Spain

Spain offers a patent box and a wide variety of expenditure-based tax incentives, but limits utilization.

Background

The Spanish corporate income tax rate is 28% (25% as from 2016). Spain applies different tax rates for SMEs (25% to 28% in 2015 and 25% as from 2016), oil companies (33%), savings banks (30%), Real Estate Investment Trusts (REITs) (19%), and investment funds (1%). Spain offers an immediate deduction for qualified R&D expenditure, as well as research tax credits for technological innovation.

Nature of incentives

General rules for R&D and technological innovation tax credits:

Volume-based credit: The volume-based credit is equal to 25% of the R&D expenses incurred in the tax year.

Incremental credit: The incremental credit equals 42% of the amount of the current year expenditure exceeding the average of such expenditure incurred in the preceding two tax years. The incremental credit is in addition to the volume-based credit. If the taxpayer's current year spend exceeds the average of the prior two years, the taxpayer receives a credit equal to 25% of the current expenses plus 42% of the excess over the base.

Personnel credit: A 17% credit for wages paid to qualified researchers dedicated exclusively to R&D.

R&D equipment credit: An 8% credit for amounts invested in tangible and intangible fixed assets, excluding real estate, used exclusively in the conduct of qualified R&D.

Technological innovation: Expenses incurred for research activities that result in technological innovation for existing products receive a 12% credit. However, the maximum allowed expenses is limited to EUR 1M for the acquisition of know-how, licenses and patents.

Credit limitations: If the amount of qualified R&D expenses for the tax year exceeds 10% of the tax due (after reducing for tax credits), the tax credits may not offset greater than 50% of the gross tax due. If the amount of R&D expenses does not exceed 10% of the tax due (after reducing for tax credits), the credits may offset up to 25% of the gross tax due.

Unused credits may be carried forward for 18 years and the Spanish tax authorities will have a period of 10 years to review the tax credits that have been accredited but not utilized.

To obtain legal certainty, a taxpayer can apply to the Spanish tax authorities to validate the qualification of a research project.

Special rules enable taxpayers to qualify for refunds for unutilized credits. The regime allows taxpayers to elect to reduce the credits they could otherwise utilize by 20% and then be subject to the following annual credit limitations:

- EUR 1M if the credit was attributable to technological innovation related expenses; or
- EUR 3M for the sum of R&D and technological innovation related expenses; or
- EUR 5M for the sum of R&D and technological innovation related expenses for companies with expenditure in R&D exceeding 10% of the net revenues. In these cases, companies that are unable to apply the tax credits due to an insufficient amount of corporate income tax due have the option of obtaining a cash refund with the same amount limitations.

The special rules enabling refunds of unutilized credits apply to taxpayers satisfying the following rules:

- At least one year must pass from the end of the tax year in which the tax credit was generated but not utilized.
- The average number of staff or the average number of staff involved in R&D and technological innovation must be maintained from the end of the tax period in which the tax credit is generated until the 24 months following the end of the period in which the corporate income tax return with the application or payment is filed.
- An amount equivalent to the tax credit applied or paid (i.e., "cash refund") must be invested in R&D and technological innovation for the same period mentioned in the previous bullet.
- The company must obtain a pre-validation report on the qualification of the activity as R&D and technological innovation or a previous valuation agreement on the expenses and investment in these activities.

Patent Box: In Spain, 60% of the net income from the grant and sale of intangible assets (i.e., patents, drawings, models, know-how) created by the entity that at least has borne 25% of the costs, is excluded from taxable income.

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Spain (cont.)

Eligible industries and qualifying costs

All industries are eligible for R&D tax credits for costs incurred in qualifying activities.

R&D activities include original planned investigation aimed at acquiring new knowledge and greater understanding in scientific or technological fields. Development is considered to be the application of the results of research or of any other kind of scientific knowledge for the manufacture of new materials or products or for the design of new production processes or methods, as well as for substantial technological improvement of materials, products, processes, or previously existing methods (including software development).

Qualifying R&D expenses include wages paid to employees engaging in research and the cost of investments in fixed assets that are exclusively dedicated to R&D activities. Indirect expenses are excluded.

For tax years prior to 2015, software development did not qualify for research tax credits unless it involved a significant scientific and technological advancement. The definition of qualifying R&D was changed for 2015 and now includes advanced software activities without additional limitations. Advanced software development activities generally are limited to developments that are innovative. For example, pilot projects related to the animation developed for video games are considered innovative.

IP and jurisdictional restrictions

To qualify for any credit, all qualified R&D must take place in Spain or an EU/EEA member state. IP ownership does not affect whether the taxpayer can claim the credit.

Other concerns

If proposed rules relating to the patent box are enacted, the following changes in the law will apply from 1 July 2016:

- The requirement that the company's stake in the creation of the intangible asset must be at least 25% would be abolished.
- The current fixed 60% exemption would remain applicable for entities that created the intangible asset, but would be proportionally reduced for entities that did not fully create the intangible.

Spain

Nature of benefit available	Income tax benefit generally available	Specific pre-approval required from government	Refundable/ Carryforward
Tax credits	1. Volume-based tax credits for 25% of qualified expenditure. 2. Incremental credit equal to 42% of the amount of current year expenditure exceeding the average of the two previous years. 3. Credit for 17% of wages paid to qualified researchers dedicated exclusively to R&D. 4. Credit for 8% of amounts invested purchasing R&D equipment used in qualified R&D. 5. Special Innovation Credit 6. Patent box reduces the tax rate for income attributable to patent.	No	Unused credits may be carried forward for18 years. Taxpayers can elect to reduce unutilized credits that could otherwise be carried forward in exchange for immediate refunds of certain tax credits.

R&D activities must occur in country	Cap/Limitations on benefits	IP must be retained in country	Industry eligibility restriction
All qualified R&D must take place in Spain or an EU/EEA member state.	If qualified R&D expenses exceed 10% of the tax due (after applying all credits), credits may not offset more than 50% of the gross tax due. If the amount does not exceed 10% of the tax due (after applying all credits), credits may offset 25% of gross tax due. In computing the Special Innovation Credit, the maximum allowed expenses is limited to EUR 1M for the acquisition of know-how, licenses and patents.	No	No