

Mobility: Tax alert

May 2022

Spain

Tightening of the rules for taxation of long-term incentives under the special tax regime for inbound employees

Executive Summary

The General Directorate of Taxes (GDT) recently issued a new interpretation which will impact the taxation of long-term incentives received by employees.

In particular, employment income derived from long-term incentive gains cannot be apportioned for periods of residence outside Spain unless the full amount of the gain is attributable to the period prior to the date of assignment or transfer to Spanish territory or the period after the assignment or transfer has ended.

Summary of the interpretation

The interpretation includes an example of an employee posted by a UK company to Spain during the second half of 2020 and, as consequence, the employee is entitled to be taxed under the special tax regime for inbounds.

In the example, a long-term incentive, linked to the achievement of a certain objectives over three years, was awarded to the employee prior to the date of assignment or transfer to Spanish territory. At the end of the third year of the incentive period, the employee has the right to receive a specific number of free shares (or at a reduced price).

The example concludes that the employment income arising from the consolidated rights linked to the incentive plan as of 31 December, 2020 do not derive from duties performed exclusively prior to the date of assignment or transfer to Spanish territory and, therefore, will be fully subject to taxation under the special tax regime.

As a result, the corresponding deduction to avoid international double taxation may be applied for taxes paid outside Spain subject to the limitations provided for in Spanish legislation.

Key Steps

The effects of the GDT interpretation should be analysed on a case-by-case basis and by reference to the conditions of the plan that regulate it. The rule of consolidation of the rights of each plan can be of critical importance under the special tax regime.

In view of the GDT interpretation, it is recommended that employers should review its implications not only in relation to long-term incentives, but also in relation to other employment income which could, by extension, be attributed to the performance of duties in Spain and therefore come within the scope of the interpretation too.

The planning of international employee assignments to any Spanish territory (including repatriations and local hiring) should also be reviewed in order to comply with the relevant legislation as it may be impacted by the GDT interpretation.

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2022 Ernst & Young LLP.
All Rights Reserved.

EYG no. 004871-22Gbl

2101-3682263
ED None

ey.com

Gerardo de Felipe Nieto
Tel: +34 91 749 89 50
Email: Gerardo.de.felipe@es.ey.com

Gonzalo Fernández de Lorenzo
Tel: +34 91 749 36 89
Email: Gonzalo.fernandez@es.ey.com

Iván Sáez Fuertes
Tel: +34 91 572 76 11
Email: Ivan.saezfuertes@es.ey.com

Judith Sans Oto
Tel: +34 93 366 37 50
Email: Judith.sansoto@es.ey.com

Sergi Cebrián Burguete
Tel: +34 91 572 58 26
Email: Sergi.cebrianburguete@es.ey.com