
Generally speaking the RYA does not have the resources to investigate regulations applicable to boats kept abroad for extended periods in one country. However, the issue of taxes, residency and registration for vessels kept in Spain has, for many years, been a recurrent subject both in queries directly to the RYA and on discussion forums. The RYA has therefore sought clarification on this subject from a Spanish lawyer.

Residency in Spain:

Foreign visitors staying in Spain for more than three months are required to register with the Oficina de Extranjeros (under Spanish Royal Decree 240/2007 articles 6 and 7). This leads to "administrative residency" as opposed to "fiscal residency". A person becomes a "fiscal resident" if they live in Spain for more than 183 days per year (Article 9 of the Law 35/2000 on Personal Taxation). A person may apply to become a "permanent resident" having lived in Spain for more than 5 years.

Vessel registration and tax when in Spain:

Law 38/1992 "Impuesto Especial sobre Determinados Medios de Transporte (IEDMT) which translated means *special tax on particular means of transport* states that a person or company that has a "permanent establishment" in Spain who owns a new or second hand boat that is intended to be used in Spanish waters must register their boat under Spanish flag and pay this special tax¹. An administrative and fiscal resident will normally be regarded as having a "permanent establishment".

The expression "permanent establishment" was clarified by the Supreme Court of Spain in November 2008 in a case in which it was decided that a yacht-owning company that also owned a house in Spain at which various business transactions had taken place had a "permanent establishment" in Spain.

However, a foreign citizen who is an administrative and fiscal resident in Spain (or who otherwise has a "permanent establishment"), who uses their boat in Spanish waters, may not have to register their boat under Spanish flag if they also use their boat in foreign waters; evidence must be produced to show that this is the case. The requirement to pay the tax remains regardless of the vessel's flag, unless a similar tax has been paid in another EU state and there are appropriate "double-taxation" arrangements between that state and Spain. (This would need to be considered on an individual case-by-case basis).

The tax may also be payable by a foreign citizen who keeps their boat in Spanish waters, who is not a fiscal resident in Spain but who is an administrative resident or who otherwise has a "permanent establishment" in Spain. It might however be possible for a person to avoid paying the tax if they can demonstrate that they are fiscally and administratively resident in another state; the Spanish tax authorities are however likely to take the view that the tax is payable by a person who has a

¹ The tax on "IEDMT" is often referred to as matriculation tax and is currently set at 12% of the market value of the boat. This tax is normally payable within 30 days of it being incurred.

residence in Spain and keeps their boat in Spanish waters and the onus would effectively be on that person to prove otherwise. Be warned: The Spanish authorities tend to detain the boat first and ask questions later.

The tax is not payable by a foreign citizen who keeps their boat in Spanish waters but who is not an administrative or fiscal resident or does not otherwise have a "permanent establishment" in Spain.

EU Legality of the Law:

Spanish Law 38/1992 "Impuesto Especial sobre Determinados Medios de Transporte (special tax on a particular means of transport) has been challenged through the European Parliament, however the European Court has decided that the Spanish Law 38/1992 does not infringe community law.

Application of the law:

Spain is comprised of quasi autonomous regions. This leads to the application of the law varying between regions and even from port to port.

RYA Advice:

Once deemed to be resident in another country a UK citizen must accept that they may be obliged to live and abide by the rules and regulations applicable to a resident of that country and pay the appropriate taxes. The tax detailed above is just one of many taxes that may apply. While some countries levy a "wealth tax" on what they perceive to be luxury goods, this may be offset by lower taxation in other "areas" and a person considering living abroad should consider that country's taxation policy as a whole before doing so. It is therefore important that individuals take their own specialist Spanish taxation advice.

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Who to contact:

If you have a query relating to boating abroad, this is best directed to the Cruising department ☎ 0845 345 0370 ✉ boating.abroad@rya.org.uk