

The Autonomous Community of Madrid approves a new tax relief in the Personal Income Tax (PIT) for investments by new taxpayers from abroad



On November 28th, the long-awaited Law 4/2024, of November 20th, which modifies the consolidated text of the legal provisions of the Community of Madrid regarding taxes assigned by the State, approved by Legislative Decree 1/2010, of October 21, of the Governing Council, to establish a deduction for investments by new taxpayers from abroad in the Personal Income Tax, was published in the Official Gazette of the Community of Madrid (BOCM) of November 14, already colloquially known as the “Mbappé Law”.

When other countries in our environment such as Portugal, Italy, or the United Kingdom have started, to a greater or lesser extent, policies to reduce the incentives they had in place to attract foreign investors, our country and some of its Autonomous Communities continue, along the path started several years ago, to continue incentivizing investment policies and attracting international talent.

And in this sense, the Community of Madrid, as claimed in the preamble of the aforementioned Law, intends to continue with its policies of attracting investments and maintain a *“leading position in the capture of monetary flows and generate incentives to continue channeling investments that have a positive impact on the Community of Madrid.”*

For this reason, the Revised Text of the Legal Provisions of the Community of Madrid on taxes assigned by the State, approved by Legislative Decree 1/2010 (DL 1/2010), of October 21st, of the Government Council, is modified and **a new tax relief for investments by new taxpayers from abroad is established in the regional section of the Personal Income Tax (PIT).**

This tax relief is aimed at non-resident taxpayers who decide to establish their residence in the

Community of Madrid for investments made in values representing the assignment to third parties of their own capital, negotiated or not, in organized markets or in values representing participation in equity of any type of entity, negotiated or not, in organized markets.

The main characteristics of this measure, whose entry into force takes place with effects for tax periods beginning on or after January 1, 2024, by creating a new article 17.bis of DL 1/2010, would be as follows:

- Application of a tax credit in the regional quota of 20 percent of the acquisition value (with the addition of expenses and taxes and exclusion of those interests, inherent in both cases to the acquisition).
- Investment in certain elements, such as:
 - a) Values representing the assignment to third parties of their own capital, negotiated or not, in organized markets.
 - b) Values representing participation in equity of any type of entity, negotiated or not, in organized markets.

The above is subject to meeting certain requirements:

1. That the taxpayer has not been a resident in Spain during the five years prior to the change of residence to the territory of the Community of Madrid.

At this point, it is important to mention that the Draft does not refer to tax periods as established by the Personal Income Tax regulations for certain special regimes aimed at attracting international talent but to calendar years.



2. In the case of acquisitions of equity participations of any type of entity (negotiated or not in organized markets):

- The entity cannot be established or domiciled in a tax haven.
- The direct or indirect participation of the taxpayer and their spouse or any person related to the taxpayer by blood or marriage, up to the second degree inclusive, cannot exceed 40% (in capital or voting rights) during the mandatory holding period of the investment.
- It must be a "pure investment" as the taxpayer cannot, under any circumstances, carry out executive or managerial functions in the entity subject to the investment or maintain an employment relationship with said entity.

3. The moment at which such investment will be made must be:

- Generally, in the tax year in which the taxpayer acquires the acquisition of tax residence in the Community of Madrid, in accordance with the Personal Income Tax regulations, or in the following tax year.
- Or in the tax year prior to the acquisition of said residence for the case of investment in values representing the assignment to third parties of their own capital issued by Spanish entities and of values representing participation in equity of Spanish entities.

4. The deduction period will be:

- Generally, in the tax year in which the investment occurs and in the immediate and successive five tax years thereafter, or
- In the tax year in which the said tax residence is acquired or in the immediate and successive five tax years thereafter in case the investment was made in the tax year

prior to becoming a taxpayer of the tax (in accordance with the allowed assumptions, investments in Spanish entities).

- In both cases, the extension is provided that there is insufficient tax quota in the year when the deduction is taken.
5. The holding period of said investment will be 6 years from the acquisition date. With the aim of promoting investment and capital movement, onerous transfers of the aforementioned elements are allowed as long as the total amount obtained in the transfer is reinvested within 1 month from said transfer.

Likewise, the taxpayer must maintain the status of Personal Income Tax taxpayer until the last year of the investment holding period.

In case of non-compliance with the aforementioned conditions, the applied deduction will be lost.

6. Incompatibilities

The deduction contained in this article will be incompatible, for the same investments, with the deductions already in force for the acquisition of shares and social participations of new entities or recently created and for investments in entities listed on the Alternative Stock Market (MAB).

In the event of other regional deductions, this deduction will be applied after the rest of the deductions to which the taxpayer is entitled.

The loss of residence in the Community of Madrid during the period of obligation to maintain the investment or the failure to comply with the obligation to maintain the investment made, including the case of transfer without total reinvestment, will result in the loss of the applied deduction.

Conclusions

The entry into force of this new deduction represents a new element aimed at attracting investors who can contribute to the capture of international talent, which, together with other incentives, means that our tax system contemplates different alternatives to be able to encourage such transfers to our country.

The potential implications that such transfers of residence may have on other taxes such as the Wealth Tax or the Temporary Solidarity Tax on Large Fortunes, as well as those relating to the Inheritance and Gift Taxes, mean that they must be analysed in a global manner and by competent advisors in the matter. In this regard, Andersen Spain and its team of professionals, experts in the different subjects, can advise and provide the necessary support both in the acquisition of residency in Spain / Madrid, and in future divestment decisions.

For more information, you may contact:

PCS Group
Andersen Tax Department
pcs@es.andersen.com

