



## 3 Tax System

The Spanish tax system is modern and competitive. The tax burden in Spain, (*i.e.* tax and social security contributions as a percentage of GDP), is almost five points lower than the average ratio for the EU-28 zone<sup>1</sup>.

The Spanish Tax Agency (*AEAT*), who has been recognized as one of the most innovative and efficient tax agencies in the world, offers the taxpayers a wide range of services

in order to facilitate the fulfillment of their tax obligations. For this purpose, among other measures, it provides the taxpayers with computer programs that facilitate the preparation of their tax forms and promotes its electronic submission and payment, by using an electronic official certificate.

The main taxes of the Spanish tax system are analyzed in this chapter.

<sup>1</sup> Total tax revenue (including social security contributions). 2018 in % of GDP.  
Source: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_T0a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_T0a_taxag&lang=en)

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## 1. Introduction

The Spanish tax system is modern and competitive. The Spanish State Tax Agency has distinguished itself through its technological leadership within the Government. Moreover, it is one of the most modernized European tax agencies, in the vanguard of offering electronic public services, such as the possibility of obtaining tax certificates or filing tax returns online (indeed, online filing is obligatory in many cases).

This tax system comprises three kinds of taxes: *impuestos* (true taxes), *tasas* (dues and fees) and *contribuciones especiales* (special levies). The *tasas* and *contribuciones especiales* are collected in return for a public service provided by the authorities or for any type of benefit as a result of public works or services.

From a territorial perspective, taxes in Spain are levied by the Central Government, by the Autonomous Communities (regional) and by local authorities. Due to their relevance, this chapter concentrates exclusively on the taxes levied by the Central Government (whether or not they are administered

and collected by regional and local authorities), albeit with a brief reference to the special regimes applicable in the Canary Islands, the Basque Country and Navarra.

Due to the health crisis triggered by the outbreak of COVID-19, the Spanish Government approved various tax regulations in the first months of 2020 which, on general terms, affect the calculation of the time periods for administrative and judicial purposes (statute of limitations, duration of inspection proceedings, filing of appeals or claims) and of the periods for filing and paying some taxes. Also, the Autonomous Communities, municipal governments, the autonomous cities of Ceuta and Melilla, and the provincial governments, within their respective jurisdictional scopes competence area, have approved numerous tax measures, generally aimed at granting deferrals in the filing of tax returns and the payment of taxes, and in some cases even establishing tax relief and incentives.

Given the extraordinary and temporary nature of these measures, we have not included them in this Guide.



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## 2. Central government taxes

National taxes in Spain can be classified as follows:

- Direct taxes:
  - On income:
    - Corporate Income Tax (CIT).
    - Personal Income Tax (PIT).
    - Nonresident Income Tax.
  - On assets (affecting only individuals):
    - Wealth tax.
    - Inheritance and gift tax (IGT).
- Indirect taxes:
  - Value added tax (VAT).
  - Transfer tax and stamp tax.
  - Excise taxes.
  - Customs duties on imports.
  - Tax on insurance premiums.

Given its importance, we refer herein to the formal reporting

obligation relating to assets and rights held abroad (introduced for the first time for year 2013 in relation to the assets and rights owned in 2012), the breach of which affects personal income tax and CIT.

### 2.1 CORPORATE INCOME TAX<sup>2</sup>

The regulation of CIT, for fiscal years starting on or after January 1, 2015, is basically contained in Corporate Income Tax Law 27/2014, of November 27, 2014, and in Royal Decree 634/2015, of July 10, 2015, approving the Corporate Income Tax Regulations.

The basic legislation applicable tax periods commencing as from January 1, 2020 is summarized below. For more detailed information on the legislation applicable to fiscal years beginning before that date, we refer the reader to the Guide corresponding to the year in question.

#### 2.1.1 Tax residence

The key factor in determining the application of CIT is "residence". A company is deemed to be resident in Spain for tax purposes if it meets any of the following conditions:

- It was incorporated under Spanish law.
- Its registered office is located in Spain.
- Its place of effective management is in Spain.

<sup>2</sup> [Exhibit I](#): Tax incentives for investment



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The Tax Administration can presume that entities, theoretically resident in tax havens or territories with zero taxation, have their tax residence in Spain when their principal assets directly or indirectly consist of property situated in Spain or rights that are exercised there, or when their principal activity is carried on in Spain, unless it is proven that their administration and effective management are handled in another country or territory and that their establishment and operation in Spain are for valid and compelling commercial and business reasons and not just as a means of managing securities or assets.

In principle, in order to determine which entities reside in tax havens, the provisions of article 1 of Royal Decree 1080/1991, of July 5 (listing 48<sup>3</sup> territories classified as such) will apply.

As from 2015, and in accordance with the current wording given to Additional Provision One of Law 36/2006 (establishing new criteria for determining whether a particular territory is or is not to be classed as a tax haven), the Directorate General of Taxes published a report on the validity of the current list of tax havens, according to which the possibility of such list being automatically updated is eliminated. The list must be expressly updated, in accordance with the criteria contained in aforementioned additional provision one of Law 36/2006, which came into force on 1 January 2015.

Those criteria are as follows:

- a. The existence with that country or territory of an international tax treaty with an exchange of information clause, a tax information exchange agreement or the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and of the European Council, amended by the 2010 Protocol, which is applicable.
- b. The absence of an effective exchange of tax information, on the terms set forth below.
- c. The results of the peer reviews carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

In turn, the status of “zero-taxation country or territory” will be given to countries or territories which do not apply a tax identical or analogous to PIT, CIT or Nonresident Income Tax. For a tax to be considered identical or analogous to the above taxes, it should tax income and/or gains, regardless of whether the subject-matter of the tax consists of the income and/or gains, the revenues or their indicative elements<sup>4</sup>.

In addition, where Spain has signed a tax treaty, a tax of an identical or analogous nature which applies for the above-mentioned purposes will be deemed to exist.

Lastly, the countries or territories with which Spain considers there to be effective exchange of information are those which have executed the following:

- A tax treaty which includes an exchange-of-information provision (provided that there are no express limitations on its scope).
- A tax information exchange agreement (provided that its suitability for the above purposes has been expressly established)<sup>5</sup>.
- The Convention on Mutual Administrative Assistance in Tax Matters of the OECD and of the Council of Europe, amended by the Protocol of 2010.

In the event of a conflict of residence, the provisions of Spain’s tax treaties with other countries will, where applicable, prevail.

Resident companies are taxed on their worldwide income. Taxable income includes all the profits from business activities, income from investments not relating to the regular business purpose, and income derived from asset transfers.

In order to determine the tax liability of corporate income taxpayers, however, regard must also be had to the provisions of Spain’s tax treaties with other countries which, where applicable, can affect the determination of taxation in Spain.

Taxation of nonresident entities is regulated separately under the Revised Nonresident Income Tax Law approved by Legislative Royal Decree 5/2004, of March 5, amended by Law 26/2014, of November 27, 2014. This tax was mainly implemented in regulations through Royal Decree 1776/2004, of March 5, 2004. The most important aspects of nonresident income tax (IRNR) legislation are discussed in [section 2.3](#).

The following section is structured in the same way as the CIT assessment.

## 2.1.2 Taxable income

There are three methods for determining taxable income: the direct assessment method, the indirect assessment method and the objective assessment method.

Under the direct assessment method (which is generally applicable), taxable income is defined as the difference between period revenues and period expenses. Taxable income is based on the income disclosed in the financial statements.

<sup>3</sup> The following States are currently deemed tax havens: Emirate of the State of Bahrain, Sultanate of Brunei, Gibraltar, Anguilla, Antigua and Barbuda, Bermuda, Caiman Islands, Cook Islands, Dominican Republic, Granada, Fiji, Falkland Islands, Isle of Man, Mariana Islands, Islands of Guernsey and Jersey, Mauritius, Montserrat, Republic of Nauru, Solomon Islands, San Vicente and Grenadines, Santa Lucia, Turks and Caicos Islands, Republic of Vanuatu, British Virgin Islands, United States Virgin Islands, Hashemite Kingdom of Jordan, Lebanese Republic, Republic of Liberia, Principality of Liechtenstein, Macao, Monaco, and Republic of the Seychelles.

<sup>4</sup> It is also established that the obligatory contributions effectively made by an individual to a public welfare system to cover contingencies similar to those covered by the Social Security will be classified as an identical or substantially similar tax for personal income tax purposes, as long as the country or territory concerned does not levy a tax that is identical or substantially similar to personal income tax.

<sup>5</sup> At present, there are tax information exchange agreements at varying stages of completion with Bermuda, Guernsey, the Cayman Islands, the Cook Islands, Isle of Man, Jersey, Macau, Monaco, Saint Vincent and the Grenadines and Saint Lucia, at varying stages of completion.



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However, as a result of applying accounting principles, at times the book income cannot be deemed representative of the taxpayer's actual contribution capacity and, thus, must be adjusted by applying the tax principles established in the legislation of the tax.

In general, the expenses relating to the business activity are deductible if they are properly accounted for and justified, and if the timing of recognition is that established in the tax legislation.

The main criteria for calculating the taxable income are as follows

## 2.1.2.1 Revenue and expense allocation criteria

### a. General rules and principles

The tax principles for allocating revenues and expenses to determine taxable income generally coincide with accounting principles. In this regard, the method generally applicable for recognizing revenue and expenses is the accrual method.

As an exception, expenses recorded in a fiscal year subsequent to their accrual, or revenues recorded in a fiscal year prior to their accrual, are allocated for tax purposes in the year in which they are recorded, as long as this does not give rise to lower taxation than that which would have applied had the expenses and revenues been accounted for using the accrual method. The tax authorities have been ruling that there is lower taxation when expenses incurred in statute-barred years are deducted in later periods.

For certain operations (such as sales in which payment of the price is deferred) the possibility is envisaged of companies being able to apply allocation criteria other than the accrual method.

In the event of applying allocation criteria which differ from those envisaged in the tax rules, it must be demonstrated

that there are grounds to substantiate such an approach and the criteria to be applied must be approved by the tax authorities.

The above notwithstanding, it should be borne in mind that as a general rule, the accounting recognition principle must be complied with, meaning that all expenses must be recorded for accounting purposes in order to qualify for deduction (subject to certain exceptions such as unrestricted depreciation).

For tax purposes, in the event of any conflict between an accounting principle and a principle applicable for tax purposes, it is the latter which must prevail.

### b. Time limits on the deductibility of certain losses

The law imposes time limits on the allocation of certain types of losses. These are therefore losses which, rather than being included in the tax base when incurred, are included later on, and in some cases are reduced in order to avoid situations of non-taxation.

For example:

b.1. **Losses generated on intra-group transfers** of shares or holdings, property, plant and equipment, investment property, intangible fixed assets, debt securities and permanent establishments abroad are not deductible.

As a general rule, these losses are to be included in the tax period in which (i) the assets are transferred to third parties not related to the group; (ii) the acquiring or transferring entities cease to form part of the group; (iii) the assets are deregistered by the acquirer, or (iv) the activity of the establishment ceases or the transferred company is dissolved (except in the case of a restructuring). In the case of

amortizable assets, the loss may be included in all cases during the remaining useful life, applying the amortization method used up to that date.

For the inclusion of losses generated on intra-group transfers of shares or holdings in entities or on the transfer of permanent establishments, there are a series of special rules applicable which will be set out in [section 2.1.6](#).

b.2. **Impairment losses** on tangible fixed assets, investment properties and intangible fixed assets, including goodwill, equity instruments and debt securities (fixed income) do not qualify for deduction.

These impairment losses are deductible:

- In the case of non-amortizable fixed assets, in the tax period in which such assets are transferred or deregistered.
- In the case of amortizable assets forming part of the property, plant and equipment, in the tax periods of remaining useful life, applying the amortization method used in relation to those assets, unless they are transferred or deregistered previously, in which case they will be included on occasion of that transfer or deregistration.

There are a series of special rules applicable in respect of impairment losses on holdings in entities, which will be set out under [section 2.1.6](#).

b.3. **Certain provisions which have generated deferred tax assets (DTAs)**<sup>6</sup> are in general to be included in the tax base, subject to a limit of 70% of the positive tax base prior to their inclusion, to the application of the capitalization reserve, and to the offset of tax losses. Specifically, this regime applies to the following provisions:

<sup>6</sup> DTAs can, in certain circumstances and subject to certain requirements being met, be converted into receivables from the tax authorities. Starting in fiscal year 2016, monetization requires having generated taxable income in the year when the provisions are recorded or otherwise, with respect to provisions of fiscal years 2008-2015, the payment of a monetary amount is made if there is not sufficient net tax payable.



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- The provisions recorded for impairment of receivables or other assets derived from insolvency of debtors not related to the taxpayer, not owed by public law entities, and which have not been deducted due to the elapsing of the six-month period since their maturity.
- The provisions or contributions to employee welfare systems and, as the case may be, pre-retirements that have not been deductible.

The general limit of 70% does not apply to entities whose net revenues for the 12 months immediately preceding the start of the tax period amounts to at least €20 million. In these cases, the limits are lower:

- 50% where net revenues amount to between €20 and €60 million.
- 25% where net revenues amount to over €60 million.

### 2.1.2.2 International “fiscal transparency” regime (“Controlled Foreign Corporations” provisions)

Under CIT rules, tax is levied on the “obtainment of income”; however, under fiscal transparency rules, tax is levied not on the income actually obtained by the taxpayer but on that obtained by a nonresident entity in which the taxpayer owns a holding, where certain circumstances are present. In short, it is an attribution (pass-through) regime.

The fiscal transparency regime applies where:

- The taxpayer (Spanish company) on its own or jointly with related persons or entities, holds 50% or more of the capital stock, equity, voting rights or results of the nonresident company.
- The tax (CIT or similar) paid by the nonresident on the attributable net income must be less than 75% of that which would have been payable under Spanish regulations.

The attribution must be done by the entity that meets the holding requirement mentioned, where it owns a stake directly or indirectly in the nonresident entity. In this last case, the income to be attributed will be that relating to the indirect holding.

The income to be attributed will be the following:

#### a. Case I: Total attribution of the income of the nonresident entity:

The whole income shall be attributed where the nonresident entity does not have an organization of material and human resources to carry out its activity, even where its transactions are recurrent. However, the income of the nonresident entity composed of dividends, shares in income or gains on the transfer of holdings shall not be attributed if they derive from an entity in which the nonresident owns a stake (directly or indirectly), of more than 5%, if this holding is owned for at least one year, where, moreover, the following requirements are simultaneously met:

- The former directs and manages its shareholding.
- That entity has the relevant organization of material and human resources, and the investee is not deemed an asset-holding entity.

This case will not apply if it is proven that the transactions are carried out with the material and human resources existing at an entity not resident in Spain and belonging to the same group, on the terms of article 42 of the Commercial Code, irrespective of its residence and of the obligation to prepare consolidated financial statements, or that its formation and operations are based on valid economic reasons.

#### b. Case II: Partial attribution of the income of the nonresident entity:

In the rest of cases in which the transparency rules apply, the taxpayer must attribute in its tax base only the income of the nonresident entity deriving from:

- Ownership of real estate or rights in rem on them, unless such real estate is used for a business activity or has been assigned to another nonresident group company (as defined in Article 42 of the Commercial Code).
  - Share in equity and transfer to third parties of capital (with certain exceptions, such as financial assets held in order to meet statutory requirements, etc.).
  - Capitalization and insurance operations, the beneficiary of which is the entity itself.
  - Industrial and intellectual property, technical assistance, movable property, image rights and lease or sublease of businesses or mines, on the terms established in subarticle 4 of article 25 of Law 35/2006.
  - Transfer of the assets or rights mentioned in the previous cases and which generate income.
  - Financial derivative instruments, except those designated to cover a specifically identified risk derived from the performance of economic activities.
  - Lending, financing, insurance and service activities (except services directly related to export activities) with related resident companies which incur deductible expenses. The attribution does not take place if more than 50% of this type of income derives from transactions carried out with unrelated entities.
- In any case, under this form of transparency, there is no attribution either of the income specified in letters b and e, where it derives from an entity in which the nonresident owns a direct or indirect holding of at least 5% and this holding is owned for at least a year, where the following two requirements are met simultaneously:
- The former engages in directing and managing its investment.



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- That entity has the relevant organization of material and human resources, and the investee is not deemed an asset-holding entity.

There is also an exception to the applicability of the regime for the income addressed in letters a. to f. above (i.e., the exception does not apply to the income mentioned in letter g) when the attributable income is below 15% of the total income obtained by the nonresident entity.

Moreover, the income mentioned in letters a) to g) shall not be attributed where it relates to non tax-deductible expenses of entities resident in Spain.

Other rules to be taken into account are the following:

- a. The amount of taxable income to be attributed will be determined in proportion to the share in income and, in the absence thereof, in proportion to the share in the capital, equity or voting rights of the investee and will be determined in accordance with the principles and criteria established in the CIT legislation. In any case, the attributed net income can never be higher than the total net income of the nonresident entity.
- b. The exchange rate for the attribution of income will be that in force at the nonresident entity's fiscal year-end.
- c. The income shall be attributed in the period running from the last day of the nonresident entity's fiscal year (which may not exceed 12 months for this purpose).
- d. Given that tax is levied on the "attribution" of income, the dividends relating to the attributed income are not taxed.
- e. A tax credit can be taken on the amount of CIT (or similar) actually paid by the nonresident entity and its subsidiaries as defined by law (in proportion to the net income attributed) and the tax actually paid as a result of the distribution of dividends. The limit for this tax credit is the Spanish tax. However, no tax credit is permitted for taxes paid in tax havens.

- f. Where the investee is resident in a country or territory classed as a tax haven, it will be presumed that:
  - a. The amount paid by the nonresident entity in relation to a tax identical or similar to CIT, is lower than the 75% that would have been applicable in accordance with the CIT rules.
  - b. The income obtained by the investee arises from the mentioned classes of income which require attributing the income on a transparent basis.
  - c. The income obtained by the investee is 15% of the acquisition cost of the holding.

These assumptions are refutable.

- g. Lastly, the international fiscal transparency rules will not apply where the entity not resident in Spain is resident in another Member State of the European Union ("EU"), where the taxpayer evidences that (i) the formation and operation of the nonresident is based on valid economic reasons and (ii) it performs business activities.

### 2.1.2.3 Market price valuation

As a general rule, assets must be valued under the methods provided in the Commercial Code. Despite this fact, as a general rule, any variations in their value caused by applying the fair value method will have no effect for tax purposes if they do not have to be taken to income.

Furthermore, special rules are established with respect to the treatment of decreases in value, arising due to the application of the fair value criterion, of shares or holdings in entities, as shall be discussed in [section 2.1.6](#).

Notwithstanding the above, in certain cases, market valuation (i.e. valuation on an arm's-length basis) must be applied for tax purposes. This method is applicable to:

- Donated assets.
- Assets contributed to entities and the securities received in exchange.
- Assets transferred to shareholders in the event of dissolution, the withdrawal of shareholders, capital reductions with refund of contributions, paid-in surplus and the distribution of income.
- Assets transferred as a result of mergers, absorptions and full or partial spin-offs.
- Assets acquired through swap transactions.
- Assets acquired as a result of exchanges or conversions.

It should be noted that current legislation provides for a tax neutrality regime when certain of the transactions described above are carried out as part of a corporate reorganization, to which we will refer hereinbelow.

Transactions between related entities must be valued at arm's-length value, i.e., the value which would have been agreed between independent persons or entities under normal market conditions.

Accordingly, the Tax Administration may verify both whether the valuation given to transactions performed between related entities is in accordance with arm's-length value and the nature and legal classification of the transactions, and where appropriate, the Tax Administration may make the adjustments which it considers appropriate to any transactions subject to CIT, PIT or Nonresident Income Tax that have not been valued at arm's length. The Tax Administration's valuation of a certain transaction will also be applicable to the other related persons or entities involved in that transaction, and under no circumstances will the Administration's valuation give rise to taxation of higher income for CIT, PIT or Nonresident Income Tax, than that actually derived from the transaction for the persons or entities as a whole that performed it.



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As a result of this kind of inspection, therefore, the Administration can make the so-called primary and secondary adjustments. The primary adjustment is the traditional adjustment derived from the difference between the price agreed and the market value in a specific transaction. For example, if a Spanish entity receives management services from its Belgian parent and pays some fees which exceed the fees that would result from applying the market value of those services, the primary adjustment will entail a reduction (for tax purposes) in the expense of the Spanish company (and, thus, an increase in the taxable base subject to CIT). At the same time, if the parent company were Spanish rather than resident in Belgium, it would reduce its income subject to CIT.

The secondary adjustment is a consequence of the recharacterization of the income/expense attributed as a result of the primary adjustment, according to its actual nature. In the previous example, as the subsidiary is paying the parent a price higher than the market price, it may be considered to be distributing a dividend. Thus, along with the nondeductibility of the dividend (deriving from the primary adjustment) another charge could arise, for example, in the same case, a withholding on the payment of the dividends (unless some benefit applies that prevents that withholding), on account of the parent company's nonresident income tax.

Related entities must make available to the Tax Administration the documentation established by regulations and with the minimum content expressly specified in the tax regulations. Based on those regulations, the documentation must include (i) on the one hand, data on the group to which the taxpayer belongs, detailing its structure; the various entities making it up; the nature, amounts and flows of related-party transactions; and, in general, the group's transfer pricing policy, and (ii) on the other hand, the appropriate supporting documentation of the taxpayer, identifying the entities related to it, including a comparability analysis, as well as justification for the valuation method chosen, and any documentation supporting the valuation of its transactions.

This documentation will have a simplified content in relation to

the related persons or entities whose net revenues are below €45 million, where none of the following transactions are involved:

- a. Those carried out by personal income taxpayers, in the pursuit of a business activity to which the objective assessment method applies, with entities in which they or their spouses, ascendants or descendants, individually or jointly with each other, own a holding of 25% or more in the capital or equity.
- b. Transactions consisting of the transfer of businesses.
- c. The transfer of securities or shares representing holdings in the equity of all kinds of entities not admitted to listing on any of the regulated securities markets, or which are admitted to listing on regulated markets located in countries or territories classed as tax havens.
- d. Transactions involving real estate.
- e. Transactions involving intangible assets.

The documentation will not be required in relation to the following transactions:

- a. In general, transactions carried out between entities forming the same consolidated tax group.
- b. Transactions carried out by economic interest groupings with their members or with other entities forming the same consolidated tax group.
- c. Transactions carried out in the context of public offerings or tender offers.

- d. Transactions carried out with the same related person or entity, where the consideration payable as a whole does not exceed a market value of €250,000. However, if these transactions have been carried out with entities resident in tax havens, they will have to be documented<sup>7</sup>, regardless of whether that threshold is exceeded.

For tax periods commencing as from January 1, 2016, due to the approval of Royal Decree 634/2015, of July 10, 2015, approving the Corporate Income Tax Regulations, important changes were made in relation to transfer pricing, which include most notably the introduction of **country-by-country** reporting obligations<sup>8</sup>, which is an instrument for evaluating risks in the transfer pricing policy of a corporate group.

This obligation applies to (a) entities resident in Spain that have the status of parent of a corporate group and which are not, at the same time, subsidiaries of another resident or non-resident entity; and (b) Spanish subsidiaries of groups whose ultimate parent company (i) is not under the obligation to present this information in the jurisdiction in which it is resident, or (ii) where the tax authorities of the country or territory in which such company resides have not formalized an automatic information exchange agreement in this area (provided, in both cases, that the group has not appointed a "surrogate" entity entrusted with compliance with this obligation in a country other than Spain); and finally, (c) to Spanish subsidiaries which have been appointed by their group as the entity entrusted with the preparation and presentation of this information to the tax authorities ("surrogate entities").

In that regard, it may be clarified that:

- Subsidiaries and permanent establishments located in Spanish territory are not required to submit documentation when:

<sup>7</sup> Except for transactions carried out with entities that meet the following two requirements: a) they reside in a Member State of the European Union or in a State belonging to the European Economic Area with which there is an effective exchange of tax information; and b) provided that the taxpayer proves that the transactions are based on valid economic reasons and that those persons or entities perform economic activities.

<sup>8</sup> In keeping with the latest work carried out by the OECD in the context of Action 13 of the Plan established within the BEPS Project.



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- The multinational group has appointed a group subsidiary resident in an EU Member State to submit the subject documentation.
- The information has already been submitted by another nonresident company appointed by the group as a surrogate entity of the parent company for the purposes of submission of the documentation in its own tax residence territory. In any event, if the entity is not resident in an EU Member State, the conditions established in Annex III of Council Directive 2011/16/EU, of 15 February 2011, on administrative cooperation in the field of taxation must be met.
- If the nonresident entity refuses to provide all or part of the documentation corresponding to the group to the resident entity or permanent establishment located in Spanish territory that is required to submit the information, the resident entity or the permanent establishment shall submit any documentation available to it and report the circumstance to the Tax Administration.

In addition, any entity resident in Spanish territory which forms part of the group which is under the obligation to present country-by-country information is required to inform the Tax Agency of the identifying particulars, country or territory and status of the entity by which such information is prepared and presented.

This obligation only applies where the revenue of the persons or entities forming part of the group as a whole, in the 12 months preceding the start of the tax period, is at least €750 million.

Lastly, the legislation regulates the procedure for advance pricing arrangements.

The legislation establishes a penalty regime for failing to provide, or for providing incomplete, inaccurate or false data in such documentation, and the fact that the arm's length value shown in the documentation provided by the taxpayer (it is presumed that the arm's-length value must be shown by such documentation) differs from that declared in CIT, PIT or

Nonresident Income Tax returns, will also constitute a serious tax infringement. In principle, therefore, incorrectly valuing a transaction is not an infringement but applying a price other than that deriving from the documentation furnished is an infringement.

For the purposes analyzed, the legislation contains a list of the persons or entities that are deemed to be related, which include, among others: (a) an entity and its shareholders; (b) an entity and its directors, except in relation to compensation for the performance of its functions; (c) two entities of a same group; (d) an entity and another entity in which the first-mentioned entity has an indirect holding of at least 25% of the capital stock or equity; (e) an entity resident in Spain and its permanent establishments abroad, or an entity not resident in Spain and its permanent establishments in Spain.

Added to these cases are a number of others where dealings are established between entities or between them and individuals pursuant to kinship relationships with family members of the shareholders or directors of these entities. It should be borne in mind that a group exists where an entity exerts or can exert control over another entity or other entities pursuant to Article 42 of the Commercial Code, regardless of where they have their residence or of the obligation to prepare consolidated financial statements.

Lastly, in order to determine the market value between related entities, the OECD methods apply, and it is up to the company to choose one or another according to the transaction to be valued:

- Comparable uncontrolled price method.
- Cost plus method.
- Resale price method.

- Profit split method.
- Transactional net margin method.
- Other generally accepted valuation methods and techniques that comply with the arm's length principle.

The legislation envisages the possibility for taxpayers to submit to the Tax Administration a proposal for valuing its transactions with related entities based on market conditions. If the proposal is approved by the Tax Administration, such valuation is valid for tax purposes for a maximum period of four tax years<sup>9</sup>.

#### 2.1.2.4 Deductibility of finance costs

Traditionally, in Spain, finance costs have been deductible with the restrictions derived (solely) from the rules on transfer pricing (set forth above) and thin capitalization (which, moreover, only applied to cases of excess net debt with nonresident related entities not resident in the EU, except for those residing in a tax haven). However, some years ago, the thin capitalization rule was replaced by a general limitation on the deductibility of finance costs (regardless of whether or not the debt is with related parties).

Specifically, the applicable legislation imposes a **general limit** on the deductibility of finance costs.

Net finance costs exceeding the limit of 30% of operating income (EBITDA) of the year are not deductible, net finance costs being deemed to mean the finance costs exceeding the revenue derived from the transfer to third parties of own capital and accrued in the tax period; however, net finance costs of the tax period of up to €1,000,000 will be deductible in all cases.

<sup>9</sup> Advance pricing arrangements may also be reached in connection with contributions for research, development and technological innovation or management expenses and in connection with the part of management expenses that may be allocated to a permanent establishment in Spain of a nonresident entity.



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This limitation applies in proportion to the duration of the tax period, so that in tax periods with a duration of less than a year, the limit is weighted according to the duration of the tax period with respect to the year.

Finance costs which are non-deductible owing to the application of this limit are deductible in subsequent tax periods, along with those corresponding to such periods, subject to the same limit.

If net finance costs for the period fall short of the limit described, the difference is to be added on to the limit for the deduction of net finance costs for the immediately ensuing five tax periods, until such difference has been deducted.

Apart from the above-mentioned general limit, the finance costs derived from debts used to acquire holdings in the capital or equity of any kind of entity shall be deductible with the **additional limit** of 30% of the acquirer's operating income, without including in the operating income that relating to any entity that merges with the former in the 4 years following that acquisition, where the merger is not carried out under the tax neutrality regime established for this type of transaction ([section 2.1.10](#)).

The additional limit will not apply in the tax period in which the holdings are acquired if the acquisition price is at least 70% financed with debt. Moreover, this limit will not apply in the following tax periods where the amount of that debt is reduced, from the time of the acquisition, by at least the proportional part relating to each of the 8 following years, until the debt reaches 30% of the acquisition price.

### 2.1.2.5 Changes in residence, cessation of business by permanent establishments, transactions performed with persons or entities resident in tax havens

The tax law requires the inclusion in the tax base of the difference between the value per books and the normal market value of the assets which are owned by a resident entity that transfers its place of residence abroad (exit tax).

However, the taxpayer can request a postponement in the

payment of the exit tax where the assets are transferred to a Member State of the EU or of the European Economic Area ("EEA") with which there is effective exchange of tax information on the terms established in Law 36/2006, of November 29, 2006, on tax fraud prevention measures.

### 2.1.2.6 Inventory valuation

There are no special tax rules regarding the valuation of inventory. Accordingly, all inventory valuation methods (FIFO, acquisition cost or weighted average cost) applicable for accounting purposes are also acceptable for tax purposes.

### 2.1.2.7 Value adjustments

#### a. Depreciation

a.1. Depreciation qualifies as a deductible expense only if it is effective and is recorded in the accounts (with certain exceptions).

a.2. There are various general tax depreciation methods:

- Straight-line depreciation: This is the method most commonly applied by taxpayers. It consists of depreciating assets on a straight-line basis by applying a certain percentage to their cost. The law sets a range of percentages for each type of asset, which determines the minimum depreciation period (maximum depreciation rate) and the maximum depreciation period (minimum depreciation rate). Thus, for example, computer equipment may be depreciated in general between 12.5% (minimum rate for a maximum useful life of 8 years) and 25% (maximum rate).

The current legislation modified the straight-line depreciation tables in order to simplify them. Traditionally, these depreciation tables (regulated in the tax regulations) were organized by economic sectors and activities, with a last group for "common assets". Under the current law, some new depreciation tables were

approved (and included in the law itself) according to types of assets, without making a distinction by sectors, although the law states that the rates and periods established therein may be modified by regulations, or additional rates and periods may be established, although that possibility has not yet been implemented.

Transitionally, the law establishes that for assets whose depreciation rates have been modified with the current depreciation tables (in relation to those existing previously), the depreciation rates will apply to the net tax value of the assets.

The use of the depreciation rates contained in the official tables relieves the taxpayer from having to prove the actual depreciation.

There are special rules for assets used on a daily basis in more than one ordinary shift of work and for assets acquired second hand.

- Declining-balance depreciation (constant rate): Under this method, which may be applied to all assets except buildings, furniture and household goods, depreciation can be shifted to the early years of the asset's useful life (when the actual decline in value will presumably be greater) by applying a rate to the asset's book value.
- Sum-of-the-years'-digits method: This system is also permitted for all assets except buildings, furniture and household goods. The sum of the digits is determined on the basis of the depreciation period established in the official tables.
- Other depreciation methods: Companies which, for technical reasons, wish to depreciate their assets at different rates than those fixed by the official tables and also wish to obviate the uncertainties involved in proving the "actual" depreciation, can seek prior approval from the tax authorities for special depreciation plans with such annual rates of depreciation.



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- Special case: Amortization of intangible assets

For tax periods commenced as from January 1, 2016, the tax treatment of this type of assets was modified<sup>10</sup>, to align it with the accounting treatment.

The accounting treatment is as follows:

- There is no distinction between intangible assets according to whether their useful life is definite or indefinite, but rather it is understood that all intangible assets have a definite useful life.
- Intangible assets are amortized according to their useful life; if it cannot be estimated reliably, they are amortized over a period of 10 years, unless established otherwise by a provision of law.
- Goodwill only appears on the assets side of the balance sheet where it has been acquired for a consideration. Also, it is presumed, unless proven otherwise, that its useful life is 10 years. Goodwill can be amortized, not only impaired).
- There is no obligation to record a non-disposable reserve for the goodwill. Reserves recorded in past years (according to prior accounting legislation) must be reclassified as voluntary reserves and are disposable in the amount exceeding the goodwill recognized for accounting purposes.
- The Notes to the financial statements must specify the period and method for amortization of intangible assets.

The tax treatment is as follows:

- Intangible assets with a definite useful life. Starting in fiscal year 2016, they are amortized according to their useful life (as is done for accounting purposes). When this useful life cannot be esti-

mated reliably, the amortization will be deductible up to the maximum annual limit of one-twentieth its amount (that is, at a lower rate than the accounting amortization<sup>11</sup>).

Nonetheless, this regime does not apply to intangible assets acquired before January 1, 2015 from entities forming part of the same group of companies as the acquirer in accordance with article 42 of the Commercial Code.

- Intangible assets with an indefinite useful life. Due to the reclassification of intangible assets with indefinite useful life as intangible assets with definite useful life, pursuant to accounting legislation, as from January 1, 2016, these assets are amortized according to the rules for intangible assets with definite useful life.<sup>12</sup>
  - Intangible assets recorded in respect of goodwill. They can be amortized with the maximum annual limit of one-twentieth their amount (5%). Unlike the previous regulation, starting on January 1, 2016, the tax deductibility of goodwill is conditional on its accounting recognition.
- a.3. Temporary limitation on depreciation: For tax periods commencing in 2013 and 2014, the accounting depreciation of tangible and intangible assets (only those with a definite useful life) and of investment property was only deductible up to 70% of that which would have been tax deductible in accordance with

the aforementioned rules (the limitation also affected assets subject to the financial lease regime).

The accounting depreciation that was not tax deductible by application of this limit was deductible starting from the first tax period commencing in 2015, on a straight-line basis over a period of 10 years or during the useful life of the asset, at the election of the taxpayer.

As the non-deductible depreciation is deducted at lower tax rates than those applicable in preceding years (when a portion of the depreciation was nondeductible), the current law established a deduction for taxpayers subject to tax at the standard rate (or that established for newly formed entities) which are affected by the aforementioned limitation on the deductibility of depreciation (the 70% mentioned above). Specifically, these taxpayers may, in tax periods commencing in or after 2016, take an additional deduction in the gross tax payable of 5%<sup>13</sup> of the amounts included in the tax base for the reversal of the amounts not depreciated for tax purposes.

a.4. Finance lease contracts

Finance lease contracts (provided by finance entities, as legally defined) for movable assets must have a minimum term of two years, and those for real estate must have a minimum term of ten years, and the annual charge corresponding to the depreciation of the cost of the asset must remain the same or increase over the term of the lease.

<sup>10</sup> Amendment made by the Audit Law 22/2015, of July 20, 2015.

<sup>11</sup> Under the law in force until 2015, intangible assets with a definite useful life could be amortized with the maximum annual limit of one-tenth of their amount (10%), provided that certain requirements were met.

<sup>12</sup> Prior to January 1, 2016, intangible assets with indefinite useful life were amortizable with the maximum annual limit of one-twentieth their amount (5%), and the deduction of the amortization was not conditional on its accounting recognition in the statement of income.

<sup>13</sup> The deduction percentage in 2015 was 2%.



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Lease payments (interest plus the portion of principal relating to the cost of the asset) are deductible. Land and other non-depreciable assets will be deductible in the portion relating to interest. However, the ceiling on the deductibility of the depreciation cost of the asset is twice the maximum depreciation rate per the official tables.

#### a.5. Accelerated depreciation

In recent years, various cases of accelerated depreciation have been regulated to encourage investment and maintain jobs (this latter requirement was initially applied but then eliminated). This incentive, which was established for tax periods commencing in 2010 2011, 2012, 2013, 2014 and 2015 and did not require the accounting recognition of the depreciation, also applied for certain investments made through financial lease contracts and for investments relating to new assets contracted through construction work agreements or investment projects (on certain conditions).

However, this incentive for new investments was eliminated and only applies for new assets acquired up to March 31, 2012, which could continue to be depreciated without restriction from that date onwards but with certain limitations.

Starting in 2015, the law introduced a new case of unrestricted depreciation for new tangible assets, where the unit value does not exceed €300, and up to the limit of €25,000 in the tax period.

The amounts taken as unrestricted depreciation will reduce the value of the depreciated assets for tax purposes.

#### b. Impairment of assets

The law establishes various rules on the deductibility or non-deductibility of the impairment of assets:

##### b.1. Impairment losses on receivables for bad debts

This provision covers the foreseeable losses in the

realizable value of accounts receivable. The deductibility of this provision is subject to certain requirements. Under these requirements, the only method applicable is the individual balance method, whereby the status of each receivable is individually analyzed. The deduction of this provision is subject to satisfaction of any of the following tests:

- The balance must be more than six months past due.
- The debtor must have been held to be in insolvency.
- The debtor must have been taken to court for the criminal act of dealing in assets to defraud creditors.
- The obligations must have been claimed in court or the subject of a lawsuit or arbitration proceeding.

In any case, losses to cover the risk of bad debts of related entities cannot be recorded for tax purposes in respect of receivables from related parties, unless the related parties concerned are subject to insolvency proceedings and the judge has established the liquidation phase in accordance with the Insolvency Law.

Moreover, bad debt provisions will not be deductible where the debtor is a public entity or where sufficient guarantees have been provided, unless they are the subject of arbitration or court proceedings regarding their existence or amount.

Losses to cover the risk of foreseeable bad debts by financial institutions are subject to specific rules.

We recall that, as stated in the section on the timing of allocation rules, the law establishes time limits on the deductibility of certain insolvency provisions.

##### b.2. Impairment of securities representing holdings in the capital of entities

As a general rule, impairment losses – on both investments in listed companies and holdings in non-listed companies – have been considered non-deductible since tax periods commencing as from January 1, 2013. The rules relating to impairment losses of these kinds will be analyzed in greater detail in [section 2.1.6](#).

Since the impairment losses became non-deductible, there has been a transitional regime in place for the reversal of impairment losses deductible prior to 2013:

- Holdings in listed entities: In the case of entities listed on a regulated market, impairment losses recorded and deducted in periods commencing before January 1, 2013, shall be reversed in the tax base of the period in which the accounting recovery takes place.
- Holdings in unlisted entities: For holdings in unlisted entities, there is a transitional regime in place which basically consists of the following:
  - Any impairment losses that were tax deductible in periods commencing before January 1, 2013 must be included in the CIT base.
  - This inclusion must be done regardless of whether or not there have been other nondeductible value adjustments for impairment.
  - The inclusion in the tax base must be done in the period in which the value of the investee's equity is recovered, in the proportion relating to the holding and with the limit of that excess.

In both cases, with effect for years commencing as from January 1 2016, an additional rule was introduced, establishing a "minimum reinvestment" obligation which functions as follows:



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- Impairment losses on holdings which were treated as deductible for tax purposes are to be included, as a minimum, in equal portions in the tax base for each of the first five tax periods commencing as from January 1, 2016.
- In the event that, by virtue of the application of the general rules on the recovery of portfolio impairment losses (e.g. in the case of unlisted companies, because there has been an increase in the equity of the investee), a larger impairment loss is required to be recovered in any of those years, it is that amount which is recoverable in the corresponding year; and the balance of remaining portfolio impairment loss which is pending recovery (once the larger reversal has been included) is to be included in equal portions over the remaining tax periods until the aforementioned period of five tax periods has been completed.
- In the event of shareholdings being transferred during those five tax periods, the amounts pending reversal are to be included in the tax base for the tax period in which the transfer takes place, subject to a limit equal to the gain obtained on the transfer (which to some extent “consolidates” losses deducted which had not been reversed at the time of the transfer).

b.4. Impairment losses on the value of property, plant and equipment, investment property and intangible assets, including goodwill, equity instruments and securities representing debt (fixed income).

We refer to the comments contained in the section relating to the timing of allocation rules ([section 2.1.2.1.](#)).

c. Provisions:

The general rule in relation to provisions is that they are deductible provided they are correctly accounted for. How-

ever, the legislation establishes certain exceptions. In this regard, the following expenses are not deductible:

- Those resulting from implied or tacit obligations.
- Those relating to long-term compensation and other personnel benefits, except for the contributions of the sponsors of pension plans subject to certain requirements.
- Those concerning the costs of performing contracts which exceed the expected financial returns from them.
- Those resulting from restructurings, unless they refer to legal or contractual obligations, not merely tacit obligations.
- Those relating to the risk of sales returns.
- Personnel expenses relating to payments based on equity instruments, used as a form of employee compensation, paid in cash.

Any expenses that are not deductible according to the foregoing list will be included in the tax base for the tax period in which the provision is used for its intended purpose.

In relation to certain provisions, the deductibility is conditional on the fulfillment of certain requirements:

- Expenses relating to environmental actions are deductible if they are incurred under a plan prepared by the taxpayer and accepted by the Tax Administration.
- Expenses relating to insurance reserves made by insurance companies are deductible, to the extent of the minimum amounts established in applicable legislation. With that same limit, the amount recorded in the fiscal year for the equalization reserve will be deductible for purposes of determining the tax base, even where it has not been included in the income statement (provisions for outstanding premiums or fees will not be consistent,

for the same balances, with provisions to cover foreseeable bad debts).

- In addition, the expenses relating to risks resulting from repair and inspection warranties (and ancillary expenses for sales returns) are deductible, up to the limit resulting from applying to the sales with outstanding warranties at the end of the tax period the average warranty expenses as a percentage of total sales under warranty in the current and the two preceding tax periods.

### 2.1.2.8 Nondeductible expenses:

The law contains an exhaustive list of nondeductible expenses. In particular, the following expenses are not deductible:

- Amounts representing a remuneration of equity. Since fiscal year 2015, this item is deemed to include the remuneration relating to participating loans provided by entities that form part of the same group of companies, according to article 42 of the Commercial Code, have the consideration of remuneration of equity. In these cases, however, the income will not be reportable at the lender. This limitation on the deductibility of the remuneration of participating loans does not apply to loans provided before June 20, 2014.
- Those derived from accounting for CIT.
- Criminal and administrative fines and penalties, surcharges in the enforcement period and surcharges for late filing without prior requirement.
- Gambling losses.
- Free gifts and gratuities (although gifts to certain non-profit entities or those involving assets registered in the Register of Assets of Cultural Interest, or assets aimed at contributing to the conservation of assets of cultural interest or to the performance of activities of general interest, will give right to a tax credit of 35% of the gift, up to a limit of 10% of the net taxable income of the year).



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Expenses for hospitality to customers or suppliers, those derived from customs and practices with the company's personnel, those incurred to promote the sale of goods or services, or those correlated to income will not be deemed gifts or gratuities. However, the deductibility of the expenses for hospitality to customers or suppliers will be limited to 1% of the company's revenues of the tax period.

The remuneration of directors for the pursuit of their senior management functions or others derived from an employment contract shall not be deemed gifts or gratuities either.

- Expenses derived from procedures that infringe the legal system.
- Expenses for services relating to transactions performed directly or indirectly with individuals or entities resident in designated tax havens or paid through individuals or entities resident in tax havens, unless the taxpayer can prove that the expense arose from a transaction effectively performed.
- Finance expenses accrued in the tax period derived from debts with group entities, according to the definition established in article 42 of the Commercial Code, regardless of residence and of the obligation to prepare consolidated financial statements, incurred to acquire, from other group entities, holdings in the capital or equity of any kind of entity, or to make contributions to the capital or equity of other group entities, unless the taxpayer evidences valid economic reasons for carrying out those transactions.
- Expenses deriving from the termination of an ordinary or special employment relationship, or of a commercial relationship of directors or board members of the company exceeding the amount of €1,000,000 per recipient or, if higher, the amount established as obligatory in the Workers' Statute, in its implementing legislation or, as the case may be, in the legislation regulating the enforcement of judgments, which does not include that established pursuant to an agreement, accord or contract. Those

expenses will not be deductible even if they are paid in several tax periods.

- Expenses relating to transactions carried out with related persons or entities which, as a consequence of a different tax classification given to them by the parties, do not generate income, or generate exempt income or income subject to a nominal tax rate below 10%.
- For fiscal years commencing as from 2017, certain impairment losses or losses corresponding to a decline in value resulting from the application of the fair value criterion to shareholdings in entities, as explained in [section 2.1.6](#).
- Effective for fiscal years commencing on or after November 10, 2018, the resulting stamp tax payable on the execution of public deeds documenting mortgage loans.

### 2.1.2.9 Capital gains and losses

By contrast with other countries, Spanish CIT treats income resulting from the transfer of assets in the same way as other income. Accordingly, such income is generally added to (or deducted from) regular business income to determine the taxable income, it not being possible, since 2015, to reduce taxation by applying the tax credit for reinvestment of extraordinary income.

For fiscal years prior to 2015, special rules were envisaged for determining income resulting from real estate transfers to take into account the declining value of money (*i.e.*, inflation). Under these rules, the acquisition cost and the annual depreciation were corrected by applying certain coefficients, with particularities according to the taxpayer's indebtedness. However, that measure was eliminated in the legislation applicable for fiscal years commencing on or after January 1, 2015.

### 2.1.2.10 Income derived from stakes in a SICAV (open-end investment company)

The income derived from a capital reduction or distribution

of additional paid-in capital by the shareholders (corporate income taxpayers) of a SICAV is subject to the following treatment:

- Capital reductions: The shareholders of the SICAV must include in their CIT base the total amount received as a result of the capital reduction, limited to the increase in the redemption value of the shares since their acquisition or subscription until the moment of the capital reduction. The shareholders will not be entitled to apply any tax credit because of this transaction.
- Distributions of additional paid-in capital: The shareholders must include in their tax base the total amount obtained in the distribution, without being able to apply any tax credit in this connection.

This regime will also apply to the shareholders of collective investment undertakings equivalent to SICAVs and registered in another Member State of the EU (and, in any case, it will apply to the companies covered by Directive 2009/65/EC of the European Parliament and of the Council, of July 13, 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities).

### 2.1.2.11 Capitalization reserve

The current law brought in (starting in 2015) a significant change whereby the portion of the taxpayer's profit that is appropriated to a restricted reserve (capitalization reserve) will not be taxable, without imposing any requirement to invest this reserve in any specific type of asset. The purpose of this measure is to encourage business capitalization by boosting equity and thus incentivize the clean-up of balance sheets and an increase in competitiveness.

Specifically, taxpayers subject to the 25% tax rate, new companies and entities taxed at the 30% rate will be entitled to a tax base reduction equal to 10% of the increase in their shareholders' funds, provided the following requirements are met:



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- a. The amount of the increase in the entity's shareholders' funds must be maintained for a five-year period as from the end of the tax period in which the reduction is applied, unless the entity reports losses.
- b. A reserve must be posted in the amount of the reduction and must be reflected in the balance sheet as a totally separate, appropriately named item, and will be restricted for the period stated in the preceding letter.

The reduction right may not in any event exceed 10% of the positive tax base for the tax period prior to this reduction, before including impairment charges on receivables or other assets due to possible debtor insolvency and before offsetting tax losses.

Nonetheless, if the tax base is insufficient to apply the reduction, the outstanding amounts may be applied in tax periods ending in the immediately successive two-year period following the end of the tax period in which the reduction right is generated, together with any reduction that may be generated in the relevant tax period and subject to the same limit.

### 2.1.2.12 Income from the assignment of the right to use or exploit certain intangible assets (patent box)<sup>14</sup>

This is a tax base reduction scheme applicable to income from the assignment of the right to use or exploit certain intangibles.

Law 6/2018, of July 3, 2018, of General State Budgets for 2018 ("GSB 2018"), adapting the regulations of the regime to the agreements adopted within the EU and the OECD, specified the income that qualifies for that regime, effective for tax periods starting on or after January 1, 2018. According to the GSB 2018, income derived from the license of the right to use or exploit patents, utility models, supplementary medicinal protection certificates and plant protection products, designs and models, protected by law, also derived from research and development and technological innovation activities and registered advanced software derived from research and development activities, qualifies for a reduction in the tax base.

On this basis, for tax periods that commenced between July 1, 2016 and December 31, 2017, regard must be had to the previous wording of the article, which established that the regime may be applied to income obtained from the licensing to third parties of the right of use or exploitation of know-how (industrial, commercial or scientific), patents, drawings or models, plans, formulae or secret procedures.

The reduction in the tax base is determined in relation to the percentage arrived at by multiplying by 60% the result of the following coefficient:

- As numerator: The expenses incurred by the licensing entity which are directly related to the creation of the asset, including any deriving from the subcontracting of third parties unrelated to such entity. These expenses are to be increased by 30%, although the numerator may in no case exceed the amount of the denominator.
- As denominator: The expenses incurred by the licensing entity which are directly related to the creation of the asset, including any deriving from subcontracting, both with third parties not related to the licensing entity and with persons or entities related to it<sup>15</sup> and from the acquisition of the asset.

The expenses referred to cannot include finance costs, the depreciation of real property, or other expenses not directly related to the creation of the asset.

This reduction is also applicable in the event of a transfer of such intangibles, when the transfer takes place between entities which are not classed as being related.

<sup>14</sup> With effect as from July 1, 2016 there was a change in the rules applicable to income from the right of use or exploitation of certain intangible assets, in the terms referred to, the purpose being to adapt these rules to agreements reached at EU and OECD levels. Under the old rules, only 40% of income deriving from the assignment to third parties of the right of use or exploitation of know-how (industrial, commercial or scientific), patents, drawings or models, plans, formulae or secret procedures, was required to be included in the tax base. This income also includes any deriving from the transfer of intangibles of these kinds when the transfer takes place between entities not pertaining to the same corporate group within the meaning of article 42 of the Commercial Code.

<sup>15</sup> The wording in force in fiscal years commencing before January 1, 2018 established that the denominator included exclusively the expenses incurred by the licensing entity related directly to the creation of the asset, including expenses derived from subcontracting and, if any, from acquisition of the asset.

<sup>16</sup> In the tax periods commencing between January 1 2016 and January 1, 2018, income was defined as the positive difference between income from the license of the right to use or exploit the assets and the amounts that are deducted in respect of amortization, impairment and expenses for the year directly related to the intangible.

Under the new wording, this tax benefit will not apply to income derived from the licensing of the right to use or exploit, or from the transfer of, brands, literary, artistic or scientific works, including cinematographic films, transferable personal rights, such as image rights, computer programs (other than registered advance software, mentioned previously), industrial, commercial or scientific equipment) as up to now, but it will also not apply to income derived from the license of the right to use or exploit, or from the transfer of, plans, formulae or secret procedures, rights on information relating to industrial, commercial or scientific experiences.

The definition of income is extended<sup>16</sup> and is now defined as the positive difference between income from both the licensing of the right to use or exploit the assets and the positive income derived from their transfer which exceeds the sum of the expenses incurred by the entity directly related to the creation of the assets which have not been included in the value of the assets, of the amounts deducted as amortization, impairment and expenses that have been included in the tax base, and of the expenses related directly to the assets, which have been included in the tax base.

Moreover, if a loss is incurred in a tax period because expenses exceed income (whereas, in prior tax periods, positive income was obtained to which the reduction was applied), that loss will be reduced by the aforementioned reduction percentage, as long as the losses generated do not exceed the positive income included in previous periods. The total excess will be included in the tax base and, in that case, the positive income obtained in a later tax period will be included in full up to that amount, and the aforementioned percentage may be applied to the excess.



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In order to apply this benefit<sup>17</sup>:

- The assignee must use the rights of use or exploitation in a business activity; additionally, the results of such use must not lead to the supply of goods or provision of services by the assignee generating tax deductible expenses in the assigning entity, provided, in this latter case, that such entity is related to the assignee.
- The assignee may not reside in a country or territory where there is zero taxation or that is classed as a tax haven, unless it is an EU Member State and the taxpayer provides evidence of valid economic reasons for the transaction and of its engagement in economic activities.
- Where the contract for the assignment of use includes the provision of other incidental services, the contract must specify the consideration corresponding to them.
- The assigning entity must keep the necessary accounting records to determine direct and indirect income and expenses pertaining to the intangible assets assigned.

The scheme provides for the possibility, before the transactions are completed, of applying to the Administration for an advance pricing agreement in connection with the income from the assignment and the expenses, as well as with the income generated on the transfer.

An advance agreement classifying the assets in the categories included in the incentive may also be requested before the transactions are completed.

As a consequence of the existence of various regimes regulating the application of this incentive (owing to the succession of legislative changes taking place), it has been necessary to implement a transitional regime which functions as follows:

- i. The licensing of the right to use or exploit intangible assets, executed before the entry into force of Law 14/2013, of September 27, 2014, on support of entrepreneurs and their

internationalization, can be subject, in all the tax periods remaining until the end of the contracts, to the regime established in the former CIT Law (Legislative Royal Decree 4/2004). The application of this regime should have been opted for in the tax return for 2016. This option shall, in any event, be applicable only through to June 30, 2021, and from then onwards, the regime regulated in the GSB 2018 becomes applicable.

- ii. The licensing of the right to use or exploit intangible assets carried out as from the entry into force of said Law 14/2013 and up to June 30, 2016, can be subject, in all the tax periods remaining until the end of the contracts, to the regime established in the current CIT Law (Law 27/2014), according to the wording in force on January 1, 2015. The application of this regime should also have been opted for in the tax return for 2016. This option shall, in any event, be applicable only through to June 30, 2021, and from then onwards, the regime regulated in the GSB 2018 becomes applicable.

The transfer of intangible assets, carried out as of July 1, 2016 and until June 30, 2021, can be subject to the regime established in the current CIT Law, according to the wording in force on January 1, 2015. The application of this regime should be opted for in the tax return relating to the tax period in which the transfer was carried out.

### 2.1.2.13 Offset of tax losses

Since fiscal year 2015, the time limit on the offset of tax losses against future taxable income has been eliminated (this also applies to amounts pending offset at the start of 2015).

Nonetheless, the offsetting of these tax losses is subject to quantitative limits. Since the subsequent reform of December

2016, the rules on the offsetting of tax losses have been as follows:

- a. As a general rule, entities whose net revenues for the preceding 12 months amount to less than €20 million may offset tax losses up to a limit equal to 70% of the positive pre-offset tax base.
- b. Entities whose net revenues for the preceding 12 months amount to at least €20 million may offset tax losses subject to the following limits, applicable as from tax periods commencing in 2016:
  - i. 50%, when the entity's net revenues are between €20 and €60 million.
  - ii. 25%, when its net revenues are above €60 million.

However, it is still not possible to offset tax losses against taxable income obtained in prior tax periods.

Moreover, in order to avoid the acquisition of dormant or quasi-dormant companies with tax losses or the commencement of activities at entities with accumulated tax losses, the law establishes measures that preclude their use. Specifically, tax losses cannot be offset in the following circumstances:

- a. The majority of share capital or rights to a share of the entity's profits have been acquired by a related person or entity (or related group of persons or entities) following the end of the tax period to which the tax losses relate.
- b. The acquiring persons or entities had an interest of less than 25% at the end of the period to which the tax losses relate.

<sup>17</sup> Prior to July 1, 2016, the following additional requirements also applied:

- The assigning entity had to have created the assets being assigned to an extent equivalent to at least 25% of their cost.
- The transfer of the intangible assets could not take place between related parties.



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c. The target entity is in any of the following circumstances:

- It did not carry on any business activity during a three-month period prior to the acquisition.
- It will perform a business activity in the two-year period following the acquisition that is different from or additional to the activity previously performed.
- It is a holding company.
- It has been struck off the companies' index for failing to file the return for three consecutive tax periods.

Lastly, the Administration's right to inspect tax losses that have been offset or are outstanding offset will become statute barred 10 years as from the day following the end date of the period stipulated for the filing of the tax return or self-assessment for the tax period in which the right to offset the tax losses was generated.

Once that period has elapsed, the taxpayer must evidence the tax losses that it intends to offset only by exhibiting the assessment or self-assessment and the accounting records, including evidence that they have been filed at the Mercantile Registry during that period.

## 2.1.2.14 Tax restatements

A voluntary tax restatement was provided for periods commencing in 2013, at a rate of 5% on the restated amount.

The recent tax rate cuts (mentioned previously and referred to below in detail) entail that depreciation charges on the restated assets will be included in the tax base at a lower rate than the rate applied on restatement, when a 5% rate was paid, as indicated. In order to mitigate this negative effect, taxpayers subject to the general rate (or the rate applicable to new companies) which availed themselves of the fixed asset restatement will be

entitled to a tax credit equal to 5%<sup>18</sup> of the amounts included in the tax base in respect of depreciation charges on the net increase in value resulting from the restatement.

These tax credits will be subsequently applied to other applicable tax credits and allowances. Amounts not deducted because tax payable is insufficient may be deducted in subsequent tax periods.

## **2.1.3 Tax rates**

The standard CIT rate in Spain is 25% for fiscal years commencing on or after January 1, 2016 (from 2008 to 2014, it was 30% and in 2015, it was 28%).

However, special rates are applicable to certain entities such as listed collective investment institutions including real estate investment funds (1%), certain cooperatives (20%) or entities engaging in oil and gas research and exploitation activities (30%).

In the case of listed corporations for investment in the real estate market (known as *SOCIMIs*), the tax rate is 19%. However, entities whose shareholders owning a holding of more than 5% in their capital are taxed on the distributed dividends at a rate of at least 10% will be subject to a tax rate of 0%.

Lastly, entities formed on or after January 1, 2013, they will be taxed at the rate of 15% in the first tax period in which they have taxable income and in the next tax period.

## **2.1.4 Tax credits, withholdings and prepayments**

Under this heading we will describe the main tax credits applicable for 2020<sup>19</sup>.

### 2.1.4.1 Investment tax credits

- i. Research and development and technological innovation tax credit.

A tax credit for 25% of the expenses incurred in the tax period on scientific R&D. If the investment made exceeds average expenses incurred in the previous two years, 42% is applied to the excess.

In addition, a tax credit for 12% of the expenses incurred in the tax period on technological innovation.

Research and development (R&D) expenses included in the tax credit base must relate to activities carried out in Spain or in any member state of the EU or of the EEA. R&D expenses will include the amounts paid by the taxpayer individually or in collaboration with other entities to fund the conduct of R&D activities in Spain or in any member state of the EU or of the EEA.

The amount of the base for this tax credit is reduced by 100% of any subsidies received to encourage such activities.

An 8% tax credit is also established for investments in tangible fixed assets and intangible assets (excluding investment in buildings or land) to be used exclusively for R&D activities.

This tax credit will be incompatible with the other tax credits provided for the same investments in the chapter on Tax Credits to encourage the pursuit of certain activities.

<sup>18</sup> This tax credit was 2% for tax periods commencing in 2015.

<sup>19</sup> For tax periods starting on or after January 1, 2011, the following tax credits have been abolished: tax credit for export activities; tax credit for investment in vehicle navigation and tracking systems, tax credit for adaptation of vehicles for the disabled and for daycare centers for employees' children; tax credit for professional training expenses (save for those derived from expenses to familiarize employees with the use of new technologies); and tax credit for company contributions to employee pension plans. Effective for fiscal years commenced in 2015 onwards, the tax credit for reinvestment of extraordinary income has been abolished.



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The entities subject to the general tax rate (which include entities of a reduced size, starting on January 1, 2016) or to the rate of 30%, will have the following options in relation to these tax credits:

- The tax credits generated in tax periods commencing on or after January 1, 2013, can be applied, optionally, without limit of tax payable but with a 20% discount in their amount.
- Nevertheless, even in case of insufficient tax payable (before applying the aforementioned discount), it is established the possibility to request the payment of the tax credits from the tax authorities through the tax return in cash. The payment of these amounts will not be deemed a refund of amounts incorrectly paid over and will not generate the right to collect late-payment interest even if it is made more than six months after the request.

In the case of the tax credit for technological innovation activities, the tax credits taken or collected cannot exceed as a whole €1 million annually. Moreover, an overall limit of €3 million is established for R&D and technological innovation tax credits taken or collected as indicated. Both limits will apply to the entire group of companies in the case of entities forming part of the group according to the criteria of article 41 of the Commercial Code.

In order to apply the two mechanisms, the following requirements must be met:

- At least one year must elapse following the end of the tax period in which the tax credit was generated without its having been taken.
- The average workforce or, alternatively, the average workforce assigned to R&D and technological innovation activities must be maintained from the end of the tax period in which the tax credit was generated until the end of the period indicated in the following point.

- In the 24 months following the end of the tax period for which the tax return recorded the use or collection of the tax credit, an amount equal to the tax credit used or collected must be assigned to R&D or technological innovation activities or to investments in property, plant or equipment or intangible assets used exclusively in those activities, excluding real estate.
- The taxpayer must have obtained a reasoned report on the classification of the activity as R&D or technological innovation, or an advance pricing agreement on the expenses and investments relating to those activities.

Other tax credits for investments:

- Tax credit for investments in film productions, audio-visual series and live performing and musical arts productions:
  - a. A 30% tax credit is provided for the first €1 million of the tax base and a 25% tax credit for the excess in respect of investments in Spanish productions of feature films, short films and fiction series, animated films or documentaries that allow the construction of a physical support prior to industrial production, subject to a maximum tax credit of €10 million, for years starting on or after January 1, 2020.<sup>20</sup>

The tax credit calculation base is formed by the production cost and expenses incurred to obtain copies, and advertising and promotion expenditure, incurred by the producer, up to 40% of the production cost. At least 50% of the calculation base must relate to costs incurred in Spain. Grants received to finance the investments will reduce the tax credit calculation base.

In the case of co-productions, the amounts will be calculated for each co-producer based on their share of the co-production.

- b. Producers entered in the Administrative Register of the Institute of Cinema and Audiovisual Arts that execute a foreign feature film production or audio-visual productions that allow the construction of a physical support prior to industrial series production will qualify for a 30% tax credit with respect to the first €1 million of tax credit base, and 25% on the excess, provided the expenses are at least €10 million. However, for expenses on preproduction and post-production of animated films and visual effects incurred in Spain, the limit is set at €200,000.
- c. Finally, costs incurred to produce and exhibit live performing and musical arts productions will qualify for a tax credit equal to 20% of direct artistic, technical or promotional costs, less grants received.

The tax credit generated in each tax period may not exceed the amount of €10 million for each production made.<sup>21</sup>

The tax credit generated in each tax period may not exceed €500,000 per taxpayer.

- Tax credit for hiring workers with disabilities:

This tax credit is calculated per person/year of increase in the average number of disabled persons hired by the taxpayer during the tax period, with respect to the average number of disabled employees in the immediately preceding period. In particular, the tax credit applies in two tranches:

<sup>20</sup> For tax periods commencing prior to January 1, 2020, the tax credit was 25% for the first €1 million of the tax base and 20% for the excess.

<sup>21</sup> For tax periods commenced prior to January 1, 2017, this amount was €2.5 million.



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- €9,000 per person with a degree of disability of between 33% and 65%.
- €12,000 per person with a degree of disability exceeding 65%.

There are no requirements regarding the indefinite term or otherwise of the employment contracts or the fulltime employment.

The employees that entitle the taxpayer to take this tax credit will not be computed for purposes of the provision establishing unrestricted amortization with job creation.

## ii. Common rules on tax credits for investment

In general, the abovementioned tax credits (for Spanish motion picture or audiovisual productions, R&D and technological innovation, hiring workers with disabilities and, creating jobs) are limited to 25% of the gross tax payable, net of domestic and international double taxation tax credits and of tax allowances (the limit will be raised to 50% where the R&D and technological innovation tax credit relating to expenditure and investment in the tax period exceed 10% of the gross tax payable).

However, any excess can be carried forward for use in the following 15 years (in the case of the tax credit for scientific research and technological innovation activities, the period will be up to 18 years). The period will be counted from the first subsequent year in which an entity reports taxable income in the case of newly-incorporated entities or entities offsetting prior year's losses by effective contributions of new resources.

The Administration's right to initiate inspection proceedings in relation to the tax credits envisaged in the preceding sections, that have been taken or are outstanding use, will become statute-barred 10 years as from the day following the end date of the period stipulated for the filing of the tax return or self-assessment for the tax period in which the

right to apply the tax credits was generated.

Once that period has elapsed, the taxpayer must evidence the tax credits that it intends to offset by exhibiting the assessment or self-assessment and the accounting records, including evidence that they have been filed at the Mercantile Registry during that period.

### 2.1.5 Treatment of double taxation

The tax credit and exemption scheme stipulated in the previous regulations based on the type of income was amended substantially by the current law (for tax periods commencing as from 2015), through a general exemption scheme for significant shareholdings applicable in both the domestic and international arenas.

To summarize:

- a. For dividends or shares of profits from shareholdings in resident entities, the previous law (applicable up to 2014) established a tax credit that could amount to 100% or 50% of gross tax payable on the tax base for the income, based on the shareholding percentage and the time during which the shares were owned.

There is now an exemption scheme similar to the scheme existing before, for shareholdings in non-resident companies, as described below.

- b. Income from the transfer of shares in resident companies was subject to the specific provision that a tax credit could be applied in certain cases in respect of reserves accumulated by the investee during the shareholding period.

The exemption now applies to this income, also in line with the scheme already in force up to 2014 for foreign-source income where certain requirements were met.

- c. Dividends and income from shareholdings in non-resident entities and income obtained by permanent establishments

abroad will remain exempt, although some changes have been made to related requirements.

- d. Lastly, the law maintains the tax credit for both (i) income and capital gains obtained abroad and (ii) foreign-source dividends and shares in income, as an alternative to an exemption. The law also maintains the possibility of deducting tax paid abroad when the tax base includes income obtained and taxed outside Spain, up to the limit of the tax that would have been payable in Spain had the income been obtained in Spain; it is now possible to deduct in the tax base the excess foreign tax that cannot be applied as a tax credit because the above-mentioned limit is exceeded.

Basically, under this tax credit method, the entire amount of income or capital gains obtained abroad by companies resident in Spain must be included in the tax base in order to calculate the tax, but the taxes actually paid by the taxpayer abroad are deducted from the resulting amount of tax (tax payable), up to the limit of the tax that would have been paid on the income had it been obtained in Spain. The calculation is made by including in the tax base all the income obtained in the same country, except in the case of permanent establishments, where the income obtained by each permanent establishment is grouped together.

In the case of dividends or shares in income paid by an entity not resident in Spain, the tax actually paid by this entity on the profits out of which the dividend is paid (known as the underlying tax) may also be deducted.

The deduction of this underlying tax applies without limit regarding tier (*i.e.*, that of the subsidiaries, their subsidiaries and so on). The requirements for deducting this underlying tax are that the direct or indirect shareholding in the non-resident entity must be at least 5% and such shareholding must have been held uninterrupted for one year prior to the year of the dividend distribution (or the one-year period must be completed following the distribution), and the resident entity must include in its tax base the profits of the entity that pays out the dividend.



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The sum of both deductions (of the underlying tax and of the tax borne by the taxpayer abroad) may not exceed the gross tax that would have been payable in Spain on the income.

Amounts not deducted because gross tax payable is insufficient may be offset in subsequent tax periods.

With effect for fiscal years commencing as from January 1, 2016, a limit to the application of these credits for the avoidance of double taxation was established for entities whose net revenues for the preceding 12 months amount to at least €20 million. Specifically, their combined application may not exceed 50% of gross tax payable for the year.

This limit affects both credits generated as from 2016 and those already reported and pending application.

### 2.1.5.1 Dividends and income from shareholdings in entities resident in Spain: Exemption scheme

As indicated, the law now establishes a general exemption method for this type of income derived from resident entities.

In order to apply this exemption, the shareholding in the resident entity (i) must be at least 5% or, alternatively, must have a value of over €20 million; and (ii) must be held uninterruptedly for at least one year, although any period during which the shareholding was owned by a different group company as defined in Article 42 of the Code of Commerce may be taken into account.

In the event that the investee obtains dividends, shares of profits or income from the transfer of shares or equity interests in other entities, representing over 70% of its income, the exemption for such amounts may be applied provided the taxpayer has an indirect interest in those entities that fulfills the above-mentioned percentage or acquisition value and ownership requirements.

The income percentage (70%) will be calculated based on the consolidated profit for the year in the event that the direct-

ly-owned entity is a parent of a group as defined in Article 42 of the Code of Commerce and issues consolidated annual accounts.

In the case of an indirect interest in subsidiaries at level 2 or lower, the minimum 5% interest must be observed, unless the subsidiaries meet the requirements of Article 42 of the Code of Commerce to form part of the same group of companies as the directly owned entity and issue consolidated financial statements.

The indirect shareholding requirement will not be applicable when the taxpayer demonstrates that the dividends or shares of profits received have been included in the tax base of the directly or indirectly owned entity as dividends, shares of profits or income from the transfer of shares or equity interests in entities not entitled to apply an exemption scheme or a double taxation tax credit scheme.

The creation of this exemption scheme for income obtained from the transfer of shares in entities resident in Spain for periods commencing on or after 1 January 2015 entails (i) the elimination of the rules that were designed to avoid double taxation on the distribution of dividends, since such double taxation no longer occurs because the income obtained by the transferring parties will be exempt in the future; and (ii) the continued application of those rules on a transitional basis for cases in which the shares were acquired prior to that date and the former owners of the shares had actually paid tax in Spain as a result of the transfer of those shares.

### 2.1.5.2 Dividends and income from shareholdings in non-resident entities: exemption scheme

This exemption was already established previously although changes have been made to it for fiscal years as of 2015.

In order to apply this exemption, in addition to fulfilling the percentage and ownership requirements referred to in the previous section, the investee entity must have been subject to and not exempt from a tax that was identical or analogous

to CIT at a nominal rate of at least 10%, irrespective of the application of any kind of exemption, allowance, reduction or tax credit.

The “identical or analogous tax” requirement will be deemed fulfilled when the investee is resident in a country with which Spanish has concluded an international double taxation treaty that is applicable to the investee and contains an information exchange clause.

For fiscal years as of 2017, it is added that in no case will this requirement be deemed met where the investee is resident in a country or territory classed as a tax haven, unless that country or territory is a Member State of the EU and the taxpayer proves that its formation and operations are based on valid economic reasons and that it performs economic activities.

In the event that the non-resident investee obtains dividends, shares of profits or income from the transfer of shares or equity interests in entities, the exemption for such amounts may be applied provided the “identical or analogous” tax requirements is fulfilled at least by the indirectly-owned entity.

As a general rule, it is not necessary for the investee’s results to derive from a business activity carried on abroad, which was a provision of the Law prior to 2015.

### 2.1.5.3 Special rules governing the application of the exemption

- A proportional calculation formula is established for the exempt income in cases in which the non-resident investee entity has not been subject to an “identical or analogous tax”, with respect to CIT, throughout the share ownership period.
- Also, a rule is, established which limits the exemption where the holdings were acquired in a contribution of (i) assets other than holdings in entities, or of (ii) holdings in entities that do not meet the minimum percentage requirement or, fully or partially, the minimum taxation requirement (being



holdings in non-resident entities), if that contribution was made pursuant to the special neutrality regime for business restructurings ([section 2.1.10](#)), such that the income obtained from that contribution was not included in the tax base for CIT or non-resident income tax purposes.

In these cases, the exemption will not apply to the income that was deferred in that contribution unless it is proven that the acquiring entity has been taxed on that deferred income.

- The same type of limitation on the exemption is established in the case of holdings of personal income taxpayers that had received those holdings in a contribution of shares carried out under the special regime for business restructurings ([section 2.1.10](#)).

In these cases, where the holdings contributed in that restructuring are transferred in the two years after the contribution, the exemption will not apply to the income that was deferred in the contribution, unless it is proven that the individuals have transferred their holding in the entity during that period.

- The application of the exemption is precluded in the case of the transfer of shares in holding companies or economic interest groupings, in the part of the income that does not relate to an increase in retained earnings generated by the investee during the share ownership period. It is also not applicable to income from the transfer of shares in an entity that fulfills international tax transparency requirements, provided at least 15% of its income is subject to that regime.

#### **2.1.5.4 Income generated by permanent establishments**

Positive income obtained abroad through a permanent establishment located outside Spain will be exempt provided the permanent establishment has been subject to and exempt from a tax that is identical or analogous to CIT at a nominal rate of at least 10%.

Income from the transfer of a permanent establishment that fulfills the taxation requirement at a nominal rate of at least 10%, in the terms stated above, will also be exempt.

Lastly, the possibility of operating in the same country through different permanent establishments is specifically envisaged, in which case the exemption or tax credit regime will be applied to each permanent establishment separately.

#### **2.1.6 Treatment of impairment expenses and losses derived from holdings in entities and the ownership of permanent establishments abroad**

As has just been summarized in [section 2.1.5](#), the CIT law establishes rules to prevent double taxation in relation to shares or holdings in entities. This double taxation is basically prevented through the application of an exemption on the income derived from holdings (dividends, capital gains) provided they meet certain requirements. As seen, these requirements mainly refer to the holding (percentage, cost, ownership period) or, in the case of non-resident entities, to the minimum taxation required. The same type of exemption is established for income from permanent establishments abroad.

For fiscal years commencing as from 2017, the lawmaker has introduced a parallelism between these benefits and the use of the losses incurred on those holdings. Thus, if a holding gives the right to the exemption on the income derived from it (dividends and capital gains), the losses (on transfer or impairment) incurred on that holding cannot be deducted. Before this reform, there were already certain restrictions on the use of losses but now, the restrictions have been extended (although we will discuss some of the restrictions that applied before 2016, for a better understanding of the issue, we refer to previous versions of this Guide).

This reform has been carried out through the amendment of the articles of the law referring to the timing of recognition of income, the deductibility of impairment expenses, nondeductible expenses and the exemption for dividends and capital gains. Given the complexity of this legislation, in this section

we provide a systematic summary (not according to each of the articles of the law) of the treatment of the losses incurred on holdings in entities.

In order to understand this treatment, a distinction must be made between two types of holdings in entities:

- a. Those which we will refer to as “qualifying” holdings, i.e., holdings which give a right to the exemption for dividends and capital gains. They are holdings which meet the requirements of (i) percentage holding of at least 5% (or acquisition value of at least €20 million) owned for at least one year, and (ii) in the case of nonresident entities, holdings in entities with a minimum level of taxation (a nominal rate of at least 10%).
- b. Those which we will refer to as “non-qualifying”, i.e., holdings which do not meet the abovementioned requirements.

As stated previously, what the lawmaker has intended is that if a holding can benefit from the exemption for dividends and capital gains, then the losses incurred on that holding will never be deductible. With regard to other losses, they may be deducted before or after (at times reduced by certain amounts, as we shall explain below), and all of the foregoing with certain exceptions that will be noted.

On a summarized and systematic basis, the treatment is the following:

##### **2.1.6.1 “Qualifying” holdings:**

- The losses derived from their transfer will never be deductible. The non-deductibility of the losses, however, will be partial when the right to apply the exemption is also partial.

Along the same lines, the losses incurred abroad as a consequence of the transfer of a permanent establishment will not be deductible either.

- The impairment losses in respect of the holdings will not be deductible, on a permanent basis.



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- However, the deductibility of the losses generated on the dissolution of the investee is expressly recognized, unless such dissolution is the consequence of a restructuring transaction or in case of the cessation of the permanent establishment.

In that case, the deductible amount of losses will be reduced by the amount of dividends or shares in income received from the investee or net income of the permanent establishment (depending on the case), obtained or generated in the ten years preceding the dissolution date, provided that:

- In the case of holdings in entities, those dividends or shares in income have not reduced the acquisition value and have had the right to apply an exemption or tax credit for the elimination of double taxation, in the amount of the exemption or tax credit.
- In the case of permanent establishments, the net income has had the right to apply an exemption or tax credit for the elimination of double taxation, also in the amount of that exemption or tax credit.

## 2.1.6.2 “Non-qualifying” holdings:

- In general, in the case of holdings in nonresident entities that do not meet the minimum taxation requirement (or that are located in tax havens), the losses or impairment expenses will not be deductible ever.

This includes value reductions derived from the application of the fair value method and which are allocated to the income statement, unless previously, an increase in value for the same amount has been included in the tax base as a consequence of the holding of uniform securities.

In the case of holdings in tax havens, the impairment expenses or losses may be deducted (where the rest of requirements are met for deductibility) only if the company resides in a Member State of the EU and the taxpayer

evidences that its formation and operations are based on valid economic reasons and that it performs economic activities.

- In all other cases:
  - The impairment expenses relating to holdings will not be deductible but this is a timing difference (because when the loss materializes, it could become deductible, as explained below).
  - In the case of losses derived from intra-group transfers, as in any other kind of assets, the allocation of the loss is deferred until the holdings are transferred to third parties unrelated to the group, or the transferring entity or the acquirer leaves the group.

In those cases, when the losses are included, they must be reduced by the amount of income generated on the transfer to third parties<sup>22</sup>.

In the event of dissolution of the investee, the losses can be included in the tax base unless the dissolution is the result of a restructuring transaction<sup>23</sup> or of any case of succession in the business activity.

- The losses incurred on the transfer to third parties will be included in the tax base but will also be reduced by the amount of income generated on any preceding intra-group transfer to which an exemption or tax credit for double taxation has been applied.
- In addition, the amount of losses will be reduced by the amount of dividends or shares in income received from

the investee as from the tax period commencing in 2009, provided that those dividends or shares in income have not reduced the acquisition value and have had the right to apply the exemption for the prevention of double taxation.

## 2.1.7 Withholdings and advance payments

Non-operating income, such as interest, rent and dividends, must be subject to withholding tax at source, as an advance prepayment against the final tax liability.

In addition, with certain exceptions, leases of certain types of real estate are subject to withholding tax at source on the rent paid to lessors<sup>24</sup>.

Moreover, Spanish companies are also required to make three advance payments (in April, October and December of each year) based on the following methods:

- i. Calculation of prepayments based on tax payable (the “tax payable” method): Taxpayers with revenues not exceeding €6 million in the 12 months prior to the date on which their tax period commences will, as a general rule, make the prepayments by applying the rate of 18% to the gross tax payable (net of the related tax credits) of the last tax year whose deadline for filing a return has elapsed.
- ii. Calculation of prepayments based on the tax base (the “tax base” method): This method is obligatory for taxpayers with revenues exceeding €6 million in the 12 months prior to the date on which their tax period commences, and optional for any other taxpayer that expressly decides to follow this method.

<sup>22</sup> In fiscal years prior to 2017, the subtraction of the losses from the taxable income could be avoided if the income had been taxed at an effective tax rate of at least 10%.

<sup>23</sup> Up to 2016, only if the restructuring was carried out under the special regime discussed in [section 2.1.10](#).

<sup>24</sup> Royal Decree-Law 20/2011, of December 30, raised the standard withholding rate from 19% to 21% for fiscal years 2012 and 2013. This 21% rate was subsequently extended for 2014. For fiscal year 2015, the general withholding rate was 20%, and 19% for 2016 onwards.



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The prepayment is calculated on the portion of the tax base for the first three, nine or eleven months of the calendar year, applying a rate equal to 5/7 of the applicable tax rate (for taxpayers taxable at the standard rate, the advance payment would be 20% in 2015 and 17% from 2016 onwards). Certain reductions, withholdings from the taxpayer's income and prepayments made during the tax period will be deducted from the resulting tax payable.

Notwithstanding, starting with the second prepayment of the 2016 tax period and for taxpayers whose revenues in the 12 months prior to the first day of the tax period are at least €10 million, the tax rate applicable to prepayments has been increased (generally, to 24%) and the rule has been reinstated, establishing a minimum prepayment which was no longer going to apply starting in 2016. Thus, the amount payable cannot in any case be less than 23% (25% for entities with a tax rate of 30%) of the income recorded on the income statement.

The following items are excluded from the income recorded on the income statement: (i) the income derived from payment deferrals and debt write-offs agreed with the taxpayer's creditors (except the portion of their amount that is included in the tax base of the period) and (ii) the amount derived from increases in capital or equity through debt capitalization not included in the tax base.

The withholdings and prepayments can be taken as tax credits in the annual return for the corresponding year. If the sum of such credits exceeds the final tax payable, the company is entitled to a refund for the excess prepaid.

## 2.1.8 Consolidated tax regime

Spanish tax law envisages the possibility of certain corporate groups being taxed on a consolidated basis.

The filing of a consolidated return has certain advantages, most notably the fact that the losses obtained by some group companies can be offset against the profits of the others.

Also, since inter-company profits are eliminated in calculating consolidated income, the arm's-length test being applied in the valuation of inter-company transactions could be irrelevant<sup>25</sup> (see the previous comments on this issue). However, the consolidated tax regime also has disadvantages. For example, the minimum general deduction of finance costs (€1,000,000) is not multiplied by the number of entities in the tax group but is a single deduction for the group as a whole.

For tax purposes, a consolidated group is a set of entities resident in Spain in which either a resident or a nonresident entity has a direct or indirect ownership interest of at least 75%<sup>26</sup> of the capital and holds a majority of the voting rights of one or more other entities that are deemed subsidiaries on the first day of the tax period in which this tax regime applies.

Where an entity not resident in Spain or in a country or territory classified as a tax haven, with legal personality and subject to and not exempt from a tax identical or similar to Spanish CIT, has the status of parent with respect to two or more subsidiaries, the tax group will be formed only by the subsidiaries (all of which are to be included obligatorily).

Solely for the purpose of applying the consolidated tax regime, the permanent establishments of nonresident entities will be deemed Spanish resident investees, in which those nonresident entities own 100% of the capital and voting rights.

In order to request the application of the consolidated tax regime, the following requirements will have to be met:

- The controlling company or permanent establishment must have a direct or indirect holding of at least 75% in the capital stock of another company and must hold a majority

of the voting rights of one or more other entities that are deemed subsidiaries on the first day of the tax period in which this tax regime applies.

- That holding and those voting rights must be maintained throughout the tax period.
- It must not be a direct or indirect subsidiary of any other company that meets the requirements to be deemed the parent.
- It must not be subject to the special regime for economic interest groupings, whether Spanish or European, joint ventures or like regimes.
- In the case of permanent establishments of entities not resident in Spain, those entities must not be direct or indirect subsidiaries of any other that meets the requirements to be deemed the parent, and they must not reside in a country or territory classed as a tax haven.

Resolutions for group companies to be taxed on a consolidated basis must be adopted by the Board of Directors (or equivalent body if they are not formed under the Commercial Code), and the tax authorities must be notified at any time during the tax period immediately prior to that in which the consolidated tax regime is applied. The regime will be applicable indefinitely so long as its application is not waived.

It should be highlighted that the status of representative of the tax group will fall on the parent where it is a resident in Spain, or on such entity of the tax group designated by it, where there are no other Spanish resident entities that meet the requirements to be deemed the parent.

<sup>25</sup> In such cases, the legislation excludes transactions performed within the tax group from the documentation obligation generally applicable to related-party transactions.

<sup>26</sup> Regarding entities whose shares are admitted to listing on a regulated market, the minimum holding of a parent company in its subsidiaries is reduced to 70% for the purposes of the definition of 'tax group', so long as they are subsidiaries whose shares are admitted to trading on a regulated market. The reduction will apply in tax periods beginning on or after January 1, 2010.



### 2.1.9 Foreign-securities holding entities

The legislation of the regime governing foreign-securities holding entities (in Spanish, *ETVEs*) has been configured as one of the most competitive in the EU. However, due to the generalized application of the exemption for dividends and capital gains from foreign sources, together with the extensive network of tax treaties signed by Spain (which in many cases permit the non-taxation at source of dividends and capital gains derived from foreign holdings in entities resident in Spain) and the transposition into Spanish legislation of the Parent-Subsidiary Directive, this regime has lost its attraction (albeit not in all cases).

The main features of this special regime are summarized below:

#### 2.1.9.1 Tax treatment of the income obtained by the ETVE from holdings in nonresident entities

The dividends or shares in the income of entities not resident in Spain, and gains deriving from the transfer of the holding, are exempt subject to the requirements and conditions provided for under the exemption method to avoid international double taxation.

As stated, a minimum holding of at least 5% must be owned in the nonresident entity to apply the aforementioned method. For the purpose of applying the exemption provided for in the *ETVE* regime, the minimum holding requirement is deemed to be met if the acquisition value of the holding is over €20 million.

Holdings of less than 5% may be held in second and subsequent level subsidiaries (when the €20 million requisite is maintained), if these subsidiaries meet the conditions referred to in Article 42 of the Commercial Code for forming part of the same group of companies as the first-level foreign entity and file consolidated financial statements.

The aforementioned €20 million limit does not apply at entities that already applied the *ETVE* regime in tax periods commencing

before January 1, 2015 and met the quantitative limit of €6 million at their investees (which is the limit that was established in the legislation prior to that currently in force).

#### 2.1.9.2 Treatment of income distributed by the ETVE

If the recipient of the income is an entity subject to Spanish CIT, the income received will entitle the recipient to the exemption for domestic double taxation.

In case the recipient is an individual subject to Spanish PIT, the income distributed will be considered savings income and he may apply the tax credit for taxes paid abroad on the terms provided for in PIT legislation.

Lastly, when the recipient is an individual or entity not resident in Spain, the profits distributed will not be deemed to have been obtained in Spain and, in this respect, the first distribution of profits will be deemed to derive from exempt income. In this respect, the distribution of additional paid-in capital is to be treated in the same way as the distribution of income, it being considered that the first income distributed comes from exempt income.

#### 2.1.9.3 Treatment of the capital gains obtained on the transfer of the holdings in the ETVE

When the shareholder is an entity subject to Spanish CIT or to Nonresident Income Tax with a permanent establishment in Spain, it may apply the exemption to avoid double taxation (where it meets the percentage holding requirements established in the article regulating the exemption).

When the shareholder is a person or entity not resident in Spain, the income relating to the reserves allocated with a charge to the exempt income or to the value differences imputable to the holdings in nonresident entities which fulfill the requirements to apply the exemption to foreign source income, will not be deemed to have been obtained in Spain.

No special rules have been introduced for individual resident shareholders, who will be subject to PIT legislation.

#### 2.1.9.4 Corporate purpose and application of the regime

The regime may be applied by notifying the Ministry of Finance (which need not grant permission to the taxpayer) of the fact that it has been opted for.

In order to apply the regime:

- The securities or interests representing the holding in the capital of the *ETVE* must be registered securities or interests. Therefore, the special regime is not available for listed companies.
- The corporate purpose of the *ETVE* must include the management and administration of securities representing the equity of entities not resident in Spanish territory, by means of the appropriate organization of material and personal resources.

#### 2.1.9.5 Other issues

- *ETVEs* can belong to a consolidated tax group, if they meet the relevant requirements.
- The *ETVE* regime is not applicable to Spanish or European Interest Groupings, to joint ventures, or to entities which have as their principal activity the management of movable or immovable assets under certain conditions.

### 2.1.10 Tax neutrality regime for restructuring operations

In order to facilitate corporate reorganizations (mergers, spin-offs, contributions of assets, and exchanges of securities and transfers of registered office of a European company or a European cooperative society from one EU Member State to another), Spanish law provides for a well-established special regime based on the principles of non-intervention by the tax authorities and tax neutrality, which guarantees the deferral of or exemption from taxation, as appropriate, in respect of both direct and indirect taxation, for taxpayers carrying out such operations, along the same lines as the rest of the EU Member States.



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Starting in fiscal year 2015, this regime is expressly configured as the general regime to be applied to restructuring transactions, meaning that the election to apply it has been eliminated. Instead, there is now a general obligation to notify the tax authorities of the performance of transactions to which this regime is applicable.

In mergers, the absorbing entity can be subrogated to the right to offset tax loss carryforwards of the absorbed entity or branch of activity.

## 2.1.11 Tax incentives for small and medium-sized entities

Entities whose net sales in the immediately preceding tax period (or in the current period in the case of newly-incorporated enterprises) amount to less than €10 million qualify for certain tax incentives. If the enterprise belongs to a group of companies within the meaning of Article 42 of the Commercial Code, the net sales figure will be calculated for the group as a whole.

This regime does not apply if the entity has the consideration of an asset-holding entity.

The special regime also applies:

- During the three successive tax periods following that in which the €10 million threshold is reached (provided that the conditions are met for these entities to be deemed entities of a reduced size, both in the period in question and in the two preceding tax periods).
- Where the €10 million threshold is exceeded as a consequence of a business restructuring carried out under the special tax neutrality regime, provided that all the entities involved in the transaction meet the conditions to be deemed entities of a reduced size, both in the tax period in which the transaction is performed and in the two preceding periods.

The incentives can be summarized as follows:

- Unrestricted depreciation of their tangible fixed assets up to certain limits, provided that certain job creation requirements are met.
- Entitlement to increase by 2 the maximum straight-line depreciation rates permitted per the official depreciation tables (even if it has not been recorded for accounting purposes) for new tangible fixed assets, investment property and intangible assets placed at the disposal of the taxpayer in the year in which it meets the requirements to be classed as an entity of reduced size (except, amongst others, goodwill and trademarks, which can be depreciated by multiplying by 1.5 the maximum depreciation rates permitted per the official depreciation tables).
- Ability to record provisions for bad debts based on 1% of the balance of their accounts receivable at the end of the tax period.
- In 2015, the tax rate for entities of a reduced size was 25% for a tax base of up to €300,000, and 28% thereafter. From 2016 onwards, that rate is 25% on a general basis (that is, the general tax rate will apply) except for newly created companies, which will be taxed at 15% in the year of their creation and the following year.

This general tax rate of 25% would be reduced in case of application of the capitalization reserve and the tax base leveling-out reserve analyzed below, to approximately 20%.

- Application of the “tax base leveling-out reserve” system, which entails a reduction of up to 10% of the tax base, with a maximum annual limit of €1 million (or the proportional amount if the entity’s tax period were shorter than a year). This tax benefit has the following characteristics:
  - i. This reduction will have to be included in the tax bases of the tax periods concluding in the 5 years immediately following the end of the tax period in which the reduction was applied, as and when the entity obtains tax

losses. The amount not included at the end of that term, because sufficient tax losses have not been generated, will be added to the tax base of the period in which that term ends.

- ii. A reserve shall be recorded for the amount of the reduction, out of income of the year in which the reduction is made, and it will be restricted during the aforementioned 5-year term. If this reserve cannot be recorded, the reduction will be conditional on the reserve being recorded out of the first income of the following fiscal years, in respect of which it is possible to record the reserve.

The breach of this requirement will trigger the inclusion in the tax base of the amounts that were reduced, plus 5%.

- iii. The amounts used to record this reserve cannot be applied simultaneously to the capitalization reserve also regulated in the current law.

## 2.1.12 Tax incentives for venture capital funds and companies

Venture capital entities (both venture capital companies and venture capital funds) are subject to Spanish CIT and to the rules established in the general regime, with the special characteristics set out below.

### 2.1.12.1 Tax treatment for venture capital companies:

- Gains obtained by venture capital companies: Two different cases apply depending on whether or not the requirements for applying the exemption for double taxation mentioned in [section 2.1.5](#) of this chapter are met:
  - If the requirements for applying the exemption are met, the gains obtained by the venture capital company are fully exempt.



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- If the requirements for applying the exemption are not met, a partial exemption of 99% will apply to gains obtained on the transfer of holdings, providing the transfer occurs between the start of the second year in which the interest is held, calculated as from the time of acquisition or delisting, and the 15th year, inclusive. The 15-year period can be extended to 20 years in certain circumstances.

In the cases listed below, application of the 99% partial exemption requires fulfilment of certain additional conditions:

- When over 50% of the investee's assets comprise buildings, at least 85% of the total carrying amount of the buildings must be used, without interruption and during the entire time the securities are held, for carrying out a non-financial and non-real estate business activity.
- When a stake is held in a company that is subsequently listed on an official stock exchange (given that the corporate purpose of venture capital funds and companies is not to hold interests in listed companies), the venture capital company or fund must transfer its holding in that company within a maximum of three years from the date the company was admitted for trading. After that period, the entire amount of the gains obtained on the transfer are included in taxable income and subject to no reductions whatsoever, although in this case the corresponding general CIT double taxation rules would still apply ([see section 2.1.5](#)).
- Dividends or share profits obtained by the venture capital company: The exemption indicated in [section 2.1.5](#) can apply to dividends obtained by this type of entity, irrespective of the percentage interest held and the duration for which the shares have been held.

### 2.1.12.2 Tax treatment for shareholders of venture capital companies

The tax treatment applicable to both the gains generated on the transfer or reimbursement of shares or holdings in venture capital companies and the dividends or share profits distributed by these entities is as follows:

- Resident legal entity shareholder or nonresident legal entity shareholder with a permanent establishment: The gains in question are exempt, irrespective of the percentage interest held and the duration for which the shares or holdings have been held.
- Nonresident individual shareholder or nonresident legal entity shareholder without a permanent establishment: The gains in question will not be deemed to have been obtained in Spain.
- Resident individual shareholder: The gains in question will be taxed in accordance with the general rules set out in the PIT Law ([see section 2.2](#)).

### **2.1.13 Other special taxation regimes**

CIT legislation contains provisions governing special taxation regimes, established mainly as a result of the nature of the taxpayer or of the activities carried on by entities in a specific economic sector:

#### a. Spanish and European Economic Interest Groupings (EIGs)

These entities and their members are subject to the general CIT rules, with the particularity that they do not pay the tax debt relating to the portion of their taxable income attributable to members resident in Spain and permanent establishments in Spain of nonresidents.

The nonresident members of a Spanish EIG are taxed pursuant to the NRITL and pursuant to the rules contained in the tax treaties. The nonresident members of a European EIG are only taxed in Spain on the income of the EIG attributed to

them, if the activity performed by the members through the grouping gives rise to a permanent establishment in Spain.

#### b. Temporary Business Associations (*UTE*)

These entities are taxed in the same way as EIGs. However, the foreign-source income (derived from activities carried on abroad) of *UTES* is tax-exempt (subject to application to the tax authorities).

The losses obtained by a *UTE* abroad are imputed to the tax bases of its members. If, in future years, the *UTE* obtains income, it must be included in the tax base of its members up to the limit of the losses previously included.

#### c. Other special tax systems

Other special tax systems apply to industrial and regional development companies and collective investment institutions.

Special regimes for economic sectors apply to both mining companies, companies engaging in oil and gas research and exploitation activities and to shipping entities on the basis of tonnage.

Lastly, the international fiscal transparency regime, already explained above, is established.

### **2.1.14 Formal requirements**

Unless otherwise stipulated in the bylaws, the fiscal year is deemed to end on December 31 each year, coinciding with the calendar year, although taxpayers can establish a different fiscal year not exceeding 12 months but which can be shorter if (i) the entity is extinguished, (ii) the entity moves its residence abroad, or (iii) its legal form is altered and the resulting entity is not subject to taxation, its tax rate changes or it is subject to a special tax regime.

The tax becomes chargeable, in general, on the last day of the tax period. Thus, if the tax period coincides with the calendar year, the tax is chargeable on December 31.



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Annual returns must be filed and the tax paid within 25 days following the six months after the end of the tax period (generally, therefore, by July 25 of each year, in relation to the preceding tax period).

At present, the tax forms to be used to report the tax are the following:

- a. Form 200. This return is generally used by companies that are subject to common legislation on the tax, regardless of their activity or size.

This form must be filed telematically<sup>27</sup>.

- b. Form 220. Its use is obligatory for tax groups and it must be filed by the parent company of the group (this does not preclude the obligation for all the group entities to file a Form 200).

## 2.2 PERSONAL INCOME TAX

This tax, which is one of the pillars of Spain's tax system, is currently governed by Law 35/2006, of November 28, on Personal Income Tax, which has been amended by Law 26/2014, of November 27, 2014 and by Royal Decree 439/2007, of March 30, 2007, approving the Personal Income Tax Regulations.

As discussed below, the taxation of nonresident individuals is regulated in a separate law (the Revised Nonresident Income Tax Law), which is analyzed in [section 2.3](#).

### 2.2.1 Persons subject to the tax

The following persons are subject to PIT:

- Individuals habitually resident in Spanish territory.
- Individuals of Spanish nationality who are habitually resident abroad but fulfill any of the conditions laid down in the law (e.g. diplomatic and consular services, etc.).

- Moreover, any Spanish national who establishes his residence for tax purposes in a tax haven will remain subject to PIT (for the year in which residence is changed and for the following four years).

A taxpayer is deemed to be habitually resident in Spanish territory if any one of the following conditions is met:

- The taxpayer is physically present in Spanish territory for more than 183 days in the calendar year.

Sporadic absences are included in determining the length of time a taxpayer is present in Spanish territory, unless tax residence in another country is proved. In the case of territories designated in the regulations as tax havens, the authorities may require the taxpayer to prove that he was present in such territories for 183 days in the calendar year.

To determine the period spent in Spain, absences due to cultural or humanitarian cooperation, for no consideration, with the Spanish authorities are excluded.

- The main center or base of the taxpayer's activities or economic interests is in Spain, either directly or indirectly.

In the absence of proof to the contrary, an individual is presumed to be resident in Spain if his/her spouse/husband (from whom he/she is not legally separated) and dependent under-age children are habitually resident in Spain.

Individuals who are payers of nonresident income tax and are resident in a Member State of the EU may elect to be taxed under Spanish PIT if they demonstrate that their habitual domicile or residence is in another EU Member State and that at least 75% of their total income during the year was obtained as salary income or business income in Spain.

For fiscal years starting on or after January 1, 2016, civil law partnerships not subject to CIT, undistributed estates, joint property entities and other entities to which article 35.4 of General Taxation Law 58/2003, of December 17, 2003 refers, are not deemed taxpayers. The income relating to them shall be attributed to the shareholders, heirs, joint owners or members, respectively, according to the pass-through tax regime established in the PIT Law.

### 2.2.2 Taxable event

Taxpayers subject to PIT are taxed on their entire worldwide income, including the income of foreign entities (international fiscal transparency system), unless the nonresident entity is resident of a EU Member State. This international tax transparency regime is similar to that described above for CIT.

### 2.2.3 Taxation system and taxpayer

The possibility of being taxed individually or jointly (as a family unit) is regulated. However, there is only one tariff but divided in two parts: the general one and the autonomous community one.

### 2.2.4 General structure of the tax

The law distinguishes between a general component and a savings component of taxable income. The general component is taxed according to a progressive scale of rates while the savings component is taxed at fixed rates (or according to a scale applied by income brackets).

The general and the savings net tax payable are calculated on the basis of the general and savings components after applying certain reductions.

<sup>27</sup> The entry into force of Public Authorities and Common Administrative Procedure Law 39/2015 on October 2, 2016, introduced the legal obligation on legal entities and entities without separate legal personality to deal electronically with the public authorities. These electronic dealings cover both notifications and the filing of documents and requests through registration.



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Moreover, the general and the savings components of taxable income are calculated according to the categories of general and savings income; these categories constitute fixed compartments, with some exceptions, such that, within each category, the income items are integrated and offset against each other but without the possibility of offsetting losses with the losses of other categories of income. Within each category, there are even sub-compartments that cannot be offset against each other.

In this regard, the **general component** of taxable income is the result of adding the following two balances:

- a. The balance resulting from adding and offsetting against each other, without limit, the following income and attributions of income:
  - Salary income.
  - Income from real estate.
  - Income from movable capital derived from the transfer of own funds to entities related to the taxpayer. This rule does not apply (in which case such income must be included as savings income) where:
    - They are entities of the kind provided for in Article 1.2 of Legislative Royal Decree 1298/1996, of June 28, Adapting the Law Currently in Force on Credit Institutions to the Law of the European Communities, provided that such income does not differ from the income that would have been offered to groups similar to the persons related to such institutions.
    - The amount of own funds assigned to a related entity does not exceed the result multiplying equity by three, to the extent that it relates to the taxpayer's interest in the related entity.
  - Other income from movable capital which is not considered savings income, such as that derived from

the assignment of the right to use the image, that from intellectual property when the taxpayer is not the author and that from industrial property which is not attached to business activities performed by the taxpayer.

- Income from business activities.
  - Imputation of income from real estate.
  - Imputation of income from entities under the international fiscal transparency system.
  - Imputation of income from assignment of rights of publicity.
  - Changes in the value of units in collective investment undertakings established in tax havens.
- b. The positive balance resulting from adding and offsetting against each other, exclusively, capital gains and losses excluding those which are deemed savings income. If its balance is negative, it may be offset against 25% of the positive balance, if any, of income and attributions. The rest of the negative balance will be offset in the following four years with the same setoff rules, it being obligatory for the setoff to be made of the maximum amount that the rules allow.
    - a. The **savings component** of taxable income is calculated based on the savings income which is formed by the positive balance resulting from adding the following balances: On the one hand, the positive balance resulting from adding and offsetting against each other the so-called income from movable capital, that is:
      - Income derived from an entity due to the status of partner, shareholder, associate or stakeholder.
      - Income from movable capital derived from the transfer of own funds to third entities not related to the taxpayer or derived from related entities that

meet the requirements in order not to be included as general income.

- The monetary return or payment in kind on capitalization transactions and life or disability insurance contracts.

If the inclusion and setoff of such income against each other leads to a negative result, this amount may only be offset against the positive balance of the capital gains and losses reported in the following component of savings income (paragraph b) below) with the limit of 25% of that positive balance.

- b. The positive balance resulting from adding and offsetting the capital gains and losses arising from the transfer of assets. If such result is negative, the amount thereof could be offset against the positive balance of the other component of savings income (paragraph a) above), that is, income from movable capital, with the limit of 25% of that positive balance.

In both cases, if the balance is negative after those gains and losses have been offset, the amount thereof may be offset in the following four years.

However, in years 2015, 2016 and 2017, the offset rate between income from movable capital and capital losses in the tax base was 10%, 15% and 20% respectively.

## 2.2.5 Exempt income

The legislation establishes numerous items of exempt income.

Noteworthy among the exemptions is that relating to salary income for work performed abroad. This exemption will apply to salary income accrued during the days spent by the employee abroad up to a limit of €60,100 per year, if certain requirements are met:



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- Salary income has to be paid in respect of work effectively performed abroad. Namely, the taxpayer must be rendering services physically abroad.
- In the case of services rendered by related entities to each other, an advantage or benefit occurs or may occur for the recipient.
- The recipient of the services must be either a non-Spanish-resident entity or a permanent establishment situated abroad of a Spanish resident company.
- A tax identical or similar to the Spanish PIT must exist in the other country, and such country must not be a territory classified as a tax haven. This requirement will be deemed to be met when the country or territory where the work is performed has signed with Spain a tax treaty containing an exchange of information clause.

The exempt income received for work performed abroad must be calculated (i) by reference to the number of days that the worker actually spent abroad and the specific income relating to the services provided outside the country; and (ii) to calculate the daily amount earned for the work performed abroad, a proportional distribution method must be used, by reference to the total number of days in the year, aside from the specific income relating to the work performed.

In addition, an exemption is envisaged for capital gains arising on the transfer of the taxpayer's principal residence, where the total amount is reinvested in the acquisition of a new principal residence within two years following the transfer date, under certain conditions.

Also relevant are the exemption for employee severance indemnities or termination benefits in the mandatory amount stipulated in the Labor Statute, in its enabling regulations or, if applicable, in regulations governing the enforcement of judgments, excluding amounts stipulated in agreements, clauses or contracts (limited to the sum of €180,000 for dismissals that take place since 1 August 2014), or the exemption for

positive securities investment income from life insurance, deposits and financial contracts used to arrange Long-Term Savings Plans, provided the taxpayer does not utilize any Plan capital before the first five years have elapsed.

It should be noted that the general exemption for dividends up to €1,500 per annum was eliminated (as from 2015).

## 2.2.6 Earned income

The main aspects of the tax treatment of earned income are as follows:

- a. Both cash income and benefits in kind are taxable.
- b. The most relevant matters affecting benefits in kind are explained below:
  - In general, they are valued at the market value of the remuneration.
  - Nonetheless, the Law provides special rules for certain types of income:  
The valuation of the benefit in kind consisting of the assignment of the use of vehicles is 20% per annum of the acquisition cost for the payer, or 20% of the value that would correspond to the vehicle if it were new (depending on whether or not the vehicle is owned by the company, respectively). The amount calculated must be weighted based on the percentage of private utilization of the vehicle. The value obtained may be reduced by up to 30% in the case of vehicles classed as energy-efficient.

If the vehicle is handed over to the employee, it will be valued at cost less the value of prior utilization.

The benefit in kind consisting of the use of housing owned by the company is limited to 5% or 10% of the ratable value, depending on whether or not this value has been revised, respectively, up to the maximum limit

of 10% of the rest of the earned income.

Other remuneration is valued at cost, such as subsistence or accommodation expenses.

- In any event, the Law states that, irrespective of the above-mentioned general and special rules, the value of benefits in kind paid by companies engaged habitually in the performance of the activities that give rise to the benefits in kind (for example, where a vehicle rental company assigns the use of vehicles to its employees) may not be lower than the price charged to the general public for the good, right or service in question, applying ordinary or common discounts, and, in any case, with a limit of 15% or €1,000 per annum (whichever is lower).
- It should also be noted that certain benefits in kind are not taxable.

The award to current employees, free of charge or at below-market price, of shares in the company itself or in other group companies, is not taxable in the portion that does not exceed €12,000 per annum, for the total number of shares awarded to each employee, provided that the offer is made on the same terms for all the employees of the company, group or sub-group of companies and other requirements are met (basically related to keeping the shares for a certain period of time).

Amounts paid to entities responsible for providing public passenger transport services to help employees to travel from their place of residence to their work center are not taxable, subject to the limit of €1,500 per annum per employee (indirect payment formulae that fulfill a number of conditions such as "transport passes / vouchers" are permitted).

Restaurant vouchers and health insurance premiums are not taxable either, subject to certain quantitative limits; child care vouchers are also not taxable, subject to no limits.



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Of the different kinds of compensation, worthy of note (due to their special characteristics) are those derived from the grant to employees of stock options in the company of group where they provide their services.

In these cases, for stock options that are non-transferable (which is the most common scenario), salary income is generated when the employee exercises the options and receives the shares. In short, no income is generated when the options are granted but only when the options are materialized in shares (with the vesting and subsequent or simultaneous exercise of the options). At that time, what is generated is salary income, for the difference between the market value of the shares received and the cost of the option.

Subsequently, when the shares received are transferred, a capital gain or loss will be generated.

Additionally, there are a series of tax benefits for this type of compensation:

- As we have stated previously, the award of shares to serving employees, for free or for a price below normal market price, will not be deemed compensation in kind for the portion not exceeding €12,000 per annum for the set of shares awarded to each employee, provided that the conditions established in this section b) are met.
  - In addition, the reduction for multi-year income can be applied to the portion exceeding €12,000, where the requirements analyzed below are met.
- c. Reduction for irregular income.

A 30% reduction is applicable to irregular income, which is defined as follows:

- Income that is generated over more than two years, provided that the reduction has not been applied in the preceding five tax periods (this second requirement

does not apply in the case of severance payments for dismissal or termination of a special or ordinary employment relationship).

- Or income classed by regulations as being notably irregular over time.

This 30% reduction may be applied to a maximum of €300,000 per annum (this limit is reduced for severance indemnities or termination benefits above €700,000, there being no reduction applicable to indemnities of €1,000,000 or more).

- d. Other types of reduction are applicable to certain earned income.

When calculating the income, certain expenses are also deducted such as Social Security contributions, or a general reduction of €2,000 per annum for other expenses is applied (this reduction increases in certain circumstances).

Taxpayers with net earned income of less than €14,450 apply an additional reduction based on the amount of their income. This limit has been increased, with effect as from July 5, 2018, to €16,825, as a result of which a specific regime applicable exclusively from 2018 has been introduced.

- e. Finally, entities resident in Spain will be required to make withholdings on earned income paid to their workers, irrespective of whether or not the income is paid by the entity itself or by a different resident or non-resident related entity.

## 2.2.7 Rental income

For the calculation of the net income all the expenses necessary to obtain it can be deducted.

The financial expenses and repair and maintenance expenses that can be deducted may not exceed the gross income gener-

ated by each property. However, the excess may be deducted under identical conditions in the following four years.

The remaining expenses may give rise to negative net income from immovable property.

In cases of leases of residential properties, a 60% reduction will apply to the net income (*i.e.* gross income less depreciation and amortization, non-State taxes and surcharges, etc.) provided it is a positive figure.

In addition, if the income was generated over a period exceeding two years, or if it was obtained at notably irregular time intervals, a 30% reduction will apply (reduction applicable to a maximum of €300,000).

## 2.2.8 Income from movable capital

The income from movable capital will generally be included in the savings component of taxable income, in the manner specified previously. This refers mainly to:

- The income derived from a holding in the equity of entities (such as dividends).

Noteworthy in this type of income is the treatment of the holdings in open-end investment vehicles (SICAVs). In this regard:

- In the case of capital reductions made to reimburse contributions, the amount of the reduction will be deemed income from movable capital, with the limit of the higher of the two following amounts: (i) that relating to the increase in the redemption value of the shares since their acquisition or subscription until the moment of the capital reduction, or (ii) where the capital reduction derives from retained earnings, the amount of such earnings. In this regard, it will be considered that capital reductions, regardless of their aim, affect firstly the portion of capital that derives from retained earnings, until that portion reaches zero.



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- Any excess over the limit determined according to the above rules will reduce the acquisition value of the relevant shares in the *SICAV* until it reaches zero, which will determine the future income deriving from the transfer. Nonetheless, any excess that might still exist will be included as income from movable capital derived from the holding in the equity of all kinds of companies, in the manner established for the distribution of additional paid-in capital.

These rules will also apply to the shareholders of collective investment undertakings equivalent to *SICAVs* and registered in another EU Member State (and, in any case, they will apply to the companies covered by Directive 2009/65/EC of the European Parliament and of the Council, of July 13, 2009, on the coordination of the laws, regulations and administrative provisions on certain collective undertakings for investment in transferable securities).

In addition, with respect to the distribution of additional paid-in capital, the law establishes that the amount obtained will reduce, down to zero, the acquisition value of the shares or holdings concerned, and any resulting excess will be taxed as income from movable capital.

Notwithstanding the preceding paragraph, in case of distribution of additional paid-in capital relating to securities not admitted to listing on any of the regulated securities markets defined in Directive 2004/39/EC of the European Parliament and of the Council, of 21 April 2004, on markets in financial instruments and representing the share in the equity of companies or entities, where the difference between the value of equity of the shares or holdings relating to the last fiscal year-end prior to the date of the distribution of the additional paid-in capital and the normal market value of the assets or rights received will be deemed income from movable capital, with the limit of that positive difference.

- The income obtained from the transfer to third parties of own capital (such as interest).

- The income from capitalization transactions and life or disability insurance and the income from capital deposits.

However, certain items of income from movable capital form part of the general component of the tax base:

- Income deriving from the transfer to third parties of own capital, in the part relating to the excess of the amount of own capital transferred to a related entity, with respect to the result of multiplying by three the equity of the entity that relates to the holding. The aim of this rule is to prevent the tax rates of the savings component (which are lower) from being applied to cases in which the income derives from the debt of the shareholders with their investees where there is “excess debt”, such that the financial income can be replacing income that could have been taxed in the general component of the tax base. Thus, for example, if the individual shareholder of an entity holds a 100% stake in it, to which equity of 1,000 corresponds, and he lends the entity 4,000, the interest on that loan will be included in the savings component only in the portion relating to 3,000 (3 x 1,000).
- The items of income referred to in the law as “other income from movable capital”, which are income deriving from (i) intellectual property where the taxpayer is not the author; (ii) industrial property not assigned to economic activities; (iii) the lease of furniture, businesses or mines or from the sublease of such assets (received by the sublessor) which are not business activities, and (iv) the assignment of the right to exploit an image or from the consent or authorization for the use thereof, when the aforementioned assignment does not take place in the course of a business activity. In this case, a 30% reduction can be applied if they are generated over more than two years or are classified by regulations as notably multi-year in nature. Also in this case the reduction applies to a maximum amount of €300,000.

## 2.2.9 Capital gains and losses

As already noted, capital gains and losses are classified into two types: (i) those not deriving from transfers, and (ii) those deriving from transfers. The first type is included in the general component of taxable income and taxed at the marginal rate, and the second type is included in the savings component.

With respect to capital gains and losses, the following aspects are worthy of note:

- a. In general, a capital gain or loss on a transfer, whether for valuable consideration or for no consideration, is valued as the difference between the acquisition and transfer values of the items transferred. In certain circumstances, however, these values are indexed to the market because they entail transactions in which there is no acquisition or transfer value *per se*. For example, in the gift of an asset, the gain is calculated as the difference between its cost and the market value of the asset at the date of the gift; or in the case of a swap, the gain is calculated as the difference between the acquisition value of the asset or right transferred and the higher of the market value of that asset or right and that of the asset or right received in exchange.

In some cases, there are also rules aimed at guaranteeing the taxation of the actual income. For example, in the transfer of unlisted securities, the transfer value will not be the price thereof, but rather the higher of that price, the value of equity resulting from the last balance sheet closed before the tax becomes chargeable, or the value resulting from capitalizing at 20% the average of the results of the last three fiscal years closed before that tax becomes chargeable (unless it is proven that the transfer price is the market price).

- b. Abatement coefficients: The law establishes the application of coefficients which reduce the gain deriving from the transfer. However, the application of these coefficients is only envisaged for the assets acquired before December 31, 1994,



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However, the coefficients do not apply to all the gain generated on the transfer but only to that generated until the legislation eliminated the coefficients, specifically up to January 19, 2006.

In general terms, what must be done is to (i) calculate the amount of the “nominal” capital gain; (ii) distinguish the portion of that gain generated up to and including January 19, 2006, and the portion generated after that date (according to rules depending on the type of asset, the general rule being that of straight-line distribution) and (iii) apply the coefficients to the first-mentioned portion of the gain.

The coefficients are (a) 11.11% in the case of real estate or real estate companies, for each year that has elapsed from the acquisition of the asset until December 31, 1994 (meaning that the gain generated up to January 19, 2006, from real estate acquired before December 1985, will not be subject to tax), (b) 25% in the case of shares traded on secondary markets (the capital gains generated up to January 19, 2006, deriving from assets acquired before December 31, 1991, not being subject to tax), and (c) 14.28% in the remaining cases (in which the gain generated up to January 19, 2006, from assets acquired before December 31, 1998 will not be subject to tax).

The rest of the gain, i.e. which is deemed to be generated after January 20, 2006 (inclusive) will be taxed in full.

In any event, according to the legislation applicable, the maximum amount of the asset transfer value to which these coefficients can be applied is €400,000. This €400,000 limit does not apply to the transfer value of each asset individually but to the total transfer value of all the assets as a whole to which the abatement coefficients apply starting on January 1, 2015, up to the moment when the capital gain is allocated. In other words, it is a global limit even if the sale of each asset takes place at different times.

- c. Certain capital gains and losses are not deemed as such (and, thus, are not taxed or their taxation differs), namely

(i) those deriving from the dissolution of jointly owned property or (ii) those resulting from the division of common property. At other times, the losses obtained are not computed, as occurs with (a) losses due to consumption or (b) those deriving from gifts. The Law also establishes an anti-abuse rule which prevents computing the losses deriving from the transfer of securities listed on organized markets when homogenous securities have been acquired in the two months before or after the transfer (the term is one year in the case of transfers of securities not traded on organized markets); in these cases, the losses are included as and when the securities remaining in the taxpayer's assets are transferred.

Of the capital gains or losses that are not subject to tax, worthy of note are those deriving from the gift of a family business, where (i) the assets were used in the economic activity for at least five years before the transfer date, and provided that the donor (i) is 65 years or older or suffers from absolute permanent disability or comprehensive disability, (ii) ceases to perform management functions and to be remunerated for those functions, and that the donee keeps the assets received for at least 10 years as from the date of the public deed documenting the gift, except in the case of death, and does not carry out any dispositions or corporate transactions which could lead to a significant decrease in the acquisition value of the business received.

In addition, it is established, among other things, that the taxpayer will not compute the capital gains obtained on the transfer of units or shares in collective investment undertakings provided that the proceeds are reinvested in assets of a similar nature.

In both cases, the new shares or units subscribed will maintain the value and the acquisition date of the shares or units transferred.

Capital gains are also not deemed to arise from capital reductions. Where the capital reduction, regardless of its purpose, gives rise to the redemption of securities or

holdings, those acquired first will be considered redeemed, and their acquisition value will be distributed proportionally amongst the rest of the analogous securities remaining in the taxpayer's assets. Where the capital reduction does not affect all the securities or holdings owned by the taxpayer equally, it shall be deemed to refer to those acquired first.

Where the purpose for the capital reduction is to reimburse contributions, the amount of the reduction or the normal market value of the assets or rights received will reduce the acquisition value of the securities or holdings concerned, in accordance with the rules of the preceding paragraph, down to nil. Any excess shall be included as income from movable capital derived from the share in the equity of any kind of entity, in the manner established for the distribution of additional paid-in capital, unless that capital reduction derives from retained earnings, in which case the sum of the amounts received for this item will be taxed in accordance with the provisions of letter a) of article 25.1 of this law. For these purposes, it shall be considered that the capital reduction, whatever its purpose, affects firstly the portion of the capital that derives from retained earnings, until they are reduced to zero.

- d. Since January 1, 2017, proceeds obtained from a transfer of subscription rights arising from securities admitted to trading on any of the regulated securities markets defined in Directive 2004/39/EC of the European Parliament and of the Council, have been treated as a capital gain for the transferor in the tax period in which the transfer takes place. This was a change from the regime applied in previous years, in which proceeds obtained from a transfer of this right reduced the acquisition cost of the listed security in question. In other words, under the previous regime, the taxation of the gain obtained from the sale of preemptive subscription rights was deferred to when the share in question was transferred.

In this case, the custodian and, in the absence thereof, the financial intermediary or the public authenticating official who has attested the transfer will be required to make the relevant withholding or prepayment for this tax.



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e. There is an exemption for capital gains generated on the transfer of shares or holdings in newly or recently formed companies for which the tax credit for investment in newly or recently formed companies was applied ([see section 2.2.13](#)), providing the total amount obtained from the transfer is reinvested in the acquisition of shares or holdings that meet the following requirements:

- Reinvestment in a public limited company, a limited liability company, a worker-owned corporation or worker-owned limited liability company that is not listed on any official stock exchange. This requirement must be met during all the years in which the shares or units are held.
- Perform an economic activity with the personal and material means necessary to perform it. In particular, the activity of the company may not be the management of movable or real property assets in the terms established in the Wealth Tax Law, in any of the company's tax periods ended prior to the transfer of the holding.
- The entity's equity cannot exceed €400,000 at the start of the tax period in which the taxpayer acquires the shares or holdings. When the entity forms part of a group of companies as defined in article 42 of the Commercial Code, regardless of residence and of the obligation to file consolidated financial statements, the equity figure will refer to the set of entities belonging to that group.
- The shares or holdings in the entity must be acquired by the taxpayer either at the time of formation of the entity or through a capital increase carried out in the three years following that formation, and the taxpayer must keep them for a period of between three and twelve years.
- The direct or indirect holding of the taxpayer, together with the holdings in the same entity owned by his/her spouse or any person related to the taxpayer by related by direct or collateral consanguinity or affinity up to and including the second degree, cannot be, on any day of the

calendar years of ownership of the holdings, above 40% of the capital stock of the entity or of its voting rights.

- They must not be shares or holdings in an entity through which the same activity is performed as that which was being performed previously under another title.

In addition, it will be necessary to secure a certificate issued by the entity whose shares or holdings have been acquired, attesting to fulfillment of the first three requirements during the tax period in which the shares or holdings were acquired.

## 2.2.10 Reductions in the net tax base to adapt the tax to the personal and family situation of the taxpayer

The law establishes certain reductions for the portion of the net taxable income which is understood to be used to meet the taxpayer's basic and personal needs, which is not subject to taxation:

- a. The taxpayer's personal allowance: €5,550 annually which will be increased by €1,150 annually for persons over 65 years of age and by €1,400 for persons over 75 years of age.
- b. Allowance for descendants: for each unmarried descendant aged under 25, or descendant with disabilities regardless of age, or person under a guardianship or foster care arrangement living with the taxpayer, the taxpayer will be entitled to a reduction of €2,400 for the first, €2,700 for the second, €4,000 for the third and €4,500 for the fourth and subsequent of these. Where the descendant is aged under 3 the foregoing amounts will be increased by €2,800 annually.

The family reductions will not apply if the taxpayers generating entitlement to these reductions file PIT returns obtaining income exceeding €8,000 or an application for a refund.

- c. Allowance for ascendants: €1,150 for each ascendant over 65 years of age or a person with disabilities who lives with

the taxpayer (or dependent boarders) who does not obtain income exceeding €8,000. For ascendants over 75 years of age it is increased by €1,400.

- d. Allowance for disability: (i) Of the taxpayer: In general, €3,000 annually, although it will be €9,000 annually for persons who prove they have a disability equal to or greater than 65% (there will be an increase of €3,000 annually for assistance, if the need for assistance from third parties, or the existence of limited mobility or a disability of at least 65% is proven); (ii) Of ascendants or descendants: for those that confer a right to the above-mentioned allowances, a reduction of €3,000 per person and year, although it will be €9,000 annually for persons who prove they have a disability equal to or greater than 65% and an increase of €3,000 annually for assistance, if the need for assistance of third parties, limited mobility or a disability of at least 65% is proven.

- e. For family units formed by spouses who are not separated and, where relevant, underage children or persons with disabilities, before the application of the personal and family allowances, a reduction will be made of €3,400 which will be applied, first of all, to the regular net tax base (which may not be negative) and subsequently, if there is a surplus, to the savings net tax base. This prior reduction will be €2,150 for single-parent family units, except in cases of living with the father or mother of one of the children that form part of the family unit.

## 2.2.11 Determination of the net taxable income

The **general component of net taxable income** will be the result of applying to the general component of taxable income the reductions for situations of dependence and old age and for contributions to social provision systems, including those established for persons with disabilities, contributions to protected estates of persons with disabilities and reductions for compensatory pensions. The application of the above-mentioned reductions may not generate a negative general net tax base.



Notable among these reductions are those deriving from contributions to employee welfare systems. Thus, making these contributions will reduce the tax base by the lower of the following amounts:

- a. €8,000.
- b. 30% of the sum of net income from work and business activities.

In addition, contributions to pension plans in which the taxpayer's spouse is the participant or member may also qualify for a reduction provided that the spouse does not obtain earned income or income from business activities, or where such income is lower than €8,000 per annum. The maximum reduction limit is €2,500 and the contribution is not subject to IGT.

If the general net tax base is negative, it can be offset with the positive net tax bases of the following four years.

The **savings component of net taxable income** will be the result of deducting from the savings tax base the remainder (not applied to reduce the general tax base), if any, of the reduction for compensatory pensions, but such operation may not lead to a negative savings net tax base.

#### 2.2.12 Determination of the gross tax payable: tax rates

The gross tax payable is calculated by applying the tax rates to the net tax base. Specifically:

- On the one hand, what we could call the "general gross tax payable" is calculated by applying the progressive scale of tax rates to the general net tax base and subtracting from it the result of applying the same scale to the personal and family allowances.
- On the other hand, what we could call the "savings gross tax payable" is calculated by applying the savings scale of tax rates to the savings net tax base.

There is not just one tax scale but rather there is a national scale and an autonomous community scale. Thus, a taxpayer in Madrid, for example, will apply to his or her net tax base both the national scale and the Madrid autonomous community scale.

The taxpayer's place of habitual residence determines the autonomous community in which income is deemed to be obtained for PIT purposes. The law also lays down specific rules to prevent tax-motivated changes of residence.

The tax scales do not vary on the basis of the type of return (joint or separate) chosen by the taxpayer.

For fiscal years 2016 and following years, the total tax scale (national plus autonomous community rates) applicable to the autonomous communities that have not approved a specific autonomous scale is as follows:

TOTAL TAX SCALE			
NET TAXABLE INCOME (UP TO EUROS)	GROSS TAX PAYABLE (EUROS)	REST OF NET TAXABLE INCOME (UP TO EUROS)	TAX RATE APPLICABLE (%)
0.00	0.00	12,450.00	19%
12,450.00	2,365.50	7,750.00	24%
20,200.00	4,225.50	15,000.00	30%
35,200.00	8,725.50	24,800.00	37%
60,000.00	17,901.50	Onwards	45%

Further, the savings component of net taxable income not corresponding to the remainder of the personal and family allowances will be taxed according to a scale of fixed rates. That means that the general national and autonomous community scale for fiscal years 2016 and following years is as follows:

SAVINGS TAXABLE INCOME (EUROS)	APPLICABLE RATE (%)
Up to 6,000	19%
From 6,000 to 50,000	21%
From 50,000 onwards	23%



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The sum of the amounts resulting from applying the national and regional tax rates to the general net tax base and to the savings net tax base as described will determine the national and regional gross tax payable respectively.

## 2.2.13 Net tax payable and final tax payable: Tax credits

The national net tax payable and the autonomous community net tax payable are the result of deducting from the national and autonomous community gross taxes payable (in the relevant percentages) some tax credits, such as (i) the tax credit for investment in newly or recently formed companies; (ii) the tax credit for economic activities; (iii) the tax credits for donations; (iv) the tax credit for income obtained in Ceuta and Melilla, and (v) the tax credit for actions to protect and publicize Spanish historical heritage and that of cities, monuments and assets declared to be world heritage. The autonomous community net tax payable, moreover, will be calculated taking into account the tax credits which may be established by the autonomous community in question exercising its powers.

Of all of them, the tax credit for investment in new or recently formed companies is worth noting above all. This tax benefit permits deducting 30%<sup>28</sup> of the amounts paid for the subscription of shares or holdings in new or recently formed companies where the following requirements are met:

- The entity whose shares or holdings are acquired must: (i) take the form of Corporation, Limited Liability Company, Worker-Owned Corporation or worker-owned Limited Liability Company, and (ii) perform an economic activity with the personal and material means necessary to perform it. Moreover, (iii), the entity's equity figure cannot

exceed €400,000 at the start of the tax period in which the taxpayer acquires the shares or holdings (when the entity forms part of a group of companies as defined in article 42 of the Commercial Code, regardless of residence and of the obligation to file consolidated financial statements, the equity figure will refer to the set of entities belonging to that group).

- The shares or holdings in the entity must be acquired by the taxpayer either at the time of formation of the entity or through a capital increase carried out in the three years following that formation, and the taxpayer must keep them for a period of between three and twelve years.
- The direct or indirect holding of the taxpayer, together with the holdings in the same entity owned by his/her spouse or any person related to the taxpayer by related by direct or collateral consanguinity or affinity up to and including the second degree, cannot be, on any day of the calendar years of ownership of the holdings, above 40% of the capital stock of the entity or of its voting rights.
- They must not be shares or holdings in an entity through which the same activity is performed as that which was being performed previously under another title.

The maximum tax credit base will be €60,000<sup>29</sup> per annum and will be formed by the acquisition value of the shares or holdings subscribed.

Mention should also be made of the deduction introduced with effect as from January 1, 2018 for taxpayers whose other family members reside in another Member State of the EU or EEA, the purpose of which is to bring Spanish legis-

lation into line with EU law and address situations in which a taxpayer is prevented from filing a joint tax return by the fact that other members of the family unit reside outside of Spain. The deduction is applied to make tax payable equal to the amount that the taxpayer would have borne had all the members of the family unit been resident for tax purposes in Spain.

The application of the tax credits cannot lead the (national and autonomous community) net tax payable to be negative.

The final tax payable is the result of deducting from the total net tax payable (autonomous community plus national) the sum of the international double taxation credits, the withholdings, payments on account and split payments and the deductions of the underlying tax in relation to income attributed by international fiscal transparency or due to assignment of image rights.

The final tax payable may be reduced in turn by the maternity tax credit (subject to the limit of €1,200 annually), the deductions for large families or disabled dependent persons (with the limit of €1,200 or €2,400, depending on the case).

## 2.2.14 Withholdings

Payments of income from movable capital, gains on shares or units in collective investment undertakings, salary income, etc. are subject to withholding at source (or prepayment, in the case of compensation in kind) which is treated as a prepayment on account of the final tax.

The base and rate of withholding and prepayment for the main types of income are detailed in the table below:

<sup>28</sup> For years commencing before January 1, 2018, the tax credit percentage was 20%.

<sup>29</sup> For years commencing before January 1, 2018, the maximum tax credit base was €50,000.



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INCOME		BASE	RATE APPLICABLE IN 2016 ONWARDS
<b>Salary income</b>	General. (*)		See paragraph below table.
	Contracts of less than a year.	Total compensation paid or satisfied.	See paragraph below table (minimum 2%).
	Special dependent employment relationships.		Minimum 18%.
	Board members.		35%. (****)
	Courses, conferences and licenses on literary, artistic or scientific works.		15%.
<b>Income from movable capital (**)</b>	General. (***)	Gross consideration claimable or paid.	19%.
<b>Professional activities</b>	General.	Amount of income or consideration obtained.	15%.
	Start of fiscal year + following 2 years.		7%.
	Certain professional activities (municipal collectors, insurance brokers, etc.).		7%.
	If the volume of gross income of the immediately preceding year is < €15,000 and entails more than 75% of the sum of gross income from economic activities and salary income obtained by the taxpayer.		Eliminated.
<b>Capital gains (**)</b>	Transfers or redemption of shares and holdings in collective investment undertakings. (****)	Amount to be included in the tax base calculated according to personal income tax legislation.	19%.
	Cash prizes.	Amount of prizes.	19%.
<b>Other income (**)</b>	Lease/sublease of urban real estate.	Amount of income and rest of items paid to the lessor or sublessor (minus VAT).	19%.
	Income derived from intellectual property, industrial property, from the provision of technical assistance and from the lease or sublease of movable assets and businesses.	Gross income paid.	19%. (*****)
	Authorization to use image rights.	Gross income paid.	24%.

- \* The withholding rate is reduced by two percentage points (without it being able to be negative), for the salary income of taxpayers who have notified the payer of their salary that a portion thereof is used to acquire or refurbish their principal residence for which they use external financing and in respect of which they will be entitled to the tax credit for investment in the principal residence, provided that the total amount of their expected annual income is less than €33,007.20.
- \*\* The establishment of a flat withholding tax/tax prepayment rate of 19% in these cases means that the tax difference between 19% and 21% (in the case of net tax bases exceeding €6,000) must be paid over when filing the relevant tax self-assessment.
- \*\*\* The amount of the tax prepayment to be made in respect of compensation in kind is calculated by applying the withholding rate to the result of increasing the acquisition value or the cost for the payer by 20%.
- \*\*\*\* In general, the withholding obligation will not exist if the transferor decides to reinvest the proceeds obtained on the transfer, acquisition or subscription of other shares or units in collective investment undertakings (deferral regime envisaged in article 94 of Law 35/2006).
- \*\*\*\*\* Directors and board members (of entities whose net revenues from the last tax period that ended prior to the payment of income were < €100,000) will be subject to a withholding rate of 19%.
- \*\*\*\*\* With effect as from January 1, 2019, a 15% withholding tax rate is applicable to revenues from intellectual property, when the taxpayer is not the author.

In order to calculate the withholdings applicable to salary income, the procedure (explained simply) consists of taking the total gross salary income and reducing it by certain deductible expenses and reductions to determine the net salary income. The withholding tax scale (aggregation of the national and the autonomous community scales) is then applied to the result of the calculation. The same process must be followed with the personal and family allowances, to which the withholding scale is also to be applied separately. The difference between the two operations gives rise to the withholdings payable. The withholding rate applicable is then determined by dividing the withholdings by the total salary income. In short, the calculation of the withholding tax rate is very similar to the calculation of the definitive tax rate, albeit with certain special features, indicating that the legislature's intention was to bring them closer together.



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## 2.2.15 Formal obligations

The tax period coincides with the calendar year. However, if the taxpayer becomes deceased on any date other than December 31, the tax period will be shorter than the calendar year.

Likewise, the tax becomes chargeable on December 31 of each year, unless the taxpayer becomes deceased on another day, in which case the tax becomes chargeable on the date of death.

Taxpayers who are required to file a PIT return (Form 100) must, when filing their returns, calculate the tax payable and pay it over in the place and manner and by the deadlines determined by the Ministry of Finance. The deadline is usually June 30.

Taxpayers who are married and not legally separated, and who are obliged to file a PIT return under which tax is payable, may request the suspension of their tax debt in an amount equal to or less than the refund to which their spouse is entitled for the same tax and in the same tax period.

## 2.3 NONRESIDENT INCOME TAX

Nonresident income tax is currently governed by the Revised Nonresident Income Tax Law, approved by Legislative Royal Decree 5/2004, of March 5, and the Nonresident Income Tax Regulations approved by Royal Decree 1776/2004, as well as by the amendments included in Law 26/2014, all of which establish the tax regime applicable to nonresident individuals or entities that obtain Spanish-source income.

As a special aspect, the Revised Nonresident Income Tax Law establishes that nonresident individuals who prove that they are habitually resident in another EU country or in a Member State of the EEA with which there is effective tax information exchange, and that they have obtained in Spain salary income and income from business activities that entails at least 75%

of their worldwide income, or that have obtained in Spain income below 90% of the personal and family allowances that would have applied to them if they had been tax resident in Spain, and the income obtained outside Spain has also been below that allowance, may opt to be taxed as resident individuals (PIT).

The key factor in determining the tax regime for nonresidents is whether or not they have a permanent establishment in Spain.

### 2.3.1 Income obtained through a permanent establishment

Nonresident individuals or entities that obtain income through a permanent establishment located in Spain will be taxed on the total income attributable to said establishment, regardless of the place where it was obtained or produced.

The concept of permanent establishment in Spanish law is in line with the OECD Model Tax Convention. In the case of a foreign entity or individual resident in a country with which Spain has a tax treaty, the treaty provisions and, specifically, the exceptions to the definition of permanent establishment, will determine whether there is a permanent establishment in Spain.

One fundamental characteristic of permanent establishments is the lack of legal personality separate from that of the parent. In other words, there are not two economic beings with separate legal personality—as is the case of a parent and a subsidiary—but rather one subject with a single legal personality that operates through different facilities, centers, offices, etc., one or more of which are located in Spain.

According to Spanish legislation—applicable where there is not a tax treaty, otherwise that treaty would apply—a permanent establishment in Spain exists where the nonresident entity:

- a. Uses in Spain, under any legal arrangement, on a continuous or habitual basis, any kind of facilities or work places where it performs all or part of its activity.

- b. Acts in Spain through an agent that has and habitually exercises an authority to conclude contracts in the name and for the account of the taxpayer.

In particular, the following are deemed to constitute a permanent establishment:

- a. A place of management, branch, office, factory, warehouse, shop or other establishment.
- b. A mine, oil or gas well, quarry.
- c. Farming, forestry or fishing operations or any other place of extraction of natural resources.
- d. Construction, installation or assembly works lasting more than six months.

In general terms, permanent establishments in Spain are taxed on their net income at the same rate as Spanish companies (in general, at 25%). Nonresident entities or individuals operating through a permanent establishment in Spain are required to withhold taxes or make tax prepayments on the same terms as resident individuals or entities (i.e. on salary income paid, income from movable capital satisfied, etc.).

However, if it is considered that the entity does not have a permanent establishment in Spain, it will be taxed on its income obtained in Spain pursuant to the regime for income obtained other than through a permanent establishment ([See section 2.3.2 of this chapter for more detailed information](#)).

There is a 19% tax (branch profit tax) on the remitted profits of nonresidents doing business through a permanent establishment in Spain. However, this tax is not chargeable according to the provisions of most of the tax treaties.

In addition, this tax is not chargeable on (i) the income obtained in Spain by entities that are tax resident in another EU Member State (unless it resides in a tax haven) or (ii) the income obtained in Spain through permanent establishments



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by entities resident for tax purposes in a State that has signed a tax treaty with Spain which does not expressly provide otherwise, provided that there is reciprocal treatment.

This tax will therefore be additional to that already borne by the permanent establishment on its income (25% on revenues net of expenses).

Nonresidents who operate in Spain through a permanent establishment are generally required to keep accounting records here, in accordance with the rules and procedures established for Spanish companies.

The taxation of the income of permanent establishments envisages three different situations, as follows:

- As a general rule, taxable income is determined in accordance with the same regulations as are applicable to Spanish-resident companies and, accordingly, the tax rate of 25% is applicable to net income. Allocated parent company general and administrative overhead expenses are deductible under certain conditions. The permanent establishment's tax year will be the calendar year unless stated otherwise.

The tax period is also deemed to have ended in the event of the discontinuation of a permanent establishment's business activities, withdrawal of the investment initially made in the permanent establishment, or the change of residence of the head office.

The permanent establishment may also take the tax credits and relief that might be applicable, in general, for Spanish resident companies.

- In the case of permanent establishments engaging in installation or erection projects with a duration of over 6 months, for those with seasonal or sporadic activity, or for those engaged in the exploration of natural resources, the tax base is determined in accordance with the rules applicable to nonresidents obtaining income in Spain not

through a permanent establishment. Such rules also apply in determining the tax return filing and tax accrual obligations of the permanent establishment, which is not obliged to keep books of account (but only documentary support of its transactions).

However, these nonresidents who operate through a permanent establishment in Spain may also choose to be taxed under the general rules, but such option may only be taken if separate accounts are kept in Spain. This choice must be made at the date of registration in the entities' index.

- If the permanent establishment does not complete a business cycle in Spain which leads to income in Spain, and the business cycle is completed by the parent company (or the nonresident individual who operates in Spain through a permanent establishment) or by other permanent establishments, the tax liability is determined by applying the general taxation rules, whereby revenues and expenses are valued at market prices.

However, the tax base will secondarily be determined by applying the percentage established by the Ministry of Finance for this purpose to the total expenses incurred, and by adding any "passive" (unearned) income not obtained in the normal course of business (interest, royalties, etc.) and any other capital gains arising from the assets assigned to the permanent establishment. This percentage has been set at 15%.

The gross tax payable in this case is determined by applying the standard tax rate, but the tax credits and tax relief provided by the standard CIT system may not be taken.

The tax period and tax return filing (Form 200) deadlines are those envisaged in the standard tax rules.

- Lastly, there is an obligation to include in the tax base the difference between the normal market value and the book value of assets assigned to a permanent establishment

that ceases its activity or which are transferred abroad.

The payment of the tax debt resulting in the case of assets transferred to a Member State of the EU or of the EEA with which there is an effective tax information exchange will be deferred by the tax authorities at the taxpayer's request until the assets in question are transferred to third parties, and the provisions of the General Taxation Law 58/2003, of December 17, and its implementing legislation shall apply with regard to the charge of late-payment interest and the provision of guarantees for that deferral.

### 2.3.2 Income obtained other than through a permanent establishment

Nonresident entities or individuals that obtain income in Spain other than through a permanent establishment will be taxed separately on each total or partial accrual of Spanish-source income.

Spanish-source income obtained other than through a permanent establishment, as defined by the Nonresident Income Tax Law, consists mainly of the following items:

- Earnings derived from economic activities pursued in Spain.
- Earnings derived from the rendering of services where such services (*i.e.* studies, projects, technical assistance or management support services) are used in Spanish territory.
- Salary income, which is directly or indirectly derived from work performed in Spain.
- Interest, royalties and other income from movable capital paid by persons or entities resident in Spanish territory or by permanent establishments in such territory.
- Income from marketable securities issued by companies resident in Spain.



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- Income from real estate located in Spain or from certain rights relating to that real estate.
- Capital gains on the sale of assets located in Spain and on the sale of securities issued by residents.

However, certain types of income originated in Spain are not taxable in Spain, most notably the following:

- Income paid for international sales of goods.
- Income paid to nonresident persons or entities relating to permanent establishments located abroad, with a charge to such establishments, if the consideration paid is related to the activity of the permanent establishment abroad.

On the other hand, the following will be exempt:

- Interest and earnings derived from the transfer of equity to a third party, as well as capital gains on movable assets owned by residents of other European Union Member States (except tax havens) obtained other than through a permanent establishment, by EU residents or by permanent establishments of those residents located in another Member State of the EU. However, capital gains on holdings in entities whose assets consist principally of real estate in Spain, or in which the seller has had, directly or indirectly, at least a 25% interest at some time during the twelve months preceding the sale, are taxable (this latter requirement only applies to individuals), or where the transfer does not meet the requirements to apply the exemption to avoid double taxation (domestic and international) established in CIT legislation.
- Gains on transfers of securities or redemptions of participation units in mutual funds on official secondary securities markets in Spain obtained by nonresident individuals or entities without a permanent establishment in Spain that are resident in a State with which Spain has signed a tax treaty and with which there is effective exchange of

tax information. The exemption does not apply when the nonresident entity resides in a country or territory classed as a tax haven.

- Yields derived from Spanish Government debt securities accruing to nonresident entities obtained not through a permanent establishment in Spain, unless they are routed through tax havens.
- Income derived from “nonresident accounts” paid by banks or other financial institutions to nonresident entities or individuals (unless payment is made to a permanent establishment in Spain of such entities) as well as that obtained not through a permanent establishment located in Spain and derived from the rental or assignment of containers or bare-boat charters and aircraft dry leases.
- Dividends from a Spanish subsidiary to its parent company resident in the EU or in a Member State of the EEA, provided that certain requirements are met (among others, 5% holding owned for one year, or an acquisition value of the holding above €20 million).

This rule is not applicable if the parent company is located in a tax haven, or when a majority of the voting rights of the parent company is held directly or indirectly by an individual or legal entity not resident in the EU or in a Member State of the EEA with which there is effective exchange of tax information, on the terms established in subarticle 4 of additional provision one of Law 36/2006, of November 29, 2006, on tax fraud prevention measures, unless the formation and operation of the parent is based on valid economic grounds and substantive business reasons.

- Royalties paid by a Spanish resident company (or by a permanent establishment in Spain of a company resident in another Member State of the EU or of the EEA) to a company resident in another European Union Member State (or to a permanent establishment of an European Union resident company in another Member State), where certain requirements are met.

In 1991 the Spanish tax authorities identified 48 territories classified as tax havens. These include such “traditional” havens as the Bahamas, Liechtenstein, Monaco, Gibraltar, etc. The Royal Decree which approved such list is still in force ([See regulations on tax havens in the CIT Law](#)).

Spanish law generally sets tax rates lower than the standard rate for residents for income accruing to nonresidents that do not have a permanent establishment in Spain. The tax is normally levied on the gross income, except for income for services rendered, technical assistance and installation and erection projects, in which case the tax is levied on the difference between the gross income and the payroll, material procurement and supplies expenses as defined in the relevant regulations.

Capital gains are generally calculated on the basis of the difference between acquisition cost and sale price, to which the same rules as those established for resident individuals are generally applicable (this law refers to PIT legislation regarding the determination of the tax base for capital gains).

Moreover, purchasers of property located in Spain from nonresidents that do not have a permanent establishment in Spain must deduct withholding tax at 3% from the purchase price on account of the vendor’s capital gains tax liability.

If the transferred property was acquired by the transferor more than two years prior to December 31, 1996, for withholding tax purposes it should be considered the application of the abatement coefficients described in the section on PIT, with the new limits discussed therein.

There are also certain exceptions to this obligation to make a withholding, such as cases in which the property is transferred as a non-monetary contribution for the formation of, or capital increase at, a company resident in Spain.



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The tax rates are as follows:

TYPE OF INCOME	RATE (%) APPLICABLE FROM 2016 ONWARDS
<b>General.</b>	24 (*)
<ul style="list-style-type: none"><li>• Dividends.</li><li>• Interest.</li><li>• Income derived from the transfer or redemption of securities representing the capital or equity of collective investment undertakings.</li></ul>	19
<b>Special cases:</b>	
<ul style="list-style-type: none"><li>• Income from reinsurance transactions.</li><li>• Income from maritime or air navigation entities.</li></ul>	1.5
<ul style="list-style-type: none"><li>• Capital gains.</li></ul>	4
<ul style="list-style-type: none"><li>• Foreign seasonal workers.</li></ul>	19
	2

\* The rate is 19% for taxpayers resident in another Member State of the EU or of the EEA with which there is effective exchange of tax information.

The tax rates applicable to retirement pensions obtained by a nonresident individual will vary between 8% for amounts of up to €12,000, 30% for the following €6,700 and 40% for amounts in excess of €18,700.

Royalty payments to entities or permanent establishments residing in the EU are subject to a 0% rate since July 1, 2011.

In the case of nonresidents without a permanent establishment in Spain there is no possibility of offsetting losses against future profits or capital gains. Moreover, a nonresident without a permanent establishment can only deduct from the tax payable the amount of the taxes withheld from its income and the amounts corresponding to gifts and allowances as described in the PIT Law for resident individuals.

Liability for nonresident income tax arises whenever Spanish-source income becomes claimable by the nonresident enti-

ty or is paid, whichever is earlier; as for capital gains, liability arises when they are generated and in the case of income attributed to urban real estate, on December 31.

In general, a separate tax return (Form 210, Nonresident Income Tax. Nonresidents without a permanent establishment. Ordinary return) and supporting documentation must be filed within one month from the above date.

At the request of the taxpayer, the tax authorities can place at its disposal, merely for information purposes, draft tax returns (notwithstanding the taxpayer's obligation to file the return and pay the tax debt), exclusively in relation to the real estate income attributed deriving from urban property located in Spain and not used in economic activities, with the limits and conditions established by the Ministry of Finance.

A draft return will be generated for each property that gives rise to the attribution of real estate income.

The law also establishes a general obligation of making withholdings and prepayments on account of the income paid to nonresidents by entities, professionals and traders who are resident in Spain. Some exceptions to this general rule are envisaged in the law and the regulations.

In cases where there is a withholding obligation, the tax return filed by the withholding agent releases the taxpayer from the obligation to file the return, and vice versa.

In most cases the above-mentioned tax returns can be filed monthly or quarterly grouping together different types of income obtained during the preceding period.

### 2.3.3 Tax regime for nonresident employees assigned to Spain (inbound expatriates)

Spanish PIT legislation contains a very attractive regime for personnel assigned to Spain due to labor reasons by multinational companies, since it allows individuals who become tax resident in Spain as a result of their assignment to Spain to opt to be taxed either under PIT rules or under nonresident income tax rules during the tax period in which their tax residence changes and for the next five tax periods. Under the nonresident income tax rules option, they are only taxed on the income and/or gains that are deemed to have been obtained in Spain, at a fixed rate (which is increased for income of above €600,000).

The requirements necessary to apply this regime are as follows:

- The inbound expatriate must not have been resident in Spain during the 10 tax periods preceding his or her assignment to Spain.
- The assignment to Spain must be the result of an employment contract.



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- The individual must not obtain income that would be classified as obtained through a permanent establishment in Spain.

This regime does not apply to professional athletes; but it does apply for the first time (as from 2015) to persons who acquire the status of director of an entity in which they do not own holdings (or in which they own holdings but to which they are not related).

The tax debt will be determined according to the provisions of the Revised Nonresident Income Tax Law for the income obtained other than through a permanent establishment with various particularities:

- The exemptions established in nonresident income tax legislation will not apply.
- All of the taxpayer's salary income will be deemed obtained in Spain.
- The income items obtained in the calendar year will be taxed on a cumulative basis, without the possibility of offsetting them against each other.
- Dividends, interest and capital gains derived from the transfer of assets will be taxed separately from the rest of income, according to the scale specified previously for savings income: 19%, 21% and 23%.
- The rest of income will be taxed according to the following scale:

NET TAXABLE INCOME	RATE 2016 ONWARDS
Up to €600,000	24%
From €600,000 onwards	45%

- The withholding rate on salary income will be 24%. However, where the income paid by the same payer during the calendar year exceeds €600,000, the withholding rate applicable to the excess will be 45% (47% in 2015).

In order to exercise the option to be taxed under this regime, it is necessary to notify the tax authorities within six months following the date of commencement of the employment that is stated in the notice informing the social security authorities that the employee was hired.

The regime described will apply as from 2015 and entails important changes with respect to that which existed up to 2014. For that reason, it was stipulated that taxpayers transferred to Spain prior to January 1, 2015 could elect to apply the regime in force as of December 31, 2014, by notifying the tax authorities.

Lastly, it should be underlined that personal income taxpayers that elect to apply this special regime can request a tax residence certificate in Spain (although this is not the residence certificate required for the purposes of the corresponding double tax treaties subscribed by Spain).

### 2.3.4 Capital gains due to a change of residence ("exit tax")

The recent reform has entailed the introduction of a new regime whereby, for PIT payers who lose taxpayer status due to a change of residence, positive differences between the market value of shares held by the taxpayer in any type of entity and their acquisition value will be deemed capital gains (in the savings base), provided the taxpayer has had taxpayer status for at least 10 of the 15 tax periods prior to the latest tax period for which PIT must be declared and any of the following circumstances concur:

- The market value of the shares must exceed a total of €4,000,000 for all the shares considered as a whole.
- Otherwise, on the accrual date of the latest tax period for which PIT must be declared, the stake in the entity must exceed 25%, provided that the market value of the shares in

that entity exceeds €1 million. In this case, this scheme will only apply to the shares held in these entities.

In the case of taxpayers that have opted to apply the special tax scheme for workers relocated to Spain (for more information, see [section 2.3.3](#) above), the 10 tax periods referred to above will begin as from the first tax period in which the special scheme is not applicable.

Capital gains will be allocated to the final tax period for which PIT must be declared; if applicable, a supplementary tax return must be filed, without any default interest or penalty.

The capital gain will be calculated using the market value of the shares which, (i) in the case of listed shares will be their listed price; and (ii) in the case of unlisted shares will be the higher of the equity value in the latest balance sheet closed prior to the accrual date and the result of capitalizing at 20% the average results for the three financial years closed prior to the accrual date (including in the calculation dividends paid out and amounts apportioned to reserves, barring regularization or fixed asset restatement reserves). Additionally, (iii) shares in collective investment institutions will be valued at their cash value on the accrual date of the latest period for which PIT must be declared or, failing this, at the latest cash value published (in the absence of this value, at the equity value in the balance sheet for the latest financial year closed prior to the accrual date, barring evidence of a different market value).

Certain special rules are provided for cases in which (i) the change of residence is the consequence of a temporary work posting to a country or territory that is not classed as a tax haven or for any reason provided that, in this case, the worker is posted temporarily to a country or territory with which Spain has concluded an international double taxation treaty containing an information exchange clause (in this case, payment of the liability may be deferred for a maximum period, which may be extended); or (ii) residence is changed to a different EU Member State or a country within the EEA with which there is effective exchange of tax information (in such cases, the company may opt to self-assess the gain only in certain circumstances).



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This regime will also be applicable when residence changes to a country or territory classed as a tax haven and the taxpayer does not lose resident status in accordance with the residence rules stipulated in the PIT law.

### 2.3.5 Tax treaties<sup>30</sup>

Tax treaties may reduce, or even completely eliminate, the taxation in Spain on the income earned by entities which do not have a permanent establishment here.

Companies without a permanent establishment in Spain which are resident in countries with which Spain has a tax treaty are generally not taxed in Spain on their business income earned here, nor for capital gains (other than on real estate).

However, capital gains on the sale of shares of companies can be taxed in Spain under the special clauses of certain treaties (including most notably shares of real estate companies, transfers of shares when a substantial interest is held, etc.).

Certain other types of income (royalties, interest or dividends) are taxed at reduced treaty rates in force.

Currently, there are various treaties which are at different stages of negotiation or coming into force. Among them, the treaties with Azerbaijan, Bahrain, Belarus, Cape Verde, China, Japan, Montenegro, Namibia, Peru, Rumania, Syria and Ukraine. Additionally, certain treaties are currently being renegotiated.

- Tax sparing arrangements

Due to the existence under Spanish regulations of relief from the tax on certain types of income (mainly interest income), the tax sparing arrangements contained in many of Spain's tax treaties are relevant.

Under these arrangements the lender resident in one State can deduct in that State not only the tax effectively with-

held from the interest in the other State but also the tax that would have been payable had relief not been provided.

### 2.3.6 Tax on property in Spain of nonresident companies

Companies resident in a country or territory classed as a tax haven that own real estate in Spain are subject to an annual tax of 3% on the cadastral value of the property at December 31 each year.

This tax does not apply to:

- International bodies and foreign States and public institutions.
- Companies that pursue in Spain, on a continuous or habitual basis, economic activities other than the simple holding or lease of real estate.
- Companies that are listed on official secondary securities markets.

### 2.3.7 Tax representative

Nonresident taxpayers are, in certain cases, obliged to appoint a representative in Spain (individual or entity resident in Spain). Specifically, this obligation applies to:

- i. Those operating in Spain through a permanent establishment.
- ii. Those performing economic activities in Spain other than through a permanent establishment and which permit the deduction of certain expenses.
- iii. Those which are entities subject to the pass-through regime formed abroad and which carry on business activities in Spain, where all or a portion of those activities are carried

on by them, continuously or habitually, through installations or workplaces of any kind, or which act in Spain through an agent authorized to conclude contracts in the name and for the account of the entity.

- iv. Those which are specifically required to do so by the tax authorities because of the nature or the amount of income obtained.
- v. Those which are persons and entities resident in countries or territories with which there is no effective exchange of information, that there are owners of property situated or rights which are fulfilled or exercised in Spain (except for securities listed on organized secondary markets).

The appointment of a representative must be done before the end of the period for reporting income obtained in Spain. The appointment must be notified to the authorities within two months. Failure to appoint a representative or to notify the authorities can lead to a fine of €2,000 (€6,000 for those taxpayers residing in countries or territories with which there is no effective exchange of information).

The tax representatives (if residents) of permanent establishments are deemed to be the persons registered as their representatives in the Commercial Register, or the persons empowered to contract on their behalf.

Persons who, pursuant to the Revised Nonresident Income Tax Law, are:

- a. Tax representatives of permanent establishments of nonresident taxpayers.
- b. Tax representatives of pass-through entities.

Shall be jointly and severally liable for paying over the tax debts corresponding to such establishments or entities.

<sup>30</sup> For more detailed information, visit web page [www.aeat.es](http://www.aeat.es), section *Fiscalidad internacional*.



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The payer of income accrued other than through a permanent establishment by nonresident taxpayers, or the depositary or manager of the assets or rights of nonresident taxpayers not used by a permanent establishment, will also be jointly and severally liable for the payment of tax debts relating to income paid by him or to income and/or gains from assets or rights whose safekeeping or management has been entrusted to him.

This liability will not exist where the payer or manager is subject to the obligation to withhold and prepay tax (since they already have such specific obligation and the responsibility that from it could eventually derive).

## 2.4 WEALTH TAX

Spanish resident individuals are subject to Wealth Tax on their total assets (located worldwide) at December 31 of each year, valued according to tax provisions. Nonresidents are taxed only on the assets located or the rights exercisable in Spain. However, some tax treaties can affect the application of this provision.

The law establishes an exemption from Wealth Tax for some assets, for example, those forming part of Spanish Historical Heritage; household furnishings, works of art and antiques, provided that their value does not exceed certain limits established by the legislation; vested rights of participants in pension plans and rights with economic content relating to similar social welfare systems; the work of an artist while it forms part of the artist's assets; assets or rights necessary for the direct, personal and habitual performance of a business or professional activity which constitutes the taxpayer's main source of income; and some holdings in the capital of certain entities (mainly family businesses). The taxpayer's principal residence is also exempt, up to a maximum amount of €300,000.

The law establishes different methods for valuing each type of asset.

With regard to the scale of rates established for this tax, in the absence of regulation by the autonomous community in question, the following tax rates will apply:

NET TAXABLE INCOME (UP TO EUROS)	TAX PAYABLE (EUROS)	REST OF NET TAXABLE INCOME (UP TO EUROS)	TAX RATE APPLICABLE (%)
<b>0.00</b>	0.00	167,129.45	0.2
<b>167,129.45</b>	334.26	167,123.43	0.3
<b>334,252.88</b>	835.63	334,246.87	0.5
<b>668,499.75</b>	2,506.86	668,499.76	0.9
<b>1,336,999.51</b>	8,523.36	1,336,999.50	1.3
<b>2,673,999.01</b>	25,904.35	2,673,999.02	1.7
<b>5,347,998.03</b>	71,362.33	5,347,998.03	2.1
<b>10,695,996.06</b>	183,670.29	onwards	2.5

These rates apply to residents on their worldwide assets, and to nonresidents on their assets or rights located or exercisable in Spain.

Moreover, in the absence of autonomous community regulations, the maximum exemption is €700,000.

The gross wealth tax payable, together with the PIT payable on the general component and the savings component of income, may not exceed, for resident taxpayers, 60% of their total taxable income subject to PIT. For this purpose, the following will not be taken into account: (i) the portion of savings income derived from capital gains and losses relating to the positive balance of gains obtained on transfers of assets acquired more than one year before transfer date, or the portion of gross personal income tax payable on that part of savings income, and (ii) the portion of wealth tax relating to assets which, because of their nature or use, are not capable of producing income taxed under the PIT Law.

If the sum of both taxes payable were to exceed the aforemen-

tioned limit, the wealth tax payable would be reduced to that limit, without that reduction exceeding 80%.

It is important to bear in mind that some autonomous communities have modified the exempt amounts while in others the tax is not payable (as in the Madrid autonomous community) because a 100% reduction applies.

However, there will be an obligation to file a tax return even if the tax payable is not positive, where the value of the assets or rights exceeds €2,000,000.

Due to the adaptation of the judgment of the Court of Justice of the European Union ("CJEU"), of 3 September 2014 (case C-127/12), the provision has been amended to establish that nonresident taxpayers, that are resident in a Member State of the EU or of the EEA, shall be entitled to apply the legislation approved by the autonomous community where the greatest value of their assets and rights are located and for which the tax is claimed, because they are located, can be exercised or must be fulfilled in Spain.



## 2.5 INHERITANCE AND GIFT TAX

Inheritance and Gift Tax applies to Spanish resident heirs, beneficiaries and donees and is charged on all assets received (located in Spain or abroad). Nonresident beneficiaries are also subject to this tax as nonresident taxpayers, and must pay the tax in Spain only on the acquisition of assets and rights (whatever their nature), that are located, exercisable or to be fulfilled in Spain.

The tax base is formed by the net value of the assets and rights acquired. However, a series of reductions to the tax base are established, which include, most notably, the following:

- Reduction of 95% of the tax base deriving from a transmission *mortis causa* to spouses, children or adopted children or, in their absence, ascendants, foster parents or collateral relatives up to the third degree of a professional business, an individual enterprise, or interests in entities or usufructs on them of the donor or deceased which were exempt from wealth tax. The requirements are as follows:
  - The beneficiary of a transmission *mortis causa* must keep the assets received for at least 10 years.
  - The beneficiary cannot carry out transactions that result in a substantial diminution in the value of the assets.
- Reduction of 95% of the tax base for *inter vivos* transfers of interests in an individual enterprise, professional business or in entities belonging to the donor which are exempt from wealth tax (or which meet the requirements for such exemption) to spouses, descendants or adopted children provided moreover that (i) the donor is at least 65 years old or has a permanent disability, and (ii) if the donor had been discharging management duties, he/she must discontinue them and stop receiving remuneration in that connection.

The tax is calculated by adjusting a tax scale of progressive rates (depending on the value of the estate or gift) with a

coefficient that takes into account the previous net worth and the degree of kinship with the donor.

As with other taxes devolved to the autonomous community governments, inheritance and gift tax legislation has been adapted to recognize the legislative power of those governments to approve reductions in the tax base and rates and in the coefficients for adjusting the tax payable, based on the taxpayer's previous net worth. However, Law 22/2009, of

December 18, establishes the reductions, rates and coefficients to be applied if the autonomous community in question has not assumed the powers devolved, or where it has not yet made any regulations, in that connection.

The tax rates and adjustment coefficients applicable for 2020 (in the absence of rates and coefficients specifically approved by the relevant autonomous community) are the following:

TAX BASE (UP TO EUROS)	TAX PAYABLE (EUROS)	REMAINING TAX BASE (UP TO EUROS)	APPLICABLE RATE (%)
0.00		7,993.46	7.65
7,993.46	611.50	7,987.45	8.50
15,980.91	1,290.43	7,987.45	9.35
23,968.36	2,037.26	7,987.45	10.20
31,955.81	2,851.98	7,987.45	11.05
39,943.26	3,734.59	7,987.46	11.90
47,930.72	4,685.10	7,987.45	12.75
55,918.17	5,703.50	7,987.45	13.60
63,905.62	6,789.79	7,987.45	14.45
71,893.07	7,943.98	7,987.45	15.30
79,880.52	9,166.06	39,877.15	16.15
119,757.67	15,606.22	39,877.16	18.70
159,634.83	23,063.25	79,754.30	21.25
239,389.13	40,011.04	159,388.41	25.50
398,777.54	80,655.08	398,777.54	29.75
797,555.08	199,291.40	Upwards	34.00



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Some autonomous communities, however, have established reductions which result in a tax payable of zero (or close to zero). This applies to inheritances and/or gifts, depending on the autonomous community, in the case of “close” heirs or donees (children, grandchildren, spouses, ascendants).

With regard to the place where the tax must be settled, a distinction must be made, in general, between transmissions *mortis causa* and *inter vivos*:

- Transmissions *mortis causa*: As a general rule, in the autonomous community in which the deceased was habitually resident.
- Transfers *inter vivos*: As a general rule, in the autonomous community where the acquirer is habitually resident, except in the case of real estate for which the place will be the autonomous community where the property is located.

These general location rules were applicable until recently to taxpayers resident in Spain; non-residents had to be taxed under State legislation in any event (which on many occasions caused discrimination because, as indicated, some autonomous communities have implemented significant rebates). Following the CJEU'S judgment of 3 September 2014 (Case C-127/12), specific connection points have been established for taxpayers resident in the EU or in the EEA.

Accordingly:

- When a **deceased person** has been a resident in an EU Member State or in a country in the EEA, other than Spain, taxpayers will be entitled to apply the regulations approved by the autonomous community in which the **largest portion of the value of the assets and rights forming the deceased's estate is located in Spain**. If there are no assets or rights located in Spain, each taxpayer will be subject to the regulations of the autonomous community in which the taxpayer resides.
- When the **deceased** has been a resident in an **autonomous community** and the taxpayers are not residents but reside

in a country of the EU or EEA, the taxpayers will be entitled to apply the regulations approved by that autonomous community.

- In the event of the acquisition of **real property located in Spain** by donation or any other legal business for no consideration *inter vivos*, non-resident taxpayers who are resident in a country of the EU or EEA will be entitled to apply the legislation approved in the autonomous community in which the real property is located.
- In the event of the acquisition of **real property located in a Member State of the EU or in a country of the EEA**, other than Spain, by donation or any other legal business for no consideration *inter vivos*, taxpayers resident in Spain will be entitled to apply the legislation approved in the autonomous community in which they reside.
- In the event of the acquisition of **moveable property located in Spain** by donation or any other legal business for no consideration *inter vivos*, non-resident taxpayers who are resident in a country of the EU or EEA will be entitled to apply the legislation approved in the autonomous community in which the moveable property has been located for the highest number of days during the immediately previous five-year period, counted from date to date, ending on the day prior to the accrual of the tax.

In 2018, the Supreme Court handed down various judgments (whose criteria have already been reiterated by the Directorate-General of Taxes and is being applied by the State Tax Agency), extending the effects of the rules to inheritances and gifts in which the subjective elements (decedent, donor, heirs, legatees and donees) or objective elements (assets and rights) are or reside outside the EU or the EEA.

Specific rules are provided to calculate tax payable in the case of donations in which, in a single document, the same donor donates different assets or rights to the same donee and the regulations of different autonomous communities are applicable in accordance with the rules explained above.

## 2.6 SPANISH VALUE ADDED TAX

The European Union VAT Directives have been implemented in Spanish law (Law 37/1992, in force since January 1, 1993), and the main provisions of these Directives are harmonized in the different Member States of the EU.

VAT is an indirect tax, the main feature of which is that it does not normally entail any cost for traders or professionals, only for the end consumer, because traders or professionals are generally entitled to offset their input VAT against their output VAT.

Within Spain, VAT is not applicable in the Canary Islands, Ceuta and Melilla.

In the Canary Islands, the Canary General Indirect Tax (*IGIC*), in force since January 1, 1993, is very similar to VAT and is an indirect tax levied on the supply of goods and services in the Canary Islands by traders and professionals and on imports of goods. The general *IGIC* rate is 7%.

Ceuta and Melilla charge a different indirect tax of their own (tax on production, services and imports).

### 2.6.1 Taxable transactions

The following transactions are subject to VAT when they are carried out by traders and professionals in the course of their business:

- Supplies of goods, generally defined as the transfer of the right to dispose of tangible property, although certain transactions not involving a transfer of this kind may also be treated as supplies of goods for the purposes of VAT.
- Intra-Community acquisitions of goods (generally, acquisitions of goods dispatched or transported to Spanish VAT territory from another Member State).
- Imports of goods: These transactions are subject to VAT regardless of who performs them.
- Supplies of services.



### 2.6.2 VAT rates and exemptions

VAT rates are as follows:

The standard rate is 21%, applicable to most supplies of goods and services.

However, there is a reduced rate of 10% applicable to supplies, intra-Community acquisitions and imports of the following, among others:

- Foodstuffs intended for humans or animals, not including alcoholic beverages.
- Water.
- Housing.
- Certain pharmaceutical specialties.

This reduced rate also applies to the following services, among others:

- Transportation of passengers and their luggage.
- Entry to libraries.

There is also a very reduced rate of 4% applicable to:

- Bread, flour, milk, cheese, eggs, fruit and vegetables.
- Books, newspapers and magazines that are not mainly composed of advertising.
- Medicine for human use cars for persons with disabilities.
- Prostheses for persons with disabilities.
- Certain subsidized housing.

Certain transactions are exempt from VAT (for example, financial and insurance transactions, medical services, educational

services, rental of housing). Since the trader or professional performing these activities does not charge VAT on such activities, they do not give the right to deduct input VAT, as described further on in this report, although there are other exempt transactions (mainly those relating to international trade, such as intra-Community supplies of goods or exports) that do confer the right to deduct input VAT.

Precisely in relation to intra-Community supplies that grant the right to the deduction, despite being treated as exempt transactions (full exemption), the following measures have been approved, effective since March 1, 2020:

- In order to apply that exemption, along with the requirement of the transport of the goods to another Member State, the following substantive – not formal – conditions are established:
  - i. The acquirer must have provided to the supplier a VAT identification number assigned by a Member State other than Spain.
  - ii. The supplier must include that transaction in its recapitulative statement of intra-Community transactions (form 349).
- In order to evidence the transportation of the goods to another Member State (necessary requirement to apply the exemption in intra-Community supplies), a series of rebuttable presumptions are established. That transport must be proven with the following means of proof:
  - Where the acquirer is the one that handles the transportation:
    - Certificate by the acquirer stating that the goods have been transported by it or by a third party in its name, and specifying the destination of the goods.
  - At least two documents related to the dispatch or transport of the goods (signed letter or *CMR* docu-

ments, bill of lading, air freight bill or invoice from the carrier of the goods) issued by parties unrelated to the seller and the acquirer.

- If at least two of the documents specified in the preceding paragraph are not available, at least one of the following means of proof issued by parties unrelated to the seller and the acquirer:
    - Insurance policy covering the dispatch or transportation of the goods, or bank documents proving the payment of the dispatch or transport.
    - Documents issued by an attesting official certifying the arrival of the goods.
    - Certificate by the warehouse keeper of the goods in the Member State, confirming the storage of the goods in that Member State.
  - If the seller is the one that handles the transportation, the same provisions will apply except for the first certificate mentioned in the preceding point, which will be replaced by a mere statement by the seller that the goods have been dispatched or transported by it or by a third party in its name.
  - Measures are also included to harmonize the taxation of chain transactions, that is, successive supplies of goods between different traders or professionals, which are transported directly from one Member State to another by the first supplier to the final acquirer of the chain.
- In order to determine which of the supplies has the status of exempt intra-Community supply, it is established that the transport is deemed linked to:
- The supply by the initial supplier to the intermediary, which will constitute an exempt intra-Community supply of goods, provided the latter has communicated a tax identification number issued by a Member State other than Spain.



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- The supply made by the intermediary, where it has communicated a Spanish VAT number to the supplier. Thus, the supply by the supplier to the intermediary will be subject to and not exempt from VAT, and the supply made by the intermediary to its customer will be an exempt intra-Community supply.
- Lastly, in relation to the sales of buffer stock or consignment sales (agreements whereby a supplier sends goods from one Member State to another in order for them to be stored in the Member State of destination and available to another trader, that can acquire them after their arrival) new regulation is established which permit simplifying the VAT treatment of these transactions and reducing the administrative burden of traders, provided a number of conditions are met.

Thus, starting on March 1, 2020, these sales give rise to a single transaction<sup>31</sup>: an intra-Community supply of goods that is exempt in the Member State of dispatch by the supplier, and an intra-Community acquisition in the Member State of arrival, by the customer when it retrieves the goods from the warehouse.

## 2.6.3 Place of supply of taxable transactions

Spanish VAT is charged on the transactions referred to above which are deemed to be supplied in Spanish VAT territory.

The law establishes rules for determining the place where the various transactions are deemed to take place.

- Supplies of goods: The general rule is that goods are deemed to be supplied in Spanish VAT territory if they are handed over to the recipient in Spain. However, if the goods are transported in order to be handed over to the recipient, the supply will be deemed to be made in the place where the transportation commences. There are other exceptions to the general rule, such as those established for supplies of goods to be installed or assembled, etc.

- Supply of services: As a general rule, services are deemed to be supplied at the recipient's place of business or permanent establishment, if the recipient is a trader or professional; however, if the recipient is a final consumer, the services will be deemed to be supplied at the *supplier's* place of business.

There are, however, exceptions to this general rule:

- Services related to real estate are deemed to be supplied at the place where the property is located. This rule also applies to services of accommodation at hotels, camping sites and spas.
- Transportation services (intra-Community or otherwise) are deemed supplied at the recipient's place of business, and it is no longer necessary to provide the VAT number that was required in some cases until now.
- Services consisting of passenger transportation (whatever the recipient's status) and of the transportation of goods (except intra-Community transportation), where the recipient is the final consumer, are taxed proportionately to the distance covered within Spanish VAT territory.
- The intra-Community transportation of goods to final consumers will be taxed in Spain the transportation begins within that territory.
- Certain services are deemed to be supplied in Spain where they are physically performed in Spanish VAT territory. This is the case, among others, of cultural, artistic, sports, scientific, educational, recreational and similar activities. The same rule applies to ancillary

transportation services and to work on movable tangible property, experts' reports, etc. where the recipient is not a trader (if he is, the general rule will apply, *i.e.*, the place of supply is the recipient's place of business).

- Services supplied electronically and telecommunications and television and radio broadcasting services will be deemed to be supplied at the recipient's place of business (whether it is the final consumer or a trader), unless they are supplied to a non-EU resident or to consumers domiciled in Spain and the services are used or operated in Spain. Moreover, VAT is not charged on services to final consumers that are not established in the Community.
- In order to facilitate the compliance with the tax obligations deriving from the aforementioned rule, in the case of services supplied to final consumers, two optional special regimes are established that permit taxable persons to pay the tax owed for the supply of those services through a website ("one-stop shop") in the Member State where they are identified, thus avoiding registration in each Member State where they carry out transactions (Member State of consumption). A distinction is made between:
  - **Non-EU regime:** Applicable to traders or professionals that have no type of permanent establishment or obligation to be identified for VAT purposes in any Member State of the Community. It is an extension of the special regime for services supplied electronically to telecommunications, TV and radio broadcasting services. The Member State of identification will be that chosen by the trader.

<sup>31</sup> Previously, these transactions constituted a transfer of goods exempt in the Member State of dispatch and a transaction treated as an intra-Community acquisition of goods in the Member State of arrival, both performed by the supplier. Subsequently, when the customer retrieved the goods from the warehouse, there was an internal supply in the Member State of arrival, to which the reverse charge mechanism applied. Also, the supplier was required to be identified for VAT purposes in the Member State of destination of the goods.



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- **EU regime:** Applicable to EU traders or professionals that supply telecommunications, TV and radio broadcasting services to final consumers in Member States where they do not have their place of business or a permanent establishment. The Member State of identification will be that where they have their place of business or a permanent establishment.

It should be noted that Directive 2017/2455 establishes, effective from January 1, 2019, a threshold for determining the place of supply of these services, according to which where the total amount of this type of services provided by the supplier does not exceed €10,000, in the current or the preceding year, the services supplied to end consumers shall be deemed subject to VAT in the place of establishment of the supplier.

According to Spanish legislation, traders or professionals may voluntarily elect taxation at destination, even if the €10,000 limit has not been exceeded, and this election has a minimum validity of two calendar years.

- Restaurant and catering services will be deemed to be supplied in Spain:
  - Where supplied on board a vessel, an aircraft or a train during the section of a transport operation effected within the EU, if the transportation begins within Spanish VAT territory. In the case of a return trip, the return leg is regarded as a separate transport operation.
  - In the rest of restaurant and catering services, where they are physically supplied in Spanish VAT territory.
- The short-term hiring (30 days in general and 90 days in the case of vessels) of means of transportation will always be taxed where such means are placed at the recipient's disposal.
- Lastly, intermediation services are supplied according

to the place where the main transaction is deemed to be performed, if the recipient is not a trader. Otherwise, the general place-of-supply rule (recipient's place of business) will apply.

## 2.6.4 VAT fixed establishment

The definition of "place of business" and fixed establishment are relevant when determining the place where transactions subject to VAT are carried out. Also, as explained below, that definition is relevant for determining who the taxable person of those transactions is.

On this basis, where a fixed establishment exists in Spanish VAT territory—on the terms defined below—and this establishment intervenes in the performance of transactions subject to VAT, the transaction will be deemed located in Spanish VAT territory and, therefore, the establishment will be deemed the taxable person for VAT purposes, with the resulting obligations (register for VAT purposes, charge the tax, meet invoicing obligations, file returns, etc.).

Another of the main implications deriving from the fact of having a fixed establishment in Spanish VAT territory is the regime that applies for the refund of the VAT borne. In this regard, if a fixed establishment exists, the general refund regime will apply, while if there is not a fixed establishment, the special refund regime for non-established traders must be used, which involves initiating a proceeding to obtain a refund of the VAT borne.

Place of business is defined in the law as the place where the taxable person centralizes the management of, and habitually exercises, his business or professional activity.

Fixed establishment is defined as any fixed place of business from which a trader or professional carries on business activ-

ities<sup>32</sup>. In particular, the following are deemed fixed establishments for VAT purposes:

- The place of management, branches, offices, factories, workshops, facilities, stores and, in general, agencies or representative offices authorized to conclude contracts in the name and for the account of the taxable person.
- Mines, quarries or tips, oil or gas wells or other places of extraction of natural products.
- A construction, installation or assembly project which lasts for more than twelve months.
- Farming, forestry or livestock operations.
- Facilities operated on a permanent basis by a trader or professional for the storage and subsequent delivery of his merchandise.
- Centers for purchasing goods or acquiring services.
- Real estate operated under a lease or any other arrangement.

It is noteworthy that although the definition and cases in which a permanent establishment is deemed to exist are similar for purposes of direct taxes and VAT, they do not fully coincide.

In cases where a fixed establishment exists in Spanish VAT territory, due to being established in that territory and deemed a VAT taxable person, it must meet the following obligations:

1. File returns relating to the commencement, modification and cessation of the activities that determine the applicability of the tax.

<sup>32</sup> The so-called "force of attraction" of fixed establishments means that an activity is attributed to a fixed establishment if it "acts" in the supply of services, that is, where material or human resources attributable to the fixed establishment are organized for the purpose of performing the transaction.



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2. Request from the tax authorities a tax identification number and communicate and report it in the cases established.
3. Issue and deliver invoices or equivalent documents for its transactions and keep a duplicate thereof.
4. Keep the mandatory accounting records and registers, without prejudice to the provisions of the Commercial Code and other accounting provisions.
5. File periodically, or at the request of the tax authorities, information relating to its business transactions with third persons.
6. File the relevant tax returns and pay over the resulting tax. Also taxable persons must file an annual summary return.

## 2.6.5 Taxable person

The taxable person is the person with an obligation to charge or pay over VAT. This obligation normally lies with the trader or professional that performs the supplies of goods or services or other transactions subject to VAT.

There are, however, some exceptions in which the taxable person is the recipient in the transaction. This is generally the case of transactions, located in the Spanish VAT territory, in which the person performing them does not have a place of business or fixed establishment in Spanish VAT territory and the recipient is a trader or professional, regardless of whether or not he is established in Spanish VAT territory.

In the last years, new cases of reversal of liability have been established (applicable to transactions for which the VAT becomes chargeable on or after October 31, 2012) in relation to (i) certain exempt supplies of real estate in which the VAT exemption is waived; (ii) supplies of real estate to enforce security interests in real estate and accord and satisfaction in whole or in part, and (iii) certain works of construction and

loaning of personnel to perform the work, it being necessary in these cases for the recipient to expressly communicate in a legally valid manner, and prior to or simultaneously with the performance of the transactions, that the requirements are met for the reversal of liability to apply.

That communication can be made through a written statement signed by the recipient, under its own responsibility, and addressed to the trader or professional that makes the supply. On this basis, the recipient is able to invoke the joint liability established in the VAT Law for those who, by action or omission, whether due to willful misconduct or negligence, avoid the correct charge of the tax.

Since April 1, 2015, the foregoing list includes some cases of supplies of (i) silver, platinum and palladium; (ii) mobile phones, and (iii) videogame consoles, portable computers and digital tablets.

Moreover, since January 1, 2015, there is a new regime for deferral of the VAT on imports through the inclusion of those amounts in the tax return of the period in which the document evidencing the assessment made by the tax authorities is received.

It is an optional regime that may be applied by taxable persons whose tax period coincides with the calendar month (*i.e.*, companies subject to the monthly refund regime, those whose volume of transactions in the preceding calendar year exceeds €6,010,121.04, or those that apply the VAT grouping scheme, among other cases).

Apart from the obligation to charge VAT, the taxable person must also:

- File notifications relating to the commencement, modification and end of activities.
- Request a tax identification number from the tax authorities and notify and evidence it in the cases established.

<sup>33</sup> Effective starting on January 1, 2009, for operators that elect to apply the monthly refund regime, and starting in January 2012, for all other operators, they must mandatorily file their returns telematically.

- Issue and deliver an invoice for all its transactions.
- Keep accounting records and official books (specific VAT books)<sup>33</sup>.
- File periodically, or at the request of the authorities, information relating to its business transactions with third parties.
- File tax returns (monthly or quarterly, depending on its volume of transactions, and an annual summary return).
- Appoint a representative in order to comply with its obligations where the taxable person does not have an establishment in Spanish VAT territory. This obligation only applies to traders that are not established in the EU, unless they are established in a State with which Spain has mutual assistance arrangements in place.

## 2.6.6 Taxable amount

In general terms, the taxable amount for VAT purposes is the total consideration for the transactions subject to VAT received from the recipient or from third parties.

VAT legislation also establishes a series of special rules on determining the taxable amount, including rules on self-supplies of goods or services and on cases where the parties are related to each other (the taxable amount consists of the normal market value).

## 2.6.7 Deduction of input VAT

Under Spanish VAT law taxable persons are generally entitled to deduct their input VAT from their output VAT, provided that the goods and services acquired are used to perform the following transactions, among others:



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- Supplies of goods and services subject to and not exempt from VAT.
- Exempt transactions which give entitlement to a deduction, with the aim of securing that traders act neutrally in intra-Community or international trade (e.g. exports).
- Transactions performed outside Spanish VAT territory which would have given rise to the right to deduct had they been performed within that territory. In general, the input tax paid on the acquisition or import of goods or services that are not used directly and exclusively for business or professional activities may not be deducted, although there are specific rules such as those relating to the tax paid on capital goods (partial offset).

The right to deduct input VAT is also subject to formal requirements and may be exercised within four years.

There are several deduction systems, and the main features of each are as follows:

### 2.6.7.1. General deductible proportion rule

This rule applies when the taxable person makes both supplies of goods or services giving rise to the right to deduct and other transactions which do not (e.g. exempt financial transactions).

Effective from January 1, 2006, the effect of subsidies on the right to deduct VAT was eliminated.

Under the deductible proportion rule, input VAT is deductible in the proportion which the value of the transactions giving the right to deduct bears to the total value of all the transactions carried out by the taxable person in the course of his business or professional activity. In other words, the percentage of deductible VAT is determined under the following formula:

$$\frac{\text{Transactions entitling to deduction}}{\text{Total transactions}} \times 100$$

The resulting percentage is rounded up.

Effective starting on January 1, 2014, and in force indefinitely, the transactions carried out from permanent establishments outside the Spanish VAT territory will be excluded from the calculation of the general deductible proportion regardless of where the costs for performing the transactions have been borne or incurred.

### 2.6.7.2. Special deductible proportion rule

This system is generally elected by the taxable person (the election must normally be made in the month of December prior to the year in which it will apply). The basic features of this deduction system are the following:

- VAT paid on acquisitions or imports of goods and services used exclusively for transactions giving the right to deduct may be deducted in full.
- VAT paid on acquisitions or imports of goods and services used exclusively for transactions not giving the right to deduct may not be deducted.
- VAT paid on acquisitions or imports of goods and services used only partly for transactions giving the right to deduct, may be deducted in the proportion resulting from applying the general deductible proportion rule.

The special deductible proportion will apply obligatorily where the total sum of deductible VAT in a calendar year by application of the general deductible proportion rule exceeds by 10% or more that which would result by application of the special deductible proportion rule.

### 2.6.7.3. Deduction system for different sectors of business activity

Where the taxable person carries on business activities in different sectors, it has to apply the relevant deductible rules to each of those activities separately.

“Business activities in different sectors” means activities classed in different groups in the National Classification of Business Activities and the deduction systems applicable to them are also different (this requirement is deemed to be met, among other cases, where under the general deductible proportion rule, the percentage of deductible VAT differs by more than 50 percentage points).

In such a case, the taxable person must apply the general or the special deductible proportion rule, on the terms described above, in each of the business sectors. The VAT paid on acquisitions or imports of goods and services that cannot be specifically allocated to any of the activities will be deducted in the general deductible proportion resulting from its activities as a whole.

It should be noted that starting in 2015, the calculation of the general deductible proportion applicable to common input VAT, in the deduction system for different sectors of business activity, excludes the volume of transactions under the special VAT grouping scheme.

### **2.6.8. Refunds**

If the VAT charged exceeds the amount of deductible VAT, the taxable person must pay over the difference in its periodic (monthly or quarterly) returns.

If, conversely, the amount of deductible VAT exceeds the amount of VAT charged, the taxable person may request a refund of the excess which, as a general rule, can only be claimed in the last return for the year.

However, provided certain regulatory requirements are met, taxable persons who register on the Monthly Refund Register may claim a refund of the balance existing at the end of each assessment period.

Registering on this Refund Register carries with it the obligation to file VAT returns monthly by telematic means (regardless of the taxable person's turnover) as well as the obligation to keep VAT registers electronically.



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The period for obtaining the refund is six months from the end of the period for filing the last return of the year (January 30 of the immediately following year) as a general rule and from the end of the period for filing monthly returns in the case of taxable persons registered on the Monthly Refund Register.

There are specific rules on the refund of VAT paid in Spain by traders that are not established in Spanish VAT territory. To obtain refunds in these cases, the following requirements must be met:

- Persons applying for a refund must be established in the EU or, otherwise, must evidence a reciprocal arrangement in their country of origin for traders or professional established in Spain (in other words, Spanish traders would obtain a refund of an equivalent tax in their country of origin).

Said reciprocity requirement has disappeared with the approval of Law 28/2014, for the tax borne on restaurant, hotel and transport services linked to the attendance at trade fairs, conferences and exhibitions and the access to them, as well as in relation to the acquisition or import of molds, templates or equipment used to manufacture goods which are exported to a nonestablished trader, provided that such equipment is also exported or destroyed when no longer used.

- A trader that is not established must not have carried out transactions in Spanish VAT territory that would make it qualify as a taxable person.
- Unlike taxable persons established in the EU, those persons who are not established in the EU must appoint a representative, resident in Spanish VAT territory; the representative will be responsible for fulfillment of the relevant formal and procedural requirements and will be jointly and severally liable in the case of incorrect refunds and sufficient security may be sought from it for these purposes.
- Input VAT is refundable in Spain if it was paid on acquisitions of goods and services or imports of goods used to

perform transactions that give the right to deduct (both in Spain and in the country where the trader is established).

Refund claims may only be related to the immediately preceding year or quarter, and the time limit for filing them is September 30 of the following year<sup>34</sup>, and it may not be less than €400 if the claim is filed quarterly, or less than €50 if it is annual.

### 2.6.9. Special VAT cash-basis accounting scheme

Since January 1, 2014, a "Special VAT cash-basis accounting scheme" can be applied by taxable persons with a volume of transactions not exceeding two million euros in the preceding calendar year. Once the taxable person has elected to apply it, it shall be deemed extended save for waiver (which will have a minimum validity of three years) or exclusion therefrom due to one of the causes listed in the law.

For an operator that elects to apply this scheme, the chargeable event in all its transactions (except for certain ones established in the law) arises when the total or partial price is collected, in respect of amounts effectively received, with a limit of December 31 of the year after that in which the transaction was carried out, at which time the tax will be chargeable in all cases even if the price has not been collected.

This cash-basis accounting scheme also affects the VAT borne by the taxable persons that elect to apply it, meaning that they can only deduct VAT when the payment is made.

Due to the amendment of the rules on the chargeability in transactions carried out under this special scheme, the deduction of VAT borne by any trader or professional (even though it has not elected to apply it) that receives supplies of goods or services made by operators that apply the scheme will be deferred until the payment or, as the case may be, until December 31 of the year after that in which the transaction was carried out.

The new rules on the chargeable event in supplies of goods and services by operators subject to the special scheme are accompanied by changes in relation to invoicing obligations, the content of the VAT registers and the information to be provided in the informational returns on transactions with third parties, which are basically summarized as follows:

- Regarding invoicing obligations, it is necessary to include a specific reference to the application of this scheme.
- In relation to the content of the VAT registers, certain additional content is included (payment/collection dates, amounts and means of payment used) in order to permit monitoring the application of the specific rules on the chargeable event, both at operators subject to the special scheme and at the recipients of the invoices.
- A dual system is used for recording those transactions in the informational return of transactions with third parties.

### 2.6.10. Special VAT grouping scheme

This system is the result of the transposition into Spanish legislation of the option, set out in the European Union VAT Directive, to treat entities that are sufficiently related financially, economically and from an organizational standpoint, as a single taxable person.

"Sufficiently related" is defined in the law as applying to a parent company (which cannot be the subsidiary of another company in Spanish VAT territory, on the terms described) and the entities over which it has effective control, either because it holds a direct or indirect interest in their capital stock of at least 50%, or because it owns a majority of the voting rights, maintained throughout the calendar year, provided that the entities included in the group have places of business or fixed establishments located in Spanish VAT territory.

<sup>34</sup> A new procedure has been established whereby applications for refunds by EU traders not established in Spain must be submitted via the electronic portal set up for that purpose by their own tax authorities.



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This system is optional and applies for at least three years, which term is automatically extendible, and any potential waiver of the system also applies for at least three years.

The option must be elected by the parent company prior to commencement of the calendar year in which it must take effect. The decision to elect the special system must be adopted by the boards of directors of each of the entities that will belong to the group.

In its simplest form, the system merely consists of the ability to aggregate the individual VAT returns of the group companies that elect to apply the system, so that the balances of offsettable or refundable VAT of some companies may be offset immediately against the balances of tax payable belonging to the others, thereby reducing or eliminating any financial expense resulting from reporting balances to the tax authorities, for which a refund cannot be claimed as a general rule until the final tax return of the year.

Optionally, group companies may request to use a specific method for determining the taxable amount, deductions and waiver of exemptions in intra-group transactions.

Under this specific method, the taxable amount would be any direct or indirect costs incurred in whole or in part in supplying goods or services to group companies, provided VAT has actually been paid on them (the costs on which no VAT has been paid cannot be included).

This optional method also envisages the power to waive certain exemptions that may be applicable to intra-group transactions, a power which may be exercised on a case-by-case basis for each transaction, and a special system is established for making deductions.

As a general rule, the special system for groups of companies establishes a series of specific obligations for the parent company of the group, such as, for example, the obligation to keep a cost accounting information system and prepare a report supporting the allocation method used (in the case of the extended version of the system).

The head company must file a joint return once all the individual returns of the group entities have been filed. VAT is settled on a monthly basis, regardless of the volume of transactions.

The group of entities may also elect to apply the new monthly refund regime, in which case the parent company will be responsible for filing the relevant census declaration.

### 2.6.11. Chargeability and tax return period

In general, the tax becomes chargeable (i) in supplies of goods, when they are placed at the disposal of the acquirer (or, as the case may be, when the supply is made according to applicable legislation), and (ii) in supplies of services, when the taxable transactions are carried out, executed or fulfilled. However, in case of advance payments, the tax becomes chargeable when the price is collected in full or in part, on the amounts actually received.

Generally, the VAT period coincides with the calendar quarter. VAT returns must be filed in the first twenty calendar days of the month following the tax period, that is, from 1 to 20 of April, July and October, and from 1 to 30 of January for that relating to the fourth quarter. Along with the fourth quarter VAT return, the annual VAT recapitulative statement (Form 390) must be filed.

However, in cases in which the volume of transactions of the taxable person in the immediately preceding calendar year calculated according to the provisions of the VAT Law, has exceeded €6,010,121.04, or if the taxable person is subject to the special scheme for groups of entities mentioned in the preceding section, or the monthly refund scheme, the assessment period coincides with the calendar month. In these cases, since the entry into force in July 2017 of the immediate supply of information system (SII)<sup>35</sup>, VAT returns must be filed during the first thirty calendar days of the month following the relevant monthly assessment period, or until the last day of February in the case of the monthly VAT return for January.

<sup>35</sup> Electronic submission of the VAT books.

These taxable persons are exempted from the obligation to file the annual return (form 390).

These VAT returns must be filed telematically.

### 2.6.12. Invoicing obligations

The invoicing obligations are a basic element of the application and settlement of VAT. In this regard:

- The invoice is the means which taxable persons must use to fulfill the obligation to charge VAT to the recipient of the taxable transaction.

The obligation to issue and deliver an invoice for each transaction carried out applies to all traders and professionals. The trader or professional who issues the invoice must also keep a copy or counterfoil of the invoice.

- The recipient of a transaction subject to VAT must be in possession of an invoice in order to be able to deduct the VAT borne.

In accordance with Spanish legislation, the obligation to issue an invoice applies not only to traders or professionals but also to those who do not have that status but who are VAT taxable persons, and in respect of the supplies of goods and services made in the performance of their business which are deemed located in Spanish VAT territory, even if they are not subject to or are exempt from VAT.

As stated in the section in which we analyzed the concept of permanent establishment, the fact of having an establishment in Spanish VAT territory that intervenes in the performance of transactions subject to VAT means, among other obligations, that due to being established in Spanish VAT territory, it must register for VAT purposes and issue invoices for the transactions in which it participates. For these purposes, the establishment will have the same consideration as a Spanish entity.



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For these purposes, according to Royal Decree 1512/2018, of December 28, 2018, amending, among others, the VAT Regulations, the legislation applicable to invoices issued by taxable persons subject to special regimes establishing a single point of contact for services supplied electronically, consisting of telecommunications, radio broadcasting and television services, which to date was that of the Member State of consumption, shall now be the legislation of the Member State of identification. This avoids the taxable person being subject to different legislations on invoicing.

Accordingly, Spanish invoicing legislation will apply to the supplier of the electronic services when Spain is the Member State of identification.

As regards the content of invoices, they must contain (in general and except in certain specific cases) the following data:

1. Number and series, if any. The numbering of the invoices within each series must be correlative.
2. Issuance date.
3. First and last names, business name or complete corporate name of the party obliged to issue the invoice and of the recipient of the transaction.
4. Tax identification number attributed by the Spanish tax authorities or by those of another member State of the EU, with which the party obliged to issue the invoice has performed the transaction.
5. Tax identification number of the recipient, in the following cases:
  - Exempt intra-Community supplies.
  - Transaction in which the recipient is the VAT taxable person thereof (reverse charge mechanism).

- Transactions performed in Spanish VAT territory where the trader or professional obliged to issue the invoice is deemed established in that territory.
6. Address of the party obliged to issue the invoice and of the recipient of the transaction.
  7. Description of the transaction, specifying all the data necessary to determine the VAT taxable amount and the VAT payable, including the transaction unit price without VAT, and any discount or reduction not included in that unit price.
  8. Tax rate/s applied to the transactions, including, as the case may be, the compensatory charge rate, which must be specified separately.
  9. The VAT payable, if any, specified separately. That amount must be expressed in euros.
  10. The date of performance of the transactions documented in the invoice or, as the case may be, the date on which the advance payment has been received, provided that it is different from the invoice issuance date.

The invoice must be issued in the following periods:

- As a general rule, at the time the transaction is performed.
- If the recipient of the transaction is a trader or professional acting as such, before the 16<sup>th</sup> day of the month following the tax return period in which the transaction has been carried out.

## 2.7 TRANSFER AND STAMP TAX

Transfer and stamp tax is levied on a limited number of transactions, including most notably:

TAX RATE (*)	(%)
<b>Corporate transactions. (**)</b>	1
<b>Transfers of real estate.</b>	6
<b>Transfers of movable assets and administrative concessions.</b>	4
<b>Certain rights in rem (mainly guarantees, pensions, security or loans).</b>	1
<b>Certain public deeds.</b>	0.5

\* *The Autonomous Communities are entitled to opt to apply a different rate in certain cases. In fact, most of them have opted to apply a 7% rate (and even higher rates) to real estate transfers, and a 1.5% rate of Stamp Tax to certain transactions.*

\*\* *At present, business restructuring transactions, company formations, capital increases, shareholder contributions in general and certain transfers of the place of effective management or registered office are not taxed.*

However, if the vendor is a company or an individual real estate developer, the transfer of buildable land or the first supply of buildings is taxed under VAT. Second and subsequent supplies of real estate by companies, traders or professionals in the course of their activity may opt to pay either transfer tax or VAT. This option is applicable if the acquirer is a trader or professional who can deduct all his VAT borne and the vendor waives to the VAT exemption, in which case, the acquirer will pay VAT rather than transfer tax (this option was only possible if the recipient could deduct all of the VAT borne, although starting on January 1, 2015, it will suffice for the right to the deduction to be partial, even if due to the expected use of the goods transferred).

Transfers of shares of Spanish companies are generally exempt from any indirect taxation. However, they can trigger taxation under VAT/transfer tax if real estate companies are transferred (that is, companies in which more than 50% of the assets are real estate located in Spain not assigned to business or profes-



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sional activities) where the control of those entities is acquired, if it is considered that the transfer is carried out with an “avoidance aim”. An “avoidance aim” is presumed to exist (unless proven otherwise) where the acquirer obtains control of a real estate company and its real estate (or the real estate of the real estate companies owned by that company, the control of which is acquired) is not assigned to economic activities.

In these cases, the transaction will be subject to VAT or to transfer tax, as appropriate.

It should be noted, lastly, that unlike VAT, transfer tax entails a cost for the acquirer/beneficiary.

## 2.8 EXCISE AND SPECIAL TAXES

In Spain there are several excise taxes in line with the EU Directives on this matter, such as (i) excise taxes on consumption (spirits and alcoholic beverages, beer, oil and gas and tobacco products)<sup>36</sup>, (ii) special tax on certain means of transport (also applicable in the Canary Islands, Ceuta and Melilla), or (iii) electricity tax (applicable throughout Spain), which is levied on the consumption of electricity.

## 2.9 CUSTOM DUTIES ON IMPORTS

Most customs duties levied in Spain are standard-rate duties which are generally payable on imports when the goods clear customs. With very few exceptions the duties are “*ad valorem*”, i.e. on CIF or similar invoice value. The rest are minor customs duties relating to storage and deposit rights and the sale of abandoned goods.

The “Harmonized Goods Classification System” and the European Economic Community (“EEC”)<sup>37</sup> Tariff (*TARIC*) have been in force in Spain since 1987. Also, since Spain’s accession to the European Economic Community, only the exemptions established by the European Economic Community have been applicable.

## 2.10 TAX ON INSURANCE PREMIUMS

This is an indirect tax which is levied in a single payment on insurance and capitalization transactions based on actuarial techniques and arranged by insurance entities operating in Spain, including those operating under the principle of freedom to provide services.

## 2.11 REPORTING OBLIGATIONS RELATING TO ASSETS AND RIGHTS ABROAD

The law regulates an obligation to report assets and rights abroad has been introduced in the legislation for individuals and legal entities (including pass-through entities) resident in Spain or nonresident with a permanent establishment.

This obligation affects accounts, securities (including insurance and life or temporary annuities) and real estate or rights over real estate, with certain quantitative and qualitative exceptions.

Although this is a purely formal obligation to be met each year in relation to information referring to the preceding year (the first return to be filed being that relating to the fiscal years ending on or after October 29, 2012), the failure to fulfill this obligation or the incorrect or late fulfillment of this obligation is subject to a costly penalty regime pursuant to which penalties are calculated per item or set of data not reported or reported inaccurately or late.

In addition, if this obligation is not fulfilled in a timely manner, the income detected will be deemed undisclosed income or an unjustified capital gain, attributable to the last earliest period of those not statute-barred, even if it can be proven that the income was generated before that, unless it is evidenced that the income was reported and tax was paid on it or that it was

generated when the taxpayer was not resident in Spain. If this undisclosed income or unjustified capital gain is attributed to the taxpayer, it could entail a penalty of 150% of the tax debt derived from that attribution.

These consequences (attribution of undisclosed income or unjustified capital gains, fixed penalties and penalty of 150%) have been analyzed by the European Commission through an infringement proceeding brought against Spain (2014/4330 C (2017) 1064) in accordance with article 258 of the Treaty on the Functioning of the EU. In its reasoned opinion, the European Commission held that Spanish legislation infringes the freedom of movement of persons and workers, the freedom of establishment, the freedom to provide services and the free movement of capital.

The general return period runs from January 1 to March 31 of the year following that for which the return is filed.

## 2.12 SPECIAL REGIMES OF CERTAIN AUTONOMOUS COMMUNITIES

### 2.12.1 Canary Islands tax regime

The Canary Islands enjoy tax benefits intended to compensate for the disadvantages brought about by insularity and distance from the Spanish mainland and the main goal of which is to attract investments to the Canary Islands.

That regime has been renewed for the period 2015 to 2010 through the approval of Royal Decree-Law 15/2014, of December 19, amending the Canary Islands Economic and Tax Regime, including some improvements in relation to the former regime **which mainly affect the regulation of the Canary Islands Investment Reserve (RIC) and the Canary Islands Special Zone.**

<sup>36</sup> In general, these special taxes are not applicable in the Canary Islands, Ceuta and Melilla (the special taxes on spirits and beer are also applicable in the Canary Islands).

<sup>37</sup> Currently the European Union.



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**As these incentives constitute State aid, and due to the authorities' approach in relation to State aid, with that renewal, the system for notification and subsequent authorization by the EU was discontinued and has been replaced by a mechanism to adapt all of the incentives included in the Canary Islands tax regime to Community legislation.**

The regime is basically as follows:

### 2.12.1.1 Direct taxation

- There is a reduction of 50% of the portion of gross tax payable that relates to income from the sale of tangible goods specific to agricultural, livestock farming, industrial or fishing activities, provided that they have been produced by the taxpayer itself in the archipelago.
- The tax credit for investment in fixed assets consisting of 25% of the investment up to a limit of 50% of tax payable net of tax reductions and double taxation credits remains in force.
- The tax credits rates for investments made in the Canary Islands are higher than those applicable to investments in the Spanish mainland.
- The taxable amount is reduced (by up to 90% of undistributed income per books for the year) by amounts recorded to the *RIC*: The *RIC* must be invested within a period of up to three years, and can be invested in certain investments (to create or expand establishments, create jobs, acquire certain assets, including the subscription of shares or other securities, investments contributing to the improvement and protection of the environment); these investments must be related (according to the requirements which are expressly regulated) with activities or entities/establishments in the Canary Islands, and they must be maintained for 5 years.
- Also, two new tax credits were created for entities domiciled in the Canary Islands (with an average workforce of 50 employees and revenues below €10 million):

- i. Tax credit for investments in territories of western Africa (Morocco, Mauritania, Senegal, Gambia, Guinea-Bissau and Cape Verde).

That tax credit is 15% of the amounts invested in setting up subsidiaries or permanent establishments, with an increase in average workforce in the Canary Islands. In the case of subsidiaries, they must be owned by companies with registered office in the Canary Islands.

- ii. Tax credit of 15% of expenses for advertising and publicity, product launches, opening and researching markets abroad and attending trade fairs and the like.

- The renewal of the *REF* included an increase from 32% to 45% in the tax credit for technological innovation through activities carried on in the Canary Islands.

#### • Canary Islands Special Zone

Canary Islands legislation also regulates the special tax regime of the Canary Islands Special Zone (*ZEC*), authorized in January 2000 by the European Commission, due to considering its application compatible with the provisions regulating the Single Market. The renewal of this tax incentive was included in the negotiation process on the Directives 2007-2013, establishing that the *ZEC* would remain in force until December 31, 2019 for authorizations granted up to December 31, 2013, although with minor modifications. However, the application of this special regime has been extended until 2026, and the period for requesting authorization has been extended to December 31, 2020.

The regime is applicable to newly formed entities and branches domiciled in the Canary Islands that are registered on the Official Register of Entities in the *ZEC*. Registered entities and branches must meet certain requirements, such as (i) having their registered office and place of effective management in the Canary Islands (although permanent establishments may be used to

perform their activities both within and outside the Canary Islands, which must first be communicated to the Governing Council of the *ZEC*); (ii) having at least one director residing in the Canary Islands; (iii) having as their corporate purposes the performance of the economic activities expressly established in the law (financial activities being excluded in all cases); or (iv) creating a minimum number of jobs within the first six months following authorization, and keeping an annual average headcount of at least that number throughout the period in which the regime applies.

The regime also requires (v) making a minimum amount of investments in the first years, through the acquisition of tangible or intangible assets located or received in the geographical area of the *ZEC* and which are used and necessary to perform the activities carried out in that area; and (vi) filing with the authorities a descriptive report on the activities to be carried out which supports their feasibility, international competitiveness and their contribution to the economic and social development of the islands, the content of which will be binding for the entity.

Pursuant to the tax regime, the income obtained by the *ZEC* entities will be subject to CIT at a single special tax rate of 4%. This reduced tax rate only applies up to a certain amount of tax base, depending on the activity carried out and the jobs created. Moreover:

- Since January 1, 2015, it is possible to take the tax credit for domestic double taxation on the dividends relating to holdings in *ZEC* entities coming from income that has been taxed at the reduced rate of 4%, and on the income obtained on the transfer of *ZEC* entities.
- The interest, capital gains and dividends obtained by nonresidents with holdings in *ZEC* entities are exempt from nonresident income tax in Spain on the same conditions as for residents in the EU, where that income is paid by a *ZEC* entity and comes from transactions physically and effectively carried out in the geographi-



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cal scope of the *ZEC*. These exemptions will not apply where the income and capital gains are obtained through countries or territories classed by regulations as tax havens, or where the parent has its tax residence in those territories.

The *ZEC* entities enjoy an exemption from transfer and stamp tax in relation to the acquisitions of assets and rights to be used by the taxpayer to perform its activity, provided they are located, can be exercised or must be met in the geographical scope of the *ZEC*.

Moreover, the supplies of goods and services carried out between *ZEC* entities, and imports of goods made by *ZEC* entities will be exempt from Canary Islands general indirect tax.

- Incentive for Cinematographic Activities in the Canary Islands

Two tax credits are established for Cinematographic Activities in the Canary Islands:

- Tax credit for Spanish cinematographic productions and audiovisual series, whereby, provided a number of requirements are met, a tax credit may be taken on the total costs of the production. That tax credit is 50% on the first million euros, and 45% to any excess over that amount. The total tax credit may not exceed 18 million euros.
- Tax credit for expenses incurred in Spain for foreign productions of feature films or audiovisual works, whereby, provided a number of requirements are met, a tax credit may be taken of up to 50% on the first million euros, and 45% to any excess over that amount. The total tax credit may not exceed 18 million euro in case of international productions. Expenses incurred in Canary Island may reach, at least, 1 million euros. In the cases of animation and postproduction works, expenses incurred should reach, at least, €200,000.

- Control of incentives and limits on the accumulation of aid derived from the application of EU Law

As stated previously, the *REF* incentives are State aid. That aid is therefore subject to control measures, in accordance with the *REF* Regulations, and are grouped as follows pursuant to Community legislation:

- a. Regional aid for business operations.
- b. Regional aid to investment.
- c. Aid for small and medium-size enterprises.
- d. Aid for audiovisual works.

Moreover:

- a. It is established that the aid obtained by the beneficiaries of the *REC* shall be included in an informational return (form 282).
- b. Rules are established for computing the aid to determine the accumulation thereof, and limits on that accumulation are specified.
- c. The procedure is established for recovery of excess aid if those limits are exceeded.
- d. Lastly, the authority to monitor and control that accumulation of aid, no matter what kind of aid it is, pertains to the State Tax Agency, without prejudice to the authority attributed to other bodies of the public administration, in particular to the Central Government Controller's Office.

### 2.12.1.2 Indirect taxation

For indirect tax purposes, rather than VAT, the Canary Islands General Indirect Tax (*IGIC*), which is similar to VAT, applies at the standard rate of 7% since January 1, 2020, (after the reduction to 6.5% in 2019). In addition, the increased tax rate

has also been raised for 2020, going from 13.5% to 15%.

The tax on imports and supplies of goods in the Canary Islands (*AIEM*) also applies to the production and import in the Canary Islands of certain tangible goods.

Lastly, there are certain incentives in indirect taxation: for example, in transfer tax under the "transfers for a consideration" heading, an exemption applies to acquisitions of capital goods and of intangible assets (for 50% of the investment, except in the case of small and medium-size enterprises) which fall within the definition of initial investment mentioned previously according to the regulations established in the *RIC*, where certain requirements are met (**article 25 of Law 19/1994**).

### 2.12.2 Special regime applicable in the Basque Country

The Economic Accord with the Autonomous Community Government of the Basque Country recognizes the power of the institutions of the provinces of the Basque Country (*Álava*, *Guipúzcoa* and *Vizcaya*) to regulate taxes. In general, they have full or shared regulatory authority in the area of direct taxation, but far more limited authority in the indirect taxation area.

The institutions of the provinces of the Basque Country also have the power to levy, manage, assess, inspect, review and collect taxes, except with respect to import duties and excise taxes on imports.

The Economic Accord regulates the applicable connecting factors in order to determine which body of laws, namely, those pertaining to Spain (excluding the Basque Country and Navarra) or those pertaining to the provinces of the Basque Country and to Navarra, apply to taxpayers and the powers to collect and inspect each tax, with revenue-raising power being shared in some cases between various tax authorities.

The specific characteristics of the main taxes of each of the Historical Territories are contained in the following legislation.



- Corporate Income Tax:

- Álava: Provincial Corporate Income Tax Law 37/2013, of December 13, 2013; Provincial Law 20/2014, of June 18, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Álava; and Provincial Law 15/2015, of October 28, 2015, amending various tax provisions of the Historical Territory of Álava.
- Guipúzcoa: Provincial Corporate Income Tax Law 2/2014, of January 17, 2014, of the Historical Territory of Guipúzcoa; and Provincial Law 7/2015, of December 23, 2015, approving certain tax amendments.
- Vizcaya: Provincial Corporate Income Tax Law 11/2013, of December 5, 2013, and Provincial Law 3/2014, of June 11, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Vizcaya.

- PIT:

- Álava: Provincial Personal Income Tax Law 33/2013, of November 27, 2013; Provincial Law 20/2014, of June 18, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Álava; and Provincial Law 15/2015, of October 28, 2015, amending various tax provisions of the Historical Territory of Álava.
- Guipúzcoa: Provincial Personal Income Tax Law 3/2014, of January 17, 2014; and Provincial Law 7/2015, of December 23, 2015, approving certain tax amendments.
- Vizcaya: Provincial Personal Income Tax Law 13/2013, of December 5, 2013, and Provincial Law 3/2014, of

June 11, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Vizcaya.

- Inheritance and gift tax:

- Álava: Provincial Inheritance and Gift Tax Law 11/2005, of May 16, 2005, and Provincial Law 20/2014, of June 18, 2013, making technical corrections in certain provincial tax laws of the Historical Territory of Álava.
- Guipúzcoa: Provincial Inheritance and Gift Tax Law 3/1990, of January 11, 1990; Provincial Law 1/2014, of January 17, 2014, amending Provincial Inheritance and Gift Tax Law 3/1990, of January 11, 1990, of the Historical Territory of Guipúzcoa; and Provincial Law 7/2015, of December 23, 2015, approving certain tax amendments.
- Vizcaya: Provincial Inheritance and Gift Tax Law 4/2015, of March 25, 2015.

- Wealth Tax:

- Álava: Provincial Wealth Tax Law 9/2013, of March 11, 2013.
- Guipúzcoa: Provincial Law 2/2018, of June 11, 2018, of Tax on Wealth.
- Vizcaya: Provincial Wealth Tax Law 2/2013, of February 27, 2013.
- Wealth tax has been reinstated in the three Historical Territories only for fiscal years 2011 and 2012.

### **2.12.3 Special regime applicable in Navarra**

Financial and tax dealings between Central Government and the Provincial Government of Navarra are governed by the Economic Agreement, with terms and conditions and powers similar to those under the Economic Accord. In this case, as in the case of the special regime in the Basque Country, the features of each tax are contained in their specific legislation:

- Corporate income tax: Provincial Corporate Income Tax Law 26/2016, of December 28.
- Personal income tax: Revised Provincial Personal Income Tax Law (Legislative Provincial Decree 4/2008, of June 2, 2008).
- Inheritance and gift tax: Revised provisions of the tax (Legislative Provincial Decree 250/2002, of December 16, 2002).
- Wealth Tax: Provincial Wealth Tax Law 13/1992, of November 19, 1992.



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## 3. Local taxes

The Revised Local Finances Law approved by Legislative Royal Decree 2/2004, of March 5, establishes a scheme aimed at rationalizing the local taxation system and facilitating the activity of local entities. Under this legislation, local authorities are empowered to modify some aspects of this type of taxes. This Law establishes two different types of municipal taxes, which can be classified as follows:

- Periodic taxes, among them:
  - Tax on real estate (*Impuesto sobre Bienes Inmuebles*).
  - Tax on business activity (*Impuesto sobre Actividades Económicas*).
- Other taxes:
  - Tax on erection and installation projects and construction works (*Impuesto sobre Construcciones, Instalaciones y Obras*).
  - Tax on increase in urban land value (*Impuesto sobre el incremento del valor de los terrenos de naturaleza urbana*).

### 3.1 PERIODIC TAXES

#### 3.1.1 Tax on real estate

This tax is levied annually on owners of real estate or on holders of rights *in rem* over real estate based on the cadastral value determined pursuant to the Property Cadaster regulations, at different rates up to a maximum of 1.30% for urban property and 1.22% for rural property.

#### 3.1.2 Tax on business activity

This tax is levied annually on any business activity conducted within the territory of the municipality.

However, the following taxpayers are exempted from this tax:

- Individuals.
- Taxpayers who start a business activity within Spanish territory, during the two first tax periods in which they carry on the activity.
- Taxpayers subject to CIT and entities without legal personality whose net sales (at group level according to article 42 of the Commercial Code) in the previous year were under €1 million.
- In the case of taxpayers subject to nonresident income tax, the exemption will only apply to those operating in Spain through a permanent establishment, provided that they obtained net sales of under €1 million in the previous year.

The tax payable is calculated on the basis of various factors (type of activity, area of premises, net revenues, etc.). The minimum tax rates published by the Government can be adapted by the municipal authorities.

### 3.2 OTHER TAXES

#### 3.2.1 Tax on erection and installation projects and construction work

This tax is levied on the actual cost of any work or construction activity that requires prior municipal permission, excluding VAT and any similar taxes.



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The tax rate will be set by each municipal council up to a top rate of 4%, and the tax falls due at the start of the project regardless of whether the permit has been obtained.

### 3.2.2 Tax on increase in urban land value

This tax is levied on the increase disclosed in the value of urban land whenever land is transferred.

- Taxpayer: In transfers for consideration, the transferor, and in donations, the transferee.
- Tax rate: The rate set by each municipal council and capped at 30%.
- Tax base: The increase in the value of the land. The tax base is determined by reference to the value of the land when the tax falls due, which in the transfer of land will be the value that has been determined for the purposes of property tax. Certain annual percentages will be applied to this value based on the ownership period, which will be determined by each municipal council, and may not be higher than the following limits: (i) Between one and five years: 3.7; (ii) Up to 10 years: 3.5; (iii) Up to 15 years: 3.2; (iv) Up to 20 years: 3.

This tax is deductible for personal income tax purposes from the transfer value of real estate.



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## Exhibit I - Corporate income tax incentives for investment

### Tax incentives applicable to the tax base.

- Accelerated depreciation/amortization ([see section 2.1.2.7 of this chapter for more detailed information](#)).
- Unrestricted depreciation/amortization ([see section 2.1.2.7 of this chapter for more detailed information](#)).
- Special regime applicable to finance lease agreements ([see section 2.1.2.7 of this chapter for more detailed information](#)).
- Partial exemption for income derived from the licensing of certain intangible assets (Patent box) ([see section 2.1.2.12 of this chapter for more detailed information](#)).

### Tax credits applicable to tax payable

- Tax credit for job creation for disabled workers ([see section 2.1.4.1 of this chapter for more detailed information](#)).
- Tax credits for investment ([see section 2.1.4.1 of this chapter for more detailed information](#)):
  - Tax credit for investment in R&D&i.
  - Other tax credits for investments made in Spanish film or audiovisual productions; investment of profits for enterprises of a reduced size.



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## Exhibit II - Treaty tax rates<sup>38</sup>

TYPE OF INCOME			
RECIPIENT COMPANY'S COUNTRY OF RESIDENCE	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
Albania	0, 5 or 10	6 or 0	0
Algeria	15 or 5	5 or 0	14 or 7
Andorra	5 or 15	0 or 5	5
Argentina <sup>39</sup>	15 or 10	12 or 0	3, 5, 10 or 15
Armenia	10 or 0	5	5 or 10
Australia	15	10	10
Austria	15 or 10	5	5
Barbados	0 or 5	0	0
Belgium (**)	15 or 0	10 or 0	5
Bolivia	15 or 10	15 or 0	15 or 0
Bosnia Herzegovina	10 or 5	7 or 0	7
Brazil	10 or 15	15, 10 or 0	15 or 10
Bulgaria	15 or 5	0	0
Canada	5 or 15	0 or 10	10 or 0
Czech Republic	15 or 5	0	5 or 0
Chile	10 or 5	4, 5, 10 or 15	2, 5 or 10
China	10	10	10 or 60
China (Hong Kong)	0 or 10	0 or 5	5
Colombia	0 or 5	5 or 10	10
Costa Rica	12 or 5	5 or 10	10
Croatia	15 or 0	0 <sup>40</sup>	0
Cuba	15 or 5	10 or 0	5 or 0
Cyprus <sup>41</sup>	5 or 0	0	0
Denmark <sup>42</sup>	15 or 0	10	6
Dominican Republic	10 or 0	10 or 0	10
Ecuador	15	0, 5 or 10	10 or 5
Egypt	12 or 9	10 or 0	12
El Salvador	12 or 0	0 or 10	10
Estonia	15 or 5	10 or 0	0, 5 or 10

CONTINUE ON NEXT PAGE >

<sup>38</sup> The tax rates established in each tax treaty are indicated. The applicability of one or another depends, in each case, on the specific requirements established in each tax treaty. Further information is available at: <http://www.minhfp.gob.es/ES/Normativa/20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx>

<sup>39</sup> The previous tax treaty between Spain and Argentina which took effect on July 28, 1994, was denounced unilaterally by Argentina and ceased to have effect on January 1, 2013. However, the new tax treaty, signed on March 11, 2013, establishes its effects from January 1, 2013 (meaning that for practical purposes there is no period not covered by a treaty).

<sup>40</sup> The tax treaty states that the rate applicable to interest and royalties is 8%. However, the Protocol specifies that after a period of 5 years since the entry into force of the tax treaty, the rates relating to interest and royalties (articles 11 and 12 of the tax treaty) will be 0%. As it took effect on April 20, 2006, the period has already elapsed, and the 0% rate will apply.

<sup>41</sup> Published on May 26, 2014, and entered into force on May 28, 2014.

<sup>42</sup> Denmark decided to terminate the Treaty with Spain as of January 1, 2009.



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TYPE OF INCOME			
RECIPIENT COMPANY'S COUNTRY OF RESIDENCE	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
<b>Finland</b>	0, 5 or 15	0	0
<b>France</b>	15 or 0	10 or 0	5 or 0
<b>Georgia</b>	0 or 10	0	0
<b>Germany</b>	15 or 10	0	0
<b>Greece</b>	10 or 5	8 or 0	6
<b>Hungary</b>	15 or 5	0	0
<b>Iceland</b>	15 or 5	0 or 5	5
<b>India</b>	15	15 or 0	10 or 20
<b>Indonesia</b>	15 or 10	10 or 0	10
<b>Iran</b>	10 or 5	7,5 or 0	5
<b>Ireland</b>	15 or 0	0	5, 8 or 10
<b>Israel</b>	10	10 or 5	7 or 5
<b>Italy</b>	15	12 or 0	8 or 4
<b>Kazakhstan</b>	5 or 15	10	10
<b>Kuwait</b>	5 or 0	0	5
<b>Jamaica</b>	10 or 5	0 or 10	10
<b>Japan</b>	15 or 10	10	10
<b>Korea</b>	10 or 15	10 or 0	10
<b>Latvia</b>	10 or 5	0, 5 or 10	0, 5 or 10
<b>Lithuania</b>	15 or 5	10 or 0	0, 5 or 10
<b>Luxembourg</b>	15 or 10	10 or 0	10
<b>Northern Macedonia</b>	15 or 5	5 or 0	5
<b>Malaysia</b>	5/0	10 ó 0	7/5
<b>Malta</b>	5 or 0	0	0
<b>Mexico</b>	10 or 0	4, 9 or 10	0 or 10
<b>Moldavia</b>	0, 5 or 10	0 or 5	8
<b>Morocco</b>	15 or 10	10	10 or 5
<b>Netherlands</b>	15, 10 or 5	10	6
<b>New Zealand</b>	15	0 or 10	10
<b>Nigeria</b>	10 or 7,5	0 or 7,5	3,75 or 7,5
<b>Norway</b>	15 or 10	10 or 0	5
<b>Pakistan</b>	5, 7,5 or 10	10	7,5
<b>Panama</b>	0, 5 or 10	5 or 0	5

CONTINUE ON NEXT TABLE &gt;

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TYPE OF INCOME			
RECIPIENT COMPANY'S COUNTRY OF RESIDENCE	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
<b>Philippines</b>	15 or 10	0 or 15 or 10	15 or 20
<b>Poland</b>	15 or 5	0	10 or 0
<b>Portugal</b>	15 or 10	15	5
<b>Qatar</b>	0 or 5	0	0
<b>Romania</b>	15 or 10	0 or 10	10
<b>Russia</b>	15 or 10 or 5	5 or 0	5
<b>Saudi Arabia</b>	5 or 0	5 or 0	8
<b>Senegal</b>	10	10 or 0	10
<b>Serbia</b>	10 or 5	10 or 0	10 or 5
<b>Singapore</b>	0 or 5	5 or 0	5
<b>Slovakia</b>	15 or 5	0	5 or 0
<b>Slovenia</b>	15 or 5	5 or 0	5
<b>South Africa</b>	15 or 5	5 or 0	5
<b>Sultanate of Oman</b>	10 or 0	5 or 0	8
<b>Sweden</b>	15 or 10	0 or 15	10
<b>Switzerland<sup>43</sup></b>	15 or 0	0	0 or 5
<b>Thailand</b>	10	0 or 15 or 10	5, 8 or 15
<b>Trinidad and Tobago</b>	0, 5 or 10	8 or 0	5
<b>Tunisia</b>	15 or 5	10 or 5	10
<b>Turkey</b>	15 or 5	15 or 10	10
<b>United Arab Emirates</b>	5 or 15	0	0
<b>United Kingdom</b>	15, 10 or 0	0	0
<b>United States</b>	0, 5 or 10	0 or 10	0
<b>Uruguay</b>	5 or 0	10 or 0	5 or 10
<b>Uzbekistan</b>	0, 5 or 10	5 or 0	5
<b>Venezuela</b>	10 or 0	0, 10 or 4,95	5
<b>Vietnam</b>	15, 10, 7 or 5	10	10 or 5
<b>Former Soviet Union</b>	18	0	5 or 0

<sup>43</sup> The new Protocol amending the Spain-Switzerland tax treaty has been signed and establishes the following rates:

- Dividends: 15 or 0.
- Interest: 0.
- Royalties: 0.



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## Exhibit III - Practical examples

A Limited Liability Company tax resident in Spain (*Teleco, S.L.*) is engaged in the supply of telecommunications services. According to the 2020 financial statements, the company obtained a profit per books of €7,225,000. The company has recorded in its accounts the following transactions which may give rise to the need to make the relevant tax adjustments to the income per books:

- *Teleco, S.L.* has its offices in a rented building, and pays to the owner of that building an annual amount in this respect of €200,000. In addition, the company owns a building, which has been rented to a third party. The rental income obtained by *Teleco, S.L.* amounted to €100,000, and the withholding taxes borne by it amounted to €20,000.
- The company has recorded a CIT expense amounting to €2,167,500.
- The company recorded a provision for impairment losses in relation to foreseeable bad debts amounting to €170,000. Of that amount, €125,000 relate to accounts receivable less than six months past-due on the date on which the CIT relating to that year fell due.
- *Teleco, S.L.* purchased certain software on July 1 of the previous year, for €600,000. This tax period it recorded an amortization expense for that software amounting to €300,000.
- In the previous tax period the company recorded a provision for impairment losses in relation to foreseeable bad debts amounting to €350,000, relating to accounts receivable two months past-due at the date on which the CIT relating to that year accrued.
- The company recorded a provision for other expenses (provision for incentives to be paid after 3 years) in the amount of €225,000 to cover the expense to be incurred in relation to the bonus payable to employees.
- In 2013 and 2014, it made adjustments in relation to the limit on the deductibility of amortization, for the amount of €20,000.
- The company purchased some computers on October 1, 2017 amounting to €60,000. In this tax period it recorded a depreciation expenses totaling €20,000 in relation to those computers.
- The company incurred expenses on scientific R&D in the amount of €620,000 during the year. The average expenses incurred in the previous two years amounted to €120,000.
- The company purchased shares in certain companies. In this connection, the company obtained dividends in a gross amount of €105,000, and bore withholding taxes in the amount of €21,000. Such shares were acquired by February 15 and transferred by the end of March.
- According to the information furnished by the company, tax installment payments were made during the tax period in the amount of €2,400,000.



# Guide to Business in Spain 2020

2020 CORPORATE INCOME TAX CALCULATION	
Income for the year	<b>7,225,000</b>
<b>POSITIVE ADJUSTMENTS</b>	
Corporate income tax expense 2020	2,167,500 <sup>44</sup>
Provision for impairment losses on receivables	125,000 <sup>45</sup>
Excess amortization of software	102,000 <sup>46</sup>
Excess depreciation of computers	5,000 <sup>47</sup>
Provision for incentives	225,000 <sup>48</sup>
<b>NEGATIVE ADJUSTMENTS</b>	
Provision for impairment losses on receivables recorded in the previous tax year	<350,000> <sup>49</sup>
Reversal of 30% adjustment to amortization/depreciation	<2,000> <sup>50</sup>
<b>Tax base</b>	<b>9,497,500</b>
Tax rate	25%
<b>Gross tax payable</b>	<b>2,374,375</b>
<b>DEDUCTIONS</b>	
Investments in R&D	<240,000> <sup>51</sup>
Deduction of reversal of adjustment to amort/depr.	<100> <sup>52</sup>
Net tax payable	<b>2,134,275</b>
<b>Withholdings and prepayments</b>	
Withholdings on dividends	<21,000>
Withholdings on rental income	<20,000>
Tax installments payments	<2,400,000>
<b>Net amount refundable</b>	<b>&lt;306,725&gt;</b>

<sup>44</sup> As stated previously, the CIT expense is nondeductible.

<sup>45</sup> As this amount is less than 6 months old on the date when the tax falls due, it is deemed a nondeductible expense.

<sup>46</sup> The maximum depreciation of software is €198,000 per year (33% of the acquisition cost). Consequently, as the depreciation for accounting purposes is higher than for tax purposes, a positive adjustment must be made for the difference (€102,000).

<sup>47</sup> The maximum depreciation of data processing equipment is €15,000 per year (25% of the acquisition cost). Consequently, as the depreciation for accounting purposes is higher than for tax purposes, a positive adjustment must be made for the difference (€5,000).

<sup>48</sup> The provision for long-term incentives for personnel who will presumably leave the company is a nondeductible expense.

<sup>49</sup> This expense becomes deductible once it is more than 6 months old.

<sup>50</sup> The tax provision permits reversing the adjustments made in fiscal years 2013 and 2014 due to the limitation on the deductibility of the amortization/depreciation recorded. Given that the total positive adjustment for this item amounted to €20,000, and the period for reversing it is 10 years, a negative adjustment must be made to the book income for one-tenth of the positive adjustment made in the past, that is, €2,000 (20,000 x 10%).

<sup>51</sup> As the R&D expense of the year is higher than the average incurred in the last two years, the deduction rate applicable is 42%, the deduction totaling €240,000 (120,000 x 25% + 500,000 x 42%). It is necessary to verify that this deduction does not exceed 25% of the gross tax payable reduced by domestic and international double taxation tax credits and reductions. However, this limit goes up to 50% when the amount of the R&D tax credit, relating to expenses and investments made in the same tax period, exceeds 10% of the gross tax payable, reduced by domestic and international double taxation tax credits and reductions. In this case, the limit is €1,434,510 (the limit is 50% because the R&D expenses of the year exceed 10% of the gross tax payable), and thus the tax credit can be taken in full.

<sup>52</sup> The current CIT Law has established, for taxpayers to which the 70% limit on the tax deductibility of accounting amortization/depreciation applied, the right to take an additional deduction of 2% in fiscal year 2015 (5% starting in 2016) of the amount included in the tax base (2,000 x 5%).



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## Exhibit IV - Case of Application of the Regime for foreign-securities holding companies (*ETVE*) the shareholders of which are not resident in Spain

The entity, *Teleco*, S.A. resident in Spain, owns 50% of an entity resident in the US. In turn, *Teleco*, S.A. is owned by an entity resident in Argentina.

In fiscal year 2020, *Teleco*, S.A. has received exempt dividends from its US subsidiary. Moreover, in that year, *Teleco*, S.A. distributes dividends to its Argentinean shareholder in the amount of €1,500,000. The taxation in Spain of these dividends will depend on whether or not the Spanish entity has elected to apply the *ETVE* regime.

a. *Teleco*, S.A. has elected to apply the *ETVE* regime

The dividends distributed by the *ETVE* to its Argentinean shareholder will not be subject to taxation in Spain, in application of the *ETVE* regime.

b. *Teleco*, S.A. has not elected to apply the *ETVE* regime

The dividends distributed to the Argentinean shareholder will be subject to taxation in Spain, with the limit established in the Spain-Argentina tax treaty.

In this regard, the tax treaty establishes that the taxation of dividends cannot exceed.

a. 10% of the gross dividends if the beneficial owner is a company that directly owns 25% of the capital of the investee that pays the dividends.

b. 15% of the gross dividends in the rest of cases.

In our case, as the Argentinean entity owns 100% of *Teleco*, S.A., the withholding applied will be limited to 10% of the dividends, i.e., the withholdings will amount to €150,000.

#### TAXATION IN SPAIN OF THE DIVIDENDS DISTRIBUTED BY *TELECO*, S.A. TO ITS SHAREHOLDER RESIDENT IN ARGENTINA

***Teleco*, S.A. is an *ETVE*** €0

***Teleco*, S.A. is not an *ETVE*** €150,000



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## Exhibit V - Nonresident case study: Income obtained without a permanent establishment

The Dutch company *TPC, B.V.* posted one of its employees to Spain in September 2020. This employee worked in the Netherlands until August 2020. The salary of the employee corresponding to the September-December period amounts to €12,000, and is paid by the Spanish branch. The employee continues making contributions to the Dutch Social Security System, amounting to €800 for those four months.

In addition, the employee opened a bank account in Spain and he received interest amounting to €100 and bore a withholding tax of €21 on said interest.

In 2020, he buys and sells shares of a Spanish company and obtains a capital gain of €100. On another transaction of the same type with shares in another Spanish company, he obtains a capital loss of €20. He also transfers shares of a Dutch company and obtains a capital gain of €50.

The employee will be considered as a nonresident in Spain for tax purposes in 2020, as he was not physically present in Spain for more than 183 days and his center of economic interest was not located in Spain this year.

The employee will be taxed separately on each item of income obtained and the tax will accrue when the income falls due or on the date of actual payment if it is sooner.

1. Salary income: The Spanish branch pays his salary and, therefore, it must pay each month (or every three months if its volume of operations in the previous year was less than €6,010,121) withholdings on the gross salary paid, without deducting any expenses. As a result, in this case, the branch would have to pay, in total and in the periods mentioned, to the tax authorities 24% of the gross salary paid to the employee, which amounts to €2,880.

2. Interest on the bank account: As a nonresident, the employee could claim a refund of the €21 withheld by the Bank, as the interest obtained from nonresidents' bank accounts is exempt from tax.

3. Shares: Only the sale of Spanish shares is subject to taxation. Additionally, gains and losses cannot be offset against each other.

Therefore, the capital gain obtained from the sale of the first shares would be taxable at the rate of 21%.

However, according to the Tax Treaty between Spain and the Netherlands, that capital gain can only be taxed in the Netherlands, as the country of residence of the employee, and as a result, it will be exempt in Spain.



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## Exhibit VI - VAT case study

A Spanish company, leader in the sale of specialized machinery, delivers measuring machines for the automotive industry to various countries, among others Spain. The recipients of these machines are taxable persons for VAT purposes, duly registered in their respective countries of residence.

In the course of its business activities, the company incurs every month in the following expenses:

- €900,000 plus VAT for the purchase of raw materials necessary for its production, being all the purchases made within the Spanish market.
- €30,000 plus VAT for the rental of its factory.
- €7,500 plus VAT for other business expenses.

The goods and services acquired are subject to Spanish VAT at the standard rate of 21% (said acquisitions have taken place in the first semester of 2020). Consequently, the input VAT for the Spanish company every month amounts to €196,875 (*i.e.* 937,500 x 21%).

In addition, the Spanish company sells and distributes its products in the Spanish, European and other international markets every month of the first half of 2020 as follows:

- Spanish sales: €1,000,000 plus VAT.

- EU sales: €200,000.
- International sales: €100,000.

The Spanish company must charge VAT for the supplies performed within the Spanish market at the standard rate of 21% (*i.e.* 1,000,000 x 21% = 210,000). However, the supply of goods to an EU Member State, or the supply of goods to other third territories (export of goods), would be exempt from VAT provided that all the regulatory requirements are met; among others, the demonstration of the transportation of products outside the Spanish VAT territory and that the recipient of the goods is a VAT trader when the goods are supplied to other EU Member State.

As the Spanish company's turnover for the previous year exceeded the amount of €6,010,121.04, the company is considered to be a large company and therefore it is obliged to submit the returns on a monthly basis. Otherwise, the returns must be submitted quarterly.

The output VAT must be recorded in such return (*i.e.* €210,000). However, this amount may be offset with the input VAT borne in the prior acquisitions of goods and services derived from its business activity (*i.e.* €196,875).

The difference between the output VAT and input VAT will amount to €13,125, which will be the final tax to be paid to the Tax Authorities when submitting the return.

