



Global Reward Update

Spain

Changes to Spanish taxation of carried interest

January 2022

What has changed

In December 2021, the Spanish Government published a Draft Bill to promote the start-up ecosystem, (so called “Startups Law”). Among other tax topics, the Draft Bill provides for draft regulations on the Personal Income Tax (PIT) treatment of carried interest earned by Spanish taxpayers with tax residence in the Spanish mainland territory. This excludes Basque Country and Navarre, as there are already special tax regimes applicable to those receiving carried interest in these two regions.

According to the draft regulations, income derived from units, shares or other rights that grant special economic rights in certain qualifying entities earned by:

- private equity/venture capital managers,
- directors, or
- employees

of those entities, of their managing entities, or of group companies. The appropriate income, including carried interest, will be deemed as employment income and will benefit from a 50% exemption provided the following requirements are met:

1. The carried interest derives from qualifying investment vehicles (or their group entities), including the following:
 - a. Closed-Ended Alternative Investment Funds (as defined in Directive 2011/61/EU on Alternative Investment Fund Managers) included in any of the following categories:
 - i. Entities regulated in Spanish Law 22/2014, which regulates venture capital funds, other closed-end collective investment undertakings and their management companies,
 - ii. European venture capital funds regulated in Regulation (EU) No. 345/2013,
 - iii. European Social Entrepreneurship Funds covered by Regulation (EU) No 346/2013,
 - iv. European Long-Term Investment Funds covered by Regulation (EU) No. 2015/760.
 - b. Other investment organizations analogous to the above.
2. The accrual of the carried interest return is conditional to the other participants in the qualifying investment vehicles reaching a minimum guaranteed return (hurdle) to be defined in the investment vehicle’s by-laws.
3. The shares or rights are held for at least 5 years.

The draft bill allows for certain special cases, where holdings can be held for a shorter period. This is anticipated where there is an anticipated liquidation or where rights are cancelled as consequence of changes in the fund managing company. In these circumstances, the shares, participations, or rights should have been kept uninterruptedly until those events happen.

4. The special economic rights do not derive, directly or indirectly, from an entity resident in a non-cooperative jurisdiction or in territories with which there is no mutual assistance concerning tax information exchange in accordance with the Spanish General Tax Act.

Pursuant to this draft tax regime, the recipients of the carried interest returns would be taxed at the general income rates which would as a maximum range between 22.75% to 27%, (calculated on the marginal rates in force in FY21 after the 50% tax benefit foreseen in the Draft Bill) depending on the region where the recipient is tax resident.

This special regime would apply from 1st January 2023.

Deloitte's view

The proposed regulations are part of a draft bill, and therefore still subject to debate and potential amendments by the Spanish Parliament. Hence, this cannot be taken as final, but it does give light on the expected qualification (employment income) and tax treatment (50% integration under certain conditions) of carried interest in Spain. The final terms and conditions will be published once the legislative procedure ends. Deloitte is currently working closely with different groups to address concerns/queries, (i.e., what will happen with previous years, tax treatment in 2022 or possible retroactive effects).

We will keep you updated to any progress in relation to this draft law.

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