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Spain
TAX

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This country-specific Q&A provides an overview of tax laws and regulations applicable in Spain.

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SPAIN
TAX

1. How often is tax law amended and what is the process?

The Spanish tax laws have not a fixed modification term. The frequency depends on the need of the Country and the political will. However, Spanish tax laws are modified quite often and usually every year.

Budget Law to be approved yearly usually amends tax laws, yet according to Spanish Constitution Budget Law modifications cannot be substantial. Sometimes modifications are included in all types of law and not necessarily in specific tax laws.

When there is a major modification of the tax laws, the Ministry of Finance publishes a draft of the bill of Law for public comments. After a reasonable period of time, the Government sends the proposed tax bills to the Parliament that could approve, reject or amend the bill before it became a Law.

In case of extremely urgent need, as during the COVID-19 situation, the Government can approve a Royal Decree-law that is a law and becomes immediately applicable, however this Royal Decree-law shall be ratified by the Parliament within 30 days after approval by the Government. The Constitutional Court can review to what extent there was an extremely urgent need.

Together with the COVID-19 situation, in recent years the Government has considered that a situation of deficit constitutes an extremely urgent need and on this basis approved Royal Decree-law increasing existing taxes.

After approval of the Parliament, the bill will be signed into law by the King and published in the state Gazette.

Generally, new laws enter into force the day after the publication.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Financial Statements

According to the Spanish Code of Commerce, Spanish entrepreneur should keep accounting books and documentation for a period of six years. However, the Tax Law may oblige taxpayers to keep accounting and tax ledgers and documentation for a longer period.

Firstly it should be mentioned that the statute of limitation period is generally four years but it is ten years when there are tax losses. Regardless the statute of limitation period, any event (e.g. Merger, acquisition, sale, etc…) from the past that has an impact in a period not protected by the statute of limitation should be fully justified and hence taxpayer should keep documentation for a period even longer than ten years.

Due to the COVID-19 situation, statute of limitation period was generally suspended (extended) for a maximum period of 78 days.

Annual accounts should be approved within six months after the year closing. Once approved they have to be deposit at the Mercantile Registry within the following month.

Main tax returns:

1. Corporate income tax (“**CIT**”) returns

Companies should file an annual return within the 25th following days to the sixth month after the closing, this is if the closing date is the 31st of December the annual CIT Return should be filed between the 1st and the 25th of July.

There are payments in advance in April, October and December, these payments in advance are getting more and more significant since there are some tax benefits that cannot be applied in the payments in advance and also because large companies (turnover of Euro 10 million) are obliged to a minimum tax calculated on the basis of the positive accounting profit.

2. VAT and withholdings and withholding tax returns.

Withholdings and VAT returns are due monthly or quarterly depending on the Company size and there is a summary annual return to be filed yearly.

3. Payments

Due payments are payable immediately after filing the return.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

Spain is a business-friendly jurisdiction with highly skilled and sophisticated Tax Authorities. The national tax system is administrated by the Ministry of treasury and managed by the Tax Agency (Agencia Estatal de Administración Tributaria- AEAT-).

The AEAT is generally well approachable. Taxpayers may obtain certainty in advance mainly by two means:

a. Asking for an interpretation of the law, by means of an advance tax ruling ("consulta"): rulings are requested from the General Directorate of Taxes (a body belonging to the Ministry of Treasury but different from the AEAT), when obtained rulings are binding for the AEAT in connection to the taxpayer asking for it (other taxpayers might also benefit from ruling's criteria, in terms of avoiding penalties).

The length of a consulta may vary depending on the matter however on average it could take between six months to one year getting an answer to a ruling.

b. Asking for a valuation criteria from the AEAT by means of an advance pricing agreement (APA) usually on transfer pricing issues. AEAT is favorable to the use of APA since it could provide certainty for both parties, out of the context of a tax audit.

Although theoretically the length of an APA is not supposed to be longer than 6 months, its negotiation always takes longer. The APA could not cover longer than 4 years though it can have retroactive effect to years within the statute of limitation. The documentation provided to the Tax Agency in the course of an APA cannot be used in a tax audit.

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

After a tax claim, taxpayers are entitled to appeal the claim if they do not agree with it. Additionally, taxpayers might obtain suspension of the tax due under the claim, what in most cases would require a guarantee from the taxpayer, usually a bank guarantee.

Appeal-wise taxpayers have two alternatives:

- Appealing before the same body issuing the tax claim ("recurso de reposición").
- Appealing to an economic-administrative tax court.

Decisions issued by Economic Administrative Courts could be appealed to the Courts of Justice: the Regional Courts of Justice ("Tribunal Superior de Justicia") or the High Court ("Audiencia Nacional") depending basically on the amount of the claim.

Afterwards, there might be even another tier of appeal to the Supreme Court ("Tribunal Supremo"), but just when the case may create precedents, so likelihood of accessing the Supreme Court is very limited.

Before getting access to the High Court and to the Supreme Court an average period from eight to ten years could last.

Lastly, the appeal could reach the Court of Justice of the European Union (CJEU), although taxpayer cannot directly request its involvement, but just through the Spanish court, if the court decides so.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

Main taxes are payable when the tax returns are filed and in any case before the last day for the voluntary payment.

For CIT the payment should be made by the 25th day following the sixth months after the closing (i.e. If the financial closing were on the 31st of December the deadline is the 25th of July, while if the closing were on the 31st of March the last day for the voluntary payment would be the 25th of October).

For VAT and withholdings, the deadline for the payment is generally by the 20th day of the following month (small companies file these returns on a quarterly basis and the deadline is the 20 first days of the following quarter).

When the tax debt is not self-assessed but issued by the Tax Authorities the payment should be made within the legal deadline which depends on the tax debt's notification date.

- Those debts notified by the 15th of the month should be paid by the 20th of the following month.
- Those debts notified between the 16th and the end of the month should be paid by the 5th of the second following month.

If the taxpayers failed to meet the payment deadline the late payment triggers a 1% surcharge that could increase depending on the delay.

The above 1% will increase by another 1% for each full moth of delay. A delay longer than twelve months entails a surcharge of 15 per cent plus late payment interests for each day exceeding the twelve months period. Main taxes are payable when the tax returns are filed and in any case before the last day for the voluntary payment.

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6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

The tax documentation, in a broad sense, generated by the tax authorities or provided by the taxpayer have a reserved character. So, in general terms, they can only be used within the framework of the procedure for which they have been created or communicated, or to impose penalties related to this procedure, if applicable.

The mentioned general rule has several exceptions specifically provided by the Law basically based on providing the aforementioned information to third parties that are public authorities also within the framework of their own procedures. In the process of the mentioned tax information exchanging, the tax authority must adopt the necessary measures to guarantee the confidentiality of the tax information.

The violation of the duty of confidentiality by the officials, will always be considered a major administrative violation, that could trigger criminal responsibilities or liabilities.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Spain has signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters and has activated exchange relationships for the Common Reporting Standard information with many jurisdictions.

The law 10-2010 of April 28 on the prevention of money laundering and the financing of terrorism, provides that Spanish companies are required to disclose the identity of their beneficial owners – i.e. individuals owning, directly or indirectly, more than 25% of the company's equity or voting rights or, failing that, the person exercising control over the management or management bodies within the companies and undertakings for collective investment.

This means that all legal entities currently registered in Spain needed to identify their beneficial owners and prepare to file the declaration of beneficial owners.

8. What are the tests for determining residence of business entities (including transparent entities)?

There are three tests for determining whether a company is resident for tax purposes in Spain:

1. It has been constituted under Spanish law.

2. The registered office is located in the Spanish territory.

3. The effective management (direction and control of the activity) is located in the Spanish territory.

Under certain conditions, Spanish Tax Authorities can assume that an entity, located in a tax heaven or a country with no-taxation, is a tax resident in Spain. In order for this assumption to be applicable, the main assets and rights of the entity must be, directly or indirectly, located in Spain or its main activity is carried out in Spain.

Regarding transparent entities, such as partnerships, the taxation would depend on the partner's residency. Spanish resident partners are liable to tax in Spain on their share of the worldwide profits of the partnership. Non-resident partners are only liable to tax on profits that arise in Spain.

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

There is a specific International Tax unit with the Spanish Tax Agency devoted to policing cross-border transactions.

Three areas have focused Tax Agency efforts when policing cross-border operations:

- Financial interest from intercompany debts.
- Permanent Establishment.
- Transfer Pricing.
- Anti-hybrids measures.

Financial Interest from intercompany and cash poling.

Before 2012 Tax Agency challenged excessive debts by means of the General Anti-abuse Rule considering that intercompany debts lacked business reasons were mainly tax driven. After 2012 the CIT Law was amended introducing two main limitations to financial cost deductibility:

Firstly, as a general anti-avoidance rule, interests paid to a group entity incurred in order to acquire shares (being the seller another group entity) or increase equity interests in other group members is wholly nondeductible (tainted financial expenses), unless the operation might pass a test business purpose.

Secondly, remaining net finance cost (this is the net amount of financial income and cost, excluding the above mentioned tainted financial expenses) is deductible up to an amount equal to 30% of the operating profit defined as the accounting operating profit eliminating the effect of (usually increasing):

a. The amortization of fixed assets;
b. The subsidies for nonfinancial fixed assets and others; and
c. The depreciation for impairment of fixed assets as well as the gains or losses derived from the transfer of fixed assets.

The resulting amount should be increased with dividends derived from entities when the stake represents at least 5% of their share capital; or, alternatively. This rule will not apply to dividends from subsidiaries which have been acquired from other companies of the group with group debts generating tainted non-deductible financial expenses referred above.

Net financial cost above 30% of operating profit could be carried forward and deducted in the following tax years (with no term limitation) within the same limit of 30% of the annual operating profit.

Conversely, if net financial cost is below 30% of operating profit (e.g. capacity excess) that excess of capacity may be carried forward to deduct more financial cost in the following 5 years.

The above limitation (30% of the Operating Profit) does not apply when:

- Net financial cost does not exceed EUR 1 million;
- The borrower is either an insurance or financial entity; and
- In case of entities belonging to a tax unit or tax consolidation group, all the above calculations (net financial cost, operating profit, etc.) would be referred to the whole tax group.

Permanent establishment (PE)

Spanish Tax Authorities has developed an aggressive doctrine towards existence of Permanent Establishment that has been adopted by Spanish Courts and, at least partially, also by the OECD. This is the so called "Spanish approach to PE" that considers that foreign companies may be deemed to have a PE when by a "complex operating settlement", this is the combination of a network of outsourcing agreements and resources they are actually carrying a business in Spain.

This doctrine has been taken by the Supreme Court and by the National Court in several cases as well as by the Ministry of Treasury in many rulings.

In this type of situations, the non-resident entity usually had a subsidiary entity in Spain that after a change of business model is suddenly reconfigured as a company with very few and limited risks that appears to be limited to providing sales support services or routine toll manufacturing services, significantly decreasing its profits and the associated Spanish tax; in turn, sales previously made by the resident entity are now, made directly by the non-resident entity allegedly without a permanent establishment and, therefore, no taxation in Spain under the treaty and its Article 7. The affiliated company, before trading company, in the performance of its new functions does not have significant changes in structure or dimension.

After an in-depth analysis about the functional deployment of the multinational group in Spain, and as a result of the information usually got from customers, tax authorities concluded that the non-resident entity operates in Spain with permanent establishment, so called "complex operating settlement" this is a substantial operating conglomerate, a framework that is implanted and stable in Spain what is the same as a fixed business place.

One element that was crucial for the Tax Authorities challenge is that after the change of business model the Spanish subsidiary headcount did not change significantly, additionally, Spanish Inspection stated that in the periods in question the non-resident entity used the means (staff and facilities) of the related Spanish company to develop the distribution activity in Spain in all its phases.

In summary, the rulings rest on the fact that by its staff and facilities the related Spanish subsidiary deployed a wide range of functions and tasks in favour of the Nonresident entity, more so than just preparation or ancillaries, so it may be said that in such periods the Non-resident entity operated in Spain through a permanent establishment. Determining either a fixed place of business or a dependent agent.

Transfer Pricing

Transfer pricing is currently the main focus of taxpayers' litigations.

The transfer pricing rules included in the CIT Act covers both companies and individuals. In this regard, transfer pricing rules apply to CIT, Personal Income Tax and Non-Resident Tax.

Additionally, and in line with the Spanish Accounting Principles, CIT Act clearly specifies that controlled transactions carried out by related parties must be valued on an arm's length basis. In this sense, the burden of proof falls upon the taxpayer who must provide documentation to proof to the tax authority that shows that the values applied in the transactions with related parties meet the principle of valuation at fair market value or on an arm's length basis.

CIT Act establishes the obligation to make available to the tax authority the documentation that is determined by law. As explained below, this documentation obligation is divided on the basis of the concepts of "Country-by-country information", "Specific documentation of the group" and "Specific documentation of the taxpayer".

One significant point that makes different the Spanish Transfer Pricing regulations and gives it more relevance is the broader perimeter of related or associated parties that obliges to apply transfer pricing principles and to prepare documentation to more operations that in other countries.

Anti-hybrid measures

Following conclusions from BEPS (Action 2) and European ATAD Directive, Spain introduce strong rules dealing with hybrids instruments and operation.

According to these rules, when as a consequence of a conflict in the characterization of a financial instrument, a permanent establishment or more broadly an operation, there were a double deduction, a deduction without inclusion or a double non-integration, the tax payer should correct the lack of taxation of the relevant operation.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

Controlled Foreign Corporations (hereinafter, CFCs) legislation applies to all resident taxable entities holding a participation in foreign entities located in low-tax jurisdictions (EU and EEA Member States excluded under certain circumstances) and whose income is passive income or, despite the nature of its income, the subsidiary does not have any substance, as defined in the law.

For CFC rule to be applicable, the following requirements should be met:

a. The Spanish entity, together with other related parties, should have at least 50% participation in the foreign company;

b. The foreign participated entity does not have any substance or the subsidiary income is passive as defined in the law; and

c. The income tax paid by the entity is lower than 75% of the tax payable in Spain.

When CFC rule applies, the Spanish taxpayer owning the foreign subsidiary should allocate (transparent) the latter's income in the proportion the taxpayer participates in the subsidiary.

CFC rule does not apply when: (i) the foreign subsidiary is tax resident in an UE Member State and (ii) it is demonstrated that the foreign entity was incorporated for sound business reasons.

In July 2021, the rule has been amended, by broadening its scope of application to include dividend income and capital gains derived by intermediate non-Spanish holding companies qualifying as CFCs.

On the other hand, provided that the Spanish participation exemption regime has been reduced to 95% of the income, which in practice might mean that a Spanish Holding company could be required to include in its taxable base the dividends and capital gains obtained by an intermediate non-Spanish holding company that meets CFC requirements.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

Advance pricing agreement (APA)

The transfer pricing regulations provides the possibility of getting an advance pricing agreement (APA).

These agreements have advantages both for taxpayers (they have the legal certainty that the valuation of their operations will not be subject to modification by the Tax Administration in a subsequent verification of the settlements) and for the Administration itself (avoiding the complexity of verifying the market value of these operations after they have been carried out).

APAs may be unilateral (when there is an agreement between the taxpayer and the Spanish Administration) or bilateral (when an agreement is reached with other countries' Administrations, binding both related companies resident in different States and their Administrations).

In order to start this procedure, taxpayers who wish to close an APA with the Tax Administration should initiate it by a formal proposal, identifying the persons or entities that will carry out the transactions and describing the transactions and the basic elements of the valuation proposal that are the subject of the specific agreement. The application must be accompanied by the documentation of the group to which the taxpayer belongs, as well as the specific documentation of the taxpayer.

The APA must be set out in a document that includes: the place and date of its formalization, the identification of the taxpayers to whom the proposal refers, the taxpayers' conformity with the content of the agreement, the description of the operations to which the proposal refers, the essential elements of the valuation method, the tax periods to which the agreement will be applicable and its date of entry into force and the critical assumptions whose existence determines the applicability of the agreement under the terms contained therein.

According to Section 25(4) of the Royal Decree 634/2015 of 10 July, the procedure derived from the formulated proposal must be completed within six months from the date on which the application has been entered in any of the registers of the competent administrative body for its resolution.

Once the six-month period has elapsed without the Administration having expressly settled the procedure, it is understood that the proposal has been rejected, however usually closing and APA takes longer than six months and APA can be approved after this deadline.

The APA shall take effect in respect of operations carried out after the date on which it is approved, and shall be valid for the tax periods specified in the agreement itself, but may not exceed 4 tax periods following the date on which it is approved. However, the APA can be also applied to operations of previous tax periods provided that the right of the Administration to determine the tax debt by means of the appropriate liquidation had not expired.

Thin-cap

There is not a per se a thin cap rule but, as described above a stripping interest rule, thus, after 2012 the CIT Law was amended introducing two main limitations to financial cost deductibility:

Firstly, as a general anti-avoidance rule, interest paid to a group entity incurred in order to acquire shares (being the seller another group entity) or increase equity interests in other group members is wholly non-deductible (tainted financial expenses), unless the operation might pass a test business purpose.

Secondly, remaining net finance cost (this is the net amount of financial income and cost, excluding the above mentioned tainted financial expenses) is deductible up to an amount equal to 30% of the operating profit. There is a minimum allowed threshold of 1 million, as explained above.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

Spanish General Tax Law provides several General Anti-Avoidance Rules (hereinafter, GAAR) that would allow Spanish Tax Authorities tackling situations where taxpayer artificially avoids the payment of taxes.

a. Substance over form or requalification rule;

b. Rule for conflicts in the application of the law; and

c. Rules for simulated schemes.

According to ATAD, European Member States have to implement a GAAR. However, since Spain already had such rule and there would not be need to introduce a new one rule, no modification would be required.

Additionally, the Spanish legislation has numerous rules of Specific Anti Avoidance Rules (hereinafter, SAAR) being the most frequently applied the following:

1. Transfer pricing anti-avoidance rule;

2. Limitation of financial interest paid to group entities deductibility;

3. Anti-abuse rule for mergers, spin off and exchange of shares; and

4. Rule for preventing the transfer of companies with carry forward tax losses.

5. Hybrid mismatches preventing rules.

Spanish Tax Agency have long applied GAAR to recharacterize transactions in accordance with the underlying substance or disregard operations when it is considered they lack genuine commercial reasons other than tax reasons.

Spanish courts have also applied an “economic substance” or “business purpose” (qualification principle) doctrine to disregard transactions that have no appreciable effect on the taxpayer other than reduction of income taxes.

The application of the GAAR is commonly litigated since its application requires many subjective considerations and the Spanish Tax Agency position is not always followed by courts.

When GAAR is applied no penalties can be imposed for taxpayers and the tax claim is limited to avoided taxes plus late payment interest.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

In 2021, the Spanish Tax on Certain Digital Services (the so called “Google Tax”), has been implemented in Spain.

It is an indirect tax which applies to the provision of certain digital services involving users located in Spain.

This tax applies to companies with worldwide turnover of over EUR750 million and to Spanish income subject to this tax of over EUR3 million.

The tax rate amounts to 3% of income resulting from rendering digital services as defined in the Law.

The taxable persons are the companies that provide digital services as defined in the Law and that exceed the above-mentioned thresholds.

14. Have any of the OECD BEPS recommendations, including the OECD’s recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

Spanish Tax Authorities have been extremely committed to implement all principles, criteria and guidelines issued by the OECD.

Spain was one of the first countries to introduce the measures of the BEPS Plan, and even before the implementation there were already pronouncements and interpretations of the Courts that are based on its spirit even to resolve cases whose origin is very prior to the approach of the BEPS Action Plan.

That said, most of BEPS conclusion were provided, directly or indirectly, in the Spanish legislation even before final BEPS report were issued.

As of 2006 it was introduced in the Spanish legislation the direct application of OECD's guidelines and doctrine for interpretation purposes.

As a conclusion, on this basis no main changes were required to apply BEPS action plan.

The European Union has already approved Directives aimed to introduce anti-profit shifting measures that have been implemented by the Spanish Tax Authorities too.

The Law number 11/2021, July 9th implemented Directive UE/2016/1164 dated July 12, 2016 called 'ATAD I' in those aspects not already provided by the Spanish Law, in particular those related to the exit taxation, and the controlled foreign companies (CFC).

Previously, Royal Decree-law number 4/2021, March 9th, implemented the hybrid mismatches preventing measures, al resulting from the BEPS Action 2 report and Council Directive (UE) 2016/1164 as amended by the Council Directive (UE) 2017/952, May 29th.

With the above practically all BEPS conclusion and ATAD 1 and ATAD 2 rules have been implemented in Spain.

As mentioned before Spain has been one of few countries approving a Digital Tax to tackle tax structures used by digital multinationals (i.e. GAFA). This tax will likely be amended when a finally consensus about Pillar One allocation criteria were achieved.

Following Pillar two initiative, Spain has announced that the approval of a Global Minimum Tax is in the agenda of new tax modifications to be approved.

15. How has the OECD BEPS program impacted tax policies?

BEPS have influenced the Spanish Tax Agency application and interpretation of the tax law.

Under a dynamic interpretation of the laws and even when there is not a direct modification the law, principles resulting from BEPS have been directly adopted for scrutinizing situations that occurred even before BEPS actions plan were initiated. In 2020 the Spanish Supreme Court challenged this dynamic interpretation of the laws.

Not additionally changes are expected in this respect.

16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

The Spanish tax system follows the OECD Model.

a. Taxation of business profits

The taxable profit is the company's gross income for the tax period, less certain deductions. Its determination comes up from the annual financial statements prepared under Spanish Generally Accepted Accounting Principles

(SGAAP), as adjusted under certain statutory tax provisions.

It must be taken into account that Tax Authorities are legally authorized to modify accounting results in order to determinate taxable profit if they consider that accounting results have not been calculated as defined in the SGAAP.

All necessary expenses and costs connected to producing income may be deducted from gross income to arrive to taxable income determination. Additionally, Spanish CIT Law provides for certain items that are never deductible (permanent differences) or are deductible in a different year (timing differences).

As said, standard tax rate is 25%, though different rates may apply depending on activity and legal form (e.g. 30% for banks).

b. Taxation of employment income and pensions Spanish tax residents are taxed on a worldwide basis.

Tax resident private individual, are subject to Personal Income Tax (PIT) on the basis of a progressive tariffs that depends on the region whether the taxpayer is resident, ranging from 19% to 54%.

Social security contributions are mostly paid by employer or self-employer, a minimum part by the Insured person. Contributions are determined on the basis of a maximum monthly earnings that would operate as a maximum limit to the social security contribution.

c. Insured person

Social insurance: 4.7% of covered earnings. The insured's contributions also finance sickness, maternity, paternity, and work injury benefits.

The minimum monthly earnings used to calculate contributions are €1.260; the minimum daily earnings used to calculate contributions are €42,00.

The maximum monthly earnings used to calculate contributions are €4,495,50; the maximum daily earnings used to calculate contributions for certain occupational classes are €149,85.

d. Employer

Social insurance: 23.6% of covered earnings.

The employer's contributions also finance sickness, maternity, paternity, and work injury benefits.

The minimum monthly earnings used to calculate contributions are €1.260 the minimum daily earnings used to calculate contributions are €42,00.

The maximum monthly earnings used to calculate contributions are €4,495,50; the maximum daily earnings used to calculate contributions for certain occupational classes are €149,85.

e. VAT (or other indirect tax)

The standard VAT rate is 21%. However, the Spanish VAT Law provides for two reduced rates 10% and 4% applicable to specifically listed goods and services. An additional reduced rates have been approved for some products, these are 5 % and 0 % for some specific goods considered as essential necessity products.

Spanish VAT is an implementation of the European VAT Directives.

f. Taxation of capital gains

Capital gains are normally considered as ordinary income taxable at the standard CIT rate (generally 25%) in the tax period they arise.

g. Stamp and/or Capital duties

Operations carried out by non-entrepreneur are usually subject to transfer tax at a tax rate between 1% to 11% (depending on the Spanish Region).

Stamp duties also applies over public documents that might be registered at a Public Registry. The tax rate amounts from 0.1% to 2.5% of the operation value.

Capital tax applies to certain corporate operations and the rate of 1%

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

The taxable profit is the company's gross income for the tax period, less certain deductions. Its determination comes up from the annual financial statements prepared under Spanish Generally Accepted Accounting Principles (SGAAP), as adjusted under certain statutory tax provisions.

It must be taken into account that Tax Authorities are legally authorized to modify accounting results in order to determinate tax results if they consider that accounting results have not been calculated as defined in the SGAAP.

All necessary expenses and costs connected to producing income may be deducted from gross income to arrive to taxable income determination. Additionally, Spanish CIT Law provides for certain items that are never deductible (permanent differences) or are deductible in a different year (timing differences).

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

Corporate

Business can be developed by way of corporate entities, most commonly, in the form of joint stock companies ("Sociedad Anónima" or "S.A.") requiring a minimum share-capital of €60,000, or limited liability companies ("Sociedad Limitada" or "S.L.") requiring a minimum share-capital of €3,000. The liability of the shareholders is limited in both cases.

From the tax viewpoint, corporations -generally speaking- , including not only S.A. and S.L, but also any other type of commercial companies, are subject to CIT regulations, which are levied on all legal entities resident in Spain.

Certain entities, mainly public entities and certain income of non-profit organizations can be exempt from CIT.

Non-corporate

There are non-corporate entities that could operate in businesses, such as the civil partnership or the private equity funds.

In order to assess the taxable income, CIT rules are also applicable to non-corporations, such as partnerships or lying heritages, provided they have a business purpose. Otherwise, in case they have not a business purpose, their income will be allocated (transparent) to their partners or co-proprietors. This is also the case regarding economic interest groupings, where profits or losses are taxed at the level of their co-proprietors.

Even more, individuals carrying out business activities – although taxed under Personal Income Tax (hereinafter, PIT)-, will apply, under certain cases, CIT rules when determining their business taxable income.

Trusts are not recognized by the Spanish Tax system and they are disregarded entities.

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

The liability to business taxation is based upon a concept of fiscal residence rather than registration. Further profits derived from a permanent establishment in the Spain would also be liable to taxation in Spain.

Companies incorporated under Spanish law will in principle be considered to be a resident in Spain, unless on the basis of an applicable Double Taxation Agreement the company is tax resident in other jurisdiction.

Foreign entities can be regarded as a tax resident in Spain if they have the place of effective management in Spain.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

Direct taxation

Regarding direct taxation, The Vasque Country and Navarra have full autonomy, though they are subject to European Union jurisdiction. Direct taxation has lot of peculiarities in those territories.

Canary Islands has specific tax benefit in CIT.

Indirect taxation

VAT does not apply in Canary Islands, Ceuta and Melilla where there are special indirect taxes.

21. Are there any special tax regimes for intellectual property, such as patent box?

Patent box

A partial exemption can be applied to the income obtained by entities from the transfer of the right to use or exploit certain assets (patents, utility models, registered advanced software, and complementary certificates for the protection of medicines, phytosanitary products and designs legally protected), that have been generated by its research, development and technological innovation activities. This partial exemption can amount to a maximum of 60 % of the income.

This partial exemption can also be applied to capital gains generated from the transfer of the abovementioned assets to third parties. In the event that the transaction is carried out between related parties, the partial exemption will not apply.

Incentives for movies shot in Spain

Spain has several tax incentives for production of movies that are totally or partially shot in Spain. The incentive could amount to Euros 20 million.

Capitalization reserve

Entities that are taxed under the general tax rate (25%) or some of the increased tax rates (30%) can apply a special reduction to their positive taxable base in an amount equal to 10% of the increase in its net equity. The following conditions must be met in order to apply this reduction:

a. There must be an increase in the entity's net equity that must be maintained during a 5 years period;

b. A reserve for the amount of the reduction will have to be booked separately in the account balance. This reserve should be recorded as restricted reserves for, at least, a period of 5 years.

However, this reduction cannot exceed 10% of the entity's positive taxable base prior to certain adjustments. The excess over the aforementioned limit can be carried forward for application in the following 2 years.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can

constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

CIT grouping

The Spanish CIT law allows Spanish tax resident companies and Spanish PE belonging to a Spanish or multinational group to be taxed as a single group and, therefore, apply a special tax consolidation regime for CIT purposes.

In order to apply this regime, main requirements are the following:

a. The Spanish companies should be owned (directly or indirectly) by the same parent company (either resident or non resident);

b. The parent company (either resident or nonresident) of the tax group must hold a direct or indirect, minimum holding of 75% (70% for quoted companies) and the majority of voting rights in the Spanish companies belonging to the group;

c. The above participation should be maintained during the whole taxable period; and

d. The parent company cannot be tax resident in a tax heaven.

The main characteristics of the tax consolidation regime are described below:

i. (The taxable income results from the sum of all the taxable incomes of each Spanish tax resident companies of the tax group, corrected as established in the following points;

ii. Current tax losses of any of the companies of the tax group can be offset against any company current tax profits;

iii. Tax profits generated from intragroup transactions are deferred and only included in the consolidated taxable income when:

a. They are realized carried out with third parties;
b. One of the intragroup companies part of the transaction ceases to form part of the group; and
c. Consolidation regime is no longer applied.
d. Intragroup dividends not exempt (i.e. 5% which, as mentioned above, cannot be exempt under current participation exemption) cannot be eliminated and, thus, will be taxable; and
e. Specific limitations apply concerning the offsetting of tax losses or the application of tax credits generated by the group companies before they formed part of the tax group or join the Group; and
f. No withholding applies on payments made at intragroup level.

VAT grouping

VAT grouping can also be applied, choosing between two different possible schemes:

Simplified tax Grouping, which means basically the aggregation of the different entities VAT assessments results or;

Advanced tax Grouping, which implies the elimination of the margin charged among the different entities of the group.

For this regime to be applicable the dominant entity must hold a minimum interest of 75%, either directly or indirectly, and the majority of the voting rights in the companies forming the tax group at the beginning of the first tax year in which the tax consolidation regime is to be applied, and this interest and the voting rights must be maintained during the year unless. In the case of listed entities, the interest requirement is just 70%.

23. Are there any withholding taxes?

Withholding on outward-bound payments (domestic law)

Provided that a double tax treaty (DTT) is applicable, the terms of such DTT should be observed. In case there is no applicable DTT or a limit of taxation is not envisaged in the relevant DTT, payments made by a Spanish taxpayer to a non-resident entity will subject to withholding tax in Spain at the following general rates:

- General rate is 24%, except for 19% for tax residents in the EU or in some of the EEA (European Economic Area) countries, Iceland and Norway.
- 19% on dividends and interest.
- 19% on royalties paid to residents in the UE, Iceland and Norway, and 24% in the rest of the cases.
- 19% on capital gains.

For the application of a reduced rate or one of the exemptions described below, the tax payer must be in possession of a tax residence certificate issued by the Tax Authorities of the country of the recipient.

Domestic law exclusions or exemptions from withholding on outward-bound payments

Dividends

According to the domestic law, dividends paid by a subsidiary to its EU parent company are exempt from withholdings when:

a. The parent company holds at least a minimum holding of 5% in the Spanish subsidiary and the interest in the Spanish subsidiary has been held for at least one year before the dividends distribution (or will be held up to completing the one-year period).

b. Both the entity paying the dividends and the beneficial owner are subject and not exempt from one of the corporate taxes mentioned in Article 2.c) of the Council Directive 2011/96/EU of 30 June 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

c. The payment is not the consequence of the liquidation of the subsidiary.

d. Both the entity paying the dividends and the beneficial owner have one of the legal forms, listed in the Annexes to the Council Directive 2011/96/EU of 30 June 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

This exemption will not be applicable in case the majority of voting rights of the receiving entity is directly or indirectly owned by non-residents in the EU, unless it is proven that the incorporation of the receiving entity is due to valid economic reasons and sound business reasons.

Interest

Interest paid to a resident in the EU will be exempt of withholding.

This exemption does not apply when the recipient is tax resident in a tax haven.

Capital gains

Capital gains from alienation of movable goods (including shares) by tax residents in the EU are exempt from withholding, except in the following cases (in which the exemption will not apply):

a. The transferred shares are issued by a Spanish company whose main asset or assets are (directly or indirectly) assets immovable located in the Spanish territory.

b. The non-resident selling the company is a private individual that has held (directly or indirectly) at least a 25% holding in the Spanish company in any moment during the twelve months previous to the transfer.

c. When the transferor is a non-resident entity, the exemption will only apply if the domestic participation exemption requirements (below described), are fulfilled. This requirement aims to equalize the treatment of both residents and non-residents.

Royalties

Royalties paid to an EU Member State would be exempt from withholding when the following requirements are:

a. Both the entity paying royalties and the beneficial owner have one of the legal forms, listed in the Annexes to the Council Directive 2003/49/EC of 3 June 2003.

b. Both the entity paying royalties and the beneficial owner are subject and not exempt from one of the corporate taxes mentioned in Article 3.a).iii) to the Council Directive 2003/49/EC of 3 June 2003.

c. Both entities are resident in the EU and none of them is resident in a third country in accordance with a Double Taxation Agreement.

d. Both entities are associated companies, this is: (a) one has a direct minimum holding of 25 % in the capital of the other, or (b) a third company has a direct minimum holding of 25 % in the capital of both entities. This holding should be held for a minimum holding period of one year that could be completed after the payment.

e. The entity that receives those royalties should receive them for its own benefit and not as an intermediary, such as an agent, trustee or authorized signatory, for some other person and, in case the recipient is a PE, the received royalties should effectively be connected with that PE activity and it should be a taxable

This exemption over royalties will not apply in case the majority of voting rights of the receiving entity is directly or indirectly owned by a non-resident in the EU unless it is proven that the incorporation of the receiving entity is due to valid economic reasons and sound business reasons.

Double Tax treaties

Currently, Spain has entered into double taxation treaties with more than 90 countries, the main aim of which is to eliminate double taxation and provide for reduced rates of withholding taxes of dividends, interests and royalties. Double taxation treaties concluded by Spain are generally compliant with the provisions set forth by the OECD.

A certificate stating that the taxpayer is a resident in another contracting state is required for a non-resident to benefit from the provisions of a treaty. Certificates of residence are valid for one-year term.

24. Are there any environmental taxes payable by businesses?

There are some taxes aimed to tackle pollution these being mainly focus in the use of dirty energy like diesel or carbon.

In Spain there is an indirect tax on electricity.

There is also a Tax on fluorinated greenhouse gases and a recently introduced non-reusable plastic packaging.

25. Is dividend income received from resident and/or non-resident companies taxable?

Participation exemption for dividends and capital gains; and capital losses.

Dividends obtained by Spanish entities either from resident or foreign entities may be 95% exempt from taxation under the participation exemption regime. Both domestic and foreign entities dividends will be generally exempt when the following conditions are met:

a. The recipient either owns at least 5% of the distributing entity;

b. Such stake has at least one year seniority (the one year seniority could be fulfilled afterwards).

c. In the case of a foreign subsidiary an additional condition is required. In order for the 95% exemption to apply, the foreign subsidiary should be effectively subject (and not exempt) from a tax similar to CIT at a nominal rate of at least 10%; this requirement is understood to be met when a tax treaty is applicable and it includes an exchange of information clause.

It must be noted that specific requirements are demanded in case of indirect participation through a holding entity.

Furthermore, capital gains resulting from the sale of shares in both, Spanish or foreign entities, would be generally 95% exempt from taxation when requirements for participation exemptions are fulfilled. In case of sale of foreign subsidiaries, the minimum taxation requirement must be met during all the years in which the participation has been held.

Capital losses from shares that could benefit from the above 95% exemption are not tax allowed, unless they come from liquidation with certain requirements.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

There are many advantages for re-locating a company or group of companies to Spain, some of them tax-wise but also other such as cultural and environmental advantages. With no exception Spain is a country where directors and teams are more easily adapted and reallocated.

From a tax view point with more than 90 Double Taxation Agreements and one of the best Tax regimes for holdings companies in the world, Spain has evolved from a purely an inward investment country to a tax attractive platform jurisdiction.

Indeed, the Holding regime together with the participation exemption, make Spain the best gateway for two main regions: (i) Latin America, since due to its cultural links Spain is surely the best platform for investing in that region and many multinational groups are using Spain so, and (ii) Europe, since given the favourable tax regime for Holding companies, many groups could get access to European single market without almost tax burden. Spain is a business-friendly jurisdiction with highly skilled

and sophisticated Tax Authorities that are in favour of giving certainty by mean of advance tax rulings and pricing agreements.

Aligned with Base Erosion and Profit Shifting (hereinafter, BEPS) OECD and EU principles, Spain is involved, and leading some, of the international initiatives aimed to promote transparency and implementation of anti-avoidance provisions such as those provided by the Anti-Tax Avoidance Directive, the Multilateral Convention to Implement Tax Treaty Related. Measures to Prevent Base Erosion and Profit Shifting.

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