

Spain Country Profile

EU Tax Centre

July 2015

Key tax factors for efficient cross-border business and investment involving Spain

EU Member State Yes

Double Tax Treaties With:

Albania	Croatia	Indonesia	Netherlands	Sweden
Algeria	Cuba	Iran	New Zealand	Switzerland
Argentina	Cyprus	Rep. of Ireland	Zealand	Syria ^(a)
Armenia	Czech Rep.	Israel	Nigeria	Tajikistan
Australia	Dominican Rep.	Italy	Norway	Thailand
Austria	Ecuador	Jamaica	Pakistan	Trinidad & Tobago
Azerbaijan	Egypt	Japan	Panama	Tunisia
Barbados	El Salvador	Kazakhstan	Peru ^(a)	Turkey
Belarus	Estonia	Rep. of Korea	Philippines	Turkmenistan
Belgium	Finland	Kuwait	Poland	UAE
Bolivia	France	Kyrgyzstan	Portugal	UK
Bosnia & Herzegovina	Georgia	Latvia	Romania	Ukraine
Brazil	Germany	Lithuania	Russia	Uruguay
Bulgaria	Greece	Luxembourg	Saudi Arabia	US
Canada	Hong Kong	Macedonia	Senegal	Uzbekistan ^(a)
Chile	Hungary	Malaysia	Serbia	Venezuela
China	Iceland	Malta	Singapore	Vietnam
Colombia	India	Mexico	Slovakia	
Costa Rica		Moldova	Slovenia	
		Morocco	South Africa	

Note: (a) Treaty signed, but not yet in force.

Forms of doing business Limited liability company (Sociedad Limitada - SL)
public limited company (Sociedad Anónima - SA)

Legal entity capital requirements SL: EUR 3,000
SA: EUR 60,000



Residence and tax system

A company is considered to be tax resident in Spain if it has been incorporated under Spanish law, or if its legal seat is located in Spain, or if its place of effective management is in Spain. For these purposes, an entity is deemed to have its place of effective management in Spain if the management and control of its activities as a whole are located in Spain.

CIT Law contains a presumption whereby companies located in tax havens or in zero tax jurisdictions may be deemed Spanish tax residents by the Spanish tax authorities if most of their assets (directly and indirectly owned) are located or can be used in Spain or if most of their activity is undertaken within the Spanish territory. However, this presumption could be waived if the company resident in the tax haven or the zero tax jurisdiction can demonstrate that its domicile and effective place of management is located in that jurisdiction and that there are sound business reasons for the incorporation and operation of the company, other than merely holding participations or other assets.

Spanish resident companies are subject to Spanish CIT on their worldwide income.

Compliance requirements for CIT purposes

Fiscal year generally covers 12 months. The CIT return will have to be submitted during the first 25 days following a six-month period after the date of conclusion of the tax year. Payments on account should also be filed.

Tax rate

The standard corporate income tax rate has been reduced from 30% to 28% in 2015, and to 25% in 2016 onwards. Other reduced rates can apply for special entities.

Withholding tax rates

On dividends paid to non-resident companies

20 percent in 2015 and 19 percent in 2016, unless reduced by double tax treaties.

- Domestic exemption if distributed by special holding company taxed under the Entidad de Tenencia de Valores Extranjeros (“ETVE”) regime and dividends derived from qualified income from non-resident subsidiaries and paid to a non-resident shareholder that does not reside in a tax haven.
- Domestic exemption in the case of dividends distributed to an EU parent (not in the case of liquidation proceeds) subject to fulfillment of certain requirements.

On interest paid to non-resident companies

20 percent in 2015 and 19 percent in 2016, unless reduced by double tax treaties; exemption in the case of interest paid to EU residents (excluding tax haven jurisdictions).

On patent royalties and certain copyright royalties paid to non-resident companies

20 percent, unless reduced by double tax treaties; 19 percent in 2016 in the case of royalties paid to EU/EEA companies to the extent that there is an



effective exchange of information.

On fees for technical services

20 percent unless reduced by double tax treaties. 19 percent in 2016 in case of technical services paid to EU/EEA companies to the extent that there is an effective exchange of information.

On other payments

20 percent in 2015 and 19 percent in 2016 in the case of payments made to EU/EEA companies to the extent that there is an effective exchange of information.

Branch withholding taxes

20 percent in 2015 and 19 percent in 2016

Holding rules

Dividend received from resident/non-resident subsidiaries

Dividend distributions by domestic and foreign subsidiaries:

Participation exemption method (100%)

- Participation requirement: 5 percent of the share capital or equity, or an acquisition price higher than EUR 20,000,000;
- Minimum holding period: 1 year or commitment (calculated on a group basis);
- Taxation requirement: subject to a tax similar to Spanish CIT, with a minimum 10% nominal tax rate. Entities resident in jurisdictions having a tax treaty providing for an exchange of information clause are deemed to meet such requirement.

Hybrid limitation rule: no exemption will be granted if the dividend distribution supposes a cost for the distributing entity.

Capital gains obtained from resident/non-resident subsidiaries

As for dividends, but the holding period must be complied with upon transfer of shares, and special rules apply for the computation of the exempt capital gain on transfer of foreign subsidiaries.

Tax losses

For tax periods starting in 2015, companies have to consider the following limitations when it comes to offsetting tax losses suffered in prior periods:

- companies whose turnover during the 12 months preceding the beginning of the year has been at least EUR 20 million and less than EUR 60 million: loss carry forward may be offset only up to 50 percent of the taxable income prior to such compensation;
- companies whose turnover during the 12 months preceding the beginning of the year has been at least EUR 60 million: loss carry forward may be offset only up to 25 percent of the taxable income prior to such compensation.

No carry back of losses available.



For tax periods starting in 2016: the losses carried forward may only be offset up to 60 percent of the taxable income prior to such compensation.

For tax periods starting in 2017: the losses carried forward may only be offset up to 70 percent of the taxable income prior to such compensation.

EUR1 million safe harbor.

Tax consolidation rules/Group relief rules

Yes. Minimum 75 percent direct or indirect participation required to be held continuously each tax period (Spanish branches of non-resident entities can head a Spanish tax group subject to certain requirements), or, at least, 70 percent of the share capital for listed entities.

The new Spanish CIT law allows the application of the tax consolidation regime to those structures where two Spanish companies have a direct or indirect common non-resident shareholder, as long as the latter is not resident in a tax haven for Spanish tax purposes, allowing the so-called "horizontal tax consolidation". Please note that the non-resident shareholder should also comply with the requirements above.

Registration duties

No

Transfer duties

On the transfer of shares

Generally exempt (except if shares are held in Spanish companies in which more than 50 percent of its balance sheet is constituted by real estate located in Spain and where the transaction is aimed at avoiding taxes. Transfer tax extends in those cases to transfers of intermediate companies holding Spanish real estate companies).

On the transfer of land and buildings

6 – 10 percent (depending on the location)

Stamp duties

There is graduated scale depending on the amount involved.

Real estate taxes

An annual immovable property tax (Impuesto sobre Bienes Inmuebles, IBI) is levied by the municipal authorities. Different standard rates apply depending on where the property is located.

Controlled Foreign Company rules

Yes

Transfer pricing rules

General transfer pricing rules

Yes



Documentation requirement

Yes

Thin capitalization rules

As from January 2012, thin cap rules no longer apply. They have been replaced by new earnings stripping rules (net financial expenses are deductible with the limit of 30 percent of the EBITDA of the tax period, EBITDA consolidated in case of a tax group). These rules apply to interest on both related and third-party debt.

There is also an additional limitation for leveraged acquisitions (LBO), consisting of limiting the deductibility of interest expenses derived from loans granted to purchase an equity interest of any entity. This additional limit amounts to 30% of the operating profit of the acquiring entity.

However, this additional limitation would not apply in the acquisition period provided that a maximum of a 70% debt is utilized for the acquisition. The limitation would also not apply in the subsequent tax periods if the amount of debt is at least reduced by the proportion corresponding to each of the following 8 years, until it is reduced to 30% of the acquisition value.

General Anti-Avoidance rules (GAAR)

Yes

Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions

Yes

Advance Ruling system

Yes, on a binding basis as of July 1, 2004

IP / R&D incentives

Tax credits regulated in CIT law to promote certain activities could be applied, as a general rule, up to a maximum amount of 25 percent of the tax liability. This 25 percent limitation is increased to 50 percent when the R&D tax credit exceeds 10 percent of the tax liability.

Other incentives

Other incentives (e.g., for investment in certain activities, for employment creation, etc.) are available.

VAT

The standard rate is 21 percent, and the reduced rates are 10 and 4 percent.

Other relevant points of attention

No

Source: Spanish tax law and local tax administration guidelines, updated 2015.



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