

# Taxation and Investment in Spain 2011

Reach, relevance and reliability



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# 1.0 Investment climate

## 1.1 Business environment

Spain is a constitutional monarchy; executive power rests with a two-chamber parliament. It is an EU member state and a member of the OECD.

Spain is a large economy and a popular destination for foreign investment. The services sector dominates the economy, with retail, tourism, banking and telecommunications accounting for a significant proportion of economic activities. The tourism industry is particularly important and Spain is one of the most popular tourist destinations in the world. The most prominent manufacturing industry is vehicle production. The bulk of Spanish trade is with the EU, although trade with Latin America and Asia has grown in recent years.

### Price controls

Price controls have all but disappeared in Spain, except in sectors still controlled by the national government and a few prices that are regulated by regional governments.

### Intellectual property

Copyrights, patents, trademarks and industrial designs are recognized in Spain. The country has ratified all of the main international conventions that allow non-Spanish nationals to protect their local rights. Spanish laws are in line with EU legislation on intellectual property. Spain adheres to the “registration” principle (i.e. there can be no right to an invention or a trademark unless it previously has been registered) and to the “first-to-file” principle (i.e. the first to apply for registration receives priority rights). A special commission addresses breaches of intellectual property law.

Patents are granted for 20 years from the date of filing, and may be maintained by paying annual fees. Once the 20 years have elapsed, the information becomes public property.

The burden of proof in patent infringement cases in Spain rests with the firm or person accused of infringement rather than the original patent holder. The owner of a patent or other intellectual property can bring civil and criminal actions against any person who infringes his/her rights in Spain. Certain types of infringement of IP rights are considered criminal offenses under national law and are punishable by imprisonment.

Industrial designs are protected for five years and are renewable for additional five-year periods, up to 25 years.

National trademarks are registered with the Office of Patents and Trademarks or with the Office for Harmonization in the Internal Market (OHIM, the EU’s industrial design and trademark office). They can consist of a number of signs that can be represented graphically. Under trademark legislation, the office examines only whether the mark violates any absolute prohibition against its registration; it does not conduct examinations to determine whether identical or similar marks already exist. A trademark holder can obtain an injunction to prevent the violation of trademark rights in any EU member state.

Copyrights (and computer software) are protected for 70 years from the death of the author if the author is an individual, and 70 years from the year the program was created if the author is a legal person. According to Spanish law, computer programs cannot be registered as patents in Spain.

## 1.2 Currency

The currency of Spain is the Euro.

Countries participating in the Economic and Monetary Union		
Austria	Germany	Netherlands
Belgium	Greece	Portugal
Cyprus	Ireland	Slovakia
Estonia	Italy	Slovenia
Finland	Luxembourg	Spain
France	Malta	

## 1.3 Banking and financing

Spain's most important financial center is the capital, Madrid, where most financial institutions have their headquarters. Barcelona is also an important banking center.

## 1.4 Foreign investment

Spain has liberalized its foreign investment rules to attract foreign capital and to harmonize domestic rules with the principles in the Treaty on the Functioning of the European Union (TFEU).

Foreign investments generally only have to be "notified" after they have been made, except in the case of investments from tax havens, which generally must be declared in advance to the Investments Registry of the Ministry of Economy and Finance; foreign investment in activities directly related to public order, national security and public health systems; and real property investments for diplomatic missions by states that are not EU member states.

The Spanish government protects strategic sectors of the economy, and industry-specific legislation restricts foreign investment in the following sectors: air transport and radio industries; areas relating to raw materials of strategic interest; private security and television; industries linked to manufacturing, marketing or distributing arms and explosives; and activities related to national security. In addition, special rules govern investments in certain sectors (e.g. pharmaceuticals and mining).

## 1.5 Tax incentives

Deductions are available for export activities, investment in the environment, R&D, extraordinary profits reinvestment, training, etc. Except for the R&D tax credit and the investment in environment tax credit, these incentives will be phased out by 2011.

## 1.6 Exchange controls

Spain has no restrictions on foreign currency operations, but the government does require prior reporting of certain capital movements for statistical purposes and to prevent money laundering and tax fraud. Payments, receipts and transfers between residents and nonresidents, whether in Euros or a foreign currency, should be made through registered entities that are deposit institutions registered with the Bank of Spain. Spanish legislation on foreign investment transactions meets EU standards.

## 2.0 Setting up a business

### 2.1 Principal forms of business entity

A number of alternatives are available for a foreign investor wishing to invest in Spain. These include incorporating a Spanish company or forming a branch or representative office. The most common form for foreign investment in Spain is the *sociedad anónima* (SA). Spanish law also provides for the *sociedad de responsabilidad limitada* (SRL), or limited liability company. Small businesses prefer the SRL because of its lower capital requirements.

Large companies may consider the European Company Statute or SE, which requires a minimum capital of EUR 120,000. A company may convert an existing firm to SE status without liquidating. One of the advantages of the SE is that it is possible to move the headquarters to another EU member state with minimal formalities (which is possible without winding up the original headquarters company and setting up another). Also mergers between companies of different EU countries are simplified under the European Company rules.

#### Formalities for setting up a company

The legal steps to set up an SA and SL are similar. Primarily, a declaration must be made to the General Directorate of Commerce and Foreign Investments if the shareholder of the Spanish company is a company resident in a tax haven. Other formalities include (1) obtaining a certificate on behalf of one of the shareholders from the Central Mercantile Registry to the effect that the proposed name of the company is not already entered in the Registry; (2) drafting bylaws; and (3) preparing the public deed of incorporation of the company. Legal entities also must obtain a taxpayer identification number and must pay the capital tax.

A corporation (SA) acquires legal existence at the time its notarized articles of incorporation are inscribed in the Mercantile Register. If all authorized capital is to be subscribed by the founders, the firm must register within two months from the time the document is signed. If a public share offering is made, the promoters must first deposit and publish a notarized prospectus and call a meeting of subscribers within six months after the deposit of the prospectus with the Mercantile Registry. During this meeting, the subscribers will approve the management of the promoters, the bylaws, the value of the contributions in kind, the particular benefits reserved to the promoters, the appointment of directors and the appointment of the persons in charge of granting the foundational public deed of the company.

Sole proprietorships or single owner companies are accepted either upon incorporation or thereafter. SAs or SRLs with only one owner must register that person's name in the Mercantile Register, and the company is subject to special reporting and registration requirements.

#### Forms of entity

##### Requirements of an SA and SRL

**Capital.** SA: Minimum EUR 60,000. Authorized capital must be fully subscribed and at least 25% of the face value of each share must be paid up at the time of inscription in the Mercantile Register, with the remaining 75% paid up within the period specified in the company's bylaws. Contributions to capital may be in cash or in kind. A contribution in kind must be verified by an independent expert appointed by the Commercial Register. Shares may be listed on a stock exchange. SRL: Minimum EUR 3,000; capital is divided into "quotas." Authorized capital must be fully subscribed and fully paid in at the time of incorporation. Contributions to capital may be made in cash or in kind.

**Founders, shareholders.** SA: No minimum number of shareholders is required for an SA, although a special reporting and registration system applies to single shareholder companies. Shareholders can be individuals or companies of any nationality and residence. Shareholder liability to third parties is limited to the face value of their shares. SRL: An SL may be founded by only one partner. The other requirements for an SL are the same as for an SA. The shareholders' liability to third parties is limited to the face value of their quotas.

**Directors.** SA: A minimum of three directors is required, but there is no maximum, nor are there any nationality requirements. Nevertheless, many foreign controlled companies prefer to appoint a

Spanish national to serve as secretary or non-director secretary of the board of directors. A director needs not be a shareholder unless stipulated in the bylaws. The term of office may not exceed six years. There are no nationality requirements for directors. Directors may be civilly liable when a company, shareholders or creditors suffer damages due to an unlawful act or omission of the directors. *SRL*: The maximum number of directors is 12, the minimum is three. Directors may serve for an unlimited period of time, unless stated otherwise in the bylaws.

**Disclosure.** *Both*: The management body of the company must file the annual accounts duly approved and signed by its members within the first three months after the close of the financial year. Such accounts generally must be approved at the shareholders' meeting within the first six months after the close of the financial year. Once approved, the company's directors must register the annual accounts with the Mercantile Register within one month after approval at the shareholders' meeting. Companies must also submit a management report and the audit report if required. Corporate groups must publish consolidated accounts.

**Types of shares.** *SA*: Shares may be registered or bearer, although they must be registered until fully paid in. The law allows preferred and non-voting shares. Non-voting shares may not exceed one-half of the paid-in capital and are entitled to a minimum preferential dividend set forth in the bylaws, which must be proportionate to the amount of paid-in capital pertaining to each non-voting share. Non-voting shareholders have preferential rights in the event of a liquidation. Company bylaws may limit the transferability of shares. *SRL*: Quotas must be in nominative form and may not be listed on the stock exchange. The procedure for the transfer of quotas is more complex than in the case of an *SA*. *SRLs* may not issue corporate bonds.

**Control.** *SA*: To adopt a resolution, the shareholders meeting generally requires a minimum quorum (25% of the capital subscribed with voting rights for the first call) and the agreements will be decided by majority vote. However, special quorum provisions apply for certain resolutions. Minority shareholders also have rights. *SRL*: Decisions generally are adopted by the majority votes issued during the general meeting, provided the number of votes is equal to at least one-third of votes carried by all of the quotas into which the company's capital is divided. Higher quorums and majorities are required in special cases.

**Taxes and fees:** *Both*: The notary public's fees for handling the incorporation are charged on a sliding scale based on capital amounts (official rates are EUR 90 for the first EUR 6,010), with the fee being freely agreed upon for capital in excess of EUR 6,010.12. Fees for registering the company in the local Mercantile Register also are based on a sliding scale of officially approved charges that range from 0.10% to 0.005% for capital amounts exceeding EUR 3,005. The total registration fee may not exceed EUR 2,181. Companies also must pay a Business Activities Tax annually; and a small one-time municipal levy called an opening license tax is chargeable in addition to miscellaneous other fees.

### Branch of a foreign corporation

Branches are used primarily by oil companies (for prospecting) and by service enterprises, including banks, construction and engineering firms, insurance companies and shipping lines. A branch is not a legal entity separate from its head office, but it does have certain autonomy to operate. A branch may carry out any kind of activity, although the head office is fully liable for the debts of the branch. For fiscal and foreign transactions, the arm's length principle applies to operations between the head office and the branch, and separate accounts must be kept.

A branch is considered a permanent establishment (PE) and generally is taxed in Spain under the same rules as those applicable to subsidiaries, i.e. they are both subject to Spanish corporate income tax on their net income. However, a branch is also subject to a branch profits tax on the remittance of profits to the foreign head office (note that said tax does not apply if the head office is located in an EU member state, unless the country or territory in which it is resident is considered to be a tax haven, or a country that has concluded a tax treaty with Spain that does not provide otherwise, subject to reciprocity).

The formalities for setting up a branch of a foreign company are similar to those for incorporating a subsidiary. Branches are formed by a public deed, which must be registered at the Mercantile Register. The branch must appoint a resident individual or legal entity to represent it in dealings with the tax authorities, but no other formal administration or management bodies are required. Branches may invest in Spanish enterprises without prior approval, purchase securities quoted on the stock exchange and obtain credit locally. Payments made by a branch to its head office

for royalties, interest, commissions, technical assistance fees or fees for the use of other assets or rights are not deductible for corporate income tax purposes.

The following steps must be taken to set up a branch: (1) obtain a certificate from the bank in Spain to the effect that the allocated capital of the branch, if any, has been transferred; (2) obtain a certificate stating that the head office is duly incorporated and provide a copy of its bylaws and the appointment of directors; (3) a certificate of the minutes of a shareholders' or board meeting of the head office in which it resolves to set up the branch and detailing the allocated capital (if any), objects clause and registered office of the branch; (4) notify the General Directorate of Commerce and Foreign Investments in advance if the head office is resident in a tax haven; (5) file form D-1A with the General Directorate; (6) file the public deed setting up the branch at the corresponding Mercantile Registry; (7) obtain a nonresident taxpayer number for the foreign head office; and (8) obtain a taxpayer number for the branch.

It is also possible to set up a representative office in Spain. A representative office is not a separate legal entity from its head office and has no power to conclude contracts with clients in Spain. The steps to establish a representative office are similar to those to set up a branch.

## **2.2 Regulation of business**

### **Mergers and acquisitions**

Companies are required to notify the government when a merger results in a company with a market share of 30% or more in Spain or sales of more than EUR 240 million provided at least two of the members individually in Spain have a turnover exceeding EUR 60 million. Notification involves submitting details of ownership, balance sheets and information on sales, market share, exports and the effect of the merger on the sector. The Service for the Defense of Competition may ask the Tribunal for the Defense of Competition (TDC) to determine whether a merger might lead to restrictive practices and, if so, to recommend measures to avoid such practices.

Company law requires merging companies to present a detailed "merger plan" to shareholders at least one month before the meeting at which they will vote on the merger. Each company must separately commission an independent expert to produce a report analysing the plan and the proposed compensation package (although exceptions apply). The value of cash inducements offered to shareholders to trade in their old shares for new shares is limited to 10% of the nominal share value. Once shareholders have approved a merger, company creditors have one month to reject the deal if they believe the new company has not provided sufficient guarantees for meeting its outstanding credit obligations.

The EU has jurisdiction over mergers in two situations: (1) where the combined aggregate worldwide turnover of all of the undertakings concerned is more than EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state; and (2) where the aggregate global turnover of the companies concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in each of at least three member states is more than EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million, unless each achieves more than two-thirds of its aggregate EU-wide turnover within one and the same state. If a merger would not normally fall within the European Commission's purview, the affected companies may ask the Commission to review it if they would otherwise be obliged to notify three or more member states. The Commission proceeds as a "one-stop shop" only if none of the relevant member states objects within 15 days.

### **Monopolies and restraint of trade**

A company with more than 30% of a particular market share may be referred to the TDC for investigation. Abuse of market dominance is defined as any of the following: (1) unfair pricing or other conditions of sale; (2) limits on production, distribution or technological development that directly harm consumers or other companies; (3) failure to meet market demand; (4) price discrimination, where different charges for the same product or service put competitors at a disadvantage; or (5) tied sales. The TDC can impose fines as high as 10% of turnover for such abuses, and injured parties may sue for damages in civil courts.

## **2.3 Accounting, filing and auditing requirements**

Spanish GAAP was amended to adapt to IFRS criteria for fiscal years beginning 1 January 2008 and after.

Financial statements must be prepared annually. Annual accounts are formed by the balance sheet, profit and loss account, cash flow situation, statement of changes in equity (only when the company audits its financial statements), notes to the financial statements and the management report (only when the company audits its financial statements). The directors of a company have a three-month period after the close of the fiscal year to formulate the accounts.

SAs must undergo external audits by a registered auditor, except for SAs that may submit abbreviated annual accounts. Under Spanish law, if two of the following requirements are met in two consecutive years, the company may file abbreviated annual accounts: (1) total assets are less than EUR 2,850,000 (2) annual turnover is less than EUR 5,700,000; and (3) the workforce is comprised of fewer than 50 employees. If, during the first financial year after incorporation, two of the above requirements are not met, the company also will be subject to an auditing requirement. The auditors must be appointed at the shareholders' meeting for a minimum of three and a maximum of nine years. For companies that are not required to appoint an auditor, a dissenting minority of at least 5% can request that the Commercial Register appoint an auditor to verify the annual accounts.

# 3.0 Business taxation

## 3.1 Overview

Taxes are levied in Spain both at the national level (either by the central government or the regions) and at the municipal level (by the municipal authorities). The main national taxes are the corporate income tax, branch profits tax and the value added tax (VAT). Other taxes include capital tax, transfer tax, real property tax and miscellaneous levies by the local governments. There are no excess profits or alternative minimum tax.

Spain offers a special tax regime for Spanish holding companies (ETVEs).

## 3.2 Residence

A company is resident in Spain if it is incorporated in Spain, has its registered office in Spain or if its effective management is in Spain.

An entity resident in a tax haven or a no-tax jurisdiction may be presumed to be a tax resident in Spain if its main assets consist of real property or rights located or exercised in Spain or its main business activity is carried out in Spain, unless the entity can demonstrate that its effective management and administration are carried out in the other country and there are valid business reasons for establishing the entity in the tax haven or no-tax jurisdiction different from management of shares or other assets.

## 3.3 Taxable income and rates

In principle, all Spanish entities with separate legal status (i.e. corporations, limited liability companies and partnerships) and foreign corporate entities are liable to Spanish corporate income tax. Spanish resident companies are subject to corporation tax on worldwide profits and capital gains. Nonresident companies are taxed only on Spanish-source income and gains, subject to the provisions of an applicable tax treaty. Branches are generally taxed in a manner similar to subsidiaries.

The basic 30% corporate tax rate applies to the worldwide profits of resident corporations. A reduced rate of 25% applies to the first EUR 300,000 of taxable income for small and medium-sized enterprises (i.e. companies with annual turnover of less than EUR 10 million), with the 30% rate applying to taxable income exceeding EUR 300,000.

No distinction is made between the tax rates on distributed and reinvested profits. However, there is a deduction for reinvested extraordinary profits, according to which, under some requirements, the final rate applicable to reinvested profits is 18%.

Nonresidents operating in Spain through a permanent establishment are subject to corporate income tax at the same rates that apply to Spanish companies and this would continue under the proposed reform. However, a branch profits tax of 19% applies to profit remittances to the head office. The branch profits tax is not levied where the head office of the permanent establishment is located in the EU (unless the head office is located in a tax haven), or in most jurisdictions that have concluded a tax treaty with Spain.

Special rates apply to certain companies, such as listed collective investment institutions, including real estate investment funds (1%), certain co-operatives (20%) and entities involved in hydrocarbon research and exploitation (35%). Special regimes also exist for Spanish and European economic interest groups, "temporary business associations," venture capital companies and funds, and industrial and regional development companies.

A special regime (ETVE) applies for international holding companies, according to which dividends and capital gains received by an ETVE from its foreign subsidiaries are exempt if the following requirements are fulfilled:

- The ETVE held a participation of at least 5% in the nonresident entity for a one-year period (or if the one-year period is completed afterwards). The 5% requirement is deemed met if the stake in the nonresident company exceeds EUR 6 million;

- The foreign subsidiary is subject to a tax comparable to the Spanish corporate income tax. Such requirement is considered met if the subsidiary is a resident of a country with which Spain has a tax treaty with an exchange of information clause. The condition will not be met if the nonresident company is located in a tax haven; and
- At least 85% of the profits of the foreign subsidiary have been derived from business activities in a foreign country other than a listed tax haven

Furthermore, dividends distributed by the ETVE to a nonresident shareholder will not be subject to Spanish income tax. Capital gains obtained by such shareholder as a result of the transfer of the participation in the ETVE will not be subject to Spanish income tax, either, provided certain other requirements are fulfilled. If such dividends are distributed to a resident shareholder, the shareholder will be entitled to double tax relief. If capital gains are obtained by a resident shareholder, the shareholder will be entitled to choose between double tax relief or a participation exemption benefit.

### **Taxable income defined**

Taxable income in Spain is comprised of total revenue less deductible expenses and is based on the income disclosed in the company's financial statements, adjusted in accordance with tax principles.

### **Dividends**

Dividends received from resident or nonresident companies are subject to corporate income tax, with double tax relief available for any foreign tax paid in the latter case. However, under the Spanish participation exemption, dividends are exempt if received by a Spanish entity that holds at least 5% of the shares of a foreign entity for a continuous period of at least one year, with the foreign entity paying the dividends subject to a tax comparable to Spanish corporate income tax (a requirement deemed met if the entity is resident in a country with which Spain has a tax treaty with an exchange of information clause) and resident in a country that is not a tax haven, with at least 85% of its profits deriving from business activities.

### **Deductions**

Business expenses are deductible if they are incurred for the purpose of earning profits, and properly recorded and documented. Payments of real property tax and local surcharges on these taxes are deductible in determining the corporate tax base, as are payments of interest and royalties. Restrictions are imposed on the deduction of expenses incurred on payments made to entities or persons resident in territories deemed to be tax havens.

Nondeductible expenses include corporate income tax, criminal and administrative fines and penalties, or surcharges for the late payment of taxes, gifts, provisions for internal pension allowances, amounts directly or indirectly remunerating equity, and expenses for services with individuals or institutions resident in tax havens that are not demonstrated to correspond with an actual transaction.

### **Depreciation**

Permissible methods of depreciation are the declining balance and the sum-of-the-years'-digits methods. The declining balance method is applicable to all assets except buildings and furniture, and allows depreciation to be shifted to the early years of the useful life of an asset. Under the sum-of-the-years'-digits method, the sum is determined on the basis of the depreciation period established in official tables.

Depreciation of fixed or movable assets is based on historical cost, using straight-line rates chosen by the company within limits set for each industry by the Ministry of Economy and Finance.

Depreciation may be taken for tangible and intangible assets. Official tables specify the following annual rates: commercial buildings, 1%-2%; industrial buildings, 1.47%-3%; office furniture, 5%-10%; machinery, 5.55%-12%; vehicles, 7.14%-16%; computers, 12.5%-25%; and software, 16.7%-33%. Leased goods are subject to the same depreciation rates as other assets.

Spanish GAAP was amended to adapt to IFRS criteria for fiscal years beginning 1 January 2008 and after. The main changes introduced under Spanish GAAP that affect the corporate income tax pertain to the write-down and deterioration of intangibles.

Intangibles with a predictable useful life will qualify for a write-down allowance, limited to 10% per year for the period of time in which they derive income, provided they are acquired for good and valuable consideration from an unrelated entity. Software licenses are an exception to the general intangible rule as they are written down pursuant to a specified table provided under the tax regulations. Intangible assets with an indeterminate predictable life do not qualify for accounting write-down allowances, although a 10% tax depreciation correction may be applicable for tax purposes.

Goods acquired through leasing arrangements are depreciated in the same way as other assets subject to depreciation. The difference between the acquisition price and the amount paid to the assigning entity is treated as a deductible expense.

### Losses

Operating losses may be carried forward for up to 15 years, starting from the first fiscal year in which profits are earned in the case of newly incorporated entities. The carryback of losses is not permitted.

## 3.4 Capital gains taxation

Capital gains are treated as ordinary business income taxable at the normal corporate rate of 30% (a reduced rate applies to small and medium-size enterprises whose turnover in the previous tax year is less than EUR 10 million).

When a company is dissolved, the excess proceeds of the market value of distributed assets over the book value of the shares is considered a capital gain recognizable to shareholders.

Under the participation exemption, capital gains derived from the sale of a participation owned by a holding in a nonresident company (except tax havens) are exempt if Spain has concluded a tax treaty that includes an exchange of information clause or if the paying entity is subject to a tax equivalent to Spanish corporate income tax. To qualify for the exemption, the Spanish company must hold at least 5% of the subsidiary for at least 12 continuous months and the profits must come from foreign business activities, amongst other requirements.

## 3.5 Double taxation relief

### Unilateral relief

Spanish domestic law grants a unilateral tax credit to resident taxpayers for direct taxes incurred that are similar to Spanish income taxes. Generally, the credit will be granted in an amount equal to the lesser of the tax payable in Spain on the income or the actual tax incurred by the taxpayer (if a tax treaty is applicable, the tax payable based on the treaty).

In addition to a direct tax credit for foreign income tax paid, a credit for underlying tax also will be available, i.e. credit for tax paid by a nonresident payer of dividends to a Spanish company. The credit is granted with regards to dividends paid by a nonresident subsidiary in which the Spanish entity held, directly or indirectly, at least 5% of the subsidiary for at least one year prior to the date on which the dividend was payable, or, if the 5% participation is maintained, until the one-year period is met. The credit cannot exceed the tax that would have been payable in Spain had the profits been obtained in Spain.

Unused credits may be carried forward 10 years.

### Tax treaties

Spain has a broad tax treaty network, the aim of which is to eliminate double taxation and provide for reduced rates of withholding tax on dividends, interest and royalties. Spain's treaties generally follow the OECD model treaty, providing for relief from double taxation on all types of income, limiting the taxation by one country of companies resident in the other and protecting companies resident in one country from discriminatory taxation in the other. The treaties also generally contain OECD-compliant exchange of information provisions.

A certificate stating that the taxpayer is a resident in the other contracting state "within the meaning of the corresponding double taxation treaty" is required for a nonresident to benefit from provisions in the corresponding treaty.

Spain Tax Treaty Network			
Albania	Czech Republic	Kazakhstan*	Russia
Algeria	Ecuador	Korea	Saudi Arabia
Argentina	Egypt	Kyrgyzstan	Serbia
Armenia	El Salvador	Latvia	Slovakia
Australia	Estonia	Lithuania	Slovenia
Austria	Finland	Luxembourg	South Africa
Azerbaijan	France	Macedonia	Sweden
Belarus	Georgia	Malaysia	Switzerland
Belgium	Germany	Malta	Tajikistan
Bolivia	Greece	Mexico	Thailand
Bosnia-Herzegovina	Hungary	Moldova	Trinidad & Tobago
Brazil	Iceland	Morocco	Tunisia
Bulgaria	India	Netherlands	Turkey
Canada	Indonesia	New Zealand	Turkmenistan
Chile	Iran	Norway	Ukraine
China	Ireland	Pakistan	United Arab Emirates
Colombia	Israel	Philippines	United Kingdom
Costa Rica	Italy	Poland	United States
Croatia	Jamaica	Portugal	Venezuela
Cuba	Japan	Romania	Vietnam

\*The treaty applies as from 18 August 2011.

## 3.6 Anti-avoidance rules

### Transfer pricing

Spain's transfer pricing legislation requires that transactions with related parties be carried out on arm's length terms and that taxpayers prepare transfer pricing documentation. Spain generally incorporates the OECD's transfer pricing guidelines with respect to valuation methods. The main methods available to determine market prices are the comparable uncontrolled price, the cost-plus and the resale price methods. If none of these methods are applicable, the profit split and the transactional net margin methods should be applied.

Documentation of related party transactions must be maintained, with penalties for failure to comply.

A taxpayer may conclude an advance pricing agreement (APA) with the tax authorities that entitles the company to: (1) use its proposed method of valuing transactions for four fiscal years; (2) value R&D contributions; and (3) establish management expenses. In certain circumstances, an APA may be rolled back to the prior accounting period.

### Thin capitalization

The thin capitalization rules apply to direct or indirect loans between a resident and a nonresident related party. A debt-to-equity ratio of 3:1 applies. Where the average amount of loans in a fiscal year exceeds the 3:1 ratio, the interest on the excess amount will be recharacterized as a dividend and hence nondeductible. The thin capitalization rules do not apply to entities in EU member states, unless the entity is resident in a tax haven.

## Controlled foreign companies

The CFC rules apply when a Spanish taxpayer (entity or individual) has a shareholding in a foreign entity that is classified as a CFC, and the CFC obtains certain types of income.

An entity is deemed to be a CFC where: it is a nonresident entity (excluding EU residents if the taxpayer can show that the CFC has valid economic reasons and engages in active business activities); the Spanish taxpayer, alone or with related parties, holds a direct or indirect participation of 50% or more in the capital, equity, results (profits) or voting rights; and the foreign tax paid by the nonresident entity on income subject to the Spanish CFC rules is less than 75% of the tax calculated in accordance with Spanish tax rules.

Only specific categories of income are subject to the CFC rules (in general, passive income): income derived from the ownership of real property, unless such income derives from the performance of activities that qualify as business activities for Spanish tax purposes; dividend income; capital gains derived from real property and shareholdings; income derived from the lending of capital; income derived from the provision of services and from insurance and financial activities; and other (residual). Exceptions may apply, such as de minimis rules, income from the provision of certain services and insurance and financial activities and certain dividends and capital gains.

Attribution is made on the basis of the percentage of the Spanish resident's participation in the CFC. Dividends paid out of income that has already been attributed under the CFC rules are not subject to Spanish corporate/personal income tax. Credits are allowed against Spanish corporate income tax for foreign income tax effectively paid by the CFC and/or its subsidiaries on income subject to attribution and foreign withholding tax deducted on dividends paid out of profits previously subject to attribution. The credit is limited to the amount of the Spanish corporate income tax liability corresponding to the income subject to attribution. Taxes paid in tax havens may not be credited.

## General anti-avoidance rule

General anti-avoidance rules apply.

## 3.7 Administration

### Tax year

A company's tax period is its fiscal year. The tax period may not exceed 12 months.

### Filing and payment

Corporate taxpayers are required to make three advance payments of income tax during the year: in April, October and December. The advance payment may either be equal to 18% of tax due in the previous year or based on taxable income derived from the beginning of the tax period to the end of the prepayment period (i.e. from the beginning of the tax period to 31 March (prepayment for April), 30 September (prepayment for October) and 30 November (prepayment for December), applying a rate equal to five-sevenths of the applicable tax rate (for taxpayers taxable at the standard rate, the prepayment would be 21%)). The latter method is mandatory for taxpayers whose turnover exceeded EUR 6,010,121.24 in the 12 months before the beginning of the current year's tax period. A taxpayer whose turnover does not exceed that amount can make the advance payment by applying the 18% rate to the tax payable in the previous year.

Companies must file a tax return and pay any tax due within the first 25 calendar days after a period of six months following the close of the fiscal year.

The governments of the Basque provinces and Navarra collect corporate income taxes and remit a portion to the central government, under an agreement signed every five years.

### Consolidated returns

Spain allows the filing of a consolidated income tax return and the offsetting of profits and losses within the group of companies.

A group of corporations may be taxed on the basis of a consolidated balance sheet, subject to shareholder agreement at every entity level and subsequent communication to the tax authorities. To qualify as a group for these purposes, a Spanish resident company must own directly or

indirectly at least 75% of its Spanish subsidiaries that are subject to corporate income tax (70% if the companies are quoted on the stock exchange). The controlling company's participation must be held on the first day of the tax period in which the group regime applies and maintained throughout the entire tax period. All of the companies in the group must have the same closing tax and the financial period may not be longer than 12 months. Controlling companies must present consolidated accounts to the Mercantile Register in the autonomous community in which they are located. Subsidiaries should also present their own accounts to the register in their particular localities.

### **Statute of limitations**

The general statute of limitations is four years from the statutory filing deadline or the date the return is actually filed, if later. Where an amended return is filed after the deadline, the four-year period restarts.

### **Tax authorities**

At the national level, taxes are administered by the *Agencia Estatal de Administración Tributaria*, an autonomous body within the Ministry of Economy and Finance. National taxes transferred to the regions or regional taxes are administered by the regional governments. Local taxes are usually administered by the municipalities, unless they do not assume these powers and, therefore, are managed by the *Agencia Estatal de Administración Tributaria*

### **Rulings**

The Spanish tax authorities generally may provide binding advance rulings on the tax consequences of a proposed transaction. As noted above, APAs also are available for up to four fiscal years following the year of approval, the negotiation year itself and, in some cases, a one-year rollback is allowed. The maximum term of an APA is six years.

## **3.8 Other taxes on business**

None

## **4.0 Withholding taxes**

### **4.1 Dividends**

Dividends paid to a nonresident (including an individual) are subject to a 19% withholding tax unless a lower rate applies under a tax treaty. Intercompany dividend payments made to residents of other EU member states are exempt from Spanish withholding tax (due to the implementation of the EU Parent-Subsidiary Directive) if the foreign parent has held at least 5% of the share capital of the Spanish company for one year before dividends are declared or if the one year holding period is subsequently completed. The exemption does not apply if the majority of voting rights in the parent company is held by non-EU residents, unless the parent company effectively carries out a business activity related to that of its subsidiary, it is in charge of managing its subsidiary and it has the appropriate personnel and material means, or it was incorporated under valid economic grounds and not just to benefit from the exemption.

### **4.2 Interest**

Interest paid to a nonresident (including an individual) is subject to a 19% withholding tax unless a lower rate applies under a tax treaty. If the the payment is made to a resident of another EU member state, a tax exemption is applicable. Interest on bank deposits and government bonds is exempt.

### **4.3 Royalties**

Royalties paid to a nonresident (including an individual) are subject to a 24% withholding rate unless the rate is reduced by a tax treaty or, from 1 July 2011, the royalties qualify for exemption under the EU Interest and Royalties Directive. (A 10% rate applies under the directive until 1 July 2011.)

### **4.4 Branch remittance tax**

A branch remittance tax of 19% applies to after-tax profits paid to a head office (in addition to the normal corporate income tax rate). The branch profits tax does not apply to branches of EU entities or entities based in a country that has signed a tax treaty with Spain (unless the treaty provides otherwise).

### **4.5 Wage tax/social security contributions**

An employer is required to withhold income tax on salary paid to an employee. The rates are progressive, ranging from 24% to 45%. Employment income paid to a nonresident is subject to a 24% withholding tax if the income derives directly or indirectly from personal activities carried out within the Spanish territory.

An employer also is required to contribute 23.6% of an employee's monthly wages to the Spanish social security system.

# 5.0 Indirect taxes

## 5.1 Value added tax

VAT is levied on the supply of goods and the provision of services. Certain transactions are exempt from VAT, including services and supplies of goods relating to insurance and financial activities, health, education and rental of residential property. VAT does not apply in the Canary Islands (where there is an indirect tax similar to VAT but with some differences, e.g. lower tax rates) and in the North African enclaves of Ceuta and Melilla.

VAT taxpayers are normally entitled to deduct VAT on the goods and services they acquire if they are used to produce other goods and services subject to VAT or if VAT was paid on transactions related to international trade or on deductible transactions conducted outside Spain.

The standard VAT rate is 18%. There are two reduced rates: 8% and 4%, the latter of which applies to basic goods. Certain transactions are exempt, e.g. most financial transactions, real estate transactions and health and education activities. Other transactions are zero rated.

Registration is mandatory for all taxpayers that carry out transactions in Spain and a special VAT identification is required when a company carries out intra-community transactions.

VAT returns must be filed monthly if the turnover in the previous period exceeds EUR 6,010,121.24 million; otherwise, quarterly filing is required.

Spain has a VAT grouping regime under which an election can be made to file a consolidated VAT return where the individual VAT results of each entity in a group are aggregated.

## 5.2 Capital tax

Capital duty is levied at 1%. Before 3 December 2010, the duty applied to companies on the contribution of capital, equity increases and certain other substantial changes in corporate structure. As from that date, exemptions apply for incorporation, share capital increases and related contributions by shareholders, as well as the transfer of corporate domicile or effective management from a non-EU member state to Spain. Certain tax-free reorganizations are exempt, to include qualifying intra-EU reorganizations.

For individuals (shareholders of a company), the duty applies on liquidation and reductions in the capital of companies in which they participate.

## 5.3 Real estate tax

Landowners must pay real property tax to the local authorities, up to a maximum of 1.1% of the cadastral value for urban property and up to a maximum of 0.9% of the cadastral value for rural property. Additional taxes are imposed on the increase in urban land values when land is transferred.

Nonresident entities that own or control Spanish real property are subject to a 3% special tax on the officially estimated value of the property. This tax does not apply to foreign states, public institutions, international bodies, entities covered by a tax treaty (with an exchange of information clause), entities engaged in business activities in Spain, companies listed on the secondary stock market or non-profit entities.

## 5.4 Transfer tax

Companies pay transfer tax on various transactions that are not part of their normal activities. The principal rates are 7% for transfers of real property, 4% for transfers of movable assets and administrative concessions, 1% on newly issued shares, 0.5% on certain mercantile law public deeds and 1% on certain real property rights. Regional governments are entitled to apply a different rate in certain areas, and most have opted to apply a 7% rate to real property transfers.

## **5.5 Stamp duty**

Stamp duty is levied at 0.5% of the value of the subject of notarized documents registered in a public register, although all of the Spanish regions have increased the general rate to 1% (except 0.75% in the Canary Islands).

## **5.6 Customs and excise duties**

As an EU member state, Spain applies the EU Community Customs Code, which sets out the general rules and procedures.

Excise taxes are generally levied at lump-sum rates (with ad valorem rates for cigarettes) on the production, manufacture or import into the EU of alcohol and alcoholic beverages, hydrocarbons and tobacco products. The Canary Islands, Ceuta and Melilla are generally exempt from these taxes, although excise duties apply to alcohol in the Canary Islands.

## **5.7 Environmental taxes**

A vehicle registration tax applies at ad valorem rates on the final registration in Spain of most new and used vehicles, including most types of passenger cars, most pleasure or sporting boats and motorized aircraft. Certain exemptions are available. The rate of the registration tax ranges from 0% to 12%, depending on the vehicle and the particular carbon dioxide emissions.

## **5.8 Other taxes**

Insurance companies carrying out taxable transactions pay a tax of 6% of paid premiums.

Companies pay city governments an economic activity tax. The self-employed and small firms with annual revenue of less than EUR 1 million are not subject to the tax. Larger firms are exempt during their first two years of operation but face a higher rate, beginning the third year. Rates increase according to the amount of a company's revenue.

Any person undertaking construction projects requiring permission from the municipality must pay a construction tax to the city government at a top rate of 4%; rates are set by each municipality.

## 6.0 Taxes on individuals

Individuals in Spain are subject to a number of taxes, including income tax, real estate tax, inheritance tax and social security contributions.

### 6.1 Residence

An individual is considered a resident for tax purposes if: (1) he/she is present in Spain for more than 183 days in a calendar year; or (2) Spain is the taxpayer's main center or business base or the place where his/her professional activities or economic interests are located, either directly or indirectly; or (3) the taxpayer's spouse and dependent children habitually reside in Spain. Residents of Spain are subject to personal income tax on worldwide income; nonresidents are subject to tax only on Spanish-source income.

An individual who changes his/her residence to a tax haven jurisdiction will not lose Spanish residence status in the tax period in which the move is made and the following four tax years.

A nonresident individual who is resident in an EU member state may elect to be subject to Spanish personal income tax if the individual can demonstrate that his/her habitual residence is in another EU member state and that at least 75% of his/her total income during the year was obtained as salary or business income in Spain. Foreign taxes paid may be credited against Spanish tax (up to the amount that would have been payable in Spain).

### 6.2 Taxable income and rates

#### Taxable income

Resident individuals generally are taxed on worldwide income, although salary income for work performed abroad is exempt from tax up to EUR 60,100 per year if the income is subject to a tax similar to Spanish personal income tax in the other country.

Taxable income includes earned income (e.g. salaries, wages and business or professional income) and passive income (e.g. dividends, interest and capital gains). Capital gains on the sale of a main residence are exempt if certain requirements are met.

Unemployment benefits are taxable, as is "irregular" income such as severance pay, sick leave pay and other income earned over a period exceeding two years (including share options and receipts from life insurance policies collected as lump sums). In the case of stock options plans, a 40% reduction in the taxable base can be applied to an amount not exceeding the result of multiplying the annual average salary by the number of years over which the income will be generated (at least two and not more than five).

#### Deductions and reliefs

Specific expenses are deductible from each type of income. A deduction for social security contributions is permitted. Additionally, income earned irregularly over a period exceeding two years is allowed a 40% deduction limited to EUR 300,000 per year. Deductions for the purchase or renting of a primary residences are available, provided certain requirements are met.

#### Rates

Spain imposes personal income tax at progressive rates ranging from 24% to 49% (the top rate varies depending on the taxpayer's region of residence).

Investment income, such as dividends, interest from bank deposits, gains on the sale of shares, etc. obtained by a Spanish tax resident generally is subject to a 19% tax rate for amounts up to EUR 6,000 and 21% on the excess.

Resident employees are required to make monthly contributions to the Spanish social security system. The total contribution is 28.3% of the monthly wages, with the employee contributing 4.7% and the employer, 23.6%.

An individual who is assigned to work and live in Spain may opt to be taxed as a nonresident for the first six years of the assignment. Under such an arrangement, the individual is taxed at a flat rate of 24% on the gross amount of the income (i.e. no deductions or allowances are granted). To

qualify for nonresident taxation, the individual must: (1) not have been a tax resident in Spain for the previous 10 years; (2) work in Spain for a Spanish tax resident company or a PE of a nonresident company; (3) not derive tax-exempt income in Spain under the Spanish nonresident income tax law; and (4) not derive more than EUR 600,000 of personal employment income (otherwise, the general rate will apply).

### **6.3 Inheritance and gift tax**

Inheritance and gift taxes are imposed on all Spanish resident heirs, beneficiaries and recipients at rates ranging from 7.65% to 34%. However in most regions, the tax has been substantially reduced for resident individuals by a 99% allowance in favor of descendants, ancestors and spouses.

### **6.4 Net wealth tax**

Spain does not levy net wealth tax.

### **6.5 Real property tax**

The land owner must pay real property tax to the local authorities, up to a maximum of 1.1% of the cadastral value for urban property and up to a maximum of 0.9% of the cadastral value for rural property. Additional taxes are imposed on the increase in urban land values when land is transferred.

### **6.6 Social security contributions**

Employees working in Spain (regardless of nationality) generally must be registered with the social security system, with the employer making the contribution. Social security contributions represent 28.3% of an employee's wages, with the employee contributing 4.7% and the employer 23.6%.

### **6.7 Other taxes**

For individuals (shareholders of a company), capital duty applies on liquidation and reductions in the capital of companies in which they participate.

### **6.8 Compliance**

The taxable period for individuals is the calendar year.

Individuals must file a tax return and pay tax due within six months following the close of the tax year. The minimum employment income threshold to file a tax return is EUR 22,000. However, an individual with total annual household income of at least EUR 11,200 must file a tax declaration where income is paid by more than one employer.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

Like other European countries, Spain maintains a system based on a labor code and standardized employment contracts (usually permanent). Legislation exists, among other purposes, to:

- Create a legal framework for temporary job agencies;
- Specify provisions related to dismissal, labor mobility, wages, working hours, paid holidays, collective negotiation and part-time work; and
- Set out specific types of employment contracts.

### Working hours

The legal work week is 40 hours, although many companies have reduced working hours to 37 or 38. The Workers Statute maintains a 40-hour legal work week but permits total hours to be distributed irregularly over the year if such an arrangement is part of a collective bargaining agreement.

Each employee worker has the statutory right to a block of one-and-a-half days off a week (two days a week for workers younger than age 18). The Workers Statute allows employees and employers to negotiate blocks of three days off over a fortnight.

The Workers Statute also allows employees and employers to negotiate extensions to the statutory nine-hour day if a 12-hour rest period is maintained in between shifts. Employees younger than age 18 may not legally work for more than eight hours per day, including training; employers using apprenticeship contracts should take this limit into account.

Overtime regulations are dictated by national law and collective bargaining agreements. There is a statutory annual maximum of 80 hours of overtime per employee.

## 7.2 Wages and benefits

The Ministry of Labor and Social Affairs establishes the minimum wage annually (in December) for the following year; increases usually match the expected inflation rate.

### Social insurance

Social security coverage is mandatory for employees and the self-employed, with social contributions paid by both the employee and the employer. General risk contributions represent 28.3% of an employee's wages with the employer paying 23.6% and the employee paying 4.7%. The rate for the unemployment fund is higher for temporary (6.7%) and part-time temporary (7.7%) contracts.

### Other benefits

Large enterprises offer a variety of special employee benefits, not all of which are mandatory, such as housing, lunches, nurseries, recreational facilities, medical insurances, life insurances, pension plans, low-cost loans, training courses and transport. Firms with more than 100 workers must provide medical services (jointly with other firms, if each has fewer than 1,000 workers).

## 7.3 Termination of employment

An employer must obtain approval from the government labor authorities for collective layoffs. Collective layoffs are defined as the termination of employment contracts for economic, technical, organizational or production-related reasons that, within a 90-day period, affect at least 10 employees in companies with fewer than 100 employees; 10% of the workforce in companies with 100–300 employees; or 30 employees in companies with 300 or more employees. A collective dismissal also includes the dismissal of all employees on payroll, where there are more than five employees. After following a specified procedure, the employer may be authorized to terminate the relevant labor contract.

When a worker is dismissed, the size of the termination payment depends on whether the dismissal is justified or unjustified. Justified dismissals, for “objective causes” (i.e. economic, technical, organizational or production-related reasons) require payment of 20 days salary per year worked with the firm, up to a maximum of 12 months. Unjustified dismissals require payments of 45 days’ salary per year worked, with a maximum of 42 months’ payment. No payments are required if an employee is dismissed for disciplinary reasons and the dismissal is declared fair and justified. However, in the case of an individual in top management with a special labor relationship, a minimum of three months (up to a maximum of 6 months) or the period established in the employment contract is required. In the case of a disciplinary dismissal, the law does not establish a minimum period, but a minimum period usually is agreed to in the contract.

## **7.4 Labor-management relations**

Employees and employers establish working and production conditions via collective bargaining agreements, with terms agreed by both parties. Generally, as long as employees and employers do not denounce a collective bargaining agreement, it will be extended each year. Collective bargaining agreements may be company agreements or general industry agreements.

Local representatives of the Ministry of Labor and Social Affairs determine whether a strike is “legal,” “abusive” or “illegal.” Employees must give five days’ written notice to call a legal strike. (Strikes in the public service sector require 10 days’ notice.) Legal strikes may be called by a simple majority of workers’ representatives (if a quorum of 75% is present) or by secret vote of a simple majority of the workforce (if 25% or more have requested the vote).

During a strike, workers are represented by a strike committee with a maximum of 12 members. Employers agree with the committee to appoint maintenance personnel. Strikers are not permitted to force non-strikers to abandon their jobs. No wages need be paid during a legal strike, but social payments and unemployment compensation continue. The employer may not hire new personnel and striking workers may not be hired by another employer.

## **7.5 Employment of foreigners**

Nationals of EEA member states (comprised of the EU, Iceland, Liechtenstein and Norway) and Switzerland do not need permits to work in Spain, but EEA/Swiss nationals who will reside for more than three months in Spain must register in the Foreigners Central Register. While EEA and Swiss nationals enjoy similar rights, the treatment of Swiss nationals is established under a series of bilateral agreements rather than the EEA Agreement.

Non-EEA employees must apply to the Ministry of Labor and Social Affairs for work permits. All permits are renewable. Foreigners with a Spanish relative, workers necessary to install foreign imported machinery, top executives and others receive preferential treatment. The period of validity is different depending on the type of each work permit. Under Spain’s labor laws, foreigners legally working in Spain enjoy the same rights and obligations as Spaniards.

## 8.0 Deloitte International Tax Source

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