

## **More legal certainty in the Beckham Law enforcement**

Perhaps due to major recent events, relevant tax news positively affecting foreign workers and professionals in our country have gone unnoticed.

This is the binding answer given by the Directorate General for Taxation in response to a consultation made by one of our clients as regards the application of the exemption regime for in-kind income to persons who have asked to be covered by the special tax regime for foreign workers displaced to Spain (colloquially known as the *Beckham Law*).

This is an important issue as, up to now, neither the Directorate General for Taxation nor any court has set the criteria on this issue with respect to displaced workers.

It should be remembered that the tax regime for foreign workers displaced to Spain has certain shortcomings in its regulatory configuration, which, on many occasions, generates a certain degree of legal uncertainty for those companies and workers who seek to apply it.

It should be recalled that the tax regime for foreign workers posted to Spain, among other benefits, allows for the employment income of those who benefit from it to be taxed at a flat rate of 24%, which, considering the progressive nature of the Personal Income Tax, is a significant benefit for all such workers, who generally receive income from employment in excess of 60,000 euros per year.

Another of the tax benefits arising from the application of this special tax regime is that only capital gains originated in Spain are taxed, which for these workers that have relevant foreign-sourced capital is a key issue for their adherence to the special regime. Similarly, foreign workers displaced to Spain are only applied the Wealth Tax if it is applicable in the Autonomous Region where they have established their residence, on the basis of the wealth located in Spain, excluding, therefore, the wealth located abroad.

In view of the tax benefits available to foreign workers displaced to Spain, who choose to pay tax under this special tax regime, the legislators, the Directorate General for Taxation and some courts have been reluctant to extend other tax benefits provided for in Spanish law, namely, inter alia, the exemption from Income Tax for severance payments or the exemption for work performed abroad (the famous 7p exemption in the Income Tax law).

With regard to the issue resolved by the Directorate General for Taxation in the binding consultation of 16 March 2020, it should be recalled that exempt in-kind incomes are those indirect forms of payment used by employers to enable their employees to optimise their Income Tax liability. These flexible payment methods include restaurant, transport and nursery tickets, payment for job-related training, contributions paid for health insurance coverage for workers and close relatives, and company shares given to workers under certain conditions.

As mentioned above, there were reasonable doubts about applying these tax benefits to the Income Tax of foreign workers displaced to Spain, since neither the relevant regulations nor the Courts, or even the Directorate General for Taxation itself, which interprets tax regulations, had issued an opinion on this matter, having even denied, in many cases, the possible application of other tax benefits to such workers with arguments lacking any legal guiding principle like, for example, that they already benefited from a very advantageous tax regime.

With this binding resolution, the Directorate General for Taxation officially extends the application of these tax benefits to foreign workers posted to Spain, providing more legal certainty to this special tax regime.