



International tax

Spain Highlights 2012

Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No, but the government requires prior notification of certain capital movements for statistical purposes and to limit tax fraud. Payments between residents and nonresidents, whether in euro or a foreign currency, should be made through registered entities with the official register of the Bank of Spain.

Accounting principles/financial statements – IAS/IFRS, as adopted in Spain. Financial statements must be prepared annually.

Principal business entities – These are the public limited company, limited liability company and branch of a foreign corporation.

Corporate taxation:

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.

Basis – Residents are subject to corporation tax on worldwide profits and capital gains. Nonresident companies are taxed on Spanish-source income and gains, subject to the provisions of an applicable tax treaty. Branches are generally taxed similar to subsidiaries.

Taxable income – Taxable income includes worldwide profits less deductible expenses, and is based on income disclosed in the financial statements.

Taxation of dividends – Dividends received are subject to corporate income tax, and double tax relief is available.

Capital gains – Capital gains are treated as ordinary business income taxable at 30%.

Losses – As from 1 January 2012, operating losses may be carried forward for up to 18 years (increased from 15), starting from the first period in which profits are earned. No carryback is allowed.

For tax periods beginning in 2011, 2012 and 2013, carried forward losses up to 75% of the taxable profits will apply to companies with

turnover between EUR 20 million and EUR 60 million. This percentage is reduced to 50% for companies whose turnover is EUR 60 million or higher.

Rate – 30% (a reduced rate applies to small and medium-size enterprises).

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Spanish law provides for an exemption or a credit to resident taxpayers for direct taxes incurred that are analogous to Spanish corporate income tax. The credit is limited to the lesser of the tax payable in Spain had the income been obtained there or the actual foreign tax incurred.

Participation exemption – Capital gains derived from 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 with that country 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 a participation of at least 5% for at least 12 continuous months and the profits must come from foreign business activities, among other requirements.

Holding company regime – See under "Participation exemption." The participation threshold may be met where the participation value is more than EUR 6 million in lieu of the 5% holding applicable to holding companies. Dividends paid out of qualifying income are free from withholding tax.

Incentives – Deductions are available for investments in the environment, R&D, extraordinary profits reinvestment, etc.

Withholding tax:

Dividends – The withholding tax rate on dividends paid to nonresidents was temporarily increased from 19% to 21% for 2012 and 2013. The rate may be reduced by an applicable tax treaty. Intercompany payments to residents of other EU member states are exempt from Spanish withholding

tax if the foreign parent has continuously held at least 5% of the share capital of the Spanish company for 1 year before the dividends are declared, or the 1-year holding period is subsequently completed.

Interest – The withholding tax rate on interest paid to nonresidents was temporarily increased from 19% to 21% for 2012 and 2013. The rate may be reduced by a tax treaty or exempt under the EC interest and royalties directive.

Royalties – The withholding tax rate on royalties paid to nonresidents was temporarily increased from 24% to 24.75% for 2012 and 2013. The rate may be reduced by a tax treaty or exempt under the EC interest and royalties directive.

Technical service fees – The withholding tax rate on technical service fees paid to a nonresident for services related to business activities in the Spanish territory was temporarily increased from 24% to 24.75% for 2012 and 2013. Reduced rates should apply under tax treaties.

Branch remittance tax – The branch remittance tax rate was temporarily increased from 19% to 21% for 2012 and 2013. The tax, which may be reduced by a tax treaty, applies to after-tax profits paid to a head office unless the payment is made to an EU resident.

Other – The general rate on nonresident income was temporarily increased from 24% to 24.75% for 2012 and 2013. The increase also applies to individuals assigned to work and live in Spain who have opted to be taxed as a nonresident for the first six years of the assignment.

Other taxes on corporations:

Capital duty – A 1% capital duty applies on the reduction of capital and upon liquidation.

Payroll tax – Withholding tax on income from employment is applicable on payroll (i.e. in relation to the personal income tax).

Real property tax – Landowners must pay tax to the local authorities, with a temporary surcharge of up to 10% also applying in 2012

and 2013. Nonresidents pay a special 3% tax, except where the nonresident is resident in a country with which Spain has a tax treaty that includes an exchange of information clause.

Social security – “General risks” contributions represent 28.3% of an employee’s wages, with the employer paying 23.6% and the employee paying 4.7%.

Stamp duty – Stamp duty is levied at 0.5% (increased to 1% in most regions) of the value of the subject of notarized documents registered in a public register. This tax rate may be increased to 1.5% or 2% – depending on the autonomous region – when real estate is acquired in a VATable transaction as a consequence of the waiver of the applicable exemption.

Transfer tax – Companies pay a 7% transfer tax (or higher depending on the region) on acquisitions from individuals (non-entrepreneurs) and on Spanish real estate, including any indirect acquisitions.

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

Anti-avoidance rules:

Transfer pricing – Transactions with related parties must be carried out at arm’s length. Spain incorporates the OECD’s transfer pricing guidelines.

Thin capitalization – Interest will be recharacterized as a dividend where the average loan amount with non-EU related parties exceeds a 3:1 debt-to-equity ratio.

Controlled foreign companies – Spain’s CFC rules require that certain income obtained from nonresident entities be included in the corporate income tax base of resident entities.

Other – General anti-avoidance rules apply.

Disclosure requirements – Transfer pricing legislation requires documentation to be prepared for related party transactions.

Administration and compliance:

Tax year – The tax year coincides with the accounting period. The tax period may not exceed 12 months.

Consolidated returns – A group of corporations may be taxed on the basis of a consolidated balance sheet. To qualify as a group, a Spanish company must own at least 75% of its Spanish subsidiaries or 70% in the case of Spanish quoted subsidiaries.

Filing requirements – The corporate income tax return must be filed and taxes paid within 6 months and 25 days following the close of the fiscal year. Corporations are required to make 3 advance payments of income tax in April, October and December of each year.

Penalties – Where there is no loss to the tax authorities, the penalty is limited to a fixed penalty of EUR 200. Underpayment penalties range from 50% to 150% of the unpaid tax liability. Surcharges, ranging from 5% to 20%, are imposed for late payment where payment is made voluntarily by the taxpayer, without investigation by the tax authorities. Interest is also imposed where the payment is more than 1 year overdue.

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

Personal taxation:

Basis – Residents of Spain are subject to personal income tax on a worldwide basis. Nonresidents are taxed under a separate regime on Spanish-source income.

Residence – An individual is resident if he/she spends more than 183 days of the tax year in Spain or if the main center or base of the taxpayer’s business, professional activities or economic interest is in Spain.

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

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

Capital gains – For 2012 and 2013, a progressive rate from 21% to 27% applies (increased from a flat 19% on the first EUR 6,000 and 21% on income exceeding that amount).

Deductions and allowances – 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 2 years is allowed a 40% deduction. When irregular income is derived from labor income, the deduction only applies to a maximum income of EUR 300,000.

Rates – For 2012 and 2013, a temporary complementary tax increased the range of progressive rates to 24.75% to 56% (from the previous range of 24% to 49%), with the maximum rate varying according to the region of residence.

Also for 2012 and 2013, savings income is subject to a progressive rate from 21% to 27% (increased from a flat rate of 19% on the first EUR 6,000 and 21% on income exceeding that amount).

Other taxes on individuals:

Capital duty – Individual shareholders receiving goods or cash from a liquidation or capital reduction of a company are subject to a 1% levy.

Stamp duty – Stamp duty is applicable at 0.5% (increased to 1% in most regions).

Capital acquisitions tax – A 7% transfer tax (or higher, depending on the region) is applicable.

Real property tax – The municipal authorities levy a real estate tax, with a temporary surcharge of up to 10% also applying in 2012 and 2013.

Inheritance/estate tax – Inheritance and gift taxes are imposed on all Spanish resident heirs, beneficiaries and recipients. Rates range up to 34%.

Net wealth/net worth tax – A net worth tax at progressive rates from 0.2% to 2.5% was reintroduced for tax years 2011 and 2012 and is levied on the worldwide net worth of resident individuals and on the net worth in Spain of nonresident individuals, with the first EUR 700,000 and the taxpayer’s main dwelling (up to a value of EUR 300,000) excluded from the tax base.

Social security – “General risk” contributions represent 28.3% of an employee’s wages, with the employer contributing 23.6% and the employee 4.7%.

Administration and compliance:

Tax year – Calendar year

Filing and payment – Individuals must file a tax return and pay tax due within 6 months following the close of the fiscal year. The minimum work income threshold to file a tax return is EUR 22,000.

Penalties – Where there is no loss to the tax authorities, the penalty is limited to a fixed penalty of EUR 200.

Value added tax:

Taxable transactions – VAT is imposed on the sale of goods and the provision of services.

Rates – The standard rate is 18%, with reduced rates of 8% and 4%. Certain transactions are exempt. Additionally, a 4% rate on the sale of new housing applies until 31 December 2012.

Registration – Registration is mandatory for all taxpayers that carry out transactions in Spain.

Filing and payment – Filing and payment are due on a monthly basis where the turnover in the previous period exceeds approximately EUR 6 million; otherwise, quarterly filing and payment are required.

Source of tax law: General Tax Law and legislation regulating each tax

Tax treaties: Spain has concluded over 70 tax treaties.

Tax authorities: *Agencia Estatal de la Administración Tributaria*

International organizations: OECD, EU

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