

International Tax

Spain Highlights

In Plain English



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Investment basics:

Currency – Euro (EUR)

Foreign exchange control – There are no foreign exchange controls, but the government requires prior notification of certain capital movements under anti-money laundering and terrorism financing regulations, for statistical purposes and to curb 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, applies. 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 (with no distinction made between ordinary business income and any other type of income) less deductible expenses, and is based on the income

disclosed in the individual company's 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.).

A capitalization reserve, aimed at strengthening an entity's net equity position by keeping retained earnings generally undistributed for a five-year period, grants a reduction in taxable income equal to 10% of the increase in qualifying net equity, provided certain conditions are fulfilled.

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 – There is no surtax.

Alternative minimum tax – There is no alternative minimum tax.

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

Capital gains – Capital gains are included as part of taxable income. 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. The limitation also may not apply in dissolution situations under certain circumstances, or where NOLs are used to offset taxable income in certain debt restructuring transactions.

Additional restrictions may apply if there has been a change in ownership.

Foreign tax relief – 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 (provided it does not exceed the applicable tax treaty rate).

Participation exemption – Dividends and capital gains from shareholdings in Spanish and foreign subsidiaries may be exempt from taxation if, among other requirements, a participation of at least 5% in the subsidiary is held for at least 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 are additional requirements 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% and not be resident in a tax haven (except in certain cases for EU tax residents). 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 and is

eligible for treaty benefits.

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, or, in case of capital gains, where the taxpayer previously has claimed tax-deductible impairments or financial goodwill deductions that are pending recapture, among other things.

Holding company regime – A special holding company regime (ETVE) operates to allow dividends paid to nonresidents (other than residents in a tax haven) from foreign income qualifying for the participation exemption 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.

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 Spanish resident corporations may be taxed on a consolidated basis. To qualify as a tax group, a qualifying company (either resident or nonresident) must own at least 75% of its Spanish subsidiaries, or 70% in the case of subsidiaries listed on a stock exchange. 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 (PEs) of foreign entities may become members of a Spanish consolidated group if certain requirements are fulfilled.

Dividends, interest, and certain other items of income may benefit from an exemption from withholding tax for companies that are part of a corporate tax consolidated group.

Filing and payment – 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. Entities with turnover exceeding EUR 10 million in the previous 12-month period generally are required to make a minimum advance payment totaling 23% of their financial turnover (with some exceptional tax adjustments), which may be reduced only by previous advance payments made in the same fiscal year.

Penalties – Administrative 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 generally is levied.

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

Individual taxation:

Residence – Individuals are resident if they spend more than 183 days of the tax year

in Spain or if the main center or base of their business, professional activities, or economic interests is in Spain.

There is a rebuttable presumption that individuals are considered tax resident in Spain if their spouse (not legally separated) and dependent minor(s) habitually reside in Spain.

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 are taxed only on Spanish-source income. The tax base is split into two categories depending on the type of income: investment taxable income and ordinary taxable income.

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

Rates – The final tax rate for taxable income (other than investment income) is the sum of the rate resulting from the national tax rate table above and the local rate resulting from the table approved by the relevant Spanish region, so the final tax rates may vary according to the region where the individual is resident (e.g. the maximum tax rate in Madrid would be 43.5%, compared to the 48% rate applicable for general taxable income over 175,000 in Catalonia).

Taxable investment income (e.g., dividends, interest, and certain capital gains) is subject to progressive 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.

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% reduction may be allowed for certain income derived over a period of more than two years, with certain limits, if specific requirements are met.

Foreign tax relief – Resident taxpayers are granted a tax credit for foreign direct taxes incurred that are similar to the Spanish personal income tax. The credit is limited to the lesser of the tax that would have arisen in Spain, or the actual foreign tax incurred. If the foreign tax incurred exceeds the amount provided for under an applicable tax treaty, the credit will be limited to the amount provided for under the treaty.

Compliance for individuals:

Tax year – The tax year is the calendar year.

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

Filing and payment – Individuals must file a tax return, and the filing and payment window generally opens in early April and closes in late June. 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 14,000.

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 generally is levied.

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

Other – Resident individuals must report annually the assets they hold abroad when specific limits are exceeded.

Withholding tax:

Dividends – Dividends paid to resident companies and individuals generally are subject to a 19% withholding tax. There are some exemptions, such as where the dividend can benefit from the participation exemption regime, among other things. Nonresidents 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 resident companies and individuals generally is subject to a 19% withholding tax. There are some exemptions, such as where interest is paid to certain qualifying lenders, e.g., banks. Nonresident individuals and companies without a PE in Spain are 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 is exempt.

Royalties – Royalties (including payments for technical assistance) qualifying as business income paid to resident companies generally are not subject to withholding tax; royalties not qualifying as business income generally are subject to a 19% withholding tax, while royalties relating to image rights may be subject to a 24% withholding

tax. Royalties paid to resident individuals generally are subject to withholding tax at a 19% rate, which may be reduced to 15% in the case of income derived from intellectual property by an individual other than the author; a 24% rate applies in the case of royalties relating to image rights. Nonresident individuals and companies without a PE in Spain 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.

Fees for services – See under “Royalties,” above, for the treatment of payments for technical assistance. Fees for services other than technical assistance that are paid between resident companies and that qualify as business income generally are not subject to withholding tax. Fees for professional services paid to resident individuals generally are subject to a 15% withholding tax (although a reduced 7% rate may apply in certain cases). The withholding tax rate on service fees paid to nonresidents 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 applies to after-tax profits paid to a foreign head office, unless the head office is an EU resident or can benefit from a tax treaty and certain conditions are fulfilled.

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).

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. Country-by-country reporting obligations apply for entities and groups with an aggregate net turnover of at least EUR 750 million. Advance pricing agreements are possible.

Interest deduction limitations – Net interest deductions generally are capped at 30% of tax-adjusted earnings before interest, tax, depreciation, and amortization (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 derived by a low-taxed 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.

Hybrids – Corporate tax legislation already

includes some provisions tackling hybrid mismatches, such as provisions that may deny a deduction in “deduction without inclusion” cases where related parties are involved. In addition to these particular anti-hybrid provisions (and those that will be provided by the EU anti-tax avoidance directive (ATAD 2) that is pending enactment in Spain but that, in principle, is required to be effective as from 1 January 2020), the Spanish tax authorities can rely on general anti-avoidance rules to address hybrid situations.

Economic substance requirements –

There is neither “black letter” law, nor formal guidance in Spain on what would be deemed “appropriate substance.” This is considered on a case-by-case basis by the Spanish tax authorities and would be relevant, e.g., when benefits under an EU directive or treaty-based exemptions are claimed, or when analyzing potentially abusive structures.

Disclosure requirements – See under “Transfer pricing,” above. Other disclosure obligations may apply to certain taxpayers. For example, certain structures may fall within the scope of reportable cross-border arrangements under EU Council Directive 2018/822 (modifying Directive 2011/16), commonly known as “DAC 6,” which follows the mandatory disclosure rules under action 12 of the OECD/G20 BEPS project. Spain has not yet enacted the provisions of the directive into domestic law.

Exit tax – The existing domestic rules provide that, where tax residence is transferred to another EU or EEA member state, the exit tax liability that otherwise would be triggered for unrealized capital gains on the taxpayer’s assets can be deferred in certain cases until there is a subsequent transfer of the assets to a

third party. Certain amendments will be introduced once the exit tax provisions of the EU anti-tax avoidance directive (ATAD 1) are enacted into domestic legislation (in principle, these provisions are required to be effective as from 1 January 2020).

General anti-avoidance rule – Spain has general anti-avoidance rules that allow the tax authorities to challenge transactions and situations that are considered fraudulent or abusive. The “conflict on the application of the tax rule” provision allows the tax authorities to challenge the tax treatment given by the taxpayer to transactions that, considering the purpose of the parties, can be deemed to have been carried out in an unusual or inappropriate way and that, if compared with a usual or appropriate transaction, do not result in relevant legal or economic differences other than obtaining tax savings. “Sham” transactions (where fraud is committed by intentionally presenting facts other than the true facts, to obtain tax savings) and “tax recharacterizations” (analyzed based on a substance-over-form approach) relating to the legal business carried out by the parties also are covered as part of the overarching general anti-abuse system.

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 (i.e. Spain, except for the Canary Islands and the autonomous cities of Ceuta and Melilla). 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 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. The electronic VAT reporting system (SII) requires the electronic submission via the tax authorities' online platform of billing registries that 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.

Other taxes on corporations and individuals:

Unless otherwise stated, the taxes in this section apply both to companies and individuals.

Social security contributions – The maximum contribution base for 2020 for employees contributing to the general social security regime is fixed at EUR 4,070.10 per month, per employee.

For 2020, for an employee whose contract is for an indefinite term, the employer contributes 29.9% of the employee's wages (23.6% for common contingencies, 5.50% for unemployment, 0.20% for the salary guarantee fund, and 0.60% for professional training) and the employee contributes 6.35% (4.70% for common contingencies, 1.55% for unemployment, and 0.10% for professional training). The employer also is required to make a contribution for professional contingencies at a rate

between 1.5% and 7.15%, depending upon the nature of the employer's activities.

Payroll tax – There is no specific payroll tax, but the employer must withhold tax on income from employment, pursuant to the law.

Capital duty – A 1% capital duty generally applies on the reduction of capital and upon the liquidation of a company where there is an allocation to the shareholders of rights and assets. However, incorporation of companies, increases to capital, and equity contributions are exempt from capital duty.

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 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.

Transfer tax – Companies and individuals pay a 6% transfer tax (which may be increased or decreased (normally increased) depending on the region) on acquisitions from taxpayers that are not VAT payers and on Spanish real estate that is not subject to or is exempt from VAT, 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. Transfers of shares generally are exempt from transfer tax, except under certain circumstances where the target company is considered "property

rich” and it can be concluded that the share deal had a main purpose of avoiding the transfer tax that otherwise would have been triggered upon a direct transfer of the underlying real estate assets.

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 3%, depending on the region and the type of transaction. Stamp duty is not levied on transactions subject to transfer tax.

Net wealth/worth tax – Spain levies net wealth tax on individuals 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 the Madrid autonomous region. Catalonia has a special tax on non-productive assets held by companies.

Inheritance/estate tax – Inheritance and gift tax is levied where the individuals that are 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.

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

There are special indirect taxes levied at a national level on certain goods or services, as well as other indirect taxes levied by regions and municipalities. In addition, the Basque and Navarra regions have their own tax systems, so the rules governing their taxes may differ from the general domestic rules.

Tax treaties: Spain has concluded 93 tax treaties and agreements that currently are in force. Spain signed the OECD multilateral instrument (MLI) on 7 June 2017.

Tax authorities: “Agencia Estatal de la Administración Tributaria” is the authority for taxes collected by the state. Regions and other local areas have their own authorities for the taxes that they administer.

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