DOING BUSINESS IN SPAIN
2017

BDO

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DOING BUSINESS IN SPAIN

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INTRODUCTION

This publication has been prepared by the International Bureau of Fiscal Documentation (IBFD) on behalf of BDO Member Firms and their clients and prospective clients. Its aim is to provide the essential background information on the taxation aspects of setting up and running a business in this country. It is of use to anyone who is thinking of establishing a business in this country as a separate entity, as a branch of a foreign company or as a subsidiary of an existing foreign company. It also covers the essential background tax information for individuals considering coming to work or live permanently in this country.

This publication covers the most common forms of business entity and the taxation aspects of running or working for such a business. For individual taxpayers, the important taxes to which individuals are likely to be subject are dealt with in some detail. We have endeavoured to include the most important issues, but it is not feasible to discuss every subject in comprehensive detail within this format. If you would like to know more, please contact the BDO Member Firm(s) with which you normally deal. Your adviser will be able to provide you with information on any further issues and on the impact of any legislation and developments subsequent to the date mentioned at the heading of each chapter.

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SPAIN

This chapter is based on information available up to 25 January 2017.

Abbreviations

Abbreviation	*English definition*	*Spanish definition*
LIS	Corporate Income Tax Law	Ley del Impuesto sobre Sociedades
LIRNR	Income Tax on Non-Residents Law	Ley del Impuesto sobre la Renta de No Residentes
LIVA	VAT Law	Ley del Impuesto sobre el Valor Añadido
LITPAJD	Law on Transfer Tax and Stamp duty	Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados
LHHLL	Law on Local Finances	Ley de Haciendas Locales
LREFC	Canary SEZ Law	Ley 19/1994, de 6 de julio, de modificación del Régimen Económico y Fiscal de Canarias
NFISV	Vizcaya Corporate Income Tax Law	Norma Foral del Impuesto sobre Sociedades del Territorio Histórico de Vizcaya
NFISG	Guipúzcoa Corporate Income Tax Law	Norma Foral del Impuesto sobre Sociedades del Territorio Histórico de Guipúzcoa
NFISA	Álava Corporate Income Tax Law	Norma Foral del Impuesto sobre Sociedades del Territorio Histórico de Álava
LFIS	Navarre Corporate Income Tax Law	Ley Foral Navarra del Impuesto sobre Sociedades
LPGE	Budget Law	Ley de presupuestos generales del Estado
LMAFC	Administrative and Tax measures of the Canary Islands Law	Ley de medidas administrativas y fiscales de la Comunidad Autónoma de Canarias

Introduction

Companies are subject to corporate income tax and a local business tax. Employers must make social security contributions. A VAT system applies.

Spain comprises mainland Spain, the Balearic Islands and the Canary Islands, as well as the enclaves of Ceuta and Melilla in Northern Africa. The Basque country and Navarre have their own income tax systems.

The currency is the euro (EUR).

1. Corporate Income Tax

1.1. *Type of tax system*

Spain applies a classical double taxation system, under which corporate income is first taxed in the hands of the company and dividends are subsequently taxed in the hands of the shareholders at the appropriate rates. However, the classical system is modified in that resident individual shareholders are taxed at a reduced flat rate (*see* Individual Taxation sections 1.5.1. and 1.9.2.). In addition, dividends derived by corporate shareholders may qualify for an exemption (*see* section 2.2.).

1.2. *Taxable persons*

Corporate income tax is levied on all legal entities resident in Spain (article 7 of the LIS). In this respect, resident corporate taxpayers are all types of commercial companies, including corporations (SA) and limited liability companies (SRL).

Partnerships and civil law partnerships with a commercial aim are considered companies for corporate income tax purposes and taxed under the general rules. Other entities subject to corporate income tax include investment funds, pension funds and venture capital funds.

Fiscal transparency applies to domestic and European economic interest groupings and unincorporated joint ventures. Their profits, whether distributed or retained, are subject to income tax at the level of the participators. Losses are also transferred to the participators.

This survey is limited to the taxation of resident corporations (SAs) and limited liability companies (SRLs), as well as to non-resident entities of a similar description. These entities will be referred to as companies.

1.2.1. Residence

A company is resident in Spain if it meets one of the following conditions (article 8.1 of the LIS):

- it is incorporated under Spanish law;
- its legal seat is located in the territory of Spain; or
- its place of effective management is in Spain.

The Spanish tax authorities may deem a company located in a tax haven or a low-tax territory to be resident in Spain if the majority of its assets is constituted by immovable property located in Spain, or rights on such immovable property, unless the location in such territory is based on valid economic reasons other than the pure management of securities.

1.3. *Taxable income*

1.3.1. General

Resident companies are liable to corporate income tax on their worldwide income and capital gains (article 4 of the LIS). The taxable income is generally calculated using a direct method of computation based on the taxpayer's accounting records, although the law authorizes the use of methods based on estimation (*forfait* methods). The tax authorities may exceptionally use an indirect method based on circumstantial evidence. Income and expenses are to be consistently allocated, as a general rule, to each financial period on an accrual basis.

1.3.2. Exempt income

There is no general list of exempt income. However, certain items of income may be exempt in some cases (e.g. qualifying dividends) (article 21 of the LIS).

1.3.3. Deductions

Business-related expenses are deductible for corporate income tax purposes. Non-deductible items include dividends and similar distributions, the income tax itself, penalties and fines and related surcharges, certain expenses paid to residents in listed tax havens, unless duly substantiated, and all gifts except those to qualifying donees (article 15 of the LIS).

The deductibility of termination payments is restricted. An amount up to EUR 1 million (per payment) remains deductible. Any excess is not deductible.

1.3.4. Depreciation and amortization

Depreciation is allowed in respect of all tangible fixed assets (except land) and intangible fixed assets on the basis of their normal useful life (article 12 of the LIS). Depreciation may be calculated in accordance with the straight-line method, the declining-balance method (excluding buildings, furniture and fixtures) or the sum-of-the-years'-digits method. Rates for depreciation are contained in official tables.

Depreciation applies from the date the underlying asset enters into effective service and it must be calculated on each separate asset and not on groups of assets unless these are attached to specialized complex installations. There has been a simplification of the amortization/depreciation tables.

Examples of straight-line depreciation rates are (article 12.1.a) of the LIS):

Depreciable asset	*Maximum rate (%)*	*Minimum rate (%)*
Industrial buildings and warehouses	3	1.47
Commercial and residential buildings	2	1
Electrical network	5	2.5
Machinery	12	5.55
Ships, aircraft	10	5
Office furniture and equipment	10	5
Computer hardware	25	12.5
Computer software	33	16.66
Automobiles, vans, trucks	16	7.14

Under the declining-balance method, the annual depreciation rate is increased by 50% (if the useful life is less than 5 years), by 100% (if the useful life is more than 5 but less than 8 years) or by 150% (if the useful life is 8 years or more).

The tax authorities may accept, at their discretion, special depreciation plans with higher annual rates of depreciation for new assets subject to an effective depreciation greater than the one calculated at normal rates. Certain types of assets, e.g. assets used in research and development activities (except for buildings qualifying for accelerated depreciation over 10 years), may be freely depreciated. In addition, free depreciation is allowed for investments in new property, plant, equipment and investment properties used for economic activities, among others.

Intangible fixed assets may be depreciated over their useful life. For unlimited-life intangibles, including goodwill, the time limit is 20 years.

For taxable periods commencing in 2013 and 2014, the depreciation of property, plant and equipment, intangible assets and real estate investments was limited to 70% of the maximum rates permitted under the corporate income tax law (*see* above). The remaining 30% accumulated during this period may be taken on a straight-line basis over a period of 10 years (or, if the taxpayer so chooses, the asset´s useful life), starting from 2015. This measure only applied to companies whose turnover in the prior taxable year exceeded EUR 10 million and did not affect assets for which special depreciation plans were approved by the tax authorities. An additional 5% deductibility is permitted with regard to assets that were affected by the limitation in FY 2013 and 2014.

1.3.5. Reserves and provisions

1.3.5.1. Provisions for unrealized losses

A provision for doubtful debts may be created if the debts are more than 6 months overdue, if the debtor is charged with fraudulent bankruptcy, is declared legally bankrupt or is in a similar financial situation (e.g. meeting of creditors, temporary receivership) or if the debt payment depends on the settlement of a judicial dispute or arbitration process (exceptions may apply) (article 13.1 of the LIS).

1.3.5.2. Provisions for environmental expenses

Allocations to provisions set aside for the coverage of environmental expenses are deductible, subject to prior approval by the tax authorities (article 14.4 of the LIS).

1.3.5.3. Revaluation reserve

Law 16/2012 of 27 December 2012 introduced a one-off revaluation tax. Under this optional regime, taxpayers (including qualifying individual taxpayers) were able to revalue certain assets using a set of coefficients. The coefficients depend on the year of acquisition or manufacture of the asset, and on the debt ratio of the taxpayer.

The resulting net increase in value (i.e. revalued amount minus the original net value of the asset) of the assets was then subject to tax at a 5% rate.

The assets qualifying for revaluation were those appearing on the first balance sheet closed after 28 December 2012 (for corporate income taxpayers) or the balance sheet as at 31 December 2012 (for personal income taxpayers).

The revaluation tax was not considered to be a prepayment for corporate or personal income tax, and the reserve was not taken into account for the calculation of these taxes. The tax is due and payable on the date the tax return to which the balance sheet recording the revaluation relates is filed.

The reserve may not be used until approval from the tax authorities is granted. In the first 10 years after formation of the reserve, the amount therein may only be used to offset losses or increase the share capital of the taxpayer. After this period, the reserve may be freely disposed of.

The net increase in value resulting from the revaluation transactions will be depreciated for the remainder of the useful life of the asset, on the same terms as for renovations, extensions or improvements.

Non-resident companies may, with respect to qualifying assets attributable to a permanent establishment in Spain, also make use of the revaluation reserve.

1.4. *Capital gains*

Capital gains are treated as ordinary income and are generally included in business income and subject to corporate income tax at the general rate (article 10.3 of the LIS) (*see* section 1.6.1.). The concept of capital gain includes gains realized on the disposal of assets for consideration as well as those made on the occasion of a gratuitous transfer.

Generally, the gain is the amount by which the proceeds from alienation exceed the costs of acquisition.

The participation exemption regime (*see* section 2.2.) is also applicable to capital gains.

1.5. *Losses*

Ordinary losses and capital losses are generally treated in the same manner and may be set off against all income of the same financial period. Losses may be carried forward indefinitely (article 26 of the LIS).

Losses on portfolio holdings in the capital or equity of other entities (both domestic and foreign) are not deductible.

I n most cases, lo sses arising from the transfer of holdings in the capital or equity of other entities or permanent establishments (both domestic and foreign) are not deductible.

For 2016, the amount of tax loss carry-forwards that could be offset was limited to 60% of the company's taxable income; tax losses up to EUR 1 million can be set off without limitation. From 1 January 2017, said limit has been increased to 70%. Nevertheless, for large enterprises with net revenues equal to or above EUR 20 million in the first 12 months before the beginning date of the taxable period, offset is limited to 50% of the company's taxable income (as long as the net revenue of the enterprise in the first 12 months before the beginning date of the taxable period remains below EUR 60 million) and to 25% of the company's taxable income for enterprises with a net revenue equal to or above EUR 60 million in the first 12 months before the beginning date of the taxable period. This limitation is in force for fiscal years beginning on or after 1 January 2016.

There are anti-avoidance provisions to combat transfers of loss-generating companies. No carry-back of losses is permitted.

1.5.1. Ordinary losses

Not applicable.

1.5.2. Capital losses

Not applicable.

1.6. *Rates*

1.6.1. Income and capital gains

The general rate of corporate income tax is 25% (article 29.1 of the LIS).

Newly formed enterprises are taxed at 15% (article 29.1 of the LIS). For details, *see* section 1.7.6.

Credit institutions and entities engaged in the operation, prospecting and mining of underground oil deposits and gas fields will, however, continue to be taxed at a rate of 30%.

The corporate income tax due is increased by the surcharge discussed in section 3.1.

1.6.2. Withholding taxes on domestic payments

Domestic income derived by companies resident or established in Spain is subject to withholding of corporate income tax. This is generally treated as a payment on account and is credited against the recipient's corporate income tax liability for the year concerned.

For withholding tax on payments to non-residents, *see* section 6.3.

1.6.2.1. Dividends

The withholding rate on dividends and other profit distributions is 19% (article 128.6 of the LIS). Stock dividends are not subject to tax. For the participation exemption, *see* section 2.2.

1.6.2.2. Interest

The standard withholding rate on interest is 19% (article 128.6 of the LIS).

Exemption from withholding tax applies principally to:

- interest on ordinary loans and related commissions payable to resident banks and financial institutions (including permanent establishments) subject to Spanish corporate income tax; and
- interest derived by residents from treasury notes and securities issued by the Treasury or the central bank to monitor the money market.

1.6.2.3. Royalties

The withholding tax on royalties is 19% (article 128.6 of the LIS).

1.7. *Incentives*

1.7.1. Investment credits and deductions

The sum of the investment credits discussed in sections 1.7.1.1. to 1.7.1.6. is limited to 25% (exceptionally 50%) of the corporate income tax liability of the year (article 39.1.b) of the LIS).

Taxpayers undertaking research, development and innovation activities may, however, opt not to apply the above-mentioned limits. Instead, they may apply the full amount of the research and development (R&D) credit, reduced by 20%. In case the taxpayer's tax liability is less than the amount of the credit, the taxpayer may request the reimbursement of the "excess" credit.

The amount of the applied or paid tax credit cannot be higher than:

- EUR 1 million for technological innovation credits; and
- EUR 3 million for R&D and technological innovation credits.

The application of this tax benefit is subject to certain requirements.

Any unused credit may be carried forward for 15 years, and R&D credits for 18 years, subject to the appropriate limitation in each year.

1.7.1.1. R&D and technological innovation credits

A tax credit equal to 25% of R&D expenses incurred in the tax year is available (article 35.1.c) of the LIS). If the expenses incurred (whether in Spain or another EU Member State) exceed the average amount of expenses in the preceding 2 years, the rate of 25% applies to an amount equal to the average, while a rate of 42% applies to the excess. The credit is reduced by 100% of any subsidies received. Exceptionally, unused credits may be carried forward for 18 years. In addition, R&D activities may benefit from a credit equal to 17% of the costs relating to payroll and 8% of the costs relating to investments in tangible (other than immovable property) and intangible assets used in the project.

Activities resulting in technological innovation for existing products benefit from a 12% credit.

1.7.1.2. Film producers' credit

Film producers may benefit from a credit equal to 20% (article 36.1 of the LIS) on the first EUR 1 million of the costs incurred for the production of films. A credit of 18% applies, if available, for costs incurred in excess of this amount.

The production costs also include print and advertising costs (up to a maximum of 40% of the production costs). The credit is reduced by 100% of any subsidies received.

At least 50% of the tax credit base must relate to expenses incurred in Spain. The amount of the tax credit cannot exceed EUR 3 million nor can it exceed, together with other aid received by the taxpayer, 50% of the production costs.

A tax credit equal to 15% of the expenses incurred in Spain for the execution of a foreign production is granted, insofar as those expenses are at least EUR 1 million. The amount of the tax credit may not exceed EUR 2.5 million per production made, nor can it, together with other aid received by the taxpayer, exceed 50% of the production costs.

A 20% tax credit is established under conditions for the direct costs of an artistic, technical and promotional nature incurred for the production of live shows of performing arts and music, reduced by the subsidies received.

1.7.1.3. Promotion of venture capital investments

To promote venture capital investments in non-financial small and medium-sized companies operating in the field of technological innovation, qualifying venture capital companies (SCR) and funds (FCR) are granted a 99% tax exemption for gains from the sale of shares and other participations held for at least 1 year (article 50.1 of the LIS). No exemption is granted after a holding period of 15 years. Exceptionally, an extension to 20 years may be granted.

1.7.1.4. Income from Ceuta and Melilla

A credit of 50% of the corporate income tax liability attributable to income derived from the Spanish enclaves of Ceuta and Melilla in Northern Africa is available (article 33.1 of the LIS).

1.7.1.5. Relief for income from certain intangible fixed assets (patent box)

A partial exemption applies to the net earnings derived from the assignment of a right to use qualifying intangible fixed assets (article 23 of the LIS). Under this incentive, 60% of such income is exempt from corporate income tax.

Several conditions apply, including, inter alia:

- the assigning party may not reside in a tax haven;
- the company's stake in the creation of the asset must be at least 25%; and
- earnings obtained upon transfer of the asset between group companies (under conditions) cannot fall under the regime.

1.7.1.6. Capitalization reserve

Taxpayers subject to the standard tax rate or to the 30% rate (*see* section 1.6.1.) may reduce their tax base by 10% of their retained earnings provided such earnings are allocated to a special reserve, and are not distributed for a period of 5 years (article 25 of the LIS).

The reduction cannot exceed 10% of the taxable income before certain adjustments (e.g. tax losses) are applied.

1.7.2. Holding companies (ETVEs)

Entities whose business purpose includes the supervision and management of participations in non-resident entities may benefit from a participation exemption regime, under which dividends, other profit distributions and capital gains from the disposal of a qualifying interest in non-resident companies are exempt from corporate income tax, provided that certain conditions are met (*see* section 6.1.1.2.). The distribution of profits by a holding company to non-resident corporate or individual shareholders is exempt from withholding tax, unless the recipient is resident in a listed tax haven.

The holding company regime is not available to certain passive entities whose main business is to manage movable or immovable property not used for business purposes.

1.7.3. Shipping companies

Shipping companies managed and registered in Spain, the European Union or the European Economic Area may elect to be taxed under a tonnage tax regime (article 113 of the LIS) in respect of ships used primarily for international transport. Under the tonnage regime, the computation of taxable income for corporate income tax purposes is based on the net tonnage per qualifying ship.

The taxable income so computed is subject to the general rate of corporate income tax (*see* section 1.6.1.).

1.7.4. Canary Islands Special Zone regime (ZEC)

Companies that are registered with the Official Registry of ZEC Entities (ROEZEC) before 1 January 2013 may benefit from a special tax regime designed to improve the economic conditions of the Canary Islands. The ZEC regime will initially apply until 31 December 2019 (registration closed on 31 December 2013), although further extensions may be granted.

Only newly incorporated companies authorized by the administrative body of the ZEC, i.e. the ZEC Consortium, and registered with the ROEZEC can benefit from the ZEC. Such companies must have their legal seat and place of effective management in the geographical area of the ZEC. At least one of the managers of the ZEC company must be resident in the Canary Islands.

In order to qualify for the regime, a company must (articles 28-52 of the LREFC):

- make a qualifying investment equal to at least EUR 100,000 in the acquisition of fixed assets within the first 2 years following the authorization in Gran Canaria or Tenerife. This requirement is reduced to EUR 50,000 in the smaller islands;
- create at least five new jobs (three in the smaller islands) within the first 6 months following the authorization and maintain an average of at least five new jobs during the period of the application of the regime to the company;
- submit to the ZEC Consortium a memorandum in which the company states the activities which it will perform and establishes its solvency, viability, international competitiveness and contribution to the social and economic development of the Canary Islands; and
- carry on a qualifying activity listed in an Annex to the Royal Decree-Law, including manufacturing, handling and delivering activities, such as fishing, food, beverage and tobacco preparation, dressmaking, paper manufacture, publishing, editing, chemical processing, recycling and wholesale and agency activities, and transport, research and development and computer-related services.

A qualifying company may benefit from a reduced corporate income tax rate of 4%. The maximum taxable base to which this reduced rate applies depends on the number of jobs created by the company, e.g. a company employing between three and eight employees in certain activities may benefit from the reduced rate on a base of up to EUR 1,125,000. Companies engaged in industrial activities with more than 100 employees may benefit from the reduced rate on a base of up to EUR 120 million. Intermediate bases exist.

An exemption from withholding tax also applies to interest and dividends paid to non-residents other than residents in listed tax havens. The exemption is subject to certain conditions, e.g. meeting, in general, the requirements of the EU Parent-Subsidiary Directive. Additional exemptions include those for transfer tax, capital duty, IGIC (*see* section 8.1.) and all local taxes.

1.7.5. Basque country and Navarre

In the area of the Basque country, several tax incentives are granted (article 56 of the NFISV, article 56 of the NFISG and article 56 of the NFISA), including a corporate income tax rate of 28%. Small companies in Alava, Vizcaya and Guipúzcoa are subject to a rate of 24%.

In Navarre the general corporate income tax rate is 28% (as from 1 January 2016) (article 50 of the LFIS) and the reduced rate for small and medium-sized companies is:

- 23% if the company's net revenues were between EUR 1 million and EUR 10 million in the previous year (under conditions); and
- 19% if the company's net revenues were lower than EUR 1 million (under conditions).

1.7.6. Newly created companies

For newly formed enterprises carrying on economic activities, a reduced corporate income tax rate of 15% applies for the first and the second year in which there are taxable profits and the year thereafter (article 29.1 of the LIS).

This incentive does not apply if the newly created company:

- is part of a group;
- performs an economic activity that has previously been performed by related persons or entities; or
- performs the same activity that was undertaken in the previous year by an individual holding 50% (or more) of the equity of the new company.

1.8. *Administration*

1.8.1. Taxable period

As a general rule, the tax year coincides with the calendar year, but companies may file their returns with reference to their financial year (article 27 of the LIS). The tax year may not exceed 12 months. Corporate income tax must be computed and paid by the taxpayers under the self-assessment method.

1.8.2. Tax returns and assessment

Corporate taxpayers must hold an annual general meeting (primarily to approve the annual accounts) within 6 months of the closing date of their financial year and must file a final return within 25 days from the date on which the annual accounts are approved (article 124 of the LIS).

1.8.3. Payment of tax

During the tax year resident companies and permanent establishments must make tax prepayments in three instalments by 20 April, 20 October and 20 December (article 40 of the LIS). Each prepayment is calculated, at the taxpayer's election, either (i) on the corporate income tax due for the preceding tax year (at 18%) or (ii) on the taxable base in the first 3-month period, 9-month period or 11-month period of the current calendar year less any related withholdings and payments on account that have been made. Companies with an annual turnover exceeding EUR 6,010,121.04 must generally use the latter system and make the payments online. The general rate of the prepayments for companies with an annual turnover exceeding EUR 6,010,121.04 and for those companies that have expressly opted for the latter calculation method is 17%.

Royal Decree Law 2/2016 (the Decree) establishes that companies with a turnover above EUR 10 million in the prior fiscal year will be subject to corporate income tax prepayments consisting of the greater amount resulting from applying either:

- a 24% rate on the partial taxable base corresponding to the first 3, 9 and 11 months of the ongoing taxable year; or
- a 23% rate (increased to 25% for financial entities and companies engaged in the exploration and exploitation of hydrocarbons) on the positive accounting result of the first 3, 9 and 11 months of the ongoing taxable year.

Certain exceptions exist related to creditor agreements or increases of capital or equity by compensation of credits. For partially exempt entities (e.g. certain non-profit entities, official chambers or trade unions), only non-exempt income would be taken into account for calculating the positive accounting result.

The Decree does not apply to non-profit organizations subject to Law 49/2002 nor to certain investment and pension funds and real estate investment corporations (REICs) subject to Law 11/2009.

The balance of the tax, if any, is payable at the time of filing the annual return (article 125 of the LIS). Any excess tax paid (taking into account the tax prepayments and withholdings) is refunded.

1.8.4. Rulings

Binding rulings are issued by the tax authorities. The rulings are binding on the tax authorities also with respect to other taxpayers in similar situations.

2. Transactions between Resident Companies

2.1. *Group treatment*

Consolidation of accounts for corporate income tax purposes is generally optional for qualifying companies (article 55 of the LIS). For banks and their affiliates consolidation is mandatory.

A group consists of:

- a resident parent company; and
- subsidiaries (SAs, SRLs and partnerships limited by shares) owned for 75% or more (directly or indirectly) by the parent company.

The Spanish entities of a common, non-resident parent company may be consolidated provided the non-resident owner of the shares in all of them does not reside in a tax haven and meets the requirements to be considered the parent company.

Thus, the tax group must include the Spanish entities indirectly owned by the same common shareholder through other entities that might not form part of the tax group. The 75% threshold is reduced to 70% where the subsidiary is a listed entity. The shareholding percentage must have been kept during the whole tax period. In addition to the holding requirement, the parent company must hold, directly or indirectly, throughout the tax period, the majority of the voting rights of the entities included in the consolidated tax group.

The rules on consolidation of accounts also include the possibility for an entity resident in Spain, but subject to Basque corporate income tax legislation, to be deemed the parent company, and for the group to be given the same tax treatment as that for tax groups in which the parent is not resident in Spain.

When group consolidation applies, only the net income of the group is subject to corporate income tax. Intra-group payments of dividends and other distributions, interest and royalties are exempt from withholding tax (*see* section 1.6.2.).

Outstanding losses of a group member incurred prior to consolidation may be set off only against profits derived by or attributed to that group member. Moreover, upon the expiration date of the consolidation period, any remaining losses of the group from the period of consolidation may be carried over and proportionally set off against profits of the former group members.

2.2. *Intercompany dividends*

Intercompany dividends and similar distributions received are included in the recipient's taxable income as grossed up by the withholding tax (*see* section 1.6.2.1.). An exemption is, however, granted if the following requirements are met (article 21 of the LIS):

- the holding in the resident entity must be at least 5% or, alternatively, must have a value higher than EUR 20 million; and
- the holding must be held for an uninterrupted period of at least 1 year.

If more than 70% of the distributing subsidiary's income consists of dividends or capital gains derived from other subsidiaries, the taxpayer must have an indirect holding in those other subsidiaries that meet the requirements regarding holding percentage and holding period.

For foreign-source dividends, *see* section 6.1.1. For dividends paid to non-residents, *see* sections 6.2.1. and 6.3.1.

3. Other Taxes on Income

There are no other taxes on income in addition to the normal corporate income tax. However, the following local income-related levies, which are deductible for corporate income tax purposes, are worth mentioning.

3.1. *Chamber of commerce surcharge*

A compulsory corporate income tax surcharge has to be paid by companies which intend to become members of the Chamber of Commerce.

The rate of the surcharge ranges from 0.75% (income up to EUR 60,101.21) to 0.01% (income in excess of EUR 24,040,484.18) of the corporate income tax due. The surcharge is deductible for corporate income tax purposes.

3.2. *Local business tax*

A local business tax, known as the tax on economic activities (IAE), is levied annually on registered companies engaged in business, professional or artistic activities in Spain if their annual turnover exceeds EUR 1 million (articles 78-91 of the LHHLL). The tax is deductible for income tax purposes.

The amount of tax due depends on the activities carried out by the taxpayer and the surface area of the business/professional premises, as corrected by certain coefficients and increased by a provincial surcharge. However, the tax liability resulting from application of the tariffs and surcharges may not exceed 15% of the presumed average profits notionally attributed to the activity in question.

A 95% reduction in the tax payable is available for taxpayers that perform activities declared to be of special interest or use to the municipality (e.g. activities of a social, cultural, artistic or economic nature).

3.3. *Urban land appreciation tax*

This tax is applicable to the increase in value of land classified as urban land. The tax is assessed on the seller, or on the recipient if acquired without consideration (article 104 of the LHHLL).

The base of the tax is determined by applying to the cadastral value of the land at the disposal date a certain percentage determined by multiplying the number of years the land was held (maximum 20 years) by a coefficient varying from 3 to 3.7. The rate may be up to 30%.

A 95% reduction in the tax payable is available for taxpayers who perform activities declared to be of special interest or use to the municipality (e.g. activities of a social, cultural, artistic or economic nature).

The tax is a deductible expense for corporate income tax purposes.

4. Taxes on Payroll

4.1. *Payroll tax*

There is no payroll tax.

4.2. *Social security contributions*

There is a general social security contribution system and there are special schemes; unless a special scheme applies, the employer and his employees are subject to the general social security system. Under this system, contributions made by both the employer and the employee take into account the employee’s professional category; each category has minimum and maximum monthly bases for determining the amount of the contribution. These are indexed annually. For 2017, the maximum monthly base is EUR 3,751.26; the minimum monthly bases vary depending of the type of work.

For employer contributions, the rates for 2016 are (article 115 of the LPGE 2016):

Contribution for	*Rate (%)*
General risks	23.6
Unemployment insurance[1]	5.5
Salary guarantee fund	0.2
Professional education and training	0.6
Total	29.9

1. This rate applies for permanent contracts.

These rates have been automatically extended for 2017, pending approval of the general budget.

In addition, employers must pay a work accident insurance (effective rate varies per job type, e.g. 1% for office work; 6.7% for construction).

A 12% or 23.6% additional charge applies separately to any overtime payment paid by the employer for absolutely necessary work or for other extra work.

Reductions are granted in respect of the employment of long-term unemployed women, severely disabled persons, the transformation of temporary labour contracts into permanent contracts, and new, permanent contracts entered into in 2016.

For the social security contributions payable by employees and the self-employed, *see* Individual Taxation section 3.

5. Taxes on Capital

5.1. *Net worth tax*

There is no net worth tax.

5.2. *Real estate tax*

This tax is levied on an annual basis by the municipalities on the possession of immovable property (article 61 of the LHHLL). It is a deductible expense for corporate and individual income tax purposes.

The taxable base is the cadastral value. The value is adjusted every 8 years with reference to the market value of the property, including the value of land and buildings.

The general tax rates are:

- 0.4% for urban property; and
- 0.3% for rural property.

Higher rates may, however, apply.

6. International Aspects

6.1. *Resident companies*

For the concept of residence, *see* section 1.2.1.

6.1.1. Foreign income and capital gains

6.1.1.1. General

Resident companies are subject to corporate income tax on their worldwide income and capital gains.

6.1.1.2. Exempt dividends and capital gains

Foreign-source dividends derived by a resident company are exempt if the following conditions are met (article 21 of the LIS):

- the resident company has, directly or indirectly, maintained continuously for 1 year a participation of (i) at least 5%, or (ii) a value higher than EUR 20 million in the non-resident company. The exemption is also granted if the distribution is made before the conclusion of such period, provided the resident parent continues to hold the participation for the remaining period;
- the subsidiary must have been subject to (and not exempt from) a tax identical or similar to Spanish corporate income tax at a nominal rate of at least 10%, regard-

less of whether any type of exemption, relief, reduction or tax credit had applied. The requirement for a “tax identical or similar to corporate income tax” is met where the subsidiary is a resident of a country with which Spain has signed a tax treaty applicable to the subsidiary and containing a provision on the exchange of information; and

- in case more than 70% of the distributing subsidiary’s income consists of dividends or capital gains derived from other subsidiaries, the taxpayer must have an indirect holding in those other subsidiaries that meet the requirements regarding holding percentage, acquisition cost and holding period.

Additionally, the participation exemption does not apply if the dividends constitute a deductible expense at the level of the distributing subsidiary.

Alternatively, the resident parent may opt to apply a direct tax credit for the foreign withholding tax paid on the dividends and an indirect tax credit for the underlying corporate income tax paid by the subsidiary or the sub-subsidiaries in respect of the dividends. The credit, however, is limited to the Spanish tax that would be attributable to the income had it been derived from Spanish sources. Any excess foreign tax may not be deducted from the taxable income of the parent, but it may be carried forward for 10 years. To qualify for the indirect tax credit, the resident company must have, directly or indirectly, a participation of at least 5% in the non-resident company or, alternatively, must have a value higher than EUR 20 million and must have maintained that participation continuously for a 1-year period. It is possible to complete such period after the distribution. In the case of indirect holdings in second- or lower-tier subsidiaries, a minimum percentage of 5% must be observed.

Capital gains derived by a resident company on the sale of shares in a non-resident company are exempt if the above-mentioned conditions for dividends are met throughout the whole shareholding period.

The exemption may be applied in proportion to taxable years where the conditions were met.

However, anti-avoidance rules may render all or part of the gains taxable in the case of circular schemes, loss-making companies or tax-neutral mergers.

6.1.1.3. Disclosure of foreign assets

Royal Decree 1558/2012 of 15 November 2012 implemented a new obligation to disclose the assets and rights located abroad, over which the taxpayer has the power of disposal.

The taxpayer must file the disclosure report between 1 January and 31 March of the year following the one for which the information must be reported. Information on the following assets that are owned by the taxpayer and located abroad must be disclosed:

- accounts held abroad with institutions engaged in banking or lending transactions where the taxpayer is the account holder or beneficiary or has the power to operate the account;
- certificates, assets, securities or rights;
- life or disability insurance policies as well as annuity contracts concluded with foreign entities; and
- real estate (rights).

Failure to fulfil the reporting obligations may result in the issuance of penalties by the tax authorities.

6.1.2. Foreign losses

Losses incurred by a permanent establishment cannot be included in the tax base until it is transferred or until it ceases its activities. Before 2015, losses from foreign permanent establishments were deductible in the same tax period against profits generated by the resident head office. Recapture took place, however, if profits were derived later by that same permanent establishment.

For tax periods commencing on or after 1 January 2013, impairment losses incurred on portfolio shareholdings in non-resident companies are no longer deductible (*see* section 1.5.).

Transitional rules apply to losses incurred before 1 January 2013.

6.1.3. Foreign capital

There is no net worth tax. Immovable property located abroad is not subject to real estate tax in Spain.

6.1.4. Double taxation relief

Spain employs two methods to avoid double taxation of foreign-source income, i.e. the exemption and ordinary tax credit methods.

When a resident company derives business profits through a permanent establishment abroad, exemption is granted if the income derived through the permanent establishment has effectively been subject to a tax comparable to the Spanish corporate income tax at a nominal rate of at least 10%, and the permanent establishment is not resident in a listed tax haven (article 22 of the LIS).

This condition is considered to be met if the permanent establishment is resident in a country with which Spain has an income tax treaty containing an exchange of information clause (all of its treaties). However, the exemption is not granted where the Spanish head office is transparent (*see* section 1.2.) or if the tax authorities prove that the permanent establishment carries out, in the same market, the same activities that were previously carried out by a Spanish resident subsidiary.

If the head office has previously deducted losses from a permanent establishment, the exemption applies only to the profit exceeding such deduction.

Where the requirements for the exemption are not met, double taxation is avoided through the ordinary credit method (article 31 of the LIS). Under this method, a resident corporate taxpayer with any type of foreign-source income may credit against its Spanish corporate income tax liability on worldwide income, on a country-by-country basis, the lower of:

- the tax effectively paid abroad on the related foreign-source income or gains; or
- the Spanish corporate income tax liability attributable to such income or gains.

However, from 1 January 2016, for enterprises having net revenues equal to or above EUR 20 million in the 12 months before the beginning date of the taxable period, the aggregate amount of domestic and international double taxation credits cannot exceed 50% of the gross tax payable for the year. For foreign dividends, *see* section 6.1.1.2.

In its treaties, the ordinary credit method described above is generally used by Spain for the avoidance of double taxation. In the treaty with Brazil, Spain uses the exemption with progression method in respect of dividends and other distributions.

6.2. *Non-resident companies*

Non-resident companies are defined as companies which have neither been incorporated under Spanish law nor have their legal seat or place of effective management in the territory of Spain.

6.2.1. Taxes on income and capital gains

6.2.1.1. Income and gains derived through a permanent establishment

A non-resident company is subject to the income tax on non-residents (IRNR) in respect of the entire income from Spanish or foreign sources attributable to such an establishment if it operates through a permanent establishment in Spain (articles 5, 12 and 13 of the LIRNR). Generally, the permanent establishment (PE) of a non-resident company is subject to tax on Spanish-source income and capital gains at the general rate of corporate income tax (*see* section 1.6.1.). Permanent establishments may benefit from the tax rate splitting available for low-turnover resident companies (*see* section 1.6.1.).

In addition, a 19% branch profits tax applies to any after-tax profits paid by a Spanish permanent establishment to its foreign head office (article 19.2 of the LIRNR). The effective rate on branch profits remitted to the head office is 39.25% (25% + 14.25%). The remittance abroad must be reported to the local tax office in a tax return filed within 1 month of the remittance.

The branch profits tax is not levied on permanent establishments of companies resident in other EU Member States. With respect to residents of countries with which Spain has a tax treaty, 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.

In computing taxable profits of a branch in Spain, payments to a foreign head office of passive income (e.g. royalties, interest and rents), payments for technical assistance, for the use of property or for the use of rights may not be deducted.

Unrealized capital gains become taxable if assets of a permanent establishment in Spain are transferred out of Spain or if the activities of a permanent establishment are terminated where:

- a resident company transfers its residence to another EU Member State; or
- assets allocated to a Spanish PE are transferred to another EU Member State.

The taxpayer has the option to defer the payment of the tax debt over the latent gains until the assets are transferred to a third party.

6.2.1.2. Income and gains derived directly

If a non-resident company does not operate through a permanent establishment in Spain, it is subject to tax separately in respect of each payment of Spanish-source income and capital gains article 13.1.b) of the LIRNR). The general rate of IRNR on income derived directly is increased to 24%. If the taxpayer is resident in another EU Member State, the general rate is 19% (article 25.1a) and Additional Provision 9 of the LIRNR). However, such income is mostly subject to the final withholding tax discussed in section 6.3.

The following items are not taxable in Spain (article 14 of the LIRNR):

- dividends, interest and capital gains derived by non-resident investors from securities issued in Spain by non-residents directly, irrespective of the residence status of the financial institutions involved;
- interest derived directly by non-residents from their bank deposits in Spain;
- interest and capital gains from public bonds derived directly by any non-resident bondholder;
- income and capital gains arising from the bareboat charter or supply of containers or vessels and aircraft operating in international shipping or air traffic;
- dividends and other participations in profits obtained (other than through a permanent establishment) in Spain by pension funds that are comparable to Spanish pension funds and are resident in another EU Member State, or by PEs of such pension funds located in another EU Member State (subject to certain conditions); and
- dividends obtained by undertakings for collective investment in transferable securities (UCITS) regulated by EU Directive 2009/65.

In the last two cases, the tax is withheld by a withholding agent. The qualifying taxpayer may, however, subsequently apply for the refund of the tax withheld.

Furthermore, exemption from Spanish tax applies to interest in general and to capital gains from movable property derived directly by residents in other EU Member States (article 14.1.c) of the LIRNR). Nevertheless, unless a tax treaty provides otherwise, capital gains from the sale of shares or other participation rights in a company or entity are taxable in Spain if:

- the assets of that company or entity consist mainly (directly or indirectly) of Spanish-situs immovable property (i.e. if the value of the immovable property is greater than that of the movable property);
- in case of an individual the transferor (or his spouse or close relative) has had a substantial interest (25% or more) in that company or entity (directly or indirectly) during the previous 12 months; or
- the capital gain would not be exempt if realized by a Spanish resident company (*see* section; 6.1.1.2.).

In addition, capital gains from the sale of shares or participations in investment funds quoted and transferred on a Spanish stock exchange derived by non-residents without a permanent establishment are exempt if the taxpayer is a resident of a country with which Spain has an income tax treaty containing an exchange of information clause (all of its treaties).

In other situations where a non-resident company derives (directly) capital gains from immovable property or shares in resident companies, the gain (each gain without offsetting any losses) is subject to IRNR on the net amount at the rate of 19%. In the case of gains from immovable property, the acquisition price can be indexed for inflation (*see* section 1.4.). The IRNR is not levied at source but must be paid through a representative of the non-resident.

Additionally, corporate taxpayers resident in another EU Member State that obtain income in Spain other than through a PE, are allowed to deduct from taxable income certain expenses that are related and directly and inseparably linked to the income-deriving activity in Spain.

Non-resident companies may also make use of the option to revalue certain assets attributable to a permanent establishment in Spain. For the revaluation reserve, *see* section 1.3.5.3.

6.2.2. Taxes on capital

There is no net worth tax. Non-residents are liable to real estate tax in respect of Spanish-situs immovable property (*see* section 5.2.).

A special immovable property tax must be paid annually by any non-resident company resident in a tax haven holding Spanish-situs immovable property or usufruct thereof. The tax is charged at 3% on the cadastral value of each item (articles 40 and 43 of the LIRNR). It is a deductible expense for corporate income tax purposes. It is due on 31 December of the current year and must be paid in January of the next year.

However, the tax is not chargeable to:

- foreign states or international organizations;
- companies quoted on officially recognized stock exchanges; and
- companies which conduct economic activities in Spain on a regular basis that can be distinguished from the mere holding or leasing of immovable property.

6.2.3. Administration

Non-resident companies without a permanent establishment in Spain, but deriving income from Spain, must in certain cases appoint a local representative in Spain and notify the tax authorities within 2 months of the appointment. Such appointment is compulsory for non-resident companies operating through a permanent establishment.

A local payer of income, a depository of securities in Spain and the representative of a permanent establishment are jointly and severally liable along with the non-resident for any tax due. They must file a tax return for every payment. However, quarterly or monthly returns may be filed in respect of certain income.

There is an anti-avoidance measure for the sale of immovable property. Under this measure, purchasers of Spanish-situs immovable property from non-resident corporate owners without a permanent establishment in Spain must withhold 3% of the transaction price as the non-resident's tax liability (on any possible capital gain). If the tax is not withheld, the tax authorities can place a lien on the underlying property in order to collect the tax due.

6.3. *Withholding taxes on payments to non-resident companies*

Domestic-source income derived by non-residents without a permanent establishment in Spain is generally subject to a final withholding tax levied on the gross amount (article 30 of the LIRNR).

For reduced rates under tax treaties, *see* section 6.3.5.

6.3.1. Dividends

The withholding rate on Spanish-source dividends and other profit distributions is 19% on the gross amount (article 25.1.f) and Additional Provision 9 of the LIRNR). Stock dividends distributed free of charge from the earnings or reserves of the company may be subject to tax if certain conditions are fulfilled.

Under the Spanish law implementing the provisions of the EU Parent-Subsidiary Directive (article 14.1.h) of the LIRNR), dividends paid to qualifying parent companies in other EU Member States are exempt from withholding tax. To qualify as a parent, a

company must hold a direct participation of at least 5%, or its acquisition value must be higher than EUR 20 million in the capital of the subsidiary for a continuous period of at least 1 year prior to the declaration of the dividends. If dividends are declared before the participation has been held for a year, there is no exemption from withholding tax, but the parent may apply for a refund if it meets this condition later.

However, the exemption from Spanish withholding tax does not apply (articles 14.1.h) and 14.2 of the LIRNR):

- where the parent is resident in any of the listed tax havens (within the European Union this only applies to Gibraltar); and
- where the ultimate parent of the company to which the dividend is paid is resident outside the European Union, i.e. where the majority of the voting rights in the EU parent company is directly or indirectly held by individuals or companies not resident in any EU Member State, unless it can be established that the constitution and operations of the parent company are based on valid economic reasons and substantial business motives.

6.3.2. Interest

The withholding rate on Spanish-source interest is 19% (article 25.1.f) and Additional Provision 9 of the LIRNR) on the gross amount. However, all types of interest paid to EU-resident companies are exempt. In addition, the following types of interest paid to any non-residents are exempt (article 14.c) of the LIRNR):

- interest on bank deposits;
- interest on all types of government bonds; and
- interest on securities issued in Spain by certain international organizations, e.g. the European Investment Bank (*bonos matador*).

6.3.3. Royalties

The withholding rate on Spanish-source royalties in general, including film royalties, is 24% on the gross amount. However, for EU and EEA residents the applicable rate is 19% on the gross amount (article 25.1.a) and Additional Provision 9 of the LIRNR).

The EU Interest and Royalties Directive (2003/49) precludes any taxation on (interest and) royalty payments to associated EU companies.

Thus, royalty payments by Spanish companies are not subject to withholding tax, provided that the recipient is an associated company of the paying company and is resident in another EU Member State. Two companies are "associated companies" if (i) one of them holds directly at least 25% of the capital of the other or (ii) a third EU company holds directly at least 25% of the capital of the two companies. In both cases, a continuous minimum holding period of 1 year is required. The relevant companies must have a legal form listed in the Annex of the Directive and be subject to a corporate income tax.

This exemption will not apply where the ultimate parent of the company to which the royalty is paid is resident outside the European Union, i.e. where the majority of the voting rights in the EU parent company is directly or indirectly held by individuals or companies not resident in any EU Member State, unless it can be established that the constitution and operations of the parent company are based on valid economic reasons and substantial business motives.

6.3.4. Other

The withholding rate on Spanish-source capital gains (on each gain without offsetting any losses) is generally 19% (article 25.1.f) and Additional Provision 9 of the LIRNR). This tax is levied on the net amount. In addition, in the case of gains from immovable property, the acquisition price can be indexed for inflation (*see* section 1.4.).

Contractual fees paid by Spanish subsidiaries to their parents for services connected with the operation of the Spanish business and head office expenses paid by branches are subject to withholding tax at 24% on the gross amount. However, for EU and EEA residents the applicable rate is 19% on the gross amount (article 25.1.a) and Additional Provision 9 of the LIRNR).

Income of shipping and air companies whose vessels enter the territory of Spain is subject to withholding tax at 4% on the gross amount (article 25.1.e) of the LIRNR).

6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by Spanish companies to non-residents under the tax treaties in force as at the date of review. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable.

In principle, immediate application of a treaty rate is possible when the residence certificate has been presented to the withholding agent. Some withholding agents, however, always apply the full domestic rate.

	Dividends		*Interest*[1]	*Royalties*
	Individuals, companies	*Qualifying companies*[2]		
	(%)	*(%)*	*(%)*	*(%)*
Domestic Rates				
Companies:	19	0	0/19	0/24
Individuals:	0/19	n/a	0/19	24
Treaty Rates				
Treaty With:				
Albania	10	0/5[3]	6	0
Algeria	15	5[4]	0/5[5,6]	7/14[7]
Andorra	15	5	5	5
Argentina	15	10	0/12[5,6]	3/5/10/15[8]
Armenia	10	0[9]	5	5/10[10]
Australia	15	15	10	10
Austria	15	10[11]	5	5
Barbados	5	0	0	0
Belarus[12]	18	18	0	0/5[13]
Belgium	15	0	0/10[6]	5
Bolivia	15	10	0/15[5]	0/15[13,14]
Bosnia and Herzegovina	10	5[15]	0/7[5]	7
Brazil	15	10/15[16]	-/10/15[17]	10/15[18]
Bulgaria	15	5	0	0
Canada	15	5	0/10[5,19]	0/10[13]

	Dividends		*Interest*[1]	*Royalties*
	Individuals, companies	*Qualifying companies*[2]		
	(%)	*(%)*	*(%)*	*(%)*
Chile	10	5[15]	5/15[6,20]	5/10[20,21]
China (People's Rep.)	10	10	10	10/60[22]
Colombia	5	0[15]	0/10[23,24]	10[25]
Costa Rica	12[26]	5[15,26]	0/5/10[5,26,27]	10[26]
Croatia	15	0	0[5,23,28]	0[28]
Cuba	15	5	0/10[5,29,30]	0/5[13]
Cyprus	5	0[4]	0	0
Czech Republic	15	5	0	0/5[13]
Dominican Republic	10	0[75]	0/10[5]	10
Ecuador	15	15	0/5/10[31]	5/10[13]
Egypt	12	9	0/10[5]	12
El Salvador	12[32]	0[11,32]	0/10[5,32]	10[32]
Estonia	15	5	0/10[33]	0/5/10[34]
Finland	15	10	10	5
France	15	0[4]	0/10[5,6,35]	0/5[13]
Georgia	10	0[4]	0	0
Germany	15	5[36]	0	0
Greece	10	5	0/8[5]	6
Hong Kong	10	0	0/5[5,37]	5
Hungary	15	5	0	0
Iceland	15	5	0/5[5]	5
India	15	15	0/15[5]	10/20[38]
Indonesia	15	10	0/10[5]	10
Iran	10	5[15]	0/7.5[23]	5
Ireland	15	0	0	5/8/10[39]
Israel	10	10	5/10[40]	5/7[41]
Italy	15	15	0/12[5]	4/8[13]
Jamaica	10	5	0/10[5]	10
Japan	15	10	10	10
Kazakhstan	15	5[4]	0/10[5]	10
Korea (Rep.)	15	10/15[42]	0/10[5,43]	10
Kuwait	5	0[44]	0	5
Kyrgyzstan[12]	18	18	0	0/5[13]
Latvia	10	5	0/10 [5,43,45]	5/10[21,46]
Lithuania	15	5	0/10[43,47]	5/10[21,48]
Luxembourg	15	10	0/10[5]	10
Macedonia (FYR)	15	5[4]	0/5[6,43]	5
Malaysia	5	0[49]	0/10[5]	5/7[50]
Malta	5	0	0	0
Mexico	15	5	0/5/10/15[51]	0/10[13,52]
Moldova	10	0/5[53]	0/5[5]	8

	Dividends		*Interest*[1]	*Royalties*
	Individuals, companies	*Qualifying companies*[2]		
	(%)	*(%)*	*(%)*	*(%)*
Morocco	15	10	10	5/10[13]
Netherlands	15	5/10[54]	10	6
New Zealand	15	15	0/10[5]	10
Nigeria	10	7.5[55]	0/7.5[5,55]	3.75/7.5[55]
Norway	15	10	0/10[6]	5
Oman	10	0	0/5[5,6]	8
Pakistan	10	5/7.5[56,57]	10	7.5
Panama	10	0/5[58]	0/5[5,59]	5
Philippines	15	10[4]	0/10/15[60]	15/20[61]
Poland	15	5	0	0/10[13]
Portugal	15	10	15	5
Romania	15	10	0/10[5]	10
Russia	15	5/10[62]	0/5[56]	5
Saudi Arabia	5	0	0/5[63]	8
Senegal	10	10	0/10[63]	10
Serbia	10	5	0/10[5]	5/10[64]
Singapore	5	0[4]	0/5[5]	5
Slovak Republic	15	5	0	0/5[13]
Slovenia	15	5	0/5[5]	5
South Africa	15	5	0/5[6]	5
Sweden	15	10[11]	0/15[65]	10
Switzerland	15	0[44]	0	0/5[66]
Tajikistan[12]	18	18	0	0/5[13]
Thailand	10	10[67]	0/10/15[68]	5/8/15[69]
Trinidad and Tobago	10	0/5[53]	0/8[5,70]	5
Tunisia	15	5[71]	5/10[6]	10
Turkey	15	5	10/15[6]	10
Turkmenistan[12]	18	18	0	0/5[13]
Ukraine[12]	18	18	0	0/5[13]
United Arab Emirates	15	5[4]	0	0
United Kingdom	10/15[72]	0[73]	0	0
United States	15	10	0/10[56]	5/8/10[74]
Uruguay	5	0[75]	0/10[5,59]	5/10[10]
Uzbekistan	10	0/5[76]	0/5[5]	5
Venezuela	10	0	0/4.95/10[5,35,77]	5
Vietnam	15	7/10[53,78]	0/10[5,78]	10[78]

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
2. Unless stated otherwise, the reduced treaty rates given in this column generally apply if the recipient company holds directly or indirectly at least 25% of the capital or the voting power, as the case may be, of the company distributing dividends.

3. The 5% rate applies if the Albanian company holds directly at least 10% of the capital of the Spanish company, and the zero rate applies if the Albanian company holds directly at least 75% of the capital of the Spanish company.
4. This rate applies if the recipient company holds directly at least 10% of the capital or voting power in the Spanish company, as the case may be.
5. The lower rate applies to interest paid to public bodies.
6. The lower rate applies to interest on qualifying loans (as defined).
7. The higher rate applies to copyright royalties, including films, etc.
8. The 3% rate applies to copyright royalties on (journalistic) news; the 5% rate applies to copyright royalties received by the author or his heirs in respect of literary, theatrical, musical or artistic work; the 10% rate applies to royalties relating to patents, designs or models, computer software, know-how and technical assistance. The 15% rate applies in all other cases.
9. This rate applies if a 25% capital holding has been held for at least 2 years.
10. The lower rate applies to copyright royalties, including films, etc.
11. The lower rate applies if the recipient company holds directly at least 50% of the capital in the Spanish company, and if the capital is held for at least 1 year before the date on which the dividends are paid.
12. Spain has agreed, by the exchange of diplomatic notes, to honour the tax treaty concluded between Spain and the former USSR with respect to the CIS member states. The treaty is still applicable to Belarus, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine.
13. The lower rate applies to copyright royalties, excluding films, etc.
14. A most favoured nation clause may be applicable with respect to royalties.
15. A minimum holding of 20% is required.
16. The rate under the treaty is 15%. However, by virtue of amost favoured nation clause and by way of a Declaratory Act 4/2006 issued by the Brazilian Federal Revenue Service on 20 March 2006, the rate is reduced to 10% for dividends paid with respect to participations of at least 25% of voting power. Under the Brazil and Israel treaty, the dividends rate is 10%
17. The domestic rate applies to interest paid by public bodies (under the treaty such interest is taxable only in the source state and there is no reduction). The 10% rate applies to interest on loans of at least 10 years granted by financial institutions for the acquisition of capital equipment.
18. The rate under the treaty is 10% for copyrights royalties (including films, etc.) and 15% for all other royalties. However, by virtue of a most favoured nation clause and by way of a Declaratory Act 4/2006 issued by the Brazilian Federal Revenue Service on 20 March 2006, the rates for all types of royalties with the exception of trademark royalties are reduced to 10%. The rate for trademark royalties remains at 15%. Under the Brazil and Israel treaty, the general rate is 10%, except for trademark royalties.
19. The zero rate applies if the beneficial owner of the interest is dealing at an arm's length with the payer.
20. A most favoured nation clause may be applicable with respect to interest and royalties.
21. The lower rate applies to royalties for equipment leasing.
22. The higher rate applies to royalties for equipment leasing.
23. The zero rate applies to interest paid to a bank (as defined).
24. A most favoured nation clause may be applicable with respect to interest.
25. A most favoured nation clause may be applicable with respect to royalties.
26. A most favoured nation clause may be applicable with respect to dividends, interest and royalties.
27. The 5% rate applies if the term of the loan is 5 years or more.
28. Under the Protocol, the withholding tax rate on interest and royalties is reduced to zero 5 years after the entry in force of the treaty (i.e. from 20 April 2011).
29. The zero rate applies to interests in connection with the sale of goods or merchandise or commercial, industrial or scientific equipment.
30. The zero rate applies if the term of the loan is 5 years or more.
31. The zero rate applies to loans granted for a minimum of 5 years; the 5% rate applies to interest in relation to sales on credit and interest on loans to finance a construction, installation or assembly project.
32. A most favoured nation clause may be applicable with respect to dividends, interest and royalties.
33. The rate under the treaty is 10%. However, by virtue of a most favoured nation clause, the rate is reduced to 0% on interest paid to a bank (as defined). Under the amending protocol of the Estonia-Netherlands treaty, the rate on such interest is 0%. In addition, the 2014 amending protocol of the Estonia-Switzerland treaty reduced the interest rate to 0% for all types of interest except interest specified in Article 11 (para 3) of the Estonia-Spain tax treaty, *see* Spain-1, News 21 December 2016.

34. The rates under the treaty are 5% (equipment leasing) and 10%. However, by virtue of a most favoured nation clause the rates are reduced to 0% for royalties (as defined). Under the 2014 amending protocol of the Estonia-Switzerland treaty, the rate is 0%, *see* Spain-1, News 21 December 2016.
35. The zero rate applies to interests in connection with the sale on credit of commercial, industrial or scientific equipment.
36. This rate applies if the beneficial owner is a company (other than a partnership or real estate investment company) which holds directly at least 10% of the capital or voting power in the Spanish company.
37. The zero rate applies to financial institutions and generally exempt pension funds.
38. The general rate under the treaty is 20%. However, by virtue of a most favoured nation clause, the rate is reduced to 10%. Under the India and Germany treaty, the rate is 10%.
39. The 5% rate applies to artistic copyrights, excluding films, etc.; the 8% rate applies to films, etc., any scientific works and any equipment.
40. The lower rate applies to interest payable to a bank or a financial institution.
41. The lower rate applies to artistic copyrights and equipment rentals.
42. The higher rate applies to dividends paid by Spanish investment institutions.
43. The zero rate applies to interests in connection with the sale of merchandise or commercial, industrial or scientific equipment.
44. This rate applies if the recipient company has held directly at least 10% of the capital in the Spanish company, during 1 year prior to the distribution.
45. A most favoured nation clause may be applicable with respect to interest.
46. A most favoured nation clause may be applicable with respect to royalties.
47. A most favoured nation clause may be applicable with respect to interest.
48. A most favoured nation clause may be applicable with respect to royalties.
49. A minimum holding of 5% is required.
50. The lower rate applies to fees for technical services.
51. The zero rate applies to interest paid by public bodies. The other rates under the treaty are 10% and 15%. However, by virtue of a most favoured nation clause the rates are reduced to 5% and 10%. The 5% rate applies to interest derived by banks or insurance companies, and on bonds or securities that are regularly and substantially traded on a recognized securities market; The 10% rate applies if the beneficial owner is not a person described above and the interest is paid by banks or by a purchaser of machinery and equipment in connection with a sale on credit. Under the Mexico-United Kingdom treaty, the rates are 5% and 10% for such interest.
52. A most favoured nation clause may be applicable with respect to royalties.
53. The lower rate applies if the recipient company holds directly at least 50% of the Spanish company's capital; the higher rate applies if it holds directly at least 25% but less than 50% of the capital.
54. The 10% rate applies if the Netherlands company is not exempt from corporate tax on the dividends received, and owns at least 50% of the capital in the Spanish company or at least 25% while another Netherlands company also owns at least 25%; the 5% rate applies if the Netherlands company, in addition to the above-mentioned holding requirement, qualifies in the Netherlands for the participation exemption on the dividends.
55. A most favoured nation clause may be applicable to dividends, interest and royalties.
56. The 7.5% rate applies if the recipient company has held directly at least 25% of the voting capital in the Spanish company, during 6 months prior to the distribution.
57. The 5% rate applies if the recipient company has held directly at least 50% of the voting capital in the Spanish company, during 6 months prior to the distribution.
58. The 5% rate applies if the recipient company holds directly at least 40% of the capital or voting power in the Spanish company, as the case may be. The zero rate applies in cases where the recipient has held at least 80% of the capital of the subsidiary, subject to certain conditions.
59. The zero rate applies to the sale on credit of equipment, goods or merchandise, or services.
60. The zero rate applies to interest paid by public bodies; the 10% rate applies to interest on bonds and debentures offered to the general public and interest in relation to sales on credit.
61. The 20% rate applies to films, etc.
62. The 5% rate applies if (1) the Russian company holds a capital participation of at least EUR 100,000 in the Spanish company and (2) the dividends are exempt in Russia; the 10% rate applies if only one condition is met.
63. Interest paid by or to public bodies is exempt.
64. The lower rate applies to copyright royalties, excluding computer software, but including films, etc.
65. The zero rate applies to interest on Government securities.

66. The zero rate applies if royalties are paid between associated companies, provided that: (i) the companies are affiliated by a direct holding of at least 25% for at least 2 years or are both held by a third company which has directly a minimum holding of 25% in the capital of both companies for at least 2 years, (ii) under any tax treaty with a third state none of the companies is resident in that third state, and (iii) all companies are subject to corporation tax without being exempted on royalty payments and each adopts the form of a limited company.
67. A most favoured nation clause may be applicable with respect to dividends.
68. The zero rate applies to interest paid in respect of loans granted by qualifying entities and public bodies; the 10% rate applies to interest paid to financial institutions (including insurance companies).
69. The 5% rate applies to copyrights, excluding films, etc.; the 8% rate applies to royalties on finance leasing of equipment.
70. The zero rate applies to interests in connection with the sale on credit of any equipment, merchandise or service.
71. A minimum holding of 50% is required.
72. The higher rate applies when dividends are paid out of income derived directly or indirectly from immovable property within the meaning of article 6 of the treaty by an investment vehicle whose income from such immovable property is exempted from tax.
73. This rate applies if the recipient company holds directly at least 10% of the capital or voting power, or if it is a pension fund.
74. The 5% rate applies to artistic copyrights, excluding films, etc.; the 8% rate applies to copyrights on scientific works, films, etc. and to equipment rentals.
75. A minimum holding of 75% is required.
76. A zero rate applies (according to article III of the Protocol) as long as, under the provisions of the Spanish corporation tax legislation and the future amendments thereto, a company which is a resident of Spain is not charged to Spanish corporation tax with respect to dividends the company receives from a company which is a resident of Uzbekistan.
77. The rates under the treaty are 0%, 4.95% and 10%. However, by virtue of a most favoured nation clause, the rate is reduced to 0%. Under the treaty between Spain and Malta, the rate is 0%. Unofficially the Venezuelan tax administration considers that the Spain-Malta treaty does not trigger the MFN clause under the Spain-Venezuela treaty as the former provides for exclusive taxation in the residence State, rather than shared taxation but at a rate lower than that agreed under the Spain-Venezuela treaty.
78. A most favoured nation clause may be applicable with respect to dividends, interest and royalties.

7. Anti-Avoidance

7.1. *General*

The General Tax Law contains a substance-over-form rule.

7.2. *Transfer pricing*

Under the current corporate income tax law, income and expenses relating to transactions between related enterprises or between companies and any participator (including his or her next of kin) who holds 25% of the capital or between companies and their directors (including their next of kin) – except for the compensation for the performance of their functions – must be adjusted to reflect arm's length prices (article 18.1 of the LIS). A corporate taxpayer may apply a corresponding adjustment to his self-assessment return. Corresponding adjustments made by the tax authorities must be in accordance with the OECD methods (i.e. the comparable uncontrolled price method, the cost-plus method, the resale price method, the profit-split method and the transactional net margin method). It is possible to make advance pricing agreements with the tax authorities.

Enterprises are related when the parties are, inter alia (article 18.2 of the LIS):

(1) a company and its shareholders or directors (or their relatives);

(2) two companies forming part of the same group of companies for accounting purposes;

(3) a parent holding indirectly at least 25% of the capital of the subsidiary;

(4) two companies participated, directly or indirectly, by the same shareholders (or their relatives) in at least 25% of the capital;

(5) a resident company and its permanent establishments abroad; or

(6) two companies where one controls the other.

Where the relation is between a company and their shareholders (case (1)), a minimum shareholding of 25% is required to establish the relationship.

The corresponding method of adjustment is an imperative rule of valuation which applies to all transactions between local enterprises directly or indirectly related to non-resident enterprises. The Spanish tax authorities are empowered to enter into advance agreements with the tax authorities of other states in order to determine the fair market value.

7.3. *Thin capitalization*

A general limitation on the deduction of borrowing costs applies instead of a thin capitalization rule. *See* section 7.5.1.

7.4. *Controlled foreign company*

Under the "international fiscal transparency" regime, which is the equivalent of a CFC regime, a Spanish resident company may be subject to corporate income tax on certain types of passive income of certain non-EU resident entities, or certain Gibraltar entities as well as Luxembourg exempt holding companies (those which were not created for valid economic reasons and which do not carry out business activities), in which it owns (directly or together with any associates) 50% or more of the capital, equity, results or voting rights (article 100 of the LIS). These entities must be situated in countries where the corporate income tax paid by the CFC in connection with the attributed positive income is less than 75% of that which would have been payable under Spanish corporate income tax rules (i.e. the passive income bears a foreign corporate income tax of less than 18.75%). The passive income to which the regime applies is income from immovable property or rights thereon not used in business activities, from financial assets, from loans between related entities, derivatives, intangibles, certain insurance operations, and capital gains from the disposal of such immovable property or assets and obtained by the CFC.

Under this regime, where the positive amount of passive income attributable to the Spanish resident controlling company is at least 15% of the total net profits or 4% of the total turnover of the CFC, the Spanish-resident controlling company must include in its taxable base that positive amount in proportion to its total interest (directly or through other foreign subsidiaries) in the results or, in the absence of results, the capital, equity or voting rights in the CFC.

7.5. *Other anti-avoidance rules*

7.5.1. Limitation on the deduction on borrowing costs

For tax periods commencing on or after 1 January 2012, Royal Decree-Law 12/2012 has introduced a general limitation on the deduction of borrowing costs. This regime replaces the thin capitalization rules applicable before that date.

A ceiling is placed on deductibility of the net borrowing costs. The ceiling is equal to 30% of the (adjusted) operating profits for the relevant period.

"Net borrowing cost" is defined as the amount by which borrowing costs exceed the income derived from loans extended to third parties in the tax period. This does not include any non-deductible, intra-group borrowing costs.

"Operating income" is the generally defined as the profit according to the profit and loss account and adjusted for certain items. These items include, for example, amortization and depreciation expenses for fixed assets and certain subsidies and financial income from equity investments.

Financial income is defined as income derived from dividends, or shares in income, and:

- the taxpayer (in)directly holds a participation of least 5% of the distributing company; or
- the acquisition cost of the participation was more than EUR 20 million (unless it was acquired using funds borrowed from group entities and the related borrowing costs are not deductible).

The 30% ceiling is subject to the following rules:

- net borrowing costs up to EUR 1 million per tax period will be deductible in any case (a safe harbour rule); and
- any net borrowing costs that were not deducted may be carried forward without limitation.

However, Royal Decree-Law 20/2012 provides that, with effect from 1 January 2012, the above-mentioned EUR 1 million safe harbour is to be calculated on a pro rata basis for companies with a tax period of less than 1 year.

If in a tax period, the net borrowing costs fall below the 30% ceiling, that difference will increase the ceiling of the deductible financial expenses of the next 5 tax years.

Entities that are taxed as part of a consolidated tax group must apply this ceiling in relation to the whole group, subject to certain conditions.

The 30% ceiling will not apply to, inter alia, financial (credit) institutions and (re)insurance companies.

8. Value Added Tax

8.1. *General*

Spain imposes a value added tax (IVA) in respect of taxable supplies of goods and services in mainland Spain and the Balearic Islands, thus excluding the Canary Islands and the Spanish enclaves of Ceuta and Melilla in Northern Africa, as well as in respect of the importation of goods into that territory (article 3 of the LIVA).

The Canary Islands levy a type of value added tax (IGIC) on taxable supplies of goods and services within the Canary Islands.

Law 14/2013 of 27 September 2013 introduced a special scheme to support entrepreneurs operating internationally. Under the scheme, companies with revenues not exceeding EUR 2 million may use the cash-basis accounting method, subject to certain requirements.

8.2. *Taxable persons*

Taxable persons are individual or corporate entrepreneurs making taxable supplies of goods or services (article 84 of the LIVA). In respect of importation of goods, the taxable person is any person carrying out the importation.

8.3. *Taxable events*

Spanish VAT liability attaches to (article 4 of the LIVA):

- the supply of taxable goods or services in the territory of imposition by an entrepreneur within the scope of his business;
- the intra-Community acquisition of goods; and
- the importation of taxable goods into the territory of imposition by any person.

8.4. *Taxable amount*

The taxable amount is the total consideration charged (article 78.1 of the LIVA). With respect to imported goods, it is the value of such goods for customs purposes, increased by any import-related taxes (other than VAT itself), duties and charges. In computing tax liability, input VAT may be deducted from output VAT, so that in practice only the value added to the entrepreneur's supplies is taxed.

8.5. *Rates*

The VAT rates in mainland Spain and the Balearic Islands are (articles 90 and 91 of the LIVA):

Type of rate	*Rate (%)*
Standard rate	21[1]
Reduced rate (food, transport, tourism, etc.)	10[2]
Super-reduced rate (basic necessities, dwellings (until 31 December 2012)	4
Zero rate (virtually only export-related goods and services)	0

1. 18% before 1 September 2012.
2. 8% before 1 September 2012.

The IGIC rates in the Canary Islands are (articles 51-61 LMAFC):

Type of rate	*Rate (%)*
Standard rate	7
Increased rate (qualifying means of transport with low power engines)	9.5
Increased rate (luxury goods, passenger motor vehicles, certain pleasure craft, X-rated films)	13.5
Reduced rate (energy, fuel, food, textiles)	3
Zero rate (water, medicines, books, journals, transport within the Canary Islands, export to a foreign country or to mainland Spain, the Balearic Islands, Ceuta and Melilla)	0
Special rate for dark tobacco	20
Special rate for Virginia-type tobacco	35

8.6. *Exemptions*

The following are the most important exempt transactions (without deduction of input VAT) (article 20 of the LIVA):

- medical and social services;

- educational and sport services;
- financial operations and insurance contracts; and
- lease of certain types of immovable property.

For zero-rated activities (exemption with deduction), *see* section 8.5.

8.7. *Non-residents*

Non-resident entrepreneurs, except for EU residents, are required to appoint a tax representative and to communicate his name to the tax authorities.

Foreign entrepreneurs who are VAT taxpayers under Spanish law may apply the general refund scheme for the recovery of the input VAT. A special refund scheme applies if:

- the entrepreneur is a resident of an EU Member State or of a country that grants reciprocal treatment to Spanish entrepreneurs; and
- the entrepreneur has carried out only exempt transport transactions, or supplies of goods or services for which the reverse charge mechanism applies.

9. Miscellaneous Taxes

9.1. *Capital duty*

A capital duty is levied only on qualifying capital redemptions, liquidations and immigration of companies to Spain (article 19 of the LITPAJD). The duty is levied at a rate of 1% on the value of the net assets contributed/refunded.

9.2. *Transfer tax*

9.2.1. Immovable property

Transfer tax is levied at a general rate of 6% (article 11.1 of the LITPAJD) (7% in most autonomous regions) on the second and any subsequent transfers of immovable property and rights thereon, except guarantees. No transfer tax is levied where the transaction is subject to VAT.

9.2.2. Shares, bonds and other securities

The transfer of shares or other securities is normally not subject to any transfer tax. However, the transfer of unquoted shares of SAs and pre-emptive rights to subscription of such shares by the intervention of a notary or a stockbroker is subject to the transfer tax discussed in section 9.2.1. if the transfer leads to the acquisition of control over a non-listed company in which 50% or more of its assets consist of Spanish-situs immovable property.

9.2.3. Other

Transfer tax is levied at a rate of 4% on the constitution and transfer of rights, other than rights in rem, on movable property and livestock, and on the granting of any administrative concession (article 11.1 of the LITPAJD). The autonomous regions are entitled to set other rates.

9.3. *Stamp duty*

Stamp duty is levied on officially documented acts which are either formalized in Spain or have any legal or economic effect in Spain and it is generally not significant. Stamp duty may be levied concurrently with VAT. No stamp duty is levied, however, where the transaction is subject to capital duty (*see* section 9.1.).

9.4. *Customs duty*

In the European Union, customs law is harmonized and applies only to movements of goods between the European Union and third countries. Customs duties, as possibly other taxes (for example VAT (*see* section 8.3.)), are imposed on the import of goods into the EU Customs Union.

The EU Customs Union consists of the EU Member States, as well as Monaco, the Channel Islands, the Isle of Man and the areas of Akrotiri and Dhekelia (Cyprus). Turkey, San Marino and Andorra have separate customs agreements with the EU.

The basis for calculating the customs duty is the customs value, which is generally the sum of the price paid for the goods and any related insurance and shipping costs. A percentage (tariff), which depends on the type and origin of the good being imported, is then applied to the customs value to determine the customs duty payable. The applicable tariff can be found in the Common Customs Tariff (Council Regulation (EEC) No. 2658/87 of 23 July 1987).

EU customs legislation comprises the Union Customs Code (Regulation (EU) No. 952/2013), the Common Customs Tariff, the Customs Duty Relief Regulation and various international agreements. The Union Customs Code, supplemented by the Delegated Act and Implementing Act, replaced the Community Customs Code (Regulation (EEC) No. 2913/92) as from 1 May 2016.

One of the main differences between the Union Customs Code and the Community Customs Code relates to the mandatory use of the “last sale” amount for valuation purposes (i.e. the sale price immediately before the goods are brought into the territory of the European Union). Previously, a “first sale for export” valuation basis was possible, under which duties were imposed on the manufacturer-to-middleman transaction price (which is generally lower than any subsequent sales).

9.5. *Excise duty*

Spain levies excise duties on the manufacture in, and importation to, Spain of alcoholic drinks and products and hydrocarbons and manufactured tobacco products.

SPAIN

This chapter is based on information available up to 25 January 2017.

Abbreviations

Abbreviation	*English definition*	*Spanish definition*
LIRPF	Individual Income Tax Law	Ley del Impuesto sobre la Renta de las Personas Físicas
LIRNR	Income Tax on Non-Residents Law	Ley del Impuesto sobre la Renta de No Residentes
LISD	Inheritance and Gift Tax Law	Ley del Impuesto sobre Sucesiones y Donaciones
LPGE	Budget Law	Ley de presupuestos generales del Estado

Introduction

Individuals are subject to income tax levied on behalf of the state and the 17 autonomous regions. No separate capital gains tax exists, but capital gains are included in taxable income. Employed and self-employed individuals must make social security contributions. Inheritance and gift tax also applies. For VAT and miscellaneous indirect taxes, *see* Corporate Taxation sections 8. and 9., respectively.

Spain comprises mainland Spain, the Balearic Islands and the Canary Islands, as well as the enclaves of Ceuta and Melilla in Northern Africa. The Basque country and Navarre have their own income tax systems.

The currency is the euro (EUR).

1. Individual Income Tax

1.1. *Taxable persons*

An individual is a resident of Spain for tax purposes if (article 9 of the LIRPF):

- he stays in Spain for more than 183 days in any calendar year (the personal residence test); or
- his centre of vital interests, i.e. his economic interests or business or professional activities, is in Spain (the economic residence test).

In the absence of proof to the contrary, a married individual is deemed to be a resident of Spain if the permanent home of his spouse and dependent minor children is in Spain.

Individuals who move their residence into Spain may opt to be taxed under this tax or the Spanish income tax on non-residents (*see* section 6.2.).

In addition, Spanish nationals who move their residence to a country deemed to be a tax haven (except for Andorra in certain cases) remain taxable on their worldwide income in the year of emigration and the 4 subsequent years.

Partnerships are considered companies and taxed under the general corporate income tax rules. With effect from 1 January 2016, civil law partnerships with a commercial corporate purpose will be subject to corporate income tax.

1.2. *Taxable income*

1.2.1. General

Residents are liable to income tax on individuals (IRPF) in respect of their worldwide income (article 2 of the LIRPF). Non-residents are liable to income tax on non-residents (IRNR) only on their Spanish-source income (*see* section 6.3.).

The concept of income encompasses income from six basic categories according to the source or origin, namely (article 6 of the LIRPF):

- employment income;
- income from movable capital;
- income from immovable capital;
- business income;
- capital gains; and
- imputed income (*see* below).

Income is imputed in the following cases (articles 85-92 of the LIRPF):

- income from residences other than the taxpayer's primary residence (*see* section 1.5.4.);
- income under the fiscal attribution regime (where individuals are directly attributed the income from civil companies, joint ownerships or estates);
- income under the CFC regime (*see* Corporate Taxation section 7.4.);
- income from unit-linked insurance policies that do not fulfil certain legal requirements; and
- income from collective investment institutions established in listed tax havens.

As a general rule, income is taxable and related expenses are deductible in the year of accrual of the income and the year in which expenses are incurred, regardless of the time of cash receipt and payment. Income spreading is not allowed, except with regard to sales by instalment and other special cases, where the taxpayer may opt to impute the income to the year of transfer or to the year in which the payment is made.

If spouses file separate returns, the determination of income and deductible expenses attributable to each taxpayer takes into account the category or source of that income. Accordingly:

- employment income (other than pensions) and related deductions are attributed exclusively to the earner; pensions are generally attributed to the individual beneficiary;
- income from movable capital and capital gains are attributed to the individual owners of the underlying property items, according to the type of marital property regime as follows:
  - if the spouses are married under a community property regime, to both spouses on a 50/50 basis unless another method of apportionment can be substantiated; and
  - if they are married under a separate property regime, entirely to the owner (or registered holder) of the underlying property; and
- business income is attributed to the individual who regularly and directly conducts the business or exercises the independent professional or artistic activities in question.

For tax calculation purposes, the taxpayer's income from the various categories (*see* above) is classified as (i) general income and (ii) savings income. *General* income is the aggregate of employment income, income from immovable capital, business income and capital gains, including the positive or negative capital gains which are not deemed to be savings income. Such income is reduced by applicable deductions and allowances. The resulting base is taxed at the progressive rates mentioned in section 1.9.1.1.

Savings income comprises both (i) income from movable capital (dividends, interest and monetary return or payment in kind on life or disability insurance contracts) and (ii) positive or negative capital gains that arise on transfer of assets. The taxable base of savings income is taxed at the rates mentioned in section 1.9.1.2.

1.2.2. Exempt income

The most important types of exempt income are (article 7 of the LIRPF):

- certain capital gains (*see* section 1.6.);
- indemnities paid for physical or mental damages, up to the maximum amount established by law or a court order or an insurance contract;
- mandatory compensation received as severance pay or for the termination of employment, up to a maximum of EUR 180,000;
- pensions paid by the social security system to severely disabled taxpayers;
- income obtained from qualifying long-term savings plans;
- court-ordered child support payments;
- certain prizes and lotteries (*see* section 1.9.2.); and
- certain scholarships.

Salaries earned from work performed in a foreign country with an income tax comparable to the Spanish income tax are exempt up to EUR 60,100.

1.3. *Employment income*

1.3.1. Salary

Employment income is subject to tax at the normal rates. However, if the income has been generated during more than 2 years and it is attributable to a single tax period, only 70% of it is taxable (with certain restrictions and subject to an overall limit of EUR 300,000 per year). This reduction of 30% over the employment income does not apply if, within the five tax periods preceding the tax period in which it becomes payable, the taxpayer obtained other income to which this same reduction was applied. The 30% reduction will not apply if the payment exceeds EUR 1 million. For such payments between EUR 700,000 and EUR 1 million, the 30% reduction will apply to the difference between the amount of the payment and EUR 700,000, minus EUR 300,000 (article 18 of the LIRPF).

Expenses related to employment are generally not deductible. However, travel allowances and amounts paid by the employer to the employee in compensation for his travel or moving expenses may be exempt if certain conditions are fulfilled.

Only the following expenses are deductible:

- social security contributions (*see* section 3.);
- trade union fees;

- compulsory fees paid to professional associations, up to EUR 500;
- legal expenses in connection with the termination of employment, up to EUR 300; and
- other expenses different from the above, up to EUR 2,000, which might be increased in certain cases such as relocation to a different city or serving employees with disabilities.

Employment income is subject to monthly withholding (*see* section 1.9.2.).

Additionally, an employment allowance up to a maximum of EUR 3,700 is available for taxpayers who obtain a net salary income below EUR 14,450 (under conditions).

1.3.2. Benefits in kind

Benefits in kind are fully taxable and valued at their cost for the employer (including related taxes) or at their market value (articles 42 and 43 of the LIRPF), with the following exceptions:

- the value of the free use of a residence is generally 10% (or 5% for dwellings with a revised cadastral value) of the cadastral value;
- the free use of a company car is valued at 20% of its acquisition value (if owned by the employer) or of its market value (if leased) annually; the valuation of this compensation may be reduced by up to 30% for vehicles which are considered to be energy-efficient; and
- the benefit of a loan bearing interest below the market rate is valued as the difference between the market rate and the interest actually charged.

1.3.3. Pension income

For tax purposes, pension payments are generally treated as employment income (article 17.2.a) of the LIRPF). However, pensions paid by the social security system to severely disabled taxpayers are exempt.

1.3.4. Directors' remuneration

Fees and other remuneration earned by resident individuals in their capacity as members of boards of directors or other management bodies are treated as employment income and subject to a 35% withholding tax on account of final income tax (article 17.2.e) of the LIRPF). The withholding tax is 19% when the income originates from entities with a turnover not exceeding EUR 100,000. Remuneration earned by a director who is employed full-time as a manager is subject to the general withholding rate (*see* section 1.9.2.).

1.4. *Business and professional income*

Business income includes income from business and professional activities (article 27.1 of the LIRPF). It is computed according to the rules that apply to companies (*see* Corporate Taxation section 1.3.). In practice, there are different methods of computation.

Under the normal direct method, virtually all duly substantiated and necessary income-generating expenses (depreciation allowances, doubtful debts, etc.) may be deducted.

Under the simplified direct method, the net income of taxpayers whose turnover is under EUR 600,000 or who are in their first year of operation is the turnover reduced by related expenses. Tangible assets may be depreciated only under the straight-line

method, and EUR 2,000 per year may be deducted as notional expenses. Taxpayers under this regime are required to maintain only simplified records, not the bookkeeping generally required for other taxpayers.

Taxpayers computing their income under the direct method (normal or simplified) may benefit from a business income allowance subject to the fulfilment of certain requirements, up to a maximum of EUR 3,700. This allowance applies to taxpayers who obtain net business or professional income below EUR 14,450 (under conditions). If these requirements are not met, a taxpayer who obtains non-exempt income (including business income) below EUR 12,000 shall be entitled to an allowance of up to EUR 1,620 which, together with the applicable reduction for salary income (see section 1.3.1.), may not exceed EUR 3,700. The allowance cannot exceed the net business income. The allowance may be increased for disabled taxpayers.

Under the objective method, businessmen engaged in listed activities (e.g. restaurants) may determine their net (notional) income according to certain parameters (inter alia square metres, employees).

Regardless of the method used, if the income has been generated during more than 2 years, only 70% of it is taxable. However, the income must be obtained in a single tax period, and the reduction can only apply over an amount of EUR 300,000.

1.4.1. Revaluation reserve

Law 16/2012 of 27 December 2012 introduced a one-off revaluation tax. Under this optional regime, qualifying individual taxpayers could revalue certain assets using a set of coefficients. The coefficients depend on the year of acquisition or manufacture of the asset, and on the debt ratio of the taxpayer. The revaluation is no longer applicable. For details, *see* Corporate Taxation section 1.3.5.3.

1.5. *Investment income*

1.5.1. Dividends

A resident individual must include in his taxable income the amount of dividends received (before withholding tax) from a resident company (article 25 of the LIRPF).

Commissions paid for the custody of shares to qualifying persons are deductible for tax purposes.

For withholding tax on dividends *see* section 1.9.2.

1.5.2. Interest

Interest derived by resident individuals is fully taxable.

For withholding tax on interest *see* section 1.9.2.

1.5.3. Royalties

Royalties derived by resident individuals are fully taxable.

For withholding tax on royalties *see* section 1.9.2.

1.5.4. Income from immovable property

Ownership of a non-rented residence other than the primary residence gives rise to an imputed annual income of 2% of the cadastral value (article 85.1 of the LIRPF) (1.1% if the value was adjusted after 1 January 1994).

Instead of the imputed income, actual rental income is taxed on its net amount, i.e. the gross rent received less related expenses (inter alia, local taxes, depreciation, mortgage interest up to the rent received). The net income from dwelling rentals is reduced by 60% on the condition that the taxpayer has duly included it in the tax return. If rental income has been generated during more than 2 years, only 70% of its amount is taxable if it is attributable to a single tax year, and with a ceiling of EUR 300,000 per year.

1.5.5. Other

The proceeds received on life or disability insurance policies are subject to special computation rules, depending on the period during which the premiums were paid. The taxable part of life and disability insurance proceeds is subject to withholding tax (*see* section 1.9.2.).

Payments based on life and term annuities are generally taxable as income from movable capital subject to the flat rate (*see* section 1.9.1.2.). However, a portion of the annual payments on life or term annuities is not subject to tax: life annuities may be reduced to a percentage ranging from 8% to 40% of the payment received, depending on the age of the recipient; term annuities may be reduced to a percentage ranging from 12% to 25%, depending on its duration.

1.6. *Capital gains*

Concept and treatment of capital gains

Capital gains and losses are the variations in the value of the taxpayer's net wealth, which arise when there is any alteration in its composition, unless the Income Tax Law classifies the variations as returns or earnings (article 33.1 of the LIRPF).

Capital gains are computed as the difference between the acquisition price (which includes the cost of improvements made to the asset and all expenses and taxes inherent to the acquisition) and the transfer price. The acquisition price is adjusted by a coefficient (based on the year of acquisition) only in the case of immovable property. However, special rules may apply in some cases, e.g. dissolution of companies.

An anti-avoidance rule applies for collective investment institutions established in listed tax havens. Taxpayers holding participations in such institutions are deemed to have a minimum net capital gain of 15% of the acquisition value of the participation or of the difference between the acquisition value and the value on the last day of the financial year, whichever is greater.

The gain or loss on a transfer by gift is computed as the difference between the asset's value for inheritance and gift tax purposes (*see* section 5.2.) and the acquisition price.

Exempt capital gains and rollover relief

Full rollover relief is available to any taxpayer in respect of his primary residence (article 38.1 of the LIRPF). The total consideration must be reinvested in a new primary residence, although partial reinvestments receive partial relief.

Rollover relief is also available for capital gains on the sale of participations in qualifying collective investment institutions or qualifying, recently created companies if the total proceeds are reinvested in similar participations or in recently incorporated companies, subject to certain conditions. Partial reinvestments receive partial relief.

Capital gains derived from the transfer by taxpayers over the age of 65 of any of their assets, is exempt from tax insofar as the total amount obtained from such a transfer is used within a 6-month period to set up an insured life annuity to their benefit, subject to certain conditions.

An exemption from income tax is available in respect of (article 33.4 of the LIRPF):

- capital gains derived from a gift to qualifying donees, e.g. central or local governments, the Spanish Red Cross, public universities and legally recognized churches and charities;
- capital gains realized by persons 65 years of age or older from the sale of their primary residence; and
- capital gains arising from the transfer of a dwelling undertaken to discharge debts secured by a mortgage on that dwelling taken out with a credit institution.

1.7. *Personal deductions, allowances and credits*

1.7.1. Deductions

The general taxable base (*see* section 1.2.1.), as reduced by the personal and family allowances (*see* section 1.7.2.), is further reduced by the following deductions (article 51 of the LIRPF):

Contributions to mutual insurance societies covering death, widowhood, orphanhood, retirement, accidents, work-related illness or disability, or granting benefits for marriage, maternity, birth or death are deductible if such contributions are made by:

- professionals (i.e. lawyers, doctors, engineers) who did not elect to be covered by the social security regime for the self-employed;
- employees, including their contributions for unemployment benefits; and
- self-employed individuals, as long as their contributions relate to the above-mentioned contingencies or benefits.

In addition, the taxpayer's contributions to private pension schemes are deductible. Contributions made by an employer (which are attributed to the taxpayer as employment income) are also deductible by the taxpayer.

In addition, the taxpayer's contributions to private pension schemes are deductible. Contributions made by an employer (which are attributed to the taxpayer as employment income) are also deductible for the taxpayer. Total contributions are deductible annually up to the lower of (i) 30% of the amount of employment and business income or (ii) EUR 8,000 per contributor (not per family unit). Disabled taxpayers may deduct higher amounts.

Child support allowances under court order, which constitute exempt income for the children (see section 1.2.2.), are not deductible for the payer. However, the taxpayer is entitled to special treatment when applying the tax rates (see section 1.9.1.1.).

For the treatment of mortgage interest, *see* section 1.7.3.

1.7.2. Allowances

Personal and family allowances reduce the final tax liability in an amount equal to the application of the general rates (*see* section 1.9.1.) to the total amount of allowances (articles 56-61 of the LIRPF).

The personal allowance is EUR 5,550. In the case of joint filing, the second taxpayer's allowance is EUR 3,400. For taxpayers older than 65, the amounts are EUR 6,700 and EUR 4,550, respectively. For taxpayers older than 75, they are EUR 8,100 and EUR 5,950, respectively.

The family allowance depends on the number of dependants, their age and income, and is:

- EUR 2,400 for the first child under 25 years living at home and whose annual income does not exceed EUR 8,000, EUR 2,700 for the second child, EUR 4,000 for the third child and EUR 4,500 for any additional child;
- additionally, EUR 2,800 for each child younger than 3 years, and for each adopted child of any age in the year of adoption and the following 2 years; and
- EUR 1,150 for each dependent ascendant older than 65 years (EUR 2,550 for dependent ascendants older than 75) whose annual income does not exceed EUR 8,000.

Any unused amount of the personal and family allowances is deducted from the taxable base for savings income, if any; any remainder is lost.

1.7.3. Credits

1.7.3.1. Primary residence

Before 1 January 2013, a 15% tax credit (up to a maximum of EUR 1,356) was available for the acquisition or renovation of the taxpayer's primary residence (which had to be continuously used as his primary residence for a minimum period of 3 years). With effect from 1 January 2013, this credit has been abolished.

However, a transitional regime applies for taxpayers who before 1 January 2013 had:

- acquired their principal residence;
- paid sums for it to be built;
- paid sums for renovation work on or extension of the principal residence (if the works are finished before 1 January 2017); or
- paid sums to adapt the principal residence of disabled people (if the works are finished before 1 January 2017).

For these taxpayers, the tax credit can be applied in accordance with the tax credit regime as it was before 1 January 2013.

1.7.3.2. Other

A credit ranging up to 75% is granted for donations below EUR 150 made to qualifying entities. For larger donations, the credit is 30% on the excess over EUR 150, but may be increased to 35% under certain conditions (article 68.3.a) of the LIRPF and article 19 of Law 49/2002 of 24 November 2002, on foundations and tax incentives to private investment in activities of general interest).

Income tax attributable to income (including capital gains) arising in the Spanish cities of Ceuta and Melilla in Northern Africa may be reduced by a 50% credit.

A 20% tax credit has been created for membership fees and contributions to political parties, electoral federations or groups, applicable to a maximum base of EUR 600 per year.

Working mothers with one or several children younger than 3 years may credit EUR 1,200 per year and child. This credit may be replaced by a tax-free subsidy of EUR 100 per month, at the mother's request.

A tax credit for the investment in new or recently incorporated companies is granted. This credit is equal to 20% of the amounts invested in the acquisition of shares or participations in a new or recently created company. The maximum base for the credit is EUR 50,000. In addition, capital gains derived from the transfer of such acquired shares or participations will be tax exempt, provided the total proceeds are reinvested in the same type of entities. Partial reinvestment will allow only a partial exemption of the gains.

1.8. *Losses*

1.8.1. Ordinary losses

Losses arising from income from movable capital (*see* section 1.2.1.) are part of the taxable base for savings income. Taxpayers may set off the negative balance from movable capital against the positive balance obtained from the inclusion of capital gains in the savings component of the taxable income, up to 25% of those gains (and vice versa). Any excess loss may be carried forward for 4 years (articles 46 and 49 of the LIRPF).

Losses from subordinated debt securities or preferred stock that are incurred before 1 January 2015 may, however, be set-off against the positive balance of income from movable capital or capital gains.

See section 1.8.2. for losses falling under the capital gains category.

Losses arising from any other category of income are part of the general taxable base, and are offset against the positive income of any of the categories falling under general income. Any excess loss may be carried forward for 4 years (articles 45 and 48 of the LIRPF).

1.8.2. Capital losses

Generally, capital losses arising from the disposal of assets (savings losses) may only be offset against capital gains from the disposal of assets. Any remaining loss may be carried forward for 4 years to be offset against gains from the same kind of assets (article 49 of the LIRPF).

However, capital losses and gains not derived from the disposal of assets (e.g. indemnities) may only be offset against each other. Any excess may be offset against 25% of the general taxable base. Any remaining amount may be carried forward for 4 years.

See section 1.8.1. for the offset of losses from subordinated debt securities or preferred stock.

1.9. *Rates*

1.9.1. Income and capital gains

1.9.1.1. General income

From income year 2016 (assessment year 2017) onwards (pending approval of the 2017 general budget), the following progressive rates apply (article 63.1 and 74 of the LIRPF):

Taxable income (EUR)			*Tax on lower amount (EUR)*	*Rate on excess (%)*
Up to		12,450	0	19
12,450	-	20,200	2,365.50	24
20,200	-	35,200	4,225.50	30

Taxable income (EUR)			Tax on lower amount (EUR)	Rate on excess (%)
35,200	-	60,000	8,725.50	37
Over		60,000	17,901.50	45

The applicable tax rates are first applied to the general taxable base (*see* section 1.2.1.). The tax so determined is then reduced by the amount resulting from the application of the tables to the amount of the personal and family allowances (*see* section 1.7.2.).

Taxpayers paying child support in an amount not exceeding the general taxable base may split the base into two different parts and apply the above tables to each part: one up to the amount of the child support actually paid and the other to the remainder of the taxable base. The resulting amount is reduced by the amount resulting from the application of the rates table to the taxpayer's personal and family allowances, as increased by EUR 1,980.

Part of the tax revenue resulting from this rates table is assigned to the autonomous regions, which are empowered to modify it.

1.9.1.2. Savings income

From tax year 2016 (assessment year 2017) onwards (pending approval of the 2017 general budget), savings income is subject to tax at the following progressive rates:

Taxable income (EUR)			Rate (%)
Up to		6,000	19
6,000	-	50,000	21
Over		50,000	23

Under a long-term savings plan (LTSP), income generated by life insurance policies, deposits and financial contracts funding the LTSP are exempt from income tax, insofar as the taxpayer does not withdraw any of the resulting capital before the end of a period of 5 years since it was opened.

1.9.2. Withholding taxes

Spanish-source income from employment, self-employment, income from movable capital and capital gains derived by resident individuals may be subject to withholding of income tax. The tax withheld is generally treated as an advance payment and credited against the taxpayer's final tax liability. Employment income, including pensions, is subject to withholding tax at the general progressive rates used for the annual income tax (*see* section 1.9.1.1.) whereby the personal and family circumstances of the taxpayer are taken into account. For directors' remuneration, *see* section 1.3.4.

Payments in kind are valued in accordance with the rules in section 1.3.2. and are then subject to the applicable rate of withholding tax depending on their nature.

Income of self-employed professionals is generally subject to a withholding tax at the rate of 15% (7% during the first 3 years of the professional activity).

The percentage is reduced by half where the person is entitled to the tax credit for income obtained in Ceuta and Melilla.

The following types of income from movable capital are subject to withholding tax:

- dividends;

- interest (interest on treasury notes and securities issued by the treasury or the central bank are exempt);
- royalties; and
- the taxable part of life and disability insurance proceeds (*see* section 1.5.5.).

The rate is generally 19%.

Capital gains from participations in investment funds are subject to withholding tax at a rate of 19% unless rollover relief applies (*see* section 1.6.). Additionally, with effect from 1 January 2017, the withholding tax rate for capital gains arising on transfers of pre-emptive subscription rights is set at 19%.

An exemption of EUR 2,500 for winnings from prizes and lotteries (ONCE, the Red Cross, the central government lottery agency, etc.) applies. The portion of the prize exceeding EUR 2,500 will be subject to a 20% final tax by way of withholding. The amount of the prize is not included in the tax base for personal income tax purposes.

1.10. *Administration*

1.10.1. Taxable period

The taxable period for individuals is the calendar year (article 12.1 of the LIRPF).

1.10.2. Tax returns and assessment

Resident taxpayers may elect to file a single or a joint tax return. Resident taxpayers who are members of the same family unit have the option to file a joint tax return for the household. A family unit consists of husband and wife, their minor children (under 18 years of age) and their disabled children regardless of age and, in the case of legally separated spouses or de facto unions, the father or the mother and the children living with either of them. Joint tax returns do not allow splitting of income. The tax return must be filed in the prescribed manner, by the due date (usually 30 June) (article 96 of the LIRPF), and on the forms that are defined every year.

1.10.3. Payment of tax

Entrepreneurs and professionals are required to file quarterly returns and make advance payments by 20 April, 20 July and 20 October of the current year and 30 January of the next year on account of final income tax liability for the current year (article 99 of the LIRPF).

For professionals computing their net income under the direct methods (*see* section 1.4.), the prepayment is, in general, 20% of the difference between income and deductible expenses relating to the portion of the current calendar year less any prepayments made for the preceding quarters of the year and payments on account and withholding tax for the quarter in question.

For entrepreneurs computing their net income according to the objective method (*see* section 1.4.) the maximum prepayments are 4% of the net yield resulting from the application of the parameters on the basic figures for the first day of the year to which the advance payments relate or the day of commencement of a new business activity (if this is not feasible, the immediately preceding year) reduced by any related withholdings. The percentage may be reduced if there are employees. The maximum prepayments may be reduced to 2% under conditions.

There is, however, an exception to the prepayments rule. Professionals are not obliged to make advance payments if at least 70% of their professional income was subject to withholding in the preceding year.

As a general rule, self-assessment of the tax is mandatory. The annual return for a tax year must be filed and any outstanding tax paid in the period 1 May to 30 June of the next year. It may be paid in two instalments, 60% by 20 June and the remainder by 5 November of that year.

If the sum of the amounts withheld and any prepayments exceeds the taxpayer's final tax liability for the current year, the excess is refunded.

1.10.4. Rulings

Binding rulings are issued by tax authorities. The rulings are binding on the tax authorities also with respect to other taxpayers in identical situations.

2. Other Taxes on Income

Spain does not levy any other tax on income. It should be noted, however, that resident entrepreneurs (not professionals) may choose to pay an amount equal to 0.15% of their business profits as an annual registration fee to the appropriate Chamber of Commerce, Industry and Navigation (Transitional Provision 4 of Law 3/1993 of 22 March 1993, regarding the Chambers of Commerce, Industry and Navigation). The fee is a deductible expense for income tax purposes.

3. Social Security Contributions

All resident employed and self-employed individuals must pay monthly contributions to the social security system, which consists of a general contribution system and special contribution schemes (e.g. for agricultural workers, seamen, domestic servants and self-employed individuals).

Compulsory social security contributions are deductible for individual income tax purposes.

3.1. *Employed*

The general system divides employees into professional categories for the purpose of determining their social security contribution. Each category has minimum and maximum contribution bases that are adjusted annually. For 2017, the maximum monthly base is EUR 3,751.26; the minimum monthly bases vary depending on the type of work.

For employee contributions, the rates for 2016 were (article 115 of the LPGE 2016):

Contribution for	*Rate (%)*
General risks	4.70
Unemployment insurance[1]	1.55
Professional education and training	0.10
Total	6.35

1. This rate applies for permanent contracts.

These rates have been automatically extended for 2017, pending approval of the general budget (article 134.4 of the Spanish Constitution).

For the social security contributions payable by employers, *see* Corporate Taxation section 4.2.

3.2. *Self-employed*

For self-employed individuals, the social security contributions are generally calculated at an effective rate of 29.8% (article 115.5 of the LPGE 2016). A minimum monthly taxable base of EUR 883.10 and a maximum monthly taxable base of EUR 3,642.00 apply for 2016 for individuals under 47 years, or if elected by individuals with a contribution base exceeding EUR 1,945.80 who are 47 years old.

Self-employed individuals who are 48 years or older may elect a monthly base between EUR 963.30 and 1,964.70.

4. Taxes on Capital

4.1. *Net wealth tax*

The existing net wealth tax (*impuesto sobre el patrimonio*) that had been left without effect (through a 100% tax credit) since 2008 has been reinstated by the Spanish government by Royal Decree-Law 13/2011 of 17 September 2011. The tax has been extended for 2017 through Royal Decree-Law 3/2016 of 2 December 2016.

This tax is levied on a resident individual's worldwide net wealth. The collection and administration of the tax is done by the autonomous regions. These regions are authorized to set their own tax rates and exemptions (within certain limits).

The taxable base is the value of the net assets on 31 December of each year. In computing the taxable base, each resident taxpayer is entitled to a general exemption of EUR 700,000 (the exemption may vary per autonomous region). Also, the exempt amount for the permanent dwellings is EUR 300,000.

Exemptions include unquoted shares and comparable interests in companies (other than portfolio or real estate management companies) in which the taxpayer holds (i) more than 5% of the capital and (ii) a managerial function which is the source of more than 50% of his total income.

Spouses are taxed separately. If they are married under the community property system, the assets are generally attributed to the spouses on a 50/50 basis. If they are married under the separate property system, each asset is attributed to the appropriate owner.

If a region does not set its own rates, a standard progressive rates table currently ranging from 0.2% (on the first EUR 167,129.45) to 2.5% (on the excess over EUR 10,695,996.06) applies.

The aggregate burden of income tax and net wealth tax due by a resident taxpayer may not exceed 60% of his total taxable income for income tax purposes. If it exceeds that amount, the taxpayer may reduce his net wealth tax liability by the excess amount. However, a minimum tax of 20% of the net wealth tax liability, as originally calculated (before the application of the 60% rule) has to be paid.

4.2. *Real estate tax*

See Corporate Taxation section 5.2.

5. Inheritance and Gift Taxes

Inheritance and gift tax is levied on behalf of the autonomous regions on property passing to individuals by way of gift or on death. Gratuitous transfers to corporate recipients are not subject to this tax but are subject to the corporate income tax (article 3 of the LISD).

5.1. *Taxable persons*

The individual beneficiary or donee is liable to the tax (article 5 of the LISD).

Tax liability arises on the date of death or, in the case of an inter vivos gift, on the date the property is given or the deed evidencing the gift is executed.

5.2. *Taxable base*

A recipient who is a resident of Spain (*see* section 1.1.) is liable to this tax with regard to property in Spain or abroad, acquired through a gratuitous transfer (article 6.1 of the LISD).

Non-resident recipients are subject to this tax:

- with regard to any assets located in Spain; and
- with regard to proceeds under a life insurance policy with a Spanish insurance company or contracted with a foreign insurance company legally authorized to operate in Spain.

In addition, some anti-avoidance measures attribute certain assets to the deceased so as to include them in his estate and apportion them to the beneficiaries for inheritance tax purposes.

Transferred assets are valued at their fair market value. The value of the deceased's household furnishings and personal belongings is assumed to be 3% of the net value of the estate apportionable to the recipients.

5.3. *Personal allowances*

The progression takes into account each recipient's taxable base. For inter vivos gifts, it coincides with the taxable base; for inheritances or bequests, it is the amount resulting from reducing each qualifying recipient's taxable base by fixed allowances. Thus, in calculating the taxable base for a beneficiary (also of a life insurance policy), the following allowances may be deducted when the appropriate autonomous region has not set its own allowances (article 20.2.a of the LISD):

- Category I recipient (deceased's direct and legally adopted descendants under 21 years of age): a maximum allowance of EUR 47,858.59 for each direct descendant who is under 13 years of age; for direct descendants who are under 21 years of age, the allowance is EUR 15,956.87, plus EUR 3,990.72 for each year under 21;
- Category II recipient (deceased's direct and legally adopted descendants of 21 years or older, spouse and direct and adoptive ascendants): EUR 15,956.87;
- Category III recipient (deceased's siblings, uncles, aunts, nephews, nieces, ascendants and descendants by marriage until the fourth degree): EUR 7,993.46; and
- Category IV recipient (other people): no deduction.

Any heir or legatee who is disabled is entitled to an additional allowance of EUR 47,858.59 or EUR 150,253.03 depending on the disability degree.

Where the recipient is the spouse or child of the deceased, an additional deduction applies in respect of a family business qualifying for a family business exemption and the permanent residence of the deceased. This deduction is 95% of the value of such property, but there is a limit of EUR 122,606.47 for each recipient with respect to the deceased's residence.

5.4. *Rates*

5.4.1. Basic rates

The tax is calculated, initially, in accordance with the table below.

The autonomous regions of Spain are authorized to set their own tax rates within certain limits. If a region fails to set its own rates, the progressive rates according to the following standard table apply (article 21.2 LISD):

Taxable amount (EUR)			*Tax on lower amount (EUR)*	*Rate on excess (%)*
Up to		7,993.46	0	7.65
7,993.46	-	15,980.91	611.50	8.50
15,980.91	-	23,968.36	1,290.43	9.35
23,968.36	-	31,955.81	2,037.26	10.20
31,955.81	-	39,943.26	2,851.98	11.05
39,943.26	-	47,930.72	3,734.59	11.90
47,930.72	-	55,918.17	4,685.10	12.75
55,918.17	-	63,905.62	5,703.50	13.60
63,905.62	-	71,893.07	6,789.79	14.45
71,893.07	-	79,880.52	7,943.98	15.30
79,880.52	-	119,757.67	9,166.06	16.15
119,757.67	-	159,634.83	15,606.22	18.70
159,634.83	-	239,389.13	23,063.25	21.25
239,389.13	-	398,777.54	40,011.04	25.50
398,777.54	-	797,555.08	80,655.08	29.75
Over		797,555.08	199,291.40	34.00

5.4.2. Net wealth-related surcharge

The final tax liability of the beneficiary is the amount resulting from applying fixed surcharges to the basic tax due by reference to the recipient's net wealth before receipt of the inheritance or gift in question and his relationship with the deceased or donor and is applied on the basic inheritance or gift tax, as indicated below (article 22.2 of the LISD). The categories from I to IV are defined in section 5.3.

Recipient's pre-existing net wealth (EUR)			*I and II (%)*	*III (%)*	*IV (%)*
Up to		402,678.11	0	58.82	100
402,678.12	-	2,007,380.43	5.00	66.76	110
2,007,380.43	-	4,020,770.98	10.00	74.71	120
Over		4,020,770.98	20.00	90.59	140

Note that this table may vary from one autonomous region to another.

5.5. *Double taxation relief*

Unilateral relief for the avoidance of double taxation applies in the form of an ordinary tax credit (article 23.1 of the LISD). Accordingly, a recipient who is a resident of Spain may credit against the Spanish tax due the lower of:

- the inheritance or gift tax paid abroad; and
- the Spanish tax attributable to that property.

Spain has concluded only two treaties for the avoidance of double taxation of inheritance, namely with France and Sweden.

6. International Aspects

6.1. *Resident individuals*

For the concept of residence, *see* section 1.1.

6.1.1. Foreign income and capital gains

Taxpayers are liable to individual income tax on their worldwide income, regardless of the source of the income.

However, income derived from employment performed abroad on behalf of a foreign entity is exempt up to EUR 60,100 if it has been subject to a tax similar to the Spanish individual income tax in the employment country (article 7.p) of the LIRPF). Where services have been provided to a group company, employment is considered performed for a foreign entity if it can be shown that the service benefits the recipient entity. The exempt amount is calculated taking into consideration the days that the employee has been abroad in proportion to the total annual income plus amounts related to the foreign specific work.

6.1.2. Foreign capital

For the net wealth tax, *see* section 4.1.

Foreign-situs immovable property is not subject to real estate tax in Spain.

6.1.3. Double taxation relief

As a unilateral measure for the avoidance of double taxation of income, Spain uses the ordinary credit method (article 80 of the LIRPF). Under this method, a resident taxpayer with foreign-source income may credit against his Spanish tax liability on worldwide income the lower of:

- the tax paid abroad on the foreign-source income or capital gains; and
- the Spanish income tax attributable to the foreign-source income or capital gains.

Under the network of comprehensive tax treaties, the method generally used by Spain for the avoidance of double taxation is the ordinary credit method as described above.

6.1.4. Disclosure of foreign assets

Royal Decree 1558/2012 of 15 November 2012 implemented an obligation to disclose the assets and rights located abroad over which the taxpayer has the power of disposal. For details, *see* Corporate taxation section 6.1.1.3.

6.2. *Expatriate individuals*

Subject to conditions, an individual who moves to Spain to work there may elect to be taxed under (i) the rules of individual income tax (i.e. taxation at progressive rates but with deduction of certain expenses and allowances) or (ii) the rules of the income tax

on non-residents in the tax year in which he moves to Spain and the following 5 tax years (under conditions, *see* below) (article 93 of the LIRPF). This regime does not apply to professional sportsmen.

The election is available to an individual if:

- he has not been resident in Spain any time during the preceding 10 tax years; and
- he moves to Spain because of an employment contract.

Should the taxpayer elect to apply the non-resident income tax, he will be subject to a number of special rules. Dividends, interest and capital gains on asset transfers will be taxed separately from other income, according to the scale already mentioned for savings income (*see* section 1.9.1.2.). Any remaining income will be subject to the following progressive rates for the 2016 tax year (assessment year 2017):

Taxable income (EUR)	*Rate (%)*
Up to 600,000	24
Over 600,000	45

6.3. *Non-resident individuals*

For the concept of residence, *see* section 1.1.

6.3.1. Taxes on income and capital gains

Non-residents are subject to the income tax on non-residents (IRNR) on their Spanish-source income and capital gains (article 1 of the LIRNR).

Tax exemption is granted in respect of certain income, in particular (article 14 of the LIRNR):

- income mentioned in section 1.2.2.;
- interest derived without a permanent establishment by a non-resident from their bank deposits in Spain;
- interest and capital gains from public bonds derived directly by a non-resident bondholder without a permanent establishment;
- interest in general and capital gains from movable property (excluding capital gains from substantial (25%) shareholdings and rights in real estate companies, under conditions) derived directly by EU residents;
- dividends, interest and capital gains from securities issued in Spain by non-residents directly, irrespective of the residence status of the financial institutions involved, if the actual owner is a non-resident investor; and
- capital gains from the sale of shares quoted and transferred on a Spanish stock exchange derived by non-residents without a permanent establishment if the taxpayer is a resident of a country with which Spain has an income tax treaty containing an exchange of information clause. This is the case for all of Spain's tax treaties.

6.3.1.1. Employment income

Income (including pensions and directors' remunerations) earned by non-residents from employment in Spain is fully taxable in Spain at a 24% rate. However, for residents of the European Union or a state that belongs to the European Economic Area with which there is an effective exchange of information, the rate is reduced to 19% (article 25.1.a) of the LIRNR). Employment income from temporary work (e.g. waiters during the summer season) is taxed at only 2% (article 25.1.g) of the LIRNR).

EU residents may deduct the expenses mentioned in *see* section 1.3.1. as if they were Spanish residents.

Pensions, regardless of their amount, are taxed in accordance with the following table:

Taxable amount (EUR)			*Tax on lower amount (EUR)*	*Rate on excess (%)*
Up to		12,000	0	8
12,000	-	18,700	960	30
Over		18,700	2,970	40

Non-residents are not entitled to the personal, family or additional allowances mentioned in section 1.7.2.

Individual taxpayers who are residents of other EU Member States may elect to be treated as Spanish residents and be subject to the individual income tax for residents if they derive at least 75% of their worldwide income from employment or business activities carried on in Spain.

6.3.1.2. Business and professional income

Business and professional income derived by non-residents from Spanish sources is fully taxable in Spain at a 24% rate, unless a tax treaty provides otherwise. With respect to income obtained by residents of the European Union, or a state that belongs to the European Economic Area with which there is an effective exchange of information, the rate is reduced to 19% (article 25.1.a) of the LIRNR). Salaries, equipment and other operating expenses are generally deductible.

Additionally, taxpayers resident in another EU Member State that obtain business and professional income in Spain other than through a PE are allowed to deduct from taxable income expenses that are related and directly and inseparably linked to the income-deriving activity in Spain.

6.3.1.3. Investment income

Non-exempt (*see* section 6.3.1. for exemptions) dividends, interest and royalties derived from Spanish sources are subject to a final withholding tax. The rate is 19% for dividends and interest and 24% for royalties, unless a reduced rate applies under a tax treaty (articles 25.1.a) and 25.1.f) of the LIRNR) (*see* Corporate Taxation section 6.3.5.).

For EU residents, the withholding rate on dividends, interest and royalties is 19%. The tax is levied on the gross amount received; no deduction of expenses of any kind is allowed.

Income imputed to second residences is determined in accordance with the rules for residents (*see* section 1.5.4.). Rental income is subject to tax on the gross amount received.

Taxpayers resident in another EU Member State that obtain investment income in Spain other than through a PE are allowed to deduct from taxable income certain expenses that are related and directly and inseparably linked to the income-deriving activity in Spain.

6.3.1.4. Capital gains

Capital gains derived by non-residents are computed in accordance with the rules mentioned in section 1.6. and are generally taxed at a rate of 19% (article 25.1.f) of the LIRNR).

In addition, there is an anti-avoidance measure concerning sales of immovable property, under which (individual or corporate) purchasers of Spanish-situs immovable property from non-resident (individual or corporate) owners without a permanent establishment in Spain must withhold as non-resident's tax liability (on the eventual capital gain) 3% of the transacted price. If the tax is not withheld, the tax authorities can place a lien on the underlying property in order to collect the tax due.

The withholding requirement does not apply:

- if the transferor produces conclusive evidence of being subject to income tax as a resident taxpayer; or
- if the transfer is a contribution to the capital of a company.

6.3.2. Taxes on capital

Non-resident individuals may be subject to the net wealth tax in respect of their possessions in Spain (*see* section 4.1.).

Non-resident individuals are liable to real estate tax (*see* section 4.2.) in respect of Spanish-situs immovable property.

6.3.3. Inheritance and gift taxes

For the liability to inheritance and gift taxes of non-residents, *see* section 5.1.

6.3.4. Administration

Non-resident taxpayers deriving Spanish-source income directly are subject to income tax on non-residents separately in respect of each item of income and capital gains. However, the local representative or the jointly and severally liable person may file quarterly returns in respect of certain categories of income. For details, *see* section 1.10.

KEY FEATURES

Last reviewed: **14 February 2017**

A. General information	
Sources of tax law	General Tax Act (*Ley General Tributaria*, LGT) Individual Income Tax Act (*Ley del Impuesto sobre la Renta de las Personas Físicas*, LIRPF) Corporate Income Tax Act (*Ley del Impuesto sobre Sociedades*, LIS)
Main types of business entities	Public company (*Sociedad Anónima*, SA) Limited liability company (*Sociedad de Responsabilidad Limitada*, SL or SRL) General partnership (*Sociedad regular colectiva*, SRC or SCC) Simple partnership (*Sociedad en comandita*, S. en Com. or S. Com) Partnership limited by shares (*Sociedad en Comandita por Acciones*, S. Com. por A.)
Accounting principles	IAS/IFRS/Spanish GAAP
Currency	Euro (EUR)
Foreign exchange control	Yes, post-investment declaration, with administrative, economic and statistical purposes. In addition, the Decree allows the suspension of the regime, and the imposition of advance reporting obligations, when the investment may affect public order, national security or public health. Investments in the national defence sector are not deregulated
Official websites	Tax State Agency http://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio.shtml Ministry of Finance http://www.minhafp.gob.es/en-GB/Paginas/Home.aspx
B. Direct taxation: Companies	
1. Resident companies	
Residence	A corporation is resident in Spain if it is incorporated under Spanish law, its legal seat is located in Spain, or its place of effective management is in Spain
Tax base	Worldwide
Corporate tax rates	25%
Alternative minimum tax	No
Capital gains	Yes, part of business income
Loss carry-forward	Yes, with certain limits
Loss carry-back	No
Unilateral double taxation relief	Ordinary foreign tax credit. Exemption in certain cases
2. Non-resident companies	
Corporate tax rates	Income without a PE: general tax rate 24%; for EU residents 19%. Other rates depend on the type of Spanish source income Income obtained through a PE: 25%

Capital gains on sale of shares in resident companies	19% (exempt if derived by residents of the EU)
Capital gains on sale of immovable property	19%
Withholding tax rates	
Branch profits	19% (effective rate 40.28%) 0% (PEs of EU resident companies)
Dividends	19% 0% for qualifying EU companies (5% participation for 1 year required) (EU Parent Subsidiary Directive)
Interest	19% 0% for EU residents 0% on bank deposits and government bonds
Royalties	24% 0% for associated EU companies (EU Interest and Royalties Directive)
Fees (technical)	24% (19% for EU residents)
Fees (management)	24% (19% for EU residents)
3. Specific issues	
Participation relief	Dividends and capital gains exempt if: 5% participation in the equity or participation acquired for more than EUR 20 Million. Participation in non-resident entities: additional requirement of non-resident entity subject to a minimum 10% CIT or DTT including exchange of information clause. Outbound dividends distributed by resident companies to non-resident entities without PE 19%
Group treatment	Yes
Incentives	Investment/reinvestment credits and deductions R&D and technological innovation credits Creation of employment Film industry Patent box Capitalization reserve SMEs Newly created companies Holding companies (ETVEs) - participation exemption Tonnage tax regime Special regions regimes
Anti-avoidance	
Transfer pricing legislation	Yes
Thin capitalization legislation	Yes
Controlled foreign company legislation	Yes
General anti-avoidance rule (GAAR)	Yes
Other anti-avoidance legislation	Yes

C. Direct taxation: Individuals	
1. Resident individuals	
Residence	Residence is based on the 183-day test and the centre of economic interests. In addition, family circumstances may determine the residence
Taxable income	Worldwide
Income tax rates	General income: Progressive; top rate 45% (over EUR 60,000) Savings income: Progressive; top rate 23% (over EUR 50,000)
Alternative minimum tax	No
Capital gains	Part of savings income
Unilateral double taxation relief	Yes, ordinary foreign tax credit
Social security contributions	Employer: - general risks 23.6%; - unemployment insurance 5.5%; - salary guarantee fund 0.2%; - professional education and training 0.6% Employee: - general risks 4.70%; - unemployment insurance 1.55%; - professional education and training 0.10%; - self-employed 29.8%
2. Non-resident individuals	
Income tax rates	Business and employment income: 24%; 19% for EEA residents
Capital gains on sale of shares in resident companies	19% (specific exemptions if derived by certain EU residents)
Capital gains on sale of immovable property	19%
Withholding tax rates	
Employment income	24%
Dividends	19% 0% if derived by EU residents
Interest	19% 0% if paid to EU residents
Royalties	24% (19% in 2016 for residents in the EEA)
Fees (technical)	24% (19% in 2016 for residents in the EEA)
Fees (directors)	24% (19% in 2016 for residents in the EEA)
D. Indirect taxation: Value added tax (VAT)/Goods and services tax (GST)	
Taxable events	Supply of goods Supply of services Self-supplies Intra-Community acquisitions of goods Importation of goods
VAT/GST (standard)	21%
VAT/GST (reduced)	0%, 4%, 10%

VAT/GST (increased)	No
Registration/deregistration threshold	No
VAT group	Yes
E. Other taxes	
Inheritance and gift taxes	Yes
Net wealth tax (individual)	Yes
Net wealth tax (corporate)	No
Real estate taxes	Yes
Capital duty	Yes (1%)
Transfer tax	Yes
Stamp duty	Yes
Excise duties	Yes
Other main taxes	Insurance premium tax, tax on specific means of transportation

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