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# Taxation and Investment in Spain 2016

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# 1.0 Investment climate

## 1.1 Business environment

Spain is a constitutional monarchy; executive power rests with a bicameral parliament with members elected for four-year terms. The current constitution dates from 1978. A prime minister and cabinet of departmental ministers head the government. Each region also has its own parliament and government.

Spain is an EU member state, as well as a member of the OECD. As an EU member state, the country is required to comply with all EU directives and regulations and it follows EU regulations on trade treaties, import regulations, customs duties, agricultural agreements, import quotas, rules of origin and other trade regulations. The EU has a single external tariff and a single market within its external borders. Restrictions on imports and exports apply in some cases. Companies operating in Spain have access to a tariff-free market of consumers through the country's membership in the EU and free trade with Iceland, Liechtenstein, Norway and Switzerland through other agreements. Trade also is governed by the rules of the World Trade Organization (WTO).

EU member states		
Austria	Germany	Netherlands
Belgium	Greece	Poland
Bulgaria	Hungary	Portugal
Croatia	Ireland	Romania
Cyprus	Italy	Slovakia
Czech Republic	Latvia	Slovenia
Denmark	Lithuania	Spain
Estonia	Luxembourg	Sweden
Finland	Malta	United Kingdom*
France		
EU candidate countries		
Albania	Montenegro	Turkey
Macedonia	Serbia	
European Economic Area (EEA) member states		
EU member states	Liechtenstein	Norway
Iceland		

\*In a referendum on 23 June 2016, the UK electorate voted for the country to leave the EU, but the country will remain an EU member state until a secession agreement is concluded with the EU.

OECD member countries		
Australia	Hungary	Norway
Austria	Iceland	Poland
Belgium	Ireland	Portugal
Canada	Israel	Slovakia
Chile	Italy	Slovenia
Czech Republic	Japan	Spain

Denmark	Korea (ROK)	Sweden
Estonia	Latvia	Switzerland
Finland	Luxembourg	Turkey
France	Mexico	United Kingdom
Germany	Netherlands	United States
Greece	New Zealand	
<b>Enhanced engagement countries</b>		
Brazil	India	South Africa
China	Indonesia	
<b>OECD accession candidate countries</b>		
Colombia	Costa Rica	Lithuania

Spain has a large economy and is a popular destination for foreign investment. The services sector dominates the economy, with retail, tourism, banking and telecommunications accounting for a significant proportion of economic activities. The tourism industry is particularly important and Spain is one of the most popular tourist destinations in the world. The most prominent manufacturing industry is vehicle production. The bulk of Spanish trade is with the EU.

### Price controls

Price controls have all but disappeared in Spain, except in sectors still controlled by the national government and a few cases in which prices are regulated by regional governments.

### Intellectual property

Copyrights, patents, trademarks and industrial designs are recognized in Spain. The country has ratified all of the main international conventions that allow non-Spanish nationals to protect their local rights. Spanish laws are in line with EU legislation on intellectual property. Spain adheres to the “registration” principle (i.e. there can be no right to an invention or a trademark unless it previously has been registered) and to the “first-to-file” principle (i.e. the first party to apply for registration receives priority rights). A special commission addresses breaches of intellectual property law.

Patents are granted for 20 years from the date of filing, and may be maintained by paying annual fees. Once the 20 years have elapsed, the information becomes public property.

The burden of proof in patent infringement cases in Spain rests with the firm or person accused of infringement, rather than with the original patent holder. The owner of a patent or other intellectual property (IP) can bring civil and criminal actions against any person who infringes his/her rights in Spain. Certain types of infringement of IP rights are considered criminal offenses under national law and are punishable by imprisonment.

Industrial designs are protected for five years and protection is renewable for additional five-year periods, up to 25 years.

National trademarks are registered with the Office of Patents and Trademarks or with the Office for Harmonization in the Internal Market (OHIM, the EU’s industrial design and trademark office). Trademarks may consist of a number of distinctive signs that can be represented graphically. Under trademark legislation, the Spanish Office of Patents and Trademarks examines only whether the mark violates any absolute prohibition against its registration; it does not conduct examinations to determine whether identical or similar marks already exist. A trademark holder can obtain an injunction to prevent the violation of trademark rights in any EU member state.

Copyrights (and computer software) are protected for 70 years from the death of the author if the author is an individual, and 70 years from the year the work was created if the author is a legal person. According to Spanish law, computer programs cannot be registered as patents in Spain.

## 1.2 Currency

The currency of Spain is the Euro.

Countries participating in the Economic and Monetary Union		
Austria	Greece	Malta
Belgium	Ireland	Netherlands
Cyprus	Italy	Portugal
Estonia	Latvia	Slovakia
Finland	Lithuania	Slovenia
France	Luxembourg	Spain
Germany		

## 1.3 Banking and financing

Spain's most important financial center is the capital, Madrid, where most financial institutions have their headquarters. Barcelona also is an important banking center. The Bank of Spain is the central bank, as well as the supervisor of the banking sector (along with the European Central Bank). The Bank of Spain has coordinated a restructuring and recapitalization of Spain's banking sector.

## 1.4 Foreign investment

Spain has liberalized its foreign investment rules to attract foreign capital and to harmonize domestic rules with the principles in the Treaty on the Functioning of the European Union (TFEU).

Foreign investment generally has to be "notified" only after it has been made, except in the case of investment from a tax haven, which must be declared in advance to the Investments Registry of the Ministry of Economy and Finance; foreign investment in activities directly related to public order, national security and public health systems, which must be declared in advance to the Council of Ministers; and real property investment for diplomatic missions by states that are not EU member states, which also must be declared in advance to the Council of Ministers.

The Spanish government protects strategic sectors of the economy, and industry-specific legislation restricts foreign investment in the following sectors: air transport and radio industries; areas relating to raw materials of strategic interest; private security and television; industries linked to manufacturing, marketing or distributing arms and explosives; and activities related to national security. In addition, special rules govern investments in certain sectors (e.g. pharmaceuticals and mining).

## 1.5 Tax incentives

A capitalization reserve is available, under which a company may reduce its taxable base in an amount equal to 10% of the increase in its net equity in a particular year, provided the company books a nondisposable reserve for the same amount.

Tax credits are available for investments in cinema productions and music and artistic performances.

A research and development (R&D) tax credit equal to 25% of R&D expenses incurred during the tax year may be granted and, in some cases, the credit may be up to 42% of qualified expenses. The scope of R&D for these purposes includes advanced software activities. Taxpayers may receive a cash rebate for excess R&D of up to EUR 5 million under certain circumstances.

Spain has a patent box regime, under which 60% of the net qualifying income derived from the licensing or the transfer of qualifying intangible assets (e.g. patents, technological IP, secret formulae or processes, designs or models, plans or information concerning industrial, commercial or scientific equipment, etc.) is not subject to corporate income tax if certain requirements are met. The rules have been revised to bring them in line with the "nexus approach" endorsed in the OECD final reports on the BEPS project by limiting or eliminating the benefits available under the

regime in situations where the taxpayer did not create the relevant intangible asset itself (through its own resources or through subcontracting work to unrelated third parties). The new rules apply as from 1 July 2016, although an elective transition regime is available for assets licensed before that date. (For additional developments relating to the BEPS project, see the table under [3.6](#), below.)

## **1.6 Exchange controls**

Spain does not have any restrictions on foreign currency operations, but the government requires prior reporting of certain capital movements for statistical purposes and to prevent money laundering and tax fraud. Payments, receipts and transfers between residents and nonresidents, whether in euros or a foreign currency, must be made through registered entities that are deposit institutions registered with the Bank of Spain.

# 2.0 Setting up a business

## 2.1 Principal forms of business entity

A number of alternatives are available for a foreign investor wishing to invest in Spain. These include incorporating a Spanish company or forming a branch or representative office. The most common form for foreign investment in Spain is the *sociedad de responsabilidad limitada* (SRL), or limited liability company. Spanish law also provides for the *sociedad anónima* (SA), or public limited company. Small businesses may prefer the SRL because of its lower capital requirements.

The *Societas Europaea* or SE company form also is available. The SE is designed to enable companies to operate across the EU with a single legal structure, to facilitate mergers and create flexibility for companies wanting to move their head office from one EU state to another.

### Formalities for setting up a company

The legal steps to set up an SA and an SRL are quite similar. If a shareholder of the Spanish company is a company resident outside Spain, a declaration must be made to the General Directorate of Commerce and Foreign Investments. If the investment comes from a tax haven, an additional prior declaration must be filed with the General Directorate of Commerce and Foreign Investments under certain circumstances. Other formalities include (1) obtaining a certificate on behalf of one of the shareholders from the Central Mercantile Registry, to the effect that the proposed name of the company is not already entered in the registry; (2) opening a bank account in the name of the company for the capital contribution (in the case of a monetary contribution) and obtaining a certificate from the bank; (3) drafting bylaws; (4) granting the incorporation public deed before a notary public; (5) filing the stamp duty tax; and (6) registration of the incorporation deed in the Mercantile Registry. Legal entities must obtain a taxpayer identification number.

An SA or an SRL acquires legal capacity at the time its public deed of incorporation is registered in the Mercantile Registry, which must be accomplished within two months from the time the document is granted.

It also is possible to set up an SA company by means of a public share offering, which must be carried out under a specific procedure monitored by the Stock Exchange Commission (CNMV).

Sole proprietorships or single-owner companies are accepted either upon incorporation or thereafter. SAs or SRLs with a single owner must register the details of such owner in the Mercantile Register, and the company is subject to special reporting and registration requirements.

### Forms of entity

#### Requirements for an SA and an SRL

**Capital:** SA: The minimum capital is EUR 60,000; capital is divided into “shares.” Authorized capital must be fully subscribed and at least 25% of the face value of each share must be paid up at the time of granting the incorporation public deed, with the remaining 75% paid up within the period specified in the company’s bylaws. Contributions to capital may be in cash or in kind. A contribution in kind must be verified by an independent expert appointed by the Mercantile Registry. Shares may be listed on a stock exchange. SRL: The minimum capital is EUR 3,000; capital is divided into “quotas.” Authorized capital must be fully subscribed and fully paid in at the time of incorporation. It is possible to set up an SRL company and maintain it temporarily with a share capital below EUR 3,000, provided certain restrictions are complied with (e.g. dividends restrictions, etc.). Contributions to capital may be made in cash or in kind, and no independent expert report is needed in this case.

**Founders, shareholders:** *Both:* There is no minimum number of shareholders required, although a special reporting and registration system applies to single-shareholder companies, as explained above. Shareholders may be individuals or companies of any nationality and residence. A shareholder’s liability to third parties is limited to the face value of its shares or quotas.

**Types of shares:** SA: Shares may be registered or bearer, although they must be registered until fully paid in. The law allows preferred and nonvoting shares. Nonvoting shares may not exceed one-half of the paid-in capital, and are entitled to a minimum preferential dividend set forth in the bylaws that must be proportionate to the amount of paid-in capital pertaining to each nonvoting

share. Nonvoting shareholders have preferential rights in the event of a liquidation. Company bylaws may limit the transferability of shares. *SRL*: Quotas must be in nominative form and may not be listed on the stock exchange. The procedure for the transfer of quotas is more complex than in the case of an SA. *SRL* companies also may issue preferred and nonvoting quotas, under the same terms as explained for SA companies.

**Directors:** A Spanish company (either an *SRL* or an SA) may be managed by one director, several directors acting jointly and/or severally or a board of directors whose resolutions are adopted by a majority of its members. SA: If there is a board of directors, at least three directors are required, but there is no maximum number and no nationality requirements. Nevertheless, many foreign controlled companies prefer to appoint a Spanish national to serve as a secretary or nondirector secretary of the board of directors, so that he/she may formalize in Spain the resolutions adopted by the board. A director need not be a shareholder unless stipulated in the bylaws. The term of office may not exceed six years. *SRL*: The maximum number of members of the board of directors is 12, the minimum is three. Directors may serve for an unlimited period of time, unless otherwise stated in the bylaws.

Directors may be liable when a company or a shareholder or creditor suffers damages due to an unlawful act or omission of the directors.

**Disclosure:** *Both*: The management body of the company must prepare annual accounts duly approved and signed by its members within the first three months after the end of the financial year. Such accounts generally must be approved at the shareholders' meeting within the first six months after the end of the financial year. Once approved, the company's directors must register the annual accounts with the Mercantile Registry within one month after approval at the shareholders' meeting. Companies also must submit a management report and the audit report if so required. Corporate groups also must publish consolidated accounts.

**Control:** SA: The shareholders' meeting generally requires a minimum quorum (25% of the capital subscribed with voting rights for the first call), and the agreements will be decided upon by majority vote. Special quorum provisions apply for certain resolutions. Minority shareholders also have rights. *SRL*: Decisions generally are adopted by the majority votes issued during the general meeting, provided the number of votes is equal to at least one-third of votes carried by all of the quotas into which the company's capital is divided. Higher quorums and majorities are required in special cases. *Both*: Majorities established by law may be increased in the bylaws, provided unanimity is not reached.

**Taxes and fees:** *Both*: The notary public's fees for handling the incorporation are charged on a sliding scale based on capital amounts. Fees for registering the company in the local Mercantile Registry also are based on a sliding scale of officially approved charges. Companies also must pay an annual business activities tax, and a small one-time municipal levy called an opening license tax is chargeable, in addition to miscellaneous other fees.

### Branch of a foreign corporation

A nonresident company may operate in Spain through a branch rather than a subsidiary. Branches primarily are used by oil companies (for prospecting) and service enterprises, including banks, construction and engineering firms, insurance companies and shipping lines.

A branch is not a legal entity separate from its head office, but it does have certain autonomy to operate. A branch may carry out any kind of activity, although the head office is fully liable for the debts of the branch. The arm's length principle applies to operations between the head office and the branch. Separate accounts must be kept.

A branch is considered a permanent establishment (PE) and generally is taxed in Spain under the same rules as those applicable to subsidiaries, i.e. both are subject to Spanish corporate income tax on their net income. A branch also is subject to a branch profits tax on the remittance of profits to the foreign head office (however, the branch profits tax does not apply if the head office is located in (1) an EU member state, unless the country or territory in which it is resident is considered a tax haven, or (2) a country that has concluded a tax treaty with Spain, unless the treaty expressly permits the tax.

The formalities for setting up a branch of a foreign company are similar to those for incorporating a subsidiary. Branches are formed by a public deed, which must be registered at the Mercantile Registry. The branch must appoint a resident individual or legal entity to represent it in dealings

with the tax authorities, but no other formal administration or management bodies are required (e.g. no minimum share capital is required). Branches may invest in Spanish enterprises without prior approval, purchase securities quoted on the stock exchange and obtain credit locally. Payments made by a branch to its head office for interest, royalties, commissions, technical assistance fees or fees for the use of other assets or rights are not deductible for corporate income tax purposes.

The following steps must be taken to set up a branch: (1) obtain a certificate from the bank in Spain, to the effect that the allocated capital of the branch, if any, has been transferred; (2) obtain a certificate stating that the head office is duly incorporated and provide a copy of its bylaws and the appointment of directors; (3) issue a certificate of the minutes of a shareholders' or board meeting of the head office in which it resolves to set up the branch, and details on the allocated capital (if any), "objects clause" and registered office of the branch; (4) notify the General Directorate of Commerce and Foreign Investments in advance if the head office is resident in a tax haven; (5) file "Form D-1A" with the General Directorate; (6) appear before a Spanish notary public for the grant of the incorporation public deed; (7) file the public deed setting up the branch at the corresponding Mercantile Registry; (8) obtain a nonresident taxpayer number for the foreign head office; and (9) obtain a taxpayer number for the branch.

### **Representative office**

A representative office may be set up in Spain. A representative office is not a separate legal entity from its head office and has no power to conclude contracts with clients in Spain. The steps to establish a representative office are similar to those to set up a branch.

## **2.2 Regulation of business**

### **Mergers and acquisitions**

Company law requires merging companies to draft a detailed "merger project" and a "report" to be approved by the directors of all the companies involved. Except in certain cases, the merger project must be deposited in the Companies Registry and published in the Companies Registry Official Gazette, and then be approved by the shareholders' meeting of every company involved in the merger within a six-month term after the merger project has been signed.

The value of cash inducements offered to shareholders to exchange their old shares for new shares is limited to 10% of the nominal share value. In some cases it may be necessary for an independent expert to check the exchange rate used and whether the value of the equity assigned to the absorbing company is correct.

Once the shareholders have approved a merger, company creditors have one month to oppose the deal if they believe the new company has not provided sufficient guarantees of meeting its outstanding credit obligations. After that one-month period ends, the merger public deed must be granted and registered in the Mercantile Registry.

### **Merger control**

Certain transactions fall within the EU or the Spanish merger control regimes and are subject to prior notification and approval by the European Commission or the Spanish Competition Authority before their implementation, when certain thresholds are met.

The European Commission has jurisdiction over transactions when at least one of the following turnover thresholds is met:

- 1) Where the combined aggregate worldwide turnover of all of the undertakings concerned exceeds EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings exceeds EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state; and
- 2) Where the aggregate global turnover of the undertakings concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in at least three member states exceeds EUR 100 million, aggregate turnover of at least two undertakings in each of these three member states exceeds EUR 25 million and aggregate EU-wide turnover of at least two of the undertakings exceeds EUR 100 million, unless each of the undertakings

concerned achieves more than two-thirds of its aggregate EU-wide turnover within a single member state.

Based on the one-stop shop principle, the European Commission has exclusive jurisdiction over any transaction meeting the above turnover thresholds. If the EU merger thresholds are not met, transactions may fall under the jurisdiction of the national competition authorities of the EU member states, including the Spanish Competition Authority, when the relevant national thresholds are met.

Under the Spanish Competition Act, companies are required to notify the Competition Authority of those transactions meeting one of the following two thresholds: (1) where, as a result of the transaction, a combined market share of 30% or more in Spain or a narrower geographic market within Spain is acquired; or (2) where the aggregate turnover of all parties concerned exceeds EUR 240 million in Spain in the prior financial year, provided at least two of the parties have turnover in Spain exceeding EUR 60 million.

Notification involves submitting details of ownership, a description of the transaction, turnover information, market shares, information about the relevant markets and the participating companies and the effects of the merger on the sector.

### **Monopolies and restraint of trade (competition law)**

The Spanish Competition Authority is responsible for the public enforcement of the EU and Spanish competition rules that prohibit horizontal and vertical anticompetitive agreements and restrictive practices (such as price-fixing, market sharing, bid rigging, etc.), and abuses of dominant positions (such as refusal to supply, predatory pricing, etc.). Spanish regional authorities also may enforce the Competition Act at a regional level. Spanish courts may rule on private claims brought by companies for a breach of the EU and/or the Spanish competition rules (private enforcement).

While the Competition Authority and the regional competition authorities may impose fines of up to 10% of the total turnover of the sanctioned companies for a breach of the Spanish and EU competition rules, injured parties also may sue for damages derived from anticompetitive conduct, in the Spanish courts, based on “follow-on” or “stand-alone” claims.

## **2.3 Accounting, filing and auditing requirements**

Spanish GAAP was amended to adapt to IFRS criteria for fiscal years beginning as from 1 January 2008.

Financial statements must be prepared annually. Annual accounts are formed by the balance sheet, profit and loss account, cash flow statement, statement of changes in equity (only when the company audits its financial statements), notes to the financial statements and the management report (only when the company audits its financial statements). Under certain circumstances, financial statements may be drafted in abbreviated form. The directors of a company have a three-month period after the close of the fiscal year to prepare the accounts.

Both SAs and SRLs must undergo external audits by a registered auditor, except when fulfilling certain parameters. Under Spanish law, if two of the following requirements are met in two consecutive years, the company may avoid auditing its annual accounts: (1) total assets are less than EUR 2.85 million; (2) annual turnover is less than EUR 5.7 million; and (3) the workforce comprises fewer than 50 employees. If, during the first financial year after incorporation, two of the above requirements are not met, the company also will be subject to an audit requirement. The auditors must be appointed at the shareholders' meeting for a minimum of three years and a maximum of nine years. For companies that are not required to appoint an auditor, a dissenting minority of at least 5% can request that the Commercial Register appoint an auditor to verify the annual accounts.

## 3.0 Business taxation

### 3.1 Overview

Taxes are levied in Spain at the national level (either by the central government or the regions) and at the municipal level (by the municipal authorities). The main national taxes are the corporate income tax, branch profits tax and the value added tax (VAT). Other taxes include capital tax, transfer tax, real property tax and miscellaneous taxes levied by the local governments.

Spain offers a special tax regime for Spanish holding companies (ETVEs).

VAT does not apply in the Canary Islands; instead a specific sales tax (IGIC) is levied. The Canary Islands also levy their own fuel and tobacco special tax.

Some specific rules may apply in the Basque Country and Navarra Region.

Spain has implemented the EU directives, including the parent-subsidiary, interest and royalties and merger directives. Spain also had implemented the savings directive, which required the exchange of information between tax administrations when interest payments were made in one EU member state to an individual resident in another member state. The directive was repealed from 1 January 2016 to coincide with the introduction of the common reporting standard (CRS) within the EU through the implementation of a new directive on the mandatory exchange of information.

National taxes are administered by the Ministry of Economy and Finance and its regional equivalents.

Spain Quick Tax Facts for Companies	
Corporate income tax rate	25% (standard rate)
Branch tax rate	25%
Capital gains tax rate	25%
Basis	Worldwide
Participation exemption	Yes
<b>Loss relief</b>	
– Carryforward	Unlimited
– Carryback	No
Double taxation relief	Yes
Tax consolidation	Yes
Transfer pricing rules	Yes
Thin capitalization rules	No, but interest deduction limitations apply
Controlled foreign company rules	Yes
Tax year	Accounting year
Advance payment of tax	Yes
Return due date	Within 6 months and 25 days following end of tax year
<b>Withholding tax</b>	
– Dividends	19%
– Interest	0%/19%
– Royalties	19%/24%
– Branch remittance tax	0%/19%

Capital tax	1%
Real estate tax	Up to 1.1% (urban property); up to 0.9% (rural property)
Transfer tax	Varies, normally 6%-10%, depending on the region and the particular transaction
Stamp duty	Varies, usually 0.5%-2%, depending on the region and the particular transaction
Social security contributions	Approximately 29.9% of monthly wages (employer contribution)
VAT	21% (standard rate)

### 3.2 Residence

A company is resident in Spain if it is incorporated in Spain, has its registered office in Spain or its effective management is in Spain.

An entity resident in a tax haven or a no-tax jurisdiction may be presumed to be a tax resident in Spain if its assets mainly consist of real property or rights located or exercised in Spain or the main business activity of the company is carried out in Spain, unless the entity can demonstrate that its effective management and administration are carried out in the tax haven and that there are valid business reasons for establishing the entity there (other than the management of shares or other assets).

### 3.3 Taxable income and rates

In principle, all Spanish entities with separate legal status (i.e. corporations, limited liability companies and most partnerships) and foreign corporate entities are liable for Spanish corporate income tax. Spanish resident companies are subject to corporate income tax on worldwide profits and capital gains. A nonresident company is subject to corporate income tax only on Spanish-source income and gains, subject to the provisions of an applicable tax treaty.

The basic 25% corporate tax rate applies to the worldwide profits of resident corporations.

Trading profits and other income arising through a Spanish PE of a nonresident entity also are subject to tax at the full corporate rate. An additional tax at a rate of 19% is imposed on income remitted to a foreign head office (with some exceptions, discussed under [4.4](#), below). Income of a nonresident entity not connected with a PE generally is taxed at lower rates via withholding at source.

Special tax rates apply to certain companies, such as collective investment institutions, including real estate investment funds (1%), certain cooperatives (20%) and entities involved in hydrocarbon research and exploitation and credit institutions (30%). Special regimes exist for Spanish REITS (SOCIMIS), Spanish economic interest groupings and European Economic Interest Groupings, “temporary business associations,” venture capital companies and funds and industrial and regional development companies.

#### Participation exemption and holding company regime

Under Spain’s participation exemption regime, dividends and capital gains derived from shareholdings in Spanish and foreign subsidiaries may be exempt from tax if:

- The parent company holds at least 5% of the subsidiary for a one-year period (for dividends, the one-year period may be subsequently met). The 5% requirement is deemed to be met if the stake in the subsidiary exceeds EUR 20 million; and
- For shareholdings in foreign entities, there is an additional requirement that the foreign subsidiary must be subject to an income tax similar to the Spanish corporate income tax, at a nominal tax rate of at least 10% (this minimum level of taxation is deemed to be met if the foreign subsidiary is resident in a country that has concluded a tax treaty with Spain).

There are a number of circumstances in which the participation exemption regime does not apply or applies with restrictions, such as an anti-hybrid measure that prevents the application of the participation exemption where the payment of dividends generates a tax-deductible expense at the level of the payer entity. (This rule is in line with the recommendations under the BEPS project; for additional developments relating to the BEPS project, see the table under [3.6](#), below.).

A special regime (ETVE) applies for international holding companies, under which dividends distributed by an ETVE to a nonresident shareholder will not be subject to Spanish income tax if paid out of profits of shareholdings in foreign subsidiaries held by the ETVE that qualified for the participation exemption.

### Taxable income defined

Taxable income in Spain comprises total revenue less deductible expenses and is based on the income disclosed in the company's financial statements, adjusted in accordance with tax principles. Dividends received from resident or nonresident companies are subject to corporate income tax unless they qualify for the participation exemption.

### Deductions

Business expenses are deductible if the expenses are incurred for the purpose of earning profit, and are properly recorded and documented. Payments of real property tax and local surcharges on these taxes are deductible in determining the corporate tax base. All salaries, wages and bonuses paid are deductible. Restrictions are imposed on the deduction of expenses incurred on payments made to entities or persons resident in territories deemed to be tax havens. Interest, whether paid to residents or nonresidents, is subject to certain deductibility limitations, as explained below. Royalties are fully deductible, provided that, when paid to related parties, the royalties are justified, necessary and calculated on an arm's length basis.

Customer or supplier entertainment expenses are deductible up to 1% of the company's turnover.

Nondeductible expenses include corporate income tax, criminal and administrative fines and penalties, surcharges for the late payment of taxes, gifts, provisions for internal pension allowances, amounts directly or indirectly remunerating equity and expenses for services paid to individuals or institutions resident in tax havens that do not correspond to an actual transaction.

In response to the OECD BEPS initiative, a special anti-abuse rule for hybrid entities disallows deductions for expenses incurred in transactions with related parties where, as a result of different tax characterizations: (1) no income will be generated; (2) income will not be subject to tax; or (3) income will be subject to a nominal tax rate of less than 10%. (For additional developments relating to the BEPS project, see the table under [3.6](#), below.)

The impairment of tangible fixed assets, real estate investments, intangible fixed assets (including goodwill), securities representing a capital or equity shareholding in an entity and debt securities is nondeductible for tax purposes. Losses derived from these items will be deductible only where transferred to non-group parties.

### Interest expense limitations

A general limit on the deductibility of net financial expenses (i.e. 30% of earnings before interest, taxes, depreciation and amortization (EBITDA)) applies to corporate income tax taxpayers (other than credit or reinsurance entities). Net financial expenses up to EUR 1 million are deductible even if they exceed the 30% EBITDA limit. Net financial expenses that cannot be deducted under this rule may be carried forward indefinitely.

In addition to this general limit, certain specific limitations were introduced in response to the BEPS initiative (for additional developments relating to the BEPS project, see the table under [3.6](#), below). One additional limit applies for leveraged vehicle acquisitions that form a consolidated group or involve a merger. This limit restricts the deductibility of interest on loans obtained to purchase shares in a company to 30% of the acquiring company's operating profit (without taking into account the operating profit of the acquired entity). This measure aims to restrict debt push-downs on leveraged acquisitions where the target and the acquisition vehicle form a consolidated tax group or are merged. This limit will not apply in the taxable year in which the shares are acquired if the acquisition is funded with debt not exceeding 70% of the acquisition price. In addition, the limit will not apply in subsequent taxable years, provided the debt decreases proportionally in each of the eight years following the acquisition date, to 30% of the acquisition price.

Additionally, intragroup profit participating loans granted as from 20 June 2014 are characterized as equity instruments rather than debt and, therefore, “interest” payments on such loans are nondeductible.

### Depreciation

All assets a company owns (except land) generally are depreciable, whether tangible or intangible, new or second-hand, provided the assets are used for the purpose of the business, have a useful life exceeding one year and necessarily diminish in value over time.

Permissible methods of depreciation are the straight-line, declining-balance and sum-of-the-years'-digits methods. The declining-balance method is applicable to all assets except buildings and furniture, and allows depreciation to be shifted to the early years of the useful life of an asset. Under the sum-of-the-years'-digits method, the sum is determined on the basis of the depreciation period established in official tables.

Depreciation of fixed or movable assets is based on historical cost, using straight-line rates chosen by the company within limits set for each industry by the Ministry of Economy and Finance.

Depreciation may be taken for tangible and intangible assets. Official tables have been simplified, and specify the following maximum annual rates: commercial buildings, 2%; industrial buildings, 3%; office furniture, 10%; machinery, 12%; vehicles, 8%-20%; computers, 25%; and software, 33%.

Intangible fixed assets whose useful life may be estimated must be amortized based on their useful life. Amortization of intangible fixed assets whose useful life cannot be estimated (including goodwill) is tax deductible up to 5% per year.

Goods acquired through finance leasing arrangements may benefit from an accelerated double amortization limit if certain requirements are fulfilled.

### Losses

As from 1 January 2016, net operating losses (NOLs) generally may be set off against only up to 60% (increasing to 70% on 1 January 2017) of the taxable base prior to the application and funding of the capitalization reserve; however, NOLs that do not exceed EUR 1 million may be set off without limitation.

Net operating losses may be carried forward indefinitely. The carryback of losses is not permitted.

The losses of a resident group company may be offset against the profits of other companies within the same fiscal unity. However, losses incurred by a group company before the first consolidation may be offset only against profits earned by that company. Certain restrictions may apply in cases where a majority stake in a company holding NOLs is transferred under certain conditions.

Losses from the impairment of shares and losses incurred by PEs abroad (except in the case of a transfer or cessation of business) are nondeductible for tax purposes.

## 3.4 Capital gains taxation

Capital gains are treated as ordinary business income taxable at the normal corporate rate of 25%.

When a company is dissolved, the excess of the market value of distributed assets over the book value of the shares is considered a capital gain recognizable to shareholders, and the wound-up company is also subject to tax on the embedded gains corresponding to its assets.

Under the participation exemption, capital gains derived from the sale of shares are exempt if (i) a participation of at least 5% in the subsidiary is held for a one-year period (the 5% requirement is deemed to be met if the stake in the subsidiary exceeds EUR 20 million), and (ii) if the subsidiary is nonresident, it is subject to an income tax similar to the Spanish corporate income tax at a nominal tax rate of at least 10% (this minimum level of taxation is deemed to be met if the nonresident subsidiary is resident in a country with which Spain has concluded a tax treaty).

## 3.5 Double taxation relief

### Unilateral relief

Resident taxpayers are granted a tax credit for foreign direct taxes paid that are similar to the Spanish corporate income tax. The credit is limited to the lesser of the tax payable in Spain if the income had been obtained there, or the actual foreign tax paid.

This double taxation relief also may apply to dividends and capital gains that do not qualify for the participation exemption, or where the taxpayer elects not to apply the participation exemption. In the case of dividends, additional double taxation relief may apply for the underlying foreign corporate income tax liability paid by the participated entity.

### Tax treaties

Spain has a broad tax treaty network, the aim of which is to eliminate double taxation and provide for reduced rates of withholding tax on dividends, interest and royalties. Spain's treaties generally follow the OECD model treaty, providing for relief from double taxation on all types of income, limiting the taxation by one country of companies resident in the other and protecting companies resident in one country from discriminatory taxation in the other. The treaties generally also contain OECD-compliant exchange of information provisions. Most of Spain's tax treaties provide for a foreign tax credit in the case of dividends, interest, royalty income and capital gains (up to the lower of the Spanish tax or the foreign tax on the income).

A certificate stating that the taxpayer is a resident in the other contracting state "within the meaning of the double taxation treaty" is required for a nonresident to benefit from provisions in a treaty. Certificates of residency are valid for one year.

Spain Tax Treaty Network			
Albania	East Timor	Kuwait	Saudi Arabia
Algeria	Ecuador	Kyrgyzstan	Senegal
Andorra	Egypt	Latvia	Serbia
Argentina	El Salvador	Lithuania	Singapore
Armenia	Estonia	Luxembourg	Slovakia
Australia	Finland	Macedonia	Slovenia
Austria	France	Malaysia	South Africa
Barbados	Georgia	Malta	Sweden
Belarus	Germany	Mexico	Switzerland
Belgium	Greece	Moldova	Tajikistan
Bolivia	Hong Kong	Morocco	Thailand
Bosnia-Herzegovina	Hungary	Netherlands	Trinidad & Tobago
Brazil	Iceland	New Zealand	Tunisia
Bulgaria	India	Nigeria	Turkey
Canada	Indonesia	Norway	Turkmenistan
Chile	Iran	Oman	Ukraine
China	Ireland	Pakistan	United Arab Emirates
Colombia	Israel	Panama	United Kingdom
Costa Rica	Italy	Philippines	United States
Croatia	Jamaica	Poland	Uruguay
Cuba	Japan	Portugal	Uzbekistan

Cyprus	Kazakhstan	Romania	Venezuela
Czech Republic	Korea (ROK)	Russia	Vietnam
Dominican Republic			

### 3.6 Anti-avoidance rules

#### Transfer pricing

Spain's transfer pricing legislation requires that transactions with related parties be carried out on arm's length terms and that taxpayers prepare transfer pricing documentation.

Spain generally follows the OECD's transfer pricing guidelines with respect to valuation methods. The main methods available to determine market prices are the comparable uncontrolled price, the cost-plus, the resale price, the profit split and the transactional net margin method. In each case, the most appropriate method should be applied.

The definition of related parties has been revised so that shareholders and entities (whether or not listed) are deemed to be related where the shareholder participation is at least 25%.

Documentation of related-party transactions (a master file and a local file, in line with action 13 of the BEPS project (for additional developments relating to the BEPS project, see the table under [3.6](#), below)) must be maintained, with penalties for failure to comply, but the requirements have been simplified relating to entities whose turnover does not exceed EUR 45 million. The penalty regime also is less burdensome.

There is no deadline to submit documentation, but it must be available by the deadline for filing the annual corporate tax return. There are certain exemptions from the documentation requirement (e.g. for transactions not exceeding EUR 250,000 carried out with a single related party).

Additionally, for tax periods beginning on or after 1 January 2016, new country-by-country (CbC) reporting obligations may apply.

The CbC reporting obligations are in line with action 13 of the BEPS project (for additional developments relating to the BEPS project, see the table under [3.6](#), below) and will apply to groups whose prior-year consolidated revenue exceeds EUR 750 million. :

The obligation to file this CbC documentation will have to be complied with by the Spanish resident parent company of the relevant group or by those Spanish subsidiaries and PEs that are held, directly or indirectly, by a foreign parent entity, where:

- The Spanish subsidiary or PE has been appointed by the foreign parent entity to prepare the CbC documentation; or
- The foreign parent entity is tax resident in a country that (1) has not introduced CbC reporting obligations similar to the rules in Spain, or (2) has not signed an automatic exchange of information agreement with Spain in relation to these obligations, or if such an agreement systematically is breached.

Where the CbC reporting obligations apply, taxpayers must provide certain information per country on an aggregate basis. The CbC reporting must be completed within a 12-month period from the end of the taxable year to which the CbC report relates.

A taxpayer may conclude an advance pricing agreement (APA) with the tax authorities. In certain circumstances, an APA may be rolled back to apply to the prior accounting period.

#### Thin capitalization

Thin capitalization rules no longer apply. However, there are some restrictions on the deductibility of interest expense (see under [3.3](#), above). Net interest expense deductions generally are capped at 30% of tax-adjusted EBITDA (but net interest expense is tax deductible if it does not exceed EUR 1 million per year).

#### Controlled foreign companies

The CFC rules apply when a Spanish taxpayer (entity or individual) has a shareholding in a foreign entity that is classified as a CFC, and the CFC lacks economic material and personnel resources

or obtains certain types of income. These rules reflect certain changes made in response to the BEPS initiative that extended the CFC rules to apply to more transactions and types of income (for additional developments relating to the BEPS project, see the table under [3.6](#), below).

An entity is deemed to be a CFC where: it is a nonresident entity (excluding EU residents, if the taxpayer can show that the CFC has valid economic reasons and engages in active business activities); the Spanish taxpayer, alone or with related parties, holds a direct or indirect participation of 50% or more in the capital, equity, results (profits) or voting rights of the entity; and the foreign tax paid by the nonresident entity on income subject to the Spanish CFC rules is less than 75% of the tax calculated in accordance with Spanish tax rules.

A Spanish entity is required to include in its taxable base any item of income derived by a CFC where there are no material and personnel resources at the level of the CFC. Additionally, certain types of income (e.g. income derived from industrial and intellectual property, technical assistance and image rights) are deemed to be passive income and, therefore, are subject to the CFC rules even if there are material and personnel resources at the level of the CFC.

Under de minimis rules, no income pickup is required at the Spanish entity level if the foreign company's passive income does not exceed 15% of the foreign company's total net income and the CFC has sufficient material and personnel resources. Special rules are used to calculate the 15% total net income threshold and total net income is calculated on a standalone basis, not at a consolidated level.

### General anti-avoidance rule

General anti-avoidance rules provided for in the General Tax Law apply. Specifically, there is a "conflict in the application of the tax law" that may permit the tax authorities to challenge the tax treatment of a given transaction where it is deemed artificial or inappropriate and it does not result in relevant legal or economic differences (if compared with a usual or appropriate transaction) other than obtaining a tax savings.

### BEPS measures

On 5 October 2015, the G20/OECD published 13 final reports and an explanatory statement outlining consensus actions under the BEPS project. The output under each of the BEPS actions is intended to form a complete and cohesive approach covering domestic law recommendations and international principles under the OECD model tax treaty and transfer pricing guidelines.

Governments must introduce the necessary legislation to implement BEPS-related measures in the domestic law of their jurisdiction. Certain measures that have been introduced in Spain and are covered within this guide are summarized in the table below.

BEPS measures in Spain	
BEPS actions	Related measures
Action 1: Addressing the tax challenges of the digital economy	New VAT location rules regarding supplies of digital services to customers have been enacted
Action 2: Neutralizing the effects of hybrid mismatch arrangements	<ul style="list-style-type: none"> <li>- Denial of participation exemption where dividends are tax-deductible for the payer company (see under <a href="#">3.3</a>)</li> <li>- Disallowance of deduction of expenses in certain transactions with related parties (see under <a href="#">3.3</a>)</li> </ul>
Action 3: Designing effective CFC rules	Applicability of rules expanded (see under <a href="#">3.6</a> )
Action 4: Interest deductions and other financial payments	Limits on deductibility for leveraged buyout transactions; recharacterization of intragroup profit participating loans as equity (see under <a href="#">3.3</a> )

Action 5: Countering harmful tax practices	Amendment of the patent box regime for consistency with the “nexus approach” (see under <a href="#">1.5</a> )
Action 13: Transfer pricing documentation	Introduction of CbC reporting obligations and changes to transfer pricing reporting and documentation obligations (see under <a href="#">3.6</a> )
Action 14: Make dispute resolution mechanisms more effective	Spain is one of the countries that has committed to mandatory binding arbitration

### 3.7 Administration

#### Tax year

A company's tax period is its accounting year. The tax period may not exceed 12 months.

#### Filing and payment

Corporate taxpayers are required to make three advance payments of income tax during the year: in April, October and December, with the final payment made when the annual tax return is submitted. The advance payment may be equal to 18% of the tax liability of the previous year, or based on taxable income generated from the beginning of the tax period to the end of the prepayment period (i.e. from the beginning of the tax period to 31 March (prepayment for April), 30 September (prepayment for October) and 30 November (prepayment for December), applying a rate equal to five-sevenths of the applicable tax rate (the corporate tax rate, which generally is 25% as from 1 January 2016). The latter method is mandatory for taxpayers whose turnover exceeded EUR 6 million in the 12 months before the beginning of the current year tax period. A taxpayer whose turnover does not exceed that amount can make the advance payment by applying the 18% rate to the tax payable in the previous year.

Companies must file a tax return and pay any tax liability within the first 25 calendar days after a period of six months following the close of the fiscal year.

#### Consolidated returns

Spain allows the filing of a consolidated income tax return and the offsetting of profits and losses within a group of companies.

A group of Spanish resident corporations may be taxed on a consolidated basis, if so agreed by the directors of the relevant companies and subsequently communicated to the tax authorities. To qualify as a group (fiscal unity) for these purposes, the parent company must own directly or indirectly at least 75% of its Spanish subsidiaries (70% for listed companies), and the parent also must hold more than 50% of the voting rights in the subsidiaries.

Spanish subsidiaries held indirectly through a foreign intermediary company may be members of a consolidated group, as well as Spanish subsidiaries held directly or indirectly by a foreign parent (i.e. horizontal tax consolidation).

PEs of foreign entities may become members of a Spanish consolidated group if certain requirements are met.

The controlling company's participation must be held on the first day of the tax period in which the group regime applies, and must be maintained throughout the entire tax period. All of the companies in the group must have the same tax closing date.

#### Statute of limitations

The general statute of limitations is four years from the statutory filing deadline, or the date the return is actually filed, if later. Where an amended return is filed after the deadline, the four-year period restarts.

The statute of limitations in the case of tax crime is five years. In certain (criminal) circumstances, the statute of limitations may be extended to 10 years. A 10-year statute of limitations also applies to audits of tax credits and loss carryforwards and to the tax authorities' administrative right to

review transactions that have tax implications in tax periods that are not barred by the statute of limitations.

### **Tax authorities**

At the national level, taxes are administered by the *Agencia Estatal de Administración Tributaria*, an autonomous body within the Ministry of Economy and Finance. National taxes transferred to the regions or regional taxes are administered by the regional governments. Local taxes usually are administered by the municipalities, unless they do not assume these powers and, therefore, the taxes are managed by the *Agencia Estatal de Administración Tributaria*.

### **Rulings**

The Spanish tax authorities generally may provide binding advance rulings on the tax consequences of a proposed transaction.

# 4.0 Withholding taxes

## 4.1 Dividends

Dividends paid to a resident are subject to a 19% withholding tax. However, no withholding tax is due on dividends qualifying for the participation exemption (see under [3.3](#), above) or between companies within a fiscal unity. The withholding tax represents a payment on account of the recipient's final corporate or personal income tax liability.

Dividends paid to a nonresident also are subject to a 19% withholding tax, unless a lower rate applies under a tax treaty or the dividends qualify for an exemption under the EU parent-subsidiary directive. The following requirements must be met for dividends to be exempt under Spain's implementation of the directive:

- The resident subsidiary and the nonresident parent company must be in one of the corporate forms listed in the annex to the directive and must be subject to (and not exempt from) corporate tax in their country of residence;
- The parent company must hold, directly or indirectly, at least 5% of the capital of the distributing Spanish company for at least one year (however, the 5% requirement need not be fulfilled if the acquisition cost of the shareholding in the Spanish subsidiary exceeds EUR 20 million); and
- The distribution must not be derived from a liquidation of the Spanish company.

## 4.2 Interest

Interest payments made by a Spanish company to a resident (other than a bank or similar financial institution) generally are subject to a 19% withholding tax. The tax represents a payment on account of the recipient's final corporate or personal income tax liability.

Interest paid to a nonresident (whether a company or an individual) is subject to a 19% withholding tax, unless the rate is reduced under a tax treaty or the interest is paid to an EU resident, in which case it may be exempt under Spain's domestic law.

Interest on bank deposits and government bonds is exempt.

## 4.3 Royalties

Royalties paid to a nonresident (including a nonresident individual) are subject to a 24% withholding tax (19% if the recipient is resident in the EU or the EEA if the country of residence of the recipient exchanges tax information with Spain), unless the rate is reduced by a tax treaty or the royalties qualify for an exemption under the EU interest and royalties directive. The directive applies where the recipient of the payment is an associated company of the payer company and is resident in another EU member state. (Two companies are "associated companies" for these purposes if (a) one company holds directly at least 25% of the capital of the other; or (b) a third EU company holds directly at least 25% of the capital of the two companies for at least one year.) The companies must have a legal form listed in the annex to the directive and must be subject to a corporate income tax.

## 4.4 Branch remittance tax

In addition to the normal corporate income tax of 25%, a nonresident entity operating in Spain through a PE is subject to a remittance tax of 19% on the after-tax profits paid to a foreign head office. The tax is not levied where the head office of the PE is located in the EU (unless the head office is located in a tax haven) or in most jurisdictions that have concluded a tax treaty with Spain.

## 4.5 Wage tax/social security contributions

An employer is required to withhold income tax on salary and wages paid to an employee, regardless of whether the employee is a resident or a nonresident. The rates for resident employees are progressive, ranging from 19% to 45%. Employment income paid to a nonresident

is subject to a 24% withholding tax (19% if the recipient is resident in the EU or the EEA if the country of residence of the recipient exchanges tax information with Spain) if the income derives directly or indirectly from personal activities carried out within Spain. Deductions by the employer represent payments on account of the employee's final personal income tax liability.

An employer must make social security contributions to cover illness and unemployment benefits, pensions and family allowances, as well as professional contingencies. The normal contribution rate for the employer is 29.9%, plus a rate that changes depending on the activity, applicable to the contribution base (which is not necessarily the same as the actual wage, since there are rules to determine the salary items included, as well as a maximum contribution base updated annually (the contribution base is capped at EUR 3,642 for 2016)). The employee also must make a contribution, which is 6.35% of the contribution base.

Social security contributions are payable with respect to individuals employed in Spain, with specific exceptions. Under EU rules, individuals employed in an EU member state who are posted by their employers to another member state continue to be subject to the social security legislation of their home country under certain conditions. In addition, Spain has entered into social security treaties with non-EU countries, under which individuals temporarily assigned to Spain may be able to obtain an exemption from Spanish social security contributions.

#### **4.6 Other withholding taxes**

Management fees paid to a foreign company are subject to a withholding tax of 24% (19% if the recipient is resident in the EU or the EEA if the country of residence of the recipient exchanges tax information with Spain), unless a lower rate or exemption applies under a tax treaty.

Fees paid for independent personal services rendered by a resident individual are subject to a 19% withholding tax; for services rendered by a nonresident individual, the rate is 24% (19% if the recipient is resident in the EU or the EEA if the country of residence of the recipient exchanges tax information with Spain), unless reduced under a tax treaty.

# 5.0 Indirect taxes

## 5.1 Value added tax

VAT is levied on the supply of goods and services, intra-community acquisitions and imports of goods. Certain transactions are exempt from VAT, including services and supplies of goods relating to insurance and financial activities, health, education and the rental of residential property. VAT does not apply in the Canary Islands (where there is an indirect tax similar to VAT (the IGIC), but with some differences, e.g. lower tax rates) or in the North African enclaves of Ceuta and Melilla.

VAT is levied on all transactions carried out in Spain, unless specifically exempted. The term "transaction" covers all supplies of goods and services made by entrepreneurs or professionals in the course of their business. All goods imported into Spain are subject to VAT, unless specifically exempted (VAT applicable to imports is payable by the importer). Certain supplies are subject to the reverse-charge mechanism, e.g. supplies of certain kinds of scrap; gold; silver; certain immovable property supplies; and mobile phones, tablets and videogame consoles, under certain conditions.

Taxable entrepreneurs are entitled to deduct the total VAT paid in purchasing goods or services for use in their business from the total VAT charged in supplying goods and services to their customers. No deduction is allowed for VAT incurred on expenditure that is unnecessary for business purposes, or for the acquisition of goods or services used for a VAT-exempt activity.

The standard VAT rate is 21%. There are two reduced rates: 10% and 4%, the latter of which applies to basic goods. In the Canary Islands, the IGIC general rate is 7%; there also are reduced rates of 0% and 3%, and increased rates of 9.5%, 13.5% and 20%. In the Basque Country, the VAT rates are the same as in the rest of the Spanish VAT territory.

The principal activities that are exempt from VAT include most banking and financial services, insurance activities, educational services, medical and dental services and certain sales of real estate. An enterprise providing exempt services does not have to charge VAT on its supplies, and VAT paid on purchases connected with these activities is not recoverable.

Registration is mandatory for all taxpayers that carry out VAT-able transactions in Spain, and a special VAT identification number is required when a company carries out intra-community transactions (the VAT number included in the VAT Information Exchange System).

Spain has a VAT grouping regime, under which an election can be made to file a consolidated VAT return, where the individual VAT results of each entity in a group are aggregated.

Taxpayers must submit a VAT return to the tax authorities on a monthly basis if their turnover in the previous year exceeds EUR 6,010,121.24, if they are included in the monthly VAT register or if they apply the VAT grouping regime. Quarterly returns are submitted in other cases.

## 5.2 Capital tax

A 1% capital duty applies on the reduction of capital and upon liquidation of a company. However, incorporation of companies, increases to capital and equity contributions are not subject to capital duty.

## 5.3 Real estate tax

Landowners must pay real property tax to the local authorities, up to a maximum of 1.1% of the cadastral value for urban property and up to a maximum of 0.9% of the cadastral value for rural property. Additional taxes are imposed on the increase in urban land values when land is transferred.

Nonresident entities that own or control Spanish real property may be subject to a 3% special tax on the officially estimated value of the property, if they are resident in a country classified as a tax haven and the property is not used in a business activity other than leasing, among other conditions. The tax does not apply to foreign states, public institutions, international bodies, entities engaged in business activities in Spain and companies listed on the secondary stock market.

## **5.4 Transfer tax**

Companies pay transfer tax on various transactions that are not part of their normal activities. The tax rates depend on the region levying the tax. The “by-default” rates (i.e. those that apply in the absence of a regional regulation) are 6% for transfers of real property, 4% for transfers of movable assets and administrative concessions and 1% on certain real property rights. Generally, regional rates range from 6% to 10%.

## **5.5 Stamp duty**

Stamp duty is levied on certain notarized documents that may be registered in a public register.

The tax rates usually range between 0.5% and 2%, depending on the region and the particular transaction.

## **5.6 Customs and excise duties**

As a member of the EU, no customs duties are imposed on goods from other member states. However, goods imported into from outside the EU generally are subject to customs duties and the common customs tariff is applied in trade between Poland and non-EU countries. As an EU member state, Spain applies the new Union Customs Code as from 1 May 2016, which sets out the general customs rules and procedures.

Excise taxes generally are levied at lump-sum rates (with ad valorem rates for cigarettes) on the production, manufacture or import into the EU of alcohol and alcoholic beverages, hydrocarbons and tobacco products. The Canary Islands, Ceuta and Melilla generally are exempt from these taxes, although excise duties apply to alcohol in the Canary Islands.

Power and coal supplies also are subject to specific excise duties.

## **5.7 Environmental taxes**

A vehicle registration tax applies at ad valorem rates on the final registration in Spain of most new and used vehicles, including most types of passenger cars, most pleasure or sporting boats and motorized aircraft. Certain exemptions are available. The rate of the registration tax ranges from 0% to 12%, depending on the vehicle and the particular carbon dioxide emissions.

## **5.8 Other taxes**

Insurance companies carrying out taxable transactions pay a tax of 6% of paid premiums.

Companies pay city governments an economic activity tax. The self-employed and small firms with annual revenue of less than EUR 1 million are not subject to the tax. Larger firms are exempt during their first two years of operation. Rates increase according to the amount of a company's revenue.

Any person undertaking construction projects requiring permission from the municipality must pay a construction tax to the city government, at a top rate of 4%; rates are set by each municipality.

## 6.0 Taxes on individuals

Resident individuals in Spain are subject to a number of taxes, including personal income tax, real estate tax, inheritance tax and social security contributions.

Spain Quick Tax Facts for Resident Individuals	
Income tax rates	Progressive from 19% to 45%
Capital gains tax rates	19%/21%/23%
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	30 June of the following year
<b>Withholding tax</b>	
– Dividends	19%
– Interest	19%
– Royalties	19%/24%
Net wealth tax	From 0.2% to 2.5% (may be adjusted by region)
Social security	6.35% (employee contribution)
Inheritance tax	From 7.65% to 34% (may be adjusted by region)
Real estate tax	Up to 1.1% (urban property); up to 0.9% (rural property)

### 6.1 Residence

An individual is considered a resident for tax purposes if: (1) he/she is present in Spain for more than 183 days in a calendar year; or (2) Spain is the taxpayer's main center or business base or the place where his/her professional activities or economic interests are located, either directly or indirectly. Unless otherwise evidenced, an individual is deemed to be a Spanish resident if his/her spouse and dependent children habitually reside in Spain. Residents of Spain are subject to personal income tax on worldwide income; nonresidents are subject to tax only on Spanish-source income.

An individual who changes his/her residence to a tax haven jurisdiction will not lose Spanish residence status in the tax period in which the move is made or the following four tax years.

Under most of Spain's tax treaties, a foreigner working in Spain for less than 183 days is exempt from Spanish tax on employment income, provided the salary or wages are paid by and charged to an employer resident outside Spain.

A nonresident individual who is resident in an EU member state may elect to be subject to Spanish personal income tax if the individual can demonstrate that his/her habitual residence is in another EU member state and that at least 75% of his/her total income during the year was obtained as salary or business income in Spain. Foreign taxes paid may be credited against Spanish tax (up to the amount that would have been payable in Spain).

### 6.2 Taxable income and rates

#### Taxable income

Resident individuals generally are taxed on worldwide income, although up to EUR 60,100 of salary income per year for work performed abroad is exempt from tax if certain requirements are fulfilled. Nonresidents are liable for personal income tax on Spanish-source income. In general, a

nonresident's personal income tax liability is discharged if the withholding tax has been properly withheld.

Taxable income includes all types of income, such as employment income, income from a business or profession, dividends, interest, royalties, real estate rental income and capital gains. However, capital gains on the sale of a main residence are exempt if certain requirements are met. Resident individuals are taxable on worldwide income, which must be included in taxable income before the deduction of foreign withholding tax, but a foreign tax credit is granted for the tax paid abroad.

Severance payments, long-term bonuses, certain stock options, schemes and other income earned over a period exceeding two years ("irregular income") may benefit from a 30% reduction in the taxable base, subject to certain requirements.

When irregular income is derived from labor, the reduction applies only to a maximum income of EUR 300,000 per year.

### **Deductions and reliefs**

Specific expenses are deductible from each type of income. A deduction for social security contributions is permitted. Deductions relating to the purchase of a primary residence before 1 January 2013 may be available, as well as deductions relating to rentals of a primary residence before such date, provided certain requirements are met.

Relief for personal and family circumstances is granted primarily in the form of deductions from taxable income. Such relief is available only to resident taxpayers.

A tax credit for taxes paid abroad is available, under the requirements and limitations legally determined.

### **Rates**

Personal income tax is levied on resident taxpayers on a progressive scale ranging from 19% to 45% as from 1 January 2016, with the rates varying according to the taxpayer's region of residence (e.g. in some regions, the maximum rate is 48% instead of 45%).

Investment income, such as dividends, interest from bank deposits and capital gains, obtained by a Spanish tax resident generally is subject to progressive tax rates of 19% on the first EUR 6,000 of income, 21% on income over EUR 6,000 and up to EUR 50,000 and 23% on income exceeding EUR 50,000.

An individual who is assigned to work and live in Spain may opt to be taxed as a nonresident during a six-year period. Under such an arrangement, the individual is taxed at a flat rate of 24% on the gross amount of the income (i.e. no deductions or allowances are granted), up to a maximum amount of EUR 600,000 (the excess will be taxed at a 45% rate). To qualify for nonresident taxation, the individual must fulfill the following conditions:

- (1) He/she must not have been a tax resident in Spain for the previous 10 tax years before the arrival to Spain;
- (2) The assignment to Spain must be made as a result of:
  - (a) A labor agreement (with the exception of professional sportsmen); or
  - (b) A condition of the legal administrator of an entity, provided the individual has no significant participation in such entity; and
- (3) The individual must not earn income that could be considered as earned through a PE located in Spain.

## **6.3 Inheritance and gift tax**

Inheritance and gift taxes are imposed on all Spanish resident heirs, beneficiaries and recipients, as well as nonresidents receiving assets (e.g. estates) located in Spain, at rates ranging from 7.65% to 34%, which may be significantly increased according to a scale in cases where the taxpayer is not a close relative of the donor/deceased person and he/she has previous relevant wealth. However, Spain's autonomous regions have the authority to increase or reduce the tax

burden. In most regions, the tax has been substantially reduced for resident individuals by a 99% allowance in favor of descendants, ancestors and spouses.

#### **6.4 Net wealth tax**

Spain levies net wealth tax at rates that generally range from 0.2% up to 2.5% of the value of the property owned by the taxpayer. However, the rate depends on the autonomous region of Spain; the regions may establish different tax rates and benefits. Wealth tax is not levied in Madrid.

#### **6.5 Real property tax**

The landowner must pay real property tax to the local authorities, up to a maximum of 1.1% of the cadastral value for urban property and up to a maximum of 0.9% of the cadastral value for rural property. Additional taxes are imposed on the increase in urban land values when land is transferred.

#### **6.6 Social security contributions**

For employees registered in the Spanish social security system, the employer and employee must make contributions. The normal contribution rate for the employer is a 29.9%, plus a rate that changes depending on the activity, applicable to the contribution base (which is not necessarily the same as the actual wage, since there are rules to determine the salary items included, as well as a maximum contribution base updated annually). The maximum contribution base is EUR 3,642 for 2016. The employee also must make a contribution, which is a 6.35% of the contribution base

#### **6.7 Other taxes**

Shareholders of a company (either individuals or entities), are subject to a 1% capital duty upon liquidation and on reductions in the capital of companies in which they participate.

#### **6.8 Compliance**

The taxable period for individuals' income tax is the calendar year.

Resident individuals must file the individuals' income tax return and pay the tax due from April to June of the following calendar year. The minimum employment income threshold to file a tax return is EUR 22,000. However, an individual with total annual household income of at least EUR 12,000 must file a tax declaration where income is paid by more than one employer, among other cases.

Married couples may choose to file jointly or separately.

Nonresident individuals may be required to file a "Form 210" to report certain income, including capital gains in relation to sales of Spanish real estate, certain "notional" income related to real estate owned that is located in Spain and certain other Spanish-source income; the deadline depends on the type of income and whether tax is due or a refund is requested.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

Like other European countries, Spain maintains a system based on a labor code, collective bargaining agreements and standardized employment contracts (usually permanent). Legislation exists, among other purposes, to:

- Specify provisions related to top management employment contracts;
- Create a legal framework for temporary job agencies;
- Specify provisions related to dismissal, labor mobility, wages, working hours, paid holidays, collective negotiation and part-time work; and
- Set out specific types of employment contracts.

### Working hours

The legal work week is 40 hours, although many companies have reduced working hours to 37 or 38 hours. The Workers Statute maintains a 40-hour legal work week, but permits total hours to be distributed irregularly over the year if such an arrangement is part of a collective bargaining agreement.

Each employee has the statutory right to a block of one-and-a-half days off a week (two days a week for employees younger than age 18). The Workers Statute allows employees and employers to negotiate blocks of three days off over a fortnight.

The Workers Statute also allows employees and employers to negotiate extensions to the statutory nine-hour day if a 12-hour rest period is maintained in between shifts. Employees younger than age 18 may not legally work for more than eight hours per day, including training; employers using apprenticeship contracts should take this limit into account.

Overtime regulations are dictated by national law and collective bargaining agreements. There is a statutory annual maximum of 80 hours of overtime per employee.

## 7.2 Wages and benefits

The Ministry of Labor and Social Affairs establishes the minimum wage annually (in December) for the following year; the increases usually match the expected inflation rate.

### Pensions and social insurance

Social security coverage is mandatory for employees, with social contributions paid by both the employee and the employer. Contributions cover illness and unemployment benefits, pensions and family allowances, as well as professional contingencies. General risk contributions represent 28.3% of an employee's wages, with the employer paying 23.6% and the employee paying 4.7%.

There are specific social security regulations for certain groups such as seafarers, top managers, etc., which should be taken into consideration. Moreover, several social security cost reductions are available if specific requirements are met.

### Other benefits

Large enterprises offer a variety of special employee benefits, not all of which are mandatory, such as housing, lunches, nurseries, recreational facilities, medical insurance, life insurance, pension plans, low-cost loans, training courses and transport.

## 7.3 Termination of employment

Collective layoffs are defined as the termination of employment contracts for economic, technical, organizational or production-related reasons that, within a 90-day period, affect at least 10 employees in companies with fewer than 100 employees; 10% of the workforce in companies with 100–300 employees; or 30 employees in companies with 300 or more employees. A collective

dismissal also includes the dismissal of all employees on payroll, where there are more than five employees.

When an employee is dismissed, the size of the termination payment depends on whether the dismissal is justified or unjustified. Justified dismissals, for “objective causes” (i.e. economic, technical, organizational or production-related reasons) require payment of 20 days’ salary per year worked with the firm, up to a maximum of 12 months’ salary. Unjustified dismissals require payments of 45 days of salary per year of seniority earned before 12 February 2012 (the date of enforcement of a major labor reform) and 33 days of salary per year worked from that date on, up to a maximum overall compensation of 720 days of salary. No payments are required if an employee is dismissed for disciplinary reasons and the dismissal is declared fair and justified. However, in the case of an individual in top management with a special labor relationship, a minimum notice period of three months and a maximum of six months, or the period established in the employment contract, is required. In the case of a disciplinary dismissal, the law does not establish a minimum notice period.

## **7.4 Labor-management relations**

Employees and employers establish working and production conditions via collective bargaining agreements, with terms agreed upon by both parties. Generally, as long as employees and employers do not denounce a collective bargaining agreement, it will be extended each year; if the agreement is denounced, unless otherwise provided, the maximum period of application from that time will be one year. Collective bargaining agreements may be company agreements or general industry agreements.

Local representatives of the Ministry of Labor and Social Affairs determine whether a strike is “legal,” “abusive” or “illegal.” Employees must give five days’ written notice to call a legal strike. (Strikes in the public service sector require 10 days’ notice.) Legal strikes may be called by a simple majority of employees’ representatives (if a quorum of 75% is present) or by secret vote of a simple majority of the workforce (if 25% or more have requested the vote).

During a strike, employees are represented by a strike committee with a maximum of 12 members. Employers agree with the committee to appoint maintenance personnel. Strikers are not permitted to force nonstrikers to abandon their jobs. No wages need be paid during a legal strike. The employer may not hire new personnel, and striking employees may not be hired by another employer.

## **7.5 Employment of foreigners**

Nationals of EEA member states (comprising the EU, Iceland, Liechtenstein and Norway) and Switzerland do not need permits to work in Spain, but EEA/Swiss nationals who will reside for more than three months in Spain must register in the Foreigners Central Register. Non-EEA employees must apply to the Ministry of Labor and Social Affairs for work permits.

The period of validity is different depending on the type of each work permit.

## 8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

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**A database that allows users to view and compare tax information for 65 jurisdictions that includes –**

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