

New Residence requirements

EU, EEA (European Economic Area) and Swiss nationals have the right to reside in Spain for more than three months a year. This is provided they apply in person at their local *Oficina de Extranjeros* or a designated police station, within three months of arrival. They are then registered in the Central Register of Foreigners.

Spain has now introduced new residency rules for all EU/EEA/Swiss citizens. The basic rule above still stands, but they have tightened up the requirements.

Note that these new measures have no bearing on whether you are a tax resident in Spain or not. Tax residence is a separate issue and assessed on different criteria. You can be tax resident in Spain even if you do not apply for a formal residence permit. It is your responsibility to register for, and pay, tax if you meet one of Spain's tax residence rules. The authorities are cracking down on people who meet the residence rules but have not been paying tax in Spain.

Residence requirements

The new rules were introduced on 10th July this year, and are backdated to cover applications from 24th April 2012. Applicants now need to produce evidence of sufficient financial means to support themselves and any dependents, and may be asked for proof of private or public healthcare insurance.

They are then issued with a Residence Certificate stating their name, address, nationality, *número de identificación extranjero* number (NIE, a fiscal identity number) and date of registration.

If you already have a residence card, you only need to re-register when your current card expires.

In summary, the rules now state that a citizen of the EU, EEA or Switzerland can live in Spain for more than three months provided:

- 1) They are employed or self-employed in Spain; or
- 2) They have sufficient resources to avoid becoming a burden on the Spanish state, and health insurance covering all risks in Spain (if you have Form S1 this suffices - see below); or
- 3) They are enrolled in an educational institution and have sufficient health insurance and resources; or
- 4) They are a family member accompanying an EU, EEA or Swiss citizen and meet the conditions set out above.

Form S1 is an EU wide form that allows you to register for healthcare if you move to a new EU country and are covered by state healthcare in your home EU country. It is available to anyone in receipt of an EU state retirement pension and in this case is permanent.

These requirements conform to the EU Directive that sets out the rights of EU citizens to reside in another Member State. Until now Spain had not adopted all the requirements, and this has been very costly for the Spanish government. The new requirements formed part of a Royal Decree in April 2012 on urgent measures to guarantee the sustainability of the national health system.

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Tax residency

You are resident for tax purposes if any of the following apply:

- 1) You spend more than 183 days in Spain in one calendar year. These days do not have to be consecutive. This rule also covers people living on a boat within 12 nautical miles of Spanish land.
- 2) Your “centre of economic interests” is in Spain, which means that Spain is the base for your economic or professional activities.
- 3) Your “centre of vital interests” is in Spain. So if your spouse (unless legally separated) and/or your dependant minor children live here, you are resident for tax purposes. This applies regardless of how many days you spend in Spain yourself.

If you are tax resident in Spain, you are liable for income, capital gains and wealth taxes on your worldwide assets and subject to Spanish succession tax on any gifts or inheritances you receive. This is in addition to other incidental tax liabilities such as IVA (VAT) and local taxes.

There is no split year treatment in Spain, so you either are, or are not, resident for the whole tax year. If you arrive or leave part way through the year, you should take advice to establish your tax residence status for that year.

You also need to consider the tax residence rules of your home country (or the country you moved here from) as it will have its own rules. In the UK, a new Statutory Residence Test comes into effect next April which will provide much more certainty than the current subjective rules. However there is still a level of complexity so it would be wise to seek advice.

It is possible to be tax resident in the UK under its rules and tax resident in Spain under its rules. In this case the UK/Spain double tax treaty ‘tie-breaker clauses’ comes into effect to determine where to pay your taxes. If these are indeterminate, it comes down to nationality.