Spain
Country Profile

EU Tax Centre

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

EU Member State Yes

Double Tax Treaties With:

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

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.

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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

19 percent will apply from 2016 onwards, 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

19 percent will apply from 2016 onwards, 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

24 percent, unless reduced by double tax treaties. 19 percent from 2016 onwards in the case of royalties paid to EU/EEA companies to the extent that there is an effective exchange of information. Domestic exemption in the case of

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royalties paid to an EU parent (not in the case of liquidation proceeds) subject to fulfillment of certain requirements

On fees for technical services

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

On other payments

24 percent, unless reduced by double tax treaties. 19 percent from 2016 onwards in the case of payments made to EU/EEA companies to the extent that there is an effective exchange of information.

This WHT applies for any payment to a non-resident not derived from:

- Dividend and other earnings resulting from the participation in a entity's equity.
- Interest and other earnings obtained through the cession of capital to third parties.
- Capital gains arising as a result of the transfer of capital assets.
- Pensions and similar benefits received by a non-resident natural person.
- Non-residents employment-related income, under certain circumstances.
- Reinsurance transactions.
- Sea and air transport businesses, which are resident abroad and whose ships or planes enter Spanish territory.

Branch withholding taxes

19 percent will apply from 2016 onwards.

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 (calculated on a group basis);
- Taxation requirement: subject to a tax similar to Spanish CIT, with a minimum 10 percent nominal tax rate. Entities resident in jurisdictions having a tax treaty providing for an exchange of information clause are deemed to meet such requirement.

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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 where the transaction is aimed at avoiding taxes

On the transfer of land and buildings

6 – 10 percent (depending on the location).

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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.

New transfer pricing documentation requirements have been established: Country-by-country report: As of FY 2016, Spain-based multinational entities having a turnover of EUR 750 million or more are required to comply with a new country-by-country reporting standard and file the report in the 12 months following the close of the fiscal year. Master file reporting: Spain-based multinational entities with a turnover in excess of EUR 45 million are required to file a new, extended version of the master file report — thereby increasing transfer pricing documentation burden for these entities. Local file reporting: The new rules for the local file require more information on competitors, a comparability analysis, and a detailed description of other non-typical methods (e.g. discounted cash flow) that are now allowed.

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 percent 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 percent 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 percent of the acquisition value.

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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 2016.

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