THE PRIMARY RESIDENCE UNDER THE "BECKHAM LAW": COULD THE CONTROVERSY FINALLY BE COMING TO AN END?

Spain's special tax regime for inbound expatriates, commonly known as the "Beckham Law," allows certain individuals who move to Spain to be taxed under the Nonresident Income Tax (IRNR) rules for up to six years, even though they are considered Spanish tax residents. This creates a paradox with practical consequences that are hard to justify and, in light of recent judicial and administrative developments, increasingly difficult to sustain. This is particularly true following the position taken by the Directorate-General for Taxation in Binding Ruling V2467-25, dated December 11, 2025.

The underlying paradox: treating residents as nonresidents

The Nonresident Income Tax Law does not recognize the concept of a "primary residence." This means that, as a general rule, any urban property owned by a nonresident in Spain gives rise to imputed income equal to 2% of its cadastral value, or 1.1% if that value has been revised within the past ten years. Article 85 of the Personal Income Tax Law, however, does not apply this imputation to resident taxpayers when the property is their primary residence.

The problem is that taxpayers who opt for the Beckham Law are still tax residents in Spain, despite being taxed under the rules for nonresidents. Many of them also own the home they use as their primary residence. The result is an imbalance that is hard to justify: the regime ends up penalizing the very thing it is meant to encourage—the relocation of foreign talent to Spain.

The judicial turning point

On May 6, 2024, the High Court of Justice of Madrid ruled that taxpayers covered by the Beckham Law should not be taxed on their primary residence. The court noted that nonresident tax legislation could hardly be expected to include a primary-residence exemption, since it is designed for people who do not live in Spain. The Beckham Law, by contrast, applies specifically to individuals who become Spanish tax residents after moving to the country. The same court went further in its subsequent Judgment No. 665/2025, holding that these taxpayers were entitled to amend previously filed self-assessments, exclude the imputed income associated with their primary residence, and obtain a refund of the tax paid in error, together with interest.

The Central Economic-Administrative Court reached the opposite conclusion, however, in its July 17, 2025 ruling, which established a uniform interpretation. After examining the statutory cross-references between the Personal Income Tax and Nonresident Income Tax regimes, it concluded that, had lawmakers intended to extend this benefit to inbound expatriates, they would have said so expressly. Even so, that formalistic reading—which mechanically applies rules intended for genuine nonresidents—is becoming increasingly difficult to defend against the growing weight of the substantive arguments to the contrary.

Europe may have pinpointed the real problem.

The European Commission has sent Spain a reasoned opinion arguing that the country is violating the free movement of capital by taxing the primary residences of certain taxpayers covered by the special tax regime for inbound expatriates. In a communication dated April 29, 2026, the Commission stated that Spain may be in breach of Article 63 of the Treaty on the Functioning of the European Union. The issue is that

nonresident taxpayers are taxed on properties used as their primary residence, while resident taxpayers are exempt from the same charge on their own primary residences. Spain has two months to respond and take the necessary action. If it fails to do so, the Commission may refer the case to the Court of Justice of the European Union.

According to the Commission, this difference in treatment infringes the free movement of workers and capital guaranteed by the Treaty on the Functioning of the European Union.

The Directorate-General for Taxation opens the door to resolving the issue.

Against a backdrop of mounting evidence pointing in the same direction, the Directorate-General for Taxation may now have taken a step that deserves close attention. In Binding Ruling V2467-25 of December 11, 2025, the Directorate-General concluded that a taxpayer covered by the Beckham Law may qualify for the exemption on capital gains arising from the sale of a primary residence in Spain because they are considered resident in a European Union Member State, subject to the conditions set out in Article 38 of the Personal Income Tax Law.

The significance of this ruling for the issue at hand is difficult to overstate. The tax authority is implicitly recognizing that inbound expatriates may benefit from the tax relief available for a primary residence. Once it is accepted that current tax law protects a taxpayer's primary residence for the purposes of the reinvestment exemption, it becomes difficult—and increasingly untenable—to argue that the same property should be taxed as though the concept of a primary residence did not exist.

A controversy that should soon be put to rest

The High Court of Justice of Madrid, the European Commission, and now the Directorate-General for Taxation itself are all pointing in the same direction: the position long taken by the Tax Inspectorate under the Beckham Law lacks sufficient justification. In fact, these three strands—judicial, European, and interpretive—are now converging, leaving the opposing position taken by the Central Economic-Administrative Court increasingly isolated and vulnerable.

The question is no longer whether the controversy will be resolved, but when—and by what means: legislative reform, a change in administrative interpretation, or an adverse ruling against Spain by the Court of Justice of the European Union? In the meantime, taxpayers covered by the special regime would be well advised to take a cautious but proactive approach, keeping a close watch on how the controversy develops while ensuring that they do not lose the right, where applicable, to amend returns for tax years that could still be revised in their favor. This may be the case where imputed real estate income relating to their primary residence in Spain was reported incorrectly or, more seriously, where a capital gain arising from the sale of that residence was not treated as exempt.

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