

Spain Country Profile

EU Tax Centre

June 2018

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

EU Member State Yes

Double Tax Treaties With:

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

Most important forms of doing business

Limited Liability Company (Sociedad de Responsabilidad 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 are 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.

Corporate income tax rate

The general corporate income tax rate is 25 percent. Other rates can apply for special entities.

Withholding tax rates

On dividends paid to non-resident companies

19 percent (applies 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 fulfilment of certain requirements.

On interest paid to non-resident companies

19 percent (applies from 2016 onwards), unless reduced by double tax treaties.

Domestic 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 royalties paid to an EU parent 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 an 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 individual.
- 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 from 2016 onwards.

The branch profits tax is not levied on permanent establishments of companies resident in other EU Member States / countries with which Spain has a tax treaty (in the latter case, this tax may be applied only where expressly allowed in the treaty, and as long as the other country also levies a similar tax on remittances to Spain).

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) prior to or after the dividend becomes due;
- Taxation requirement (for non-resident subsidiaries): subject to a tax similar to Spanish CIT, at a minimum 10 percent nominal tax rate and the subsidiary

should not be resident in a tax haven. Entities resident in jurisdictions having a tax treaty providing for an exchange of information clause are deemed to meet the minimum 10 percent nominal tax rate 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 the shares and the taxation requirement must be complied with in all periods (when the taxation requirement is not met in all tax periods, special rules apply for the computation of the exempt capital gain on transfer of foreign subsidiaries).

Tax losses

The limitations are calculated based on the taxpayers taxable income before any adjustments based on the capitalization reserve rules.

- Taxpayers whose turnover is below EUR 20,000,000 in the 12 months preceding the beginning of the relevant fiscal year may only offset 70% of their positive tax base, before deducting any capitalization reserve;
- Taxpayers whose turnover in the 12 months preceding the beginning of the relevant fiscal year falls between EUR 20,000,000 and EUR 60,000,000 may only offset 50% of their positive tax base, before deducting any capitalization reserve;
- Taxpayers whose turnover in the 12 months preceding the beginning of the relevant fiscal year is at least EUR 60,000,000 may only offset 25% of their positive tax base, before deducting any capitalization reserve; and,
- A EUR 1,000,000 threshold of tax losses will in any case apply.

When entities are included in a tax group, the abovementioned limits apply to the taxable base of the group, considered as a whole.

No carryback of losses available.

The capitalization reserve is a tax benefit effective as of January 1, 2015. Under this benefit, companies can reduce their taxable base with an amount equal to 10 percent of the increase of their net equity during a given year (provided that certain requirements are met). A non-disposable reserve for the same amount shall be provided and kept on their balance sheet for five FYs.

For a tax group, the tax deduction of the capitalization reserve is calculated on an aggregate basis, although the accounting reserve can be recognized by any of the tax group's entities.

Tax consolidation rules/Group relief rules

Yes. Minimum 75 percent direct or indirect continuous participation required during 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 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](#)

2 – 11 percent (depending on the location, the characteristics of the real estate and the acquirer).

[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, obligations apply to Spanish tax-resident entities that are the "head" of a group (as defined under the Spanish commercial law rules) and that are not at the same time a dependent of any other entity, to the extent that the consolidated group's net turnover in the immediately preceding fiscal year exceeds EUR 750 million.

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.

The documentation must be duly updated every tax period and supplied to the tax authorities upon request.

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.

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.

Specifically, a tax credit equal to 25 percent of R&D expenses incurred in the tax year is available. If the expenses incurred (whether in Spain or another EU Member State) exceed the average amount of expenses in the preceding two years, the rate of 25 percent applies to an amount equal to the average, while a rate of 42 percent applies to the excess. The credit is reduced by 100 percent of any subsidies received.

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 2018.

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