AMSTERDAM
& PARTNERS

30 June 2025

His Excellency Mr. Mathias Cormann
Secretary-General
Organisation for Economic Co-operation and Development
2 Rue André Pascal
75016 Paris, France

cc Ms. Manal Corwin
Director, Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
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Subject: **Formal Complaint Regarding Systemic Violations by the Kingdom of Spain of OECD Standards, Conventions, and Transparency Frameworks in the Taxation of Impatriates**

Mr Secretary-General,

1. We write to you on behalf of **Amsterdam & Partners LLP**, an international law firm committed to promoting the rule-of-law. We respectfully submit this formal complaint and request for action in relation to systematic and escalating breaches of OECD standards by the **Agencia Estatal de Administración Tributaria (hereafter "AEAT")** of the Kingdom of Spain in relation to its treatment of Impatriate taxpayers under the regime known as the **Beckham Law** or **Impatriate Law.** Spain's conduct towards Impatriate taxpayers threatens the integrity of the OECD's cooperative tax architecture.

Amsterdam & Partners LLP has launched a legal and policy initiative ***"Hacienda vs The People"*** to confront the systemic misconduct of the Spanish tax authority, particularly its retroactive audits, misuse of CRS data, and disregard for non-resident fiscal determinations under the Beckham Law regime (Article 93, Law 35/2006).

In May 2025, Amsterdam Partners LLP formally published the white paper titled ***"Hacienda vs The People: an initial report on Spain and the Beckham Law"*** *(annexed to this letter)*, in which we have compiled evidence from affected individuals, spanning multiple jurisdictions, including citizens and residents of the EU, United Kingdom, United States, and other treaty partners. The Beckham Law has been weaponised by AEAT, transforming what was once an incentive into a legal and financial trap. In our White Paper, we have outlined in detail Spain's violations of its own Constitution, as well as breaches of EU law and the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Beckham Law regime is explained in paragraphs 11-20 below.

In our investigations, we have uncovered a system that is simply not fit for purpose. At its core lies a group of underpaid inspectors who achieve a liveable wage through the predation of their fellow citizens. These incentives to bad faith and corruption permeate their entire system. In addition, the use of Hacienda for political purposes is well documented and evidenced by the recent indictment of the General Prosecutor.[1]

2. We now turn to you, Mr. Secretary-General on behalf of affected individuals and in the public interest, seeking institutional review and remedial action under relevant OECD instruments and processes. This complaint is not theoretical, but rather grounded in client testimony, documentary evidence, legal advocacy, and rigorous engagement with the OECD's standards and commentary. Spain's conduct, if left unchecked, risks undermining the legitimacy and sustainability of the very international tax system that the OECD has built. It is the OECD's mandate to guide fair, lawful, and coordinated international tax policy. Spain's Impatriate Tax Regime's implementation violates Spanish domestic law, the ECHR, and key OECD legal instruments, including:

- The **Multilateral Convention on Mutual Administrative Assistance in Tax Matters** (hereinafter "MAC"),
- The **Common Reporting Standard** (hereinafter "CRS"),
- The **OECD Model Tax Convention on Income and Capital** (hereinafter "MTC"), and
- OECD best practices in administrative cooperation and confidentiality.

The systematic disregard by Spain for these regulatory frameworks and their potential to undermine international cooperation in tax matters—based on trust, reciprocity, and the rule of law—must be addressed without delay.

3. Spain's conduct stands in stark contrast to the international treatment of similar regimes in peer OECD jurisdictions. Other leading OECD member states, including the United Kingdom, Portugal, and Italy, offer special tax regimes designed to attract foreign professionals and investors. The UK's non-domiciled regime allows taxation on UK-source income and remitted foreign income, while exempting unremitted foreign income from UK tax liability. Portugal's Non-Habitual Resident (NHR) regime provides a ten-year preferential tax treatment for certain foreign-sourced income, and Italy's new resident regime offers a flat tax on foreign income for eligible individuals. Critically, none of these jurisdictions have sought to undermine their own regimes retrospectively or challenge the legal effect of their own mechanisms.

Spain is uniquely positioned in having actively reversed the benefits it conferred under its own Impatriate Regime, invalidating official residency determinations and using foreign-derived data to construct liabilities inconsistent with the original terms of the law. This divergence not only undermines Spain's own legislative commitments but places it in breach of OECD instruments designed to ensure legal certainty, proportionality, and taxpayer protection.

[1] https://www.elindependiente.com/wp-content/uploads/2025/06/PA-auto-instructor.pdf (Indictment PDF) Comunicación Poder Judicial, *'El magistrado instructor del Tribunal Supremo dicta auto de procedimiento abreviado contra el fiscal general del Estado y el fiscal provincial de Madrid por delito de revelación de secretos'* (Poder Judicial, 9 June 2025) https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-magistrado-instructor-del-Tribunal-Supremo-dicta-auto-de-procedimiento-abreviado-contra-el-fiscal-general-del-Estado-y-el-fiscal-provincial-de-Madrid-por-delito-de-revelacion-de-secretos accessed 30 June 2025

4. This letter sets out the following:

i. Spain's role in the OECD and its adoption of transparency instruments.

ii. Background: "Hacienda vs The People" and the Impatriate Law.

iii. Specific violations of OECD legal instruments.

iv. Specific requests for OECD Action.

5. We respectfully submit the following requests to the OECD:

i. **Formal Review by the Committee on Fiscal Affairs (CFA):** In light of the OECD Committee on Fiscal Affairs' (CFA) explicit mandate under the OECD Governance Framework for International Taxation to oversee the implementation, interpretation, and integrity of OECD instruments, we respectfully request that this submission be formally admitted for review by the CFA.

ii. **Initiate a Formal Investigation into Spain's Use of Exchanged Data**: This investigation must include structured review of Spain's CRS and MAC enforcement practices, including legal justifications for data use, compliance with the "foreseeable relevance" standard, and retroactive actions against Impatriates.

iii. **Refer Spain to the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) for Urgent Peer Review**: The OECD should refer Spain to Global Forum to assess compliance with confidentiality, proportionality, and due process standards, and consider a third-party review to restore procedural integrity and consistency.

iv. **Issue Interpretative Guidance on CRS and MAC Limitations**: The OECD should prepare guidance to clarify that automatic information exchange mechanisms cannot be used retroactively against Impatriate taxpayers who previously were subscribed under the Beckham Law, and Spain must respect its own Beckham Law unless lawfully revoked, and that enforcement actions require specific, evidence-based justification. In light of the bonus procedure and substantive evidence of misuse of tax information, issue a warning to those countries sharing tax information with Spain, pursuant to treaty obligations and ongoing systemic abuse relating to the confidentiality of information.

v. **Recommend Immediate Suspension of Retroactive Enforcement**: We urge the OECD to formally engage the Spanish Government and recommend the immediate suspension of retroactive enforcement measures based on CRS data, particularly against Impatriates who were lawfully exempt from liability under the Beckham Law. The OECD should call on Spain to reinstate the rights and protections originally granted under this special regime, where legitimate expectations were established in good faith. Furthermore, Spain must restore access to treaty-based remedies especially in cases where retroactive actions had resulted in disregard for foreign tax credits due to double taxation or discriminatory outcomes in breach of international obligations.

I. SPAIN'S ROLE IN THE OECD AND ADOPTION OF TRANSPARENCY INSTRUMENTS

6. The OECD plays a foundational role in establishing the global architecture for fair, transparent, and cooperative taxation. Its initiatives, most notably the Base Erosion and Profit Shifting (BEPS), the Common Reporting Standard, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and the Model Tax Convention provide a powerful framework to combat tax evasion, foster mutual accountability, and safeguard the legal rights of taxpayers within and across jurisdictions.

7. Spain has long been an influential member of the OECD, actively participating in both policy formation and multilateral implementation. As part of this commitment:

- Spain ratified the MAC (as amended by the 2010 Protocol), which entered into force on 1 January 2013, making it legally binding under Article 96 of the Spanish Constitution.
- Spain signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (hereafter "CRS MCAA") in October 2014 which came into effect in January 2016; As of 2025 126 jurisdictions have signed the CRS MCAA.
- Spain implemented the Common Reporting Standard through domestic measures thereby establishing the legal framework for financial institutions to collect, verify, and transmit financial account information of non-resident taxpayers. The CRS was transposed into EU law through Council Directive 2014/107/EU (known as DAC2).
- Spain has committed to the OECD's International Compliance Assurance Programme and has undergone multiple Global Forum Peer Reviews under the Transparency and Exchange of Information for Tax Purposes Framework.
- Spain has signed numerous double taxation treaties based on the OECD Model Tax Convention on Income and Capital.
- Spain has also committed to the OECD Code of Liberalisation of Capital Movements since joining the OECD.

8. In aligning its domestic legal system with these OECD standards, Spain has undertaken a legal and political obligation to uphold core principles of data confidentiality, foreseeable relevance, rights and safeguards, proportionality, and non-discrimination in its tax policies and implementation. These obligations form the backbone for reciprocal trust between states and underpin the operational integrity of the entire system of Automatic Exchange of Information (hereafter "AEOI") and International Exchange on Request of Information (hereafter "EOIR"). Any systemic deviation from these obligations threatens not only the rights of individual taxpayers, but also the credibility and sustainability of the OECD's transparency framework.

9. Notwithstanding these prior commitments, the Spanish tax authority has undertaken an aggressive enforcement campaign targeting former Impatriate taxpayers, individuals who previously benefited from favourable tax treatment under the so-called Beckham Law (Article 93 of Law 35/2006). While our white paper provides a comprehensive analysis of these actions, this letter is narrowly focused on Spain's specific violations of relevant OECD frameworks, guidelines, and policy standards concerning the issues arising out of the Impatriate Regime.

II. BACKGROUND: "HACIENDA VS THE PEOPLE" AND THE IMPATRIATE LAW

10. The "*Hacienda vs The People*" initiative responds to Spain's on-going campaign, waged by the AEAT, against individuals who, years earlier, lawfully elected into Spain's Impatriate Tax Regime/Beckham Law. The white paper provides more detailed background but we summarise the basics of the regime here. In addition, a further white paper detailing systemic rule of law violations of Hacienda as an institution will be available in September.

a. The Impatriate Law Regime

11. The Spanish special tax regime for inbound workers, commonly referred to as the Beckham Law, was first introduced through Law 62/2003 of 30 December 2003, which inserted a new paragraph 5 into Article 9 of the Personal Income Tax Act 40/1998, with effect from 1 January 2004. Its formal structure was consolidated in Article 93 of Law 35/2006 of 28 November.

12. This regime was conceived as a policy tool to attract international executive talent and facilitate Spain's competitiveness as a destination for multinational operations. The idea was simple yet strategic: allow high-income professionals relocating to Spain under genuine employment contracts to benefit from a temporary, simplified, and advantageous tax regime that provided certainty to taxpayers and efficiency to tax administrators. Since its introduction, the regime has undergone substantive reforms, including in 2009, 2014, and most recently in 2023 (through Royal Decree 1008/2023 and Order HPF/1338/2023). These reforms broadened eligibility criteria to include digital nomads and entrepreneurs under Spain's investment and innovation strategy.

i. *Eligibility Conditions and Scope of the Regime*

13. To qualify for the Impatriate regime, a taxpayer must satisfy all of the following conditions: (i) become a tax resident in Spain, which generally requires physical presence in the country for more than 183 days in a calendar year; (ii) relocate to Spain due to: a bona fide employment relationship, either through direct recruitment by a Spanish employer or via an intra-group transfer from a foreign entity to a Spanish branch or subsidiary, teleworkers (digital nomads), appointment as a member of board of directors of a company irrespective of the percentage of participation if any (except if the company is an asset holding company, officially recognised entrepreneurial activity, and highly qualified professional working in startups or R&D+I); (iii) not have been a tax resident in Spain during the five tax years preceding the relocation; (iv) not obtaining income that would be classified as earned through a permanent establishment in Spain (except entrepreneurs and highly qualified professionals); and (v) file the election to apply the regime by submitting Form 149 within six months from the date of registration as a resident in Spain, which is typically marked by the commencement of activities or registration with the Spanish social security authorities. The regime applies for a maximum duration of six years, comprising the year of arrival and the five immediately following calendar years.

ii. Tax Benefits Under the Regime

14. The Impatriate regime offers a range of significant tax benefits to qualifying taxpayers, including: (i) a flat tax rate of 24% on employment income up to €600,000, with income exceeding that amount taxed at

47%; (ii) an exemption from Spanish taxation on foreign-sourced investment income and capital gains, such as interest, dividends, rental income, and gains from non-Spanish assets, throughout the duration of the regime; (iii) an exemption from the obligation to file Form 720, the annual declaration of foreign assets required from Spanish residents holding assets abroad exceeding €50,000; (iv) exclusion from the "Temporary Solidarity Tax on Great Fortunes" (Law 38/2022) with respect to worldwide wealth, such that only assets located in Spain are subject to this tax; (v) application of the Net Wealth Tax solely to Spanish-situs assets, with foreign assets expressly excluded; and (vi) social security contributions governed by general employment rules, subject to possible exemption under a bilateral treaty or Regulation (EC) No. 883/2004.

iii. Application and Certification Procedure

15. The process of opting into the regime is straightforward and has not changed fundamentally in structure despite amendments over time. To opt in, the individual must file Form 149 with the AEAT, accompanied by their employment contract and identification documents, providing factual confirmation of eligibility. The AEAT has 10 business days to respond and, absent objections or following resolution of any queries, will issue a Certificate of Special Regime. However, in practice the AEAT can and does take much more time than the 10 business days with over 100 days in some cases. This certificate must be provided to the employer and any withholding agents to ensure correct application of the flat tax rate. Impatriates must file Form 151 annually, distinct from the standard Form 100, with the latest version governed by Order HPF/1338/2023. Due to the regime's exemption on foreign income, Form 720 is not required. Early termination may occur through voluntary withdrawal (by re-submitting Form 149), loss of eligibility (e.g., cessation of employment or shift to self-employment), or upon expiry of the six-year term. Importantly, neither Article 93 of Law 35/2006 nor its implementing regulations empower the AEAT to revoke a certificate once granted, except in cases of fraud or material misrepresentation.

16. The Certificate functions as an official administrative act that confirms an individual's entitlement to Impatriate status. It creates legitimate expectations under Spanish administrative law (*principio de confianza legítima*) and must be relied upon in good faith by both the taxpayer and third parties (such as employers, financial institutions, or treaty partners). Absent a judicial annulment or evidence of fraud, it is binding and conclusive for its intended duration.

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b. Summary of Spanish Tax Authority Conduct and Violations of the Impatriate Regime

17. The Impatriate regime has been weaponised by AEAT, transforming what was once an incentive into a legal and financial trap. As documented in the accompanying white paper *Hacienda vs The People*, the AEAT's treatment of individuals under this regime has shifted from benign administration to a pattern of aggressive and unlawful enforcement, marked by retroactive action, extrajudicial threats, and gross overreach.

18. Contrary to foundational principles of legal certainty and administrative transparency, the AEAT has engaged in practices that severely undermine the rule of law, violate individual rights, and threaten mutual cooperation in tax matters. These actions are often directed at non-Spanish nationals, professionals, executives, and their families, who were specifically encouraged to relocate to Spain based on the

commitments provided for in the Beckham Law. The transition from using the Beckham Law to welcome foreign workers to Spain into a tool of persecution has been both abrupt and profound. The following conduct typifies the evolving pattern of abuse:

- **Breach of Impatriate Taxpayers Legitimate Expectation**: The AEAT has initiated audits several years after affected Impatriate taxpayers, many of whom have long since departed Spain, filed their tax declarations in full compliance with the Beckham Law (Article 93 of Law 35/2006) and were formally granted eligibility certificates issued by the Tax Agency. These certificates, which were conferred through administrative act, gave rise to legitimate reliance interests and legal certainty. Yet, in numerous cases, Spanish tax inspectors have sought to retrospectively disclaim or invalidate those certificates, asserting, without legal basis, that prior confirmations were non-binding or merely informative. This conduct blatantly disregards the legal principle of *legitimate expectation*, destabilises the Impatriate reliance on official state acts, and erodes confidence in Spain's administrative system.

- **Fishing Expeditions via Illicit Use of CRS**: There is growing concern that the Spanish Tax Agency is misusing information obtained through CRS. Rather than adhering to the foreseeability and specificity requirements under Article 26 of the OECD Model Convention and Article 4 of the MAC, the AEAT routinely engages in speculative, open-ended investigations. The AEAT appears to be engaging in a form of regulatory bait and switch, relying on lawfully disclosed or exchanged information not to address concrete instances of non-compliance, but to revisit settled matters, disregard prior legal determinations, and construct retroactive liabilities against taxpayers who acted in good faith under the legal framework in effect during the relevant periods. Such conduct is tantamount to a fishing expedition and runs contrary to the legal limits imposed by international standards, including the OECD's prohibition on speculative requests, the requirement of foreseeable relevance, and the principle that taxpayers must be able to rely on legal certainty and good faith administrative conduct. Spain's actions, in effect, weaponize international cooperation instruments to invalidate its own prior administrative positions and penalize taxpayers for compliance that was lawful at the time, eroding both domestic and international trust in the information exchange framework.

- **Harassment Through Third-Party Inquiries**: AEAT officials routinely contact former employers, banks, colleagues, and even personal acquaintances to solicit information, without adequate procedural safeguards or judicial oversight. These contacts often involve insinuations of wrongdoing, leading to reputational harm and unjustified suspicion.

- **Intrusions Into Private and Family Life**: Tax inspectors have contacted schools, interrogated staff about minors' linguistic skills and integration, and collected sensitive family data, all without lawful basis or relevance to any taxable matter. As established in the white paper, these actions appear to be motivated by attempts to undermine the taxpayer's claim of non-residency or special tax regime eligibility. By targeting personal records, authorities aim to construct a retroactive narrative of habitual residence. These practices violate not only the GDPR and Spanish privacy law, but also Article 8 of the ECHR.

- **Weaponisation of Administrative Deadlines and Penalties**: Taxpayers are given impracticable deadlines—often as short as 10 days—to produce vast volumes of documentation, while the AEAT often ignores its own statutory time limits in its own filings. Any delay or request for clarification is penalised as "obstruction," with fines running into thousands of euros.

- **Threats of Criminalisation and Coerced Settlements**: The AEAT often engages in veiled or overt threats that civil proceedings will be converted into criminal investigations unless the taxpayer agrees to a so-called *Acta con Acuerdo*, a settlement often signed under pressure, fear, or misinformation. These threats and coerced settlements undermine access to justice and due process.

- **Systematic Intimidation of Legal Advisers**: Multiple professionals have reported that legal representatives are discouraged or dissuaded, explicitly or implicitly, from defending clients in dispute with the AEAT. Some firms report being threatened with retaliatory audits, particularly in VAT matters, a tactic reminiscent of authoritarian misuse of regulatory powers, if they represent clients subject to AEAT investigation.

- **Misuse of the Concept of 'Simulación'**: In the absence of concrete evidence, the AEAT increasingly invokes the doctrine of 'simulación', the allegation that an employer is a sham entity. This claim is often made despite documented corporate activity, Spanish tax filings, and social security contributions by the employer. In so doing, the AEAT shifts the burden of proof onto the taxpayer that the employer is legitimate.

- **Incentivised Aggression via Bonus Schemes**: The AEAT's internal structure includes performance-linked bonuses for tax inspectors tied to tax collection targets, including an additional €125 million incentive framework for 2025. Such schemes inherently reward the pursuit of settlements, fines, and aggressive enforcement at the expense of individual rights, due process, and procedural regularity, creating perverse incentives incompatible with the rule of law. Indeed, most Beckham requests appear to focus not on residence, but asset location and they are issued in advance of any determination as to disqualification.

19. The use of published blacklists, account closures and community shaming in breach of relevant domestic and international legislation and GDPR is a brutal tool used against both foreigners and citizens. Taken together, these practices are not just indicative of maladministration, but also **systemic violation of Spain's obligations under international law**, including:

i. **OECD Model Tax Convention**, particularly Articles 23, 24, 25, and 26.

ii. **Common Reporting Standard** including the model agreements that Spain has adopted. The Common Reporting Standard has been adopted by Spain through domestic legal instruments which operationalizes the reporting framework.

iii. **Multilateral Convention on Mutual Administrative Assistance in Tax Matters**, notably Articles 4, 21, and 22.

iv. **European Union Law**, including Articles 2 and 7 TEU and Article 21 of the Treaty on the functioning of the European Union and Article 45 and 18 of the EU Charter of Fundamental Rights.

v. **European Convention on Human Rights**, especially Articles 6 and 8 (right to fair hearing, right to privacy).

vi. **EU GDPR Laws:** Articles 5, 6, and 9**.**

20. In sum, a regime designed to attract international professionals has devolved into a retaliatory mechanism against those very individuals to fill the coffers of the Spanish government. The AEAT's conduct violates not only the letter of OECD and EU instruments, but the spirit of cooperation, proportionality, and rule-based taxation that underpin the international tax system. The OECD cannot remain inactive and silent in the face of such violations. It affects the situation of other governments who are committed to these instruments.

III. SPECIFIC VIOLATIONS OF OECD LEGAL INSTRUMENTS

a. Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC)

21. Spain's conduct, as detailed in our analysis below, constitutes a multi-faceted breach of its obligations under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Specifically, the Spanish Tax Authority has violated Article 4 by engaging in unfocused, retrospective "fishing expeditions" lacking foreseeable relevance; Article 21 by undermining fundamental taxpayer safeguards through retroactive enforcement, coercive settlement tactics, discriminatory audits, and disproportionate penalties; and Article 22 by misusing confidential CRS-derived data beyond authorised tax enforcement purposes, without obtaining the required intergovernmental consent. These practices collectively erode the integrity of the Convention, disregard the principles of legal certainty, procedural fairness, and non-discrimination, and represent a serious deviation from both the letter and spirit of international tax cooperation. Spain's continued misuse of this infrastructure warrants urgent scrutiny by the OECD and the Global Forum.

22. The Preamble of the MAC is critical for interpretative purposes under Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT). It provides:

"Considering that fundamental principles ***entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters****... and that States should endeavour to* ***protect the legitimate interests of taxpayers,*** *including appropriate protection against discrimination and double taxation..."*

23. The preamble establishes two key objectives:

i. Facilitating international tax cooperation;

ii. Ensuring adherence to the rule of law, procedural fairness, and the protection of taxpayer rights.

24. The Preamble's reference to the protection of confidentiality and personal data further integrates European and international privacy norms into the interpretive framework of the Convention.

i. Violation of Article 4 - Foreseeable Relevance and Prohibition on Fishing Expeditions

25. Article 4(1) of the MAC establishes a **"foreseeable relevance"** standard for the exchange and use of information:

"The Parties shall exchange any information... that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention."

26. This standard is not permissive carte blanche. The term "foreseeably relevant" is a qualified threshold designed to prevent misuse of tax information mechanisms for unfocused, speculative inquiries. The **OECD Commentary on Article 26** of the Model Tax Convention, which applies *mutatis mutandis* to MAC Article 4, affirms that:

"Contracting States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer."
– OECD Commentary on Article 26, para. 5

27. Spain, in numerous documented cases, has breached this principle by utilising CRS data to investigate the foreign income and assets of individuals who:

- Were formally certified under Article 93 of Law 35/2006 (Beckham Law);
- Had no tax liability on non-Spanish assets under Spanish law during their period of residence;
- Were selected for audit *post-factum*, long after leaving Spain, with no prior suspicion, audit trail, or cause shown.

28. In particular as documented by the white paper, the case of "Mike" is just one example of the breaches committed by the Spanish Tax Authority. Mike, a British financial professional, relocated to Spain in 2018 under the Beckham Law regime as part of his employer's post-Brexit EU strategy. Upon returning to the UK after two years, once the firm recalibrated its EU presence, he remained fully compliant with Spanish reporting obligations. Despite this, AEAT launched an audit long after his departure, targeting income years explicitly exempt under Beckham Law provisions. Not only did the AEAT refuse to clarify the full legal basis and scope of the audit, but they also expanded the inquiry globally, using CRS data to pursue bank account information from multiple jurisdictions. No domestic tax liability had been identified, yet intrusive data demands and coercive settlement discussions ensued. This case exemplifies a misuse of exchanged data: information obtained for cooperative tax enforcement was instead weaponised in a speculative, open-ended investigation devoid of legal foundation. Such conduct constitutes a de facto violation of MAC Article 4 (foreseeable relevance), Article 21 (safeguards), and the confidentiality obligations under Article 22, as well as Section 5(1)–(2) of the CRS MCAA.

29. This is a textbook example of a fishing expedition, conducted not on the basis of "foreseeable relevance" but in pursuit of revenue extraction. A fishing expedition, in this context refers to an improper or overly broad information request that lacks specific evidence or suspicion and is not based on foreseeable relevance. The requests for personal, business, and familial data across multiple jurisdictions without evidence or well-grounded suspicion clearly fall outside the scope of what Article 4(1) permits. In doing so, Spain has repurposed the CRS as an intelligence-gathering tool, contrary to both the letter and spirit of the MAC.

30. The AEAT's conduct also infringes **Article 4(2)** of the MAC:

"A Party may use information obtained under this Convention as evidence before a criminal court only if prior authorisation has been given by the Party which has supplied the information."

31. Despite this requirement, documented practice reveals that AEAT inspectors routinely threaten Impatriate taxpayers with the initiation of criminal proceedings, particularly when taxpayers refuse to accept a coercive tax settlement. These threats are frequently made without any reference to or evidence of criminal conduct, and without demonstrating that any prior authorisation has been obtained from the information-supplying jurisdictions.

32. The threatened improper use of this information in criminal cases undermines the integrity of the Convention and the trust-based framework of international cooperation as well as the object and purpose of the MAC as indicated in the preamble. It also violates basic principles of due process, the presumption of innocence, and the right to a fair hearing. The abuse of information for intimidation purposes, without judicial scrutiny or prior inter-state authorisation, is a material breach of Spain's treaty obligations under Article 4(2).

ii. Violation of Article 21 – Protection of Persons

33. Article 21 of the MAC serves as a critical legal safeguard, preserving the procedural and substantive rights of individuals and ensuring that the Convention cannot be used as a pretext to bypass national protections, international human rights instruments, or the foundational principles of tax fairness. It reads, in part:

- **Article 21(1):** *"Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State."*
- **Article 21(2)(e):** *"The provisions of this Convention shall not be construed so as to impose on the requested State the obligation … to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles… "*
- **Article 21(2)(f):** *"…or to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State."*

34. The Explanatory Report to the MAC (para. 179) confirms that Article 21:

"…is of particular importance in achieving a proper balance between the need to make mutual administrative assistance in tax matters effective and the need to provide safeguards for the taxpayers… "

Furthermore, the Explanatory Report recognises that these rights include and are informed by the protections accorded in international human rights treaties, notably the ECHR, the EU Charter of Fundamental Rights, and the principle of legal certainty and proportionality under EU law.

35. The Spanish Tax Authority has engaged in a consistent pattern of enforcement conduct that breaches these protections, as documented in the attached white paper.

First, AEAT inspectors have retroactively revoked Beckham Law certificates issued under Article 93 of Law 35/2006, despite the clear legal expectation that such certificates confer exemption from Spanish taxation on foreign income. These revocations violate the principle of legal certainty and Article 21(2)(e) of the MAC, which bars cooperation in cases of retroactive or arbitrary taxation. Secondly, the AEAT has routinely threatened criminal prosecution to force settlements (*Actas con Acuerdo*), often without any substantiated evidence of wrongdoing. This practice undermines the presumption of innocence and violates Articles 21(1) and 21(2)(e) of the MAC. Third, the AEAT has engaged in discriminatory audits targeting foreign nationals, primarily EU, US, and UK citizens. This constitutes national origin-based discrimination in breach of Article 21(2)(f) of the MAC, even if non-discrimination under the Convention does not extend to indirect discrimination. Spain has been called out for its discriminatory practices even by the CJEU *(not related to the Impatriate Regime)* which has ruled against Spain in Case ***C-788/19 (Commission v Kingdom of Spain)***, declaring that the severe penalties and indefinite limitation periods associated with Tax Form 720 (declaration of foreign assets) were disproportionate and violated the free movement of capital. Fourth, the AEAT has

violated privacy rights through invasive investigations into the family lives of taxpayers, including interrogations of school staff and unauthorised access to personal data and social media. These investigations constitute breaches of Article 8 ECHR and GDPR including Article 5(1)(a) (requiring lawfulness, fairness, and transparency), Article 5(1)(c) (data minimisation), Article 6(1) (lawful basis for processing), and Article 9(1) (prohibition on processing special categories of personal data without a valid legal exception under Article 9(2)). These breaches are prohibited by Article 21(1) of the MAC. Finally, the AEAT's conduct displays a systemic disregard for proportionality. It demands voluminous documentation with minimal notice, while ignoring its own deadlines and issuing heavy penalties for purported "obstruction." Such disproportionate enforcement, lacking fairness or balance, contravenes Article 21(2)(e) of the MAC and established principles of international and EU law.

iii. Violation of Article 22 – Confidentiality

36. The MAC sets out strict conditions on the confidentiality, handling, and use of information exchanged between competent authorities for tax purposes.

- **Article 22(1)**: Information must be treated as secret, and at a minimum, protected under the same standards as domestic law requires:

  "…to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required."

- **Article 22(2)**: Use of information is limited exclusively to:

  "…assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party."

- **Article 22(4)**: Any use beyond tax enforcement (e.g., for criminal prosecution, reputational implications, or third-party sharing) requires:

  "…prior authorisation by the competent authority of the supplying Party."

37. These provisions are grounded in the broader principle of data purpose limitation, reflected in the OECD Commentary, the GDPR, and ECHR Article 8, the "right to privacy." Qualified Impatriate taxpayers under the Beckham Law are exempt from Spanish taxation on foreign-sourced income. Therefore, data obtained under CRS concerning foreign assets or income is not relevant to any Spanish tax liability during the period of applicability of the Beckham Law. The *white paper* documents numerous cases in which AEAT initiated audits based on foreign bank account information obtained via CRS, used this data as leverage in interviews and settlement negotiations; demanded disclosure of foreign income and assets despite their exemption under Spanish law.

38. Using CRS data to target exempt income is not authorised under MAC or CRS frameworks and constitutes use beyond permitted tax enforcement. No authorisation from the jurisdictions providing information appears to have been sought under Article 22(4) to use that information for reputational pressure or tactical gain. Deploying information in these ways contravenes both the purpose limitation principle under Article 22(2) and the requirement for authorisation under Article 22(4). Furthermore, if information derived under MAC/CRS frameworks was used to create suspicion of criminal activity or money laundering, this represents a purpose shift outside tax enforcement. No documentation has been produced suggesting prior

authorisation under Article 22(4), rendering these disclosures unlawful under the Convention. AEAT thus appears to have breached both the confidentiality and authorised use clauses of Article 22.

39. Numerous Impatriate taxpayers report being told by AEAT inspectors that: *"Unless you agree to settle, this matter will be referred to criminal prosecutors."* These threats were issued without evidence of fraud, and no indication exists that authorisation was requested from the information-supplying jurisdiction. Threatening criminal action based on information that was lawfully obtained only for civil tax enforcement purposes, without compliance with Article 22(4) authorisation, is a violation of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It explicitly prohibits the use of exchanged tax information for criminal proceedings unless the supplying jurisdiction provides consent. Spain's use, or threat of use, of CRS-derived information in this context therefore constitutes a direct breach of binding treaty obligations, undermining mutual trust among competent authorities and violating international norms governing the use of exchanged information.

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b. CRS and CRS-MCAA Violations

40. Spain has adopted the OECD Common Reporting Standard (CRS) and the CRS Multilateral Competent Authority Agreement (hereafter "CRS MCAA"). As mentioned previously the Common Reporting Standard has been adopted by Spain through domestic legal instruments, most notably Royal Decree 1021/2015, which operationalizes the reporting framework. Similarly, Spain signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information in October 2014 and came into effect in January 2016. Thus, Spain is bound by specific obligations on the exchange, confidentiality, and lawful use of financial account information. These instruments aim to strengthen global tax compliance without sacrificing taxpayer rights or enabling abuse. Yet, the Spanish Tax Authority has systematically misused this data, particularly against Impatriate taxpayers, breaching the CRS MCAA's core protections.

41. The AEAT's conduct, as documented in the attached white paper and corroborated by numerous cases examples, constitutes systematic and illegal misuse of automatically exchanged financial data, particularly targeting individuals under the Impatriate Regime. These actions breach both the spirit and letter of the CRS and CRS MCAA. Many of the arguments discussed under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters also apply here, as the CRS MCAA is an operationalization of the MAC's automatic exchange framework for financial accounts.

i. CRS MCAA – Section 5: Confidentiality and Data Safeguard

42. Spain's handling of taxpayer data is in breach of Section 5 of the CRS MCAA, which mandates strict confidentiality and limits the use of exchanged information to specified tax purposes.

- Section 5(1) of the CRS MCAA provides:

  "All information exchanged is subject to the confidentiality rules and other safeguards provided for in the [Convention]/[Instrument], including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Competent Authority as required under

its domestic law."

- Section 5(2) adds:

  "Each Competent Authority will notify the other Competent Authority immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed."

43. The CRS Standard requires that automatic exchange must be contingent upon domestic legal and administrative safeguards that ensure confidentiality and lawful use. In failing to notify affected persons or provide remedies, AEAT breaches this condition. As detailed in the white paper *Hacienda vs the People*, the Spanish Tax Authority has repeatedly violated these obligations. Specifically, AEAT officers have publicly disclosed taxpayer data in the course of unrelated enforcement actions. One prominent example involved the case of an Impatriate, where CRS-derived financial information was not only used to initiate enforcement for a year beyond the individual's lawful Spanish residence period, but elements of that data were discussed in public administrative proceedings. These actions go far beyond the legally sanctioned use of such data for tax collection purposes and clearly violate the limited-use principle embedded in Section 5(1) of the CRS MCAA. The CRS MCAA is not a standalone document but derives its structure and legitimacy from the MAC. Accordingly, breaches of MAC Articles 4 (foreseeable relevance), 21 (safeguards and non-discrimination), and 22 (confidentiality) are also breaches of the CRS MCAA. The AEAT's mass inquiries without tax nexus, discriminatory targeting of non-Spanish nationals, and public dissemination of financial allegations both compound and extend these violations.

44. The retroactive use of CRS-derived information against individuals whose exemption from taxation was legally recognised at the time is also incompatible with the principle of good faith implementation under Article 26 of the Vienna Convention on the Law of Treaties, to which Spain is a party.

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c. OECD Model Tax Convention on Income and on Capital

45. The MTC serves as the model agreement for nearly all of Spain's double taxation treaties. By 2019, Spain's treaty network had expanded from 99 to 142 jurisdictions, reflecting an active commitment to broadening its bilateral tax agreements and deepening global cooperation on exchange of information. The 2019 Global Forum Peer Review confirms that Spain continues to interpret and implement its exchange of information agreements in line with both the OECD Model Tax Convention. It also confirms that all exchange of information agreements signed by Spain since the 2011 review incorporate the standard of "foreseeable relevance". While the MTC itself is not legally binding, it informs treaty construction and interpretation, and its Commentary is regarded by the OECD and national courts as highly persuasive authority in tax treaty disputes.

46. In the case of Spain's treatment of Impatriate taxpayers under the Beckham Law, multiple violations of substantive and procedural provisions of the MTC have been documented, particularly with respect to Articles 23, 24, 25, and 26. Key violations include Spain's misuse of CRS data in breach of Article 26's "foreseeable relevance" standard, transforming lawful data exchange into unlawful fishing expeditions without individualized suspicion. Under Article 23, Spain has triggered economic double taxation by retroactively revoking tax exemptions and denying treaty relief, even where income was already taxed in the source country. Moreover, under Article 24, AEAT has disproportionately targeted non-Spanish nationals through discriminatory audits and invasive enforcement practices not applied to similarly situated Spanish citizens.

Together, these actions undermine the fundamental treaty principles of fairness, reciprocity, and non-discrimination, and reflect a broader disregard for Spain's obligations under international tax law.

i. Article 26 – Exchange of Information: Breach of the "Foreseeable Relevance" Standard

- **Article 26(1) MTC** provides:

  "The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws… of the requesting State… "

47. This provision enshrines the **"foreseeable relevance"** standard, which is also central to Article 4 of the MAC and Section 5 of the CRS Multilateral Competent Authority Agreement. As explained in paragraph 5 of the OECD Commentary to Article 26, this standard:

> *"…is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant… "*

48. Spain's use of CRS data to initiate broad investigations into individuals who held Impatriate status under Article 93 of Law 35/2006, often years after they had departed Spain, clearly contravenes this limitation. The attached white paper documents over a dozen cases where CRS information was accessed or used to pressure disclosures without any prior tax liability, clear suspicion, or foreseeable relevance, particularly when the income in question was legally exempt under Spanish domestic law. The blanket actions undertaken by AEAT against former Impatriate taxpayers, where the only common element was their prior lawful election into the Beckham regime. The absence of individualized suspicion, coupled with the use of CRS data as a general investigative tool, constitutes a prohibited fishing expedition under Article 26 MTC.

ii. Article 23 – Elimination of Double Taxation: Breakdown of Treaty Protections

49. Article 23 MTC obliges states to eliminate double taxation either by: Exemption Metho (Article 23A) or Credit method (Article 23B). Under Article 23A (Exemption Method), if a resident of one State earns income or owns capital that may be taxed in the other State under the Convention, the residence State "shall exempt such income or capital from tax," except where the other State applies exemptions or special rules. However, the residence State may still, "in calculating the amount of tax on the remaining income or capital... take into account the exempted income or capital" (Art. 23A(3)).

50. Under Article 23B (Credit Method), where a resident earns income or owns capital that is taxed by the other State, the residence State "shall allow as a deduction... an amount equal to the income [or capital] tax paid in that other State," ensuring relief from double taxation through a tax credit rather than full exemption (Art. 23B(1)). Like Article 23A, Article 23B(2) also permits the residence State to consider exempt income or capital when determining tax on the rest of the taxpayer's income or assets.

51. The Spanish authorities' practice of revoking Beckham Law protections retroactively, without legal basis or individual misconduct, has resulted in the taxation of foreign-source income that was already taxed in the source country (e.g., the UK), was exempt from Spanish tax under Article 93, and did not receive credit or exemption under the bilateral treaty.

52. An example cited in the attached white paper involves a British taxpayer who was taxed in Spain on UK income after departure from Spain, with no credit allowed under Article 22 of the Spain–UK Double Taxation Convention. This is a direct violation of Article 23, resulting in unrelieved economic double taxation, which both the OECD and ECJ have consistently held to be contrary to international treaty obligations.

iii. Article 24 – Non-Discrimination: Disparate Treatment of Foreign Nationals

- **Article 24(1) MTC** states:

  "Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation… which is other or more burdensome than the taxation to which nationals of that other State in the same circumstances… are or may be subjected."

53. The wording of Article 24 MTC enshrines the principle of national treatment. This provision is also adopted in Article 24 of the Spain -UK Double Taxation Convention which states:

  "Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected."

54. AEAT's enforcement disproportionately targets non-Spanish nationals, particularly those from the EU, US, and UK, in the following ways: retroactive denial of Impatriate status, application of "simulación" to invalidate foreign contractual relationships, intrusive audits and personal investigations (e.g., children's schooling, social integration), and lack of similar scrutiny for Spanish nationals with comparable employment structures.

iv. Article 25 Mutual Agreement Procedure (MAP) Violations

- **Article 25** states:

  "i. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State … (ii). The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to

the avoidance of taxation which is not in accordance with the Convention…."

55. Spain has adopted MAP in most of its double taxation treaties for instance the Spain – UK Double Taxation Convention contains similar clause. Despite incorporating Article 25 into virtually all its double tax treaties, Spain has, in practice, denied affected Impatriate taxpayers access to the procedure. There is no evidence that Spain has allowed these individuals, who are now facing unexpected tax liabilities on previously exempt foreign income (such as under the Beckham Law), to initiate or participate in MAP discussions, even when the relevant treaty explicitly permits it. Spain's failure to offer access to the Mutual Agreement Procedure constitutes a serious breach of its bilateral treaty obligations and undermines the integrity of the international tax dispute resolution framework. This right is a cornerstone of taxpayer protection and is designed to ensure that cross-border taxation is consistent, coordinated, and fair. This administrative silence or failure to act not only breaches the text of the relevant treaties, but it also contravenes OECD best practices as articulated in the OECD Manual on Effective Mutual Agreement Procedures (MEMAP), which requires that taxpayers be granted access to MAP in a timely, transparent, and good-faith manner.

56. It is important to note that Article 25 does not require the exhaustion of domestic remedies such as domestic appeal procedures, a feature specifically intended to protect taxpayers facing intractable or abusive tax administration in one contracting state. Spain's failure to honour this procedural safeguard removes a critical mechanism for bilateral coordination and denies affected individuals the legal certainty that the OECD framework is designed to provide. This is not a mere technical oversight; it reflects a systemic unwillingness to uphold treaty obligations and engage in good-faith dispute resolution. As such, it invites scrutiny under the OECD peer review process. Spain's conduct must be publicly reviewed and addressed to restore trust in the integrity of the MAP process and the legitimacy of the OECD tax treaty framework.

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d. OECD best practices in administrative governance

57. The OECD has established a range of guides and best practices on the tax administration. The OECD's **VITARA Reference Guide on Institutional Governance** outlines critical best practices for tax administrations, emphasising the need to balance effective enforcement with the protection of taxpayer rights. Although not legally binding, the VITARA Guide serves as recognized soft law instrument, establishing internationally accepted best practices for institutional governance within tax authorities. The VITARA Guide explicitly emphasises that revenue authorities must adhere to principles such as the presumption of innocence, respect for legal privilege, and the right to timely, impartial, and effective redress mechanisms. It also calls for a clear institutional separation between enforcement and dispute resolution functions, the presence of external oversight mechanisms, and robust accountability frameworks to mitigate risks of coercion, abuse of power, and systemic unfairness. In doing so, the Guide aims to reinforce public trust and voluntary compliance, both of which are essential for sustainable revenue systems in democratic societies.

58. However, the Spanish Tax Authority, as extensively documented in *Hacienda vs the People*, has consistently disregarded the institutional governance standards outlined in the OECD's VITARA Reference Guide. The Guide expressly affirms the importance of upholding the presumption of innocence, requiring that tax enforcement actions be grounded in demonstrable legal justification, and warns against coercive tactics that infringe upon taxpayer rights. In practice, AEAT inspectors have routinely threatened former Impatriate taxpayers with criminal prosecution, often without any substantiated evidence of fraud or legal basis for suspicion. These threats are typically issued during *Actas con Acuerdo* (settlement proceedings), used strategically to pressure individuals into relinquishing their rights or accepting unfounded tax liabilities. This

conduct directly contravenes both the spirit and the letter of the OECD's governance principles, eroding the procedural fairness that VITARA emphasises as foundational to any legitimate tax administration.

59. Furthermore, the rights of Impatriate taxpayers to seek impartial and independent redress have been systematically obstructed. The VITARA Guide explicitly recommends that dispute resolution mechanisms be institutionally separated from enforcement arms, subject to external review, and designed to uphold integrity and accountability. In contrast, AEAT procedures frequently concentrate both investigative and adjudicative power in the same administrative body, denying taxpayers meaningful recourse and shielding enforcement decisions from neutral scrutiny. Spain's failure to comply with these safeguards violates not only the OECD's recommended standards but also undermines the rule-of-law commitments it has undertaken under various treaty frameworks.

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e. Critical Review of the 2019 Global Forum Peer Review on Spain

60. The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter "Global Forum") is mandated to conduct in-depth peer reviews on jurisdictions' compliance with international transparency standards, both under the Exchange of Information on Request and Automatic Exchange of Information frameworks. In 2019, the Global Forum published its Second Round EOIR Peer Review of Spain, concluding that Spain was "Largely Compliant" with the international standard. Although the peer review process is helpful in understanding whether countries' written laws are compliant with OECD standards, they do not sufficiently capture how the laws are actually implemented and how that implementation affects taxpayers. The OECD should seek additional input from affected stakeholders, such as legal and tax professionals, affected taxpayers, trade unions, academic or civil society observers, and Ombuds institutions.

61. The 2019 report evaluated Spain's EOIR framework based on data between 1 January 2015 and 31 December 2017, assessed against the 2016 Terms of Reference. The assessment process was largely dependent on input from Spanish authorities, including the Tax Agency, the Ministry of Economy and Finance, and other regulatory and oversight bodies. It also incorporated information from partner jurisdictions and selected internal documentation. While this approach captures formal institutional arrangements, it excludes any independent verification of enforcement behaviour or access to complaints data, external stakeholders, or affected persons. The methodology suffers from a high-level, elite-driven design that privileges official narratives and internal documentation. The Spanish Tax Agency and related ministries dominate the factual matrix, without effective triangulation from affected stakeholders.

62. As a result, the peer review captures theoretical compliance rather than the practical implementation or misuse of powers, particularly concerning the foreseeable relevance standard, data confidentiality, and procedural safeguards. As Rixen (2008) has argued, transparency mechanisms in tax governance lack legitimacy unless they embed pluralistic oversight and practical accountability.[2] Empirical validation, including through participatory methods, is central to measuring procedural justice and proportionality in tax enforcement. This omission is material. The Global Forum itself identifies as a best practice that compliance with transparency standards requires "both legal framework and effective implementation." However, the Spanish review fails to meaningfully assess implementation. No data was gathered on taxpayer complaints,

[2] Rixen, T. (2008). *The Political Economy of International Tax Governance*. Palgrave Macmillan.

judicial challenges to EOI actions, or on-the-ground audit behaviour involving CRS-derived information. The absence of any review of audit case files involving Impatriate taxpayers is especially striking. In the context of legal systems, rule-of-law assessments must be grounded in observable administrative behaviour, not merely statutory form (Craig, 2017).[3]

63. Annex 3 of the report reveals the peer review was conducted through:

- Written questionnaire responses by Spain,
- An on-site visit in July 2018 with exclusive interviews of state institutions (AEAT, SEPBLAC, Banco de España, etc.),
- No open-ended interviews or anonymous stakeholder surveys.

Such a closed methodology cannot uncover non-compliant enforcement patterns, nor detect abuse of discretion. It inherently lacks the forensic tools required to uncover coercive or extrajudicial practices such as those reported under the *Hacienda vs The People* initiative. The international tax information exchange regime is vulnerable to political insulation when peer reviews exclude empirical, ground-level data and perspective. It is protected by elite information provided by state institutions. For instance, the foreseeable relevance standard, the backbone of the OECD's EOI framework, is discussed at para 260, yet the review fails to examine how Spain has interpreted and applied the standard in practice. As our white paper documents, the AEAT has systematically requested and used CRS data for audits involving foreign-source income exempt under Article 93 and situations involving no prior suspicion or domestic tax deficiency. Furthermore Spain's conduct violates Section C.2.1 of the OECD AEOI Terms of Reference, which prohibits the inappropriate use of information exchanged under the CRS framework and requires participating jurisdictions to ensure that enforcement actions comply with international standards of proportionality and data protection. The Peer Review fails to evaluate any such case file or conduct a random audit sample, which would have revealed potential violations of Article 4 MAC, Article 26 MTC and the AEOI Terms of References.

64. A notable area of concern, largely absent from peer review assessments, is the operation of the AEAT's audit incentive system. Spanish legal commentators and civil society reports have observed that tax inspectors receive performance-based remuneration linked to audit outcomes or collection levels. While such mechanisms may be intended to enhance efficiency, they create structural bias, particularly if financial incentives are not transparently disclosed or subject to safeguards on disgorgement. In this context, the use of CRS-derived data may inadvertently be shaped by revenue-oriented motivations, rather than strictly limited to ensuring legal compliance and proportional enforcement. This approach is incompatible with natural justice and the rule of law. Greater transparency and oversight of such incentives would help reinforce public confidence in the integrity of the enforcement process.

65. We respectfully submit that, considering these concerns, the OECD should consider modest but meaningful reforms to its Peer Review methodology, including:

- The OECD should reform the Peer Review methodology to include empirical audits of case files, anonymous stakeholder feedback, and judicial appeal data;

[3] Craig, P. (2017). *EU Administrative Law*. Oxford University Press.

- All EOI audits involving retroactive data use, particularly in cases governed by special tax regimes (e.g., Beckham Law), should be subjected to a special compliance review;

- Spain's current "Largely Compliant" rating should be downgraded pending an investigation into CRS-based audit practices and procedural fairness.

66. The OECD cannot claim that its standards are being followed merely because a jurisdiction's laws are formally aligned. The test is enforcement behaviour, not paperwork. Spain's systemic abuses, as detailed in this letter and the annexed white paper, remain invisible to the current peer review model, not due to a lack of evidence, but due to institutional self-reliance, methodological limitations, and a lack of independent verification. Spain is a classic example of a 'dual state' where legal instruments do not describe the bad faith inherent in tax inspections motivated by bonus schemes over compliance.

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f. Spain's pattern of violations: summary of complaints against the Spanish tax system

67. Spain's pattern of violations extends well beyond our complaint. There is a growing body of public and institutional criticism pointing to systemic issues within the Spanish tax enforcement structure. Spain's tax enforcement regime compels taxpayers to navigate a deeply flawed system of redress, where fundamental rights are routinely undermined by the very institutions tasked with upholding them. The AEAT has institutionalised a model of enforcement that relies on mass surveillance, automated processing of sensitive personal data, and public exposure, conduct that directly contravenes protections enshrined in the Spanish Constitution, the Charter of Fundamental Rights of the European Union, and the European Convention on Human Rights. Alarmingly, Spanish taxpayers must often seek justice through a sequence of courts and administrative tribunals that, as the Court of Justice of the European Union ruled in its landmark 2020 judgment in *C-274/14, Banco de Santander SA* (a judgment that was not concerning the Beckham Law), fail to meet the basic standards of judicial independence required under EU law. Despite these concerns, Spanish jurisprudence, particularly from the Constitutional and Supreme Courts, continues to legitimise AEAT practices that violate European standards. An appeal currently pending before the Spanish Supreme Court marks the first attempt to invoke the direct applicability of the proportionality principle under Article 52.1 of the Charter of Fundamental Rights of the European Union to AEAT conduct, highlighting both the urgent need for reform and the growing disconnect between Spanish administrative practices and the rule-of-law standards expected within the European Union.

68. In June 2025, the Instituto de Estudios Económicos (IEE) published a report, *"The Problem of Tax Litigation in Spain: Proposals for Solutions and Improvements from the Perspective of Companies,"* where it underscored a systemic crisis in Spain's tax administration marked by excessive litigation, legal uncertainty, and disproportionate sanctioning. According to the report over 60% of tax assessments appealed are ultimately resolved in favour of taxpayers, highlighting administrative failings that inflate litigation levels and undermine trust. With more than €40 billion in contested tax debt and €12 billion in state compensation for adverse rulings, the cost of unresolved disputes is staggering. The report attributes this to a regulatory framework plagued by complexity, ambiguity, frequent legal changes, and a confrontational administrative culture that discourages cooperation. Penalties are often imposed automatically without fraud or intent, contravening recent Spanish Supreme Court rulings affirming the presumption of innocence. The administrative appeal system is slow, fragmented, and inconsistent, discouraging investment, 36.8% of

Spanish firms report that their relationship with the tax authority restricts their business, a rate three times higher than the EU average. The IEE proposes urgent reforms: regulatory simplification, clearer interpretative guidance, promotion of cooperative tax compliance, implementation of alternative dispute resolution mechanisms, procedural streamlining, and realignment of AEAT incentives to prioritize fairness over revenue targets.

69. On 25 December 2024, the Citizen Advice Bureau for Spain released a statement titled "*Unfair Practices in Spain's Tax System: Addressing the Barriers to Fair Appeals for Expats*," highlighting how enforcement under the Beckham Law disproportionately targets foreign workers and places unreasonable barriers on appeal mechanisms. Similarly, Lullius+ Partners, an international law firm, published detailed legal guidance warning clients about the increasing risk of arbitrary inspections and enforcement tactics by the AEAT. The TaxPayers' Alliance has further described Spain as laying a "tax trap for unwary newcomers."

70. The concerns raised by these independent actors are echoed at the institutional level. On 12 March 2025, the European Commission referred Spain to the Court of Justice of the European Union (CJEU) for violating Article 63 of the Treaty on the Functioning of the European Union (TFEU) concerning the free movement of capital. Spain's discriminatory deferral rules in capital gains taxation disproportionately burden non-resident taxpayers, denying them the instalment-based tax payment options available to residents. Although not directly about the Impatriate law regime but the pattern of discrimination against Impatriates remain the same. The structure of such taxation rules reflects a broader systemic bias in Spain's tax policy that conflicts with EU law. This legal conflict also intersects with non-discrimination provisions under the OECD Model Tax Convention (Article 24) and the Convention on Mutual Administrative Assistance in Tax Matters.

71. The CJEU has also ruled against Spain in Case ***C-788/19 (Commission v Kingdom of Spain)***, declaring that the severe penalties and indefinite limitation periods associated with Tax Form 720 (declaration of foreign assets) were disproportionate and violated the free movement of capital. Though Form 720 does not apply directly to Impatriate taxpayers, the AEAT's threat of extreme fines mirrors the coercive environment in which foreign taxpayers operate. The Court emphasised that fines amounting to more than 100% of a taxpayer's declared assets constitute a violation of EU fundamental freedoms. This jurisprudence from the CJEU reinforces the claim that Spanish tax enforcement mechanisms operate with a disproportionate and discriminatory effect. The AEAT's pattern of targeting non-residents or Impatriates under vague legal grounds, using harsh penalties or exploiting asymmetrical legal rights (e.g., denial of audit reasons, confidential data use, aggressive settlement tactics), arguably contravenes not only EU primary law but also the OECD's principles of fair and effective EOIR. Specifically, the practices run afoul of the OECD Guidelines' emphasis on legal certainty, proportionality, and taxpayer safeguards.

72. On 19 December 2024, the Court of Justice of the European Union delivered a further critical judgment in the case of ***Credit Suisse Securities (Europe) Ltd v. Diputación Foral de Bizkaia***. The Court found that Bizkaia's withholding tax regime was incompatible with the principle of free movement of capital, specifically for foreign entities receiving dividends from Spanish sources. The decision underscores the systemic nature of Spain's discriminatory tax frameworks that place disproportionate burdens on non-residents. Although the case pertains to a subnational tax authority, it reflects national practices and the underlying uniform enforcement philosophy employed across Spain. The CJEU's conclusions bolster the need to review Spain's entire approach to tax enforcement for consistency with EU and OECD obligations.

73. Accordingly, Spain's EOIR enforcement regime must be viewed in light of this broader context of legal breaches and judicial findings. The convergence of independent watchdog reports, European Commission infringement actions, and CJEU rulings reveals a pattern of institutionalized disproportion that is both incompatible with EU law and in direct tension with OECD norms. The OECD Peer Review's failure to engage with these developments undermines the credibility of its compliance ratings and necessitates a more rigorous and context-aware methodology going forward.

IV. REQUEST FOR OECD ACTION

74. The Spanish Tax Authority's misuse and violations of the Common Reporting Standard, The Model Tax Convention, the Multilateral Convention on Mutual Administrative Assistance in Tax, and Guidelines on Institutional Governance reflects a broader and dangerous trend: the instrumentalization of cooperative tax mechanisms to achieve domestic enforcement objectives through intimidation, data overreach, and legal retroactivity.

75. Left unaddressed, these violations threaten to erode international confidence in the OECD's cooperative tax frameworks and will undoubtedly embolden other jurisdictions to adopt similarly predatory enforcement practices. When a member state is permitted to misuse Common Reporting Standard data retroactively, turning a tool designed for forward-looking transparency into an instrument of punitive audit and legal overreach, it sends a clear message to taxpayers and treaty partners alike: that protections under international standards are hollow. The result is not merely reputational damage. Taxpayers, particularly mobile workers, foreign investors, and cross-border residents will be less willing to disclose sensitive financial information if they believe it may be retroactively weaponized. This undermines the principle of voluntary compliance, which is essential for accurate reporting under CRS. Moreover, jurisdictions sharing information with such a member state may begin to withhold or sanitize data to protect their residents, degrading the quality, reliability, and completeness of exchanges. This chilling effect defeats the very objectives of the OECD's transparency agenda and threatens the long-term viability of the multilateral exchange of information architecture. The OECD's reputation as the architect of a balanced, lawful, and rights-respecting global tax regime depends on the consistent and lawful application of its instruments by all member states. Allowing this precedent to persist would signify the OECD's tolerance of systemic misuse, weakening its legal authority and diplomatic credibility.

i. *Formal Request for OECD Action*

76. In light of the extensive documentary and legal evidence provided, we respectfully request that the **OECD Centre for Tax Policy and Administration**, **the Committee for Fiscal Affairs** and where appropriate the **OECD Global Forum on Transparency and Exchange of Information for Tax Purposes**, take the following concrete actions:

i. Launch a Formal Investigative Review

77. We urge the OECD to open a structured review of Spain's CRS and MAC enforcement practices, including: the legal basis for AEAT's use of exchanged data; compliance with the foreseeable relevance standard; retroactive enforcement actions against Impatriate taxpayers and other non-residents. This investigation should include, stakeholder interviews and submissions, treaty partner consultation, and examination of Spain's internal bonus-linked enforcement policies, as disclosed in the white paper. The methodology should go beyond that of the previous Peer Review report and must include empirical evidence from stakeholders.

78. Should a formal public investigation not be feasible in the short term, we respectfully propose that the OECD consider issuing a confidential technical memorandum to the Spanish authorities, identifying specific compliance failures and recommending corrective measures in line with OECD standards.

ii. Refer Spain to the Global Forum for Peer Review

79. Given the magnitude and systematic nature of Spain's actions, we request that the OECD refer this matter to the **Global Forum on Transparency and Exchange of Information for Tax Purposes** for:

- **Urgent peer review** of Spain's confidentiality, proportionality, and due process safeguards. However, the Peer Review must conduct interviews with non-institutional stakeholders including lawyers, affected taxpayers and unions;
- Revaluation of Spain's **compliance rating** on information exchange standards (currently marked "Compliant" and "Largely Compliant").

80. In addition, we request that OECD explore establishing a neutral third-party review of Spain's conduct. This would restore credibility to the Global Forum process and ensure consistency across jurisdictions.

iii. Issue Interpretative Guidance

81. We request the OECD to issue publicly available interpretative guidance reaffirming:

- That **CRS and MAC cooperation must not be used retroactively** against laws such as Beckham Law that confer rights and guarantees;
- That **certification under special domestic tax regimes**, such as the Beckham Law, must be respected unless lawfully revoked with proper due process;
- And that **tax authorities must provide individualised, evidence-based justification** for information requests or enforcement actions initiated on the basis of shared data.

82. This guidance should clarify the **non-derogable limits** to the use of CRS data and underscore the distinction between lawful cooperation and coercive fishing.

iv. Recommend Immediate Administrative Suspension of Retroactive Enforcement

83. Finally, we urge the OECD to formally engage the Spanish Government and recommend:

- A **halt to retroactive enforcement actions** based on CRS data when no tax liability existed at the time;
- The **reinstatement of rights under prior legal regimes** (e.g., the Beckham Law) where legitimate expectations were established through official certification;

84. A lack of publicly available, legally binding administrative guidance has enabled a culture of selective enforcement, coercive investigation, and arbitrary revocation of rights, as clearly documented in the white paper *Hacienda vs the People*. This secrecy must be replaced with public accountability and procedural transparency.

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85. We request the that the OECD, provide, or commit to provide, a timeline or procedural roadmap outlining how the OECD intends to assess and respond to the concerns raised, whether through the Global Forum, Centre for Tax Policy and Administration, or other appropriate mechanism.

86. We remain available for consultation and would welcome the opportunity to present further evidence or coordinate discussions with affected treaty partners. We stand ready to provide further documentation, testimonies, and legal materials in support of this complaint.

Yours respectfully,

Robert Amsterdam
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Annex: Hacienda vs The People White Paper