

## International Tax Spain Highlights 2018



### Investment basics:

**Currency** – Euro (EUR)

**Foreign exchange control** – No, but the government requires prior notification of certain capital movements under anti-money laundering and terrorism financing regulations, for statistical purposes and to limit tax fraud. Payments for services between residents and nonresidents, whether in euros or a foreign currency, should be made by entities registered with the Ministry of Economy (and certain formal obligations should be fulfilled).

**Accounting principles/financial statements** – IAS/IFRS, as adopted in Spain. Financial statements must be prepared annually.

**Principal business entities** – These are the public limited company (SA), limited liability company (SL) and branch of a foreign corporation.

### Corporate taxation:

**Residence** – A company is resident in Spain if it is incorporated under Spanish law, it has its registered office in Spain or its effective management is in Spain.

**Basis** – Resident companies are subject to corporation tax on worldwide income. Nonresident companies are taxed only on Spanish-source income, subject to the provisions of an applicable tax treaty. Branches generally are taxed in a manner similar to subsidiaries.

**Taxable income** – Taxable income includes worldwide profits less deductible expenses, and is based on the income disclosed in the financial statements. Some expenses are not considered deductible for tax purposes (e.g. restrictions may apply to the deductibility of financing expenses, certain provisions, certain employee benefits, penalties, etc.).

**Taxation of dividends** – Dividends received are subject to corporate income tax, but may be exempt in certain cases (see below under “Participation exemption”).

**Capital gains** – Capital gains are treated as ordinary business income taxable at a rate of 25%, and a tax exemption is available for capital gains derived from the transfer of shares if certain requirements are met (see below under “Participation exemption”).

**Losses** – Net operating losses (NOLs) may be carried forward indefinitely. The carryback of losses is not permitted.

NOLs generally may be offset against up to 70% of the taxable base prior to the application and funding of the capitalization reserve; the limit is 50% for taxpayers whose turnover in the previous 12-month period was between EUR 20 million and EUR 60 million; and the limit is 25% for taxpayers whose turnover in the previous 12-month period was greater than EUR 60 million. However, NOLs that do not exceed EUR 1 million may be offset without limitation in any case.

Restrictions may apply if there has been a change in ownership.

**Rate** – The general rate of corporate income tax is 25%. Special rates may apply in certain cases (e.g. banks are subject to a 30% rate).

**Surtax** – No

**Alternative minimum tax** – No

**Foreign tax credit** – Resident taxpayers are granted a tax credit for foreign direct taxes incurred that are similar to the Spanish corporate income tax. The credit is limited to the lesser of the tax that would have been payable in Spain had the income arisen in Spain, or the actual foreign tax incurred.

**Participation exemption** – Dividends and capital gains from shareholdings in Spanish and foreign subsidiaries may be exempt from taxation if a participation of at least 5% in the subsidiary is held for a one-year period (for dividends, the one-year period may be completed after the dividend payment). The 5% requirement is deemed to be met if the holding in the subsidiary exceeds EUR 20 million. For shareholdings in foreign subsidiaries, there is an additional requirement that the foreign subsidiary 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 several circumstances in which the participation exemption does not apply or applies with restrictions, such as where the payment of dividends generates a tax-deductible expense at the level of the entity paying the dividend.

**Holding company regime** – A special holding company regime (ETVE) operates to allow dividends paid to nonresidents out of qualifying foreign income to be free from withholding tax. See under "Participation exemption."

**Incentives** – Available incentives include an R&D tax credit and a patent box regime. Under certain circumstances, the limit of EUR 3 million that may be claimed as a cash rebate for the R&D credit is increased to EUR 5 million.

#### Withholding tax:

**Dividends** – Dividends paid to a nonresident 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.

**Interest** – Interest paid to a nonresident (including a nonresident individual) is subject to a 19% withholding tax, unless the rate is reduced by a tax treaty or the interest is paid to an EU resident, in which case it is exempt.

**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 European Economic Area (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.

**Technical service fees** – The withholding tax rate on technical service fees paid to a nonresident for services related to business activities in the Spanish territory 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 a lower rate or an exemption applies under a tax treaty.

**Branch remittance tax** – The branch remittance tax rate is 19%. The tax, which may be reduced or subject to an exemption under a tax treaty, applies to after-tax profits paid to a head office unless the payment is made to an EU resident or where a tax treaty applies, under certain conditions.

**Other** – The general withholding tax rate on income paid to nonresidents 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).

#### Other taxes on corporations:

**Capital duty** – 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 exempt from capital duty.

**Payroll tax** – The employer must withhold tax on income from employment.

**Real property tax** – Local tax is levied annually on real estate, superficial rights and administrative concessions on a property. The applicable rate (up to 1.3%) applies on the cadastral value and it varies depending on the municipality levying the tax, the category of real estate and other circumstances.

Nonresident entities that own or hold real property in Spain are subject to a special 3% tax 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.

**Social security** – For an employee whose contract is for an indefinite term, the employer contributes 29.9% of the employee's wages and the employee 6.35%. The employer also is required to make a contribution for professional contingencies at a rate between 0.9% and 7.15%, depending upon the nature of the employer's activities.

**Stamp duty** – Stamp duty is levied at 0.5% of the value of the subject of notarized documents registered in a public register. The tax rate may be increased in different regions and the increased rates range between 0.75% and 2.5%, depending on the region and the type of transaction.

**Transfer tax** – Companies pay a 6% transfer tax (which may be increased or decreased, depending on the region) on acquisitions from individuals (non-entrepreneurs) and on Spanish real estate where VAT does not apply,

including indirect acquisitions in certain cases. The formalization of certain rights is subject to transfer tax at 1% or 4%, depending on the nature of the rights.

**Other** – Business activities tax is charged, at a rate depending on several factors, including industry type, number of employees and size of the premises.

#### Anti-avoidance rules:

**Transfer pricing** – The transfer pricing rules generally follow the OECD's transfer pricing guidelines. The following transfer pricing methods are permitted: comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods. Taxpayers are required to prepare documentation for related party transactions. Advance pricing agreements are possible.

**Thin capitalization** – Thin capitalization rules no longer apply, although there are some restrictions on the deductibility of interest expense. Net interest deductions generally are capped at 30% of tax-adjusted EBITDA. However, net interest expense is tax deductible if it does not exceed EUR 1 million per year. Additional restrictions apply for leveraged buyouts and intragroup indebtedness.

**Controlled foreign companies** – A Spanish entity is required to include in its taxable base any income obtained 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 from industrial and intellectual property, image rights and technical assistance) are deemed to be passive income and, therefore, subject to the CFC rules even if there are material and personnel resources at the level of the CFC.

**Disclosure requirements** – Country-by-country reporting obligations apply for entities and groups with an aggregate net turnover of at least EUR 750 million. Other disclosure obligations may apply to certain taxpayers. See also under "Transfer pricing," above.

**Other** – Spain has general anti-avoidance rules.

#### Compliance for corporations:

**Tax year** – The tax year coincides with the accounting period. The tax period may not exceed 12 months.

**Consolidated returns** – A group of corporations may be taxed on a consolidated basis. To qualify as a tax group, a company must own at least 75% of its Spanish subsidiaries, or 70% in the case of Spanish-quoted subsidiaries. Spanish subsidiaries held indirectly through a foreign intermediary company may be part of a consolidated group, as well as Spanish subsidiaries held, directly or indirectly, by a foreign parent (i.e. horizontal tax consolidation). Permanent establishments of foreign

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

**Filing requirements** – The corporate income tax return must be filed and taxes paid within six months and 25 days following the close of the fiscal year. Corporations are required to make three advance payments of income tax in April, October and December each year, with the final payment made when the annual tax return is submitted.

**Penalties** – Underpayment penalties range from 50% to 150% of the unpaid tax liability. Specific penalties may be imposed for various infringements of the law. Surcharges, ranging from 5% to 20%, are imposed for late payment of tax due where the payment is made voluntarily by the taxpayer without an investigation by the tax authorities. Late payment interest also is imposed.

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

#### Personal taxation:

**Basis** – Individuals that are residents of Spain are subject to personal income tax on their worldwide income, unless they are subject to a special regime for impatriates. Nonresidents (as well as residents benefitting from the impatriate regime) are taxed only on Spanish-source income.

**Residence** – An individual is resident if he/she spends more than 183 days of the tax year in Spain or if the main center or base of his/her business, professional activities or economic interests is in Spain.

**Filing status** – Married couples may choose to file jointly or separately.

**Taxable income** – Taxable income of individuals includes earned income (e.g. salaries, wages and business or professional income) and passive income (e.g. dividends, interest and capital gains).

**Capital gains** – Capital gains generally are included in the investment income taxable base.

**Deductions and allowances** – Specific expenses are deductible from each type of income. In certain cases, a deduction for mandatory social security contributions is permitted. A 30% deduction is allowed for income earned irregularly over a period exceeding two years if certain requirements are met. When irregular income is derived from labor income, the deduction applies only to a maximum income of EUR 300,000.

**Rates** – The progressive rates range from 19% to 48%, with the maximum rate varying according to the region where the individual is resident.

Dividends, interest, capital gains and savings income are subject to progressive rates of 19% on the first EUR 6,000 of income, 21% on income from EUR 6,000 up to EUR 50,000 and 23% on income exceeding EUR 50,000.

#### Other taxes on individuals:

**Capital duty** – Individual shareholders receiving goods or cash from a liquidation or capital reduction of a company are subject to a 1% levy.

**Stamp duty** – Stamp duty is levied at 0.5% of the value of the subject of notarized documents registered in a public register. The tax rate may be increased in different regions and the increased rates range between 0.75% and 2.5%, depending on the region and the type of transaction.

**Capital acquisitions tax** – No

**Transfer tax** – Individuals pay a 6% transfer tax (which may be increased or decreased, depending on the region) on acquisitions from individuals (non-entrepreneurs) and on Spanish real estate that is not subject to VAT, including indirect acquisitions in certain cases.

**Real property tax** – A local tax is levied annually on real estate, superficial rights and administrative concessions on a property. The applicable rate (up to 1.3%) applies on the cadastral value and varies depending on the municipality levying the tax, the category of real estate and other circumstances.

**Inheritance/estate tax** – Inheritance and gift tax is levied where the heirs or donees are resident in Spain or where the inherited or gift assets are located in Spain. Rates range from 7.65% to 34% (rates in certain regions may be higher). The tax also is imposed on nonresidents receiving assets (e.g. estates) located in Spain. Spain's autonomous regions have the authority to increase or reduce the tax burden.

**Net wealth/net worth tax** – Spain levies net wealth tax at a rate established by each autonomous region, which may range from 0.2% to 2.5% of the value of property. Wealth tax is not levied in Madrid.

**Social security** – For an employee whose contract is for an indefinite term, the employer contributes 29.9% of the employee's wages and the employee 6.35%.

#### Compliance for individuals:

**Tax year** – Calendar year

**Filing and payment** – Individuals must file a tax return

and pay any tax due within six months following the close of the fiscal year. The minimum employment income threshold to file a tax return is EUR 22,000. Where the employee has income from two sources, the minimum employment income threshold to file a tax return is EUR 12,000.

**Penalties** – Underpayment penalties range from 50% to 150% of the unpaid tax liability. Specific penalties may be imposed for various infringements of the law. Surcharges ranging from 5% to 20% are imposed for late payment of tax where the payment is made voluntarily by the taxpayer without investigation by the tax authorities. Late payment interest also is imposed.

**Other** – Resident individuals must report annually the assets they hold abroad.

#### Value added tax:

**Taxable transactions** – VAT is imposed on the sale of goods and the provision of services performed by entrepreneurs/professionals within the Spanish VAT territory. VAT also is imposed on the intra-EU acquisition and importation of goods.

**Rates** – The standard rate is 21%, with reduced rates of 10% and 4%. Certain transactions are zero-rated or exempt.

**Registration** – Registration is mandatory for all taxpayers that carry out transactions in the Spanish VAT territory.

**Filing and payment** – Filing and payment are due on a monthly basis where the turnover in the previous period exceeds approximately EUR 6 million; otherwise, quarterly filing and payment are required. A new Anticipated Electronic VAT Reporting System (SII) introduced as from 1 July 2017 requires the electronic submission via the tax authorities' online platform of billing registries which are part of the VAT ledgers. The information required must be submitted within four calendar days of the issuance of or accounting for each invoice. The SII is mandatory for taxpayers filing monthly returns (i.e. those whose turnover exceeds EUR 6 million), those who have applied for the monthly VAT refund regime (REDEME) and those who are part of a VAT group.

**Source of tax law:** General Tax Law and legislation regulating each tax.

**Tax treaties:** Spain has concluded 96 tax treaties. Spain signed the OECD MLI on 7 June 2017.

**Tax authorities:** *Agencia Estatal de la Administración Tributaria* for taxes collected by the state. Regions and other local areas have their own authorities for the taxes which they administer.

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