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The provisional text abolishing the Spanish Golden Visa is approved

During the year 2024, the debate on Investor Residence Visas and Investor Residence Authorisations (both commonly known as the “**Golden Visa**”)¹ has gained significance not only in Spain, but also in the European Union. In line with the European trend, in recent months, there have been certain attempts to eliminate some of the ways investors can obtain a residence permit. However, in view of the state of affairs in the Spanish Parliament, it seems that the legislator’s final intention is to completely eliminate the residence permits provided for in the law for investors.

The regulatory modification takes the form of an amendment introduced in the last Justice Commission in the [Draft Organic Law on measures regarding the efficiency of the Public Justice Service and collective actions for the protection and defence of the rights and interests of consumers and users](#) (the “**Draft Law**”).

The Draft Law proposes to leave articles 63, 64, 65, 66 and 67 of [Law 14/2013, of 27 September, on support for entrepreneurs and their internationalisation](#) (the “**Entrepreneurs Law**”) without any content whatsoever. In other words, it eliminates all the articles that establish the requirements and conditions of the Golden Visa. This elimination of the qualifying conditions for the Golden Visa is expected to come into force three months after the publication of the law in the Official State Gazette. In any case, as will be pointed out below, if the reform is approved, other cases of residence permits will nevertheless remain in force.

With regard to the practical effects of the elimination of the Golden Visa cases, the new legislation will include transitional provisions to protect situations that arose prior to the entry into force of the Draft Law. In particular, the transitional provisions envisaged are as follows:

- **Initial Application.** All those applications submitted before the entry into force may follow the process of obtaining a visa or authorisation in accordance with [the regulations in force at the time of the application](#).

It is important to bear in mind that, in order to start the process, the investment must already have been made and, in the case of real estate, duly registered in the Land Registry. The process of buying and selling and registration can take up to two months, so it is essential that the visa or residency process is started before the new regulations come into force, and not just the investment process.

For clarification purposes, if all requirements are fulfilled and, for example, the application is submitted before the end of the last day of the three-month period mentioned above, the administration should grant the residence permit, even if the granting is already agreed at a time when the new rule is in force.

¹ Law 14/2013, of 27 September, on support for entrepreneurs and their internationalisation, provides for the following permits for investors:

- **Visa for Investors.** Duration of one year, non-extendable, once expired a new application must be started. The application must be made directly to the Spanish Consulate corresponding to the applicant’s place of residence.
- **Residence Authorisation for Investors.** Duration of three years and extendable for periods of 5 years (as long as the conditions for entitlement are maintained). It must be requested directly from the Large Companies Unit.

In both cases, the investments that give entitlement to apply for either permit are as follows:

- An initial investment of at least EUR 2 million in Spanish government debt securities.
- An initial investment of at least EUR 1 million in shares or a stake in Spanish companies with real business activity, in investment or venture capital funds incorporated in Spain (in principle, these are funds with a Spanish ISIN, even if they are marketed by foreign entities), or in bank deposits in Spanish financial institutions.
- The acquisition of real estate in Spain with a minimum amount of EUR 500,000 per applicant, free of encumbrances (it is important to note that the intention is to eliminate this possibility, although there is still nothing concrete in this regard).
- A business project in Spain considered to be of general interest, based on the creation of employment, the socio-economic impact of relevance in the geographical area where the project is developed or its relevant contribution to scientific or technological innovation.

- **Renewal.** Residence permits already granted to investors for the acquisition of real estate shall remain valid until their expiry date.²

However, for subsequent renewals, the rules in force at the time of the initial grant - not the time of submission of the application - will apply. However, proper and continuous advice will be essential in order to handle these renewals correctly, as in the event of problems or a refusal of the renewal, the proposed wording implies that there will be no option to reapply for an investor visa or residence.

Following the above example, if the application submitted before the expiry of the three-month period was ultimately granted already at a time when the Bill is in force, that applicant will not be able to renew the permit on the basis of the Golden Visa assumptions.

The elimination of the residence visa for investment represents a radical change in Spain's migration and economic policy. This measure, which in any case falls within the framework of EU policies on financial security and transparency, has different objectives, such as avoiding rigidities in access to housing and preventing speculation. For current and future investors, this amendment means a reorientation, **allowing only those who are already in the process of obtaining a permit or have a current authorisation to benefit** and those who wish to reside in Spain from now on will have to assess whether they fit into the remaining qualifying situations.

Having passed the debate and approval phase in the plenary session of the Congress of Deputies yesterday, the Bill has been sent to the Senate, where it will continue its parliamentary processing. The Upper House may approve the text in its terms, present amendments or propose a veto. In the latter two cases, the initiative will return to the Congress of Deputies for a final plenary debate. Although the proposal still has to be finally approved, this is not far off. Therefore, considering the time needed to finalise the investment and the possible deadlines for entry into force, the time remaining to obtain a Golden Visa is very limited.

Without prejudice to the above, it should be noted that, in addition to the general cases of residence permits (i.e. temporary non-gainful residence, residence for family reunification, residence for nationals of a Member State of the European Union, etc.), the Entrepreneurs Act itself provides for other types of permits of a similar nature. Thus, there are currently the following options:

- **Residence Permit for Entrepreneurs.** Aimed at foreigners who wish to enter Spain, or who already have a residence permit or visa, and who wish to start, develop or manage an economic activity as entrepreneurs. These people can obtain a business residence permit valid throughout the national territory for a period of three years. At the end of this period, they can apply for a two-year extension, and after five years they can obtain permanent residence directly.

For these purposes, entrepreneurial activity is considered to be that which is innovative and/or of special economic interest for Spain, and for which a favourable report from ENISA ("**Empresa Nacional de Innovación, S.A.**") is required. Therefore, for the assessment of entrepreneurial and business activity, the following will be taken into account:

- » The applicant's professional profile and involvement in the project. In the event that there are several partners, the involvement of each of them will be assessed, both those requiring a visa or permit and those not requiring a permit or visa.
 - » The business plan, which includes a description of the project, the product or service to be developed and its financing, including the necessary investment and possible sources of financing.
 - » The elements that generate added value for the Spanish economy, innovation and investment opportunities.
- **Residence Authorisation for Highly Qualified Professionals.** This is designed so that companies that require the incorporation in Spanish territory of foreign professionals who are graduates or postgraduates

² Without prejudice to the fact that the final wording of the transitional provisions is unknown, it should be noted that the title of the transitional provision of the Draft Law regulating the renewal only refers to the Renewal of visas and authorisations for investors for the acquisition of real estate, although the body of the provision refers to a broader term that could encompass the remaining Golden Visa cases. Strictly according to the wording of the regulation, it could be understood that the renewal will only be feasible in cases where an investment in real estate has been made.

However, we will have to wait for the final wording of the regulation for a more accurate interpretation.

from universities and business schools of recognised prestige, graduates of higher vocational training, or specialists with at least three years' professional experience of a comparable level, can incorporate highly qualified professionals into their workforces. They can obtain a residence permit valid throughout the national territory for a period of three years, which will allow them to reside and work with their family. At the end of this period, they can apply for a two-year extension, and after five years they can directly obtain permanent residence.

- **Intra-company Transfer Residence Permit**. This is for foreigners who move to Spain as part of an employment, professional or vocational training relationship with a company or group of companies established in Spain. They can obtain a residence permit valid throughout the national territory for a non-renewable period of three years.
- **Visa for International Teleworking (“Digital Nomads”)**. This visa is for foreigners not resident in the European Union who wish to work remotely or carry out a professional activity for companies located outside the national territory, through the exclusive use of computer, telematic and telecommunication means and systems. They can obtain a residence permit valid throughout the national territory for a non-renewable period of one year. Subsequently, they must apply for a residence permit valid for three years.

Despite the elimination of residence permits for investors, current regulations recognise different ways of obtaining a long-term residence permit, all of which should be considered on a case-by-case basis.

Regarding other alternatives in nearby jurisdictions, it is important to note that the Portuguese Golden Visa programme is still in force, although it has been reformulated in 2023, mainly due to the tension generated in the demand for housing, and for this reason the eligibility of real estate investments has been eliminated. Although it cannot be ruled out that the position of the European Union will change in the future, the following investments remain eligible in Portugal today:

- Creation of at least 10 jobs through an investment in business activity;
- Investment of at least EUR 500,000 in the acquisition of shares of non-real estate Collective Investment Schemes, which are incorporated under Portuguese law, with a maturity of at least five years at the time of the investment, and where at least 60% of the value of the investment is made in commercial companies headquartered in Portuguese territory;
- Investment of at least EUR 500,000 for the establishment of a commercial enterprise based on Portuguese territory, combined with the creation of five permanent jobs.

With regard to the first of these cases, it is clear that the requirement is more lax than the one that will survive in the Spanish legislation, which requires the business created to be classified as an entrepreneurial venture and validated by ENISA.

In any case, it is essential to assess the possible impact of these different permits on tax residence, taking into account the requirements established by Spanish law for acquiring tax residence (rules relating to the number of days spent in Spain in each calendar year and the location in Spain of the main base of economic activities, as well as the legal presumption of residence if the non-legally separated spouse and dependent minor children are resident in Spain). The determination of tax residence in Spain may determine the taxability of worldwide income and assets, so a careful analysis of tax residence is necessary.

A similar analysis should be carried out should the investor decide to pursue alternatives from nearby jurisdictions, such as the Portuguese Golden Visa.

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