

# Guide to business in Spain 2017

Guía de negocios en España



GARRIGUES



ICEX

INVESTIN SPAIN

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This guide was researched and written by Garrigues on behalf of ICEX-INVEST IN SPAIN.

This guide is correct to the best of our knowledge and belief at the date mentioned below. It is, however, written as a general guide so it.

Madrid, July 2017

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# Chapter

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## Spain: an attractive profile

# 1

# 1

## Spain: an attractive profile

Spain is in an outstanding position worldwide in terms of the importance of its economy: the 14<sup>th</sup> largest economy in the world by GDP, the 13<sup>th</sup> country most attractive for foreign direct investment (FDI), the 14<sup>th</sup> largest issuer of FDI and the 11<sup>th</sup> largest exporter of commercial services.

Spain has a modern economy based on knowledge, in which services represent almost 75% of business activity. It is an international center for innovation that benefits from a young and highly qualified population of a proactive nature, and competitive costs in the context of Western Europe, especially as regards graduate and post-graduate employees.

The country has worked hard to equip itself with state of the art infrastructures capable of fostering the future growth of the economy. And this has been done alongside a major commitment to R&D.

There are interesting business opportunities for foreign investors in Spain in high value-added and strategic fields such as the ICT, renewable energy, biotechnology, environment, aerospace and automotive sectors, because of the attractive competitive environment.

In addition, companies that set up business in Spain can gain access not only to the Spanish national market, an attractively large market (more than 46 million consumers) with a high purchasing power, but also to the markets of the EMEA region (Europe, Middle East and North Africa), and Latin America, given its privileged geostrategic position, prestige and the strong presence of Spanish companies in these regions.

The main characteristics of our country are described in this Chapter: demographics, political and territorial structure, economy and the foreign trade sector.



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## 1. Introduction

Spain is one of the most significant important economies in the world, ranking 14<sup>th</sup> in terms of size, and its appeal is borne out by its ability to attract foreign investment (currently ranked 13<sup>th</sup> in terms of foreign direct investment<sup>1</sup>. Spain's appeal for investment lies not only in its domestic market, but also in the possibility of operating with third markets from Spain. This is because Spain has a privileged geostrategic position within the European Union giving access to around 1,950 million potential clients in the EMEA Region (Europe, Middle East and Africa). Its strong economic, historic and cultural ties also make Spain the perfect business gateway to Latin America.

Furthermore, Spain is a modern knowledge-based economy with services accounting for 74.26%<sup>2</sup> of economic activity. The country has become a center of innovation supported by a young, highly-qualified work force and competitive costs in the context of Western Europe.

This Chapter gives a brief description of Spain's vital statistics: its population, its political and territorial structure and its economy.

## 2. The country, its people and quality of life

### 2.1. Geography, climate and living conditions

The Kingdom of Spain occupies an area of 505,970 square kilometers in the southwest of Europe, and is the second largest country in the EU. The territory of Spain covers most of the Iberian Peninsula, which it shares with Portugal, and also includes the Balearic Islands in the Mediterranean Sea, the Canary Islands in the Atlantic Ocean, the North African cities of Ceuta and Melilla and several small islands.

Despite differences among the various regions of Spain, the country can be said to have a typical Mediterranean climate. The weather in the northern coastal region (looking onto the Atlantic and the Bay of Biscay) is mild and generally rainy throughout the year, with temperatures neither very low in the winter nor very high in the summer. The climate on the Mediterranean coastline, including the Balearic Islands, Ceuta and Melilla, is mild in the winter and hot and dry in the summer. The most extreme differences occur in the interior of the Peninsula, where the climate is dry, with cold winters and hot summers. The Canary Islands have a climate of their own, with temperatures constantly around 20 degrees Celsius and only minor variations in temperature between seasons or between day and night.

Spain has an excellent quality of life and is very open to foreigners. Almost 8,000 kilometers of coastline, abundant sporting facilities and events and social opportunities are crowned by the diversity of the country's cultural heritage as a crossroads of civilizations (Celts, Romans, Visigoths, Arabs, Jews, etc.).

### 2.2. Population and human resources

The population of Spain in 2016 was almost 46.6 million people, with a population density of more than 92 inhabitants per square kilometer.

Spain is a markedly urban society (see Table 1), as evidenced by the fact that 32% of the population lives in provincial capitals.

Table 1

THE BIGGEST CITIES IN SPAIN\*

	POPULATION
Madrid	3,165,541
Barcelona	1,608,746
Valencia	790,201
Seville	690,566
Zaragoza	661,108
Málaga	569,009
Murcia	441,003
Mallorca	402,949
Las Palmas de Gran Canaria	378,998
Bilbao	345,122

\* Figures refer only to the municipal districts of each city.

SOURCE: Report on registered population of Spanish provincial capital cities at January 1, 2016. National Statistics Institute/Official State Gazette.

Spanish is the official language of the country. There are other Spanish languages that are also official in the corresponding Autonomous Communities (regions), according to their "Statutes of Autonomy". Education is compulsory until the age of 16 and English is the main foreign language studied at school.

Spain has a labor force of 22.7 million people according to the Labor Force Survey (released in the fourth quarter of 2016). Compared with other OECD countries, Spain's population is relatively young: 16% is under 16 years old, 65% is between 16 and 64 years old, and only 19% is 65 and over, according to 2016 figures. As highlighted in Table 2, Spain has a highly diverse multicultural and multiracial population.

<sup>1</sup> According to the 2016 A. T. Kearney FDI Confidence Index.

<sup>2</sup> National Statistics Institute. Data up to third quarter of 2016.



**Table 2**  
**FOREIGNERS RESIDENT IN SPAIN BY CONTINENT OF ORIGIN**

	2014	2015	2016*
Europe	2,560,408	2,654,473	2,707,026
America	947,361	904,335	883,703
Asia	382,590	392,161	401,517
Africa	1,031,612	1,027,944	1,021,734
Oceania	2,012	2,073	2,170
Unknown	1,106	1,197	1,256
TOTAL	4,925,089	4,982,183	5,017,406

\* Data at June 30, 2016.

SOURCE: Ministry of Employment and Social Security<sup>3</sup>.

Spain is particularly noted for the contribution from, and the integration of, these groups, as well as for the absence of cultural conflict.

Spain's labor force structure by economic sector underwent significant changes sometime ago, when there was an increase in the active population in the services sector and a decrease in the number of workers employed in farming and industry. Today, the services sector is by far Spain's main employer (Chart 1 and Table 3).

The labor force is highly qualified and capable of adapting to technological changes.

Lastly, in keeping with the commitment entered into with the European Union to promote job creation, the Spanish government has implemented significant reforms to the job market in recent years, introducing a greater degree of flexibility in employment.

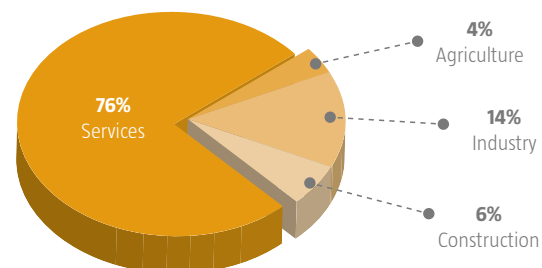
<sup>3</sup> [http://extranjeros.empleo.gob.es/es/Estadisticas/operaciones/con-certificado/201606/Residentes\\_Tablas\\_PR\\_30-06-2016.pdf](http://extranjeros.empleo.gob.es/es/Estadisticas/operaciones/con-certificado/201606/Residentes_Tablas_PR_30-06-2016.pdf)

Like our neighboring countries, and as a result of the recent global economic crisis and the changing economy, which has moved away from labor-intensive sectors towards highly technological sectors, the unemployment rate in Spain has also increased. In order to definitively overcome the consequences of the crisis, Spain launched an ambitious program of structural reform with a view to boosting economic growth and creating jobs.

In recent years, the Spanish Government, in keeping with the commitments entered into by the European Union to promote employment, has implemented major labor market reforms in line with the trends observed in neighboring countries and the proposals made by various economic agents and institutions and international economic advisers. The reforms aim to introduce greater flexibility, reduce the dual nature of the job market and improve the employability of workers.

A number of procedures have also been introduced to facilitate the entry, residence and permanence in Spain, for reasons of general interest, of foreigners who plan to invest and create jobs in Spain or who are highly qualified professionals.

**Chart 1**  
**LABOR FORCE STRUCTURE BY ECONOMIC SECTOR IN 2016**



SOURCE: National Statistics Institute.

**Table 3**  
**EVOLUTION OF LABOR FORCE STRUCTURE BY ECONOMIC SECTOR (Percentage)**

	2014	2015	2016
Agriculture	4.1	4.3	4.4
Industry	13.9	13.6	14.0
Construction	5.9	5.9	5.8
Services	76.1	76.2	75.8

SOURCE: National Statistics Institute. 2016. *Labor Force Survey*.

### 2.3. Political institutions

Spain is a parliamentary monarchy. The King is the Head of State<sup>4</sup>, and his primary mission is to arbitrate and moderate the correct functioning of the country's institutions in accordance with the Constitution. He also formally ratifies the appointment or designation of the highest holders of public office in the legislative, executive and judicial branches<sup>5</sup>.

The Constitution of 1978 enshrined the fundamental civil rights and public freedoms as well as assigning legislative power to the *Cortes Generales* (Parliament)<sup>6</sup>, executive power to the Government of the nation, and judicial powers to independent judges and magistrates.

The responsibility for enacting laws is entrusted to the *Cortes Generales*, comprising the *Congreso de los Diputados* (Lower House of Parliament) and the *Senado* (Senate), the members of which are elected by universal suffrage every four years.

<sup>4</sup> <http://www.casareal.es/EN/Paginas/home.aspx>

<sup>5</sup> [http://www.poderjudicial.es/portal/site/cgpj/?Template=default&vgnnextlocale=en&lang\\_chosen=en](http://www.poderjudicial.es/portal/site/cgpj/?Template=default&vgnnextlocale=en&lang_chosen=en)

<sup>6</sup> <http://www.congreso.es/portal/page/portal/Congreso/Congreso>

The *Cortes Generales* exercise the legislative power of the nation, approve the annual State budgets, control the actions of the Government and ratify international treaties.

The Government<sup>7</sup> is headed by the *Presidente del Gobierno* (President of the Government) who is elected by the *Cortes Generales* and is, in turn, in charge of electing the members of the *Consejo de Ministros* (Council of Ministers).

The members of the Council of Ministers are appointed and removed by the President of the Government at his or her discretion.

For administrative purposes, Spain is organized into 17 Autonomous Communities (Regions) each of which generally comprises one or more provinces, plus the Autonomous Cities of Ceuta and Melilla in Northern Africa, and the total number of provinces is 50.

Each Autonomous Community (Region) exercises the powers assigned to it by the Constitution as specified in its “Statute of Autonomy”. These Statutes also stipulate the institutional organization of the Community concerned, consisting generally of: a legislative assembly elected by universal suffrage, which enacts legislation applicable in the Community; a Government with executive and administrative functions, headed by a President elected by the Assembly, who is the Community’s highest representative; and a Superior Court of Justice, in which judicial power in the Community’s territory is vested. A Delegate appointed by the Central Government directs the Administration of the State in the Autonomous Community (Region), and coordinates it with the Community’s administration.

The Autonomous Communities (Regions) are financially autonomous and also receive allocations from the general State budgets.

As a result of the structure described above Spain has become one of the most decentralized countries in Europe.

<sup>7</sup> <http://www.lamoncloa.gob.es/lang/en/Paginas/index.aspx>

### 3. Spain and the European Union

Spain became a full member of the European Economic Community in 1986. In this connection and according to figures published by the European Commission, Spain fully complies with the objectives established by the European Council.

A major impact of European Union membership for Spain, and for the other Member States, came in the mid-nineties with the advent of the European Single Market and the European Economic Area, which created a genuine barrier-free trading space.

Since then, the EU has advanced significantly in the process of unification by strengthening the political and social ties among its citizens. Spain, throughout this process, has always stood out as one of the leaders in the implementation of liberalization measures.

Since July 1, 2013, with the addition of Croatia, the European Union now has 28 Member States<sup>8</sup>.

With the aim of strengthening democracy, efficiency and transparency within the EU and, in turn, its ability to meet global challenges such as climate change, security, and sustainable development, on December 13, 2007, the then 27 EU Member States signed the Treaty of Lisbon, which entered into force – subject to prior ratification by each of the 27 Member States – on December 1, 2009. The European Parliament elections took place between June 4 and 7 of that year<sup>9</sup>.

Spain holds significant responsibilities within the EU, evidenced by the fact that it is, along with Poland, the fifth country in terms of voting power in the Council of Ministers. In 2010, Spain assumed the Council Presidency of the European Union for the fourth time, for the period from January to June.

<sup>8</sup> [http://europa.eu/about-eu/countries/member-countries/index\\_en.htm](http://europa.eu/about-eu/countries/member-countries/index_en.htm)

<sup>9</sup> [http://europa.eu/european-union/law/treaties\\_en](http://europa.eu/european-union/law/treaties_en)  
[http://europa.eu/about-eu/eu-history/index\\_en.htm](http://europa.eu/about-eu/eu-history/index_en.htm)

The introduction of the Euro (on January 1, 2002) heralded the start of the third Spanish presidency of the European Council and represented the culmination of a long process and the creation of a veritable array of opportunities for growth for Spanish and European markets. Since January 1, 2015, with the addition of Lithuania, Eurozone membership now stands at nineteen.

The euro has led to the creation of a single currency area within the EU that makes up the world’s largest business area, bringing about the integration of the financial markets and economic policies of the area’s Member States, strengthening ties between the Member States’ tax systems and bolstering the stability of the European Union.

Furthermore, the adoption of a single European currency has had a clear impact at an international level, raising the profile of the Eurozone at both international and financial gatherings (G-7 meetings) and within multilateral organizations. The economic and business stability offered by the euro have contributed to the growth of the Spanish economy, as well as its international political standing. In addition, measures are being implemented to strengthen the European economy; for example, the Euro-Plus Pact designed to consolidate the coordination of the economic policy in the Economic and Monetary Union, and an EU multiannual spending plan (2014-2020) to stimulate growth. Spain remains committed to structural reforms under the Europe 2020 Strategy and the Compact for Growth and Jobs which will boost economic growth, investment and employment, based on a more competitive European Union.

Spain has traditionally benefitted from EU funding from the Structural Funds and the Cohesion Fund and is the third largest recipient of funding from the Structural Funds and the Cohesion Fund. It is estimated that between 2014 and 2020 European funding from the ERDF and financing for Trans-European Transport Networks (through the Connecting Europe Facility) will make a positive contribution of an estimated €2.5 billion to certain regions and priority areas.

European institutions are tasked with encouraging and supporting technological research and development. Horizon 2020 is the EU Framework Program for Research and Innovation for the period 2014-2020 (with funding of €76,880 billion) which will directly tackle the main societal challenges set out in Europe 2020 and contribute to its flagship initiatives. It will also boost industrial leadership in Europe and strengthen the excellence of its science base, which is essential to the sustainability, prosperity and wellbeing of Europe in the long term.

In this respect, the 2011 Science Law, in keeping with the Europe 2020 Strategy, contributed measures to the current framework (e.g., implementation in the Autonomous Communities, increasing European dimension, qualitative and quantitative increase in public resources, consolidation of a professionalized and competitive scientific and technical community open to the world, and transition towards an economy based on knowledge and innovation).

The promotion and fostering of excellence and the strengthening of scientific research institutes constitutes one of the cornerstones of the actions of, and definition of scientific policy by, the Office of the Secretary of State for Research, Development and Innovation, as reflected in the *2013-2020 Spanish Science, Technology and Innovation Strategy* and the *2013-2016 State Plan for Scientific and Technical Research*.

The State Plan has a clearly international focus, given its structure and strict alignment with the R&D&I targets established in Horizon 2020.

Lastly, in late 2015, the Government approved the creation of the State Research Agency in order to provide the Spanish science, technology and innovation model with a swifter, more flexible and independent management system. This new body, which is responsible for financing, assessing and allocating R&D funds, acts in conjunction with the Center for Industrial and Technological Development (CDTI), the other major R&D&I funding body focusing specifically on business.

## 4. Infrastructure

The Government intends to continue with its program of heavy investment in this area in the future.

In this connection, the Transport and Housing Plan (PITVI) was approved which, based on an analysis of the current situation and a rigorous assessment of Spanish needs, establishes the priorities and action plans up to 2024.

The Plan's objectives notably include: (i) enhancing the efficiency and competitiveness of the global transport system, optimizing the existing capacity; (ii) contributing to balanced economic development; (iii) promoting sustainable mobility, combining its economic and social effects with respect for the environment; (iv) reinforcing territorial cohesion and accessibility to all State territories through the transport system; and (v) improving the functional integration of the transport system as a whole by taking an intermodal approach.

The motorway and dual carriageway network, of nearly 17,021 kilometers, has undergone constant renovation with a view to enhancing its efficiency and Spain is one of the European countries with the most kilometers of these types of roads. The improvement of the motorway and dual carriageway network and an increase in high-capacity roads, with investment of €36,439 million, are among the objectives of the plan.

Spain is ranked eleventh<sup>10</sup> worldwide in terms of road infrastructure.

As far as railway transport is concerned (where Spain has a network of almost 20,861 kilometers), high-speed networks have become a priority.

Madrid currently has high-speed train connections to 29 Spanish cities, following the inauguration in 2015 of new high-speed routes

to Zamora, Palencia and León. The last section of the Atlantic Corridor was completed in 2015, connecting Galicia from North to South. The Barcelona-Paris line has enabled a high-speed rail connection between the Spanish and French capitals, with a connection to the French border via Vitoria and Irún (the Basque Country) to be added shortly.

In recent years, Spain has become a global high-speed rail pioneer, having multiplied the kilometers of high-speed lines in service more than fivefold, from just over 550 kilometers to more than 3,100 kilometers, with over 1,900 kilometers of new railway lines at various stages of development, giving Spain a larger high-speed rail footprint than France and Germany combined. Indeed, since its inception, approximately €45,120 million has been invested in the high-speed rail network, making a commitment to ensuring that 9 out of every 10 citizens live less than 30 kilometers away from a high-speed rail station. Spain has thus become the leading country in Europe and the second worldwide, after China, in terms of the number of kilometers of high-speed lines in operation, outperforming countries such as France and Japan.

Also noteworthy is the important network of relations with managers of railroad infrastructure in other countries, established as a result of signing cooperation protocols. In the context of these agreements representatives from a range of countries, such as the US and Brazil, have visited Spain to learn about its high-speed model. Spanish companies have participated in the construction of rail infrastructure and equipment in countries such as Turkey, Morocco, Mexico, Russia, Poland, Colombia, Peru, Kuwait or the United Arab Emirates; and in the construction of the high-speed line connecting Medina and Mecca in Saudi Arabia.

A process for the deregulation of rail passenger transport is currently underway, having commenced with the deregulation of rail transport for tourism purposes.

Finally, the freight sector liberalization since 2005 has led to the creation of private enterprises that transport goods by railroad.

<sup>10</sup> *Global Competitiveness Report 2015-2016* by the World Economic Forum.

The Spanish Government plans to approve a series of measures to promote this type of transport.

Air transport links the main Spanish cities via Spain's 46 airports, which also connect Spain to the world's leading cities. Spain is a major hub for routes linking the Americas and Africa to Europe. The most significant investments in the pipeline are aimed at the two principal international airports in Madrid and Barcelona. With the inauguration of Terminal 4 in 2006, Madrid airport saw its capacity increase to 70 million passengers per year. In 2016, Spanish airports handled more than 230 million passengers, making Spain one of the leading countries worldwide in terms of passenger numbers.

Furthermore, with over 46 international ports on the Atlantic and Mediterranean coasts, Spain boasts excellent maritime transport links. The reinforcement of short-distance maritime transport, both domestic and European, and the development of seaside motorways are some other key initiatives. Moreover, the Seaside Motorway between Spain and France is now in operation, linking Vigo with the French port of Nantes-Saint Nazaire. Spain plans to promote this type of link in the Mediterranean, through agreements with Italy and other countries, with a view to increasing the number of lines already on offer and operating with good results between the Spanish ports of Barcelona, Valencia, Castellón and Tarragona and the Italian ports of Genoa, Civitavecchia, Livorno, Cagliari and Salerno.

This will permit a more sustainable alternative in some of the main flows within the EU. In addition, with a view to improving the competitiveness of ports, in 2010 the Ports Law was amended to reduce restrictions on inter- and intra-port competition and boost the competitiveness of Spanish ports in the global economy.

As part of its plans for internationalization, the State Port Authority is promoting alliances with the major Chinese operators, with the Barcelona Europe South Terminal (BEST) at the port of Barcelona being operated by Chinese group Hutchinson Port

Holdings (HPH), the leading port terminal operator in the world. Three major Spanish ports (Bahía de Algeciras, Valencia and Barcelona) are listed among the top 100 ports worldwide in terms of container traffic, thereby confirming Spain's strategic position in the global maritime transport industry.

Spain is well equipped in terms of technological and industrial infrastructure, having seen a boom in recent years in technological parks in the leading industrial areas, as well as around universities and R&D centers. There are currently 69 technological parks<sup>11</sup> housing over 7,700 companies, mainly engaged in the telecommunications and IT industries, in which a large number of workers are employed in R&D activities.

Spain also boasts a solid telecommunications network, with an extensive conventional optic fiber cable network covering the country almost in its entirety, on top of one of the world's largest undersea cable networks and satellite link-ups spanning the five continents. Particularly noteworthy is the significant deregulation set in place some years ago in the majority of industries, including the telecommunications industry, meeting the deadlines set for such purpose by the EU with ease. Among other advantages, this deregulation has meant a more competitive range of products on offer as reflected in costs, essential for economic development.

Also notable is Government backing for integral management of water resources, based on environmental management and recovery, more efficient use of water and planned management of risks such as droughts and flooding. As part of these initiatives, under Royal Decree 1/2016, the Government has approved the review of the Water Plans for the Western Cantabrian, Guadalquivir, Ceuta, Melilla, Segura and Júcar river basin districts, and the Spanish sections of the Eastern

<sup>11</sup> Members of the Association of Science and Technology Parks in Spain <http://www.apte.org/es>

Cantabrian, Miño-Sil, Duero, Tajo, Guadiana and Ebro river basin districts.

## 5. Economic structure

The structure of the Spanish economy is that of a developed country, with the services sector being the main contributor to GDP, followed by industry. These two sectors represent more than 92% of Spain's GDP with agriculture's share today representing a 2.33% of GDP, having declined sharply as a result of the country's economic growth (see Table 4).

**Table 4**  
**STRUCTURE OF GDP (% OF TOTAL, CURRENT PRICES)**

Sector	2014	2015	2016*
Agriculture and fishery	2.50	2.56	2.33
Industry	17.59	18.05	17.86
Construction	5.67	5.59	5.55
Services	74.24	73.80	74.26

\*Data up to third quarter of 2016.

SOURCE: National Statistics Institute.

Throughout 2016, the Spanish economy continued the growth observed in the last two quarters of 2013. GDP grew at a quarter-on-quarter rate of 0.8% and 1% in the first two quarters of 2016, respectively. This growth was consolidated in the last two quarters, with a rise of 0.7%<sup>12</sup> in the third and fourth quarters. Overall, GDP grew 3.2% in 2016, with the Spanish economy recording one of the highest growth rates in Europe.

<sup>12</sup> National Statistics Institute. Data for fourth quarter of 2016.

Moreover, inflation in Spain has been falling slowly since the end of the 1980s. Average inflation between 1987 and 1992 was 5.8%; it dropped below 5% for the first time in 1993, and it has been shrinking gradually since then. The year-on-year inflation rate at December 2016 was 1.6%, due mainly to rising fuel prices.

**Table 5**  
**GROWTH FOR OECD COUNTRIES (PERCENTAGES)**

	Real GDP Growth		
	2014	2015	2016*
<b>EU countries</b>			
Germany	1.6	1.5	1.7
France	0.7	1.2	1.2
Italy	0.2	0.6	0.9
United Kingdom	3.1	2.2	2.1
Spain	1.4	3.2	3.3
<b>Other countries</b>			
United States	2.4	2.6	1.5
Japan	-0.1	0.6	0.6
<b>Total Euro Zone</b>	1.2	1.9	1.7
<b>Total OECD</b>	1.9	2.2	1.7**

\* Data up to third quarter of 2016.

\*\* Data up to second quarter of 2016.

SOURCE: Bank of Spain.

## 6. Domestic market

Growth in the Spanish economy in recent times has been driven by a sharp increase in demand and a substantial expansion of production in the current context of globalization of the economy.

Today Spain has a domestic market of almost 46.6 million people with a per capita income in 2015 of €23,290 according to data

from the National Statistics Institute, with additional demand coming from the record 75.6 million tourists who visited Spain in 2016<sup>13</sup>, a 10.3% increase on 2015. This record figure places Spain among the top three most visited countries worldwide. Links with Latin America and North Africa and the obvious advantages of using Spain as a gateway to those countries are significant factors.

Table 6 reflects the growth of production and demand components in the last years. The consolidated growth rate of the Spanish economy is mainly due to the rise in private consumption, gross capital formation and good performance of net foreign demand. The foreign demand trend stems from faster growth in exports than in imports.

**Table 6**  
**GROWTH OF PRODUCTION AND DEMAND COMPONENTS (PERCENTAGES)**

Production components	2015	2016*
Agriculture and fishery	-2.9	3.1
Industry	5.5	2.7
Construction	0.2	2.0
Services	2.6	3.5
Demand components	2015	2016*
Private consumption	2.9	3.1
Public consumption	2.0	1.4
Gross fixed capital formation	6.0	3.8
Domestic demand	3.4	3.0
Exports of goods and services	4.9	4.4
Imports of goods and services	5.6	3.6

\* Data up to third quarter of 2016.

SOURCE: Bank of Spain.

<sup>13</sup> Tourism Border Movements (FRONTUR) statistics. Data at December 2016. National Statistics Institute.

## 7. Foreign trade and investment

Rapid growth in international trade and foreign investments in recent years has made Spain one of the most internationally-oriented countries in the world.

With regard to the trading of goods, Spain is ranked 18<sup>th</sup> in the world as an exporter and 15<sup>th</sup> as an importer; while in the trading of services it occupies 11<sup>th</sup> place as an exporter and 21<sup>st</sup> place as an importer<sup>14</sup>.

Spanish exports and imports of goods account for 1.7% and 1.8%, respectively, of the worldwide total, while Spanish exports and imports of services represent 2.5% and 1.4%, respectively.

The breakdown by industry of foreign trade is relatively diversified, as can be seen in the following table:

<sup>14</sup> WTO *World Trade Statistical Review 2016*.

**Table 7**  
**DISTRIBUTION OF EXPORTS AND IMPORTS 2016 (AS A % OF TOTAL)**

Exports		Imports	
Capital goods	20.2	Capital goods	21.7
Automobile industry	18.0	Chemical products	15.7
Food	16.7	Automobile industry	13.8
Chemical products	14.2	Consumer goods	12.9
Consumer goods	10.1	Food	11.7
Semi-manufactured non-chemical products	10.0	Energy products	10.6
Energy products	5.1	Semi-manufactured non chemical products	6.9
Raw materials	2.2	Raw materials	3.2
Durable consumer goods	1.7	Durable consumer goods	2.8
Other goods	1.7	Other goods	0.5

SOURCE: Ministry of Economy, Industry and Competitiveness. January – November 2016 data.

As would be expected, the countries of the EU are Spain's main trading partners. Accordingly, during 2016<sup>15</sup>, Spanish exports to the European Union accounted for 66.5% of total exports and sales to the Eurozone represented 51.9% of the total. Imports from the European Union accounted for 57.1% of the total and those from the Eurozone represented 45.8%.

Specifically, Spain's leading trade partners are France and Germany. Outside the EU, Asia and Africa have displaced Latin America and North America from their traditional role as Spain's main non EU trading partners.

The positive adaptation of Spanish companies to the new worldwide economic scenario, reflected mainly in the progressive diversification of the markets to which Spanish products and services are directed, should also be underscored. Indeed,

<sup>15</sup> Annual data published by the Spanish Ministry of Economy, Industry and Competitiveness. January – November 2016 data.

Spanish exports are to some extent being redirected from the EU to the rest of the world. In this regard, Spain's share of exports to the EU dropped from 70.1% in 2007 to 66.5% of total exports in 2016.

As regards investment, Spain is one of the main recipients of investment worldwide.

Specifically, Spain is the 13<sup>th</sup> largest recipient of foreign investment worldwide in terms of stock (and 4<sup>th</sup> in the EU) with USD 533,306 million. Spain is the 14<sup>th</sup> largest source of FDI in terms of stock, with a volume equal to USD 472,116 million in 2015<sup>16</sup>.

With a view to making the Spanish economy more competitive and boosting the contribution made by foreign trade to growth and job creation, the Spanish Government has adopted a

<sup>16</sup> According to the UNCTAD *World Investment Report 2016*.

series of measures aimed at enabling Spanish businesses to access the financing required for their internationalization. Noteworthy among the financial instruments approved by the Spanish Government to provide official support for the internationalization of Spanish enterprise are the Foreign Investment Fund (FIEX), the Fund for Foreign Investment by Small and Medium-sized Enterprises (FONPYME) and the Enterprise Internationalization Fund (FIEM), as well as financing lines for investment in the electronics, information technology, communications and infrastructure concessions sectors, not to mention the 2017 ICO International Facility and the 2017 ICO-Exporters Facility.

By way of a summary of Spanish foreign trade, the balance of payments is set out below.



**Table 8**  
**SPAIN'S BALANCE OF PAYMENTS (Millions of euros)**

	2015	2016*
<b>I. Current Account</b>	<b>14,725</b>	<b>14,046</b>
Goods and services	26,228	27,023
Primary and secondary income	-11,503	-12,976
<b>II. Capital Account</b>	<b>7,008</b>	<b>2,372</b>
<b>III. Financial Account</b>	<b>25,185</b>	<b>7,532</b>
Total (excluding Bank of Spain)	65,345	56,613
Direct investment	29,375	10,804
Portfolio investment	-5,872	29,660
Other investment	43,080	18,403
Financial derivatives	-1,238	-2,253
Bank of Spain	-40,160	-49,081
Reserves	5,067	8,006
Claims with the Eurosystem	-50,929	-54,005
Other net assets	-5,702	-3,082

N.B.: A positive sign in the current and capital accounts means a surplus (receipts greater than payments) and represents a net loan from Spain to the rest of the world (increase in assets or decrease in liabilities), whereas in the financial account a positive sign means a net inflow of capital and represents a net loan from the rest of the world to Spain. A negative sign in reserves means an increase.

\*Data January-September 2016.

SOURCE: Bank of Spain.

## 8. Legislation on foreign investment and exchange control

Deregulation is the dominant feature in exchange control and foreign investment matters.

As a general rule, a foreign investor can invest freely in Spain without having to obtain any type of authorization or prior notification. The investor only needs to report the investment, once it has been made, within a maximum term of one month, to the Directorate-General for Trade and Investments of the

Secretary of State for Trade purely for administrative, statistical or economic purposes.

Exchange control and capital movements are fully deregulated in Spain, there being complete freedom of action in this field in all areas.

### 8.1. Legislation on foreign investment

Royal Decree 664/1999 deregulated practically all transactions of this kind (with the conditions and exceptions set forth below), adapting Spanish domestic law to the rules on the freedom of movement of capital contained in Articles 56 *et seq.* of the Treaty of the European Union.

The most noteworthy aspects of the regulations applicable to foreign investments are as follows :

- As a general rule, and for purely administrative, statistical or economic purposes, foreign investments must be reported afterwards to the Directorate-General for Trade and Investments, once the investment has been made<sup>17</sup>. The only exceptions are: (i) investments from tax havens, which in general are subject to a prior administrative notification; and (ii) foreign investments in activities directly related to

national security, and real estate investments for diplomatic missions by non-EU Member States, which require prior authorization by the Spanish Council of Ministers. There is no obligation for foreign investments to be formalized in the presence of a Spanish public certifying officer (unless an express provision provides otherwise).

- The parties subject to the obligation to report investments or divestments in transferable securities are not generally the investors, but rather the investment firms, credit institutions or other resident entities engaging, as the case may be, in any of the activities specific to the first two and acting at the risk and expense of the investor, as the interposed holder of such securities. Investors must report the investment only when the securities account or deposit is held at an institution domiciled abroad, where the securities are being kept by the holder of the investment; or where they acquire a holding of 3% or more in listed companies (the last case must be reported to the National Securities Market Commission).
- Foreign investments in the air transportation and radio industries, in industries relating to raw materials, minerals of strategic interest and mining rights, in the television, gaming, telecommunications and private security industries, in industries concerned with the manufacturing, marketing or distributing of arms and explosives and in national security-related activities (these latter activities are subject to the clearance rules), will be subject to the requirements imposed by the relevant bodies established by industry-specific legislation, although the general provisions may apply to them once those requirements are met.

<sup>17</sup> The contents and instructions to complete each declaration can be found at the following link: <http://www.comercio.gob.es/es-ES/inversiones-exteriores/declaracion-inversiones-exteriores/Paginas/declaracion-inversiones-exteriores.aspx>. The forms are obtained, completed and presented electronically using a help program called AFORIX, which can be downloaded from the electronic sub-office of the Secretary of State for Trade (at <https://sede.comercio.gob.es>, by accessing the option: "Procedimientos y servicios electrónicos->Descarga de programas de ayuda->AFORIX Programa para la cumplimentación de Formularios de Inversiones Exteriores"). It is necessary for the declarant to have an electronic signature in order to submit the declaration electronically. As an exception, in the event that the holder of the investment is an individual, he/she may also use, in addition to the forms obtained via AFORIX, the preprinted forms available at the General Register of the Ministry of Economy and Competitiveness and may choose whether to file the declaration electronically or on paper.

### 8.1.1. Foreign investments - Characteristics

Table 9  
FOREIGN INVESTMENTS

<b>Investors<sup>18</sup></b>	Non-resident individuals (that is, Spanish or foreign nationals domiciled abroad, or who have their principal place of residence abroad).
	Legal entities domiciled abroad.
	Public entities of foreign States.
<b>Regulated investments<sup>19</sup>. Reporting obligations</b>	Participation in Spanish companies, including their incorporation and subscription and acquisition of shares in joint-stock companies or in limited liability companies, and any legal transaction whereby voting rights are acquired.
	Establishment of, and increase of capital allocated to branches.
	Subscription and acquisition of marketable debt securities issued by residents (debentures, bonds, promissory notes).
	Participation in mutual funds recorded on the Registers of the Spanish National Securities Market Commission <sup>20</sup> .
	Acquisition by non-residents of real estate located in Spain, valued at more than €3,005,060, or where the investment originates from a tax haven, whatever its amount is.
	Incorporation, formalization or participation in joint ventures, foundations, economic interest groupings, cooperatives and joint-property entities, with the same characteristics as in the previous paragraph.
<b>Parties subject to obligation</b>	The investor.
	The Spanish public certifying officer who may have intervened in the transaction.
	However, investments in certain assets (securities, mutual funds, registered shares) may require that other individuals involved in the transaction report the investment (credit or financial institutions, deposit-taking or management companies of such assets, the Spanish company receiving the investment).

<sup>18</sup> A Spanish company in which foreign shareholders have a majority holding is not deemed to be an investor. A change of registered office of legal entities or a change of residence of individuals will be sufficient to change the classification of an investment as a Spanish investment abroad or a foreign investment in Spain.

<sup>19</sup> Foreign investments not included in the above list (such as equity loans) are totally deregulated, and no communication is required in relation to them. The foregoing, notwithstanding any industry-specific regulations that may apply to such investments, and the rules on exchange control, with respect to such investments.

<sup>20</sup> <http://www.cnmv.es/portal/home.aspx?lang=en>



Table 9 (Cont.)

FOREIGN INVESTMENTS

**Reporting rules**

As a general rule, all foreign investments subject to disclosure, and the liquidation thereof, must be reported after the event to the Investments Register of the Ministry of Economy and Competitiveness.

Investments from tax havens must be reported before and after the event. However, the following cases shall be excluded from the prior declaration:

- Investments in marketable debt securities issued or offered publicly, whether or not they are traded on an official secondary market, and units in mutual funds recorded on the Registers of the Spanish National Securities Market Commission.
- Where the foreign interest does not exceed 50% of the capital stock of the Spanish company in which the investment is made.
- Acquisitions of foreign investments in Spain as a result of *inter vivos* transfers for no consideration or *mortis causa* transmissions.

This prior disclosure obligation is not equivalent to a prior verification or authorization requirement and, once the investment has been disclosed, the investor may make its investment without having to wait for any reply from the authorities. In all cases, the declaration is valid for six months, so once notified, the investment must be made within that time period.

**8.1.2. Monitoring of foreign investments**

The Directorate-General for Trade and Investments (“DGCI”)<sup>21</sup> can generally or specifically require Spanish companies which have foreign shareholders, and Spanish branches of non-resident persons, to file an annual report with it on the status of their foreign investments. The DGCI may also require the holders of investments to provide the information necessary in each particular case.

**8.1.3. Suspension of the deregulation rules**

The Spanish Council of Ministers can suspend the application of the deregulation rules in certain cases, which will require the investments concerned to undergo a prior procedure to obtain administrative clearance from the Council of Ministers.

At present, the Council of Ministers has only suspended the deregulation rules in respect of foreign investments in Spain

in activities directly related to national security, such as the production or sale of arms, munitions, explosives and other armaments (except in the case of listed companies engaged in those activities, in which case clearance will only be required for acquisitions by non-residents that reach, exceed or fall below certain ownership thresholds, starting from 3% of the capital stock, or those acquisitions that without reaching such thresholds enable such investors to directly or indirectly form part of their managing bodies).

**8.2. Exchange control regulations**

Exchange control and capital movements are fully deregulated and in all areas there is complete freedom of action.

The basic regulation on exchange control is contained in Law 19/2003 on Capital Movements and Foreign Transactions and on Anti-Money Laundering, and in Royal Decree 1816/1991 on Economic Transactions Abroad, which uphold the principle of deregulation of capital movements.

**8.2.1. The main features of the Spanish exchange control provisions currently in force can be summarized as follows:**

**(i) Freedom of action**

As a general rule, all acts, businesses, transactions and operations between residents and non-residents which involve or may involve payments abroad or receipts from abroad are completely deregulated. This includes payments or receipts (made either directly or by offset), transfers to or from abroad and changes in accounts or financial debit or credit positions abroad. It also covers the import and export of means of payment.

**(ii) Safeguard clauses and exceptional measures**

EU rules may prohibit or restrict the performance of certain transactions, and the respective collections, payments, bank transfers or changes in accounts or financial positions, in respect of third countries.

The Spanish Government may also impose prohibitions or restrictions in respect of one State or of a group of States, a

<sup>21</sup> <http://www.comercio.gob.es/en/pages/default.aspx>

certain territory or an extra-territorial center, or suspend the deregulation system for certain acts, businesses, transactions or operations. However, the application of these prohibitions and limitations is only envisaged in especially serious scenarios.

### (iii) Types of bank accounts

Non-resident individuals and legal entities can hold bank accounts on the same conditions as resident individuals and legal entities. The only requirement, on opening the bank account, is that they provide documentary evidence of the non-resident status of the account holder. Additionally, such status must be confirmed to the bank every two years. Other minor formalities are also stipulated.

Moreover, residents may, subject to certain reporting requirements, freely open and hold bank accounts abroad either in euros or in foreign currency (when opened, they must be declared to the Bank of Spain), and foreign currency bank accounts in Spain at registered institutions (without being subject to any reporting requirement).

### (iv) Residence for exchange control purposes

For exchange control purposes, individuals are deemed to be resident in Spain if they reside habitually in Spain. Legal entities with registered offices in Spain, and the establishments and branches in Spain of individuals or legal entities resident abroad, are likewise deemed resident in Spain for exchange control purposes.

Individuals whose habitual residence is abroad, legal entities with registered offices abroad, and permanent establishments and branches abroad of Spanish resident individuals or entities are deemed non-residents for exchange control purposes.

Habitual residence is defined in accordance with tax legislation, albeit with the adaptations established by regulations (which regulations are currently pending implementation).

## 8.3. Foreign transactions declarations with the Bank of Spain

For purely statistical and informative purposes Circular 4/2012 of Bank of Spain establishes that individuals or entities (public or private) resident in Spain, other than payment service providers registered on the official registers of the Bank of Spain, that carry out transactions with non-residents or hold assets or liabilities abroad, must report them to the Bank of Spain<sup>22</sup>.

The frequency of the notifications will depend on the volume of transactions carried out by the subjects obliged to submit them in the immediately preceding year, and on the balance of assets and liabilities of these subjects at December 31 of the previous year, as follows:

- If the amount of the transactions during the immediately preceding year, or the balance of assets and liabilities at December 31 of the preceding year, is €300 million or more, the information shall be provided monthly, within the 20 days following the end of each calendar month.
- If the amount of the transactions during the immediately preceding year, or the balance of assets and liabilities at December 31 of the preceding year, is €100 million or more but less than €300 million, the information shall be provided quarterly, within the 20 days following the end of each calendar quarter.
- If the amount of the transactions during the immediately preceding year, or the balance of assets and liabilities at

<sup>22</sup> Without prejudice to the fact that the parties subject to the obligation to report to Bank of Spain detailed here are individuals and entities resident in Spain, we considered it of interest to include this section, since what gives rise to these reporting obligations are precisely transactions with nonresidents and/or assets and liabilities held abroad or which the nonresident entity holds in Spain (in other words, both the real estate held abroad by a Spanish company and the real estate held in Spain by a nonresident entity must be declared).

December 31 of the preceding year, is less than €100 million, the information shall be provided annually, within the first 20 days of January of the following year.

- When the aforementioned amounts do not exceed €1 million, the return will only be submitted to the Bank of Spain at the express request thereof, and in a maximum period of two months following the date of that request.

However, residents that have not reached the reporting thresholds mentioned above, but that will cross them in the current year, will be required to file the corresponding declarations within the timeframe previously established from the moment at which the limits are exceeded.

Notwithstanding, when neither the amount of the balances nor the transactions exceed €50 million, the declarations can be filed on a summarized basis, only indicating the opening and closing balances of assets and liabilities held abroad, the total sum of receipts and the total sum of payments in the period reported.

## 8.4. Import and export of certain means of payment and movements in Spain

Incoming or outgoing cross-border movements of means of payment for an amount of €10,000 or more or its equivalent in foreign currency is subject to prior administrative disclosure. If the disclosure is not made, Spanish customs officials may confiscate these means of payment.

Likewise, movements in Spain of means of payment for amounts of €100,000 or more, or its equivalent in foreign currency must also be disclosed previously.

For the purposes of the above, “movement” shall be deemed to mean any change of place or position verified outside the domicile of the holder of the means of payment.

“Means of payment” shall mean paper money and coins (domestic or foreign); bearer checks denominated in any currency as well as any other instrument, including the electronic ones, designed to be used as a bearer payment means. Solely for the purposes of entering or leaving Spain, “payment means” shall also be deemed to be bearer negotiable instruments, including monetary instruments such as travelers’ checks, negotiable instruments, including checks, promissory notes and payment orders, whether in bearer form, endorsed without restriction, made out to a fictitious payee or any other form in which ownership thereof is transferred on delivery, and incomplete instruments, including checks, promissory notes and payment orders that are signed but omit the name of the payee.

## 9. Obligations in relation to anti-money laundering and counter-terrorism financing

In order to perform certain transactions in Spain, the parties thereto, before performing them, must provide specific documents relating to their identity and their business or professional activity, pursuant to the legislation applicable in relation to anti-money laundering and counter-terrorist financing (“AML/CTF”).

The main obligations applicable in Spain in relation to AML/CTF are established in Law 10/2010, of April 28, 2010, on the prevention of money laundering and of the financing of terrorism (“Law 10/2010”) and in Royal Decree 304/2014, of May 5, approving the Regulations of Law 10/2010 (“Royal Decree 304/2014”).

Spanish AML/CTF legislation is the result of the transposition of EU legislation on the subject, in particular, of Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, and Commission Directive 2006/70/EC of August 1, 2006, laying down the implementing provisions of the former. Current Spanish AML/CTF legislation also includes the recommendations issued by

the Financial Action Task Force (“FATF”) on money laundering and terrorist financing.

The legislation enacted in relation to AML/CTF applies to the transactions carried out by the parties bound by it (“relevant persons”), such as financial institutions, notaries, lawyers or real estate developers, with their customers and potential customers, regardless of whether those customers are persons resident in Spain or nonresidents. Thus, where a party seeks to carry out in Spain procedures such as opening a current account, executing a public deed or acquiring real estate, the relevant persons must perform certain formalities to identify their customers and the origin of their funds.

In particular, the relevant persons must have procedures in place for identifying and accepting customers, and classifying them according to risk. In this regard, although each relevant person has specific AML/CTF procedures tailored to the characteristics of their activity, the information generally required pursuant to AML/CTF legislation can be summarized as follows:

- (i) *Legally valid documents for formal identification purposes*<sup>23</sup>. Admissible identifying documents are the following:
  - a. Individuals.
    - Spanish nationals: national identity card.
    - Foreign national: residence permit, foreign identity card, passport or, in the case of citizens from the European Union or the European Economic Area, official letter or personal identity card issued by the authorities of origin.

<sup>23</sup> The relevant persons shall identify and verify, through legally valid documents, the identity of all the individuals or legal entities that seek to establish business relationships or carry out occasional transactions the amount of which is €1,000 or more. The identity shall be verified in all cases of transactions for sending money and managing transfers.

Exceptionally, other personal identity documents issued by a governmental authority could be accepted, provided they have appropriate guarantees of authenticity and include a photograph of the holder.

- b. For legal entities: the public documents proving their existence and containing their corporate name, legal form, address, the identity of their directors, their bylaws and tax identification number.
- c. Authorized representatives: a copy of the legally valid document relating to the representative and to the represented person or entity, and the public document evidencing the powers conferred.

The identification documents must be in force when business relationships are established or occasional transactions are executed.

- (ii) *Identification of the beneficial owner*<sup>24</sup>. The identification and verification of the identity of the beneficial owner may generally be carried out through a solemn declaration by the customer or the authorized representative of the legal entity.
- (iii) *Information on the purpose and nature of the business relationship*. Such information shall be gathered in order to know the nature of the customer’s professional or business activity. In this regard, in order to evidence the activity, it will suffice to provide, among others, some of these valid documents:

<sup>24</sup> The relevant persons shall identify the beneficial owner and adopt the appropriate measures in view of the risk in order to verify its identity before establishing business relationships, executing electronic transfers for amounts over €1,000 or executing other occasional transactions for amounts above €15,000.

- a. Salaried employees or pensioners: last pay slip, pension or subsidy, certificate of labor history or employment contract in force.
- b. Customers with liberal professions or self-employed persons: proof of payment of social security contributions, professional association membership card or receipt of membership dues.
- c. Legal entities: last corporate income tax return, financial statements, annual business report or annual external auditors' report.
- (iv) *Information and, as appropriate, evidence of the origin of the funds to be contributed.*

The relevant persons shall carry out enhanced verifications of the information provided to them in those situations in which, given the nature and characteristics of the transaction and in view of the criteria established in legislation, they consider that there is, in principle, a higher risk of money laundering or terrorist financing.

# Chapter 2

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## Establishing a business in Spain

# 2

## Establishing a business in Spain

This chapter describes the basic aspects of the main structures for investing in Spain, as well as the key formalities that a foreign investor must fulfill in order to set up or start up each of them.

Setting up a business in Spain is simple. The type of business entities available are in keeping with those existing in other OECD countries and there is also a wide range of alternatives capable of meeting the needs of the different types of investors who wish to invest in or from Spain.

This chapter also examines how to open a branch; the pursuit of the activity directly by an individual entrepreneur as a “limited liability entrepreneur”; the formation of a joint venture with one or more enterprises already established in Spain; the acquisition of real estate; the sale and purchase of businesses; investment in venture capital firms; and distribution, agency, commission and franchising agreements.

It is also worth noting that foreign investment restrictions and exchange controls have been virtually eliminated in line with the EU legislation on deregulation in this area.

# 2

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## 1. Introduction

This chapter takes a practical look at the main alternatives open to a foreign investor interested in establishing a business in Spain, as well as the main steps, costs and legal requirements involved.

Several alternatives are analyzed in this chapter, namely: the setting-up of a company; the opening of a branch; the pursuit of the activity directly by an individual entrepreneur and among the possible alternatives, this Guide highlights in particular the form of the “limited liability entrepreneur”; the formation of a joint venture with another or other enterprises already established in Spain; the acquisition of real estate; the sale and purchase of businesses; investment in venture capital firms; or distribution, agency, commission or franchising agreements.

The steps required to make the following types of investment are explained in this chapter:

- Setting-up of a Spanish corporation or limited liability company and formation of a Spanish branch (sections 4 and 6).
- Pursuit of the activity directly by an individual entrepreneur under the form of the “limited liability entrepreneur” (section 5).
- Acquisition of shares in an existing Spanish company (section 8.1).
- Acquisition of real estate located in Spain (section 8.2).
- Acquisition of a business through sale/purchase or global transfer of assets and liabilities (section 8.3).
- Investment in venture capital firms (section 8.4).

Finally, this chapter contains a final section on dispute resolution in Spain, whether through court or arbitration proceedings, a real and effective alternative for the settlement of disputes.

## 2. Different ways of doing business in Spain

Various alternatives are open to the foreign investor once the decision to invest in Spain has been taken:

**Table 1**  
**WAYS OF DOING BUSINESS IN SPAIN**

<b>Creation of a Spanish company with its own legal personality</b>	Spanish law provides for a variety of vehicles that can be used by foreign companies or individuals for investing in Spain. The most common forms used are the corporation (S.A.) and, principally, the limited liability company (S.L.)
<b>Limited liability entrepreneur</b>	Pursuit of the activity directly by the individual where certain requirements are met.
<b>Branch or permanent establishment</b>	Neither alternative has its own legal personality, meaning that their activity and legal liability will at all times be directly related to the parent company of the foreign investor.
<b>Joint venture</b>	Association with other businesses already established in Spain. It allows the parties to share risks and combine resources and expertise.  A joint venture can be set up under Spanish law in a number of ways: <ul style="list-style-type: none"> <li>• An Economic Interest Grouping (EIG) and a European EIG (EEIG).</li> <li>• A Temporary Business Association (“Unión Temporal de Empresas” or UTE).</li> <li>• Under a type of silent partnership arrangement peculiar to Spanish law (“cuenta en participación”) with one or more Spanish entrepreneurs.</li> <li>• Joint ventures through Spanish corporations or limited liability companies.</li> </ul>
<b>Without setting up a business or entering into an association with existing business or establishing a physical center of operations in Spain</b>	The alternatives include: <ul style="list-style-type: none"> <li>• Signing a distribution agreement.</li> <li>• Operating through an agent.</li> <li>• Operating through commission agents.</li> <li>• Franchising</li> </ul>
<b>Acquisition of assets</b>	Acquisition of real estate located in Spain or acquisition of businesses.
<b>Venture capital</b>	Investment in venture capital entities.



Each of these forms of doing business in Spain offer different advantages that must be balanced against the potential setbacks from a tax and legal standpoint.

### 3. Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.)

The applicable Spanish legislation currently requires that any individual or legal entity with economic or professional interests in Spain, or involved in a relevant way for tax purposes, must hold a tax identification number (in the case of legal entities) or a foreigner identity number (for individuals). In particular, and among other cases, a N.I.F./N.I.E. must be applied for when a foreign investor makes a direct investment in Spain or in the case of a shareholder or director of an entity resident in Spain or of a foreign entity's permanent establishment located in Spain.

The following tables summarize the documentation and steps required to obtain (i) a N.I.E. for individuals who are to be shareholders or directors of companies resident in Spain or limited liability entrepreneurs; (ii) a N.I.F. for legal entities that are to be shareholders or directors of companies resident in Spain; and (iii) the provisional and definitive N.I.F. of the company resident in Spain that is to be set up.

#### 3.1. N.I.E. for individuals who are to be shareholders or directors of companies resident in Spain

Table 2

##### N.I.E. (FOR INDIVIDUALS)

COUNTRY OF APPLICATION	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	COST	DECISION PERIOD
Spain	Directorate-General of Police or at Immigration Offices or Police Stations.	<ol style="list-style-type: none"> <li>1. Original and copy of Official Form (EX15).</li> <li>2. Original and copy of the full passport of the applicant, travel document or registration certificate or identity document if an EU citizen</li> </ol>	€9.45 (Form 790 <sup>2</sup> ).	5 days.
Abroad	Office of the Commissioner-General for Foreigners and Borders, through Spanish Consulates abroad.	<ol style="list-style-type: none"> <li>3. If application is made through a representative: (i) a copy of the applicant's passport authenticated before a notary and legalized and, where appropriate, certified by apostille <sup>1</sup>; (ii) evidence that the representative has sufficient powers, duly translated (sworn translation) and authenticated and/or certified by apostille.</li> </ol>		

<sup>1</sup> If a citizen of the European Union, a copy of the first page of the passport will suffice.

<sup>2</sup> [http://www.mjusticia.gob.es/cs/Satellite/es/1200666550200/Tramite\\_C/1215326307711/Detalle.html](http://www.mjusticia.gob.es/cs/Satellite/es/1200666550200/Tramite_C/1215326307711/Detalle.html)

### 3.2. N.I.F. for legal entities that are to be shareholders or directors of companies resident in Spain

Table 3

#### N.I.F. (FOREIGN COMPANY THAT IS TO BE SHAREHOLDER/DIRECTOR OF SPANISH COMPANY)

COUNTRY OF APPLICATION	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Spain	State Tax Agency or telematically.	<ul style="list-style-type: none"> <li>Certificate or extract from the Commercial Registry of the company's domicile of residence, certified by apostille and a sworn translation thereof, which must state the name, registered office, date of incorporation, capital stock and representative(s).</li> <li>Form 036<sup>3</sup> (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 120), which must be signed by the legal representative who appears in the above-mentioned certificate or an attorney-in-fact of the company. If the legal representative is not Spanish and does not have a N.I.E., the Tax Agency will assign him/her an instrumental N.I.E. which will be valid for this formality only.</li> </ul>	Immediate assignment of the N.I.F. and sending of card within 10 business days
Abroad	Office of the Commissioner-General for Foreigners and Borders, through Spanish Consulates abroad.	<ul style="list-style-type: none"> <li>Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036. The power of attorney must evidence the valid existence and continuity of the foreign company in accordance with the relevant foreign legislation and must be translated and certified by apostille or legalized.</li> <li>Photocopy of the Spanish national identity card or N.I.E. and passport (copy of the first page where the signature appears) of the signatory of form 036 and/or of the legal representative.</li> <li>If the legal representative or the signatory has a N.I.E. but has not registered with the census at the Tax Agency, such registration must be done on form 030.</li> </ul>	

NOTE: Documents from other countries (such as powers of representation in order to appear before the authorities and apply for a N.I.F./N.I.E.) must be translated into Spanish or the co-official language of the Autonomous Community<sup>4</sup> in which the application is submitted. Any foreign public document must be legalized beforehand by the Spanish consulate office with jurisdiction in the country the document was issued and by the Ministry of Foreign Affairs and Cooperation, unless the document has been certified by apostille by a competent authority in the country of issue pursuant to the Hague Convention of October 5, 1961.

<sup>3</sup> <https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/G322.shtml>

<sup>4</sup> Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

### 3.3. Provisional and definitive N.I.F. of the company resident in Spain that is to be set up

Table 4

#### PROVISIONAL N.I.F. (BEFORE SETTING UP COMPANY)

PROCEDURE	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Ordinary procedure	State Tax Agency	<ul style="list-style-type: none"> <li>Form 036<sup>5</sup> declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 110), signed by a representative of the company holding a N.I.E. or Spanish national identity card<sup>6</sup>.</li> <li>Copy of the N.I.E. or Spanish national identity card of the signatory.</li> <li>Clear name search certificate from the Central Commercial Registry.</li> <li>Agreement of intent to form a company<sup>7</sup>.</li> </ul>	Same day
Telematic procedure	The notary authorizing the deed of formation will request the assignment of a provisional N.I.F. by the State Tax Agency by telematic means. The shareholders and directors must have a N.I.E. or a Spanish national identity card.		

Table 5

#### DEFINITIVE N.I.F. (AFTER SETTING UP THE COMPANY)

PROCEDURE	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Ordinary procedure	State Tax Agency	<ul style="list-style-type: none"> <li>Form 036 (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 120), signed by a representative of the company holding a N.I.E. or Spanish national identity card.</li> <li>Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036.</li> <li>Copy of the N.I.E. or Spanish national identity card of the signatory.</li> <li>Original and copy of the deed of formation bearing the registration stamp.</li> </ul>	10 business days
Telematic procedure	Once the company has been registered, the Commercial Registry officer will send the company's registration details to the State Tax Agency by telematic means and the State Tax Agency will notify the notary and the registrar of the definitive nature of the N.I.F.		

NOTE: Documents from other countries (such as powers of representation in order to appear before the authorities and apply for a N.I.F./N.I.E.) must be translated into Spanish or the co-official language of the Autonomous Community<sup>8</sup> in which the application is submitted. Any foreign public document must be legalized beforehand by the Spanish consulate office with jurisdiction in the country the document was issued and by the Ministry of Foreign Affairs and Cooperation, unless the document has been certified by apostille by a competent authority in the country of issue pursuant to the Hague Convention of October 5, 1961.

<sup>5</sup> Form 036 can be acquired at offices of the tax authorities or downloaded directly from the tax authority website: [https://www.agenciatributaria.gob.es/AEAT.sede/en\\_gb/tramitacion/G322.shtml](https://www.agenciatributaria.gob.es/AEAT.sede/en_gb/tramitacion/G322.shtml)

<sup>6</sup> If the signatory of form 036 is not registered as a shareholder or member of the managing body in the agreement of intent, authorization of the signatory must be provided.

<sup>7</sup> With the following content: a) type of company, (b) corporate purpose, (c) initial capital stock, (d) registered office, (e) shareholders, and (f) the members of the managing body. A copy of the N.I.F./N.I.E./national identity document of the shareholders and members of the managing body must also be provided.

<sup>8</sup> Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

The provisional and definitive N.I.F. for companies resident in Spain, unlike the N.I.F. for foreign individuals or legal entities who are going to be shareholders or directors of companies resident in Spain, may only be applied in Spain, directly by the applicant or through a representative, and are free of charge.

#### 4. Formation of a company

The most common forms of legal entity under Spanish corporate law are the corporation (“Sociedad Anónima” - S.A.), and the limited liability company (“S.L.”) (other corporate forms are described in Appendix I, section 2 of this Guide).

The main differences between S.A.s and S.L.s are as follows:

**Table 6**  
**MAIN DIFFERENCES BETWEEN CORPORATIONS (S.A.s) AND LIMITED LIABILITY COMPANIES (S.L.s)**

	S.A.	S.L.
<b>Minimum capital stock</b>	€ 60,000	€ 3,000 <sup>9</sup>
<b>Payment upon formation</b>	At least 25% and any share premium.	Payment in full.
<b>Contributions</b>	A report from an independent expert on any non-monetary contributions is required.	No report from an independent expert on non-monetary contributions is required, although the founders and shareholders are jointly and severally liable for the authenticity of any non-monetary contributions made.
<b>Shares</b>	They are marketable securities. Debentures and other securities that recognize or create a debt, even bonds convertible into shares, can be issued.	They are not marketable securities. Debentures and other securities that recognize or create a debt can be issued.
<b>Transfer of shares</b>	Depends on how they are represented (share certificates, book entries, etc.) and on their nature (registered or bearer shares).  In principle, they may be freely transferred, unless the bylaws provide otherwise.	Must be recorded in a public document.  S.L. shares are generally not freely transferable (unless acquired by other shareholders, ascendants, descendants or companies within the same group). In fact, unless otherwise provided in the bylaws, the law establishes a pre-emptive acquisition right in favor of the other shareholders or the company itself in the event of a transfer of the shares to persons other than those referred to above.
<b>Amendments to the bylaws</b>	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
<b>Venue for shareholders’ meetings</b>	As indicated in the bylaws. Otherwise, in the municipality where the company has its registered office.	
<b>Attendance and majorities at shareholders’ meetings</b>	Different quorums and majorities are established for meetings on first and second call and depending on the content of the resolutions. These can be increased by the bylaws.	Different majorities are established depending on the content of the resolutions. These can be increased by the bylaws.
<b>Right to attend shareholders’ meetings</b>	A minimum number of shares may be required to attend the shareholders’ meeting.	This right cannot be restricted.

<sup>9</sup> Except in the case of the entrepreneurial limited liability company, the rules for which are described in section 4.2 of Annex I.

Table 6 (Cont.)

## MAIN DIFFERENCES BETWEEN CORPORATIONS (S.A.s) AND LIMITED LIABILITY COMPANIES (S.L.s)

	S.A.	S.L.
<b>Number of members of the board of directors</b>	Minimum: 3. No maximum limit.	Minimum: 3. A maximum of 12 members.
<b>Term of the office of director</b>	Maximum 6 years. They may be reelected for periods of the same maximum duration.	May be indefinite.
<b>Issue of bonds</b>	Bond issues may be used as a means to raise funds. Bonds convertible into shares may be issued or guaranteed.	Bond issues may be used as a means to raise funds, although the total amount of the issues may not be higher than twice the company's equity, unless the issue is secured by a mortgage, by a pledge of securities, by a government guarantee or by a joint and several guarantee from a credit institution.  If the issue is secured by a joint and several guarantee from a mutual guarantee society, the limit and other conditions of the guarantee will be determined by the guarantee capacity of the society at the time of providing it, in accordance with its specific legislation.  Bonds convertible into shares cannot be issued or guaranteed.

Any foreign citizen or legal entity may freely be a shareholder of a Spanish company provided that he/she/it applies for a N.I.E. or N.I.F. as described in this chapter.

necessary to register for social security purposes<sup>11</sup> and therefore be a legal resident in Spain.

In addition, any foreign citizen or legal entity may also be a director of a Spanish company, with the same requirement to apply for a N.I.E. or N.I.F.<sup>10</sup> and, where shares are held in the company and/or compensation is received for services as a director, it will be

#### 4.1. Legal formalities

- The ordinary steps and expenses involved are similar for both legal forms and are detailed in the following tables.

<sup>10</sup> Directorate-General of Registries and the Notarial Profession of January 18, 2012.

<sup>11</sup> Articles 136 and 305 of Legislative Royal Decree 8/2015, of October 30, 2015, approving the revised General Social Security Law.

Table 7

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

REQUIREMENTS	Applicable to any kind of limited liability company or corporation
1. <b>Clear name search certificate</b>	Application to the Central Commercial Registry by the interested party or anyone authorized by it (may contain up to 5 alternative corporate names) <sup>12</sup> . The Central Commercial Registry will issue a name reservation certificate for the new company. Names are reserved for a period of six months as from the date of issue of the certificate.
2. <b>Application for provisional N.I.F.</b>	See section 3.3 above.
3. <b>Opening of a bank account</b>	Opening of a bank account in the entity's name for payment of the capital stock. Once the founding shareholders have paid in the capital, the bank must issue payment certificates.
4. <b>Document containing representations by the beneficial owner</b>	The founding shareholders must execute a document containing representations by the beneficial owner in accordance with Law 10/2010, of April 28 <sup>13</sup> .
5. <b>Execution of deed before a notary</b>	The founding shareholders must execute a public deed before a notary, containing: <ol style="list-style-type: none"> <li>1. Evidence of the identity of the founding shareholders. If any of the shareholders is represented at the act of formation, a notarized power of attorney to represent the shareholder must be produced to the notary. If the power of attorney is issued abroad, it must be duly legalized<sup>14</sup>.</li> <li>2. Representations by the beneficial owner (see requirement 4 above).</li> <li>3. Evidence of contributions and whether they are to be made in cash or in kind (if applicable) using the corresponding bank documentation, as well as details of the capital stock subscribed by the shareholders (see requirement 3 above)<sup>15</sup>.</li> <li>4. Clear name search certificate issued by the Commercial Registry (see requirement 1 above).</li> <li>5. Company bylaws.</li> <li>6. If the company is a limited liability company, the deed of formation must specify the initial form of the managing body, if the bylaws provide for different alternatives</li> <li>7. Identification of and acceptance by the company directors.</li> <li>8. Subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for Trade and Investment ("DGCI") of the Ministry of Economy, Industry and Competitiveness (see Chapter 1, section 8 for further information). In some cases, limited mainly to foreign investments from countries or territories deemed to be tax havens, a prior declaration must be made (see Chapter 1, section 8 for further information).</li> <li>9. Identification of the economic activity code describing the activity in accordance with the National Classification of Economic Activities (CNAE).</li> </ol>

<sup>12</sup> Applications for clear name search certificates may be made:

- Directly at the offices of the Central Commercial Registry with a printed application form.
- By mail, by sending an application or letter to the offices of the Central Commercial Registry. The Registry will issue the certificate in return for payment on delivery to the address indicated in the application.
- By telematic means, by filling the application form on the website: [www.rmc.es](http://www.rmc.es) ([http://www.rmc.es/Deno\\_solicitud.aspx](http://www.rmc.es/Deno_solicitud.aspx)).

<sup>13</sup> Law 10/2010, of April 28, on the Prevention of Money Laundering and Terrorist Financing requires the founders of a company to provide a declaration by the "beneficial owner", that is, by the individual(s):

- on whose behalf it is intended to establish a business relationship or take part in transactions; and/or
- who, in the last instance, directly or indirectly own(s) or control(s) more than 25% of the capital stock or voting rights of a legal entity, or who by any other means exercise(s) direct or indirect control over the management of a legal entity. Companies listed on a regulated market of the European Union or other equivalent third country are excepted; and/or
- who hold or exercise control over 25% or more of the assets of a vehicle or legal entity that manages or distributes funds, or, where the beneficiaries are still to be designated, the category of persons for whose benefit the legal entity or vehicle is created or mainly acts.

Table 7 (Cont.)

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

REQUIREMENTS	Applicable to any kind of limited liability company or corporation
	10. If the company is a corporation, the deed of formation must also state, at least approximately, the total amount of the formation expenses, both of those already paid and those merely envisaged until registration. The deed must be executed within the three months following the issue of the clear name search certificate by the Central Commercial Registry.
<b>6. Application for registration of the registered office at the Commercial Registry</b>	The deed of formation will be submitted (i) telematically by the notary; or (ii) in person by the interested party.
<b>7. Period for assessment and registration in the Commercial Registry</b>	Fifteen (15) days as from the date of the entry recording the filing of the deed, unless there is just cause, in which case the period will be thirty (30) days.
<b>8. Obtainment of definitive N.I.F.</b>	See section 3.3 above.
<b>9. Opening formalities for tax and labor purposes</b>	<p><b>Registration for the purposes of the Tax on Economic Activities:</b> submission of Form 036. Companies being set up must describe the activities they are going to pursue and the reason why they are exempt from this tax</p> <p>The following, among others, are exempt from this tax:</p> <ul style="list-style-type: none"> <li>— Individuals are exempt in any case.</li> <li>— Legal entities during the first two years they pursue their activities.</li> <li>— Legal entities whose net turnover is less than one million euros.</li> <li>— Nonprofit associations and foundations for people with physical, mental or sensory disabilities, for teaching, scientific or welfare activities.</li> <li>— Taxpayers that qualify for the exemption under international treaties.</li> </ul> <p>This step must be completed before the company commences operations.</p> <p><b>Registration for the purposes of Value Added Tax (VAT).</b></p> <p><b>Obtainment of an opening/operating license, or sufficient enabling instrument for pursuit of the activity, from the relevant municipal council<sup>16</sup>.</b></p> <p><b>For labor purposes, please see Chapter 5, section 10.</b></p>

<sup>14</sup> There are two main procedures for such legalization:

- Execution of the powers of attorney in the presence of the Spanish Consul in the foreign investor’s home country. The foreign investor appears before the Spanish Consul, provides evidence of his identity and grants the related powers of attorney. If a company, rather than an individual, is the foreign shareholder, apart from his identity, the person appearing before the Spanish Consul must provide evidence of his capacity to grant the powers of attorney to the designated person in the name and on behalf of the shareholder. The Spanish Consul may demand any documentation he considers necessary and will proceed to grant a deed of power of attorney, in Spanish, to the designated person. This power of attorney may be used directly in Spain.
- Execution of the power of attorney in the presence of a foreign public authenticating officer. The foreign investor appears before the authenticating officer, provides evidence of his identity and grants the related power of attorney. If the foreign investor is a company, its representative shall execute the power of attorney in the presence of the public authenticating officer, who will certify the document as well as the identity and capacity of the representative of the foreign investor to grant the power of attorney. The signature of the foreign authenticating officer would also require subsequent legalization (either by the “apostille” procedure approved by The Hague Convention of October 5, 1961, or by a Spanish Consul abroad). Under this second procedure, the power of attorney would normally be issued in the language of the authenticating officer who attests to the act, meaning a sworn translation into Spanish would also have to be provided.

<sup>15</sup> It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Annex 1, section 4.2).

<sup>16</sup> In this connection, in accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services, establishments with a useful area of up to 750 m<sup>2</sup> whose activity is included in the Schedule to the Law will not be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication.

As a general rule, setting up a corporation or limited liability company using the ordinary procedure takes between 6 and 8 weeks.

For aspects relating to labor formalities and authorizations, see Chapter 5 .

For additional information please visit [www.investinspain.org](http://www.investinspain.org).

In addition, Law 14/2013, of September 27, on support to entrepreneurs and their internationalization (the “Entrepreneurs Law”) provides an express regime for the telematic formation of limited liability companies, with and without standard bylaws, the content of which is implemented by Royal Decree 421/2015, of May 29 (regulating the standard bylaws and standard public deed forms for limited liability companies, approving the standard bylaws form, regulating the Notarial Electronic Agenda and the exchange of reserved business names) and by Order JUS/1840/2015, of September 9 (approving the public deed form in standard format and codified fields of limited liability companies, as well as the list of activities that can be included in the corporate purpose<sup>17</sup>). This notwithstanding, according to the provisions of the Entrepreneurs Law, the regime will consist of the following steps:

<sup>17</sup> For these purposes, it is established that the standard form of public deed will be used to form a limited liability company with and without standard bylaws (art. 6 Royal Decree 421/2015, of May 29).

Table 8A

**FORMATION OF A LIMITED LIABILITY COMPANY WITH STANDARD BYLAWS:**

No.	STEPS
<b>1</b>	At the Entrepreneur Service Point (“P.A.E.”): 1.1. Completion of single electronic document (“D.U.E. ”) and commencement of electronic processing. 1.2. Filing of request to reserve the name of the company (up to 5 different names) with the Central Commercial Registry, which will issue a certificate within the following 6 business hours. 1.3. A date will immediately be set for the execution of the deed of formation by means of real-time communication with the electronic notarial agenda, obtaining information on the notary’s office, date and time of execution of the deed, which will be within the 12 business hours following the filing of the application.
<b>2</b>	The notary will: 2.1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock <sup>18</sup> . 2.2. Immediately send a copy of the deed to the tax authorities, requesting the assignment of a provisional N.I.F. via the Business Information Center and Creation Network (“CIRCE”) remote processing system. 2.3 Send an authorized copy of the deed of formation to the Commercial Registry corresponding to the registered office via the CIRCE remote processing system. 2.4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost, which will be available at the P.A.E.
<b>3</b>	The Commercial Registrar, on receiving via CIRCE (a) an electronic copy of the deed of formation together with the provisional N.I.F. assigned, and (b) evidence of the exemption from transfer and stamp tax, will: 3.1. Assess the deed and register it within 6 business hours. 3.2. Send a certification of registration to the CIRCE on the same date of registration. 3.3. Request the definitive N.I.F.
<b>4</b>	The tax authorities will: 4.1. Notify the definitive status of the N.I.F. via the CIRCE. 4.2. Notify the N.I.F. via the CIRCE.
<b>5</b>	The formalities for commencement of the activity will be performed at the PAE, which will send the information contained in the DUE to: 5.1. The State Tax Agency. 5.2. The Social Security General Treasury. 5.3. The local and autonomous community authorities, as the case may be.

<sup>18</sup> It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Chapter 2, section 4.2).



**Table 8B**  
**FORMATION OF A LIMITED LIABILITY COMPANY WITHOUT STANDARD BYLAWS:**

No.	STEPS
1	At the Entrepreneur Service Point (“P.A.E.”), the founding shareholders may: <ul style="list-style-type: none"> <li>• File a request to reserve the name of the company.</li> <li>• Set the date for the execution of the deed of formation.</li> </ul>
2	The notary will: <ol style="list-style-type: none"> <li>2.1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock<sup>19</sup>.</li> <li>2.2. Immediately send a copy of the deed to the tax authorities, requesting the assignment of a provisional N.I.F. via the Business Information Center and Creation Network (“CIRCE”) remote processing system.</li> <li>2.3. Send an authorized copy of the deed of formation to the Commercial Registry corresponding to the registered office via the CIRCE remote processing system.</li> <li>2.4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost.</li> </ol>
3	The Commercial Registrar, on receiving the electronic copy of the deed of formation, shall initially register the company at the Commercial Registry within a period of 6 business hours, solely indicating the data relating to: (i) name, (ii) registered office; (iii) corporate purpose, (iv) capital stock; and (v) managing body.  Definitive registration will take place within the ordinary assessment period.  Once registered, the Commercial Registrar will notify the competent tax authorities of the registration of the company, requesting the definitive N.I.F.
4	The tax authorities will: <ol style="list-style-type: none"> <li>4.1. Notify the definitive status of the N.I.F. via the CIRCE.</li> <li>4.2. Notify the N.I.F. via the CIRCE.</li> </ol>
5	The formalities for commencement of the activity will be performed at the P.A.E., which will send the information contained in the DUE to: <ol style="list-style-type: none"> <li>5.1. The State Tax Agency.</li> <li>5.2. The Social Security General Treasury.</li> <li>5.3. The local and autonomous community authorities, as the case may be.</li> </ol>

NOTE: where the founding shareholders choose to form an S.L. without standard bylaws, the formalities for formation may be performed using the DUE and the CIRCE remote processing system.

<sup>19</sup> It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies 9

Alt should be noted that according to the Entrepreneurs Law:

- Entrepreneur Service Points (“P.A.E.”) are: offices belonging to public and private organizations, including notary offices, which will be tasked with facilitating the creation of new businesses, the effective commencement of their operations and their development, by providing information, processing, documentation and advisory services.
- The Single Electronic Document (“D.U.E.”) is the document containing the data that must be sent to the legal registries and to the competent public authorities for:
  - The formation of limited liability companies.
  - The registration at the Commercial Registry of the Individual Entrepreneur.
  - Fulfillment of the tax and social security obligations on commencement of the activity.
  - The performance of any other formality on commencement of the activity with the state, autonomous community and local authorities.

As a general rule, the telematic formation of limited liability companies takes approximately 15 business days.

## 4.2. Telematic legalization of books

In accordance with article 18 of the Entrepreneurs Law and with the Instruction of February 12, 2015, of the Directorate-General of Registries and the Notarial Profession, on the legalization of traders’ books in accordance with article 18 of Law 14/2013, of September 27, on support to entrepreneurs and their internationalization, all of the books that traders must keep in accordance with the applicable legal provisions will be legalized telematically at the Commercial Registry after they have been completed in electronic format and before four months elapse after the year-end date.

Regarding the books that are mandatory, their key features are as follows:

- Minutes book:
  - All of the minutes of the meetings of the collective bodies of commercial companies, including decisions adopted by the sole shareholder, must be reflected in electronic format and be submitted telematically for legalization within four (4) months after the fiscal year-end.
  - The company may keep just one book for all of the minutes of all of the collective bodies of the company, or a different book for each one of the collective bodies.
  - Each book must state the date of the start and the end of the fiscal year.
  - At any time of the fiscal year, the company may legalize books of details of minutes with minutes from the current fiscal year for purposes of an evidentiary or any other nature, and notwithstanding that all minutes must be included in the minutes book for the entire fiscal year.
- Register of shareholders (S.L.) or register of registered shares (S.A. with registered shares):
  - Once the company has been registered at the Commercial Registry, it will be necessary to legalize a book which records the initial ownership of the founders and, once this initial book has been legalized, it will only be necessary to legalize a new book within the four months following the end of the fiscal year in which there has been any change in the initial or successive ownership of the shares or encumbrances have been created over them.
  - These books must record the full identity of the owners, their nationality and domiciles. The omission of the recording of the nationality or domicile will not preclude the book in question from being legalized, but this omission will be recorded in the legalization note.

- Book of contracts with the sole shareholder: This book is subject to the same rules as those applicable to the register of shareholders / register of registered shareholders.

It is possible to legalize any of the above books from a given year without those from the immediately preceding years having been legalized.

The signatures of the persons who authorize the request and the list of digital signatures generated by the books whose legalization is requested must meet the requirements laid down in the current legislation on qualified electronic signatures and with the mandatory certification of the certification services provider.

### 4.3. Fees and costs

- Fees of the notary handling the formation:
  - a) As a general rule, for corporations and limited liability companies formed under the ordinary regime, the fees are charged on a sliding scale based on the capital stock. For guidance purposes, the official rates amount to approximately €90 for the first €6,010, after which rates of between 0.03% and 0.45% are applied to amounts of between €6,010,121 and €601,012.10. For any amount in excess of €6,010,121.10, the notary will receive the amount that is freely agreed upon by the executing parties.
  - b) For limited liability companies formed telematically whose capital exceeds €3,100 or whose bylaws are not adapted to any of the forms approved by the Ministry of Justice, the fee will be €150.
  - c) For limited liability companies formed telematically whose capital does not exceed €3,100 and whose bylaws are adapted to one of the forms approved by the Ministry of Justice, the fee will be €60.

- Fees for registering the company at the local Commercial Registry:
  - a) As a general rule, for corporations and limited liability companies formed under the ordinary regime, there are official rates that amount to €6.01 for the first €3,005, after which there is a sliding scale ranging from 0.005% and 0.10% for capital in excess of €6,010,121. The total fee is capped and may not exceed €2,181.
  - b) For limited liability companies formed telematically whose capital exceeds €3,100 or whose bylaws are not adapted to any of the forms approved by the Ministry of Justice, the fee will be €100.
  - c) For limited liability companies formed telematically whose capital does not exceed €3,100 and whose bylaws are adapted to any of the forms approved by the Ministry of Justice, the fee will be €40.
- Transfer tax under the “corporate transactions” heading, exempt in accordance with Royal Decree-Law 3/2010 (see Chapter 3)<sup>20</sup>.
- Charge for processing of the opening/operating license or solemn declaration by the municipal authority. A one-off municipal tax, ordinarily a relatively small amount<sup>21</sup>.
- Other expenses (e.g. professional fees) which are not readily quantifiable.

<sup>20</sup> The decision by the Directorate-General of Registries and the Notarial Profession of January 26, 2012, establishes that in forming companies domiciled in territories where rules or instructions have been handed down regarding the settlement of transfer tax (including under the corporate transactions heading), the relevant tax return must be submitted together with the deed of formation at the relevant Commercial Registry.

<sup>21</sup> In accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services, establishments with a useful area of up to 750 m<sup>2</sup> whose activity is included in the Schedule to the Law will not be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication.

## 5. Limited liability entrepreneur

The Entrepreneurs Law created the concept of the “limited liability entrepreneur” (ERL), the main characteristics of which are as follows:

Table 9

### LIMITED LIABILITY ENTREPRENEUR

<b>Concept</b>	Limited liability entrepreneur status can be taken on by an individual entrepreneur, regardless of their business or professional activity, to limit their liability for the debt deriving from the conduct of their business which will prevent any such debt from affecting their principal residence under certain conditions. It makes an exception to the limited liability regime for any public law debts acquired by the limited liability entrepreneur the collection of which is subject to the provisions of General Taxation Law 58/2003, of December 17, General Budget Law 47/2003, of November 26, and Legislative Royal Decree 1/1994, of June 20, approving the revised General Social Security Law.
<b>Requirements</b>	<p><b>1. Registration of ERL status at the Commercial Registry corresponding to the registered office:</b></p> <p>The notarial certificate that must be submitted by the notary to the Commercial Registry on the same day or on the business day following its authorization, or the application signed with the digital signature of the entrepreneur and sent by telematic means to the Commercial Registry, will be sufficient to apply for first registration of a limited liability Intrepreneur.</p> <p><b>2. Value of the principal residence for which liability for business or professional debts does not extend to such asset<sup>22</sup>:</b></p> <p>a. May not exceed €300,000 (valued according to the taxable amount for transfer and stamp tax purposes at the time of registration at the Commercial Registry).</p> <p>b. In the case of residences located in towns with more than 1,000,000 inhabitants, a multiplier of 1.5 will be applied to the value under (a) above.</p> <p><b>3. Disclosure of ERL status</b></p> <p>It must be mentioned on all documentation, stating the registry particulars.</p> <p><b>4. Registration at the Property Registry</b></p> <p>The fact that the principal residence is not tied to the professional activity must be registered at the Property Registry. The Commercial Registrar will issue a certificate and send it to the Property Registrar by telematic means on the same business day as registration of ERL status at the relevant Commercial Registry.</p>

The Entrepreneurs Law provides that the necessary formalities for registration of ERL status may be performed using the CIRCE system and the DUE. In this case, the procedure would be as follows:

<sup>22</sup> A limited liability entrepreneur can achieve that his/her liability and any creditor’s action, stemming from business or professional debts, do not extend to the exempt asset, as an exception to what is provided for in article 1911 of the Civil Code and article 6 of the Commercial Code, in accordance with article 8.2 of the Entrepreneurs Law and provided that this absence of connection is disclosed in the manner established in that Law.

Table 10

## ERL REGISTRATION

No.	STEP
1	Completion of the single electronic document (“DUE”) at the Entrepreneur Service Point (“PAE”) and submission of the necessary documentation for registration at the Commercial Registry and at the Property Registry.
2	2.1. The PAE sends the DUE along with the relevant documentation to the Commercial Registry, requesting the registration of the limited liability entrepreneur. 2.2. The Commercial Registry has 6 business hours in which to register the entry and send the certification of registration to the CIRCE system by telematic means.
3	The Commercial Registrar will send the certificate of registration to the Property Registry, requesting registration of the prohibition on attachment of the ERL’s principal residence in respect of professional and business debts.
4	The Property Registrar will register the prohibition within 6 business hours of receipt of the request, and shall immediately notify the registration to the CIRCE system, which will forward it to the tax authorities.

Entrepreneurs can ascertain the status of the procedure at any time from the corresponding PAE.

When it comes to this form of investment, of note is the recent Royal Decree-Law 1/2015, of February 27, on the second chance mechanism, reduction of the financial burden and other measures of a social nature, whereby, among other reforms, a regime is established for the discharge of debts for natural person debtors in the context of an insolvency proceeding. Specifically, their debts will be discharged where:

(i) The debtor is a bona fide debtor; and

(ii) His/her assets are previously liquidated (or the insolvency proceeding is declared concluded due to an insufficiency of assets); and

(iii) The debtor has paid in their entirety the post-insolvency order claims, the preferred pre-insolvency order claims and, if an out-of-court payment agreement has not been tried, 25% of the ordinary claims; or

(iv) Where the claims indicated in point (iii) have not been paid, if the debtor agrees to submit to a 5-year payment plan (in this case, the debtor will be released from all of his/her claims

except for public claims, alimony claims, post-insolvency order claims and preferred claims).

## 6. Opening of a branch

In general terms, the requirements, procedural formalities and costs of opening a branch in Spain of a foreign company are very similar to those for the formation of a subsidiary (as a company). The main legal steps and costs are summarized below, highlighting the main differences with respect to the formation of a subsidiary.

## 6.1. Legal steps and costs

Table 11

### LEGAL STEPS AND COSTS

REQUIREMENTS	STEPS
1. Clear name search certificate	Same procedure followed as for a company.
2. Obtainment of the N.I.F. and appointment of the representative of the parent company in dealings with the Spanish tax authorities	Same procedure followed as for a company. Appointment of an individual or legal entity residing in Spain to represent the parent company in dealings with the Spanish tax authorities regarding its tax obligations.
3. Document containing representations by the beneficial owner	Same procedure followed as for a company.
4. Execution of the deed recording the opening of a branch before a Spanish notary	This step consists of the public formalization before a notary of the resolution to open a branch previously adopted by the competent body of the foreign parent company. The notary will request (i) documentation similar to that required for a subsidiary (that is, evidence of the identity of the person who appears before him, his power of attorney to represent the parent company, declaration of the beneficial owner, evidence of payment and whether it is to be made in cash or in kind (if applicable); (ii) sufficient proof (translated, legalized and/or certified by apostille, as appropriate) of the existence of the parent company, its bylaws and the names and personal details of its directors; and (iii) the resolution to form the branch adopted by the competent body of the parent company. The deed may also contain the subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for Trade and Investment (“DGI”) of the Ministry of Economy, Industry and Competitiveness. In some cases, as with subsidiaries, prior declaration is required (see Chapter 1, section 8 for further information).
5. Application for registration at the Commercial Registry	Same procedure followed as for a company.
6. Opening formalities	<b>Registration for the purposes of the Tax on Economic Activities:</b> same procedure followed as for a company. <b>Registration for the purposes of Value Added Tax (VAT):</b> same procedure followed as for a company. <b>Payment of the charge for processing of the opening/operating license or solemn declaration:</b> same procedure followed as for a company <sup>23</sup> . <b>Registration of the company for Spanish social security purposes:</b> (see Chapter 5, section 13 for further information).

<sup>23</sup> In accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services, establishments with a useful area of up to 750 m<sup>2</sup> whose activity is included in the Schedule to the Law will not be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication.

As a general rule, setting up a branch takes between 6 and 8 weeks.

## 6.2. Branch versus subsidiary

The main differences between a branch and a subsidiary to be taken into consideration from a tax and legal standpoint are summarized below.

Table 12

### BRANCH VERSUS SUBSIDIARY

	BRANCH	SUBSIDIARY
<b>Minimum capital stock:</b>	No minimum required.	S.A.: €60,000 S.L.: €3,000 <sup>24</sup>
<b>Legal personality:</b>	No (no separate legal personality but rather the same legal identity as its parent company).	Yes.
<b>Managing and government body:</b>	Representative resident in Spain (who acts as attorney of the branch in the name and on behalf of the parent company for all purposes, particularly tax purposes <sup>25</sup> ).	Shareholders' meeting and the managing body.
<b>Shareholder liability:</b>	No limit to the parent company's liability.	The liability of the shareholders of a subsidiary formed as an S.A. or S.L. for the debts of the subsidiary is limited to the amount of their capital contributions (with the exceptions analyzed in Appendix I, section 3).

<sup>24</sup> Except in the case of an entrepreneurial limited liability company. For these purposes, please see section 4.2.4 of Annex I.

<sup>25</sup> Article 10.1 of Legislative Royal Decree 5/2004, of March 5, approving the revised Nonresident Income Tax Law.

From a tax standpoint, both the branch and the subsidiary are, in general terms, liable for Spanish corporate income tax (subsidiary) or nonresident income tax (branch) at 25% on their net income (rate applicable from 2016 onwards).

The following aspects in relation to the tax treatment of branches and subsidiaries and of the income paid or remitted by them should be noted:

- The remittance of a branch's profits to its head office or the payment of a subsidiary's dividend to its parent will be taxed in Spain depending on the country of residence of the parent company or head office:
  - If it is not resident in an EU country and is also not resident in a country with which Spain has a tax treaty, remittances or dividends will be taxed in Spain at a rate of 19% from 2016 onwards.
  - If it is EU-resident, remittances or dividends are usually tax-exempt. If the exemption cannot be applied to dividends, the reduced rate under the relevant tax treaty with Spain will apply. If there is no tax treaty with Spain (which is only the case with Cyprus) and the exemption cannot be applied, the applicable rate will be 19%.
  - If it is resident in a non-EU country with which Spain does have a tax treaty, the dividends will be taxable at the reduced treaty rate and the remittance of branch profits will, under most treaties, be exempt from tax in Spain
- A branch is a permanent establishment for the purposes of nonresident income tax. Nonetheless, a branch is not the only form of permanent establishment. In order to identify whether or not a permanent establishment exists, consideration must

first be given to whether or not a tax treaty has been signed between Spain and the country of residence of the interested party.

- a) If a tax treaty has been signed between Spain and the taxpayer's country of residence, regard must be had to the definition of permanent establishment in that treaty. In general, the tax treaties currently in force are in line with the definition set forth under Article 5 of the OECD Model Convention, which distinguishes between two forms of permanent establishment.

The first form of permanent establishment is the *fixed place of business*. This is a place through which the business of an enterprise is wholly or partly carried on. In general, a fixed place of business will therefore exist where the following requirements are met:

- the facility, center or site must be used to carry on the business;
- the facility must be fixed or related to a specific place or space, with a certain degree of permanence over time;
- the activity must be productive and must contribute to the enterprise's global income.

This definition of permanent establishment excludes a fixed place of business from which certain auxiliary or preparatory activities, listed in the tax treaties, are carried on.

The second form of permanent establishment is the *dependent agent*. This is an agent who acts on behalf of the nonresident entity, who has and exercises powers to bind such entity, and who does not have independent agent status.

- b) If there is no applicable tax treaty, regard must be had to the definition of permanent establishment set forth in Spanish domestic law. Article 13.1.a of Legislative Royal Decree 5/2004, approving the revised Nonresident Income Tax Law has, to a great extent, been brought into line with the aforesaid definition of permanent establishment according to the OECD Model Convention.

- The Directorate General of Taxes has ruled on a number of occasions that the Special Rules regulated under Title VII of the Revised Corporate Income Tax Law are applicable to permanent establishments located in Spain and belonging to nonresident entities, *inter alia*, the special rules applicable to small entities (**For further information on the special rules**, see Chapter 3).
- Share of parent company overheads: In practice, it is usually easier for these expenses (if any are imputed) to qualify as deductible in the case of a branch than in the case of a subsidiary.
- Interest on loans from a foreign parent company to its Spanish branch is not tax-deductible for the branch. By contrast, the interest on loans from the shareholders of a subsidiary is normally tax-deductible for the subsidiary, provided that the transaction is valued on an arm's-length basis and subject to certain requirements, subject to the limits on deductibility established in corporate income tax legislation. The general limit is 30% of the subsidiary's EBITDA, although deductibility is prohibited in some cases, for example, where the debt is used to acquire holdings in entities from other group entities (unless they are acquired on valid economic grounds) or where the finance costs do not generate any income, or generate tax-exempt income or income taxed at less than 10% at the recipient, due to such income not being classed as a financial return.

### 6.3. Calculation of Spanish corporate income tax

Below is a simple example of how Spanish corporate income tax and nonresident income tax is calculated on the profit obtained

by a Spanish subsidiary or by the branch in Spain of a foreign company, respectively (For further information, on these taxes, see section 2.1. of Chapter 3).

Table 13

#### CALCULATION OF SPANISH CORPORATE INCOME TAX

PARENT COMPANY	EU COUNTRY <sup>26</sup>	TREATY COUNTRY	NON-TREATY COUNTRY
<b>Subsidiary:</b>			
Profit of Spanish subsidiary	100	100	100
Spanish income tax (25%) <sup>27</sup>	25	25	25
Dividends	75	75	75
Withholding tax on dividends	– <sup>29</sup>	7.5 <sup>30</sup>	14.25 <sup>28</sup>
Total tax in Spain	25	32.5	39.25
<b>Branch:</b>			
Profit of Spanish branch	100	100	100
Spanish income tax (25%) <sup>27</sup>	25	25	25
Profit remitted to the parent company	75	75	75
Withholding tax	– <sup>29</sup>	– <sup>31</sup>	14,25 <sup>28</sup>
Total tax in Spain	25	25	39.25

<sup>26</sup> Spain has tax treaties in force with all EU countries except Cyprus.

<sup>27</sup> The general corporate income tax rate is 25%.

<sup>28</sup> Withholding tax rate = 19%.

<sup>29</sup> Exempt, provided certain conditions are met.

<sup>30</sup> The withholding tax rate on dividends used in this example is 10% (the most common rate in the tax treaties entered into by Spain).

<sup>31</sup> The branch profit tax will apply if provided for in the corresponding tax treaty (e.g. the U.S., Canada and Brazil).



## 6.4. Representative Offices

Apart from through a corporation or a branch, a foreign investor in Spain may operate, among other options, through a representative office.

In light of the lack of specific regulations in this respect, a definition may be found in the tax treaties signed by Spain with third countries: a representative office is understood to be a fixed place of business, established by a nonresident company, that pursues purely marketing or informational activities relating to commercial, financial and economic matters but does not conduct any actual business. They are governed by treaties signed with Spain or, where there are no treaties, by Spanish legislation and representative offices are considered permanent establishments.

This form of establishment in Spain allows investors to obtain all kinds of information on which they can base their investment decision, without having to comply with too many legal formalities. A representative office is, therefore, the ideal vehicle for conducting market research, studying the level of competition existing in the industry in which it intends to invest, compiling financial projections and profit estimates for the investment or negotiating the acquisition of companies via purchase of shares or of assets and liabilities.

Representative offices have, *inter alia*, the following key characteristics:

- Representative offices do not have separate legal personality from their parent.
- The nonresident company is liable for all debts assumed by the representative office.
- Representative offices cannot themselves conduct commercial transactions.

- In general, no commercial requirements need to be met for a representative office to be opened, although mainly for tax, employment and social security purposes a public deed (or document executed before a foreign notary public, duly legalized with the Hague Apostille or any other applicable form of legalization) may have to be executed, recording the opening of the representative office, the allocation of funds, the identity of the tax representative (an individual or legal entity resident in Spain) and its powers. Representative offices need not be recorded at the Commercial Registry.
- Representative offices have no formal managing bodies; the representative of each office performs the activities of the representative office by virtue of the powers granted to that representative.

As regards the main employment and tax aspects of representative offices, please see the corresponding sections in chapters 3 and 5.

## 7. Other alternatives for operating in Spain

### 7.1. Forms of business cooperation

One of the most common forms of business cooperation between companies is the joint venture (J.V.). Spanish law does not expressly regulate this mechanism, as it is an atypical contract that finds its basis in the principle of freedom of contract provided for in article 1255 of the Civil Code.

Under the current legislation, the main forms through which a joint venture may be set up between one or more parties are as follows:

- Through a temporary business association (see section 7.2. below);

- As an economic interest grouping (see section 7.3. below);
- Through a silent participation agreement (see section 7.4. below);
- By setting up a company (see section 7.5. below).

### 7.2. Temporary Business Associations (UTEs)

- **Concept/purpose:** Under Spanish law, UTEs are temporary business alliances set up for a specified or unspecified period of time, for the purpose of carrying out a specific project or service. UTEs allow several companies to operate together on one common project. This form of association is very common for engineering and construction projects but can be used in other sectors as well.
- **Legal personality:** UTEs are not companies in the strict sense and have no legal personality.
- **Fiscal transparency regime:** While they have no legal personality, in order to qualify for the special fiscal transparency regime provided for UTEs, their formation must be recorded in a public deed and they must be registered on the Special Register of UTEs at the Spanish Ministry of Finance and Public Administration. Furthermore, they must comply with bookkeeping and accounting requirements similar to those of Spanish companies. They may be also registered at the Commercial Registry. Formalities for formalization of a UTE are similar to those for a company or branch, adjusted to reflect the special characteristics of this type of arrangement.
- **Regulation:** UTEs are governed by Law 18/1982 on the Tax Regime of Temporary Business Groupings and Associations and Regional Industrial Development Companies, amended, among others, by Law 12/1991, Law 43/1995 and Law 62/2003.

### 7.3. Economic Interest Groupings (EIGs)

- **Concept/purpose:** EIGs are created with a view to facilitating the pursuit or enhancing the profitability of the activities of their members. EIGs may not act on behalf of their members nor may they substitute them in their operations. Consequently, the EIG is most commonly used to provide secondary services, such as centralized purchasing, sales, information management or administrative services, within the context of a broader association or group of companies.
- **Legal personality:** One of the key differences between UTEs and EIGs is that EIGs are commercial entities with a separate legal personality.
- **Formation requirements:** Spanish law sets out certain requirements for the formation of EIGs:
  - They may not interfere with their members’ decisions on personnel, finance or investment matters, nor are they allowed to manage or control the activities of their members.
  - They may not directly or indirectly hold stakes in their member companies, unless it is necessary to acquire shares or holdings in order to fulfill the EIG’s purpose, in which case the shares or holdings must be transferred immediately to its members.
  - They must be formed by notarial deed and registered at the competent Commercial Registry.
- **Member liability:** EIG members are considered personally and jointly and severally liable for the entity’s debts, albeit secondarily to the EIG’s liability. Their main obligation is to contribute to the EIG’s capital on the agreed terms and to share in its expenses.

- **Governing bodies:**

- the members’ meeting; and
- the managers, who are jointly and severally liable with the EIG for all tax obligations accrued and for any damage caused, unless they are able to prove that they acted with due diligence.

- **Regulation:** EIGs are mainly governed by Economic Interest Groupings Law 12/1991, of April 29.

- **European Economic Interest Grouping (EEIG):** This has a separate legal identity, with the characteristics regulated by EU Council Regulation (EEC) 2137/85, which establishes the basic rules governing EEIGs.

### 7.4. Silent Participation Agreement (CEP)

- **Concept:** This form of business association, which is not subject to any legal formality at all, consists of a financial collaboration whereby one or more entrepreneurs (silent partners) take an interest in the operations of another (the active partner), contributing an agreed portion of capital to the active partner and sharing in the profits or losses in the proportion determined by them.
- **Contributions:** The contributions, whether cash or in kind, do not qualify as capital contributions as such, but rather simply represent the right of the silent partner(s) to share in the results of the business concerned. Silent partners are therefore not shareholders of the active partner..
- **Formal requirements:** As provided in the Commercial Code, this type of agreement does not require any legal formality to be fulfilled (public deed or registration at the Commercial Registry). However, in practice, the parties tend to record the

agreement in a public deed in order to provide proof to third parties.

- **Regulation:** Articles 239 through 243 of the Commercial Code, contained in Title II “Silent Participation Agreements” (Book II of the Commercial Code).

### 7.5. Joint ventures through Spanish corporations or limited liability companies

A significant number of joint ventures use corporations and limited liability companies as vehicles. Therefore, we recommend reading the comments made in other sections of this Guide on the formation, basic characteristics and features of the corporate bodies of corporations and limited liability companies (See this Chapter and Annex I).

### 7.6. Distribution, agency, commission agency and franchising agreements

There are various ways to operate in Spain without having to set up a company or enter into an association with other existing entities or establish a physical center of operations in Spain, including most notably the following.

#### 7.6.1. Distribution agreements

Distribution agreements are an interesting alternative to forming a company or branch or entering into commercial cooperation agreements with previously existing businesses given the low initial investment required. There are several types of distribution agreement. Given the current lack of specific legislation on this area, many such agreements allow the parties broad discretion to decide on their contents.

In practice, distribution agreements are often confused with agency agreements. Nevertheless, they are different and have distinct regulations and characteristics.

- **Concept:** Under a distribution agreement, one of the parties (the distributor) undertakes to purchase goods belonging to the other party for resale.

Distributors are legal entities that form an intrinsic, albeit not truly integrated, part of the commercial network of the supplier, united by a business relationship and a shared desire to increase sales.

- **Classification:** There are three main categories according to the types of distribution networks or system:

- Commercial concession or exclusive distribution agreements

The supplier not only undertakes not to provide his products to more than one distributor within a specified territory, but also not to sell those products himself within the territory of the exclusive distributor.

- Sole distribution agreements

The only difference between sole and exclusive distribution agreements is that under a sole distribution agreement, the supplier reserves the right to supply the agreed products to users in the territory in question.

- Authorized distribution agreements under the selective distribution system.

Owing to their nature, certain products require special treatment by distributors and sellers. The form of distribution used in both cases is called “selective distribution”, so-called because distributors are carefully selected on the basis of their capacity to

handle technically complex products or to maintain a particular image or brand name.

### 7.6.2. Agency agreements

- **Concept:** Article 1 of Agency Agreements Law 12/1992 transposed Directive 86/653/EEC into Spanish law and provides the following definition of agency agreements:

*“Under an agency agreement, an individual or legal entity, known as an agent, agrees with another on a continuous or regular basis, in exchange for remuneration, to promote commercial acts or transactions for the account of another or to promote and conclude them for the account and in the name of others, as an independent intermediary and without assuming the risk and hazard of such transactions, unless otherwise agreed.”*

Agents are independent intermediaries who do not act in their own name and behalf, but rather for and on behalf of one or more principals.

An agent must, of his own accord or through his employees, negotiate and, if required by contract, conclude on behalf of the principal, the commercial acts or operations he is instructed to handle. Agents are subject to a number of obligations, including the following:

- An agent cannot outsource his activities unless expressly authorized to do so.
- An agent is authorized to negotiate the agreements or transactions detailed in the agency agreement, but can only conclude them on behalf of its principal when expressly authorized to do so.
- An agent may act on behalf of several principals, unless the related goods or services are similar or identical, in which case express consent is required.

- **Restraint-of-trade provisions:** Restraint-of-trade provisions (i.e., provisions restricting or limiting the activities that can be carried out by the agent once the agency agreement has been terminated) have a maximum duration of two years as from termination of the agency agreement. However, if the agency agreement has been agreed to for a shorter period of time, the restraint-of-trade provision may not last longer than one year.

- **Obligations of the principal:**

- To act loyally and in good faith in its relations with the agent.
- To provide the agent with all the documentation he needs to engage in his activity.
- To provide the agent with all the information required to perform the agreement.
- To pay the agreed compensation.
- To accept or reject transactions proposed by the agent.

- **Compensation:** One of the essential elements of the agency agreement is that the agent’s work must always be compensated. The compensation may consist of a fixed amount, a commission or a combination of both.

### 7.6.3. Commission agency agreements

- **Concept:** This is the mandate under which the authorized agent (commission agent) undertakes to perform or to participate in a commercial act or agreement on behalf of another (the principal). Commission agents may act:

- In their own name, acquiring rights against the contracting third parties and vice versa; and

- On behalf of their principal, who acquires rights against third parties and vice versa.
- **Main obligations of commission agents:**
  - To protect the interests of their principals as if they were their own and to perform their engagement personally. Commission agents may delegate their duties if authorized to do so and may use employees at their own liability.
  - To account for amounts that they have received as commission, to reimburse any excess amount and to return any unsold merchandise.
  - In general, commission agents are not liable to their principal for the performance of the related agreements by third parties, although this risk can be secured by a commission del credere.
  - Commission agents are barred from buying for their own account or for the account of others, without the consent of their principal, the goods that they have been instructed to sell, and from selling the goods that they have been instructed to buy.
- **Commission:** The principal undertakes to pay a commission and to respect the retention and preference rights of the commission agent. The claims of the commission agent against the principal are protected by the right to retain the goods.
- **Differences and similarities between agency agreements and commission agency agreements**
  - **Main similarity:** In both cases, an individual or legal entity undertakes to pay another compensation for arranging a business opportunity for the former to

conclude a legal transaction with a third party, or for acting as the former's intermediary in concluding the transaction.

- **Main difference:** Agency agreements involve an engagement on a continuous or regular basis, whereas commission agency agreements involve occasional engagements.

#### 7.6.4 Franchising

- **Concept:** Franchising is a system for marketing goods and/or services and/or technology. It is based on close, ongoing cooperation between independent undertakings (the franchisor and its individual franchisees). Under this system, the franchisor grants a right to, and imposes an obligation on, its individual franchisees, for a specific market, to pursue the business or commercial activity previously carried out by the former with sufficient experience and success, using the concept and system defined by the franchisor.

In return for a direct and/or indirect consideration, this right entitles and obliges individual franchisees to use the brand name and/or trade or service mark for the goods and/or services, the know-how and the technical and business methods, which must be specific to the business, material and unique, the procedures and other intellectual property rights of the franchisor, backed by the ongoing provision of commercial and technical assistance under, and during the term of, the relevant franchising agreement between the parties, all of the above regardless of any supervisory powers conferred on the franchisor by contract.

Commercial concession or exclusive distribution agreements will not necessarily be considered franchises where an entrepreneur undertakes to acquire products (usually brand products) under certain exclusive rights in an area in order to resell them, again under certain conditions, as well as to offer after-sale services to purchasers of the products.

In addition, the following are not considered to be franchises: (i) the grant of a manufacturing license, (ii) the licensing of a registered trademark to be used in a particular area, (iii) transfers of technology or (iv) a license to use a commercial emblem or logo.

- **Legislation:** The applicable Spanish legislation is (i) Law 7/1996, of January 15, regulating retail trade, regarding the basic conditions for carrying on franchise activity and creating the Register of Franchisors (as amended by Law 1/2010, of March 1); (ii) Royal Decree 201/2010, of February 26, regulating the exercise of the commercial activity under a franchise arrangement and the communication of information to the Register of Franchisors; and (iii) Royal Decree 378/2003, which refers to Regulation (EC) No. 2790/1999, of December 22, 1999, relating to the application of Article 81(3) of the Treaty to certain categories of vertical agreements and concerted practices and Regulation (EC) No. 1400/2002, of July 31, 2002, for the motor vehicles sector.
- **Registration:**
  - Franchisors with registered office in Spain or in another EU Member State: register of franchisors of the Autonomous Community where their registered office is located, if the Autonomous Community has established the obligation to communicate data or, otherwise, the register of franchisors of the Ministry of Economy, Industry and Competitiveness.

The communication must be made within three months after the start of the activity.

  - Franchisors with registered office in a country that is not an EU Member State: register of franchisors of the Ministry of Economy, Industry and Competitiveness.
- **Types of franchising agreement:** Industrial franchising agreements (for the manufacture of goods), distribution franchising agreements (for the sale of goods) and service franchising agreements (relating to the provision of services).

The advantages offered by a franchising agreement include the fact that a franchising agreement is a form of product and/or service distribution that enables a uniform distribution network to be swiftly created with limited investment. Franchising also enables independent traders to set up installations more rapidly and with greater chances of success than if they did so themselves without the know-how and assistance of the franchisor.

Antitrust law requirements must be thoroughly considered when defining the content of franchising agreements.

According to the experts, franchising has seen spectacular growth in Spain in recent years, giving rise to what is now a well-established franchising system.

## 8. Other alternatives for investing in Spain

### 8.1. Acquisition of shares of an existing corporation or of a limited liability company

The following table summarizes the fundamental legal steps involved in the acquisition of shares of an existing corporation or limited liability company:

**Table 14**  
**LEGAL STEPS AND COSTS**

FORMALITY	S.A.	S.L.
<b>Attestation by public authenticating officer</b>	Necessary where required by Spanish law or by the bylaws or where so agreed by the parties.	Always required.
<b>Documentation to be provided to the notary</b>	<ul style="list-style-type: none"> <li>Title to the shares being transferred.</li> <li>Powers of attorney, as the case may be, to appear in the name of the buyer or seller, as appropriate. If the powers of attorney were granted abroad, they must be duly legalized (See requirement 5 under section 4 above).</li> <li>N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller (see section 3 above).</li> <li>Declaration regarding the beneficial owner, from both the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the deed itself (see requirement 4 under section 4 above).</li> <li>Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).</li> </ul>	
<b>Subsequent declaration of the investment to the DGI</b>	<p>Filing of form D-1A at the Ministry of Economy, Industry and Competitiveness.</p> <p>This form must include the protocol number and date of the public document formalizing the investment, must be signed by telematic means by the individual or legal entity making the investment and countersigned by the public authenticating officer, and filed by telematic means via the website of the Directorate-General of International Trade and Investment (DGI).</p> <p>In some cases, a prior declaration is required (see Chapter 1, section 8 for further information).</p>	
<b>Payment of transfer tax and stamp tax under the “transfers for consideration” heading</b>	See Chapter 3.	
<b>Costs</b>	<p>Depending on the Spanish public authority before which the acquisition is made:</p> <ul style="list-style-type: none"> <li>Notary fee: the scale applicable for the formation of a branch is also applicable here.</li> <li>Fee of Spanish Consul abroad: the fee will be determined in the legislation in force on notarial fees.</li> </ul>	

In relation to this form of investment, with effect from January 1, 2017, shareholders of limited liability companies and (unlisted) corporations are recognized a right of withdrawal if at least one-third of the profit obtained from pursuit of the corporate purpose in the preceding year is not distributed as a dividend<sup>32</sup>. In particular, this right is recognized as from the fifth year following the registration of the company at the Commercial Registry to shareholders who voted in favor of the distribution of dividends,

who will have a period of one month as from the date of the annual shareholders' meeting in which to exercise this right.

## 8.2. Acquisition of real estate located in Spain

Set out below are the main legal formalities to be performed for the acquisition of real estate located in Spain:

Table 15

### ACQUISITION OF REAL ESTATE LOCATED IN SPAIN

FORMALITY	ACQUISITION OF REAL ESTATE LOCATED IN SPAIN
<b>Attestation by public authenticating officer</b>	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.
<b>Documentation to be provided to the notary</b>	<ul style="list-style-type: none"> <li>Title to the property.</li> <li>Powers of attorney, as the case may be, to appear in the name of the buyer or seller, as appropriate. If the powers of attorney were granted abroad, they must be duly legalized (See requirement 5 under section 4 above).</li> <li>N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller.</li> <li>Declaration regarding the beneficial owner, both for the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the sale and purchase deed itself (see requirement 4 under section 4 above).</li> <li>Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).</li> </ul>
<b>Subsequent declaration of the investment to the DGCI</b>	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).
<b>Taxes</b>	See Chapter 3.
<b>Registration at the relevant Property Registry</b>	The acquisition must be registered at the relevant Property Registry as soon as the sale and purchase deed has been formalized and the related taxes have been paid in order to ensure that acquirer's property rights are duly protected.
<b>Costs</b>	<ul style="list-style-type: none"> <li>Notary fee: the scale applicable for the formation of a subsidiary is also applicable here.</li> <li>Fee of Spanish Consul abroad: the fee will be determined in the legislation in force on notarial fees.</li> <li>Property Register fees: for guidance purposes, the official rates amount to €24 if the value of the property does not exceed €6,010, plus a variable rate of between 0.00175% and 0.0002% . The total fee is capped and may not exceed €2,181.</li> </ul>

<sup>32</sup> Article 348.bis of Legislative Royal Decree 1/2010, of July 2, 2010, approving the Revised Capital Companies Law, the application of which was suspended until December 31, 2016.

### 8.3. Acquisition of a business

As an alternative to the sale and purchase of shares in Spanish companies, the investment in Spain could be made by acquiring

a business, either through an agreement for the sale and purchase of the assets and liabilities of a Spanish company, or through a global transfer of the assets and liabilities of a company.

Table 16

#### ACQUISITION OF A BUSINESS

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
<b>Requirements</b>	If the seller or buyer is a legal entity and the sale or purchase, respectively, are of an essential asset (i.e. the amount of the transaction exceeds 25% of the value of the assets that appear in the last approved balance sheet), the transaction must be approved by the shareholders' meeting of the selling company or of the buying company, as appropriate.	Under the Structural Modifications Law: <ul style="list-style-type: none"> <li>• Global transfer plan, drawn up by the directors of the transferring company;</li> <li>• Report applying and justifying the global transfer plan drawn up by the directors of the transferring company;</li> <li>• Approval of the global transfer by the shareholders of the transferring company;</li> <li>• Publication of the resolution on the global transfer approved by the shareholders of the transferring company in the Official Gazette of the Commercial Registry and in a large circulation newspaper in the province where the transferring company has its registered office<sup>33</sup>.</li> <li>• Expiration of the statutory period for objection by creditors: one month from the date of publication of the last notice of the global transfer resolution<sup>34</sup>.</li> <li>• Execution of a public deed before a notary (see formality below "Documentation to be provided to the notary").</li> <li>• Registration at the Commercial Registry of the transferring company (effectiveness of the transfer) (see formality below "Registration at the appropriate Registry").</li> </ul>
<b>Attestation by public authenticating officer</b>	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.	

<sup>33</sup> The resolution approving the global transfer need not be published where the resolution is notified individually in writing to all of the shareholders and creditors. In addition, the global transfer plan and the directors' report must be made available to the workers' representatives.

<sup>34</sup> In the case of notification in writing to all of the shareholders and creditors, one month from the sending of the notification to the last one.

Table 16 (Cont.)

ACQUISITION OF A BUSINESS

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
<b>Documentation to be provided to the notary</b>	<ul style="list-style-type: none"> <li>Title of ownership of the assets.</li> <li>Powers of attorney, if applicable, to appear on behalf of the seller and buyer, as appropriate. If granted abroad, it must be duly legalized (see requirement 5 of section 4 above).</li> <li>Spanish N.I.E./N.I.F./D.N.I. of the seller and buyer.</li> <li>Declaration regarding the beneficial owner, both for the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the sale and purchase deed itself (see requirement 4 under section 4 above).</li> <li>Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).</li> </ul>	<ul style="list-style-type: none"> <li>Title of ownership of the assets.</li> <li>Powers of attorney, if applicable, to appear on behalf of the transferor and transferee. If granted abroad, it must be duly legalized (see requirement 5 of section 4 above).</li> <li>Spanish N.I.E./N.I.F. of the transferor and transferee.</li> <li>Declaration regarding the beneficial owner, both for the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the global transfer deed itself (see requirement 4 under section 4 above).</li> <li>Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).</li> <li>Certificate of the resolution of the shareholders' meeting or the decision of the sole shareholder of the transferring company approving the global transfer.</li> <li>Notice of the transfer in the Official Gazette of the Commercial Registry and in a large circulation newspaper in the province where the registered office is located, if applicable.</li> </ul>
<b>Subsequent declaration of the investment to the DGI</b>	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).	
<b>Taxes</b>	See Chapter 3.	
<b>Registration at the appropriate Registry</b>	As soon as the purchase deed has been formalized before a notary and the related taxes have been paid, it will be necessary to register the immovable property at the appropriate Property Registry, as well as the movable property at the Movable Property Registry, in order to ensure that the acquirer's property rights are duly protected.	The transfer will take effect upon registration at the Commercial Registry pertaining to the registered office of the transferring company. If the company is extinguished as a result of the transfer, its registry entries will be cancelled. In addition, the directors of the participating companies must submit a copy of the global transfer plan for filing at the Commercial Registry.
<b>Costs</b>	<ul style="list-style-type: none"> <li>Notary fee: the scale applicable for the formation of a subsidiary is also applicable here.</li> <li>Fee of Spanish Consul abroad: the fee will be determined in the legislation in force on notarial fees.</li> <li>Property Register fees: for guidance purposes, the official rates amount to €24 if the value of the property does not exceed €6,010; thereafter rates of between 0.175% and 0.02% are applied. The total fee is capped and may not exceed €2,181.</li> <li>Movable Property Registry fee: for guidance purposes, the fee amounts to €2.40 if the value of the property does not exceed €60; thereafter rates of between €6 and €13 apply up to a property value of €18,000. For any excess over €18,000, a fee of €1.20 will apply to each €3,000 of excess.</li> </ul>	<ul style="list-style-type: none"> <li>Commercial Registry fee: for guidance purposes, the fee amounts to €6.010121 if the value of the assets does not exceed €3,005.06; thereafter rates of between 0.1% and 0.005% apply. In any event, the overall fee may not exceed €2,181.673939.</li> </ul>



## 8.4. Venture capital entities

Another way to invest in Spain is to take up temporary stakes in the capital of companies established in Spain (i.e. non-real estate, non-financial and unlisted companies) by forming venture capital entities. Venture capital is defined as those investment strategies that channel financing directly and indirectly to companies, maximize the value of the company through management and professional advice, and divest from the company with a view to earning high gains for the investors. Through this channel, it is possible to invest both in start-up business projects (venture capital), and in already mature companies with a proven track record of profitability (private equity).

The current regulation of venture capital in Spain, recently introduced by Law 22/2014 of November 12, regulating venture capital entities, other closed-end collective investment undertakings and the management companies of closed-end collective investment undertakings (the “Venture Capital Law”), relaxes the legislative framework for these entities with, among others, the aim of helping them to raise more funds to be able to finance a larger number of companies.

## 9. Dispute resolution

### 9.1. Court proceedings

Judiciary Organic Law 6/1985, of July 1, regulates the constitution, operation and governance of courts and tribunals in Spain. For judicial purposes, the State is organized on a territorial basis into municipalities, judicial districts, provinces and Autonomous Communities, in which the Justices of the Peace, the Courts of First Instance, Examining Courts, Commercial Courts, Criminal Courts, Judicial Review Courts, Labor Courts, Provincial Appellate Courts and High Courts have jurisdiction. The Supreme Court and the National Appellate Court (*Audiencia Nacional*) (the latter only for certain specific matters) have jurisdiction over the entire national territory. The Supreme Court is the highest judicial authority with

the sole exception of the guarantee of constitutional rights, which are safeguarded by the Constitutional Court.

Law 1/2000, the Spanish Civil Procedure Law, came into force on January 8, 2001. Criminal, labor and administrative proceedings are governed, respectively, by the Criminal Procedure Law approved by the Royal Decree dated September 14, 1882, Law 36/2011, of October 10, 2011, regulating the labor and social security jurisdiction, and Judicial Review Procedure Law 29/1998.

Although the Spanish litigation system should be considered as a continental law system, certain features of the Civil Procedure Law have their roots in the common law system. An example of this is the predominance of the oral proceeding. The Civil Procedure Law reduces formalities and promotes more expeditious proceedings and a quicker and more efficient response from the courts.

Spain has signed numerous bilateral and multilateral treaties on the recognition and enforcement of foreign judicial decisions.

### 9.2. Arbitration

Arbitration is increasingly viewed as a genuine alternative for the settlement of commercial disputes. Companies, aware of the greater speed, efficiency and flexibility of arbitration compared to action before the courts, are increasingly keen to turn to arbitration. Furthermore, Spanish courts increasingly support arbitration, both in terms of arbitration agreements and the enforcement of arbitral awards.

Arbitration Law 60/2003 of December 23, 2003 (the “Arbitration Law”) enables both individuals and companies to enter into agreements to submit to one or more arbitrators any disputes that have arisen or may arise on matters the regulation of which is not subject to any legal restrictions. The Arbitration Law is almost entirely inspired by the UNCITRAL Model Law on International Commercial Arbitration. Royal Decree 231/2008,

of February 15, regulates the Consumer Arbitration System for disputes arising between consumers or users and companies in relation to the legal or contractual rights granted to consumers.

The Arbitration Law allows for the granting of interim measures by the arbitrators. This power does not oust the jurisdiction of the courts under the Civil Procedure Law to grant interim measures while a decision is pending in an arbitration proceeding. The jurisdiction of courts and arbitrators to grant interim measures is concurrent, meaning that parties can request interim measures from the arbitral tribunal or from the court, without distinction.

Under the Arbitration Law it is possible to enforce an arbitral award handed down in Spain even where proceedings to set aside the award have already been brought. In this case, a court may only stay the enforcement of the award if the party against whom the award is being enforced posts security for an amount equal to the amount set out in the award, plus any potential damages arising from the delay in enforcement of the award.

The grounds for refusal to recognize or enforce arbitral awards contained in the Arbitration Law are based on the contents of the UNCITRAL Model Law, which in turn is based almost in its entirety on the New York Convention of 1958. Spain has ratified the New York Convention of 1958 and the European Convention on International Commercial Arbitration signed in Geneva on April 21, 1961.

Spain’s adherence to a Model Law-inspired arbitration regime makes international arbitration in Spain more accessible for cross-border practitioners and their clients. The Arbitration Law brings Spain ever closer to becoming an ideal venue for international arbitration, particularly where Latin American interests are involved, given Spain’s convenient geographical location in southern Europe, its competitive cost structure compared to other European jurisdictions and its linguistic and cultural ties to Latin America.

## 10. Appendix

### Appendix I

#### TABLE SUMMARIZING THE TAX TREATMENT GIVEN TO THE VARIOUS WAYS OF INVESTING IN SPAIN

WAYS OF INVESTING IN SPAIN	TAX TREATMENT
<b>Incorporation of a subsidiary (Corporation (S.A.) / Limited liability company (S.L.))</b>	General corporate income tax rules pursuant to the Corporate Income Tax Law (See Chapter 3, section 2.1 for more detailed information).
<b>Formation of a branch</b>	Nonresident income tax, with permanent establishment (See Chapter 3, section 2.3.1 for more detailed information).
<b>Economic Interest Grouping (EIG), Temporary Business Alliance (UTE) and joint venture</b>	<p>Special rules for economic interest groupings, both Spanish and European, and temporary business alliances. In particular:</p> <ul style="list-style-type: none"> <li>• The part of the tax base attributable to members resident in Spain is not subject to corporate income tax.</li> <li>• The tax bases, tax credits and tax relief and the withholdings and prepayments of EIGs or UTEs are attributed to the resident members.</li> <li>• Dividends distributed to nonresident members of Spanish EIGs or UTEs will be taxed pursuant to the Nonresident Income Tax Law and to the tax treaties signed by Spain.</li> </ul> <p>(See Chapter 3, sections 2.1.12 for more detailed information).</p>
<b>Distribution agreement</b>	<p>The tax treatment of nonresidents in Spain who contract with Spanish distributors will depend on whether or not said contracting gives rise to the existence of permanent establishment in Spain for the nonresidents:</p> <ul style="list-style-type: none"> <li>• If a permanent establishment exists, it will be taxed according to the rules on permanent establishments stipulated under the Nonresident Income Tax Law or in the applicable tax treaties (See Chapter 3, section 2.3.1 for more detailed information).</li> <li>• If a permanent establishment does not exist, it will be taxed pursuant to the same legislation, but in connection with taxpayers without a permanent establishment. In general, the income will be characterized as business profits, which are usually exempt where a tax treaty can be applied (See Chapter 3, section 2.3.2 for more detailed information).</li> </ul> <p>Whether or not a permanent establishment exists will depend, in general, on whether the nonresident is deemed to be distributing in Spain through a fixed place of business or an independent agent.</p>
<b>Agency agreement</b>	<p>The tax treatment is similar to that stipulated for distribution agreements.</p> <p>Whether or not a permanent establishment exists will depend, in general, on whether or not the agent has powers to bind the nonresident.</p> <ul style="list-style-type: none"> <li>• Where a permanent establishment exists (See Chapter 3, 2.3.1 for more detailed information).</li> <li>• Where a permanent establishment does not exist (See Chapter 3, section 2.3.2 for more detailed information).</li> </ul>
<b>Commission agency agreement</b>	<p>The tax treatment is similar to that stipulated for distribution and agency agreements.</p> <p>Whether or not a permanent establishment exists will depend, in general, on whether or not the commission agent has powers to bind the nonresident principal.</p> <ul style="list-style-type: none"> <li>• Where a permanent establishment exists (See Chapter 3, section 2.3.1 for more detailed information).</li> <li>• Where a permanent establishment does not exist (See Chapter 3, section 2.3.2 for more detailed information).</li> </ul>

Appendix (Cont.)

TABLE SUMMARIZING THE TAX TREATMENT GIVEN TO THE VARIOUS WAYS OF INVESTING IN SPAIN

WAYS OF INVESTING IN SPAIN	TAX TREATMENT
<p><b>Franchising agreement</b></p>	<p>The payment made by the franchiser to the franchisee may be given the following treatments, depending on the services provided and rights granted:</p> <ul style="list-style-type: none"> <li>• it may be treated in part as a royalty and in part as business profits; or</li> <li>• it may be treated only as a royalty.</li> </ul> <p>(See Chapter 2, section 6.2.5 for more detailed information).</p>
<p><b>Sale and purchase of business (assets and liabilities or global transfer of assets and liabilities)</b></p>	<p>The main tax implications in a sale and purchase of a business relate to VAT, transfer tax under the “transfers for consideration” heading and stamp tax. Accordingly:</p> <ul style="list-style-type: none"> <li>• If all of the transferred assets and liabilities can be considered an independent economic unit, the sale and purchase will not be subject to VAT. In this case, if the transferred assets include real estate, the transfer of these assets will be subject to transfer tax under the “transfers for consideration” heading.</li> <li>• If all of the transferred assets and liabilities cannot be considered an independent economic unit, the sale and purchase will be subject to VAT. In this case, an analysis will have to be performed as to whether the transferred assets qualify for any exemption. If any of the transferred assets can be registered and the transaction is recorded in a public deed, stamp tax will also be triggered.</li> </ul>

# Chapter

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## Tax system

# 3

# 3

## Tax system

The Spanish tax system is modern and competitive. The tax burden in Spain (i.e. tax and social security contributions as a percentage of GDP) is almost five and a half points lower than the average ratio for the EU-28 zone.

The Spanish Tax Agency (AEAT), which has been recognized as one of the most innovative and efficient tax agencies in the world, offers the taxpayers a wide range of services in order to facilitate the fulfillment of their tax obligations. For this purpose, among other measures, it provides the taxpayers with computer programs

that facilitate the preparation of their tax forms and promotes its electronic submission and payment, by using an electronic official certificate.

Finally, the tax reform carried out in 2014 simplified the tax obligations of the taxpayers and, in general terms, reduced their tax burden.

The main taxes of the Spanish tax system are analyzed in this Chapter.

# 3

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## 1. Introduction

The Spanish tax system is modern and competitive. The Spanish State Tax Agency has distinguished itself through its technological leadership within the Government. It is one of the most modernized European tax agencies, in the vanguard of offering electronic public services, such as the possibility of obtaining tax certificates or filing tax returns online (indeed, online filing is obligatory in many cases).

This tax system comprises three kinds of taxes: “impuestos” (true taxes), “tasas” (dues and fees) and “contribuciones especiales” (special levies). The “tasas” and “contribuciones especiales” are collected in return for a public service provided by the authorities or for any type of benefit as a result of public works or services.

From a territorial perspective, taxes in Spain are levied by the Central Government, by the Autonomous Communities (regional) and by local authorities. Due to their relevance, this Chapter concentrates exclusively on the taxes levied by the Central Government, including those administered and collected by regional and local authorities, albeit with a brief reference to the special regimes applicable in the Canary Islands, the Basque Country and Navarra.

Lastly, it should be highlighted that, in order to simplify taxpayers’ tax obligations and, in general, reduce their tax burden, a tax reform was carried out at the end of fiscal year 2014. That reform had a particular impact on corporate income tax, personal income tax, nonresident income tax, value added tax, Canary Island general indirect tax, and some special and excise taxes.

## 2. Central Government taxes

National taxes in Spain can be classified as follows:

- Direct taxes:
  - On income:
    - Corporate income tax.
    - Personal income tax.
    - Nonresident income tax.
  - On assets (affecting only individuals):
    - Wealth tax.
    - Inheritance and gift tax.
- Indirect taxes:
  - Value added tax (VAT).
  - Transfer tax and stamp tax.
  - Excise taxes.
  - Customs duties on imports.
  - Tax on insurance premiums.

Given its importance, we refer herein to the formal reporting obligation relating to assets and rights held abroad (introduced for the first time for year 2013 in relation to the assets and rights owned in 2012), the breach of which affects personal income tax and corporate income tax.

### 2.1. Corporate income tax<sup>1</sup>

The regulation of corporate income tax, for fiscal years starting on or after January 1, 2015, is basically contained in Corporate Income Tax Law 27/2014, of November 27, 2014, and in Royal Decree 634/2015, of July 10, 2015, approving the Corporate Income Tax Regulations. These recent legislative texts have introduced important changes in the regulation of this tax.

A series of major changes have also been made to this Law during 2016, some of which take effect for tax periods commencing as from January 1, 2016 and others in tax periods commencing as from January 1, 2017.

The most noteworthy of the changes applicable to tax periods commencing as from 2016, introduced towards the end of 2016, are the following: (i) the establishing of new limits on the offsetting of tax losses and deductions for the avoidance of double taxation at domestic and international levels, which depend on the net revenues of the taxable person concerned, and (ii) the obligation to reverse portfolio impairment losses deducted prior to 2003 in at least five equal annual portions over the next five years.

Among the main changes applicable for fiscal years commencing as from 2017, attention is drawn to the introduction of numerous amendments which either restrict or prevent the use of impairment losses and losses deriving from shares and ownership interests in entities and permanent establishments located abroad, when the positive income obtained (dividends and gains) which derives from the holding of such shares or interests and permanent establishments is exempt, or when certain requirements in terms of minimum taxation are not met by the investee.

A summary is provided in the following sections of the basic rules applicable for years commencing as from January 1, 2017, and where necessary (because there is a change with respect

<sup>1</sup> Exhibit I: Tax incentives for investment.

to the legislation in force at the end of 2015), those changes introduced during 2016 which are effective as from 1 January of that year shall be indicated. Certain transitional rules shall also be discussed where these are considered to be of interest.

For more detailed information on the legislation applicable to fiscal years commencing before January 1, 2017 (apart from those changes for 2016 which were approved in 2016 itself) we shall refer the reader to the Guide corresponding to the year in question.

### 2.1.1. Tax Residence

The key factor in determining the application of corporate income tax is “residence”. A company is deemed to be resident in Spain for tax purposes if it meets any of the following conditions:

- It was incorporated under Spanish law.
- Its registered office is located in Spain.
- Its place of effective management is in Spain.

The Tax Administration can presume that entities, theoretically resident in tax havens or territories with zero taxation, have their tax residence in Spain when their principal assets directly or indirectly consist of property situated in Spain or rights that are exercised there, or when their principal activity is carried on in Spain, unless it is proven that their administration and effective management are handled in another country or territory and that their establishment and operation in Spain are for valid and compelling commercial and business reasons and not just as a means of managing securities or assets.

In principle, in order to determine which entities reside in tax havens, the provisions of article 1 of Royal Decree 1080/1991, of July 5 (listing 48<sup>2</sup> territories classified as such) will apply.

As from 2015, and in accordance with the new wording given to Additional Provision One of Law 36/2006 (establishing new criteria for determining whether a particular territory is or is not to be classed as a tax haven), the Directorate General of Taxes has published a report on the validity of the current list of tax havens, according to which the possibility of such list being automatically updated is eliminated. The list must be expressly updated, in accordance with the criteria contained in aforementioned Additional Provision One of Law 36/2006, which came into force on 1 January 2015.

Those criteria are as follows:

- a) The existence with that country or territory of an international tax treaty with an exchange of information clause, a tax information exchange agreement or the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and of the European Council, amended by the 2010 Protocol, which is applicable.
- b) The absence of an effective exchange of tax information, on the terms set forth below.
- c) The results of the peer reviews carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

<sup>2</sup> The following States are currently deemed tax havens: Emirate of the State of Bahrain, Sultanate of Brunei, Gibraltar, Anguilla, Antigua and Barbuda, Bermuda, Cayman Islands, Cook Islands, Dominican Republic, Granada, Fiji, Falkland Islands, Isle of Man, Mariana Islands, Islands of Guernsey and Jersey, Mauritius, Montserrat, Republic of Nauru, Solomon Islands, Saint Vincent and the Grenadines, Saint Lucia, Turks and Caicos Islands, Republic of Vanuatu, British Virgin Islands, United States Virgin Islands, Hashemite Kingdom of Jordan, Lebanese Republic, Republic of Liberia, Principality of Liechtenstein, Macao, Monaco, and Republic of the Seychelles.

In turn, the status of “zero-taxation country or territory” will be given to countries or territories which do not apply a tax identical or analogous to personal income tax, corporate income tax or nonresident income tax. For a tax to be considered identical or analogous to the above taxes, its purpose must be to tax income and/or gains, regardless of whether the subject-matter of the tax consists of the income and/or gains, the revenues or their indicative elements<sup>3</sup>.

In addition, where Spain has signed a tax treaty, a tax of an identical or analogous nature which applies for the above-mentioned purposes will be deemed to exist.

Lastly, the countries or territories with which Spain considers there is effective exchange of information are those which have executed the following:

- A tax treaty which includes an exchange-of-information provision (provided that there are no express limitations on its scope);
- A tax information exchange agreement (provided that its suitability for the above purposes has been expressly established); or
- The Convention on Mutual Administrative Assistance in Tax Matters of the OECD and of the Council of Europe, amended by the Protocol of 2010.

In the event of a conflict of residence, the provisions of Spain’s tax treaties with other countries will, where applicable, prevail.

Resident companies are taxed on their worldwide income. Taxable income includes all the profits from business activities, income

<sup>3</sup> It is also established that the obligatory contributions effectively made by an individual to a public welfare system to cover contingencies similar to those covered by the Social Security will be classified as an identical or substantially similar tax for personal income tax purposes, as long as the country or territory concerned does not levy a tax that is identical or substantially similar to personal income tax.



from investments not relating to the regular business purpose, and income derived from asset transfers.

In order to determine the tax liability of corporate income taxpayers, however, regard must also be had to the provisions of Spain's tax treaties with other countries which, where applicable, can affect the determination of taxation in Spain.

Taxation of nonresident entities is regulated separately under the Revised Nonresident Income Tax Law approved by Legislative Royal Decree 5/2004, of March 5, amended by Law 26/2014, of November 27, 2014. This tax was mainly implemented in regulations through Royal Decree 1776/2004, of March 5, 2004. The most important aspects of nonresident income tax (IRNR) legislation are discussed in section 2.3.

The following section is structured in the same way as the corporate income tax assessment.

## 2.1.2. Taxable income

There are three methods for determining taxable income: the direct assessment method, the indirect assessment method and the objective assessment method.

Under the direct assessment method (which is generally applicable), taxable income is defined as the difference between period revenues and period expenses. Taxable income is based on the income disclosed in the financial statements. However, as a result of applying accounting principles, at times the book income cannot be deemed representative of the taxpayer's actual contribution capacity and, thus, must be adjusted by applying the tax principles established in the legislation of the tax.

In general, the expenses relating to the business activity are deductible if they are properly accounted for and justified, and if the timing of recognition rules have been fulfilled.

The main criteria for calculating the taxable income are as follows:

### 2.1.2.1. Revenue and expense allocation criteria

#### a) General rules and principles

The tax principles for allocating revenues and expenses to determine taxable income generally coincide with accounting principles. In this regard, the method generally applicable for recognizing revenue and expenses is the accrual method.

As an exception, expenses recorded in a fiscal year subsequent to their accrual, or revenues recorded in a fiscal year prior to their accrual, are allocated for tax purposes in the year in which they are recorded, provided that this does not give rise to lower taxation than that which would have applied had the expenses and revenues been accounted for using the accrual method. The tax authorities have been ruling that there is lower taxation when expenses incurred in statute-barred years are deducted in later periods.

For certain operations (such as sales in which payment of the price is deferred), the possibility is envisaged of companies being able to apply allocation criteria other than the accrual method.

In the event of applying allocation criteria which differ from those envisaged in the tax rules, it must be demonstrated that there are grounds to substantiate such an approach and the criteria to be applied must be approved by the tax authorities.

The above notwithstanding, it should be borne in mind that as a general rule, the accounting recognition principle must be complied with, meaning that all expenses must be recorded for accounting purposes in order to qualify for deduction (subject to certain exceptions such as unrestricted depreciation).

For tax purposes, in the event of any conflict between an accounting principle and a principle applicable for tax purposes, it is the latter which must prevail.

#### b) Time limits on the deductibility of certain losses

The law imposes time limits on the allocation of certain types of losses. These are therefore losses which, rather than being included in the tax base when incurred, are included later on, and in some cases are reduced in order to avoid situations of non-taxation.

For example:

b.1. **Losses generated on intra-group transfers of shares** or holdings, property, plant and equipment, investment property, intangible fixed assets, debt securities and permanent establishments abroad are not deductible.

As a general rule, these losses are to be included in the tax period in which (i) the assets are transferred to third parties not related to the group, (ii) the acquiring or transferring entities cease to form part of the group, (iii) the assets are deregistered by the acquirer, or (iv) the activity of the establishment ceases or the transferred company is dissolved (except in the case of a restructuring). In the case of amortizable assets, the loss may be included in all cases during the remaining useful life, applying the amortization method used up to that date.

For the inclusion of losses generated on intra-group transfers of shares or holdings in entities or on the transfer of permanent establishments, there are a series of special rules applicable which will be set out in section 2.1.6.

b.2. **Impairment losses** on tangible fixed assets, investment properties and intangible fixed assets, including goodwill,

equity instruments and debt securities (fixed income) do not qualify for deduction.

These impairment losses are deductible:

- In the case of non-amortizable fixed assets, in the tax period in which such assets are transferred or deregistered.
- In the case of amortizable assets forming part of the property, plant and equipment, in the tax periods of remaining useful life, applying the amortization method used in relation to those assets, unless they are transferred or deregistered previously, in which case they will be included on occasion of that transfer or deregistration.

There are a series of special rules applicable in respect of impairment losses on holdings in entities, which will be set out under section 2.1.6.

b.3. **Certain provisions which have generated deferred tax assets (DTAs)<sup>4</sup>** are in general to be included in the tax base, subject to a limit of 70%<sup>5</sup> of the positive tax base prior to their inclusion, to the application of the capitalization reserve, and to the offset of tax losses. Specifically, this regime applies to the following provisions:

- The provisions recorded for impairment of receivables or other assets derived from insolvency of debtors not related to the taxpayer, not owed by public law

<sup>4</sup> DTAs can, in certain circumstances and subject to certain requirements being met, be converted into receivables from the tax authorities. Starting in 2016, monetization requires having generated taxable income in the year when the provisions are recorded or otherwise, with respect to provisions of fiscal years 2008-2015, the payment of a monetary amount is made if there is not sufficient net tax payable.

<sup>5</sup> This general limit was 60% for tax periods commencing in 2016.

entities, and which have not been deducted due to the elapsing of the six-month period since their maturity.

- The provisions or contributions to employee welfare systems and, as the case may be, pre-retirements that have not been deductible.

The general limit of 70%<sup>6</sup> does not apply (with effect for tax periods commencing in 2016) to entities whose net revenues for the 12 months immediately preceding the start of the tax period amounts to at least 20 million euros. In these cases, the limits are lower:

- 50% where net revenues amount to between 20 and 60 million euros.
- 25% where net revenues amount to over 60 million euros.

### 2.1.2.2. *International “fiscal transparency” regime (“Controlled Foreign Corporations” provisions)*

Under corporate income tax rules, tax is levied on the “obtainment of income”; however, under fiscal transparency rules, tax is levied not on the income actually obtained by the taxpayer but on that obtained by a nonresident entity in which the taxpayer owns a holding, where certain circumstances are present. In short, it is an attribution (pass-through) regime.

The fiscal transparency regime applies where:

- The taxpayer (Spanish company) on its own or jointly with related persons or entities, holds 50% or more of the capital stock, equity, voting rights or results of the nonresident company.

<sup>6</sup> 60% for tax periods commencing in 2016.

- The tax (corporate income tax or similar) paid by the nonresident on the attributable net income must be less than 75% of that which would have been payable under Spanish regulations.

The attribution must be done by the entity that meets the holding requirement mentioned, where it owns a stake directly or indirectly in the nonresident entity. In this last case, the income to be attributed will be that relating to the indirect holding.

The income to be attributed will be the following:

- a) Case I: Total attribution of the income of the nonresident entity

The whole income shall be attributed where the nonresident entity does not have an organization of material and human resources to carry out its activity, even where its transactions are recurrent. However, the income of the nonresident entity composed of dividends, shares in income or gains on the transfer of holdings shall not be attributed if they derive from an entity in which the nonresident owns a stake (directly or indirectly), of more than 5%, if this holding is owned for at least one year, where, moreover, the following requirements are simultaneously met:

- The former directs and manages its shareholding.
- That entity has the relevant organization of material and human resources, and the investee is not deemed an asset-holding entity.

This case will not apply if it is proven that the transactions are carried out with the material and human resources existing at an entity not resident in Spain and belonging to the same group, on the terms of article 42 of the Commercial Code, irrespective of its residence and of the obligation to prepare consolidated financial statements, or that its formation and operations are based on valid economic reasons.

b) Case II: Partial attribution of the income of the nonresident entity

In the rest of cases in which the transparency rules apply, the taxpayer must attribute in its tax base only the income of the nonresident entity deriving from:

- a. Ownership of real estate or rights *in rem*, unless such real estate is used for a business activity or is assigned to another nonresident group company (as defined in Article 42 of the Commercial Code).
- b. Share in equity and transfer to third parties of capital (with certain exceptions, such as financial assets held in order to meet statutory requirements, etc.).
- c. Capitalization and insurance operations, the beneficiary of which is the entity itself.
- d. Industrial and intellectual property, technical assistance, movable property, image rights and lease or sublease of businesses or mines, on the terms established in subarticle 4 of article 25 of Law 35/2006.
- e. Transfer of the assets or rights mentioned in the previous cases and which generate income.
- f. Financial derivative instruments, except those designated to cover a specifically identified risk derived from the performance of economic activities.
- g. Lending, financing, insurance and service activities (except services directly related to export activities) with related resident companies which incur deductible expenses. The attribution does not take place if more than 50% of this type of income derives from transactions carried out with unrelated entities.

In any case, under this form of transparency, there is no attribution either of the income specified in letters b and e, where it derives from an entity in which the nonresident owns a direct or indirect holding of at least 5% and this holding is owned for at least a year, where the following two requirements are met simultaneously:

- The former engages in directing and managing its investment.
- That entity has the relevant organization of material and human resources, and the investee is not deemed an asset-holding entity.

There is also an exception to the applicability of the regime for the income addressed in letters a to f above (i.e., the exception does not apply to the income mentioned in letter g when the attributable income is below 15% of the total income obtained by the nonresident entity.

Moreover, the income mentioned in letters a to g shall not be attributed where it relates to non tax-deductible expenses of entities resident in Spain.

Other rules to be taken into account are the following:

- a) The amount of taxable income to be attributed will be determined in proportion to the share in income and, in the absence thereof, in proportion to the share in the capital, equity or voting rights of the investee and will be determined in accordance with the principles and criteria established in the corporate income tax legislation. In any case, the attributed net income can never be higher than the total net income of the nonresident entity.
- b) The exchange rate for the attribution of income will be that in force at the nonresident entity's fiscal year-end.

c) The income shall be attributed in the period running from the last day of the nonresident entity's fiscal year (which may not exceed 12 months for this purpose).

d) Given that tax is levied on the "attribution" of income, the dividends relating to the attributed income are not taxed.

e) A tax credit can be taken on the amount of corporate income tax (or similar) actually paid by the nonresident entity and its subsidiaries as defined by law (in proportion to the net income attributed) and the tax actually paid as a result of the distribution of dividends. The limit for this tax credit is the Spanish tax. However, no tax credit is permitted for taxes paid in tax havens.

f) Where the investee is resident in a country or territory classed as a tax haven it will be presumed that:

- a. The amount paid by the nonresident entity in relation to a tax identical or similar to corporate income tax, is lower than the 75% that would have been applicable in accordance with the corporate income tax rules.
- b. The income obtained by the investee arises from the mentioned classes of income.
- c. The income obtained by the investee is 15% of the acquisition cost of the holding.

These assumptions are refutable.

g) Lastly, the international fiscal transparency rules will not apply where the entity not resident in Spain is resident in another Member State of the European Union, where the taxpayer evidences that (i) the formation and operation of the nonresident is based on valid economic reasons and (ii) it performs business activities.

### 2.1.2.3. Market price valuation

As a general rule, assets must be valued under the methods provided in the Commercial Code. Despite this fact, as a general rule, any variations in their value caused by applying the fair value method will have no effect for tax purposes if they do not have to be taken to income.

Furthermore, special rules are established with respect to the treatment of decreases in value, arising due to the application of the fair value criterion, of shares or holdings in entities, as shall be discussed in section 2.1.6.

Notwithstanding the above, in certain cases, market valuation (i.e. valuation on an arm's-length basis) must be applied for tax purposes. This method is applicable to:

- donated assets;
- assets contributed to entities and the securities received in exchange;
- assets transferred to shareholders in the event of dissolution, the withdrawal of shareholders, capital reductions with refund of contributions, paid-in surplus and the distribution of income;
- assets transferred as a result of mergers, absorptions and full or partial spin-offs;
- assets acquired through swap transactions;
- assets acquired as a result of exchanges or conversions.

It should be noted that current legislation provides for a tax neutrality regime when certain of the transactions described above are carried out as part of a corporate reorganization, to which we will refer hereinbelow.

Transactions between related entities must be valued at arm's-length value, i.e., the value which would have been agreed between independent persons or entities under normal market conditions.

Accordingly, the Tax Administration may verify both whether the valuation given to transactions performed between related entities is in accordance with arm's-length value and the nature and legal classification of the transactions, and where appropriate, the Tax Administration may make the adjustments which it considers appropriate to any transactions subject to corporate income tax, personal income tax or nonresident income tax that have not been valued at arm's length. The Tax Administration's valuation of a certain transaction will also be applicable to the other related persons or entities involved in that transaction, and under no circumstances will the Administration's valuation give rise to taxation of higher income for corporate income tax, personal income tax or nonresident income tax, than that actually derived from the transaction for the persons or entities as a whole that performed it.

As a result of this kind of inspection, therefore, the Administration can make the so-called primary and secondary adjustments. The primary adjustment is the traditional adjustment derived from the difference between the price agreed and the market value in a specific transaction. For example, if a Spanish entity receives management services from its Belgian parent and pays some fees which exceed the market value of those services, the primary adjustment will entail a reduction (for tax purposes) in the expense of the Spanish company (and, thus, an increase in the taxable base subject to corporate income tax). At the same time, if the parent company were Spanish rather than Belgian, it would reduce its income subject to corporate income tax.

The secondary adjustment is a consequence of the recharacterization of the income/expense attributed as a result of the primary adjustment, according to its actual nature. In the previous example, as the subsidiary is paying the parent a price higher than the market price, it may be considered to be distributing a dividend. Thus, along with the nondeductibility of the dividend (deriving from the primary adjustment) another charge could arise, for example, in the same

case, a withholding on the payment of the dividends (unless some benefit applies that prevents that withholding), on account of the parent company's nonresident income tax.

Related entities must make available to the Tax Administration the documentation established by regulations and with the minimum content expressly specified in the tax regulations. Based on those regulations, the documentation must include (i) on the one hand, data on the group to which the taxpayer belongs, detailing its structure; the various entities making it up; the nature, amounts and flows of related-party transactions; and, in general, the group's transfer pricing policy, and (ii) on the other hand, the appropriate supporting documentation of the taxpayer, identifying the entities related to it, including a comparability analysis, as well as justification for the valuation method chosen, and any documentation supporting the valuation of its transactions.

This documentation will have a simplified content in relation to the related persons or entities whose net revenues are below €45 million, where none of the following transactions are involved:

- a. Those carried out by personal income taxpayers, in the pursuit of a business activity to which the objective assessment method applies, with entities in which they or their spouses, ascendants or descendants, individually or jointly with each other, own a holding of 25% or more in the capital or equity.
- b. Transactions consisting of the transfer of businesses.
- c. The transfer of securities or shares representing holdings in the equity of all kinds of entities not admitted to listing on any of the regulated securities markets, or which are admitted to listing on regulated markets located in countries or territories classed as tax havens.
- d. Transactions involving real estate.
- e. Transactions involving intangible assets.

The documentation will not be required in relation to the following transactions:

- a. In general, transactions carried out between entities forming the same consolidated tax group.
- b. Transactions carried out by economic interest groupings with their members or with other entities forming the same consolidated tax group.
- c. Transactions carried out in the context of public offerings or tender offers.
- d. Transactions carried out with the same related person or entity, where the consideration payable as a whole does not exceed a market value of €250,000. However, if these transactions have been carried out with entities resident in tax havens, they will have to be documented<sup>7</sup>, regardless of whether that threshold is exceeded.

Furthermore, for tax periods commencing as from January 1, 2016, due to the approval of Royal Decree 634/2015, of July 10, 2015, approving the Corporate Income Tax Regulations, important changes have been made in relation to **transfer pricing**, which include most notably the introduction of country-by-country reporting obligations<sup>8</sup>, which is an instrument for evaluating risks in the transfer pricing policy of a corporate group.

This new obligation applies to (a) entities resident in Spain that have the status of parent of a corporate group and which are not,

<sup>7</sup> Except for transactions carried out with entities that meet the following two requirements: a) they reside in a Member State of the European Union or in a State belonging to the European Economic Area with which there is an effective exchange of tax information; and b) provided that the taxpayer proves that the transactions are based on valid economic reasons and that those persons or entities perform economic activities.

<sup>8</sup> In keeping with the latest work carried out by the OECD in the context of Action 13 of the Plan established within the BEPS Project.

at the same time, subsidiaries of another resident or nonresident entity; and (b) Spanish subsidiaries of groups whose ultimate parent company (i) is not under the obligation to present this information in the jurisdiction in which it is resident, or (ii) where the tax authorities of the country or territory in which such company resides have not formalized an automatic information exchange agreement in this area (provided, in both cases, that the group has not appointed a “surrogate” entity entrusted with compliance with this obligation in a country other than Spain); and finally, (c) to Spanish subsidiaries which have been appointed by their group as the entity entrusted with the preparation and presentation of this information to the tax authorities (“surrogate entities”).

In addition, any entity resident in Spanish territory which forms part of the group which is under the obligation to present country-by-country information is required to inform the Tax Agency of the identifying particulars, country or territory and status of the entity by which such information is prepared and presented.

This obligation only applies where the revenue of the persons or entities forming part of the group as a whole, in the 12 months preceding the start of the tax period, is at least €750 million.

Lastly, the legislation regulates the procedure for advance pricing arrangements.

The legislation establishes a penalty regime for failing to provide, or for providing incomplete, inaccurate or false data in such documentation, and the fact that the arm’s-length value shown in the documentation provided by the taxpayer (it is presumed that the arm’s-length value must be shown by such documentation) differs from that declared in corporate income tax, personal income tax or nonresident income tax returns, will also constitute a serious tax infringement. In principle, therefore, incorrectly valuing a transaction is not an infringement but applying a price other than that deriving from the documentation furnished is an infringement.

For the purposes analyzed, the legislation contains a list of the persons or entities that are deemed to be related, which include,

among others: (a) an entity and its shareholders, (b) an entity and its directors, except in relation to compensation for the performance of its functions, (c) two entities of a same group, (d) an entity and another entity in which the first-mentioned entity has an indirect holding of at least 25 percent of the capital stock or equity, (e) an entity resident in Spain and its permanent establishments abroad, or an entity not resident in Spain and its permanent establishments in Spain.

Added to these cases are a number of others where dealings are established between entities or between them and individuals pursuant to kinship relationships with family members of the shareholders or directors of these entities.

It should be borne in mind that a group exists where an entity exerts or can exert control over another entity or other entities pursuant to Article 42 of the Commercial Code, regardless of where they have their residence or of the obligation to prepare consolidated financial statements.

Lastly, in order to determine the market value between related entities, the OECD methods apply, and it is up to the company to choose one or another according to the transaction to be valued:

- Comparable uncontrolled price method.
- Cost plus method.
- Resale price method.
- Profit split method.
- Transactional net margin method.
- Other generally accepted valuation methods and techniques that comply with the arm’s-length principle.

The legislation envisages the possibility for taxpayers to submit to the Tax Administration a proposal for valuing its transactions with related entities based on market conditions. If the proposal is

approved by the Tax Administration, such valuation is valid for tax purposes for a maximum period of four tax years<sup>9</sup>.

#### 2.1.2.4. *Deductibility of finance costs*

Traditionally, in Spain, finance costs have been deductible with the restrictions derived (solely) from the rules on transfer pricing (set forth above) and thin capitalization (which, moreover, only applied to cases of excess net debt with nonresident related entities not resident in the European Union, except for those residing in a tax haven). However, some years ago, the thin capitalization rule was replaced by a general limitation on the deductibility of finance costs (regardless of whether or not the debt is with related parties).

Specifically, the applicable legislation imposes a **general limit** on the deductibility of finance costs.

Net finance costs exceeding the limit of 30% of operating income (EBITDA) of the year are not deductible, net finance costs being deemed to mean the finance costs exceeding the revenue derived from the transfer to third parties of own capital and accrued in the tax period; however, net finance costs of the tax period of up to €1,000,000 will be deductible in all cases.

This limitation will apply in proportion to the duration of the tax period, so that in tax periods with a duration of less than a year, the limit will be weighted according to the duration of the tax period with respect to the year.

Finance costs which are non-deductible owing to the application of this limit are deductible in subsequent tax periods, along with those corresponding to such periods, subject to the same limit.

<sup>9</sup> Advance pricing arrangements may also be reached in connection with contributions for research, development and technological innovation or management expenses and in connection with the part of management expenses that may be allocated to a permanent establishment in Spain of a nonresident entity.

If net finance costs for the period fall short of the limit described, the difference is to be added on to the limit for the deduction of net finance costs for the immediately ensuing five tax periods, until such difference has been deducted.

Apart from the above-mentioned general limit, the finance costs derived from debts used to acquire holdings in the capital or equity of any kind of entity shall be deductible with the additional limit of 30% of the acquirer's operating income, without including in that operating income that relating to any entity that merges with the former in the 4 years following that acquisition, where the merger is not carried out under the tax neutrality regime established for this type of transaction (section 2.1.10).

The additional limit will not apply in the tax period in which the holdings in the capital or equity of entities are acquired if the acquisition price is at least 70% financed with debt. Moreover, this limit will not apply in the following tax periods where the amount of that debt is reduced, from the time of the acquisition, by at least the proportional part relating to each of the 8 following years, until the debt reaches 30% of the acquisition price.

#### 2.1.2.5. *Changes in residence, cessation of business by permanent establishments, transactions performed with persons or entities resident in tax havens*

The tax law requires the inclusion in the tax base of the difference between the value per books and the normal market value of the assets which are owned by a resident entity that transfers its place of residence abroad (exit tax).

However, in the case mentioned above, the taxpayer can request a postponement in the payment of the exit tax where the assets are transferred to a Member State of the European Union or of the European Economic Area with which there is effective exchange of tax information on the terms established in Law 36/2006, of November 29, 2006, on tax fraud prevention measures.

#### 2.1.2.6. *Inventory valuation*

There are no special tax rules regarding the valuation of inventory. Accordingly, all inventory valuation methods (FIFO, acquisition cost or weighted average cost) applicable for accounting purposes are also acceptable for tax purposes.

The same rules apply to inventory depreciation.

#### 2.1.2.7. *Value adjustments*

##### a) Depreciation

a.1. Depreciation qualifies as a deductible expense only if it is effective and is recorded in the accounts (with certain exceptions).

a.2. There are various general tax depreciation methods:

- Straight-line depreciation: This is the method most commonly applied by taxpayers of the tax and consists of depreciating assets (irrespective of the type) on a straight-line basis, that is, applying a certain percentage to the cost of the assets each year, according to percentages within a range for each type of asset. The new tax law has simplified the straight-line depreciation tables, establishing that for assets in respect of which the depreciation rate has been modified by application of the new tables contained in the new law, those new rates will apply to the asset's net value for tax purposes.

That range of depreciation rates runs between what is known as the "minimum straight-line depreciation rate", which is the rate applied according to the useful life of the asset, and the "maximum straight-line depreciation rate". In this regard, for example, in general, computer hardware can be depreciated

at a rate of between 12.5% (minimum rate, according to a maximum useful life of 8 years) and 25% (maximum rate).

Traditionally, these depreciation tables (regulated in the Regulations of the tax) have been organized by sectors and economic activities, with a last group defined for “common assets”. Now the Law has established some new depreciation tables according to type of assets and without distinguishing between sectors, and states that, according to the regulations, the rates and periods established in the law can be modified or additional rates and periods can be established, although that authority has not yet been used.

The use of the depreciation rates contained in the official tables relieve the taxpayer from having to prove the actual depreciation.

There are special rules for assets used on a daily basis in more than one ordinary shift of work and for assets acquired second hand.

- Declining-balance depreciation (constant rate): Under this method, which is permitted for all assets except buildings, furniture and household goods, depreciation can be shifted to the early years of the asset’s useful life, when the actual depreciation may be greater by applying a coefficient to the declining balance of the asset’s book value.
- Sum-of-the-years’-digits method: This system is also permitted for all assets except buildings, furniture and household goods, and the sum of the digits is determined on the basis of the depreciation period established in the official tables.
- Other depreciation methods: Companies which, for technical reasons, wish to depreciate their assets

at different rates than those fixed by the official tables and also wish to obviate the uncertainties involved in proving the “actual” depreciation, can seek prior approval from the tax authorities for special depreciation plans with such annual rates of depreciation.

- Special case: Amortization of intangible assets:

Starting on January 1, 2016, the tax treatment of this type of assets has been modified<sup>10</sup>, along the same lines as the modification made in the accounting treatment.

The new accounting treatment will be as follows:

- The distinction between intangible assets with definite useful life and indefinite useful life disappears and all intangible assets will be considered assets with definite useful life.
- Those intangibles will be amortized according to their useful life; if it cannot be estimated reliably, they will be amortized over a period of 10 years, unless established otherwise by a provision of law.
- Goodwill will only appear in the assets side of the balance sheet where it has been acquired for a consideration. Also, it is presumed, unless proven otherwise, that its useful life is 10 years (it may be amortized -previously, the taxpayer could only record an impairment expense in respect of it-).

- The obligation to record a non-disposable reserve for the goodwill is eliminated. Reserves already recorded will be reclassified as voluntary reserves and will be disposable as from that date in the amount exceeding the goodwill recognized for accounting purposes.
- The Notes to the financial statements must specify the period and method for amortization of intangible assets.

The new tax treatment will be as follows:

- *Intangible assets with a definite useful life.* Prior to 2015, the Law in force established that they could be amortized with the maximum annual limit of one-tenth of their amount (10%), provided that certain requirements were met. Starting in 2016, they will be amortized according to their useful life (as is done for accounting purposes). When it cannot be estimated reliably, the amortization will be deductible up to the maximum annual limit of one-twentieth of its amount (that is, at a lower rate than the accounting amortization based on the estimated useful life).

Nonetheless, this new regime does not apply to intangible assets acquired before January 1, 2015 from entities forming part of the same group of companies as the acquirer in accordance with article 42 of the Commercial Code.

- *Intangible assets with an indefinite useful life.* Due to the reclassification of intangible assets with indefinite useful life as intangible assets with definite useful life, pursuant to accounting legislation, the amortization rule contained in tax legislation has been

<sup>10</sup> Amendment made by the Audit Law 22/2015, of July 20, 2015.

modified. Thus, as from January 1, 2016, these assets are amortized according to the rules set forth in the preceding section for intangible assets with definite useful life<sup>11</sup>.

- *Intangible assets recorded in respect of goodwill.* They can be amortized with the maximum annual limit of one-twentieth of their amount (5%). Unlike the previous regulation, starting on January 1, 2016, the tax deductibility of goodwill is conditional on the accounting recognition.

#### a.3. Temporary limitation on depreciation

For tax periods commencing in 2013 and 2014, the accounting depreciation of tangible and intangible assets (only those with a definite useful life) and of investment property was only deductible up to 70% of that which would have been tax deductible in accordance with the aforementioned rules (the limitation also applies to the assets that apply to the financial lease regime).

The accounting depreciation that was not tax deductible by application of this limit could be deducted starting from the first tax period commencing in 2015, on a straight-line basis over a period of 10 years or during the useful life of the asset, at the election of the taxpayer.

As the non-deductible depreciation is deducted at the new tax rates applicable since 2015 (which are lower than those applicable in preceding years), the

<sup>11</sup> Prior to January 1, 2016, intangible assets with indefinite useful life were amortizable with the maximum annual limit of one-twentieth of their amount (5%), and the deduction of the amortization was not conditional on its accounting recognition in the statement of income.

new Law has established a deduction for taxpayers subject to tax at the standard rate (or that established for newly formed entities) which are affected by the aforementioned limitation on the deductibility of depreciation (the 70% mentioned above). Specifically, these taxpayers may, in tax periods commencing in or after 2016, take an additional deduction in the gross tax payable of 5%<sup>12</sup> of the amounts included in the tax base for the reversal of the amounts not depreciated for tax purposes.

#### a.4. Finance lease contracts

Finance lease contracts (provided by finance entities, as legally defined) for movable assets must have a minimum term of two years, and those for real estate must have a minimum term of ten years, and the annual charge corresponding to the depreciation of the cost of the asset must remain the same or increase over the term of the lease.

Lease payments (interest plus the portion of principal relating to the cost of the asset) are deductible. Land and other non-depreciable assets will be deductible in the portion relating to interest. However, the ceiling on the deductibility of the depreciation cost of the asset is twice the maximum depreciation rate per the official tables.

#### a.5. Accelerated depreciation

In recent years, various cases of accelerated depreciation have been regulated to encourage investment and maintain jobs (this latter requirement was initially applied but then eliminated). This incentive, which was established for tax periods

<sup>12</sup> The deduction percentage in 2015 was 2%.

commencing in 2010, 2011, 2012, 2013, 2014 and 2015 and did not require the accounting recognition of the depreciation, also applied for certain investments made through financial lease contracts and for investments relating to new assets contracted through construction work agreements or investment projects (on certain conditions).

However, this incentive for new investments was eliminated and only applies for new assets acquired up to March 31, 2012, which could continue to be depreciated without restriction from that date onwards but with certain limitations.

Starting in 2015, the Law has established a new case of unrestricted depreciation for new tangible assets, where the unit value does not exceed €300, and up to the limit of €25,000 in the tax period.

The amounts taken as unrestricted depreciation will reduce the value of the depreciated assets for tax purposes.

#### b) Impairment of assets

The Law establishes various rules regarding the deductibility or non-deductibility of the impairment of assets:

##### b.1. Impairment losses on receivables for bad debts

This provision covers the foreseeable losses in the realizable value of accounts receivable. The deductibility of this provision is subject to certain requirements. Under these requirements, the only method applicable is the individual balance method, whereby the status of each receivable is individually analyzed. The deduction of this provision is subject to satisfaction of any of the following tests:



- The balance must be more than six months past due.
- The debtor must have been held to be in insolvency.
- The debtor must have been taken to court for the criminal act of dealing in assets to defraud creditors.
- The obligations must have been claimed in court or the subject of a lawsuit or arbitration proceeding.

In any case, losses to cover the risk of bad debts of related entities cannot be recorded for tax purposes in respect of receivables from related parties, unless the related parties concerned are subject to insolvency proceedings and the judge has established the liquidation phase in accordance with the Insolvency Law.

Similarly, bad debts will not be deductible where the debtor is a public entity or where sufficient guarantees have been provided, unless they are the subject of arbitration or court proceedings regarding their existence or amount.

Losses to cover the risk of foreseeable bad debts by financial institutions are subject to specific rules.

We recall that, as stated in the section on the timing of allocation rules, the Law establishes time limits on the deductibility of certain insolvency provisions

b.2. Impairment of securities representing holdings in the capital of entities

As a general rule, impairment losses –on both investments in listed companies and holdings in non-listed companies– have been considered non-deductible since tax periods commencing as from January 1, 2013. The rules relating to impairment losses of these kinds will be analyzed in greater detail in section 2.1.6.

Since the impairment losses became non-deductible, there has been a transitional regime in place for the reversal of impairment losses deductible prior to 2013:

- Holdings in listed entities: In the case of entities listed on a regulated market, impairment losses recorded and deducted in periods commencing before January 1, 2013, shall be reversed in the tax base of the period in which the accounting recovery takes place.
- Holdings in unlisted entities: For holdings in unlisted entities, there is a transitional regime in place which basically consists of the following:
  - Any impairment losses that were tax deductible in periods commencing before January 1, 2013 must be included in the corporate income tax base.
  - This inclusion must be done regardless of whether or not there have been other nondeductible value adjustments for impairment.
  - The inclusion in the tax base must be done in the period in which the value of the investee's equity is recovered, in the proportion relating to the holding and with the limit of that excess.

In both cases, with effect for years commencing as from January 1 2016, an additional rule is introduced, establishing a "minimum reinvestment" obligation which functions as follows:

- Impairment losses on holdings which were treated as deductible for tax purposes are to be included, as a minimum, in equal portions in the tax base for each of the first five tax periods commencing as from January 1, 2016.

- In the event that, by virtue of the application of the general rules on the recovery of portfolio impairment losses (e.g. in the case of unlisted companies, because there has been an increase in the equity of the investee), a larger impairment loss is required to be recovered in any of those years, it is that amount which is recoverable in the corresponding year; and the balance of remaining portfolio impairment loss which is pending recovery (once the larger reversal has been included) is to be included in equal portions over the remaining tax periods until the aforementioned period of five tax periods has been completed.
- In the event of shareholdings being transferred during those five tax periods, the amounts pending reversal are to be included in the tax base for the tax period in which the transfer takes place, subject to a limit equal to the gain obtained on the transfer (which to some extent "consolidates" losses deducted which had not been reversed at the time of the transfer).

b.3. Impairment losses on the value of property, plant and equipment, investment property and intangible assets, including goodwill, equity instruments and securities representing debt (fixed income).

In this respect, we refer to the comments contained in the section relating to the timing of allocation rules (section 2.1.2.1.).

c) Provisions

The general rule in relation to provisions is that they are deductible provided they are correctly accounted for. However,

the legislation establishes certain exceptions. In this regard, the following expenses are not deductible:

- Those resulting from implied or tacit obligations.
- Those relating to long-term compensation and other personnel benefits, except for the contributions of the sponsors of pension plans subject to certain requirements.
- Those concerning the costs of performing contracts which exceed the expected financial returns from them.
- Those resulting from restructurings, unless they refer to legal or contractual obligations, not merely tacit obligations.
- Those relating to the risk of sales returns.
- Personnel expenses relating to payments based on equity instruments, used as a form of employee compensation, paid in cash.

Any expenses that are not deductible according to the foregoing list will be included in the tax base for the tax period in which the provision is used for its intended purpose.

In relation to certain provisions, the deductibility is conditional on the fulfillment of certain requirements:

- Expenses relating to environmental actions are deductible if they are incurred under a plan prepared by the taxpayer and accepted by the tax authorities.
- Expenses relating to insurance reserves made by insurance companies are deductible, to the extent of the minimum amounts established in applicable legislation. With that same limit, the amount recorded in the fiscal year for

the equalization reserve will be deductible for purposes of determining the tax base, even where it has not been included in the income statement (provisions for outstanding premiums or fees will not be consistent, for the same balances, with provisions to cover foreseeable bad debts).

- In addition, the expenses relating to risks resulting from repair and inspection warranties (and ancillary expenses for sales returns) are deductible, up to the limit resulting from applying to the sales with outstanding warranties at the end of the tax period the average warranty expenses as a percentage of total sales under warranty in the current and the two preceding tax periods.

#### 2.1.2.8. *Nondeductible expenses*

The Law contains an exhaustive list of nondeductible expenses. In particular, the following expenses are not deductible:

- Amounts representing a remuneration of equity. Since fiscal year 2015, this item is deemed to include the remuneration relating to participating loans provided by entities that form part of the same group of companies, according to article 42 of the Commercial Code. In these cases, however, the income will not be reportable at the lender. This limitation on the deductibility of the remuneration of participating loans does not apply to loans provided before June 20, 2014.
- Those derived from accounting for corporate income tax.
- Criminal and administrative fines and penalties, surcharges in the enforcement period and surcharges for late filing without prior requirement.
- Gambling losses.

- Free gifts and gratuities (although gifts to certain non-profit entities or those involving assets registered in the Register of Assets of Cultural Interest, or assets aimed at contributing to the conservation of assets of cultural interest or to the performance of activities of general interest, will give right to a tax credit of 35% of the gift, up to a limit of 10% of the net taxable income of the year).

Expenses for hospitality to customers or suppliers, those derived from customs and practices with the company's personnel, those incurred to promote the sale of goods or services, or those correlated to income will not be deemed gifts or gratuities. However, the deductibility of the expenses for hospitality to customers or suppliers will be limited to 1% of the company's revenues of the tax period.

The remuneration of directors for the pursuit of their senior management functions or others derived from an employment contract shall not be deemed gifts or gratuities either.

- Expenses derived from procedures that infringe the legal system.
- Expenses for services relating to transactions performed directly or indirectly with individuals or entities resident in designated tax havens or paid through individuals or entities resident in tax havens, unless the taxpayer can prove that the expense arose from a transaction effectively performed.
- Finance expenses accrued in the tax period derived from debts with group entities, according to the definition established in article 42 of the Commercial Code, regardless of residence and of the obligation to prepare consolidated financial statements, incurred to acquire, from other group entities, holdings in the capital or

equity of any kind of entity, or to make contributions to the capital or equity of other group entities, unless the taxpayer evidences valid economic reasons for carrying out those transactions.

- Expenses deriving from the termination of an ordinary or special employment relationship, or of a commercial relationship of directors or board members of the company exceeding the amount of €1,000,000 per recipient or, if higher, the amount established as obligatory in the Workers' Statute, in its implementing legislation or, as the case may be, in the legislation regulating the enforcement of judgments, which does not include that established pursuant to an agreement, accord or contract. Those expenses will not be deductible even if they are paid in several tax periods.
- Expenses relating to transactions carried out with related persons or entities which, as a consequence of a different tax classification given to them by the parties, do not generate income, or generate exempt income or income subject to a nominal tax rate below 10%.
- For fiscal years commencing as from 2017, certain impairment losses or losses corresponding to a decline in value resulting from the application of the fair value criterion to shareholdings in entities, as explained in section 2.1.6.

### 2.1.2.9. Capital gains and losses

By contrast with other countries, Spanish corporate income tax treats income resulting from the transfer of assets in the same way as other income. Accordingly, such income is generally added to (or deducted from) regular business income to determine the taxable income, it not being possible, since 2015, to reduce taxation by applying the tax credit for reinvestment of extraordinary income.

For fiscal years prior to 2015, special rules were envisaged for determining income resulting from real estate transfers to take into account the declining value of money (i.e., inflation). Under these rules, the acquisition cost and the annual depreciation were corrected by applying certain coefficients, with particularities according to the taxpayer's indebtedness. However, that measure has been eliminated in the new legislation applicable for fiscal years commencing on or after January 1, 2015.

### 2.1.2.10. Income derived from stakes in a SICAV (open-end investment company)

The income derived from a capital reduction or distribution of additional paid-in capital by the shareholders (corporate income taxpayers) of a SICAV is subject to the following treatment:

- Capital reductions: The shareholders of the SICAV must include in their corporate income tax base the total amount received in the capital reduction, limited to the increase in the redemption value of the shares since their acquisition or subscription until the moment of the capital reduction. The shareholders will not be entitled to apply any tax credit because of this transaction.
- Distributions of additional paid-in capital: The shareholders must include in their tax base the total amount obtained in the distribution, without being able to apply any tax credit in this connection.

This regime will also apply to the shareholders of collective investment undertakings equivalent to SICAVs and registered in another Member State of the European Union (and, in any case, it will apply to the companies covered by Directive 2009/65/EC of the European Parliament and of the Council, of July 13, 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities).

### 2.1.2.11. Capitalization reserve

The current Law brought in (starting in 2015) a significant change whereby the portion of the taxpayer's profit that is appropriated to a restricted reserve (capitalization reserve) will not be taxable, without imposing any requirement to invest this reserve in any specific type of asset. The purpose of this measure is to encourage business capitalization by boosting equity and thus incentivize the clean-up of balance sheets and an increase in competitiveness.

Specifically, taxpayers subject to the 25% tax rate, new companies and entities taxed at the 30% rate will be entitled to a tax base reduction equal to 10% of the increase in their shareholders' funds, provided the following requirements are met:

- a) The amount of the increase in the entity's shareholders' funds must be maintained for a five-year period as from the end of the tax period in which the reduction is applied, unless the entity reports losses.
- b) A reserve must be posted in the amount of the reduction and must be reflected in the balance sheet as a totally separate, appropriately named item, and will be restricted for the period stated in the preceding letter.

The reduction right may not in any event exceed 10% of the positive tax base for the tax period prior to this reduction, before including impairment charges on receivables or other assets due to possible debtor insolvency and before offsetting tax losses.

Nonetheless, if the tax base is insufficient to apply the reduction, the outstanding amounts may be applied in tax periods ending in the immediately successive two-year period following the end of the tax period in which the reduction right is generated, together with any reduction that may be generated in the relevant tax period and subject to the same limit.

**2.1.2.12. Income from the assignment of the right to use or exploit certain intangible assets (patent box)<sup>13</sup>**

This is a tax base reduction scheme applicable to income from the assignment of the right to use or exploit certain intangibles.

Specifically, as from July 1, 2016, income obtained from the assignment to third parties of the right of use or exploitation of know-how (industrial, commercial or scientific), patents, drawings or models, plans, formulae or secret procedures are entitled to a reduction in the tax base of the percentage arrived at by multiplying by 60% the result of the following coefficient:

- As numerator: The expenses incurred by the assigning entity which are directly related to the creation of the asset, including any deriving from the subcontracting of third parties unrelated to such entity. These expenses are to be increased by 30%, although the numerator may in no case exceed the amount of the denominator.
- As denominator: The expenses incurred by the assigning entity which is directly related to the creation of the asset, including any deriving from subcontracting and, where appropriate, from the acquisition of the asset.

The expenses referred to cannot include finance costs, the depreciation of real property, or other expenses not directly related to the creation of the asset.

<sup>13</sup> With effect as from July 1, 2016 there has been a change in the rules applicable to income from the right of use or exploitation of certain intangible assets, in the terms referred to, the purpose being to adapt these rules to agreements reached at European Union and OECD levels. Under the old rules, 40% of income deriving from the assignment to third parties of the right of use or exploitation of know-how (industrial, commercial or scientific), patents, drawings or models, plans, formulae or secret procedures, was required to be included in the tax base. This income also includes any deriving from the transfer of intangibles of these kinds when the transfer takes place between entities not pertaining to the same corporate group within the meaning of article 42 of the Commercial Code.

This reduction is also applicable in the event of a transfer of such intangibles, when the transfer takes place between entities which are not classed as being related.

The scheme excludes from this benefit income from the assignment of the right to use or exploit, or from the transfer of, brands, literary, artistic or scientific works (including cinematograph films), personal rights able to be assigned, such as image rights, computer software and industrial, commercial or scientific equipment.

In this case, income is specifically defined as the positive difference between income from the assignment of the right to use or exploit the assets and the amounts that are deducted in respect of amortization, impairment and expenses for the year directly related to the intangible.

In order to apply this benefit<sup>14</sup>:

- The assignee must use the rights of use or exploitation in a business activity; additionally, the results of such use must not lead to the supply of goods or provision of services by the assignee generating tax deductible expenses in the assigning entity, provided, in this latter case, that such entity is related to the assignee.
- The assignee may not reside in a country or territory where there is zero taxation or that is classed as a tax haven, unless it is a European Union Member State and the taxpayer provides evidence of valid economic reasons for the transaction and of its engagement in economic activities.
- Where the contract for the assignment of use includes the provision of other incidental services, the contract must specify the corresponding consideration in either case.

<sup>14</sup> Prior to July 1, 2016, the following additional requirements also applied:

- The assigning entity had to have created the assets being assigned to an extent equivalent to at least 25% of their cost.
- The transfer of the intangible assets could not take place between related parties.

- The assigning entity must keep the necessary accounting records to determine direct and indirect income and expenses pertaining to the intangible assets assigned.

The scheme provides for the possibility, before the transactions are completed, of applying to the Administration for an advance pricing agreement in connection with the income from the assignment and the expenses, as well as the income generated on the transfer.

An advance agreement classifying the assets in the categories included in the incentive may also be requested before the transactions are completed.

As a consequence of the existence of various regimes regulating the application of this incentive (owing to the succession of legislative changes taking place), it has been necessary to implement a transitional regime which functions as follows:

- The licensing of the right to use or exploit intangible assets, executed before the entry into force of Law 14/2013, of September 27, 2014, on support of entrepreneurs and their internationalization, can be subject, in all the tax periods remaining until the end of the contracts, to the regime established in the former Corporate Income Tax Law (Legislative Royal Decree 4/2004). The election of this regime will be made through the tax return of 2016.
- The licensing of the right to use or exploit intangible assets carried out as from the entry into force of said Law 14/2013 and up to June 30, 2016, can be subject, in all the tax periods remaining until the end of the contracts, to the regime established in the current Corporate Income Tax Law (Law 27/2014), according to the wording in force on January 1, 2015 (which is that summarized at the beginning of this section). The election of this regime will also be made through the tax return of 2016.
- The transfer of intangible assets, carried out as of July 1, 2016 and until June 30, 2021, can be subject to the regime

established in the current Corporate Income Tax Law, according to the wording in force on January 1, 2015. The election of this regime will be made in the tax return relating to the tax period in which the transfer was carried out.

- (iv) The provisions mentioned in paragraphs (i) and (ii) above will apply until June 30, 2021, after which the licenses carried out as stated in those paragraphs shall be subject to the new regime established with effects from July 1, 2016.

### 2.1.2.13. Offset of tax losses

Since fiscal year 2015, the time limit on the offset of tax losses against future taxable income has been eliminated (this also applies to amounts pending offset at the start of 2015).

Nonetheless, the offsetting of these tax losses is subject to quantitative limits. Since the recent reform, which took place in December 2016, the rules on the offsetting of tax losses have been as follows:

- a) As a general rule, entities whose net revenues for the preceding 12 months amount to less than 20 million euros may offset tax losses up to a limit equal to 70% (60% in 2016) of the positive pre-offset tax base.
- b) Entities whose net revenues for the preceding 12 months amount to at least 20 million euros may offset tax losses subject to the following limits, applicable as from tax periods commencing in 2016:
  - i. 50%, when the entity's net revenues are between 20 and 60 million euros.
  - ii. 25%, when its net revenues are above 60 million euros.

However, it is still not possible to offset tax losses against taxable income obtained in prior tax periods.

Moreover, in order to avoid the acquisition of dormant or quasi-dormant companies with tax losses or the commencement of activities at entities with accumulated tax losses, the Law establishes measures that preclude their use. Specifically, tax losses cannot be offset in the following circumstances:

- a) The majority of share capital or rights to a share of the entity's profits have been acquired by a related person or entity (or related group of persons or entities) following the end of the tax period to which the tax losses relate.
- b) The acquiring persons or entities had an interest of less than 25% at the end of the period to which the tax losses relate.
- c) The target entity is in any of the following circumstances:
  - i. It did not carry on any business activity during a three-month period prior to the acquisition.
  - ii. It will perform a business activity in the two-year period following the acquisition that is different from or additional to the activity previously performed.
  - iii. It is a holding company.
  - iv. It has been struck off the companies index for failing to file the return for three consecutive tax periods.

Lastly, the Administration's right to inspect tax losses that have been offset or are outstanding offset will become statute barred 10 years as from the day following the end date of the period stipulated for the filing of the tax return or self-assessment for the tax period in which the right to offset the tax losses was generated.

Once that period has elapsed, the taxpayer must evidence the tax losses that it intends to offset by exhibiting the assessment or self-assessment and the accounting records, including evidence that they have been filed at the Mercantile Registry during that period.

### 2.1.2.14. Tax restatements

A voluntary tax restatement was provided for periods commencing in 2013, at a rate of 5% on the restated amount.

The recent tax rate cuts (mentioned previously and referred to below in detail) entail that depreciation charges on the restated assets will be included in the tax base at a lower rate than the rate applied on restatement, when a 5% rate was paid, as indicated. In order to mitigate this negative effect, taxpayers subject to the general rate (or the rate applicable to new companies) which availed themselves of the fixed asset restatement will be entitled to a tax credit equal to 5%<sup>15</sup> of the amounts included in the tax base in respect of depreciation charges on the net increase in value resulting from the restatement.

These tax credits will be subsequently applied to other applicable tax credits and allowances. Amounts not deducted because tax payable is insufficient may be deducted in subsequent tax periods.

### 2.1.3. Tax rates

The standard corporate income tax rate in Spain is 25% for fiscal years commencing on or after January 1, 2016 (from 2008 to 2014, it was 30% and in 2015, it was 28%).

However, special rates are applicable to certain entities such as listed collective investment institutions including real estate investment funds (1%), certain cooperatives (20%) or entities engaging in oil and gas research and exploitation activities (30%).

In the case of listed corporations for investment in the real estate market (known as SOCIMIs), the tax rate is 19%. However, entities whose shareholders owning a holding of more than 5% in their

<sup>15</sup> This tax credit is 2% for tax periods commencing in 2015.

capital are taxed on the distributed dividends at a rate of at least 10% will be subject to a tax rate of 0%.

Lastly, entities formed on or after January 1, 2013, they will be taxed at the rate of 15% in the first tax period in which they have taxable income and in the next tax period.

#### 2.1.4. Tax credits, withholdings and prepayments

Under this heading we will describe the main tax credits applicable for 2017<sup>16</sup>.

##### 2.1.4.1. Investment tax credits

###### (i) Research and development and technological innovation tax credit

A tax credit for 25% of the expenses incurred in the tax period on scientific R&D. If the investment made exceeds average expenses incurred in the previous two years, 42% is applied to the excess.

In addition, a tax credit for 12% of the expenses incurred in the tax period on technological innovation.

Research and development (R&D) expenses included in the tax credit base must relate to activities carried out in Spain or in

<sup>16</sup> For tax periods starting on or after January 1, 2011, the following tax credits have been abolished: tax credit for export activities; tax credit for investment in vehicle navigation and tracking systems, tax credit for adaptation of vehicles for the disabled and for daycare centers for employees' children; tax credit for professional training expenses (save for those derived from expenses to familiarize employees with the use of new technologies); and tax credit for company contributions to employee pension plans. Effective for fiscal years 2015 onwards, the tax credit for reinvestment of extraordinary income has been abolished.

any Member State of the European Union or of the European Economic Area. R&D expenses will include the amounts paid by the taxpayer individually or in collaboration with other entities to fund the conduct of R&D activities in Spain or in any Member State of the European Union or of the European Economic Area.

The amount of the base for this tax credit is reduced by 100% of any subsidies received to encourage such activities.

An 8% tax credit is also established for investments in tangible fixed assets and intangible assets (excluding investment in buildings or land) to be used exclusively for R&D activities.

This tax credit will be incompatible with the other tax credits provided for the same investments in the Chapter on Tax Credits to encourage the pursuit of certain activities.

The entities subject to the general tax rate (which include entities of a reduced size, starting on January 1, 2016) or to the rate of 30%, will have the following options in relation to these tax credits:

- The tax credits generated in tax periods commencing on or after January 1, 2013, can be applied, optionally, without limit of tax payable but with a 20% discount in their amount.
- Nevertheless, even in case of insufficient tax payable (before applying the aforementioned discount), it is established the possibility to request the payment of the tax credits from the tax authorities through the tax return in cash. The payment of these amounts will not be deemed a refund of amounts incorrectly paid over and will not generate the right to collect late-payment interest even if it is made more than six months after the request.

In the case of the tax credit for technological innovation activities, the tax credits taken or collected cannot exceed as a whole €1 million annually. Moreover, an overall limit of €3 million is

established for R&D and technological innovation tax credits taken or collected as indicated. Both limits will apply to the entire group of companies in the case of entities forming part of a group according to the criteria of article 41 of the Commercial Code.

In order to apply the two mechanisms, the following requirements must be met:

- At least one year must elapse following the end of the tax period in which the tax credit was generated without its having been taken.
- The average workforce or, alternatively, the average workforce assigned to R&D and technological innovation activities must be maintained from the end of the tax period in which the tax credit was generated until the end of the period indicated in the following point.
- In the 24 months following the end of the tax period for which the tax return recorded the use or collection of the tax credit, an amount equal to the tax credit used or collected must be assigned to R&D or technological innovation activities or to investments in property, plant or equipment or intangible assets used exclusively in those activities, excluding real estate.
- The taxpayer must have obtained a reasoned report on the classification of the activity as R&D or technological innovation, or an advance pricing agreement on the expenses and investments relating to those activities.

###### (ii) Other tax credit for investments

- Tax credit for investments in film productions, audiovisual series and live performing and musical arts productions:
  - a. A 20% tax credit is provided for the first €1 million of the tax base and an 18% tax credit for the excess in respect of investments in Spanish productions

of feature films and fiction series, animated films or documentaries that allow the construction of a physical support prior to industrial production, subject to a maximum tax credit of €3 million.

The tax credit calculation base is formed by the production cost and expenses incurred to obtain copies, and advertising and promotion expenditure, incurred by the producer, up to 40% of the production cost; at least 50% of the calculation base must relate to costs incurred in Spain. Grants received to finance the investments will reduce the tax credit calculation base.

In the case of co-productions, the amounts will be calculated for each co-producer based on their share of the co-production.

- b. Producers entered in the Ministry of Education, Culture and Sport's Register of Film Companies that execute a foreign feature film production or audiovisual productions that allow the construction of a physical support prior to industrial series production will qualify for a 15% tax credit on expenditure incurred in Spain, provided the amount incurred is at least €1 million.

The tax credit generated in each tax period may not exceed the amount of €2.5 million for each production made.

- c. Finally, costs incurred to produce and exhibit live performing and musical arts productions will qualify for a tax credit equal to 20% of direct artistic, technical or promotional costs, less grants received.

The tax credit generated in each tax period may not exceed €500,000 per taxpayer.

- Tax credit for hiring workers with disabilities.

This tax credit is calculated per person/year of increase in the average number of disabled persons hired by the taxpayer during the tax period, with respect to the average number of disabled employees in the immediately preceding period. In particular, the tax credit applies in two tranches:

- €9,000 per person with a degree of disability of between 33% and 65%.
- €12,000 per person with a degree of disability exceeding 65%.

There are no requirements regarding the indefinite term or otherwise of the employment contracts or the fulltime employment.

The employees that entitle the taxpayer to take this tax credit will not be computed for purposes of the provision establishing unrestricted amortization with job creation.

- Tax credits for job creation.

Entities that hire their first worker under the indefinite-term employment contract established to support entrepreneurs can take a tax credit of €3,000, provided that the worker is under the age of 30.

Notwithstanding that tax credit, entities can take a second tax credit where they meet the following requirements:

- a. Their workforce is less than 50 when they sign indefinite-term employment contracts for the support of entrepreneurs.
- b. They hire unemployed persons receiving unemployment benefits.
- c. In the twelve months following the commencement of the employment relationship, there is, in respect

of each worker, an increase in the total average workforce of the entity of at least one unit with regard to that existing in the previous twelve months.

- d. The hired worker had received unemployment benefits for at least three months before the commencement of the employment relationship. For these purposes, the worker will provide the entity a certificate from the Public National Employment Service on the amount of the benefits yet to be received at the envisaged date of commencement of the employment relationship.

Specifically, the amount of this second tax credit (which will only apply with respect to contracts formalized in the tax period and until the workforce reaches 50 employees) will be 50% of the lower of the following amounts:

- The amount of the unemployment benefits yet to be received by the worker at the contract date.
- The amount of twelve monthly unemployment benefits recognized to the worker.

- (iii) Common rules on tax credits for investment

In general, the abovementioned tax credits (for Spanish motion picture or audiovisual productions, R&D and technological innovation, hiring workers with disabilities and creating jobs) are limited to 25% of the gross tax payable, net of domestic and international double taxation tax credits and of tax allowances (the limit will be raised to 50% where the R&D and technological innovation tax credit relating to expenditure and investment in the tax period exceed 10% of the gross tax payable).

However, any excess can be carried forward for use in the following 15 years (in the case of the tax credit for scientific research and technological innovation activities, the period will be up to 18 years). The period will be counted from the first



subsequent year in which an entity reports taxable income in the case of newly-incorporated entities or entities offsetting prior year's losses by effective contributions of new resources.

The Administration's right to initiate inspection proceedings in relation to the tax credits envisaged in the preceding sections, that have been taken or are outstanding use, will become statute-barred 10 years as from the day following the end date of the period stipulated for the filing of the tax return or self-assessment for the tax period in which the right to apply the tax credits was generated.

Once that period has elapsed, the taxpayer must evidence the tax credits that it intends to offset by exhibiting the assessment or self-assessment and the accounting records, including evidence that they have been filed at the Mercantile Registry during that period.

### 2.1.5. Treatment of double taxation

The tax credit and exemption scheme stipulated in the previous regulations based on the type of income has been amended substantially by the new Law (for tax periods commencing as from 2015), with a general exemption scheme for significant shareholdings applicable in both the domestic and international arenas being introduced.

To summarize:

- a) For dividends or shares of profits from shareholdings in resident entities, the previous Law (applicable up to 2014) established a tax credit that could amount to 100% or 50% of gross tax payable on the tax base for the income, based on the shareholding percentage and the time during which the shares were owned.

There is now an exemption scheme similar to the scheme existing before, for shareholdings in non-resident companies, as described below.

- b) Income from the transfer of shares in resident companies was subject to the specific provision that a tax credit could be applied in certain cases in respect of reserves accumulated by the investee during the shareholding period.

The exemption now applies to this income, also in line with the scheme already in force up to 2014 for foreign-source income where certain requirements were met.

- c) Dividends and income from shareholdings in non-resident entities and income obtained by permanent establishments abroad will remain exempt, although some changes have been made to related requirements.
- d) Lastly, the new Law maintains the tax credit for both (i) income and capital gains obtained abroad and (ii) foreign-source dividends and shares in income, as an alternative to an exemption. The new Law also maintains the possibility of deducting tax paid abroad when the tax base includes income obtained and taxed outside Spain, up to the limit of the tax that would have been payable in Spain had the income been obtained in Spain; it is now possible to deduct in the tax base the excess foreign tax that cannot be applied as a tax credit because the above-mentioned limit is exceeded.

Basically, under this tax credit method, the entire amount of income or capital gains obtained abroad by companies resident in Spain must be included in the tax base in order to calculate the tax, but the taxes actually paid by the taxpayer abroad are deducted from the resulting amount of tax (tax payable), up to the limit of the tax that would have been paid on the income had it been obtained in Spain. The calculation is made by included in the tax base all the income obtained in the same country, except in the case of permanent establishments, where the income obtained by each permanent establishment is grouped together.

In the case of dividends or shares in income paid by an entity not resident in Spain, the tax actually paid by this entity on

the profits out of which the dividend is paid (known as the underlying tax) may also be deducted.

The deduction of this underlying tax applies without limit regarding tier (i.e., that of the subsidiaries, their subsidiaries and so on). The requirements for deducting this underlying tax are that the direct or indirect shareholding in the non-resident entity must be at least 5% and must have been held uninterruptedly for one year prior to the dividend distribution (or the one-year period must be completed following the distribution), and the resident entity must include in its tax base the profits of the entity that pays out the dividend.

The sum of both deductions (of the underlying tax and of the tax borne by the taxpayer abroad) may not exceed the gross tax that would have been payable in Spain on the income.

Amounts not deducted because gross tax payable is insufficient may be offset over the immediately following 10-year period.

With effect for fiscal years commencing as from January 1, 2016, a limit to the application of these credits for the avoidance of double taxation has been established for entities whose net revenues for the preceding 12 months amount to at least 20 million euros. Their combined application may not exceed 50% of gross tax payable for the year.

This limit affects both credits generated as from 2016 and those already reported and pending application.

#### 2.1.5.1. Dividends and income from shareholdings in entities resident in Spain: exemption scheme

As indicated, the Law now establishes a general exemption method for this type of income derived from resident entities.

In order to apply this exemption, the shareholding in the resident entity (i) must be at least 5% or, alternatively, must have a value of



over €20 million; and (ii) must be held uninterruptedly for at least one year, also taking into account any period during which the shareholding was owned by a different group company as defined in Article 42 of the Code of Commerce.

In the event that the investee obtains dividends, shares of profits or income from the transfer of shares or equity interests in other entities, representing over 70% of its income, the exemption for such amounts may be applied provided the taxpayer has an indirect interest in those entities that fulfills the above-mentioned percentage or acquisition value and ownership requirements.

The income percentage (70%) will be calculated based on the consolidated profit for the year in the event that the directly-owned entity is a parent of a group as defined in Article 42 of the Code of Commerce and issues consolidated annual accounts.

In the case of an indirect interest in subsidiaries at level 2 or lower, the minimum 5% interest must be observed, unless the subsidiaries meet the requirements of Article 42 of the Code of Commerce to form part of the same group of companies as the directly owned entity and issue consolidated financial statements.

The indirect shareholding requirement will not be applicable when the taxpayer demonstrates that the dividends or shares of profits received have been included in the tax base of the directly or indirectly owned entity as dividends, shares of profits or income from the transfer of shares or equity interests in entities not entitled to apply an exemption scheme or a double taxation tax credit scheme.

The creation of this exemption scheme for income obtained from the transfer of shares in entities resident in Spain for periods commencing on or after 1 January 2015 entails (i) the elimination of the rules that were designed to avoid double taxation on the distribution of dividends, since such double taxation no longer exists because the income obtained by the transferring parties will be exempt in the future; and (ii) the continued application of those rules on a transitional basis for cases in which the shares

were acquired prior to that date and the former owners of the shares had actually paid tax in Spain as a result of the transfer of those shares.

### **2.1.5.2. Dividends and income from shareholdings in non-resident entities: exemption scheme**

This exemption was already established previously although changes have been made to it for fiscal years as of 2015.

In order to apply this exemption, in addition to fulfilling the percentage and ownership requirements referred to in the previous section, the investee entity must have been subject to and not exempt from a tax that was identical or analogous to Corporate Income Tax at a nominal rate of at least 10%, irrespective of the application of any kind of exemption, allowance, reduction or tax credit.

The “identical or analogous tax” requirement will be deemed fulfilled when the investee is resident in a country with which Spanish has concluded an international double taxation treaty that is applicable to the investee and contains an information exchange clause.

For fiscal years as of 2017, it is added that in no case will this requirement be deemed met where the investee is resident in a country or territory classed as a tax haven, unless that country or territory is a Member State of the European Union and the taxpayer proves that its formation and operations are based on valid economic reasons and that it performs economic activities.

In the event that the non-resident investee obtains dividends, shares of profits or income from the transfer of shares or equity interests in entities, the exemption for such amounts may be applied provided the “identical or analogous” tax requirements is fulfilled at least by the indirectly-owned entity.

As a general rule, it is not necessary for the investee’s results to derive from a business activity carried on abroad, which was a provision of the Law prior to 2015.

### **2.1.5.3. Special rules governing the application of the exemption**

- A proportional calculation formula is established for the exempt income in cases in which the non-resident investee has not been subject to an “identical or analogous tax”, with respect to Corporate Income Tax, throughout the share ownership period.
- Also, a rule is established which limits the exemption where the holdings were acquired in a contribution of (i) assets other than holdings in entities; or of (ii) holdings in entities that do not meet the minimum percentage requirement or, fully or partially, the minimum taxation requirement (being holdings in non-resident entities), if that contribution was made pursuant to the special neutrality regime for business restructurings (section 2.1.10), such that the income obtained from that contribution was not included in the tax base for corporate income tax or non-resident income tax purposes.

In these cases, the exemption will not apply to the income that was deferred in that contribution unless it is proven that the acquiring entity has been taxed on that deferred income.

- The same type of limitation on the exemption is established in the case of holdings of personal income taxpayers that had received those holdings in a contribution of shares carried out under the special regime for business restructurings (section 2.1.10).

In these cases, where the holdings contributed in that restructuring are transferred in the two years after the contribution, the exemption will not apply to the income that was deferred in the contribution, unless it is proven that the individuals have transferred their holding in the entity during that period.

- The application of the exemption is precluded in the case of the transfer of shares in holding companies or economic interest groupings, in the part of the income that does not relate to an increase in retained earnings generated by the investee during

the share ownership period. It is also not applicable to income from the transfer of shares in an entity that fulfills international tax transparency requirements, provided at least 15% of its income is subject to the tax transparency scheme.

#### 2.1.5.4. *Income generated by permanent establishments*

Positive income obtained abroad through a permanent establishment located outside Spain will be exempt provided the permanent establishment has been subject to and exempt from a tax that is identical or analogous to this tax at a nominal rate of at least 10%.

Income from the transfer of a permanent establishment that fulfills the taxation requirement at a nominal rate of at least 10%, in the terms stated above, will also be exempt.

Lastly, the possibility of operating in the same country through different permanent establishments is specifically envisaged, in which case the exemption or tax credit regime will be applied to each permanent establishment separately.

#### 2.1.6. **Treatment of impairment expenses and losses derived from holdings in entities and the ownership of permanent establishments abroad**

As has just been summarized in section 2.1.5, the Corporate Income Tax Law establishes rules to prevent double taxation in relation to shares or holdings in entities. This double taxation is basically prevented through the application of an exemption on the income derived from holdings (dividends, capital gains) provided they meet certain requirements. As seen, these requirements mainly refer to the holding (percentage, cost, ownership period) or, in the case of non-resident entities, to the minimum taxation required. The same type of exemption is established for income from permanent establishments abroad.

For fiscal years commencing as from 2017, the lawmaker has introduced a parallelism between these benefits and the use of the losses incurred on those holdings. Thus, if a holding gives the right to the exemption on the income derived from it (dividends and capital gains), the losses (on transfer or impairment) incurred on that holding cannot be deducted. Before this reform, there were already certain restrictions on the use of losses but now, the restrictions have been extended (although we will discuss some of the restrictions that applied before 2016, for a better understanding of the issue, we refer to previous versions of this Guide).

This reform has been carried out through the amendment of the articles of the Law referring to the timing of recognition of income, the deductibility of impairment expenses, nondeductible expenses and the exemption for dividends and capital gains. Given the complexity of this legislation, in this section we provide a systematic summary (not according to each of the articles of the Law) of the treatment of the losses incurred on holdings in entities.

In order to understand this treatment, a distinction must be made between two types of holdings in entities:

- a) Those which we will refer to as “qualifying” holdings, i.e., holdings which give a right to the exemption for dividends and capital gains. They are holdings which meet the requirements of (i) percentage holding of at least 5% (or acquisition value of at least €20 million) owned for at least one year, and (ii) in the case of nonresident entities, holdings in entities with a minimum level of taxation (a nominal rate of at least 10%).
- b) Those which we will refer to as “non-qualifying”, i.e., holdings which do not meet the abovementioned requirements.

As stated previously, what the lawmaker has intended is that if a holding can benefit from the exemption for dividends and capital gains, then the losses incurred on that holding will never be deductible. With regard to other losses, they may be deducted

before or after (at times reduced by certain amounts, as we shall explain below), and all of the foregoing with certain exceptions that will be noted.

On a summarized and systematic basis, the treatment is the following:

##### 2.1.6.1. *“Qualifying” holdings*

- The losses derived from their transfer will never be deductible. The non-deductibility of the losses, however, will be partial when the right to apply the exemption is also partial.

Along the same lines, the losses incurred abroad as a consequence of the transfer of a permanent establishment will not be deductible either.

- The impairment losses in respect of the holdings will not be deductible, on a permanent basis.
- However, the deductibility of the losses generated on the dissolution of the investee is expressly recognized, unless the dissolution is the consequence of a restructuring transaction or in case of the cessation of the permanent establishment.

In that case, the amount of deductible losses will be reduced by the amount of dividends or shares in income received from the investee or net income of the permanent establishment (depending on the case), obtained or generated in the ten years preceding the dissolution date, provided that:

- In the case of holdings in entities, those dividends or shares in income have not reduced the acquisition value and have had the right to apply an exemption or tax credit for the elimination of double taxation, in the amount of the exemption or tax credit.

- In the case of permanent establishments, the net income has had the right to apply an exemption or tax credit for the elimination of double taxation, also in the amount of that exemption or tax credit.

### 2.1.6.2. “Non-qualifying” holdings

- In general, in the case of holdings in nonresident entities that do not meet the minimum taxation requirement (or that are located in tax havens), the losses or impairment expenses will not be deductible ever.

This includes value reductions derived from the application of the fair value method and which are allocated to the income statement, unless previously an increase in value for the same amount has been included in the tax base as a consequence of the holding of uniform securities.

In the case of holdings in tax havens, the impairment expenses or losses may be deducted (where the rest of requirements are met for deductibility) only if the company resides in a Member State of the European Union and the taxpayer evidences that its formation and operations are based on valid economic reasons and that it performs economic activities.

- In all other cases:
  - The impairment expenses relating to holdings will not be deductible but this is a timing difference (because when the loss materializes, it could become deductible, as explained below).
  - In the case of losses derived from intra-group transfers, as in any other kind of assets, the allocation of the loss is deferred until the holdings are transferred to third parties unrelated to the group, or the transferring entity or the acquirer leaves the group.

In those cases, when the losses are included, they must be reduced by the amount of income generated on the transfer to third parties<sup>17</sup>.

In the event of dissolution of the investee, the losses can be included in the tax base unless the dissolution is the result of a restructuring transaction<sup>18</sup> or of any case of succession in the business activity.

- The losses incurred on the transfer to third parties will be included in the tax base but will also be reduced by the amount of income generated on any preceding intra-group transfer to which an exemption or tax credit for double taxation has been applied.
- In addition, the amount of losses will be reduced by the amount of dividends or shares in income received from the investee as from the tax period commencing in 2009, provided that those dividends or shares in income have not reduced the acquisition value and have had the right to apply the exemption for the prevention of double taxation.

### 2.1.7. Withholdings and advance payments

Non-operating income, such as interest, rent and dividends, must be subject to withholding tax at source, as an advance prepayment against the final tax liability.

<sup>17</sup> In fiscal years prior to 2017, the reduction of the losses from the taxable income could be avoided if the income had been taxed at an effective tax rate of at least 10%.

<sup>18</sup> Up to 2016, only if the restructuring was carried out under the special regime discussed in section 2.1.10.

In addition, with certain exceptions, leases of certain types of real estate are subject to withholding tax at source on of the rent paid to lessors<sup>19</sup>.

Moreover, Spanish companies are also required to make three advance payments (in April, October and December of each year) based on either of the following methods:

- (i) Calculation of prepayments based on tax payable (the “tax payable” method): taxpayers with revenues not exceeding €6 million in the 12 months prior to the date on which their tax period commences will make the prepayments by applying the rate of 18% to the gross tax payable (net of the related tax credits) of the last tax year whose deadline for filing a return has elapsed.
- (ii) Calculation of prepayments based on the tax base (the “tax base” method): this method is obligatory for taxpayers with revenues exceeding €6 million in the 12 months prior to the date on which their tax period commences, and optional for any other taxpayer that expressly decides to follow the method.

The prepayment is calculated on the portion of the tax base for the first three, nine or eleven months of the calendar year, applying a rate equal to 5/7 of the applicable tax rate (for taxpayers taxable at the standard rate, the advance payment would be 20% in 2015 and 17% from 2016 onwards). Certain reductions, withholdings from the taxpayer’s income and prepayments made during the tax period will be deducted from the resulting tax payable.

Moreover, unlike in 2015, starting in fiscal year 2016, the entities that apply this tax base method to calculate their

<sup>19</sup> Royal Decree-Law 20/2011, of December 30, raised the standard withholding rate from 19% to 21% for fiscal years 2012 and 2013. This 21% rate was subsequently extended for 2014. For fiscal year 2015, the general withholding rate is 20%, and 19% for 2016 onwards.

prepayments no longer need to include in the tax base of the period 25% of the amount of dividends and income accrued to which the exemption of article 21 of the Law applies (foreign-source dividends and capital gains).

Notwithstanding, starting with the second prepayment of the 2016 tax period and for taxpayers whose revenues in the 12 months prior to the first day of the tax period are at least €10 million, the tax rate applicable to prepayments has been increased (generally, to 24%) and the rule has been reinstated, establishing a minimum prepayment which was no longer going to apply starting in 2016. Thus, the amount payable cannot in any case be less than 23% (25% for entities with a tax rate of 30%) of the income recorded on the income statement.

The following items are excluded from the income recorded on the income statement: (i) the income derived from payment deferrals and debt write-offs agreed with the taxpayer's creditors (except the portion of their amount that is included in the tax base of the period) and (ii) the amount derived from increases in capital or equity through debt capitalization not included in the tax base.

The withholdings and prepayments can be taken as tax credits in the annual return for the corresponding year. If the sum of such credits exceeds the final tax payable, the company is entitled to a refund for the excess prepaid.

### 2.1.8. Consolidated tax regime

Spanish tax law envisages the possibility of certain corporate groups being taxed on a consolidated basis.

The filing of a consolidated return has significant advantages, most notably the fact that the losses of some group companies can be offset against the profits of others. Also, since inter-company profits are eliminated in calculating consolidated income, the arm's-length

test being applied in the valuation of inter-company transactions could be irrelevant<sup>20</sup> (see the previous comments on this issue). However, the consolidated tax regime also has disadvantages. For example, the minimum general deduction of finance costs (€1,000,000) is not multiplied by the number of entities in the tax group but is a single deduction for the group as a whole.

For tax purposes, a consolidated group is a set of entities resident in Spain in which a resident or nonresident entity has a direct or indirect ownership interest of at least 75%<sup>21</sup> of the capital and holds a majority of the voting rights of one or more other entities that are deemed subsidiaries on the first day of the tax period in which this tax regime applies.

Where an entity not resident in Spain or in a country or territory classified as a tax haven, with legal personality and subject to and not exempt from a tax identical or similar to Spanish corporate income tax, has the status of parent with respect to two or more subsidiaries, the tax group will be formed by all the subsidiaries.

Solely for the purpose of applying the consolidated tax regime, the permanent establishments of nonresident entities will be deemed Spanish resident investees, in which those nonresident entities own 100% of the capital and voting rights.

In order to request the application of the consolidated tax regime, the following requirements will have to be met:

- The controlling company or permanent establishment must have a direct or indirect holding of at least 75% in the capital stock of

<sup>20</sup> In such cases, the legislation excludes transactions performed within the tax group from the documentation obligation generally applicable to related-party transactions.

<sup>21</sup> Regarding entities whose shares are admitted to listing on a regulated market, the minimum holding of a parent company in its subsidiaries is reduced to 70% for the purposes of the definition of a 'tax group', so long as they are subsidiaries whose shares are admitted to trading on a regulated market. The reduction will apply in tax periods beginning on or after January 1, 2010.

another company and must hold a majority of the voting rights of one or more other entities that are deemed subsidiaries on the first day of the tax period in which this tax regime applies.

- that holding and those voting rights must be maintained throughout the tax period.
- It must not be a direct or indirect subsidiary of any other company that meets the requirements to be deemed the parent.
- It must not be subject to the special regime for economic interest groupings, whether Spanish or European, joint ventures or like regimes.
- In the case of permanent establishments of entities not resident in Spain, those entities must not be direct or indirect subsidiaries of any other that meets the requirements to be deemed the parent, and they must not reside in a country or territory classed as a tax haven.

Resolutions for group companies to be taxed on a consolidated basis must be adopted by the Board of Directors (or equivalent body if they are not formed under the Commercial Code), and the tax authorities must be notified at any time during the tax period immediately prior to that in which the consolidated tax regime is applied. The regime will be applicable indefinitely so long as its application is not waived.

It should be highlighted that the status of representative of the tax group will fall on the parent where it is a resident in Spain, or on such entity of the tax group designated by it, where there are no other Spanish resident entities that meet the requirements to be deemed the parent.

### 2.1.9. Foreign-securities holding entities

The legislation of the regime governing foreign-securities holding entities (in Spanish, ETVEs) has been configured as one of the

most competitive in the European Union. However, due to the generalized application of the exemption for dividends and capital gains from foreign sources, together with the extensive network of tax treaties signed by Spain (which in many cases permit the non-taxation at source of dividends and capital gains derived from foreign holdings in entities resident in Spain) and the transposition into Spanish legislation of the Parent-Subsidiary Directive, this regime has lost its attraction (albeit not in all cases).

The main features of this special regime are summarized below:

#### **2.1.9.1. Tax treatment of the income obtained by the ETVE from holdings in nonresident entities**

The dividends or shares in the income of entities not resident in Spain, and gains deriving from the transfer of the holding, are exempt subject to the requirements and conditions provided for under the exemption method to avoid international double taxation.

As stated, a minimum holding of at least 5% must be owned in the nonresident entity to apply the aforementioned method. For the purpose of applying the exemption provided for in the ETVE regime, the minimum holding requirement is deemed to be met if the acquisition value of the holding is over €20 million.

Holdings of less than 5% may be held in second and subsequent level subsidiaries (when the €20 million requisite is maintained), if these subsidiaries meet the conditions referred to in Article 42 of the Commercial Code for forming part of the same group of companies as the first-level foreign entity and file consolidated financial statements.

This €20 million limit does not apply at entities that already applied the ETVE regime in tax periods commencing before January 1, 2015 and met the quantitative limit of €6 million at their investees (which is the limit that was established in the legislation prior to that currently in force).

#### **2.1.9.2. Treatment of income distributed by the ETVE**

If the recipient of the income is an entity subject to Spanish corporate income tax, the income received will entitle the recipient to the exemption for domestic double taxation.

In case the recipient is an individual subject to Spanish personal income tax, the income distributed will be considered savings income and he may apply the tax credit for taxes paid abroad on the terms provided for in personal income tax legislation.

Lastly, when the recipient is an individual or entity not resident in Spain, the profits distributed will not be deemed to have been obtained in Spain and, in this respect, the first distribution of profits will be deemed to derive from exempt income. In this respect, the distribution of additional paid-in capital is to be treated in the same way as the distribution of income, it being considered that the first income distributed comes from exempt income.

#### **2.1.9.3. Treatment of the capital gains obtained on the transfer of the holdings in the ETVE**

When the shareholder is an entity subject to Spanish corporate income tax or to nonresident income tax with a permanent establishment in Spain, it may apply the exemption to avoid double taxation (where it meets the percentage holding requirements established in the article regulating the exemption).

When the shareholder is a person or entity not resident in Spain, the income relating to the reserves allocated with a charge to the exempt income or to the value differences imputable to the holdings in nonresident entities which fulfill the requirements to apply the exemption to foreign source income, will not be deemed to have been obtained in Spain.

No special rules have been introduced for individual resident shareholders, who will be subject to personal income tax legislation.

#### **2.1.9.4. Corporate purpose and application of the regime**

The regime may be applied by notifying the Ministry of Finance and Public Administrations (which need not grant permission to the taxpayer).

In order to apply the regime:

- The securities or interests representing the holding in the capital of the ETVE must be registered securities or interests. Therefore, the special regime is not available for listed companies.
- The corporate purpose of the ETVE must include the management and administration of securities representing the equity of entities not resident in Spanish territory, by means of the appropriate organization of material and personal resources.

#### **2.1.9.5. Other issues**

- ETVEs can belong to a consolidated tax group, if they meet the relevant requirements.
- The ETVE regime is not applicable to Spanish or European Interest Groupings, to joint ventures, or to entities which have as their principal activity the management of movable or immovable assets under certain conditions.

#### **2.1.10. Tax neutrality regime for restructuring operations**

In order to facilitate corporate reorganizations (mergers, spin-offs, contributions of assets, and exchanges of securities and transfers of registered office of a European company or a European cooperative society from one European Union Member State to another), the Spanish tax system provides for a well-established special regime based on the principles of non-intervention by the tax authorities and tax neutrality, which guarantees the deferral

of or exemption from taxation, as appropriate, in respect of both direct and indirect taxation, for taxpayers carrying out such operations, along the same lines as the rest of the European Union Member States.

Starting in fiscal year 2015, this regime is expressly configured as the general regime to be applied to restructuring transactions, meaning that the election to apply it has been eliminated, and there is a general obligation to notify the tax authorities of the performance of transactions pursuant to this regime.

In mergers, the absorbing entity can be subrogated to the right to offset tax loss carryforwards of the absorbed entity or branch of activity.

### 2.1.11. Tax incentives for small and medium-sized entities

Entities whose net sales in the immediately preceding tax period (or in the current period in the case of newly-incorporated enterprises) amount to less than €10 million qualify for certain tax incentives. If the enterprise belongs to a group of companies within the meaning of Article 42 of the Commercial Code, the net sales figure will be calculated for the group as a whole.

This regime does not apply if the entity has the consideration of an asset-holding entity.

The special regime also applies:

- During the three successive tax periods following that in which the €10 million threshold is reached (provided that the conditions are met for these entities to be deemed entities of a reduced size, both in the period in question and in the two preceding tax periods).
- Where the €10 million threshold is exceeded as a consequence of a business restructuring carried out under the special tax neutrality regime, provided that all the entities involved in the transaction meet the conditions to be deemed entities of a

reduced size, both in the tax period in which the transaction is performed and in the two preceding periods.

The incentives can be summarized as follows:

- Unrestricted depreciation of their tangible fixed assets up to certain limits, provided that certain job creation requirements are met.
- Entitlement to increase by 2 the maximum straight-line depreciation rate permitted per the official depreciation tables (even if it has not been recorded for accounting purposes) for new tangible fixed assets, investment property and intangible assets (except, amongst others, goodwill and trademarks, which can be depreciated by multiplying by 1.5 the maximum depreciation rates permitted per the official depreciation tables).
- Ability to record provisions for bad debts based on 1% of the balance of their accounts receivable at the end of the tax period.
- In 2015, the tax rate for entities of a reduced size was 25% for a tax base of up to €300,000, and 28% thereafter. From 2016 onwards, that rate is 25% on a general basis (that is, the general tax rate will apply) except for newly created companies, which will be taxed at 15% in the year of their creation and the following year.

That general tax rate of 25% would be reduced in case of application of the capitalization reserve and the tax base leveling-out reserve analyzed below, to approximately 20%.

- Application of the “tax base leveling-out reserve” system, which entails a reduction of up to 10% of the tax base, with a maximum annual limit of €1 million (or the proportional amount if the entity’s tax period were shorter than a year). This tax benefit has the following characteristics:
  - i) This reduction will have to be included in the tax bases of the tax periods concluding in the 5 years immediately following the end of the tax period in which the reduction was applied, as and when the entity obtains tax losses.

The amount not included at the end of that term, because sufficient tax losses have not been generated, will be added to the tax base of the period in which that term ends.

- ii) A reserve shall be recorded for the amount of the reduction, out of the income of the year in which the reduction is made, and it will be restricted during the aforementioned 5-year term. If this reserve cannot be recorded, the reduction will be conditional on the reserve being recorded out of the first income of the following fiscal years, in respect of which it is possible to record the reserve.
 

The breach of this requirement will trigger the inclusion in the tax base of the amounts that were reduced, plus 5%.
- iii) The amounts used to record this reserve cannot be applied simultaneously to the capitalization reserve also regulated in the new law.

### 2.1.12. Other special taxation regimes

Corporate income tax legislation contains provisions governing special taxation regimes, established mainly as a result of the nature of the taxpayer or of the activities carried on by entities in a specific economic sector:

- a. Spanish and European Economic Interest Groupings (EIGs)

These entities and their members are subject to the general corporate income tax rules, with the particularity that they do not pay the tax debt relating to the portion of their taxable income attributable to members resident in Spain and permanent establishments in Spain of nonresidents.

The nonresident members of a Spanish EIG are taxed pursuant to the NRITL and pursuant to the rules contained in the tax treaties.

The nonresident members of a European EIG are only taxed in Spain on the income of the EIG attributed to them, if they are considered to have a permanent establishment in Spain.

b. Temporary Business Associations (“UTE”)

These entities are taxed in the same way as EIGs. However, the foreign-source income (derived from activities carried on abroad) of UTEs is tax-exempt (subject to application to the tax authorities).

The losses incurred by a UTE abroad are imputed to the tax bases of its members. If, in future years, the UTE obtains income it must be included in the tax base of its members up to the limit of the losses previously included.

c. Other special tax systems

Other special tax systems apply to venture capital companies and funds, industrial and regional development companies and collective investment institutions.

Special regimes for economic sectors apply to both mining companies, companies engaging in oil and gas research and exploitation activities and to shipping entities on the basis of tonnage.

Lastly, the international fiscal transparency regime, already explained above, is established.

**2.1.13. Formal requirements**

Unless otherwise stipulated in the bylaws, the fiscal year is deemed to end on December 31 each year, coinciding with the calendar year, although taxpayers can establish a different fiscal year not exceeding 12 months but which can be shorter if (i) the entity is extinguished; (ii) the entity moves its residence abroad, or (iii) its legal form is altered and the resulting entity is not subject to taxation, its tax rate changes or it is subject to a special tax regime.

The tax becomes chargeable, in general, on the last day of the tax period. Thus, if the tax period coincides with the calendar year, the tax is chargeable on December 31.

Annual returns must be filed and the tax paid within 25 days following the six months after the end of the tax period (generally, therefore, by July 25 of each year, in relation to the preceding tax period).

At present, the tax forms to be used to report the tax are the following:

- a) Form 200. This return is generally used by companies that are subject to common legislation on the tax, regardless of their activity or size.

This form must be filed telematically<sup>22</sup>.

- b) Form 220. Its use is obligatory for tax groups and it must be filed by the parent company of the group (this does not preclude the obligation for all the group entities to file a Form 200).

**2.2. Personal income tax**

This tax, which is one of the pillars of Spain’s tax system, is currently governed by Law 35/2006, of November 28, on Personal Income Tax, which has been amended by Law 26/2014, of November 27, 2014 and by Royal Decree 439/2007, of March 30, 2007, approving the Personal Income Tax Regulations.

As discussed below, the taxation of nonresident individuals is regulated in a separate law (the Revised Nonresident Income Tax Law), which is analyzed in section 2.3.

<sup>22</sup> The entry into force of Public Authorities and Common Administrative Procedure Law 39/2015 on October 2, 2016, introduced the legal obligation on legal entities and entities without separate legal personality to deal electronically with the public authorities. These electronic dealings cover both notifications and the filing of documents and requests through registration.

**2.2.1. Persons subject to the tax**

The following persons are subject to personal income tax:

- Individuals habitually resident in Spanish territory.
- Individuals of Spanish nationality who are habitually resident abroad but fulfill any of the conditions laid down in the Law (e.g. diplomatic and consular services, etc.).
- Moreover, any Spanish national who establishes his residence for tax purposes in a tax haven will remain subject to personal income tax (this rule will apply in the year in which residence is changed and for the following four years).

A taxpayer is deemed to be habitually resident in Spanish territory if any one of the following conditions is met:

- The taxpayer is physically present in Spanish territory for more than 183 days in the calendar year.

Sporadic absences are included in determining the length of time a taxpayer is present in Spanish territory, unless tax residence in another country is proved. In the case of territories designated in the regulations as tax havens, the authorities may require the taxpayer to prove that he was present in the territory in question for 183 days in the calendar year.

To determine the period spent in Spain, absences due to cultural or humanitarian cooperation, for no consideration, with the Spanish authorities are excluded.

- The main center or base of the taxpayer’s activities or economic interests is in Spain, either directly or indirectly.

In the absence of proof to the contrary, an individual is presumed to be resident in Spain if his/her spouse/husband (from whom he/she is not legally separated) and dependent under-age children are habitually resident in Spain.



Individuals who are payers of nonresident income tax and are resident in a Member State of the European Union may elect to be taxed under Spanish personal income tax if they demonstrate that their habitual domicile or residence is in another European Union Member State and that at least 75% of their total income during the year was obtained as salary income or business income in Spain.

For fiscal years starting on or after January 1, 2016, civil law partnerships not subject to corporate income tax, undistributed estates, joint property entities and other entities to which article 35.4 of General Taxation Law 58/2003, of December 17, 2003 refers, are not deemed taxpayers. The income relating to them shall be attributed to the shareholders, heirs, joint owners or members, respectively, according to the pass-through tax regime established in the Personal Income Tax Law.

### 2.2.2. Taxable event

Taxpayers subject to personal income tax are taxed on their entire worldwide income, including the income of foreign entities (international fiscal transparency system), unless the nonresident entity is resident of a European Union Member State. This international tax transparency regime is similar to that described above for corporate income tax.

### 2.2.3. Taxation system and taxpayer

The possibility of being taxed individually or jointly (as a family unit) is regulated. However, there is only one tariff but divided in two parts: the general one and the autonomous community one.

### 2.2.4. General structure of the tax

The Law distinguishes between a general component and a savings component of taxable income. The general component

is taxed according to a progressive scale of rates while the savings component is taxed at fixed rates (or according to a scale applied by income brackets).

The general and the savings net tax payable are calculated on the basis of the general and savings components after applying certain reductions.

Moreover, the general and the savings components of taxable income are calculated according to the categories of general and savings income; these categories constitute fixed compartments, with some exceptions, such that, within each category, the income items are integrated and offset against each other but without the possibility of offsetting losses with the losses of other categories of income. Within each category, there are even sub-compartments that cannot be offset against each other.

In this regard, the **general component** of taxable income is the result of adding the following two balances:

- a) The balance resulting from adding and offsetting against each other, without limit, the following income and attributions of income:
  - Salary income.
  - Income from real estate.
  - Income from movable capital derived from the transfer of own funds to entities related to the taxpayer. This rule does not apply (in which case such income must be included as savings income) where:
    - They are entities of the kind provided for in Article 1.2 of Legislative Royal Decree 1298/1996, of June 28, Adapting the Law Currently in Force on Credit Institutions to the Law of the European Communities, provided that such income does not differ from the income that would have been offered to groups similar to the persons related to such institutions;

- The amount of own funds assigned to a related entity does not exceed the result multiplying equity by three, to the extent that it relates to the taxpayer's interest in the related entity.
- Other income from movable capital which is not considered savings income, such as that derived from the assignment of the right to use the image, that from intellectual property when the taxpayer is not the author and that from industrial property which is not attached to business activities performed by the taxpayer.
  - Income from business activities.
  - Imputation of income from real estate.
  - Imputation of income from entities under the international fiscal transparency system.
  - Imputation of income from assignment of rights of publicity.
  - Changes in the value of units in collective investment undertakings established in tax havens.
- b) The positive balance resulting from adding and offsetting against each other, exclusively, capital gains and losses excluding those which are deemed savings income. If the balance is negative, it may be offset against 25% of the positive balance, if any, of income and attributions. The rest of the negative balance will be offset in the following four years with the same setoff rules, the legislation establishing an express mandate for the setoff to be made of the maximum amount that the rules allow.
    - 1) The **savings component** of taxable income is calculated based on the savings income which is formed by the positive balance resulting from adding the following balances: On the one hand, the positive balance resulting from adding and offsetting against each other the so-called income from movable capital, that is:



- Income derived from an entity due to the status of partner, shareholder, associate or stakeholder.
- Income from movable capital derived from the transfer of own funds to third entities not related to the taxpayer or derived from related entities that meet the requirements in order not to be included as general income.
- The monetary return or payment in kind on capitalization transactions and life or disability insurance contracts.

If the inclusion and setoff of such income against each other leads to a negative result, this amount may only be offset against the positive balance of the capital gains and losses reported in the following component of savings income (paragraph 2) below) with the limit of 25% of that positive balance.

- 2) The positive balance resulting from adding and offsetting the capital gains and losses arising from the transfer of assets. If such result is negative, the amount thereof could be offset against the positive balance of the other component of savings income (paragraph 1) above), that is, income from movable capital, with the limit of 25% of that positive balance.

In both cases, if the balance is negative after those gains and losses have been offset, the amount thereof may be offset in the following four years.

However, in years 2015, 2016 and 2017, the offset rate between income from movable capital and capital losses of the savings component will not be 25% but rather 10%, 15% and 20% respectively.

These rules on inclusion and offset are applicable starting in 2015. As changes have been made with respect to those applicable up to 2014, a transitional regime has been established for the amounts outstanding offset from prior years, which is summarized in the following table:

**Table 1**  
**TRANSITIONAL REGIME**

ITEM OUTSTANDING OFFSET		OFFSET STARTING IN 2015 AGAINST
Fiscal year	Item	Item
2011-2012	Capital losses derived from transfer (without generation period requirement) outstanding offset at January 1, 2003.	Capital gains derived from transfer irrespective of generation period.
2013-2014	Capital losses derived from transfer with generation period of more than 1 year, outstanding offset at January 2015.	Capital gains derived from transfer irrespective of generation period.
2011-2012	Capital losses not derived from transfer, outstanding offset at January 1, 2003.	Capital gains not derived from transfer (e.g., prizes).
2013-2014	Capital losses not derived from transfer, outstanding offset at January 1, 2015.	Capital gains not derived from transfer (e.g., prizes).
	Capital losses derived from transfer with generation period of less than 1 year.	Capital gains derived from transfer irrespective of generation period.

Without possibility of offsetting income from movable capital and capital gains and losses against each other (25% limit specified, reduced in certain years).

### 2.2.5. Exempt income

The legislation establishes numerous items of exempt income.

Noteworthy among the exemptions is that relating to salary income for work performed abroad. This exemption will apply to salary income accrued during the days spent by the employee abroad up to a limit of €60,100 per year, if certain requirements are met:

- Salary income has to be paid in respect of work effectively performed abroad. Namely, the taxpayer must be rendering services physically abroad.
- In the case of services rendered by related entities to each other, an advantage or benefit occurs or may occur for the recipient.

- The recipient of the services must be either a non-Spanish-resident entity or a permanent establishment situated abroad of a Spanish resident company.

- A tax identical or similar to the Spanish personal income tax must exist in the other country, and such country must not be a territory classified as a tax haven. This requirement will be deemed to be met when the country or territory where the work is performed has signed with Spain a tax treaty containing an exchange of information clause.

The exempt income received for work performed abroad must be calculated (i) by reference to the number of days that the worker actually spent abroad and the specific income relating to the services provided outside the country; and (ii) to calculate

the daily amount earned for the work performed abroad, a proportional distribution method must be used, by reference to the total number of days in the year, aside from the specific income relating to the work performed.

Furthermore, an exemption is envisaged for capital gains arising on the transfer of the taxpayer's principal residence, where the total amount is reinvested in the acquisition of a new principal residence within two years following the transfer date, under certain conditions.

Also relevant are the exemption for employee severance indemnities or termination benefits in the mandatory amount stipulated in the Labor Statute, in its enabling regulations or, if applicable, in regulations governing the enforcement of judgments, excluding amounts stipulated in agreements, clauses or contracts (limited to the sum of €180,000 for dismissals that take place since 1 August 2014), or the exemption for positive securities investment income from life insurance, deposits and financial contracts used to arrange Long-Term Savings Plans, provided the taxpayer does not utilize any Plan capital before the first five years have elapsed.

It should be noted that the general exemption for dividends up to €1,500 per annum was eliminated (as from 2015).

### 2.2.6. Earned income

The main aspects of the tax treatment of earned income are as follows:

- a) Both cash income and benefits in kind are taxable.
- b) The most relevant matters affecting benefits in kind are explained below:
  - In general, they are valued at the market value of the remuneration.

- Nonetheless, the Law provides special rules for certain types of income:
  - The valuation of the benefit in kind consisting of the assignment of the use of vehicles is 20% per annum of the acquisition cost for the payer, or 20% of the value that would correspond to the vehicle if it were new (depending on whether or not the vehicle is owned by the company, respectively). The amount calculated must be weighted based on the percentage of private utilization of the vehicle. The value obtained may be reduced by up to 30% in the case of vehicles classed as energy-efficient.
  - If the vehicle is handed over to the employee, it will be valued at cost less the value of prior utilization.
  - The benefit in kind consisting of the use of housing owned by the company is limited to 5% or 10% of the ratable value, depending on whether or not this value has been revised, respectively, up to the maximum limit of 10% of the rest of the earned income.
  - Other remuneration is valued at cost, such as subsistence or accommodation expenses.
- In any event, the Law states that, irrespective of the above-mentioned general and special rules, the value of benefits in kind paid by companies engaged habitually in the performance of the activities that give rise to the benefits in kind (for example, where a vehicle rental company assigns the use of vehicles to its employees) may not be lower than the price charged to the general public for the good, right or service in question, applying ordinary or common discounts, and, in any case, with a limit of 15% or €1,000 per annum (whichever is lower).
- It should also be noted that certain benefits in kind are not taxable.

The award to current employees, free of charge or at below-market price, of shares in the company itself or in other group companies, is not taxable in the portion that does not exceed €12,000 per annum, for the total number of shares awarded to each employee, provided that the offer is made on the same terms for all the employees of the company, group or sub-group of companies and other requirements are met (basically related to keeping the shares for a certain period of time).

Amounts paid to entities responsible for providing public passenger transport services to help employees to travel from their place of residence to their work center are not taxable, subject to the limit of €1,500 per annum per employee (including indirect payment formulae that fulfill a number of conditions such as "transport passes / vouchers").

Restaurant vouchers and health insurance premiums are not taxable either, subject to certain quantitative limits; child care vouchers are also not taxable, subject to no limits.

Of the different kinds of compensation, worthy of note (due to their special characteristics) are those derived from the grant to employees of stock options in the company or group where they provide their services.

In these cases, for stock options that are non-transferable (which is the most common scenario), salary income is generated when the employee exercises the options and receives the shares. In short, no income is generated when the options are granted but only when the options are materialized in shares (with the vesting and subsequent or simultaneous exercise of the options). At that time, what is generated is salary income, for the difference between the market value of the shares received and the cost of the option.

Subsequently, when the shares received are transferred, a capital gain or loss will be generated.

Additionally, there are a series of tax benefits for this type of compensation:

- As we have stated previously, the award of shares to serving employees, for free or for a price below normal market price, will not be deemed compensation in kind for the portion not exceeding €12,000 per annum for the set of shares awarded to each employee, provided that the conditions established in this section b) are met.
- The reduction for multi-year income can be applied to the portion exceeding €12,000, where the requirements analyzed below are met.

c) Reduction for irregular income.

A 30% reduction is applicable to irregular income, which is defined as follows:

- Income that is generated over more than two years, provided that the reduction has not been applied in the preceding five tax periods (this second requirement does not apply in the case of severance payments for dismissal or termination of a special or ordinary employment relationship).
- Or income classed by regulations as being notably irregular over time.

This 30% reduction may be applied to a maximum of €300,000 per annum (reducing the limit for severance indemnities or termination benefits to €700,000).

d) Other types of reduction are applicable to certain earned income.

When calculating the income, certain expenses are also deducted such as Social Security contribution and a general reduction of €2,000 per annum for other expenses (this reduction increases in certain circumstances).

Taxpayers with net earned income of less than €14,450 apply an additional reduction based on the amount of their income.

- e) Finally, entities resident in Spain will be required to make withholdings on earned income paid to their workers, irrespective of whether or not the income is paid by the entity itself or by a different resident or non-resident related entity.

### 2.2.7. Rental income

For the calculation of the net income all the expenses necessary to obtain it can be deducted.

The financial expenses and repair and maintenance expenses that can be deducted may not exceed the gross income generated by each property. However, the excess may be deducted under identical conditions in the following four years.

The remaining expenses may give rise to negative net income from immovable property.

In cases of leases of residential properties, a 60% reduction will apply to the net income (i.e. gross income less depreciation and amortization, non-State taxes and surcharges, etc.) provided it is a positive figure.

In addition, if the income was generated over a period exceeding two years, or if it was obtained at notably irregular time intervals, a 30% reduction will apply (reduction applicable to a maximum of €300,000).

### 2.2.8. Income from movable capital

The income from movable capital will generally be included in the savings component of taxable income, in the manner specified previously. This refers mainly to:

- The income derived from a holding in the equity of entities (such as dividends).

Noteworthy in this type of income is the treatment of the holdings in open-end investment vehicles (SICAVs). In this regard:

- In the case of capital reductions made to reimburse contributions, the amount of the reduction will be deemed income from movable capital, with the limit of the higher of the two following amounts: (i) That relating to the increase in the redemption value of the shares since their acquisition or subscription until the moment of the capital reduction, or (ii) where the capital reduction derives from retained earnings, the amount of such earnings. In this regard, it will be considered that capital reductions, regardless of their aim, affect firstly the portion of capital that derives from retained earnings, until that portion reaches zero.
- Any excess over the limit determined according to the above rules will reduce the acquisition value of the relevant shares in the SICAV until it reaches zero, which will determine the future income deriving from the transfer. Nonetheless, any excess that might still exist will be included as income from movable capital derived from the holding in the equity of all kinds of companies, in the manner established for the distribution of additional paid-in capital.

These rules will also apply to the shareholders of collective investment undertakings equivalent to SICAVs and registered in another European Union Member State (and, in any case, they will apply to the companies covered by Directive 2009/65/EC of the European Parliament and of the Council, of July 13, 2009, on the coordination of the laws, regulations and administrative provisions on certain collective undertakings for investment in transferable securities).

In addition, with respect to the distribution of additional paid-in capital, the law establishes that the amount obtained will reduce, down to zero, the acquisition value of the shares or holdings concerned, and any resulting excess will be taxed as income from movable capital.

Notwithstanding the preceding paragraph, in case of distribution of additional paid-in capital relating to securities not admitted to listing on any of the regulated securities markets defined in Directive 2004/39/EC of the European Parliament and of the Council, of 21 April 2004, on markets in financial instruments and representing the share in the equity of companies or entities, where the difference between the value of equity of the shares or holdings relating to the last fiscal year-end prior to the date of the distribution of the additional paid-in capital and the normal market value of the assets or rights received will be deemed income from movable capital, with the limit of that positive difference.

- The income obtained from the transfer to third parties of own capital (such as interest).
- The income from capitalization transactions and life or disability insurance and the income from capital deposits.

However, certain items of income from movable capital form part of the general component of the tax base:

- Income deriving from the transfer to third parties of own capital, in the part relating to the excess of the amount of own capital transferred to a related entity, with respect to the result of multiplying by three the equity of the entity that relates to the holding. The aim of this rule is to prevent the tax rates of the savings component (which are lower) from being applied to cases in which the income derives from the debt of the shareholders with their investees where there is “excess debt”, such that the financial income can be replacing income that could have been taxed in the general component of the tax base. Thus, for example, if the individual shareholder of

an entity holds a 100% stake in it, to which equity of 1,000 corresponds, and he lends it for 4,000, the interest on that loan will be included in the savings component only in the portion relating to 3,000 (3 x 1,000).

- The items of income referred to in the Law as “other income from movable capital”, which are income deriving from (i) intellectual property where the taxpayer is not the author; (ii) industrial property not assigned to economic activities; (iii) the lease of furniture, businesses or mines or from the sublease of such assets (received by the sublessor) which are not business activities, and (iv) the assignment of the right to exploit an image or from the consent or authorization for the use thereof, when the aforementioned assignment does not take place in the course of a business activity. In this case, a 30% reduction can be applied if they are generated over more than two years or are classified by regulations as notably multi-year in nature. Also in this case the reduction applies to a maximum amount of €300,000.

### 2.2.9. Capital gains and losses

As already noted, capital gains and losses are classified into two types: (i) those not deriving from transfers, and (ii) those deriving from transfers. The first type is included in the general component of taxable income and taxed at the marginal rate, and the second type is included in the savings component.

With respect to capital gains and losses, the following aspects are worthy of note:

- In general, a capital gain or loss on a transfer, whether for valuable consideration or for no consideration, is valued as the difference between the acquisition and transfer values of the items transferred. In certain circumstances, however, these values are indexed to the market because they entail transactions in which there is no acquisition or transfer value *per se*. For example, in the gift of an asset, the gain is calculated

as the difference between its cost and the market value of the asset at the date of the gift; or in the case of a swap, the gain is calculated as the difference between the acquisition value of the asset or right transferred and the higher of the market value of that asset or right and that of the asset or right received in exchange.

In some cases, there are also rules aimed at guaranteeing the taxation of the actual income. For example, in the transfer of unlisted securities, the transfer value will not be the price of the securities but rather the higher of that price, the value of equity resulting from the last balance sheet closed before the tax becomes chargeable, or the value resulting from capitalizing at 20% the average of the results of the last three fiscal years closed before that tax becomes chargeable (unless it is proven that the transfer price is the market price).

- Adjustment rates: Up to 2014, the law envisaged the application of adjustment rates, but only in the case of transfers of real estates. The adjustment rates were aimed at correcting for inflation and were applied to the acquisition cost of the transferred real estate and to the related depreciation. This measure has disappeared with the recent reform and therefore does not apply in 2015.
- Abatement coefficients: The Law establishes the application of coefficients which reduce the gain deriving from the transfer. However, the application of these coefficients is only envisaged for the assets acquired before December 31, 1994.

However, the coefficients do not apply to all the gain generated on the transfer but only to that generated until the legislation eliminated the coefficients, specifically up to January 19, 2006.

In general terms, what must be done is to (i) calculate the amount of the “nominal” capital gain; (ii) distinguish the portion of that gain generated up to and including January 19, 2006, and the portion generated after that date (according to rules depending on the type of asset, the general rule being

that of straight-line distribution) and (iii) apply the coefficients to the first-mentioned portion of the gain.

The coefficients are (a) 11.11% in the case of real estate or real estate companies, for each year that has elapsed from the acquisition of the asset until December 31, 1994 (meaning that the gain generated up to January 19, 2006, from real estate acquired before December 1985, will not be subject to tax); (b) 25% in the case of shares traded on secondary markets (the capital gains generated up to January 19, 2006, deriving from assets acquired before December 31, 1991, not being subject to tax), and (c) 14.28% in the remaining cases (in which the gain generated up to January 19, 2006, from assets acquired before December 31, 1998 will not be subject to tax).

The rest of the gain, i.e. that which is deemed to be generated after January 20, 2006 (inclusive) will be taxed in full (notwithstanding the application, in the case of real estate, of the revision coefficients to correct inflation, in the determination of the price or cost of acquisition).

This regime has been amended as part of the tax reform which entered into force for fiscal years commencing on or after January 1, 2015. In general terms, it remains the same but a limit has been established on the amount to which the coefficients can be applied. Thus, they will apply to a maximum asset transfer value of €400,000. This €400,000 limit does not apply to the transfer value of each asset individually but to the total transfer value of all the assets as a whole to which the abatement coefficients apply starting on January 1, 2015, up to the moment when the capital gain is allocated. In other words, it is a global limit even if the sale of each asset takes place at different times.

- d) Certain capital gains and losses are not deemed as such (and, thus, are not taxed or their taxation differs), namely (i) those deriving from the dissolution of jointly owned property or (ii) those resulting from the division of common property. At other

times, the losses obtained are not computed, as occurs with (a) losses due to consumption or (b) those deriving from gifts. The Law also establishes an anti-abuse rule which prevents computing the losses deriving from the transfer of securities listed on organized markets when homogenous securities have been acquired in the two months before or after the transfer (the term is one year in the case of transfers of securities not traded on organized markets); in these cases, the losses are included as and when the securities remaining in the taxpayer's assets are transferred.

Of the capital gains or losses that are not subject to tax, worthy of note are those deriving from the gift of a family business, where the assets were used in the economic activity for at least five years before the transfer date, and provided that the donor (i) is 65 years or older or suffers from absolute permanent disability or comprehensive disability; (ii) ceases to perform management functions and to be remunerated for those functions, and that the donee keeps the assets received for at least 10 years as from the date of the public deed documenting the gift, except in the case of death, and does not carry out any dispositions or corporate transactions which could lead to a significant decrease in the acquisition value of the business received.

In addition, it is established, among other things, that the taxpayer will not compute the capital gains obtained on the transfer of units or shares in collective investment undertakings provided that the proceeds are reinvested in assets of a similar nature.

In both cases, the new shares or units subscribed will maintain the value and the acquisition date of the shares or units transferred.

Capital gains are also not deemed to arise from capital reductions. Where the capital reduction, regardless of its purpose, gives rise to the redemption of securities or holdings, those acquired first will be considered redeemed, and their

acquisition value will be distributed proportionally amongst the rest of the analogous securities remaining in the taxpayer's assets. Where the capital reduction does not affect all the securities or holdings owned by the taxpayer equally, it shall be deemed to refer to those acquired first.

Where the purpose for the capital reduction is to reimburse contributions, the amount of the reduction or the normal market value of the assets or rights received will reduce the acquisition value of the securities or holdings concerned, in accordance with the rules of the preceding paragraph, down to nil. Any excess shall be included as income from movable capital derived from the share in the equity of any kind of entity, in the manner established for the distribution of additional paid-in capital, unless that capital reduction derives from retained earnings, in which case the sum of the amounts received for this item will be taxed in accordance with the provisions of letter a) of article 25.1 of this Law. For these purposes, it shall be considered that the capital reduction, whatever its purpose, affects firstly the portion of the capital that derives from retained earnings, until they are reduced to zero.

- e) Starting January 1, 2017, proceeds obtained from a transfer of subscription rights arising from securities admitted to trading on any of the regulated securities markets defined in Directive 2004/39/EC of the European Parliament and of the Council, will be treated as a capital gain for the transferor in the tax period in which the transfer takes place. This is a change from the regime applied in previous years, in which proceeds obtained from a transfer of this right reduced the acquisition cost of the listed security in question. In other words, under the previous regime, the taxation of the gain obtained from the sale of preemptive subscription rights was deferred to when the share in question was transferred.

In this case, the custodian and, in the absence thereof, the financial intermediary or the public authenticating official who has attested the transfer will be required to make the relevant withholding or prepayment for this tax.

### 2.2.10. Reductions in the net tax base to adapt the tax to the personal and family situation of the taxpayer

The Law establishes certain reductions for the portion of the net taxable income used for the taxpayer's basic and personal needs, which are not subject to taxation:

- a) The taxpayer's personal allowance: €5,550 annually which will be increased by €1,150 annually for persons over 65 years of age and by €1,400 for persons over 75 years of age.
- b) Allowance for descendants: for each unmarried descendant aged under 25, or descendant with disabilities regardless of age, or person under a guardianship or foster care arrangement living with the taxpayer, the taxpayer will be entitled to a reduction of €2,400 for the first, €2,700 for the second, €4,000 for the third and €4,500 for the fourth and subsequent of these. Where the descendant is aged under 3 the foregoing amounts will be increased by €2,800 annually.

The family reductions will not apply if the taxpayers generating entitlement to these amounts file personal income tax returns obtaining income exceeding €8,000 or an application for a refund.

- c) Allowance for ascendants: €1,150 for each ascendant over 65 years of age or a person with disabilities who lives with the taxpayer (or dependent boarders) who does not obtain income exceeding €8,000. For ascendants over 75 years of age it is increased by €1,400.
- d) Allowance for disability: (i) Of the taxpayer: in general, €3,000 annually, although it will be €9,000 annually for persons who prove they have a disability equal to or greater than 65% (there will be an increase of €3,000 annually for assistance, if the need for assistance from third parties, or the existence of limited mobility or a disability of at least 65% is proven); (ii) Of ascendants or descendants: for those that confer a right to the above-mentioned allowances, a reduction of €3,000

per person and year, although it will be €9,000 annually for persons who prove they have a disability equal to or greater than 65% and an increase of €3,000 annually for assistance, if the need for assistance of third parties, limited mobility or a disability of at least 65% is proven.

- e) For family units formed by spouses who are not separated and, where relevant, underage children or persons with disabilities, before the application of the personal and family allowances, a reduction will be made of €3,400 which will be applied, first of all, to the regular net tax base (which may not be negative) and subsequently, if there is a surplus, to the savings net tax base. This prior reduction will be €2,150 for single-parent family units, except in cases of living with the father or mother of one of the children that form part of the family unit.

### 2.2.11. Determination of the net taxable income

The **general component of net taxable** income will be the result of applying to the general component of taxable income the reductions for situations of dependence and old age and for contributions to social provision systems, including those established for persons with disabilities, contributions to protected estates of persons with disabilities and reductions for compensatory pensions. The application of the above-mentioned reductions may not generate a negative general net tax base.

Notable among these reductions are those deriving from contributions to employee welfare systems. Thus, making these contributions will reduce the tax base by the lower of the following amounts:

- a) €8,000.
- b) 30% of the sum of net income from work and business activities.

Contributions to pension plans in which the taxpayer's spouse is the participant or member may also qualify for a reduction provided

that the spouse does not obtain earned income or income from business activities, or where such income is lower than €8,000 per annum. The maximum reduction limit is €2,500 and the contribution is not subject to inheritance or gift tax.

If the general net tax base is negative, it can be offset with the positive net tax bases of the following four years.

The **savings component of net taxable income** will be the result of deducting from the savings tax base the remainder (not applied to reduce the general tax base), if any, of the reduction for compensatory pensions, but such operation may not lead to a negative savings net tax base.

### 2.2.12. Determination of the gross tax payable: tax rates

The gross tax payable is calculated by applying the tax rates to the net tax base. Specifically:

- On the one hand, what we could call the "general gross tax payable" is calculated by applying the progressive scale of tax rates to the general net tax base and subtracting from it the result of applying the same scale to the personal and family allowances.
- On the other hand, what we could call the "savings gross tax payable" is calculated by applying the savings scale of tax rates to the savings net tax base.

There is not just one tax scale but rather there is a national scale and an autonomous community scale. Thus, a taxpayer in Madrid, for example, will apply to his or her net tax base both the national scale and the Madrid autonomous community scale.

The taxpayer's place of habitual residence determines the autonomous community in which income is deemed to be obtained for personal income tax purposes. The Law also lays down specific rules to prevent tax-motivated changes of residence.

The tax scales do not vary on the basis of the type of return (joint or separate) chosen by the taxpayer.

For fiscal years 2016 and following years, the total tax scale (national plus autonomous community rates) applicable to the autonomous communities that have not approved a specific autonomous scale is as follows:

**Table 2**  
**TOTAL TAX SCALE**

Net taxable income (up to euros)	Gross tax payable (euros)	Rest of net taxable income (up to euros)	Tax rate applicable (%)
0.00	0.00	12,450.00	19%
12,450.00	2,365.50	7,750.00	24%
20,200.00	4,225.50	15,000.00	30%
35,200.00	8,725.50	24,800.00	37%
60,000.00	17,901.50	Onwards	45%

Further, the savings component of net taxable income not corresponding to the remainder of the personal and family allowances will be taxed according to a scale of fixed rates. That means that the general national and autonomous community scale for fiscal years 2016 and following years is as follows:

**Table 3**  
**NATIONAL AND AUTONOMOUS COMMUNITY SCALE**

Savings taxable income (euros)	Applicable rate (%)
Up to 6,000	19%
From 6,000 to 50,000	21%
From 50,000 onwards	23%

The sum of the amounts resulting from applying the national and regional tax rates to the general net tax base and to the savings

net tax base as described will determine the national and regional gross tax payable respectively.

### 2.2.13. Net tax payable and final tax payable: Tax credits

The national net tax payable and the autonomous community net tax payable are the result of deducting from the national and autonomous community gross taxes payable (in the relevant percentages) some tax credits, such as (i) the tax credit for investment in newly or recently formed companies; (ii) the tax credit for economic activities; (iii) the tax credits for donations; (iv) the tax credit for income obtained in Ceuta and Melilla, and (v) the tax credit for actions to protect and publicize Spanish historical heritage and that of cities, monuments and assets declared to be world heritage. The autonomous community net tax payable, moreover, will be calculated taking into account the tax credits which may be established by the autonomous community in question exercising its powers.

Of all of them, the tax credit for investment in new or recently formed companies is worth noting. This tax benefit permits deducting 20% of the amounts paid for the subscription of shares or holdings in new or recently formed companies where certain requirements are met<sup>23</sup>.

**23** To take the tax credit, the following requirements must be met:

- The entity whose shares or holdings are acquired must: (i) take the form of corporation, limited liability company, worker-owned corporation or worker-owned limited liability company, and (ii) perform an economic activity with the personal and material means necessary to perform it. Moreover, (iii), the entity's equity figure cannot exceed €400,000 at the start of the tax period in which the taxpayer acquires the shares or holdings (when the entity forms part of a group of companies as defined in article 42 of the Commercial Code, regardless of residence and of the obligation to file consolidated financial statements, the equity figure will refer to the set of entities belonging to that group).
- The shares or holdings in the entity must be acquired by the taxpayer either at the time of formation of the entity or through a capital increase carried out in the three years following that formation, and the taxpayer must keep them for a period of between three and twelve years.

The maximum tax credit base will be €50,000 per annum and will be formed by the acquisition value of the shares or holdings subscribed.

The application of the tax credits cannot lead the (national and autonomous community) net tax payable to be negative.

The final tax payable is the result of deducting from the total net tax payable (autonomous community plus national) the sum of the international double taxation credits, the withholdings, payments on account and split payments and the deductions of the underlying tax in relation to income attributed by international fiscal transparency or due to assignment of image rights.

The final tax payable may be reduced in turn by the maternity tax credit (subject to the limit of €1,200 annually), the deductions for large families or disabled dependent persons (with the limit of €1,200 or €2,400, depending on the case).

### 2.2.14. Withholdings

Payments of income from movable capital, gains on shares or units in collective investment undertakings, salary income, etc. are subject to withholding at source (or prepayment, in the case of compensation in kind) which is treated as a prepayment on account of the final tax.

The base and rate of withholding and prepayment for the main types of income are detailed in the table below:

- The direct or indirect holding of the taxpayer, together with the holdings in the same entity owned by his/her spouse or any person related to the taxpayer by direct or collateral consanguinity or affinity up to and including the second degree, cannot be, on any day of the calendar years of ownership of the holdings, above 40% of the capital stock of the entity or of its voting rights.
- They must not be shares or holdings in an entity through which the same activity is performed as that which was being performed previously under another title.

Table 4  
WITHHOLDINGS

	Income	Base	Rate applicable from 2016 onwards
Salary income	General (*).		See paragraph below table.
	Contracts of less than a year.		See paragraph below table (minimum 2%).
	Special dependent employment relationships.	Total compensation paid or satisfied.	Minimum 18%.
	Board members.		35% (****)
	Courses, conferences and licenses on literary, artistic or scientific works.		15%
Income from movable capital (**)	General (***)	Gross consideration claimable or paid.	19%
	General.		15%
Professional activities.	Start of fiscal year + following 2 years.		7%
	Certain professional activities (municipal collectors, insurance brokers, etc.).	Amount of income or consideration obtained.	7%
	If the volume of gross income of the immediately preceding year is < €15,000 and entails more than 75% of the sum of gross income from economic activities and salary income obtained by the taxpayer.		Eliminated
Capital gains (**)	Transfers or redemption of shares and holdings in collective investment undertakings (****).	Amount to be included in the tax base calculated according to personal income tax legislation.	19%
	Cash prizes.	Amount of prizes.	19%
Other income (**)	Lease/sublease of urban real estate.	Amount of income and rest of items paid to the lessor or sublessor (minus VAT).	19%
	Income derived from intellectual property, industrial property, from the provision of technical assistance and from the lease or sublease of movable assets and businesses.	Gross income paid.	19%
	Authorization to use image rights.	Gross income paid.	24%

(\*) The withholding rate is reduced by two percentage points (without it being able to be negative), applicable to salary income of taxpayers who have notified the payer of their salary that a portion thereof is used to acquire or refurbish their principal residence for which they use external financing and in respect of which they will be entitled to the tax credit for investment in the principal residence, provided that the total amount of their expected annual income is less than €33,007.20.

(\*\*) The establishment of a flat withholding tax/tax prepayment rate of 19% in these cases means that the tax difference between 19% and 21% (in the case of net tax bases exceeding €6,000) must be paid over when filing the relevant tax self-assessment.

(\*\*\*) The amount of the tax prepayment to be made in respect of compensation in kind is calculated by applying the withholding rate to the result of increasing the acquisition value or the cost for the payer by 20%.

(\*\*\*\*) In general, the withholding obligation will not exist if the transferor decides to reinvest the proceeds obtained on the transfer, acquisition or subscription of other shares or units in collective investment undertakings (deferral regime envisaged in article 94 of Law 35/2006).

(\*\*\*\*\*) Directors and board members (of entities whose net revenues from the last tax period that ended prior to the payment of income were < €100,000) will be subject to a withholding rate of 19%.



In order to calculate the withholdings applicable to salary income, the procedure (explained simply) consists of taking the total gross salary income and reducing it by certain deductible expenses and reductions to determine the net salary income. The withholding tax scale (aggregation of the national and the autonomous community scales) is then applied to the result of the calculation. The same process must be followed with the personal and family allowances, applying the withholding scale to them. The difference between the two operations gives rise to the withholdings payable. The withholding rate applicable is then determined by dividing the withholdings by the total salary income.

### 2.2.15. Formal obligations

The tax period coincides with the calendar year. However, if the taxpayer becomes deceased on any date other than December 31, the tax period will be shorter than the calendar year.

Likewise, the tax becomes chargeable on December 31 of each year, unless the taxpayer becomes deceased on another day, in which case the tax becomes chargeable on the date of death.

Taxpayers who are required to file a personal income tax return (Form 100) must, when filing their returns, calculate the tax payable and pay it over in the place and manner and by the deadlines determined by the Ministry of Economy and Finance. The deadline is usually June 30.

Taxpayers who are married and not legally separated, and who are obliged to file a personal income tax return under which tax is payable, may request the suspension of their tax debt in an amount equal to or less than the refund to which their spouse is entitled for the same tax and in the same tax period.

## 2.3. Nonresident income tax

Nonresident income tax is currently governed by the Revised Nonresident Income Tax Law, approved by Legislative Royal Decree 5/2004, of March

5, and the Nonresident Income Tax Regulations approved by Royal Decree 1776/2004, as well as by the amendments included in Law 26/2014, all of which establish the tax regime applicable to nonresident individuals or entities that obtain Spanish-source income.

As a special aspect, the Revised Nonresident Income Tax Law establishes that nonresident individuals who prove that they are habitually resident in another European Union country or in a Member State of the European Economic Area with which there is effective tax information exchange, and that they have obtained in Spain salary income and income from business activities that entails at least 75% of their worldwide income, or that have obtained in Spain income below 90% of the personal and family allowances that would have applied to them if they had been tax resident in Spain, and the income obtained outside Spain has also been below that allowance, may opt to be taxed as resident individuals (personal income tax).

The key factor in determining the tax regime for nonresidents is whether or not they have a permanent establishment in Spain.

### 2.3.1. Income obtained through a permanent establishment

Nonresident individuals or entities that obtain income through a permanent establishment located in Spain will be taxed on the total income attributable to said establishment, regardless of the place where it was obtained or produced.

The concept of permanent establishment in Spanish law is in line with the OECD Model Tax Convention. In the case of a foreign entity or individual resident in a country with which Spain has a tax treaty, the treaty provisions and, specifically, the exceptions to the definition of permanent establishment, will govern the existence of a permanent establishment in Spain.

One fundamental characteristic of permanent establishments is the lack of legal personality separate from that of the parent. Thus, there are not two economic beings with separate legal personality—as is

the case of a parent and a subsidiary—but rather one subject with a single legal personality that operates through different facilities, centers, offices, etc., one or more of which are located in Spain.

According to Spanish legislation—applicable where there is not a tax treaty, otherwise that treaty would apply—a permanent establishment exists where the nonresident entity:

- a. uses in Spain, under any legal arrangement, on a continuous or habitual basis, any kind of facilities or work places where it performs all or part of its activity.
- b. acts in Spain through an agent that has and habitually exercises an authority to conclude contracts in the name and for the account of the taxpayer.

In particular, the following are deemed to constitute a permanent establishment:

- a. a place of management, branch, office, factory, warehouse, shop or other establishment;
- b. a mine, oil or gas well, quarry;
- c. farming, forestry or fishing operations or any other place of extraction of natural resources;
- d. construction, installation or assembly works lasting more than six months.

In general terms, permanent establishments in Spain are taxed on their net income at the same rate as Spanish companies (in general, 28% in 2015 and 25% from 2016 onwards). Nonresident entities or individuals operating through a permanent establishment in Spain are required to withhold taxes or make tax prepayments on the same terms as resident individuals or entities (i.e. on salary income paid, income from movable capital satisfied, etc.).

However, if it is considered that the entity does not have a permanent establishment in Spain, it will be taxed on its income

obtained in Spain pursuant to the regime for income obtained other than through a permanent establishment (See section 2.3.2 of this Chapter for more detailed information).

There is a 19% tax (branch profit tax)<sup>24</sup> on the remitted profits of nonresidents doing business through a permanent establishment in Spain. However, this tax is not chargeable according to the provisions of most of the tax treaties.

In addition, this tax is not chargeable on (i) the income obtained in Spain by entities that are tax resident in another European Union Member State (unless they reside in a tax haven) or (ii) the income obtained in Spain through permanent establishments by entities resident for tax purposes in a State that has signed a tax treaty with Spain which does not expressly provide otherwise, provided that there is reciprocal treatment.

This tax will therefore be additional to that already borne by the permanent establishment on its income (25% or 28% on revenues net of expenses).

Nonresidents who operate in Spain through a permanent establishment are generally required to keep accounting records here, in accordance with the rules and procedures established for Spanish companies.

The taxation of the income of permanent establishments envisages three different situations, as follows:

- As a general rule, taxable income is determined in accordance with the same regulations as are applicable to Spanish-resident companies and, accordingly, from 2016 onwards, the tax rate of 25% (28% in 2015) would be applicable to net income. Allocated parent company general and administrative overhead expenses are deductible under certain conditions.

The permanent establishment's tax year will be the calendar year unless stated otherwise.

The tax period is also deemed to have ended in the event of the discontinuation of a permanent establishment's business activities, withdrawal of the investment initially made in the permanent establishment, or the change of residence of the head office.

The permanent establishment may also take the tax credits and relief that might be applicable, in general, for Spanish resident companies.

- For permanent establishments engaging in installation or erection projects with a duration of over 6 months, for those with seasonal or sporadic activity, or for those engaged in the exploration of natural resources, the tax base is determined in accordance with the rules applicable to nonresidents obtaining income in Spain not through a permanent establishment. Such rules also apply in determining the tax return filing and tax accrual obligations of the permanent establishment, which is not obliged to keep books of accounts (but only documentary support of its transactions).

However, these nonresidents who operate through a permanent establishment in Spain may also choose to be taxed under the general rules, but such option may only be taken if separate accounts are kept in Spain. This choice must be made at the date of registration in the entities' index.

- If the permanent establishment does not complete a business cycle in Spain which leads to income in Spain, and the business cycle is completed by the parent company (or the nonresident individual who operates in Spain through a permanent establishment) or by other permanent establishments, the tax liability is determined by applying the general taxation rules, whereby revenues and expenses are valued at market prices.

However, the tax base will secondarily be determined by applying the percentage established by the Ministry of Finance and Public Administrations for this purpose to the total

expenses incurred, and by adding any "passive" (unearned) income not obtained in the normal course of business (interest, royalties, etc.) and any other capital gains arising from the assets assigned to the permanent establishment. This percentage has been set at 15%.

The gross tax payable in this case is determined by applying the standard tax rate, but the tax credits and tax relief provided by the standard corporate income tax system may not be taken.

The tax period and tax return filing (Form 200) deadlines are those envisaged in the standard tax rules.

- Lastly, starting in 2015, there is an obligation to include in the tax base the difference between the normal market value and the book value of assets assigned to a permanent establishment that ceases its activity or which are transferred abroad.

The payment of the tax debt resulting in the case of assets transferred to a Member State of the European Union or of the European Economic Area with which there is an effective tax information exchange will be deferred by the tax authorities at the taxpayer's request until the assets in question are transferred to third parties, and the provisions of the General Taxation Law 58/2003, of December 17, and its implementing legislation shall apply with regard to the charge of late-payment interest and the provision of guarantees for that deferral.

### 2.3.2. Income obtained other than through a permanent establishment

Nonresident entities or individuals that obtain income in Spain other than through a permanent establishment will be taxed separately on each total or partial accrual of Spanish-source income.

Spanish-source income obtained other than through a permanent establishment, as defined by the Nonresident Income Tax Law, consists mainly of the following items:

<sup>24</sup> That rate was 20% for fiscal year 2015.

- Earnings derived from economic activities pursued in Spain.
- Earnings derived from the rendering of services where such services (i.e. studies, projects, technical assistance or management support services) are used in Spanish territory.
- Salary income, which is directly or indirectly derived from work performed in Spain.
- Interest, royalties and other income from movable capital which remunerate capital used in Spanish territory.
- Income from marketable securities issued by companies resident in Spain.
- Income from real estate located in Spain or from certain rights relating to that real estate.
- Capital gains on the sale of assets located in Spain and on the sale of securities issued by residents.

However, certain types of income originated in Spain are not taxable in Spain, most notably the following:

- Income paid for international sales of goods.
- Income paid to nonresident persons or entities relating to permanent establishments located abroad, with a charge to these establishments, if the considerations paid are related to the activity of the permanent establishment abroad.

On the other hand, the following will be exempt:

- Interest and earnings derived from the transfer of equity to a third party, as well as capital gains on movable assets owned by residents of other European Union Member States (except tax havens) obtained other than through a permanent establishment, by European Union residents or by permanent establishments of those residents located in another Member State of the European Union. However, capital gains on holdings in entities whose assets

consist principally of real estate in Spain, or in which the seller has had, directly or indirectly, at least a 25% interest at some time during the twelve months preceding the sale, are taxable (this latter requirement only applies to individuals starting in 2015), or where the transfer does not meet the requirements to apply the exemption to avoid double taxation (domestic and international) established in corporate income tax legislation.

- Gains on transfers of securities or redemptions of participation units in mutual funds on official secondary securities markets in Spain obtained by nonresident individuals or entities without a permanent establishment in Spain that are resident in a State with which Spain has signed a tax treaty and with which there is effective exchange of tax information. The exemption does not apply when the nonresident entity resides in a country or territory classed as a tax haven.
- Yields derived from Spanish Government debt securities accruing to nonresident entities obtained not through a permanent establishment in Spain, unless they are routed through tax havens.
- Income derived from “nonresident accounts” paid by banks or other financial institutions to nonresident entities or individuals (unless payment is made to a permanent establishment in Spain of such entities) as well as that obtained not through a permanent establishment located in Spain and derived from the rental or assignment of containers or bare-boat charters and aircraft dry leases.
- Dividends from a Spanish subsidiary to its parent company resident in the European Union or in a Member State of the European Economic Area, provided that certain requirements are met (among others, 5% holding owned for one year, or an acquisition value of the holding above €20 million).

This rule is not applicable if the parent company is located in a tax haven, or when a majority of the voting rights of the parent company is held directly or indirectly by an individual or legal entity

not resident in the European Union or in a Member State of the European Economic Area with which there is effective exchange of tax information, on the terms established in subarticle 4 of additional provision one of Law 36/2006, of November 29, 2006, on tax fraud prevention measures, unless the formation and operation of the parent is based on valid economic grounds and substantive business reasons.

- Royalties paid by a Spanish resident company (or by a permanent establishment in Spain of a company resident in another Member State of the European Union or of the European Economic Area) to a company resident in another European Union Member State (or to a permanent establishment of an European Union resident company in another Member State), where certain requirements are met.

In 1991 the Spanish tax authorities identified 48 territories classified as tax havens. These include such “traditional” havens as the Bahamas, Liechtenstein, Monaco, Gibraltar, etc. The Royal Decree which approved such list is still in force (**See regulations on tax havens in the Corporate Income Tax Law**).

Spanish law generally sets tax rates lower than the standard rate for residents for income accruing to nonresidents that do not have a permanent establishment in Spain. The tax is normally levied on the gross income, except for income for services rendered, technical assistance and installation and erection projects, in which case the tax is levied on the difference between the gross income and the payroll, material procurement and supplies expenses as defined in the relevant regulations. In this connection, nonresidents operating in Spain not through a permanent establishment are obliged to withhold and make payments on account from salaries paid as well as other payments subject to withholding or payment on account which can be considered deductible expenses in order to determine the nonresident income obtained in Spain.

Capital gains are generally calculated on the basis of the difference between acquisition cost and sale price, to which the same rules as those established for resident individuals are generally applicable.

Moreover, purchasers of property located in Spain from nonresidents that do not have a permanent establishment in Spain must deduct withholding tax at 3% from the purchase price on account of the vendor's capital gains tax liability.

If the transferred property was acquired by the transferor more than two years prior to December 31, 1996, for withholding tax purposes the application of the abatement coefficients described in the section on Personal Income Tax, with the new limits discussed therein, should be considered.

There are also certain exceptions to this obligation to make a withholding, such as cases in which the property is transferred as a non-monetary contribution for the formation of, or capital increase at, a company resident in Spain. The tax rates are as follows:

**Table 5**  
**TAX RATES EXEMPTION**

Type of Income	Rate (%) applicable from 2016 onwards
<b>General:</b>	24 (*)
Dividends	
Interest	
Income derived from the transfer or redemption of securities representing the capital or equity of collective investment undertakings.	19
<b>Special cases:</b>	
• Income from reinsurance transactions	1.5
• Income from maritime or air navigation entities	4
• Capital gains	19
• Foreign seasonal workers	2

(\*) The rate is 19% for taxpayers resident in another Member State of the European Union or of the European Economic Area with which there is effective exchange of tax information (20% in 2015) but 19.5% since July 12, 2015).

The tax rates applicable to retirement pensions obtained by a nonresident individual will vary between 8% for amounts of up to €12,000, 30% for the following €6,700 and 40% for amounts in excess of €18,700.

Royalty payments to entities or permanent establishments residing in the European Union are subject to a 0% rate since July 1, 2011.

In the case of nonresidents without a permanent establishment in Spain there is no possibility of offsetting losses against future profits or capital gains. Moreover, a nonresident without a permanent establishment can only deduct from the tax payable the amount of the taxes withheld from its income and the amounts corresponding to gifts and allowances as described in the Personal Income Tax Law for resident individuals.

Liability for nonresident income tax arises whenever Spanish-source income becomes claimable by the nonresident entity or is paid, whichever is earlier; as for capital gains, liability arises when they are generated and in the case of income attributed to urban real estate, on December 31.

In general, a separate tax return (Form 210, Nonresident Income Tax. Nonresidents without a permanent establishment. Ordinary return) and supporting documentation must be filed within one month from the above date.

At the request of the taxpayer, the tax authorities can place at his or her disposal, merely for information purposes, draft tax returns (notwithstanding the taxpayer's obligation to file the return and pay the tax debt), exclusively in relation to the real estate income attributed deriving from urban property located in Spain and not used in economic activities, with the limits and conditions established by the Ministry of Finance and Public Administrations.

A draft return will be generated for each property that gives rise to the attribution of real estate income.

The Law also establishes a general obligation of making withholdings and prepayments on account of the income paid to

nonresidents by entities, professionals and traders who are resident in Spain. Some exceptions to this general rule are envisaged in the Law and the Regulations.

In cases where there is a withholding obligation, the tax return filed by the withholding agent releases the taxpayer from the obligation to file the return, and vice versa.

In most cases the above-mentioned tax returns can be filed monthly or quarterly grouping together different types of income obtained during the preceding period.

### 2.3.3. Tax regime for nonresident employees assigned to Spain (inbound expatriates)

Spanish personal income tax legislation contains a very attractive regime for personnel assigned to Spain due to labor reasons by multinational companies, since it allows individuals who become tax resident in Spain as a result of their assignment to Spain to opt to be taxed either under personal income tax rules or under nonresident income tax rules during the tax period in which their tax residence changes and for the next five tax periods. Under the nonresident income tax rules option, they are only taxed on the income and/or gains that are deemed to have been obtained in Spain, at a fixed rate (which is increased for income of above €600,000).

The requirements necessary to apply this regime are as follows:

- The inbound expatriate must not have been resident in Spain during the 10 tax periods preceding his or her assignment to Spain.
- The assignment to Spain must be the result of an employment contract.
- The individual must not obtain income that would be classified as obtained through a permanent establishment in Spain.

This regime does not apply to professional athletes; but it does apply for the first time (as from 2015) to persons who acquire the status of director of an entity in which they do not own holdings (or in which they own holdings but to which they are not related).

The tax debt will be determined according to the provisions of the Revised Nonresident Income Tax Law for the income obtained other than through a permanent establishment with various particularities:

- a) The exemptions established in nonresident income tax legislation will not apply.
- b) All of the taxpayer's salary income will be deemed obtained in Spain.
- c) The income items obtained in the calendar year will be taxed on a cumulative basis, without the possibility of offsetting them against each other
- d) Dividends, interest and capital gains derived from the transfer of assets will be taxed separately from the rest of income, according to the scale specified previously for savings income: 19%, 21% and 23%.
- e) The rest of income will be taxed according to the following scale:

Net taxable income	Rate 2016 onwards
Up to €600,000	24%
From €600,000 onwards	45%

- f) The withholding rate on salary income will be 24%. However, where the income paid by the same payer during the calendar year exceeds €600,000, the withholding rate applicable to the excess will be 45% (47% in 2015).

In order to exercise the option to be taxed under this regime, it is necessary to notify the tax authorities within six months following

the date of commencement of the employment that is stated in the notice informing the social security authorities that the employee was hired.

The regime described will apply as from 2015 and entails important changes with respect to that which existed up to 2014. For that reason, the new Law establishes that taxpayers transferred to Spain prior to January 1, 2015, can elect to apply the regime in force as of December 31, 2014, by notifying the tax authorities.

Lastly, it should be underlined that personal income taxpayers that elect to apply this special regime can request a tax residence certificate in Spain.

#### 2.3.4. Capital gains due to a change of residence ("exit tax")

The recent reform has entailed the introduction of a new regime whereby, for Personal Income Tax (PIT) payers who lose taxpayer status due to a change of residence, positive differences between the market value of shares held by the taxpayer in any type of entity and their acquisition value will be deemed capital gains (in the savings base), provided the taxpayer has had taxpayer status for at least 10 of the 15 tax periods prior to the latest tax period for which PIT must be declared and any of the following circumstances concur:

- (i) The market value of the shares must exceed a total of €4,000,000 for all the shares considered as a whole.
- (ii) Otherwise, on the accrual date of the latest tax period for which PIT must be declared, the stake in the entity must exceed 25%, provided that the market value of the shares in that entity exceeds €1 million. In this case, this scheme will only apply to the shares held in these entities.

In the case of taxpayers that have opted to apply the special tax scheme for workers relocated to Spain (for more information, see section 2.3.3 above), the 10 tax periods referred to above will begin

as from the first tax period in which the special scheme is not applicable.

Capital gains will be allocated to the final tax period for which PIT must be declared; if applicable, a supplementary tax return must be filed, without any default interest or penalty.

The capital gain will be calculated using the market value of the shares which, (i) in the case of listed shares will be their listed price; and (ii) in the case of unlisted shares will be the higher of the equity value in the latest balance sheet closed prior to the accrual date and the result of capitalizing at 20% the average results for the three financial years closed prior to the accrual date (including in the calculation dividends paid out and amounts apportioned to reserves, barring regularization or fixed asset restatement reserves). Additionally, (iii) shares in collective investment institutions will be valued at their cash value on the accrual date of the latest period for which PIT must be declared or, failing this, at the latest cash value published (in the absence of this value, at the equity value in the balance sheet for the latest financial year closed prior to the accrual date, barring evidence of a different market value).

Certain special rules are provided for cases in which (i) the change of residence is the consequence of a temporary work posting to a country or territory that is not classed as a tax haven or for any reason provided that, in this case, the worker is posted temporarily to a country or territory with which Spain has concluded an international double taxation treaty containing an information exchange clause (in this case, payment of the liability may be deferred for a maximum period, which may be extended); or (ii) residence is changed to a different European Union Member State or a country within the European Economic Space which this there is effective exchange of tax information (in such cases, the company may opt to self-assess the gain only in certain circumstances).

This regime will also be applicable when residence changes to a country or territory classed as a tax haven and the taxpayer does not lose resident status in accordance with the residence rules stipulated in the PIT Law.

### 2.3.5. Tax treaties<sup>25</sup>

Tax treaties may reduce, or even completely eliminate, the taxation in Spain on the income earned by entities which do not have a permanent establishment here.

Companies without a permanent establishment in Spain which are resident in countries with which Spain has a tax treaty are generally not taxed in Spain on their business income earned here, nor for capital gains (other than on real estate).

However, capital gains on the sale of shares of companies can be taxed in Spain under the special clauses of certain treaties (including most notably shares of real estate companies, transfers of shares when a substantial interest is held, etc.).

Certain other types of income (royalties, interest or dividends) are taxed at reduced treaty rates in force.

Currently, there are various treaties which are at different stages of negotiation or coming into force. Among them, the treaties with Azerbaijan, Bahrain, Belarus, Cape Verde, Qatar, Montenegro, Namibia, Peru and Syria. Additionally, certain treaties are currently being renegotiated.

### Tax sparing arrangements

Due to the existence under Spanish regulations of relief from the tax on certain types of income (mainly interest income), the tax sparing arrangements contained in many of Spain's tax treaties are relevant.

Under these arrangements the lender resident in one State can deduct in that State not only the tax effectively withheld from

the interest in the other State but also the tax that would have been payable had relief not been provided.

### 2.3.6. Tax on property in Spain of nonresident companies

Companies resident in a country or territory classed as a tax haven that own real estate in Spain are subject to an annual tax of 3% on the cadastral value of the property at December 31 each year.

This tax does not apply to:

- International bodies and foreign States and public institutions.
- Companies that pursue in Spain, on a continuous or habitual basis, economic activities other than the simple holding or lease of real estate.
- Companies that are listed on official secondary securities markets.

### 2.3.7. Tax representative

Nonresident taxpayers are, in certain cases, obliged to appoint a representative in Spain (individual or entity resident in Spain). Specifically, this obligation applies to:

- (I) those operating in Spain through a permanent establishment;
- (II) those performing economic activities in Spain other than through a permanent establishment and which permit the deduction of certain expenses;
- (III) those which are entities subject to the pass-through regime formed abroad and which carry on business activities in Spain, where all or a portion of those activities are carried on by them, continuously or habitually, through installations or workplaces of any kind, or which act in Spain through an agent authorized

to conclude contracts in the name and for the account of the entity;

- (IV) those which are specifically required to do so by the tax authorities because of the nature or the amount of income obtained;
- (V) those which are persons and entities resident in countries or territories with which there is no effective exchange of information, that are owners of property situated or rights which are fulfilled or exercised in Spain (except for securities listed on organized secondary markets).

The appointment of a representative must be done before the end of the period for reporting income obtained in Spain. The appointment must be notified to the authorities within two months. Failure to appoint a representative or to notify the authorities can lead to a fine of €2,000 (€6,000 for those taxpayers residing in countries or territories with which there is no effective exchange of information).

The tax representatives (if residents) of permanent establishments are deemed to be the persons registered as their representatives in the Commercial Register, or the persons empowered to contract on their behalf.

Persons who, pursuant to the Revised Nonresident Income Tax Law, are:

- a) tax representatives of permanent establishments of nonresident taxpayers, or
- b) tax representatives of pass-through entities,

shall be jointly and severally liable for paying over the tax debts relating to them.

The payer of income accrued other than through a permanent establishment by nonresident taxpayers, or the depository or

<sup>25</sup> For more detailed information, visit web page [www.aeat.es](http://www.aeat.es), section "Fiscalidad internacional".

manager of the assets or rights of nonresident taxpayers not used by a permanent establishment, will also be jointly and severally liable for the payment of tax debts relating to income paid by him or to income and/or gains from assets or rights whose safekeeping or management has been entrusted to him.

This liability will not exist where the payer or manager is subject to the obligation to withhold and prepay tax (since they already have such specific obligation and the responsibility that from it could eventually derive).

## 2.4. Wealth tax

Spanish resident individuals are subject to wealth tax on their total assets (located worldwide) at December 31 of each year, valued according to tax provisions. Nonresidents are taxed only on the assets located or the rights exercisable in Spain. However, some tax treaties can affect the application of this provision.

The Law establishes an exemption from wealth tax for some assets, for example, those forming part of Spanish Historical Heritage; household furnishings, works of art and antiques, provided that their value does not exceed certain limits established by the legislation; vested rights of participants in pension plans and rights with economic content relating to similar social welfare systems; the work of an artist while it forms part of the artist's assets; assets or rights necessary for the direct, personal and habitual performance of a business or professional activity which constitutes the taxpayer's main source of income; and some holdings in the capital of certain entities (mainly family businesses). The taxpayer's principal residence is also exempt, up to a maximum amount of €300,000.

The Law establishes different methods for valuing each type of asset.

With regard to the scale of rates established for this tax, in the absence of regulation by the autonomous community of residence, the following tax rates will apply:

Net taxable income (up to euros)	Tax payable (euros)	Rest of net taxable income (up to euros)	Tax rate applicable (%)
0.00	0.00	167,129.45	0.2
167,129.45	334.26	167,123.43	0.3
334,252.88	835.63	334,246.87	0.5
668,499.75	2,506.86	668,499.76	0.9
1,336,999.51	8,523.36	1,336,999.50	1.3
2,673,999.01	25,904.35	2,673,999.02	1.7
5,347,998.03	71,362.33	5,347,998.03	2.1
10,695,996.06	183,670.29	onwards	2.5

These rates apply to residents on their worldwide assets, and to nonresidents on their assets or rights located or exercisable in Spain.

Moreover, in the absence of autonomous community regulations, the maximum exemption and the threshold after which it is obligatory to file a wealth tax return is €700,000.

The gross wealth tax payable, together with the personal income tax payable on the general component and the savings component of income, may not exceed, for resident taxpayers, 60% of their total taxable income subject to personal income tax. For this purpose, the following will not be taken into account: (i) the portion of savings income derived from capital gains and losses relating to the positive balance of gains obtained on transfers of assets acquired more than one year before transfer date, or the portion of gross personal income tax payable on that part of savings income, and (ii) the portion of wealth tax relating to assets which, because of their nature or use, are not capable of producing income taxed under the Personal Income Tax Law.

If the sum of both taxes payable were to exceed the aforementioned limit, the wealth tax payable would be reduced to that limit, without that reduction exceeding 80%.

It is important to bear in mind that some autonomous communities have modified the exempt amounts while in others the tax is not payable (as in the Madrid autonomous community) because a 100% reduction applies.

However, there will be an obligation to file a tax return even if the tax payable is not positive, where the value of the assets or rights exceeds €2,000,000.

Due to the adaptation of the judgment of the Court of Justice of the European Union, of September 3, 2014 (case C-127/12), the provision has been amended to establish that nonresident taxpayers, that are resident in a Member State of the European Union or of the European Economic Area, shall be entitled to apply the legislation approved by the autonomous community where the greatest value of their assets and rights are located and for which the tax is claimed, because they are located, can be exercised or must be fulfilled in Spain.

## 2.5. Inheritance and gift tax

Inheritance and gift tax applies to Spanish resident heirs, beneficiaries and donees and is charged on all assets received (located in Spain or abroad). Nonresident beneficiaries are also subject to this tax as nonresident taxpayers, and must pay the tax in Spain only on the acquisition of assets and rights (whatever their nature), that are located, exercisable or to be fulfilled in Spain.

The tax base is formed by the net value of the assets and rights acquired. However, a series of reductions to the tax base are established, which include, most notably, the following:

- Reduction of 95% of the tax base deriving from a transmission *mortis causa* to spouses, children or adopted children or, in



their absence, ascendants, foster parents or collateral relatives up to the third degree of a professional business, an individual enterprise, or interests in entities or usufructs on them of the donor or deceased which were exempt from wealth tax. The requirements are as follows:

- The beneficiary of a transmission *mortis causa* must keep the assets received for at least 10 years.
- The beneficiary cannot carry out transactions that result in a substantial diminution in the value of the assets.
- Reduction of 95% of the tax base for *inter vivos* transfers of interests in an individual enterprise, professional business or in entities belonging to the donor which are exempt from wealth tax (or which meet the requirements for such exemption) to spouses, descendants or adopted children provided moreover that (i) the donor is at least 65 years old or has a permanent disability, and (ii) if the donor had been discharging management duties, he/she must discontinue them and stop receiving remuneration in that connection.

The tax is calculated by adjusting a tax scale of progressive rates (depending on the value of the estate or gift) with a coefficient that takes into account the previous net worth and the degree of kinship with the donor.

As with other taxes devolved to the autonomous community governments, inheritance and gift tax legislation has been adapted to recognize the legislative power of those governments to approve reductions in the tax base and rates and in the coefficients for adjusting the tax payable, based on the taxpayer's previous net worth. However, Law 22/2009, of December 18, establishes the reductions, rates and coefficients to be applied if the autonomous community in question has not assumed the powers devolved, or where it has not yet made any regulations, in that connection.

The tax rates and adjustment coefficients applicable for 2017 (in the absence of rates and coefficients specifically approved by the relevant autonomous community) are the following:

Tax Base (up to euros)	Tax Payable (euros)	Remaining Tax Base (up to euros)	Applicable Rate (%)
0,00		7,993.46	7.65
7,993.46	611.50	7,987.45	8.50
15,980.91	1,290.43	7,987.45	9.35
23,968.36	2,037.26	7,987.45	10.20
31,955.81	2,851.98	7,987.45	11.05
39,943.26	3,734.59	7,987.46	11.90
47,930.72	4,685.10	7,987.45	12.75
55,918.17	5,703.50	7,987.45	13.60
63,905.62	6,789.79	7,987.45	14.45
71,893.07	7,943.98	7,987.45	15.30
79,880.52	9,166.06	39,877.15	16.15
119,757.67	15,606.22	39,877.16	18.70
159,634.83	23,063.25	79,754.30	21.25
239,389.13	40,011.04	159,388.41	25.50
398,777.54	80,655.08	398,777.54	29.75
797,555.08	199,291.40	Upwards	34.00

Some autonomous communities, however, have established reductions which result in a tax payable of zero (or close to zero). This applies to inheritances and/or gifts, depending on the

autonomous community, in the case of "close" heirs or donees (children, grandchildren, spouses, ascendants).

With regard to the place where the tax must be settled, a distinction must be made, in general, between transmissions *mortis causa* and *inter vivos*:

- Transmissions *mortis causa*: as a general rule, in the autonomous community in which the deceased was habitually resident.
- Transfers *inter vivos*: as a general rule, in the autonomous community where the acquirer is habitually resident, except in the case of real estate for which the place will be the autonomous community where the property is located.

These general location rules were applicable until recently to taxpayers resident in Spain; non-residents had to be taxed under State legislation in any event (which on many occasions caused discrimination because, as indicated, some Autonomous Communities have implemented significant rebates). Following the European Court of Justice's Judgment of 3 September 2014 (Case C-127/12), specific connection points have been established for taxpayers resident in the European Union or in the European Economic Space. Accordingly:

- (i) When a **deceased person** has been a resident in a European Union (EU) Member State or in a country in the European Economic Space, other than Spain, taxpayers will be entitled to apply the regulations approved by the autonomous community in which the **largest portion of the value of the assets and rights forming the deceased's estate is located in Spain**. If there are no assets or rights located in Spain, each taxpayer will be subject to the regulations of the Autonomous Region in which the taxpayer resides.
- (ii) When the **deceased** has been a resident in an **Autonomous Region** and the taxpayers are not residents but reside in



a country of the European Union or European Economic Space, the taxpayers will be entitled to apply the regulations approved by that Autonomous Region.

- (iii) In the event of the acquisition of real property located in Spain by donation or any other legal business for no consideration *inter vivos*, non-resident taxpayers who are resident in a country of the European Union or European Economic Space will be entitled to apply the legislation approved in the Autonomous Region in which the real property is located.
- (iv) In the event of the acquisition of real property located in a Member State of the European Union or in a country of the European Economic Space, other than Spain, by donation or any other legal business for no consideration *inter vivos*, taxpayers resident in Spain will be entitled to apply the legislation approved in the Autonomous Region in which they reside.
- (v) In the event of the acquisition of moveable property located in Spain by donation or any other legal business for no consideration *inter vivos*, non-resident taxpayers who are resident in a country of the European Union or European Economic Space will be entitled to apply the legislation approved in the Autonomous Region in which the moveable property has been located for the highest number of days during the immediately previous five-year period, counted from date to date, ending on the day prior to the accrual of the tax.

Specific rules are provided to calculate tax payable in the case of donations in which, in a single document, the same donor donates different assets or rights to the same donee and the regulations of different Autonomous Regions are applicable in accordance with the rules explained above.

As a result of the judgment of the Court of Justice of the European Union of September 3, 2014 (case C-127/12), the Law was

amended so that taxpayers resident in a Member State of the European Union or of the European Economic Area can benefit from the legislation of the autonomous community where the decedent or the donor resides. In addition, the Law provides that, in the case of acquisitions for no consideration or *mortis causa* acquisitions of assets of residents in a Member State of the European Union or the European Economic Area, resident taxpayers may benefit from the legislation of the autonomous community that applies based on where the assets and rights transferred are located.

For the time being, the legislation has not been adapted to cases in which there are parties not resident in the European Union.

## 2.6. Spanish Value Added Tax

The European Union VAT Directives have been implemented in Spanish law (Law 37/1992, in force since January 1, 1993), and the main provisions of these Directives are harmonized in the different Member States of the European Union.

VAT is an indirect tax, and its main feature is that it does not normally entail any cost for traders or professionals, only for the end consumer, since traders or professionals are generally entitled to offset their input VAT against their output VAT.

Within Spain, VAT is not applicable in the Canary Islands, Ceuta and Melilla.

In the Canary Islands, the Canary General Indirect Tax (“IGIC”), in force since January 1, 1993, is very similar to VAT and is an indirect tax levied on the supply of goods and services in the Canary Islands by traders and professionals and on imports of goods. The general IGIC rate is 7%.

Ceuta and Melilla charge a different indirect tax of their own (tax on production, services and imports).

### 2.6.1. Taxable transactions

The following transactions are subject to VAT when they are carried out by traders and professionals in the course of their business:

- Supplies of goods, generally defined as the transfer of the right to dispose of tangible property, although certain transactions not involving a transfer of this kind may also be treated as supplies of goods for the purposes of VAT.
- Intra-Community acquisitions of goods (generally, acquisitions of goods dispatched or transported to Spanish VAT territory from another Member State).
- Imports of goods: These transactions are subject to VAT regardless of who performs them.

### 2.6.2. VAT rates and exemptions

VAT rates are as follows:

The standard rate is 21%, applicable to most supplies of goods and services.

However, there is a reduced rate of 10% applicable to supplies, intra-Community acquisitions and imports of the following, among others:

- Foodstuffs intended for humans or animals, not including alcoholic beverages.
- Water.
- Housing.
- Certain pharmaceutical specialties.

This reduced rate also applies to the following services, among others:

- Transportation of passengers and their luggage.
- Entry to libraries.

There is also a very reduced rate of 4% applicable to:

- Bread, flour, milk, cheese, eggs, fruit and vegetables.
- Books, newspapers and magazines that are not mainly composed of advertising.
- Medicine for human use.
- Cars for persons with disabilities.
- Prostheses for persons with disabilities.
- Certain subsidized housing.

Certain transactions are exempt from VAT (for example, financial and insurance transactions, medical services, educational services, rental of housing). Since the trader or professional performing these activities does not charge VAT on them, they do not give the right to deduct input VAT, as described further on in this report, although there are other exempt transactions (mainly those relating to international trade, such as exports) that do confer the right to deduct input VAT.

### 2.6.3. Place of supply of taxable transactions

Spanish VAT is charged on the transactions referred to above which are deemed to be supplied in Spanish VAT territory.

The Law provides rules for determining the place where the various transactions are deemed to take place.

- Supplies of goods: The general rule is that the goods are deemed to be supplied in Spanish VAT territory where they are handed over to the recipient in Spain. However, if the goods are transported in order to be handed over to the recipient, the supply will be deemed to be made in the place where the transportation commences. There are other exceptions to the

general rule, such as those established for supplies of goods to be installed or assembled, etc.

- Supply of services: As a general rule, services will be deemed to be supplied at the recipient's place of business or permanent establishment, where the recipient is a trader or professional; however, if the recipient is a final consumer, the services will be deemed to be supplied at the supplier's place of business.

There are, however, exceptions to this general rule:

- Services related to real estate are deemed to be supplied in the place where the property is located. This rule also applies to services of accommodation at hotels, camping sites and spas.
- Transportation services (intra-Community or otherwise) are deemed supplied at the recipient's place of business, and it is no longer necessary to provide the VAT number that was required in some cases until now.
- Services consisting of passenger transportation (whatever the recipient's status) and of the transportation of goods (except intra-Community transportation) where the recipient is the final consumer, are taxed proportionately to the distance covered within Spanish VAT territory.
- The intra-Community transportation of goods to final consumers will be taxed in Spain when the transportation begins within that territory.
- Certain services are deemed to be supplied in Spain where they are physically performed in Spanish VAT territory. This is the case, among others, of cultural, artistic, sports, scientific, educational, recreational and similar activities. The same rule applies to ancillary transportation services and to work on movable tangible property, experts' reports, etc., where the recipient is not a trader (if he is, the general rule will apply, i.e., the place of supply is the recipient's place of business).

- Services supplied electronically and telecommunications and television and radio broadcasting services will be deemed to be supplied at the recipient's place of business (whether it is the final consumer or a trader), unless they are supplied to a non-European Union resident or to consumers domiciled in Spain and the services are used or operated in Spain. Moreover, VAT is not charged on services to final consumers that are not established in the Community. In order to facilitate the compliance with the tax obligations deriving from the aforementioned rule, in the case of services supplied to final consumers, two optional special regimes are established that permit taxable persons to pay the tax owed for the supply of those services through a website ("one-stop shop") in the Member State where they are identified, thus avoiding having to be registered in each Member State where they carry out transactions (Member State of consumption). A distinction is made between:

- **Non-EU regime:** applicable to traders or professionals that have no type of permanent establishment or obligation to be identified for VAT purposes in any Member State of the Community. It is an extension of the special regime for services supplied electronically to telecommunications, TV and radio broadcasting services. The Member State of identification will be that chosen by the trader.
- **EU regime:** applicable to EU traders or professionals that supply telecommunications, TV and radio broadcasting services to final consumers in Member States where they do not have their place of business or a permanent establishment. The Member State of identification will be that where they have their place of business or a permanent establishment.
- Restaurant and catering services will be deemed to be supplied in Spain:
  - Where supplied on board a vessel, an aircraft or a train during the section of a transport operation effected within

the EU, if the transportation begins within Spanish VAT territory. In the case of a return trip, the return leg is regarded as a separate transport operation.

- In the rest of restaurant and catering services, where they are physically supplied in Spanish VAT territory.
- The short-term hiring (30 days in general and 90 days in the case of vessels) of means of transportation will always be taxed where such means are placed at the recipient's disposal.
- Lastly, intermediation services are supplied according to the place where the main transaction is deemed to be performed, if the recipient is not a trader. Otherwise, the general place-of-supply rule (recipient's place of business) will apply.

#### 2.6.4. VAT fixed establishment

The definition of “place of business” and fixed establishment are relevant when determining the place where transactions subject to VAT are carried out. Additionally, as described below, they are also relevant for defining the taxable person of such transactions.

On this basis, where a fixed establishment exists in Spanish VAT territory—on the terms defined below—and this establishment intervenes in the performance of transactions subject to VAT, the transaction will be deemed located in Spanish VAT territory and, therefore, the establishment will be deemed the taxable person for VAT purposes, with the resulting obligations (register for VAT purposes, charge the tax, meet invoicing obligations, file returns, etc.).

Another of the main implications deriving from the fact of having a fixed establishment in Spanish VAT territory is the regime that applies for the refund of the VAT borne. In this regard, if a fixed establishment exists, the general refund regime will apply, while if there is not a fixed establishment, the special refund regime for non-established traders must be used, which involves initiating a proceeding to obtain a refund of the VAT borne.

Place of business is defined in the Law as the place where the taxable person centralizes the management of, and habitually exercises, his business or professional activity.

Fixed establishment is defined as any fixed place of business from which a trader or professional carries on business activities<sup>26</sup>. In particular, the following are deemed fixed establishments for VAT purposes:

- The place of management, branches, offices, factories, workshops, facilities, stores and, in general, agencies or representative offices authorized to conclude contracts in the name and for the account of the taxable person.
- Mines, quarries or tips, oil or gas wells or other places of extraction of natural products.
- A construction, installation or assembly project which lasts for more than twelve months.
- Farming, forestry or livestock operations.
- Facilities operated on a permanent basis by a trader or professional for the storage and subsequent delivery of his merchandise.
- Centers for purchasing goods or acquiring services.
- Real estate operated under a lease or any other arrangement.

It is noteworthy that although the definition and cases in which a permanent establishment is deemed to exist are similar for purposes of direct taxes and VAT, they do not fully coincide.

<sup>26</sup> The so-called “force of attraction” of fixed establishments means that an activity is attributed to a fixed establishment if it “acts” in the supply of services, that is, where material or human resources attributable to the fixed establishment are organized for the purpose of performing the transaction.

In cases where a fixed establishment exists in Spanish VAT territory, insofar as it is located in that territory and deemed a VAT taxable person, it must meet the following obligations:

1. File returns relating to the commencement, modification and cessation of the activities that determine the applicability of the tax.
2. Request from the tax authorities a tax identification number and communicate and report it in the cases established.
3. Issue and deliver invoices or equivalent documents for its transactions and keep a duplicate thereof.
4. Keep the mandatory accounting records and registers, without prejudice to the provisions of the Commercial Code and other accounting provisions.
5. File periodically, or at the request of the tax authorities, information relating to its business transactions with third persons.
6. File the relevant tax returns and pay over the resulting tax. Also taxable persons must file an annual summary return.

#### 2.6.5. Taxable person

The taxable person is the person with an obligation to charge or pay over VAT. This obligation normally lies with the trader or professional that performs the supplies of goods or services or other transactions subject to VAT.

There are, however, some exceptions in which the taxable person is the recipient in the transaction. This is generally the case of transactions, located in the Spanish VAT territory, in which the person performing them does not have a place of business or fixed establishment in Spanish VAT territory and the recipient is a trader or professional, regardless of whether or not he is established in Spanish VAT territory.

In the last years, new cases of reversal of liability have been established (applicable to transactions for which the VAT becomes chargeable on or after October 31, 2012) in relation to (i) certain exempt supplies of real estate in which the VAT exemption is waived; (ii) supplies of real estate to enforce security interests in real estate and accord and satisfaction in whole or in part; and (iii) certain works of construction and loaning of personnel to perform the work, it being necessary in these cases for the recipient to expressly communicate in a legally valid manner, and prior to or simultaneously with the performance of the transactions, that the requirements are met for the reversal of liability to apply.

That communication can be made through a written statement signed by the recipient, under its own responsibility, and addressed to the trader or professional that makes the supply. On this basis, the recipient is able to invoke the joint liability established in the VAT Law for those who, by action or omission, whether due to willful misconduct or negligence, avoid the correct charge of the tax.

More recently, starting on April 1, 2015, the foregoing list will include some cases of supplies of (i) silver, platinum and palladium; (ii) mobile phones, and (iii) videogame consoles, portable computers and digital tablets.

Moreover, since January 1, 2015, there is a new regime for deferral of the VAT on imports through the inclusion of those amounts in the tax return of the period in which the document evidencing the assessment made by the tax authorities is received.

It is an optional regime that may be applied by taxable persons whose tax period coincides with the calendar month (i.e., companies subject to the monthly refund regime, those whose volume of transactions in the preceding calendar year exceeds €6,010,121.04, or those that apply the VAT grouping scheme, among other cases).

Apart from the obligation to charge VAT, the taxable person must also:

- File notifications relating to the commencement, modification and end of activities.
- Request a tax identification number from the tax authorities and notify and evidence it in the cases established.
- Issue and deliver an invoice for all his/her transactions.
- Keep accounting records and official books (specific VAT books)<sup>27</sup>.
- File periodically, or at the request of the authorities, information relating to his/her business transactions with third parties.
- File tax returns (monthly or quarterly, depending on his/her volume of transactions, and an annual summary return).
- Appoint a representative in order to comply with his/her obligations where the taxable person does not have an establishment in Spanish VAT territory. This obligation only applies to traders that are not established in the European Union, unless they are established in a State with which Spain has mutual assistance arrangements in place.

#### 2.6.6. Taxable amount

In general terms, the taxable amount for VAT purposes is the total consideration for the transactions subject to VAT received from the recipient or from third parties.

VAT legislation also establishes a series of special rules on determining the taxable amount, including rules on self-supplies of goods or services and on cases where the parties are related

<sup>27</sup> Effective starting on January 1, 2009, for operators that elect to apply the monthly refund regime, and starting in January 2012, for all other operators, they must mandatorily file their returns telematically.

to each other (the taxable amount consists of the normal market value).

#### 2.6.7. Deduction of input VAT

Under Spanish VAT Law taxable persons are generally entitled to deduct their input VAT from their output VAT, provided that the goods and services acquired are used to perform the following transactions, among others:

- Supplies of goods and services subject to and not exempt from VAT.
- Exempt transactions which give entitlement to a deduction, with the aim of securing that traders act neutrally in intra-Community or international trade (e.g. exports).
- Transactions performed outside Spanish VAT territory which would have given rise to the right to deduct had they been performed within that territory. In general, the input tax paid on the acquisition or import of goods or services that are not used directly and exclusively for business or professional activities may not be deducted, although there are specific rules such as those relating to the tax paid on capital goods (partial offset).

The right to deduct input VAT is also subject to formal requirements and may be exercised within four years.

There are several deduction systems, and the main features of each are as follows:

#### 2.6.7.1. General deductible proportion rule

This rule applies when the taxable person makes both supplies of goods or services giving rise to the right to deduct and other transactions which do not (e.g. exempt financial transactions).

Effective from January 1, 2006, the effect of subsidies on the right to deduct VAT was eliminated.

Under the deductible proportion rule, input VAT is deductible in the proportion which the value of the transactions giving the right to deduct bears to the total value of all the transactions carried out by the taxable person in the course of his business or professional activity.

In other words, the percentage of deductible VAT is determined under the following formula:

$$\frac{\text{Transactions entitling to deduction}}{\text{Total transactions}} \times 100$$

The resulting percentage is rounded up.

Effective starting on January 1, 2014, and in force indefinitely, the transactions carried out from permanent establishments outside the Spanish VAT territory will be excluded from the calculation of the general deductible proportion regardless of where the costs for performing the transactions have been borne or incurred.

### 2.6.7.2. Special deductible proportion rule

This system is generally elected by the taxable person (the election must normally be made in the month of December prior to the year in which it will apply). The basic features of this deduction system are the following:

- VAT paid on acquisitions or imports of goods and services used exclusively for transactions giving the right to deduct may be deducted in full.
- VAT paid on acquisitions or imports of goods and services used exclusively for transactions not giving the right to deduct may not be deducted.

- VAT paid on acquisitions or imports of goods and services used only partly for transactions giving the right to deduct, may be deducted in the proportion resulting from applying the general deductible proportion rule.

The special deductible proportion will apply obligatorily where the total sum of deductible VAT in a calendar year by application of the general deductible proportion rule exceeds by 10% or more that which would result by application of the special deductible proportion rule.

### 2.6.7.3. Deduction system for different sectors of business activity

Where the taxable person carries on business activities in different sectors, it has to apply the relevant deductible rules to each of those activities separately.

“Business activities in different sectors” means activities classed in different groups in the National Classification of Business Activities and the deduction systems applicable to them are also different (this requirement is deemed to be met, among other cases, where under the general deductible proportion rule, the percentage of deductible VAT differs by more than 50 percentage points).

In such a case, the taxable person must apply the general or the special deductible proportion rule, on the terms described above, in each of the business sectors. The VAT paid on acquisitions or imports of goods and services that cannot be specifically allocated to any of the activities will be deducted in the general deductible proportion resulting from his/her activities as a whole.

It should be noted that starting in 2015, the calculation of the general deductible proportion applicable to common input VAT, in the deduction system for different sectors of business activity, excludes the volume of transactions under the special VAT grouping scheme.

### 2.6.8. Refunds

If the VAT charged exceeds the amount of deductible VAT, the taxable person must pay over the difference in his/her periodic (monthly or quarterly) returns.

If, conversely, the amount of deductible VAT exceeds the amount of VAT charged, the taxable person may request a refund of the excess which, as a general rule, can only be claimed in the last return for the year.

However, provided certain regulatory requirements are met, taxable persons who register on the Monthly Refund Register may claim a refund of the balance existing at the end of each assessment period.

Registering on this Refund Register carries with it the obligation to file VAT returns monthly by telematic means (regardless of the taxable person’s turnover) as well as to file VAT books telematically.

The period for obtaining the refund is six months from the end of the period for filing the last return of the year (January 30 of the immediately following year) as a general rule and from the end of the period for filing monthly returns in the case of taxable persons registered on the Monthly Refund Register.

There are specific rules on the refund of VAT paid in Spain by traders that are not established in Spanish VAT territory. To obtain refunds in these cases, the following requirements must be met:

- Persons applying for a refund must be established in the European Union or, otherwise, must evidence a reciprocal arrangement in their country of origin for traders or professionals established in Spain (in other words, Spanish traders would obtain a refund of an equivalent tax in their country of origin).

Said reciprocity requirement has disappeared with the approval of Law 28/2014, for the tax borne on restaurant, hotel and transport services linked to the attendance at trade fairs,

conferences and exhibitions and the access to them, as well as in relation to the acquisition or import of molds, templates or equipment used to manufacture goods which are exported to a nonestablished trader, provided that such equipment is also exported or destroyed when no longer used.

- A trader that is not established must not have carried out transactions in Spanish VAT territory that would make it qualify as a taxable person.
- Unlike taxable persons established in the European Union, those persons who are not established in the European Union must appoint a representative, resident in Spanish VAT territory; the representative will be responsible for fulfillment of the relevant formal and procedural requirements and will be jointly and severally liable in the case of incorrect refunds and sufficient security may be sought from it for these purposes.
- Input VAT is refundable in Spain if it was paid on acquisitions of goods and services or imports of goods used to perform transactions that give the right to deduct (both in Spain and in the country where the trader is established).

Refund claims may only be related to the immediately preceding year or quarter, and the time limit for filing them is September 30 of the following year<sup>28</sup>, and it may not be less than €400 if the claim is filed quarterly, or less than €50 if it is annual.

### 2.6.9. Special VAT cash-basis accounting scheme

Since January 1, 2014, a “Special VAT cash-basis accounting scheme” can be applied by taxable persons with a volume of transactions

<sup>28</sup> A new procedure has been established whereby applications for refunds by EU traders not established in Spain must be submitted via the electronic portal set up for that purpose by their own tax authorities.

not exceeding two million euros in the preceding calendar year. Once the taxable person has elected to apply it, it shall be deemed extended save for waiver (which will have a minimum validity of three years) or exclusion therefrom due to one of the causes listed in the Law.

For an operator that elects to apply this scheme, the chargeable event in all its transactions (except for certain ones established in the Law) arises when the total or partial price is collected, in respect of amounts effectively received, with a limit of December 31 of the year after that in which the transaction was carried out, at which time the tax will be chargeable in all cases even if the price has not been collected.

This cash-basis accounting scheme also affects the VAT borne by the taxable persons that elect to apply it, meaning that they can only deduct VAT when the payment is made.

Due to the amendment of the rules on the chargeability in transactions carried out under this special scheme, the deduction of VAT borne by any trader or professional (even though it has not elected to apply it) that receives supplies of goods or services made by operators that apply the scheme will be deferred until the payment or, as the case may be, until December 31 of the year after that in which the transaction was carried out.

The new rules on the chargeable event in supplies of goods and services by operators subject to the special scheme are accompanied by changes in relation to invoicing obligations, the content of the VAT registers and the information to be provided in the informational returns on transactions with third parties, which are basically summarized as follows:

- Regarding invoicing obligations, it is necessary to include a specific reference to the application of the special scheme.
- In relation to the content of the VAT registers, certain additional content is included (payment/collection dates, amounts and means of payment used) in order to permit monitoring the application of

the specific rules on the chargeable event, both at operators subject to the special scheme and at the recipients of the invoices.

- A dual system is used for recording those transactions in the informational return of transactions with third parties.

### 2.6.10. Special VAT grouping scheme

This system is the result of the transposition into Spanish legislation of the option, set out in the European Union VAT Directive, to treat entities that are sufficiently related financially, economically and from an organizational standpoint, as a single taxable person.

“Sufficiently related” is defined in the Law as applying to a parent company (which cannot be the subsidiary of another company in Spanish VAT territory, on the terms described) and the entities over which it has effective control, either because it holds a direct or indirect interest in their capital stock of at least 50%, or because it owns a majority of the voting rights, maintained throughout the calendar year, provided that the entities included in the group have places of business or fixed establishments located in Spanish VAT territory.

This system is optional and applies for at least three years, which term is automatically extendible, and any potential waiver of the system also applies for at least three years.

The option must be elected by the parent company prior to commencement of the calendar year in which it must take effect. The decision to elect the special system must be adopted by the boards of directors of each of the entities that will belong to the group.

In its simplest form, the system merely consists of the ability to aggregate the individual VAT returns of the group companies that elect to apply the system, so that the balances of offsettable or refundable VAT of some companies may be offset immediately against the balances of tax payable belonging to the others, thereby reducing or eliminating any financial expense resulting from

reporting balances to the tax authorities, for which a refund cannot be claimed as a general rule until the final tax return of the year.

Optionally, group companies may request to use a specific method for determining the taxable amount, deductions and waiver of exemptions in intra-group transactions.

Under this specific method, the taxable amount would be any direct or indirect costs incurred in whole or in part in supplying goods or services to group companies, provided VAT has actually been paid on them (the costs on which no VAT has been paid cannot be included).

This optional method also envisages the power to waive certain exemptions that may be applicable to intra-group transactions, a power which may be exercised on a case-by-case basis for each transaction, and a special system is established for making deductions.

As a general rule, the special system for groups of companies establishes a series of specific obligations for the parent company of the group, such as, for example, the obligation to keep a cost accounting information system and prepare a report supporting the allocation method used (in the case of the extended version of the system).

The head company must file a joint return once all the individual returns of the group entities have been filed. VAT is settled on a monthly basis, regardless of the volume of transactions.

The group of entities may also elect to apply the new monthly refund regime, in which case the parent company will be responsible for filing the relevant census declaration.

### 2.6.11. Chargeability and tax return period

In general, the tax becomes chargeable (i) in supplies of goods, when they are placed at the disposal of the acquirer (or, as the case may be, when the supply is made according to applicable legislation), and (ii) in supplies of services, when the taxable

transactions are carried out, executed or fulfilled. However, in case of advance payments, the tax becomes chargeable when the price is collected in full or in part, on the amounts actually received.

Generally, the VAT period coincides with the calendar quarter, and VAT returns must be filed in the first twenty calendar days of the month following the tax period, that is, from 1 to 20 of April, July and October, and from 1 to 30 of January for that relating to the fourth quarter. Along with the fourth quarter VAT return, the annual VAT recapitulative statement (Form 390) must be filed.

However, in cases in which the volume of transactions of the taxable person in the immediately preceding calendar year calculated according to the provisions of the VAT Law, has exceeded €6,010,121.04, or if the taxable person is subject to the special scheme for groups of entities mentioned in the preceding section, or the monthly refund scheme, the assessment period coincides with the calendar month. In these cases, since the entry into force in July 2017 of the immediate supply of information (SII), VAT returns must be filed during the first thirty calendar days of the month following the relevant monthly assessment period, or until the last day of February in the case of the monthly VAT return for January. These taxable persons are exempted from the obligation to file the annual return (form 390).

These VAT returns must be filed telematically.

### 2.6.12. Invoicing obligations

The invoicing obligations are a basic element of the application and settlement of VAT. In this regard:

- The invoice is the means which taxable persons must use to fulfill the obligation to charge VAT to the recipient of the taxable transaction.

The obligation to issue and deliver an invoice for each transaction carried out applies to all traders and professionals.

The trader or professional who issues the invoice must also keep a copy or counterfoil of the invoice.

- The recipient of a transaction subject to VAT must be in possession of an invoice in order to be able to deduct the VAT borne.

In accordance with Spanish legislation, the obligation to issue an invoice applies not only to traders or professionals but also to those who do not have that status but who are VAT taxable persons, and in respect of the supplies of goods and services made in the performance of their business which are deemed located in Spanish VAT territory, even if they are not subject to or are exempt from VAT.

As stated in the section in which we analyzed the concept of permanent establishment, the fact of having an establishment in Spanish VAT territory that intervenes in the performance of transactions subject to VAT means, among other obligations, that due to being established in Spanish VAT territory, it must register for VAT purposes and issue invoices for the transactions in which it participates. For these purposes, the establishment will have the same consideration as a Spanish entity.

As regards the content of invoices, they must contain (in general and except in certain specific cases) the following data:

1. Number and series, if any. The numbering of the invoices within each series must be correlative.
2. Issuance date.
3. First and last names, business name or complete corporate name of the party obliged to issue the invoice and of the recipient of the transaction.
4. Tax identification number attributed by the Spanish tax authorities or by those of another member State of the European Union, with which the party obliged to issue the invoice has performed the transaction.



5. Tax identification number of the recipient, in the following cases:
  - Exempt intra-Community supplies;
  - Transaction in which the recipient is the VAT taxable person thereof (reverse charge mechanism);
  - Transactions performed in Spanish VAT territory where the trader or professional obliged to issue the invoice is deemed established in that territory.
6. Address of the party obliged to issue the invoice and of the recipient of the transaction.
7. Description of the transaction, specifying all the data necessary to determine the VAT taxable amount and the VAT payable, including the transaction unit price without VAT, and any discount or reduction not included in that unit price.
8. Tax rate/s applied to the transactions, including, as the case may be, the compensatory charge rate, which must be specified separately.
9. The VAT payable, if any, specified separately. That amount must be expressed in euros.
10. The date of performance of the transactions documented in the invoice or, as the case may be, the date on which the advance payment has been received, provided that it is different from the invoice issuance date.

The invoice must be issued in the following periods:

- As a general rule, at the time the transaction is performed.
- If the recipient of the transaction is a trader or professional acting as such, before the 16th day of the month following the tax return period in which the transaction has been carried out.

## 2.7. Transfer and Stamp Tax

Transfer and stamp tax is levied on a limited number of transactions, including most notably:

Tax rate (*)	(%)
Corporate transactions (**)	1
Transfers of real estate	6
Transfers of movable assets and administrative concessions	4
Certain rights on real estate (mainly guarantees, pensions, security or loans)	1
Certain mercantile law public deeds	0.5

(\*) The Autonomous Communities are entitled to opt to apply a different rate in certain cases. In fact, most of them have opted to apply a 7% rate (and even higher rates) to real estate transfers, and a 1.5% rate of Stamp Tax to certain transactions.

(\*\*) At present, business restructuring transactions, company formations, capital increases, shareholder contributions in general and certain transfers of the place of effective management or registered office are not taxed.

However, if the vendor is a company or an individual real estate developer, the transfer of buildable land or the first supply of buildings is taxed under VAT. Second and subsequent supplies of real estate by companies, traders or professionals in the course of their activity may opt to pay either transfer tax or VAT. This option is applicable if the acquirer is a trader or professional who can deduct all his VAT borne and the vendor waives the VAT exemption, in which case, the acquirer will pay VAT rather than transfer tax (this option was only possible if the recipient could deduct all of the VAT borne, although starting on January 1, 2015, it will suffice for the right to the deduction to be partial, even if due to the expected use of the goods transferred).

Transfers of shares of Spanish companies are generally exempt from any indirect taxation. However, they can trigger taxation

under VAT/transfer tax if real estate companies are transferred (that is, companies in which more than 50% of the assets are real estate located in Spain not assigned to business or professional activities) where the control of those entities is acquired, if it is considered that the transfer is carried out with an “avoidance aim”. An “avoidance aim” is presumed to exist (unless proven otherwise) where the acquirer obtains control of a real estate company and its real estate (or the real estate of the real estate companies owned by that company, the control of which is acquired) is not assigned to economic activities.

In these cases, the transaction will be subject to VAT or to transfer tax, as appropriate.

It should be noted, lastly, that unlike VAT, transfer tax entails a cost for the acquirer/beneficiary.

## 2.8. Excise and special taxes

In Spain there are several excise taxes in line with the EU Directives on this matter, such as (i) excise taxes on consumption (spirits and alcoholic beverages, beer, oil and gas and tobacco products)<sup>29</sup>; (ii) special tax on certain means of transport (also applicable in the Canary Islands, Ceuta and Melilla), or (iii) electricity tax (applicable throughout Spain), which is levied on the consumption of electricity.

## 2.9. Customs duties on imports

Most customs duties levied in Spain are standard-rate duties which are generally payable on imports when the goods clear customs. With very few exceptions the duties are *ad valorem*, i.e. on CIF or

<sup>29</sup> In general, these special taxes are not applicable in the Canary Islands, Ceuta and Melilla (the special taxes on spirits and beer are also applicable in the Canary Islands).



similar invoice value. The rest are minor customs duties relating to storage and deposit rights and the sale of abandoned goods.

The “Harmonized Goods Classification System” and the European Economic Community (“EEC”)<sup>30</sup> Tariff (TARIC) have been in force in Spain since 1987. Also, since Spain’s accession to the European Economic Community, only the exemptions established by the European Economic Community have been applicable.

## 2.10. Tax on insurance premiums

This is an indirect tax which is levied in a single payment on insurance and capitalization transactions based on actuarial techniques and arranged by insurance entities operating in Spain, including those operating under the principle of freedom to provide services.

## 2.11. Reporting obligations relating to assets and rights abroad

The Law regulates an obligation to report assets and rights abroad for individuals and legal entities (including pass-through entities) resident in Spain or nonresident with a permanent establishment.

This obligation affects accounts, securities (including insurance and life or temporary annuities) and real estate or rights over real estate, with certain quantitative and qualitative exceptions.

Although this is a purely formal obligation to be met each year in relation to information referring to the preceding year (the first return to be filed being that relating to the fiscal years ending on or after October 29, 2012), the failure to fulfill this obligation or the incorrect or late fulfillment of this obligation is subject to a costly penalty regime.

<sup>30</sup> Currently the European Union.

In addition, if this obligation is not fulfilled in a timely manner, the income detected will be deemed undisclosed income or an unjustified capital gain, attributable to the last earliest period of those not statute-barred, even if it can be proven that the income was generated before that, unless it is evidenced that the income was reported and tax was paid on it.

The general return period runs from January 1 to March 31 of the year following that for which the return is filed.

## 2.12. Special regimes of certain Autonomous Communities

### 2.12.1. Canary Islands tax regime

The Canary Islands enjoy tax benefits intended to compensate for the disadvantages brought about by insularity and distance from the Spanish mainland and the main goal of which is to attract investments to the Canary Islands.

That regime has been renewed for the period 2015 to 2020 through the approval of Royal Decree-Law 15/2014, of December 19, amending the Canary Islands Economic and Tax Regime, including some improvements in relation to the former regime **which mainly affect the regulation of the Canary Islands Investment Reserve (RIC) and the Canary Islands Special Zone**. In this regard, some of these improvements were implemented in regulations by means of Royal Decree 1022/2015, of November 13, 2015, published in the *Official State Gazette* on November 17, 2015, amending the Regulations implementing the Canary Islands Economic and Tax Regime Law 19/1994, of July 6, 1994 (the REF Regulations).

A major change resulting from the authorities’ new approach in relation to State aid, is the discontinuation of the system for notification and subsequent authorization by the European Union, which has been replaced by a mechanism to adapt the incentives included in the Canary Islands tax regime as a whole to Community legislation.

The regime is basically as follows:

### 2.12.1.1. Direct taxation

- There is a reduction of 50% of the portion of gross tax payable that relates to income from the sale of tangible goods specific to agricultural, livestock farming, industrial or fishing activities, provided that they have been produced by the taxpayer itself in the archipelago.
- The tax credit for investment in fixed assets consisting of 25% of the investment up to a limit of 50% of tax payable net of tax reductions and double taxation credits remains in force.
- The tax credits rates for investments made in the Canary Islands are higher than those applicable to investments in the Spanish mainland.
- The taxable amount is reduced (by up to 90% of undistributed income per books for the year) by amounts recorded in the RIC: the RIC must be invested within a period of up to three years, and can be invested in certain investments (to create or expand establishments, acquire certain assets, including the subscription of shares or other securities, investments contributing to the improvement and protection of the environment); these investments must be related (according to the requirements which are expressly regulated) to activities or entities/establishments in the Canary Islands.
- In addition, two new tax credits were created for entities domiciled in the Canary Islands (with an average workforce of 50 employees and revenues below €10 million):
  - i. Tax credit for investments in territories of western Africa (Morocco, Mauritania, Senegal, Gambia, Guinea-Bissau and Cape Verde).

That tax credit is 15% of the amounts invested in setting up subsidiaries or permanent establishments, with an increase in average workforce in the Canary Islands. In the case of subsidiaries, they must be owned by companies with registered office in the Canary Islands.

- ii. Tax credit of 15% of expenses for advertising and publicity, product launches, opening and researching markets abroad and attending trade fairs and the like.
- The Law establishes an increase from 32% to 45% in the tax credit for technological innovation through activities carried on in the Canary Islands.

### 2.12.1.1. Canary Islands Special Zone

Canary Islands legislation also regulates the special tax regime of the Canary Islands Special Zone (ZEC), authorized in January 2000 by the European Commission, due to considering its application compatible with the provisions regulating the Single Market. The renewal of this tax incentive was included in the negotiation process of the Directives 2007-2013, establishing that the ZEC would remain in force until December 31, 2019 for authorizations granted up to December 31, 2013, although with minor modifications. Recently, the application of this special regime has been extended until 2026, and the period for requesting authorization runs until December 31, 2020.

The regime is applicable to newly formed entities and branches domiciled in the Canary Islands that are registered on the Official Register of Entities in the ZEC. Registered entities and branches must meet certain requirements, such as (i) having their registered office and place of effective management in the Canary Islands (although PEs may be used to perform their activities both within and outside the Canary Islands, which must first be communicated to the Governing Council of the ZEC), (ii) having at least one director residing in the Canary Islands, (iii) having as their corporate purposes the performance of the economic activities expressly

established in the Law (financial activities being excluded in all cases), or (iv) creating a minimum number of jobs within the first six months following authorization, and keeping an annual average headcount of at least that number throughout the period in which the regime applies.

**In the current renewal of the Canary Islands Economic and Tax Regime, the list of activities that may benefit from the ZEC regime has been broadened and its territorial scope has been extended to the Canary Islands as a whole, meaning that the restriction of the regime to the activities carried out in certain geographical areas has been eliminated.**

The regime also requires (v) making a minimum amount of investments in the first years, through the acquisition of tangible or intangible assets located or received in the geographical area of the ZEC and which are used and necessary to perform the activities carried out in that area; and (vi) filing with the authorities a descriptive report on the activities to be carried out which supports their feasibility, international competitiveness and their contribution to the economic and social development of the islands, the content of which will be binding for the entity.

Pursuant to the tax regime, the income obtained by the ZEC entities derived from the transactions carried out will be subject to corporate income tax at a single special tax rate of 4%. This reduced tax rate only applies up to a certain amount of tax base, depending on the activity carried out and the jobs created. Moreover:

- Under the regime in force up to 2014, the shareholders (legal entities) of a ZEC entity that were tax residents in Spain did not have a right to the tax credit for double taxation for the dividends distributed by the ZEC entity where they came from income that was taxed at the reduced rate.

However, in the reform of the Canary Islands Economic and Tax Regime, starting on January 1, 2015, that restriction has been corrected and it is now possible to take the tax credit for domestic double taxation on the dividends relating to holdings

in ZEC entities coming from income that has been taxed at the reduced rate of 4%, and on the income obtained on the transfer of ZEC entities.

- The interest, capital gains and dividends obtained by nonresidents with holdings in ZEC entities are exempt from nonresident income tax in Spain on the same conditions as for residents in the European Union, where that income is paid by a ZEC entity and comes from transactions physically and effectively carried out in the geographical scope of the ZEC. These exemptions will not apply only where the income and capital gains are obtained through countries or territories classed by regulations as tax havens, or where the parent has its tax residence in those territories.

The ZEC entities enjoy an exemption from transfer and stamp tax in relation to the acquisitions of assets and rights to be used by the taxpayer to perform his/her activity, provided they are located, or can be exercised in the geographical scope of the ZEC.

Moreover, the supplies of goods and services carried out between ZEC entities, and imports of goods made by ZEC entities will be exempt from Canary Islands general indirect tax.

- Control of incentives and limits on the accumulation of aid derived from the application of European Union Law.

As a result of the approval of the REF Regulations implementing, for the first time, measures to control and monitor State aid in the REF, aid is grouped as follows pursuant to Community legislation:

- (a) Regional aid for business operations.
- (b) Regional aid to investment.
- (c) Aid for small and medium-size enterprises.
- (d) Aid for audiovisual works.

In addition:

1. It is established that the aid obtained by the beneficiaries of the REC shall be included in an informational return (form 282).
2. Rules are established for computing the aid to determine the accumulation thereof, and limits on that accumulation are specified.
3. The procedure is established for recovery of excess aid if those limits are exceeded.
4. Lastly, the authority to monitor and control that accumulation of aid, no matter what kind of aid it is, pertains to the State Tax Agency, without prejudice to the authority attributed to other bodies of the public administration, in particular to the Central Government Controller's Office.

### 2.12.1.3. Indirect taxation

For indirect tax purposes, rather than VAT, the Canary Islands General Indirect Tax (IGIC), which is similar to VAT, applies at the standard rate of 7%.

The tax on imports and supplies of goods in the Canary Islands (AIEM) also applies to the production and import in the Canary Islands of certain tangible goods.

Lastly, there are certain incentives in indirect taxation: for example, in transfer tax under the "transfers for a consideration" heading, an exemption applies to acquisitions of capital goods and of intangible assets (for 50% of the investment, except in the case of small and medium-size enterprises) which fall within the definition of initial investment mentioned previously in relation to the RIC, where certain requirements are met (article 25 of Law 19/1994).

### 2.12.2. Special regime applicable in the Basque Country

The Economic Accord with the Autonomous Community Government of the Basque Country recognizes the power of the institutions of the provinces of the Basque Country (Álava, Guipúzcoa and Vizcaya) to regulate taxes. In general, they have full or shared regulatory authority in the area of direct taxation, but far more limited authority in the indirect taxation area.

The institutions of the provinces of the Basque Country also have the power to levy, manage, assess, inspect, review and collect taxes, except with respect to import duties and excise taxes on imports.

The Economic Accord regulates the applicable connecting factors in order to determine which body of laws, namely, those pertaining to Spain (excluding the Basque Country and Navarra) or those pertaining to the provinces of the Basque Country and to Navarra, apply to taxpayers and the powers to collect and inspect each tax, with revenue-raising power being shared in some cases between various tax authorities.

The specific characteristics of the main taxes of each of the Historical Territories are contained in the following legislation.

- Corporate income tax:

- Álava: Provincial Corporate Income Tax Law 37/2013, of December 13, 2013; Provincial Law 20/2014, of June 18, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Álava; and Provincial Law 15/2015, of October 28, 2015, amending various tax provisions of the Historical Territory of Álava.
- Guipúzcoa: Provincial Corporate Income Tax Law 2/2014, of January 17, 2014, of the Historical Territory of Guipúzcoa; and Provincial Law 7/2015, of December 23, 2015, approving certain tax amendments.
- Vizcaya: Provincial Corporate Income Tax Law 11/2013, of December 5, 2013, and Provincial Law 3/2014, of June 11,

2014, making technical corrections in certain provincial tax laws of the Historical Territory of Vizcaya.

- Personal income tax:

- Álava: Provincial Personal Income Tax Law 33/2013, of November 27, 2013; Provincial Law 20/2014, of June 18, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Álava; and Provincial Law 15/2015, of October 28, 2015, amending various tax provisions of the Historical Territory of Álava
- Guipúzcoa: Provincial Personal Income Tax Law 3/2014, of January 17, 2014; and Provincial Law 7/2015, of December 23, 2015, approving certain tax amendments.
- Vizcaya: Provincial Personal Income Tax Law 13/2013, of December 5, 2013, and Provincial Law 3/2014, of June 11, 2014, making technical corrections in certain provincial tax laws of the Historical Territory of Vizcaya

- Inheritance and gift tax:

- Álava: Provincial Inheritance and Gift Tax Law 11/2005, of May 16, 2005, and Provincial Law 20/2014, of June 18, 2013, making technical corrections in certain provincial tax laws of the Historical Territory of Álava.
- Guipúzcoa: Provincial Inheritance and Gift Tax Law 3/1990, of January 11, 1990; Provincial Law 1/2014, of January 17, 2014, amending Provincial Inheritance and Gift Tax Law 3/1990, of January 11, 1990, of the Historical Territory of Guipúzcoa; and Provincial Law 7/2015, of December 23, 2015, approving certain tax amendments.
- Vizcaya: Provincial Inheritance and Gift Tax Law 4/2015, of March 25, 2015.

- Wealth tax:
  - Álava: Provincial Wealth Tax Law 9/2013, of March 11, 2013.
  - Guipúzcoa: Provincial Law 10/2012, of December 18, 2012, of Tax on Wealth and Large Fortunes, amended by Provincial Law 6/2015, of December 23, 2015, reforming the Tax on Wealth and Large Fortunes. This law creates a new tax which replaces wealth tax, albeit with similar regulations.
  - Vizcaya: Provincial Wealth Tax Law 2/2013, of February 27, 2013.
  - Wealth tax has been reinstated in the three Historical Territories only for fiscal years 2011 and 2012.

### 2.12.3. Special regime applicable in Navarra

Financial and tax dealings between Central Government and the Provincial Government of Navarra are governed by the Economic Agreement, with terms and conditions and powers similar to those under the Economic Accord. In this case, as in the case of the special regime in the Basque Country, the features of each tax are contained in their specific legislation:

- Corporate income tax: Provincial Corporate Income Tax Law 24/1996, of December 30, 1996.
- Personal income tax: Revised Provincial Personal Income Tax Law (DFL 4/2008, of June 2, 2008).
- Inheritance and gift tax: Revised provisions of the tax (Legislative Provincial Decree 250/2002, of December 16, 2002).
- Wealth Tax: Provincial Wealth Tax Law 13/1992, of November 19, 1992.

## 3. Local taxes

The Revised Local Finances Law approved by Legislative Royal Decree 2/2004, of March 5, establishes a scheme aimed at rationalizing the local taxation system and facilitating the activity of local entities. Under this legislation, local authorities are empowered to modify some aspects of this type of taxes. This Law establishes two different types of municipal taxes, which can be classified as follows:

- Periodic taxes, among them:
  - Tax on real estate (*impuesto sobre bienes inmuebles*).
  - Tax on business activity (*impuesto sobre actividades económicas*).
- Other taxes:
  - Tax on erection and installation projects and construction works (*impuesto sobre construcciones, instalaciones y obras*).
  - Tax on increase in urban land value (*impuesto sobre el incremento del valor de los terrenos de naturaleza urbana*).

### 3.1. Periodic taxes

#### 3.1.1. Tax on real estate

This tax is levied annually on owners of real estate or on holders of rights *in rem* over real estate based on the cadastral value determined pursuant to the Property Cadastre regulations, at different rates up to a maximum of 1.30% for urban property and 1.22% for rural property<sup>31</sup>.

<sup>31</sup> The tax rates applicable to urban real estate were increased for fiscal years 2014 and 2015.

#### 3.1.2. Tax on business activity

This tax is levied annually on any business activity conducted within the territory of the municipality.

However, the following taxpayers are exempted from this tax:

- Individuals.
- Taxpayers who start a business activity within Spanish territory, during the two first tax periods in which they carry on the activity.
- Taxpayers subject to corporate income tax and entities without legal personality whose net sales (at group level according to article 42 of the Commercial Code) in the previous year were under €1 million.
- In the case of taxpayers subject to nonresident income tax, the exemption will only apply to those operating in Spain through a permanent establishment, provided that they obtained net sales of under €1 million in the previous year.

The tax payable is calculated on the basis of various factors (type of activity, area of premises, net revenues, etc.). The minimum tax rates published by the Government can be adapted by the municipal authorities.

### 3.2. Other taxes

#### 3.2.1. Tax on erection and installation projects and construction works

This tax is levied on the actual cost of any work or construction activity that requires prior municipal permission, excluding VAT and any similar taxes.

The tax rate will be set by each municipal council up to a top rate of 4%, and the tax falls due at the start of the project regardless of whether the permit has been obtained.

### 3.2.2. Tax on increase in urban land value

This tax is levied on the increase disclosed in the value of urban land whenever land is transferred.

- Taxpayer: in transfers for consideration, the transferor, and in donations, the transferee.
- Tax rate: the rate set by each municipal council and capped at 30%.
- Tax base: the increase in the value of the land. The tax base is determined by reference to the value of the land when the tax falls due, which in the transfer of land will be the value that has been determined for the purposes of property tax. Certain

annual percentages will be applied to this value based on the ownership period, which will be determined by each municipal council, and may not be higher than the following limits: (i) Between one and five years: 3.7; (ii) Up to 10 years: 3.5; (iii) Up to 15 years: 3.2; (iv) Up to 20 years: 3.

This tax is deductible for personal income tax purposes from the transfer value of real estate.

## 4. Exhibit 1

### Exhibit 1

#### CORPORATE INCOME TAX INCENTIVES FOR INVESTMENT

##### INCENTIVES

Tax incentives applicable to the tax base

- Accelerated depreciation/amortization (See section 2.1.2.7. of this chapter for more detailed information).
- Unrestricted depreciation/amortization (See section 2.1.2.7. of this chapter for more detailed information).
- Special regime applicable to finance lease agreements (See section 2.1.2.7. of this chapter for more detailed information).
- Partial exemption for income derived from the licensing of certain intangible assets (Patent box) (See section 2.1.2.12. of this chapter for more detailed information).

Tax credits applicable to tax payable

- Tax credit for job creation for disabled workers (See section 2.1.4.1. of this chapter for more detailed information).
- Tax credit for job creation (See section 2.1.4.1. of this chapter for more detailed information).
- Tax credits for investment (See section 2.1.4.1. of this chapter for more detailed information).
  - Tax credit for investment in R&D&I.
  - Other tax credits for investments made in Spanish film or audiovisual productions; investment of profits for enterprises of a reduced size.

## 5. Exhibit 2

Exhibit 2  
TREATY TAX RATES<sup>32</sup>

TYPE OF INCOME			
Recipient Company's Country of Residence	Dividends (%)	Interest (%)	Royalties (%)
Albania	0, 5 or 10	6 or 0	0
Algeria	15 or 5	5 or 0	14 or 7
Argentina <sup>33</sup>	15 or 10	12 or 0	3, 5, 10 or 15
Armenia	15 or 0	5	5 or 10
Australia	15	10	10
Austria	15 or 10	5	5
Barbados	0 or 5	0	0
Belgium (**)	15 or 0	10 or 0	5
Bolivia	15 or 10	15 or 0	15 or 0
Bosnia Herzegovina	10 or 5	7 or 0	7
Brazil	15	15, 10 or 0	15 or 10
Bulgaria	15 or 5	0	0
Canada	5, 10 or 15	0 or 10	10 or 0
Czech Republic	15 or 5	0	5 or 0
Chile	10 or 5	15 or 5	10 or 5
China	10	10	10 or 6
China (Hong Kong)	0 or 10	5	5

<sup>32</sup> The tax rates established in each tax treaty are indicated. The applicability of one or another depends, in each case, on the specific requirements established in each tax treaty.

<sup>33</sup> The previous tax treaty between Spain and Argentina which took effect on July 28, 1994, was denounced unilaterally by Argentina and ceased to have effect on January 1, 2013. However, the new tax treaty, signed on March 11, 2013, establishes its effects from January 1, 2013 (meaning that for practical purposes there is no period not covered by a treaty).

TYPE OF INCOME			
Recipient Company's Country of Residence	Dividends (%)	Interest (%)	Royalties (%)
Colombia	5/0	10	10
Costa Rica	12 or 5	10 or 5	10
Croatia	15 or 5	0 <sup>34</sup>	0
Cuba	15 or 5	10 or 0	5 or 0
Cyprus <sup>35</sup>	5 or 0	0	0
Denmark <sup>36</sup>	15 or 0	10	6
Dominican Republic	10 or 0	10 or 0	10
Ecuador	15	0 or 5 or 10	10 or 5
Egypt	12 or 9	10 or 0	12
El Salvador	12 or 0	10 or 0	10
Estonia	15 or 5	10 or 0	10 or 5
Finland	15 or 10	10	5
France	15 or 0	10 or 0	5 or 0
Georgia	0 or 10	0	0
Germany	15 or 10	0	0
Greece	10 or 5	8 or 0	6
Hungary	15 or 5	0	0
Iceland	15 or 5	5	5
India	15	15 or 0	10 or 20
Indonesia	15 or 10	10 or 0	10
Iran	10 or 5	7.5 or 0	5

<sup>34</sup> The tax treaty states that the rate applicable to interest and royalties is 8%. However, the Protocol specifies that after a period of 5 years since the entry into force of the tax treaty, the rates relating to interest and royalties (articles 11 and 12 of the tax treaty) will be 0%. As it took effect on April 20, 2006, the period has already elapsed, and the 0% rate will apply.

<sup>35</sup> Published on May 26, 2014, and entered into force on May 28, 2014.

<sup>36</sup> Denmark decided to terminate the Treaty with Spain as of January 1, 2009.

TYPE OF INCOME			
Recipient Company's Country of Residence	Dividends (%)	Interest (%)	Royalties (%)
Ireland	15 or 0	0	5, 8 or 10
Israel	10	0 or 5 or 10	7 or 5
Italy	15	12 or 0	8 or 4
Kazakhstan	5 or 15	10	10
Kuwait	5 or 0	0	5
Jamaica	10 or 5	10 or 0	10
Japan	15 or 10	10	10
Korea	10 or 15	10 or 0	10
Latvia	10 or 5	10 or 0	10 or 5
Lithuania	15 or 5	10 or 0	10 or 5
Luxembourg	15 or 10	10 or 0	10
Macedonia	15 or 5	5 or 0	5
Malaysia	5 or 0	10	5 or 7
Malta	5 or 0	0	0
Mexico	15 or 5	15 or 10	10 or 0
Moldova	0, 5 or 10	0/5	8
Morocco	15 or 10	10	10 or 5
Netherlands	15,10 or 5	10	6
New Zealand	15	10	10
Nigeria	10 or 7.5	7.5	3.75 or 7.5
Norway	15 or 10	10 or 0	5
Pakistan	5, 7.5 or 10	10 or 0	7.5
Panama	0, 5 or 10	5 or 0	5
Philippines	15 or 10	0 or 15 or 10	10, 15 or 20
Poland	15 or 5	0	10 or 0
Portugal	15 or 10	15	5
Romania	15 or 10	10	10
Russia	15 or 10 or 5	5 or 0	5

Exhibit 2 (Cont.)

TYPE OF INCOME			
Recipient Company's Country of Residence	Dividends (%)	Interest (%)	Royalties (%)
Saudi Arabia	5 or 0	5 or 0	8
Senegal	10	10 or 0	10
Serbia	10 or 5	10 or 0	10 or 5
Singapore	0 or 5	5 or 0	5
Slovakia	15 or 5	0	5 or 0
Slovenia	15 or 5	5 or 0	5
South Africa	15 or 5	5 or 0	5
Sultanate of Oman	10 or 0	5 or 0	8
Sweden	15 or 10	15 or 0	10
Switzerland <sup>37</sup>	15 or 0	0	0 or 5
Thailand	10	0 or 15 or 10	5, 8 or 15
Trinidad and Tobago	0, 5 or 10	8 or 0	5
Tunisia	15 or 5	10 or 5	10
Turkey	15 or 5	15 or 10	10
United Arab Emirates	15, 5 or 0	0	0
United Kingdom	10 or 0	0	0
United States <sup>38</sup>	15 or 10	10 or 0	5 or 8 or 10

**37** The new Protocol amending the Spain-Switzerland tax treaty has been signed and establishes the following rates:

- Dividends: 15 or 0
- Interest: 0
- Royalties: 0

**38** The new Protocol amending the Spain-US tax treaty has been signed and establishes the following rates:

- Dividends: 0, 5 or 15
- Interest: 0 or 10
- Royalties: 0

TYPE OF INCOME			
Recipient Company's Country of Residence	Dividends (%)	Interest (%)	Royalties (%)
Uruguay	5 or 0	10 or 0	5 or 10
Uzbekistan	0, 5 or 10	5 or 0	5
Venezuela	10 or 0	0, 10 or 4.95	5
Vietnam	15, 10, 5 or 7	10 or 0	10
Former Soviet Union	18	0	5 or 0

## 6. Exhibit 3

### Calculation of corporate income tax

A Limited Liability Company tax resident in Spain (Teleco, S.L.) is engaged in the supply of telecommunications services. According to the 2017 financial statements, the company obtained a profit per books of €7,225,000. The company has recorded in its accounts the following transactions which may give rise to the need to make the relevant tax adjustments to the income per books:

- Teleco, S.L. has its offices in a rented building, and pays to the owner of that building an annual amount in this respect of €200,000. In addition, the company owns a building, which has been rented to a third party. The rental income obtained by Teleco, S.L. amounted to €100,000, and the withholding taxes borne by it amounted to €20,000.
- The company has recorded a corporate income tax expense amounting to €2,167,500.
- The company recorded a provision for impairment losses in relation to foreseeable bad debts amounting to €170,000. Of that amount, €125,000 relate to accounts receivable less than six months past-due on the date on which the corporate income tax relating to that year fell due.

- Teleco, S.L. purchased certain software on July 1 of the previous year, for €600,000. This tax period it recorded an amortization expense for that software amounting to €300,000.
- In the previous tax period the company recorded a provision for impairment losses in relation to foreseeable bad debts amounting to €350,000, relating to accounts receivable two months past-due at the date on which the corporate income tax relating to that year accrued.
- The company recorded a provision for other expenses (provision for incentives to be paid after 3 years) in the amount of €225,000 to cover the expense to be incurred in relation to the bonus payable to employees.
- In 2013 and 2014, it made adjustments in relation to the limit on the deductibility of amortization, for the amount of €20,000.
- The company purchased some computers on October 1, 2012 amounting to €60,000. In this tax period it recorded a depreciation expense totaling €20,000 in relation to those computers.
- The company incurred expenses on scientific R&D in the amount of €620,000 during the year. The average expenses incurred in the previous two years amounted to €120,000.
- The company purchased shares in certain companies. In this connection, the company obtained dividends in a gross amount of €105,000, and bore withholding taxes in the amount of €21,000. Such shares were acquired by February 15 and transferred by the end of March.
- According to the information furnished by the company, tax installment payments were made during the tax period in the amount of €2,400,000.

2017 CORPORATE INCOME TAX CALCULATION	
Income for the year	7,225,000
<b>Positive adjustments</b>	
Corporate income tax expense 2017	2,167,500 <sup>39</sup>
Provision for impairment losses on receivables	125,000 <sup>40</sup>
Excess amortization of software	102,000 <sup>41</sup>
Excess depreciation of computers	5,000 <sup>42</sup>
Provision for incentives	225,000 <sup>43</sup>
<b>Negative adjustments</b>	
Provision for impairment losses on receivables recorded in the previous tax year	<350,000> <sup>44</sup>
Reversal of 30% adjustment to amortization/depreciation	<2,000> <sup>45</sup>
<b>Tax base</b>	<b>9,497,500</b>
Tax rate	25%
<b>Gross tax payable</b>	<b>2,374,375</b>
<b>Tax credits</b>	
Expenses in scientific R&D	<240,000> <sup>46</sup>
Deduction of reversal of adjustment to amort/depr.	<100> <sup>47</sup>
<b>Net tax payable</b>	<b>2,134,275</b>
<b>Withholdings and prepayments</b>	
Withholding on dividends	<21,000>
Withholdings on rental income	<20,000>
Tax installments payments	<2,400,000>
<b>Net amount refundable</b>	<b>&lt;306,725&gt;</b>

## 7. Exhibit 4

### Case of application of the regime for foreign-securities holding companies (“ETVE”) the shareholders of which are not resident in Spain

The entity, Teleco, S.A. resident in Spain, owns 50% of an entity resident in the US. In turn, Teleco, S.A. is owned by an entity resident in Argentina.

In fiscal year 2017, Teleco, S.A. has received exempt dividends from its US subsidiary. Moreover, in that year, Teleco, S.A. distributed dividends to its Argentinian shareholder in the amount of €1,500,000. The taxation in Spain of these dividends will depend on whether or not the Spanish entity has elected to apply the ETVE regime.

- <sup>39</sup> As stated previously, the corporate income tax expense is nondeductible.
- <sup>40</sup> As this amount is less than 6 months old on the date when the tax falls due, it is deemed a nondeductible expense.
- <sup>41</sup> The maximum depreciation of software is €198,000 per year (33% of the acquisition cost). Consequently, as the depreciation for accounting purposes is higher than for tax purposes, a positive adjustment must be made for the difference (€102,000).
- <sup>42</sup> The maximum depreciation of data processing equipment is €15,000 per year (25% of the acquisition cost). Consequently, as the depreciation for accounting purposes is higher than for tax purposes, a positive adjustment must be made for the difference (€5,000).
- <sup>43</sup> The provision for long-term incentives for personnel who will presumably leave the company is a nondeductible expense.
- <sup>44</sup> This expense becomes deductible once it is more than 6 months old.
- <sup>45</sup> The tax provision permits reversing the adjustments made in fiscal years 2013 and 2014 due to the limitation on the deductibility of the amortization/depreciation recorded. Given that the total positive adjustment for this item amounted to €20,000, and the period for reversing it is 10 years, a negative adjustment must be made to the book income for one-tenth of the positive adjustment made in the past, that is, €2,000 (20,000 x 10%).

#### a) Teleco, S.A. has elected to apply the ETVE regime

The dividends distributed by the ETVE to its Argentinian shareholder will not be subject to taxation in Spain, in application of the ETVE regime.

#### b) Teleco, S.A. has not elected to apply the ETVE regime

The dividends distributed to the Argentinian shareholder will be subject to taxation in Spain, with the limit established in the Spain-Argentina tax treaty.

In this regard, the tax treaty establishes that the taxation of dividends cannot exceed:

- i) 10% of the gross dividends if the beneficial owner is a company that directly owns 25% of the capital of the investee that pays the dividends;
- ii) 15% of the gross dividends in the rest of cases.

In our case, as the Argentinean entity owns 100% of Teleco, S.A., the withholding applied will be limited to 10% of the dividends, i.e., the withholdings will amount to €150,000.

<sup>46</sup> As the R&D expense of the year is higher than the average incurred in the last two years, the deduction rate applicable is 42%, the deduction totaling €240,000 (120,000 x 25% + 500,000 x 42%). It is necessary to verify that this deduction does not exceed 25% of the gross tax payable reduced by domestic and international double taxation tax credits and reductions. However, this limit goes up to 50% when the amount of the R&D tax credit, relating to expenses and investments made in the same tax period, exceeds 10% of the gross tax payable, reduced by domestic and international double taxation tax credits and reductions. In this case, the limit is €1,434,510 (the limit is 50% because the R&D expenses of the year exceed 10% of the gross tax payable), and thus the tax credit can be taken in full.

<sup>47</sup> The new Corporate Income Tax Law has established, for taxpayers to which the 70% limit on the tax deductibility of accounting amortization/depreciation applied, the right to take an additional deduction of 2% in fiscal year 2015 (5% starting in 2016) of the amount included in the tax base (2,000 x 5%).



#### Taxation in Spain of the dividends distributed by Teleco, S.A. to its shareholder resident in Argentina

Teleco, S.A. is an ETVE	€0
Teleco, S.A. is not an ETVE	€150,000

## 8. Exhibit 5

### Nonresident case study: income obtained without a permanent establishment

The Dutch company TPC, B.V. posted one of its employees to Spain in September 2017. This employee worked in the Netherlands until August 2010. The salary of the employee corresponding to the September-December period amounts to €12,000, and is paid by the Spanish branch. The employee continues making contributions to the Dutch Social Security System, amounting to €800 for those four months.

In addition, the employee opened a bank account in Spain and he received interest amounting to €100 and bore a withholding tax of €21 on said interest.

In 2017, he buys and sells shares of a Spanish company and obtains a capital gain of €100. On another transaction of the same type with shares in another Spanish company, he obtains a capital loss of €20. He also transfers shares of a Dutch company and obtains a capital gain of €50.

The employee will be considered as a nonresident in Spain for tax purposes in 2017, as he was not physically present in Spain for more than 183 days and his center of economic interest was not located in Spain this year.

The employee will be taxed separately on each item of income obtained and the tax will accrue when the income falls due or on the date of actual payment if it is sooner.

1. Salary income: the Spanish branch pays his salary and, therefore, it must pay each month (or every three months if its volume of operations in the previous year was less than €6,010,121) withholdings on the gross salary paid, without deducting any expenses. As a result, in this case, the branch would have to pay to the tax authorities, in total and in the periods mentioned, 24% of the gross salary paid to the employee, which amounts to €2,880.
2. Interest on the bank account: as a nonresident, the employee could claim a refund of the €21 withheld by the Bank, as the interest obtained from nonresidents' bank accounts is exempt from tax.
3. Shares: Only the sale of Spanish shares is subject to taxation. Additionally, gains and losses cannot be offset against each other.

Therefore, the capital gain obtained from the sale of the first shares would be taxable at the rate of 21%.

However, according to the Tax Treaty between Spain and the Netherlands, that capital gain can only be taxed in the Netherlands, as the country of residence of the employee, and as a result, it will be exempt in Spain.

## 9. Exhibit 6

### VAT case study

A Spanish company, leader in the sale of specialized machinery, delivers measuring machines for the automotive industry to various countries, among others Spain. The recipients of these machines are taxable persons for VAT purposes, duly registered in their respective countries of residence.

In the course of its business activities, the company incurs every month in the following expenses:

- €900,000 plus VAT for the purchase of raw materials necessary for its production, being all the purchases made within the Spanish market.
- €30,000 plus VAT for the rental of its factory.
- €7,500 plus VAT for other business expenses.

The goods and services acquired are subject to Spanish VAT at the standard rate of 21% (said acquisitions have taken place in the first semester of 2017). Consequently, the input VAT for the Spanish company every month amounts to €196,875 (i.e.  $937,500 \times 21\%$ ).

In addition, the Spanish company sells and distributes its products in the Spanish, European and other international markets every month of the first half of 2017 as follows:

- Spanish sales: €1,000,000 plus VAT
- European Union Sales: €200,000
- International Sales: €100,000

The Spanish company must charge VAT for the supplies performed within the Spanish market at the standard rate of 21% (i.e.  $1,000,000 \times 21\% = 210,000$ ). However, the supply of goods to an European Union Member State, or the supply of goods to other third territories (export of goods), would be exempt from VAT provided that all the regulatory requirements are met; among others, the demonstration of the transportation of products outside the Spanish VAT territory and that the recipient of the goods is a VAT trader when the goods are supplied to other European Union Member State.

As the Spanish company's turnover for the previous year exceeded the amount of €6,010,121.04, the company is considered to be a large company and therefore it is obliged to submit the returns on a monthly basis. Otherwise, the returns must be submitted quarterly.

The output VAT must be recorded in such return (i.e. €210,000). However, this amount may be offset with the input VAT borne in the prior acquisitions of goods and services derived from its business activity (i.e. €196,875).

The difference between the output VAT and input VAT will amount to €13,125, which will be the final tax to be paid to the Tax Authorities when submitting the return.

# Chapter

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## Investment aid and incentives in Spain

# 4

# 4

## Investment aid and incentives in Spain

With the aim of promoting investment, employment, competitiveness and economic growth, the Spanish State and all other public authorities have been developing a broad range of aid instruments and incentives specially targeted at boosting indefinite term employment, regional investment and research, development and technological innovation (R&D and TI).

Furthermore, since Spain is an EU Member State, potential investors are also able to access European aid programs, which provide further incentives for investing in Spain.

# 4

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## 1. Introduction

With the aim of promoting investment, employment, competitiveness and economic growth, the Spanish State and all other public authorities have been developing and consolidating an extensive and complete system of aid instruments and incentives especially targeted at boosting indefinite-term employment, regional investment and at research, development and technological innovation (R&D&I).

Furthermore, since Spain is an EU Member State, potential investors are able to access European aid programs, which provide further incentives for investing in Spain.

These investment aid measures can be classified as follows:

- State incentives for training and employment.
- State incentives for specific industrial sectors.
- Incentives for investments in certain regions.
- State incentives for innovative SMEs.
- Preferred financing from the Official Credit Institute (Instituto de Crédito Oficial or ICO).
- Incentives for internationalization.
- EU aid.

Most of the aid that can be obtained from the various agencies depends largely on the specific characteristics of each investment project (i.e. the better the prospects of the project, the more possibilities there are of obtaining financing and aid).

Furthermore, the **ICEX-Invest in Spain** website ([www.investinspain.org](http://www.investinspain.org)) offers a search engine for public aid and subsidies granted in Spain. Using this tool, companies can gain easy access to updated information regarding the grants available for their investment projects. Also, this same tool now includes an automatic alert system for aid and subsidies tailor-made to each user.

Notwithstanding the tax incentives discussed in other chapters (the main tax incentives analyzed in Chapter 3 are investment tax credits (for further information go to Chapter 3, section 2), the main State incentives for investors are described on the following pages.

## 2. State incentives for training and employment

These incentives, which form part of the Government's employment promotion policy, can signify important savings in labor costs and are divided into two types:

### 2.1. Training incentives

Royal Decree 395/2007, regulating the Vocational Training for Employment subsystem, has combined both the training aimed at employed workers (Ongoing Vocational Training) and the training aimed at unemployed workers (Occupational Training) under a single model.

In this context, the Vocational Training for Employment subsystem encompasses a set of instruments and actions aimed at encouraging and extending to companies and to employed and unemployed workers a type of training that meets their needs and contributes to the development of a knowledge-based economy.

The following are the initiatives making up this training subsystem:

- Demand-based training:** training initiatives fostered by companies and individual leaves of absence for training, financed in whole or in part with public funds, to meet the specific training needs raised by companies and their workers.
- Supply-based training:** comprising both training initiatives aimed preferentially at employed workers and training initiatives aimed primarily at unemployed workers with a view to offering them training which capacitates them for qualified work and access to jobs.
- Training alternating with work:** training initiatives under vocational training contracts and public training/work programs, enabling the worker to combine training with professional practice on the job.
- Programs to support and accompany training:** aimed at improving the efficiency of the Vocational Training for Employment subsystem.

The most notable initiatives, for the purposes of interest here, are demand-based training and programs to support and accompany training.

Thus, **demand-based training** is regulated by Order TAS/2307/2007, partially implementing Royal Decree 395/2007, regulating the vocational training subsystem for employment in connection with demand-based training.

The demand-based training system is implemented through the grant of an annual credit to companies-consisting of a percentage of reductions in their workers' social security contributions —which must be earmarked for training activities for their workers.

The amount of the reductions is set annually in the General State Budgets, according to the size of the company and the scope of the training carried out in the preceding year.

Specifically, the aforesaid credit is subdivided into two types, according to the type of training program:

**Table 1**

	<b>Features of the aid</b>	<b>Amount (Additional Provision 91 LGPE 2016) *</b>
Own training programs	Reductions in employer social security contributions so that the worker can take part in programs aimed at improving his qualifications.	<p>The result of applying the following percentages, according to number of workers, to the amount paid in the preceding year as employer contributions to vocational training: 100% (between 6 and 9), 75% (between 10 and 49), 60% (between 50 and 249) and 50% (more than 250)</p> <p>For companies with between 1 and 5 workers and for newly formed companies or companies opening new workplaces with new workers, reductions of €420 are established for the first case and of €65 for the second.</p>
Individual leaves of absence for workers	Reductions in employer social security contributions for companies granting individual leaves of absence for training to their workers	<p>Equal to the salary costs of the leaves of absence granted, with certain limits established by Ministerial Order, according to size of company. As an example, for 2017 the limits will be between the amount equal to the costs of 200 hours, for companies with between 1 and 9 workers, and the amount equal to the costs of 800 hours, for companies with between 250 and 499 workers, increased by another 200 hours for each 500 workers more on the workforce.</p> <p>During 2017, total credits granted under this section may not exceed 5% of the Public State Employment Service budget for the financing of reductions in employer social security contributions for vocational training for employment.</p>

(\*) The amount of the 2017 reductions had not been stipulated by the date on which this Chapter was prepared, given that the 2017 General State Budgets Law had not yet been approved; accordingly, the amounts stipulated in the 2016 General State Budgets Law should be deemed to have been extended.

Pursuant to Additional Provision 91, funds from the amount relating to vocational training will be used to finance the vocational training for employment system regulated under Royal Decree-Law 4/2015, of March 22, 2015, on the urgent reform of the Vocational Training for Employment System. Nonetheless, the application of the vocational training for employment system provided for under said Royal Decree-Law is subject to subsequent implementation by regulation which has not yet taken place.

In this connection and pursuant to Transitional Provision 1 of Royal Decree-Law 4/2015, until the new categories of vocational training for employment initiatives provided for thereunder have been implemented by regulation, those in force under Royal Decree 395/2007 shall remain in force.

See the previous clarification regarding the transitional application of the training actions in force under Royal Decree 395/2007 for as long as the professional training for employment system regulated by Royal Decree-Law 4/2015, of March 22, 2015 has not been implemented by regulation.

On the other hand, the **programs to support and accompany training** are regulated in Order TIN/2805/2008, implementing Royal Decree 395/2007 on programs to support and accompany training, stipulating the terms regulating the grant of the public subsidies to be used to finance them.

These subsidies are aimed at contributing to the improvement of the vocational training for employment subsystem, boosting the quality of the training of employed and unemployed workers at industry or inter-industry level, as well as at disseminating and promoting the subsystem as a whole.

The procedure for granting these subsidies is initiated *ex officio* in a public call for applications issued by the Director-General of the National Employment Service or the respective Autonomous Community body with jurisdiction on the matter.

These subsidies are targeted at the financing of four types of program:

Table 2

PROGRAM	Purpose	Beneficiaries
Prospecting and analysis	To obtain a more detailed knowledge of the factors making up training demands, and analysis of specific training problems and needs in the various economic industries.	
Preparation and experimentation	To furnish companies and agents active in the management of worker training with tools enabling them to improve their organization.	Companies with workplaces in national territory, which include among their corporate purposes the pursuit of activities relating to occupational training for employment.
Evaluation	To evaluate training in the various economic industries and to develop evaluation methodologies with a view to improving training quality.	
Promotion and dissemination	To create knowledge networks using virtual workplaces, documentary consultation bases, publications, etc. which favor the dissemination of initiatives and products of all the agents active in Vocational Training for Employment.	



Notwithstanding the foregoing, it is important to note that, by virtue of the provisions of Royal Decree Law 4/2015, of March 22, 2015, on the urgent reform of the vocational training for employment system in the area of labor and of Law 30/2015, of September 9, 2015, regulating the vocational training for employment system in the area of labor, modifications are made to the system in force in this connection under the following main objectives: (i) to guarantee that workers, employees and unemployed persons can exercise their right to training, (ii) to make an effective contribution through training to the competitiveness of enterprises, (iii) to strengthen the role played by collective bargaining in the matter and (iv) to offer efficiency and transparency in the management of public resources.

The newly introduced features include most notably the following:

- *Reorganization and regulation of training initiatives:* the aforesaid regulations restructure and regulate in detail the categories of modules of vocational training for employment. In this connection, they stipulate the following four training modules: (i) programmed training by companies for their workers; (ii) training offered by the relevant authorities to active workers; (iii) training offered by the relevant authorities to unemployed workers; and (iv) other vocational training initiatives (which include, *inter alia*, individual leaves of absence for training and training that alternates with employment).
- *Economic modules for training:* economic module means the cost per participant and hour of training eligible for public financing. The amount of these modules will comprise both direct and indirect costs of the training activity, and the costs relating to organization in programmed training can be financed up to 10% in companies of more than 9 employees, 15% in companies of between 6 and 9 employees and up to 20% in companies with 5 or fewer employees.

- *Programmed training by companies:* with this new legislation, training initiatives seek to respond to the real, immediate and specific training needs of companies and their employees, and can be carried out by the company itself or entrusted to an external entity accredited and/or registered in the appropriate register.

For such purpose, companies may avail themselves of credit for the financing of training costs, which can take the form of reductions in employer social security contributions according to the annual projections in the General State Budgets Law. Companies will also participate in the financing of their employees' training with their own resources, according to the following percentages: 5% (1 to 9 employees), 10% (10 to 49 employees), 20% (50 to 249 employees), or 40% (250 or more employees).

In any case, pursuant to Transitional Provision 1 of Royal Decree-Law 4/2015 and of Law 30/2015, referred to above, until the new categories of vocational training for employment initiatives provided for under such legislation are implemented by regulation, those in force under Royal Decree 395/2007, already described, will remain in force, except in connection with a few adjectival aspects (financing from grant, early payment, competition among training entities, etc.).

## 2.2. Employment incentives

The Spanish Central Government offers an extensive catalog of aid, consisting mainly of reductions in social security contributions, aimed at promoting new stable or indefinite jobs (especially for unemployed persons included in groups such as women in general, young people aged 16-30, the long-term unemployed, unemployed persons over the age of 45 and persons with disabilities).

Furthermore, on an exceptional basis, certain reductions in social security contributions are instrumented for temporary contracts executed with workers with disabilities or with socially-excluded individuals, provided that in both cases they are unemployed and registered as job seekers at the Employment Office, as well as with persons who provide evidence of having been victims of gender-based violence.

Where the indefinite-term or temporary contract is part-time, the incentive will be the result of applying to the incentives stipulated for each case, a percentage equal to the percentage of the working day stipulated in the contract, increased by 30%, the result of which may in no case exceed 100% of the stipulated incentive, except in connection with incentives for hiring persons with disabilities through special employment centers.

The catalog of aid, the basic parameters of which were just described above, is very extensive, as it varies according to the ample number of existing contracts and the specific features of each of them. Most of these incentives are set forth in Law 43/2006, on improved growth and employment, as well as in Law 3/2012, on urgent measures to reform the job market, which, among other objectives, are aimed at rationalizing the system of incentives for hiring under indefinite-term contracts, with a view to correcting some of the inefficiencies detected, in practice, in recent years.

More information on the aid and reductions envisaged for each type of contract may be found at the website of the State Public Employment Service (<http://www.sepe.es>).

In any case, the following is a summary of the main aids set forth in the aforesaid legislation, indicating the stipulated incentive percentages.

Table 3

**A) Incentives for hiring under indefinite-term contracts to support entrepreneurs\* (article 4 of Law 3/2012)**

Groups	Description	Annual amount (€)		Duration
Unemployed persons registered as job seekers at the Unemployment Office	Young people aged 16 -30**	Men and Women	Women in occupations in which women are less represented	3 years
		Year 1: 1,000	Year 1: 1,100	
		Year 2: 1,100	Year 2: 1,200	
	Year 3: 1,200	Year 3: 1,300		
Persons over 45	Men and Women	Women in occupations in which women are less represented		
	1,300	1,500		

(\*) Only companies with fewer than 50 workers will be able to make use of the employment contract to support entrepreneurs regulated in this article.

In order to apply these initiatives, the employer must maintain the worker hired in his job for at least 3 years after the commencement date of the employment relationship. It must also maintain the level of employment attained by the company with the indefinite-term contract to support entrepreneurs for at least one year after execution of the contract. In the event of a breach of these obligations, the incentives must be returned.

Companies with fewer than 50 workers which hire unemployed persons who collect unemployment benefits using this contractual form may also take a tax credit for corporate income tax purposes equal to the lower of the following amounts: the value of the unemployment benefits still to be collected at the time of hiring or the amount of 12 months of the acknowledged unemployment benefit.

This tax credit will apply to contracts executed during the tax period until a workforce of 50 workers has been attained, provided that, during the 12 months preceding commencement of the employment relationship, the company's total average workforce increases in connection with each worker by at least one unit with respect to that existing in the previous 12 months, and its application will be conditional on the worker hired having received unemployment benefits for at least 3 months prior to commencement of the employment relationship.

Indefinite-term employment contracts to support entrepreneurs may be executed until the unemployment rate in Spain has dropped below 15%.

(\*\*) Companies hiring their first worker aged under 30 using this contractual form may take a €3,000 tax credit for corporate income tax purposes.

Table 4

**B) Incentives for hiring under indefinite-term contracts**

Groups	Description	Annual Amount (€)			Duration
		Full time	Part time		
Beneficiaries of the National Youth Guarantee System*	Young persons over the age of 16 and under the age of 25, or under the age of 30 in the case of disabled persons** (art. 107 of Law 18/2014, of October 25, 2014, approving urgent measures for growth, competitiveness and efficiency)	1,800	1,350 in the case of working time equal to 75% or 900 in the case of working time equal to 50%		6 months
			600		
Special situations	Socially-excluded workers (art. 2.5 Law 43/2006)		Year 1: 1,650 Year 2: 600		4 years
	Socially-excluded workers who have finalized an employment contract with an employee insertion company during the preceding 12 months, and have not worked for another employer thereafter and are hired by an employer that is not an insertion company or special employment center (art. 2.5 Law 43/2005)				
	Victims of domestic violence (art. 2.4 Law 43/2006)***		1,500		
	Victims of gender-based violence (art. 2.4 Law 43/2005)***		1,500		
	Victims of terrorism (art. 2.4 bis Law 43/2006)***		1,500		
	Victims of human trafficking (art. 2.4 ter of Law 43/2006)***		1,500		2 years
Persons with disabilities	In general (art. 2.2.1 Law 43/2006)	Men < 45 years	Women < 45 years	Men and women aged over 45	Throughout the term of the contract
		4,500	5,350	5,700	
	In case of severe disability (art. 2.2.2 Law 43/2006)	5,100	5,950	6,300	

(\*) This reduction will apply in all cases of workers hired between the time Royal Decree-Law 8/2014, of July 4, 2014 came into force, i.e., October 17, 2014, and June 30, 2016.

(\*\*) Young persons over the age of 25 and under the age of 30 who meet the requirements imposed under Law 18/2014 for eligibility for an action under the National Youth Guarantee System will be eligible for this reduction until their unemployment rate drops to below 20% according to the Survey of Active Population for the last quarter of the year.

(\*\*\*) Victims of gender-based and domestic violence, of terrorism and of human trafficking, do not have to meet the condition of being unemployed.

Table 4 (Cont.)

**B) Incentives for hiring under indefinite-term contracts**

Groups	Description	Annual Amount (€)			Duration
		Men < 45 years	Women < 45 years	Men and women aged over 45	
Conversion to indefinite	Conversion of temporary contracts for job creation executed with persons with disabilities, or of training contracts executed with disabled workers into indefinite-term contracts (art. 2.2.1 Law 43/2006)	Men < 45 years	Women < 45 years	Men and women aged over 45	Throughout the term of the contract
		4,500	5,350	5,700	
		5,100	5,950	6,300	
	Conversions of work-experience, handover and replacement due to retirement contracts into indefinite-term contracts (art. 7 Law 3/2012) ****	Men	Women		3 years
		500	700		
	Conversion of vocational training and apprenticeship contracts, regardless of the date of execution, into indefinite-term contracts (art. 3.2 Law 3/2012) *****	1,500	1,800		4 years
	Conversion of contracts executed with socially-excluded workers into indefinite-term contracts (art. 2.6 Law 43/2006)	600			
	Conversion of contracts executed with socially-excluded workers who have finalized an employment contract with an employee insertion company during the preceding 12 months, and have not worked for another employer thereafter and are hired by an employer that is not an insertion company or special employment center into indefinite-term contracts (art. 2.6 Law 43/2006)	Year 1: 1,650 Year 2: 600			
	Conversion of contracts executed with victims of domestic violence into indefinite-term contracts (art. 2.6 Law 43/2006)	1,500			
	Conversion of contracts executed with victims of gender-based violence into indefinite-term contracts (art. 2.6 Law 43/2006)	1,500			
Conversion of contracts executed with victims of terrorism into indefinite-term contracts (art. 2.6 Law 43/2006)	1,500				

(\*\*\*\*) Potential beneficiaries of these reductions are employers with fewer than 50 employees at the time of hiring, including independent professionals and worker-owned enterprises or cooperatives joined by employees as working or business partners, provided that the latter have chosen a social security scheme for employees. In the case of workers hired under work-experience contracts and made available to user companies, said companies will be entitled, on the same terms, to identical reductions where, without a break in continuity, they arrange an indefinite-term employment contract with those workers.

(\*\*\*\*\*). Starting on January 1, 2017, the social security contribution relief will consist of a reduction, where those hired are workers registered under the National Youth Guarantee System who meet the requirements imposed under article 105 of Law 18/2014, of October 15, 2014, approving urgent measures for growth, competitiveness and efficiency, said reduction being applied on the same terms as those of the reductions stipulated under article 3.5 of Law 3/2012.

Table 5

**C) Incentives for hiring under temporary contracts**

GROUPS	Description	Annual amount (€)				Duration
		Men < 45 years	Men > 45 years	Women < 45 years	Women > 45 years	
Persons with disabilities hired under temporary contracts to foster employment (art. 2.2.4 Law 43/2006)	In general	3,500	4,100	4,100	4,700	Throughout the term of the contract
	Severe disability	4,100	4,700	4,700	5,300	
Socially-excluded persons (art. 2.5 Law 43/2006)				500		
Victims of gender-based or domestic violence (art. 2.4 Law 43/2006)				600		
Victims of terrorism (art. 2.4 bis Law 43/2006)				600		
Victims of human trafficking (art. 2.4 ter Law 43/2006)				600		

Table 6

**D) Incentives for hiring under indefinite-term contracts, under temporary contracts or for conversion into indefinite-term contracts through special employment centers**

GROUPS	Annual amount	Duration
Unemployed persons with disabilities hired under temporary or indefinite-term contracts through special employment centers (art. 2.3 Law 43/2006)	100% of the employer's social security contributions, including contributions for occupational accidents and sickness and joint collection contributions	Throughout the term of the contract.

Table 7

**E) Incentives for training and apprenticeship contracts (article 3 of Law 3/2012)**

GROUPS	Description	Annual amount	Duration
Unemployed persons registered as job seekers with the Employment Office	For contracts executed after July 8, 2012	Reduction in employer's contribution to social security for common contingencies, including those relating to occupational accidents and illnesses, unemployment, wage guarantee fund and vocational training, equal to 100% in the case of employers with fewer than 250 employees; and 75% in the case of employers with 250 or more employees (Article 3.1 Law 3/2012)	Throughout the term of the contract, including renewals.
	Regardless of the date on which they are executed	Reduction in employer's social security contribution of EUR 1,500 per year (EUR 1,800 in the case of women) where training and apprenticeship contracts which have terminated are converted into indefinite-term contracts (Article 3.2 Law 3/2012)	

(\*) The employer social security contribution relief stipulated for training and apprenticeship contracts will consist of a reduction, where those hired are workers registered under the National Youth Guarantee System who meet the requirements imposed under article 105 of Law 18/2014, of October 15, 2014, approving urgent measures for growth, competitiveness and efficiency, said reduction being applied on the same terms as those of the reductions stipulated under article 3 of Law 3/2012 (article 3.5 Law 3/2012).

The above does not preclude the reductions provided for in Order ESS/2518/2013 of December 26, 2013, regulating the training aspects of the contract for training and apprenticeship, whereby enterprises may finance the cost of training inherent in this type of contract through reductions in employer social security contributions. The maximum amount of these reductions will be the result of multiplying the economic module in question (face-

to-face training: €8/hour; and distance training: €5/hour) by the number of hours equal to 25% of the working hours during the first year, and 15% of the working hours the second and third years.

It should be noted that the above-mentioned Law 18/2014 on urgent measures for growth, competitiveness and efficiency has entailed the modification of the above-mentioned Order ESS/2581/2013 on

the training aspects of the contract for training and apprenticeship, increasing the maximum amounts of the reductions in employer social security contributions for cases where beneficiaries of the Youth Guarantee System are hired. In these cases, Order ESS/41/2015, of January 12, 2015, establishes that the above-mentioned multiple of 25%/15% will be increased to 50% of the working hours during the first year, and 25% of the working hours the second and third years.

Table 8

**F) Incentives for the contracts provided for in Law 11/2013, of July 26, 2013, on measures to support entrepreneurs and to boost growth and create jobs\***

TYPE	Description/Groups	Annual amount	Duration
Training relationship (art. 9)	Indefinite or temporary part-time hiring of young unemployed persons under the age of 30 registered with the employment office, beneficiaries of the National Youth Guarantee System, without employment experience and originating from other sectors of activity, combining employment and training*** or having pursued such training in the 6 months preceding the execution of the contract.	100% reduction to employer social security contributions for common contingencies in the case of companies with fewer than 250 employees; and 75% in the case of companies with 250 employees or more.	Maximum 12-month term, renewable for another 12 months provided that the worker continues to combine training and employment or has pursued the training in the 6 months prior to the deadline for the 12 months preceding.
Microenterprises and self-employed workers ****	Hiring on a permanent, full- or part-time basis, of young unemployed persons under the age of 30 and registered at the employment office.	100% reduction to employer social security contributions for common contingencies.*****	During the first year of the contract.

(\* ) The hiring incentives provided for under articles 9, 10, 11, 12 and 13 of Law 11/2013 will also apply where the contract is executed with youth under the age of 35 who have been recognized a degree of disability equal to or greater than 33%, provided that they also meet the other requirements imposed under the aforesaid articles (Additional Provision Nine Law 11/2013).

(\*\* ) In accordance with the First Transitional Provision of the above mentioned Law 11/2013, the incentives set out in articles 9 to 13 will remain in force until the unemployment rate falls below the 15% mark.

(\*\*\*) Officially certified training or training promoted by the Public Employment or Training Services in languages or IT and communication of a minimum annual duration of 90 hours.

(\*\*\*\*) Excluding indefinite contracts in support of entrepreneurs, indefinite contracts of groups in special situations or with a disability and permanent contracts for intermittent work.

(\*\*\*\*\* ) In order to qualify for this measure, companies must meet the following requirements: a) have, when the contract is executed, a workforce equal to or of less than nine workers; b) not have had any previous employment relationship with the worker; c) not have adopted, during the six months preceding execution of the contract, unjustified contract termination measures; and d) not have previously executed another contract pursuant to article 10.1 of Law 11/2013.

Table 8 (Cont.)

**F) Incentives for the contracts provided for in Law 11/2013, of July 26, 2013, on measures to support entrepreneurs and to boost growth and create jobs**

TYPE	Description/Groups	Annual amount	Duration
New young entrepreneurial projects (art. 11)	First hiring on a permanent basis (full or part time) on the part of independent contractors under the age of 30 and without salaried workers, of unemployed persons aged 45 or more registered uninterruptedly at the unemployment office, for 12 months in the 18 months preceding the hiring or who are beneficiaries of the occupational retraining program for persons who have used up their unemployment protection.	100% reduction to employer social security contributions.	Maximum 12-month term after the hiring.
First young persons' employment (art. 12)	Conversion of temporary contracts (up to a maximum of 6 months) of young unemployed persons under the age of 30 without employment experience or less than 3 months of experience into indefinite-term contracts.	Reduction in employer social security contributions of €500 a year and €700 a year in the case of women.	During 3 years.
Work experience for first employment (art. 13)	Work experience contracts for young persons under the age of 30, even where 5 or more years have elapsed since completion of their studies.	Reduction to employer social security contributions of 50% or 75% where performing unpaid work experience at the company, with an additional reduction of 50% or 25%, respectively, for beneficiaries of the National Youth Guarantee System.	Throughout the term of the contract. In the case of beneficiaries of the National Youth Guarantee System, the additional reduction will apply until June 30, 2016.

**G) Incentives for indefinite-term employment and for independent professionals under Law 1/2015**

Article 8 of Law 25/2015, of July 28, 2015, on the second chance mechanism, the reduction of the financial burden and other social security measures, consolidated the incentive for indefinite-term employment and for independent professionals introduced by Royal Decree-Law 1/2015, of February 27, 2015, on the second chance mechanism, the reduction of the financial burden and other social security measures, consisting of the possibility of reducing the employer social security contribution, in any of its forms, in cases of indefinite-term hiring. In order to be eligible for this incentive, companies must be up to date with their tax and social security obligations; they must not have terminated employment contracts in the preceding six months;

and they must execute indefinite-term contracts, over a period of at least 36 months, which entail an increase in the level of employment.

The amount of the incentive can be up to €500, over 24 months, in cases of full-time hiring, and is reduced proportionally, according to the percentage of reduction in working time under each contract.

After the 24 months have elapsed, and during the following 12 months, companies with fewer than 10 employees at the time they execute the contract qualifying for this contribution relief, will be entitled to maintain the incentive, although only up to the first €250 of the contribution base, or the relevant amount reduced proportionally, in cases of part-time hiring.

It is also important to note that in the case of employees registered under the National Youth Guarantee System, this contribution relief will consist of a reduction, provided that the requirements stipulated under article 105 of Law 18/2014 are met (mainly, to be registered and included on the single demand list and, in any case, have evidenced not having worked or received education or training previously, during a specific period of time).

Nonetheless, this incentive will not apply to certain employment relationships, such as special employment relationships (senior management, disabled persons, etc.) or to those that affect the spouse, ascendants, descendants and other persons related by consanguinity or affinity, or to the hiring of employees who had been hired by other group companies, among other cases.

Lastly, the application of this incentive will be incompatible with the application of any other social security contribution relief for the same contract, other than the relief for hiring beneficiaries of the National Youth Guarantee System or the economic aid to beneficiaries of the Employment Activation Program under indefinite-term contracts.

### 2.3. Local employment initiatives (no time limit)

In addition to the incentives to foster employment and for labor adjustments, aid and subsidies may also be granted for investment projects aimed at generating economic activity and stable employment in local and regional areas of Spain, subject to classification by the State Employment Public Service as investment and employment (I+E) projects or entities.

The specifications for the grant of this aid are established in the Order of the Ministry of Employment and Social Security of July 15, 1999, which has remained in force in the context of the new Spanish Employment Strategy 2014-2016 approved by Royal Decree 751/2014, of September 5, 2014.

In connection with the foregoing, it is important to note that at the Industry-wide Conference on Employment and Labor Affairs of the most recent Conference of Autonomous Community Presidents held in Madrid on January 17, 2017, an agreement was reached to renew the Spanish Employment Strategy for 2017-2020 (still awaiting final approval), stipulating the following priorities:

1. To continue actively advancing in the modernization of the Public Employment Services and in the improvement of the coordination instruments on which the National Employment System is based, increasing the efficiency of Active Employment Policies.
2. To continue advancing in the improvement of the Vocational Training for Employment system, especially in matters of Dual Training.

3. To give priority to directing the services and programs related to active employment policies toward enhancing the employability, principally of young people and long-term unemployed persons.

According to specific information furnished by the government, the final approval of this Strategy apparently will not introduce substantial changes to the aforesaid Order of July 15, 1999, which will continue to represent the basic framework of reference in these matters.

*A priori*, the incentives provided for under said Order for investment projects aimed at generating economic activities and stable employment (able to be classed by the State Public Employment Service as “I+E” projects or enterprises) are therefore expected to remain in force under the aforesaid Spanish Employment Activation Strategy 2017-2020.

In this connection, for a project to be classed as “I+E”, it must meet the following requirements:

- A local corporation must support the business project by contributing economic and/or material resources, such as infrastructures or services assisting it in the start-up and management of the business.
- Projects must provide for the hiring of workers or the recruitment of new partners in the case of projects involving cooperatives or labor companies.
- Projects must provide for the incorporation of a new company with a maximum number of 25 employees at the time of incorporation.
- Projects must relate to a newly formed enterprise.
- Projects must provide for the production of products and/or services which relate to emerging economic activities or, in the case of traditional activities in the area, which cover needs not covered by the existing structure.

- Projects must meet technical, economic and financial viability requirements.

**Incentives available** for projects deemed eligible are as follows:

- A financial subsidy aimed at the reduction by up to three percentage points of interest rates on loans granted to the company in connection with its incorporation and establishment. The maximum amount of this subsidy will be €5,108 per indefinite-term job created.
- A subsidy for the support of management activities (e.g. subsidies for the external contracting of market or technical research, reports, and/or training programs). This subsidy will only be available during the first year after the incorporation of the company and will cover 75% of the cost of the qualifying services up to a maximum of €12,020.
- A subsidy for technical assistance for the hiring of highly-qualified technical experts, covering 50% of total labor costs (including employer social security contributions for a maximum period of one year). This is a one-time subsidy with a ceiling of €18,030.
- A subsidy for each indefinite-term employment contract, amounting to €4,808 for each new worker hired under an indefinite-term full-time contract (or the related proportion of such overall amount in the case of indefinite-term part-time contracts).
- A subsidy for cooperatives and labor companies amounting to €4,808 per unemployed working partner recruited on an indefinite-term basis. This subsidy is not compatible with those described in the two preceding points.

All the aforementioned subsidies may be increased by 10% where the main activity is related to certain areas, such as the protection and maintenance of natural areas, new information and communication technologies, waste management, mass transportation, the development of local culture and the care of children, the handicapped and the aged.



Applications for these incentives must be submitted to the respective Provincial Directorate of the Employment Public Service or the appropriate Autonomous Community body, which are the bodies in charge of the management of this aid, selecting projects and granting the related aid.

This aid and these subsidies are compatible with others granted by other government agencies or public or private entities, although the total amount of the subsidy, whether taken alone or together with aid or subsidies granted by other public authorities, private or public entities, may not exceed 80% of the cost of the subsidized activity.

### 3. State incentives for specific industries

The Central Government provides financial aid and tax benefits for activities pursued in certain industries which are considered to be priority industries (e.g., mining, technological development, research and development, etc.) in view of their growth potential and their impact on the nation's overall economy. Additionally, Autonomous Community governments provide similar incentives for most of these industries.

Financial aid includes both nonrefundable subsidies and interest relief on loans obtained by beneficiaries, or combinations of the two.

The main official programs supporting the industrial development projects to support innovation currently in force are:

#### 3.1. Research, development and technological innovation

##### 3.1.1. 2013-2020 Spanish Strategy for Science and Technology and for Innovation

Encouraging innovation, technological improvement and research and development projects continues to be one of the priority objectives of the Spanish public authorities, since this is a

determining factor of the increase in a country's competitiveness and economic and social development.

Science, Technology and Innovation Law 14/2011, of June 1, 2011, establishes the legal framework for the fostering of scientific and technical research, experimental development and innovation in Spain, founded on a scheme based on the approval of the related Spanish Strategies for Science, Technology and for Innovation, which serve as multi-year reference documents for reaching the statutory objectives and as a basis for the preparation of a State Plan through which to instrument in detail the initiatives required to perform such objectives.

In line with the foregoing, at the beginning of 2013 the Council of Ministers approved, in a combined document, "the Spanish Strategy for Science and Technology and for Innovation" for the 2013-2020 period, whose essential purpose is to promote the scientific, technological and business leadership of the country as a whole and to increase the innovation capacities of the Spanish company and the Spanish economy, defining in this connection the following **general objectives**:

- (i) recognizing and promoting R&D&I talent and its employability, with a view to improving the System's R&D&I training capacities, boosting labor market integration and employability of the trained human resources, both in the public and in the business sectors, and facilitating their mobility among public institutions and between such institutions and the private sector for the pursuit of R&D&I activities;
- (ii) fostering excellence in scientific and technical research; promoting the creation of knowledge, increasing the scientific leadership of the country and its institutions and fostering the creation of new opportunities which lead to the future development of highly competitive technological and business capacities;
- (iii) boosting business leadership in R&D&I, increasing the competitiveness of the productive fabric by increasing

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R&D&I activities in all areas and, in particular, in those industries deemed to be strategic for growth and job creation in the economies of Spain and its Autonomous Communities;

- (iv) fostering R&D&I activities aimed at meeting the global challenges currently facing Spanish society.

In order to attain the foregoing objectives, and having regard to the characteristics of the environment in which the agents of the Spanish System for Science, Technology and Innovation are to pursue their activities, six **priority areas of transversal action** were identified: (i) defining a favorable environment which enables the pursuit of R&D&I activities; (ii) specializing and aggregating the creation of knowledge and talent; (iii) stimulating knowledge transfer in open and flexible environments which favor interaction and encourage its conversion into innovative applications, whether commercial or non-commercial; (iv) supporting internationalization and promoting the international leadership of the System; (v) fostering the intelligent specialization of territories with a view to promoting a highly competitive regional framework; and (vi) disseminating a scientific, innovative and enterprising culture throughout society as a whole, with a view to achieving a higher degree of social and institutional acceptance of the entrepreneur.

The structure of the Spanish Strategy for Science and Technology and for Innovation aimed at aligning Spanish policies with the R&D&I objectives pursued by the European Union, defined in the new framework program for the financing of "Horizonte 2020" R&D&I activities, with a view to intensifying the participation of the agents of the Spanish System for Science, Technology and Innovation in the development of the European Research Space, facilitating access to sources of financing at Community level.

In short, the 2013-2020 Spanish Strategy for Science and Technology and for Innovation, as an instrument used to foster the country's economic growth and competitiveness, defines the conceptual

framework used to instrument R&D&I policies in Spain, whose specific initiatives are implemented and instrumented in the related State Plans.

### 3.1.2. 2013-2016 State Plan for Scientific and Technical Research and for Innovation

Simultaneous to the approval of the aforesaid Strategy, the Council of Ministers approved the 2013-2016 State Plan for Scientific and Technical Research and for Innovation, which, in line with the objectives and priorities defined in the Spanish Strategy for Science and Technology, defines the instruments to be used to finance R&D&I activities on the part of the national government, comprising the entire process, from the creation of ideas through the incorporation of those ideas into the market in the form of new products and processes used to improve the quality of life and the wellbeing of all citizens and to contribute to economic development.

This State Plan has the nature of a Strategic Plan pursuant to Subsidies Law 38/2003, of November 17, 2003, and the funds allocated thereunder are granted in competitive tender procedures, in which the selection of the proposals is based on

scientific/technical methods and technological, business and commercial viability, supported by internationally validated principles, as well as by standardized and transparent assessment processes based on inter-party assessment committees.

In summary, the **objectives** of the 2013-2016 State Plan for Scientific and Technical Research and for Innovation have as a common denominator that of bolstering the competitiveness of the business fabric of Spain, founded on a sound scientific and technological base and on promoting innovation in all its dimensions, including most notably the following objectives: (i) promoting the training and employment of human resources in R&D&I activities in both the public and the private sectors; (ii) increasing the quality of scientific and technical research so that it attains its maximum level of excellence and impact; (iii) strengthening the international capacities and leadership of scientific and technical research institutions, centers and implementation units; (iv) facilitating access to scientific and technological infrastructures and to scientific equipment (in particular to major domestic and international special scientific and technical facilities); (v) boosting business leadership in R&D&I by enhancing the capabilities of companies in this regard and incorporating SMEs into the innovation process;

(vi) favoring the creation and growth of technology-based enterprises and promoting efficient investor networks that provide access to new forms of financing for R&D&I activities; (vii) increasing cooperation between the public sector and the business sector in connection with R&D&I; (viii) stimulating R&D&I aimed at meeting society's challenges; (ix) promoting the internationalization of the R&D&I activities of the agents of the Spanish Science, Technology and Innovation System; (x) expanding scientific, technological and innovative culture, as well as the dissemination of the results of scientific-technical research and innovation projects; (xi) going more deeply into R&D&I policies based on demand.

The Council of Ministers, in a resolution dated December 30, 2016, approved the extension of the State Plan for Scientific and Technical Research and for Innovation 2013-2016, which will remain in force until the approval of the future State Plan for 2017-2020, on which the Secretariat of State for R&D&I of the Ministry of Economy, Industry and Competitiveness is currently working.

The initiatives of the national government set forth in the Plan are organized into the following **scheme**:

Table 9  
STATE PROGRAMS

Promotion of talent and its employability	Fostering of excellence in scientific and technical research	Business leadership in R&D&I	R&D&I aimed at the challenges of society
State Subprograms		Strategic Actions	
<ul style="list-style-type: none"> <li>• Training.</li> <li>• Incorporation.</li> <li>• Mobility.</li> <li>• Creation of knowledge.</li> <li>• Development of emerging technologies.</li> <li>• Institutional strengthening.</li> <li>• Scientific and technical infrastructures and equipment.</li> <li>• Business R&amp;D&amp;I.</li> <li>• Essential facilitating technologies.</li> <li>• Cooperative R&amp;D&amp;I targeted at the demands of the productive fabric.</li> <li>• Health, demographic change and welfare.</li> <li>• Food safety and quality; Productive and sustainable agriculture, sustainability of natural resources, marine and maritime research.</li> <li>• Safe, efficient and clean energy.</li> <li>• Intelligent, sustainable and integrated transportation.</li> <li>• Action on climatic change and efficiency in the use of resources and raw materials.</li> <li>• Social changes and innovations.</li> <li>• Digital economy and society.</li> <li>• Security, protection and defense.</li> </ul>		<ul style="list-style-type: none"> <li>• Strategic action for health.</li> <li>• Strategic action for economy and digital society.</li> </ul>	

In the area of **administrative management**, the Plan attributes the management of the financing instruments provided for in the State Programs, as far as initiatives of the Secretariat of State for Research, Development and Innovation are concerned, to the two R&D and IT financing agencies created under Science, Technology and Innovation Law 14/2011: the Center for Industrial Technological Development (Centro para el Desarrollo Tecnológico Industrial or CDTI) and the State Agency for Research (Agencia Estatal para la Investigación) soon to be created.

The Plan also covers the approval of Annual Action Programs as instruments of ongoing review for the monitoring and management of the State Plan during its term, from the allocation of available financial resources through programmed initiatives. Such programs are to include a list of the initiatives that are meant to be promoted during this annuity, including submission deadlines and time limits on the resolution of proposals, as well as the agencies in charge of managing them.

Lastly, in order to guarantee the success of programmed public initiatives, the Plan provides for the design of indicators of results and of follow-up for the assessment of the degree of compliance with the objectives stipulated for each State Program, as well as the impact of such program on the objectives stipulated in the Spanish Strategy for Science and Technology itself.

Notwithstanding the provisions of each call for applications for the respective programs and subprograms, in general, the aid included in the State Plan has the following characteristics:

Table 10

Beneficiaries	Types of aid	Forms of participation
<ul style="list-style-type: none"> <li>Individuals.</li> <li>Public research agencies, pursuant to Science, Technology and Innovation Law 14/2011.</li> <li>Public and private universities with proven R&amp;D capacity, pursuant to Organic Law 6/2001 on Universities.</li> <li>Other public R&amp;D centers.</li> <li>Public and private health entities and institutions related to or assisted by the National Health System.</li> <li>Certified Health Research Institutes.</li> <li>Public and private non-profit entities (foundations and associations) engaging in R&amp;D activities.</li> <li>Enterprises (including SMEs).</li> <li>State technological centers.</li> <li>State technological and innovation support centers.</li> <li>Business groupings or associations (joint ventures, economic interest groupings, industry-wide business associations).</li> <li>Innovative business groupings and technological platforms.</li> <li>Organizations supporting technological transfer and technological and scientific dissemination and disclosure.</li> </ul>	<p>According to the State Program:</p> <ul style="list-style-type: none"> <li>Subsidies.</li> <li>Loans.</li> <li>Venture capital instruments.</li> <li>Other instruments (tax guarantees and incentives, etc.).</li> </ul>	<ul style="list-style-type: none"> <li>R&amp;D&amp;I programs and projects: individual or group aid, including public-private cooperation, used to foster the creation of knowledge, its application, and innovation in all its dimensions.</li> <li>Contracting and aid targeted at R&amp;D&amp;I human resources: aid for the training and incorporation of doctors, researchers, technologists, technicians and R&amp;D&amp;I managers in all stages of their professional careers.</li> <li>Aid for scientific and technical infrastructures and for the acquisition of equipment: aid for the acquisition and maintenance of the scientific and technical equipment required for the pursuit of R&amp;D&amp;I activities.</li> <li>Supplementary actions: aid for the performance of a wide spectrum of especially significant actions associated with R&amp;D&amp;I programs and projects, human resources or infrastructures for the development and pursuit of activities not covered in the preceding forms of participation.</li> <li>Revitalization actions: aid for the execution of strategic and priority actions which, due to their nature, do not fit the characteristics of the activities covered in the preceding forms of participation (participation in community programs or bilateral or multilateral cooperation with non-EU countries; improvement of scientific communication and innovation, etc.).</li> <li>Joint programming initiatives: aid used to bolster scientific and technical research and innovation in transnational cooperation with a view to facing major scientific challenges on a joint basis.</li> </ul>

For more information please see the following website of the Ministry of Economy, Industry and Competitiveness (<http://www.idi.mineco.gob.es/>).

### 3.1.3. Strategic Action on Digital Economy and Society

This strategic action, forming part of the State Plan for Scientific and Technical Research and Innovation 2013-2016, comprises a set of measures aimed at the progressive adoption of digital

technologies and the development of the Information Society with a view to the transformation of the economy and society towards a digital environment that cuts across all sectors of business activity.

Included within this strategic action are the measures set out in the Digital Agenda for Spain approved in 2013 and structured into six headings: (i) boosting the roll-out of networks and services to guarantee digital connectivity; (ii) developing the digital economy for the growth, competitiveness and internationalization of

Spanish enterprises; (iii) improving e-Government and adopting digital solutions for the efficient provision of public services; (iv) strengthening trust in the digital sphere, (v) promoting the R&D&I system in information and communication technology (ICT), and (vi) encouraging the inclusion and digital literacy and training of new ICT professionals.

The action is set to be implemented through various instruments such as competitive calls for applications for domestic and

international aid, agreements with third parties, loans, venture capital, innovative public procurement, awareness initiatives, direct implementation programs and other European financing instruments.

At present, the rules governing the grant of aid in the area of information and communication technology (ICT) and the Information Society, within the context of the strategic action on the economy and society, are contained in Order IET/786/2013, of May 7, 2013, recently amended by Order IET/457/2015, of March 11, 2015. The main features of this system of aid are as follows:

- It can take the form of **subsidies, loans or a combination of both**, with maximum financing, in the case of loans, of up to 100% of the eligible cost of the projects or initiatives, with a variable interest rate to be specified in each call for applications and with a maximum **repayment** period of 5 years, including a grace period of 2 years.
- The **beneficiaries** will be enterprises (distinguishing between SMEs, individual micro-enterprises, public corporate enterprises and state-owned business entities), research bodies and business groupings or associations (EIGs, joint ventures, industry business associations and innovation clusters).
- The following will be **eligible for aid**: industrial research projects (planned research or critical studies aimed at acquiring new knowledge and techniques useful for creating new products, processes or services) and experimental development projects (acquisition, combination and use of pre-existing knowledge and techniques, of a scientific, technological or business nature, for the development of plans, structures or designs of new, modified or improved products, processes or services).
- The **costs eligible for subsidies** are, among others, personnel costs, instrument and material costs, contractual

research costs, technical knowledge and patents acquired or obtained under a license and additional overhead costs directly deriving from the project.

### 3.1.4. Center for Industrial Technological Development (CDTI)

The CDTI (state-owned business entity under the auspices of the Ministry of Economy, Industry and Competitiveness) promotes the technological innovation and development of enterprises, its main objective being to contribute to the improvement of the technological level of enterprises through the pursuit of the following activities:

- Technical/economic evaluation and financing of R&D&I projects developed by enterprises.
- Management and promotion of Spanish participation in international technological cooperation programs.
- Promotion of the international transfer of business technology and support services for technological innovation.
- Support for the creation and consolidation of technologically based enterprises.

Notwithstanding the more detailed presentation found on the CDTI website ([www.cdti.es](http://www.cdti.es)), the lines available to the CDTI for the financing of R&D&I projects include most notably the following:

#### 1) R&D Projects:

This line has the purpose of financing applied business projects for the creation and significant improvement of a productive process, product or services, including both industrial research activities and experimental development.

Three categories of projects are eligible for financing under this line:

- Individual R&D projects for the financing of production processes, products or services submitted by a single enterprise, with a term of 1 to 3 years and a minimum eligible budget of €175,000.
- National Cooperation R&D Projects for projects submitted by business groupings (EIGs or consortiums) with a term of 1 to 3 years and a total minimum eligible budget of €500,000 (and a minimum budget per enterprise of €175,000, the share of any one enterprise in no case exceeding 65% of the project's total budget).
- International Technological Cooperation Projects for the financing of the participation of Spanish enterprises with a joint collaboration agreement with foreign enterprises participating in international technological cooperation programs managed by the CDTI (multilateral, bilateral programs, international programs with certification and unilateral monitoring by this body) or with an increase in the technological capacity of Spanish enterprises to enhance their possible participation in large international scientific-technological facilities. In these cases, the term of the project may be from 1 to 3 years and the minimum eligible budget of the Spanish enterprise will be €175,000.
- R&D&I projects under a specific call, for R&D&I projects submitted in the context of a specific call for applications published by the CDTI and which will have the aid established in its own call.

The instruments for financing the projects included in this line consist of partially repayable aid (only a part of the aid granted must be repaid to the CDTI), for up to a maximum

of 75% of the total budget of the approved project, or 85% on an exceptional basis.

In these projects, the costs eligible for subsidies will be, among others, personnel costs, instrument and material costs, contractual research costs, technical knowledge and patents or certain costs deriving from consulting and equivalent services aimed exclusively at research activities, in addition to supplementary general expenses incurred directly on the research project.

Regarding the advances of the aid that can be obtained, the CDTI offers two different forms: (i) a 25% advance of the aid granted, up to a limit of €200,000, without requiring guarantees additional to the financial terms agreed by the Board of the CDTI when it approved the project; and (ii) an advance of 50% or 75% of the aid granted, provided that the applicant furnishes guarantees in order to secure the 25% or 50% excess over the advance without additional guarantees granted by the Center (the guarantees furnished may be from financial institutions, mutual guarantee societies or public entities able to issue guarantees pursuant to the regulations governing them, with sufficient solvency in the opinion of the CDTI).

## 2) Direct Innovation Line

This financing instrument, directly managed by the CDTI and co-financed with Structural Funds through the Research, Development and Innovation Operating Program, under the *de minimis* rules, is aimed at enterprises (regardless of their size), which carry out technological innovation projects whose objectives cover one or more of the following cases: (i) active incorporation and adaptation of technologies entailing an innovation at the enterprise, as well as processes aimed at improving technologies and adapting them to new markets; (ii) the application of the industrial design and engineering of the product and process for technological improvement (projects

that not only entail technological modernization for the enterprise, but also a technological leap in the industry in which the enterprise operates); or (iii) application of a new or significantly improved production or supply method (including significant changes in the area of techniques, equipment and/or software).

Projects cannot last more than 18 months and the minimum eligible budget will be €175,000. The amount of the financing will be 75% of the eligible budget (CDTI funds), which can be increased to 85% if co-financed by ERDF funds.

Investments eligible for financing will include the acquisition of new fixed assets, personnel, material and consumables, external collaborations, overhead costs and audit costs.

It will be possible to opt for an advance of 25% of the aid granted (up to €300,000) without additional guarantees, or up to 50% or 75% by providing guarantees from financial institutions or mutual guarantee societies with sufficient solvency in the opinion of the CDTI.

## 3) Global Innovation Line

This line is targeted at financing projects aimed at investing in innovation and incorporating innovative technology for the growth and internationalization of enterprises that pursue their activities in Spain, both at facilities located in Spain and abroad, with a view to meeting the requirements of new markets, improving the competitive position of the enterprise and generating added value.

Projects that are eligible for this program must strengthen the value-added activities that are carried on in Spain and, although they may entail the internationalization of the enterprise's activities, they cannot lead to the activity being relocated.

This aid is available to SMEs and midcap companies. The maximum duration of the projects may not exceed 2 years and the minimum eligible budget will be €667,000, up to a maximum of €10,000,000, including as eligible items the acquisition of new fixed assets related to the innovation intended to be implemented, the engagement of external services and outsourcing and audit expenses.

The amount of the financing may be up to 75% of the total eligible budget, and guarantees must be requested from financial institutions with sufficient solvency in the opinion of the CDTI) for 50% of the loan, which may reach 100% depending on the economic-financial analysis performed by the Center. The interest rate will be calculated loan to loan, taking into account the characteristics of the transaction and of the beneficiary, with a repayment term of 7 years. Advances of 25%, 50% or 75% of the loan may be obtained up to a maximum of €4 million, without guarantees beyond those already required.

## 4) Direct Expansion Line

This instrument uses subsidized loans to finance the purchase of new fixed assets for the following investment lines:

- Initial investment, as an investment in tangible and intangible assets related to the creation of a new establishment, the expansion of capacity at an existing establishment, the diversification of an establishment's production with products not previously produced by it, or a fundamental transformation of an existing establishment's global production process.
- Initial investment in favor of a new economic activity, as an investment in tangible and intangible assets related to the creation of a new establishment or the diversification of an establishment's activity, provided

that the new activity is not an activity identical or similar to that previously pursued at the establishment.

Potential beneficiaries targeted by the aid are businesses legally incorporated in Spain, which meet the following requirements: (i) to carry out the investment project in the assisted regions of Andalucía, Asturias, Castilla-La Mancha, Extremadura and Galicia; (ii) to have been beneficiaries previously of any public aid for the development of an R&D&I project; and (iii) for the beneficiaries to contribute 25% of the budget in the form of equity or external financing exempt from any public aid.

SMEs can be beneficiaries of aid for the initial investment or for the initial investment in favor of a new economic activity. Large enterprises can only be beneficiaries of aid for the initial investment in favor of new economic activity (unless they carry out the project in Extremadura, in which case they can also benefit from the aid for the initial investment).

The following cannot be beneficiaries of this aid:

- Businesses which have terminated an identical or similar activity in the European Economic Area within two years prior to their application for regional aid for investment or which, when they apply for the aid, have specific plans to terminate said activity within not more than two years after the initial investment, for which the aid is requested, has been completed in the area in question.
- Businesses which are subject to an outstanding recovery order following a previous decision of the European Commission, declaring the aid illegal and incompatible with the common market, or businesses in crisis (i.e., businesses which have petitioned for a declaration of voluntary insolvency or have been adjudged insolvent).

- Businesses which are not up to date on their compliance with the tax and/or social security obligations imposed on them by the legislation in force.

Financing cannot be obtained for projects pertaining to economic activities in the steel, coal, naval construction, synthetic fibers, transport and connected infrastructures, production and distribution of energy and energy infrastructures, fishing and aquaculture and primary agricultural production industries, pursuant to the applicable Community legislation. Equally ineligible are projects to finance activities related to exportation, pursuant to Community legislation, nor can aid be granted if it is conditional on the use of national products rather than imports.

The minimum eligible budget is €200,000 and the maximum, €10,000,000. The maximum duration of the project is 24 months. In terms of form and amount, the financing consists of repayable aid with a coverage of up to 75% of the total loan approved by the CDTI. The interest rate is fixed, set at 1-year Euribor + 0.5%, to be established when the aid is approved. Ordinary interest will accrue semi-annually from the time the aid is drawn down. This aid is to be repaid semi-annually for 7 years, the first repayment falling due one year after completion of the project.

With respect to eligible investments and expenses, the financing can be obtained for the acquisition of new fixed assets, both tangible (plant, machinery and equipment) and intangible (patents, licenses, technical know-how or other intellectual property rights). The following investments cannot be financed: (i) items contained in an investment project already completed prior to its presentation; (ii) lands, buildings and constructions; (iii) depreciation of equipment; (iv) lease of tangible assets; (v) second-hand assets; and (vi) VAT.

Once the investments are completed, they must be maintained in the beneficiary area for at least three years, in the case of SMEs, and five years, in the case of large enterprises. This will not preclude the replacement of installations or equipment which have been rendered obsolete or have broken down within said period, provided that the economic activity is maintained in the area in question during the stipulated minimum period.

#### 5) INNODEMANDA Program

INNODEMANDA Program is a financing instrument to support the technological offer in innovative public procurement processes convened by Public Administrations. This program finances an enterprise's innovation costs required in a particular public procurement process, in such a way that the contracting body has more competitive offers, fostering a greater use of innovative products and services by the Administration.

The operation of this program requires a synchronization between the scheduled time of a particular procurement and the time of application, analysis and resolution of the R&D by the CDTI required for participation in the that tender.

To this end, it is necessary the formalization of a Adhesion Protocol between the CDTI and the contracting bodies, specifying, among others, the most significant milestones established in the invitation to tender, as well as the implementation deadlines, conditions and legislation applicable to the financing offered by the CDTI for R&D activities.

#### 6) NEOTEC Initiative

The aid under the NEOTEC Initiative finances the start-up of new business projects that require the use of technologies or knowledge developed from a research activity, in

which the business strategy is based on the technological development.

Technology and innovation must be competitive factors that help to set the enterprise apart and serve as a basis for its long-term business strategy and plan, with the maintenance of its own R&D lines.

The aid can be used for business projects in any technological and/or industrial area. The 2016 call for aid applications did not admit business projects whose business model was primarily based on services to third parties, without their own technological development.

The aid will take the form of subsidies, and beneficiaries must be innovative small companies, incorporated not more than four years prior to the date on which the aid application is filed and in accordance with the requirements imposed in each call for aid applications.

The maximum budget of the 2016 call for aid applications was €20 million. A new call for applications for this line of aid is expected to be launched in 2017.

In addition, in an attempt to enable technological enterprises to avail themselves of the possibility of financing through venture capital instruments, the “NEOTEC Venture Capital Program” was designed as a joint initiative of the CDTI and the European Investment Fund (EIF), aimed at revitalizing the national venture capital market, either by contributing capital to funds being incorporated or by executing joint investment agreements with funds already operating.

In order to guarantee maximum flexibility and optimum access, the **NEOTEC Venture Capital Program** is structured as two actions which function through the following vehicles:

- The “NEOTEC Capital Riesgo” venture capital company, which acts as a fund of funds, investing in venture capital

investment vehicles managed by qualified teams based in Spain.

- The “Coinversión NEOTEC” venture capital company, which invests jointly with pre-selected venture capital investment vehicles (acting as a Joint Investment Fund) in Spanish technological SMEs.

However, the CDTI is currently reviewing the conditions and the functioning of the NEOTEC Initiative, so there is a possibility that this line of aid may undergo changes.

#### 7) CIEN Strategic Projects

The Strategic Program of Consorcios de Investigación Empresarial Nacional (CIEN) (National Business Research Consortiums) finances major industrial research and experimental development projects, carried out by business groupings on the basis of effective cooperation and targeted at the performance of planned research in tomorrow’s strategic areas with potential international projection.

It also pursues the promotion of public-private cooperation in the area of R&D and, accordingly, requires the appropriate outsourcing of activities to research bodies.

The eligible industrial research and experimental development activities are those defined in European legislation on state aid.

Each call for aid applications will detail the characteristics (composition of the consortium, eligible expenses, etc.) and the type of funding of the consortiums.

#### 8) Multi-regional Operational Program for Intelligent Growth

The CDTI, as an ERDF funds manager since the 2007-2013 period, designed a regional instrument aimed at boosting the generation of innovative capacities in less developed areas

through the funding of experimental development projects carried out by business consortiums: ERDF INNTERCONECTA.

With this instrument, the CDTI aimed to boost cooperation, at regional level, on projects targeted at the regions’ needs and at generating innovative capacities that foster greater territorial cohesion.

In the 2014-2020 period, calls for aid applications will be co-funded through the Multi-regional Operational Program for Intelligent Growth. The basic requirements for a transaction to be selected are: (i) it must comply with national and Community legislation on European Structural and Investment Funds and on State Aid; (ii) it must be in line with the objectives of the related Operational Program; (iii) it must be in line with the strategy of the National R&D&I Plan; (iv) it must support tech-based enterprises, whether large or SME, as well as recently formed tech-based enterprises, preference being given to the participation of public research centers and technological or innovation support centers in the projects; (v) it must support R&D activities; and (vi) it must help to generate a competitive advantage for the enterprises in their respective fields of action and, at the same time, serve to increase the level of technical knowledge in the industry in which they operate.

#### 9) EIB Financing

The European Investment Bank (EIB) granted Spain a loan to serve as support for investment projects carried out by small and medium-size enterprises (SMEs) and mid- and small-cap companies (companies with less than 3,000 workers).

The EIB financing is to be used for loans granted by the CDTI to R&D projects with a minimum term of 2 years. Projects of small size and investments with a projected maximum cost of €25 million can be financed, although the EIB’s contribution cannot exceed €12.5 million.



Potentially eligible are loans requested by companies established in an EU Member State and which are (i) independent SMEs with less than 250 workers prior to the investment; or (ii) independent mid-cap companies with less than 3,000 workers prior to the investment.

Nearly all economic industries are eligible, save for certain exceptions (weaponry, arms and ammunition production; military or police installations or infrastructures; materials or infrastructures used to limit individual rights or personal freedom; games of chance; tobacco-related industries; activities entailing the use of live animals for experimental or scientific purposes; activities whose impact on the environment cannot be mitigated or compensated; activities that are controversial for moral or ethical reasons; activities whose sole purpose is real estate speculation).

## 10) Internationalization of R&D&I

At international level, the CDTI offers support to Spanish enterprises and promotes technological cooperation abroad through various programs aimed at financing cooperation projects and initiatives, including most notably:

- INNVOLUCRA Program

With a view to boosting the participation of Spanish entities in international technological cooperation programs and the submission of bids to large scientific/technological facilities, this program establishes various specific measures such as: (i) aid for the preparation of Community proposals (Ayudas a la preparación de Propuestas Comunitarias or “APC”); (ii) aid for participation in bids to large facilities (Ayudas a la Participación en Ofertas a grandes instalaciones or “APO”); (iii) Management Specialization Program in Brussels; (iv) international technological promotion actions (Acciones Internacionales de Promoción Tecnológica

or “AIPT”) and (v) information and guidance services for entities that wish to participate in tenders of large scientific/technological facilities.

- EUROSTARS Program

The aim of this EU Program is to aid the development of transnational market-based projects by SMEs engaging in intensive R&D activities. It is ultimately about favoring the generation of projects of this nature which represent a break with the technical state of the art and a commercial challenge in such a way as to enable these enterprises to take a significant qualitative leap in their position on the market.

The mechanisms envisaged for materializing the aid designed under this program are fundamentally the following: (i) creating a sustainable European mechanism to support these organizations; (ii) promoting the creation of economic activities based on R&D findings and introducing products, processes and services on the market more rapidly; (iii) promoting technological and business development and the internationalization of such enterprises; and (iv) securing the public funding of those participating in the projects.

In Spain, the Ministry of Economy, Industry and Competitiveness, through the CDTI, is in charge of managing this program.

- ERA – NET

The ERA – NET scheme consists of a set of European networks of public bodies that provide financing for R&D&I at national level, with the objective of coordinating the research and innovation programs of the European states and regions, and of mobilizing resources to jointly meet technological and strategic challenges in a more focused, consistent and effective manner.

ERA-NET calls for aid applications comprise an international phase and a national phase, each of which has its own eligibility requirements and application procedures, it being essential to comply with all of them in order to obtain the financing (only projects approved in the international phase of the calls can become candidates eligible to receive CDTI financing).

- Innovation and Competitiveness Program (Programa de Innovación y Competitividad or CIP)

The CIP is aimed at bringing together under a common framework specific Community aid programs and the related parts of other Community programs in areas essential to the boosting of productivity, innovative capacity and sustainable growth, at the same time that it addresses supplementary environmental concerns.

The CIP, with a total budget of €3,621,000, is composed of three specific subprograms:

- Business Initiative and Innovation Program: with a budget of €2,166,000, this program supports horizontal activities with a view to enhancing, fostering and promoting innovation (including ecological innovation) at enterprises. It fosters, *inter alia*, innovation by industries, clusters, public-private innovation associations and the application of innovation management. It also helps to provide innovation support services at regional level, especially for transnational knowledge and technology transfers and intellectual and industrial property management.
- Political ICT Aid Program: with a budget of €728,000, this program is aimed at fostering the adoption of ICT by citizens, enterprises and governments, and intends to intensify public investment in information and communication

technologies. The Program will be based on programs such as eTen, eContent and the MODINIS programs, attempting to enhance the synergies among them, as well as their impact. The CIP supports actions targeted at developing the single European information area and to strengthen the domestic information products and services market. Its objective is to foster innovation, increasing the adoption of ICT and investments in ICT in order to develop an exclusive information society and more efficient services in areas of public interest, and in order to enhance the quality of life.

- Intelligent Energy-Europe Program: with a budget of €727,000, this program is aimed at expediting actions related to the Community strategy and objectives agreed in the area of sustainable energy and, in particular, to facilitate the development and application of the regulatory framework for energy. Its objective is also to increase the level of investments in new and more profitable technologies and to increase the incorporation of and demand for energy efficiency, renewable energy sources and energy diversification, also in transportation, through increased awareness and better knowledge among key agents within the EU.
- International Technological Cooperation Projects

These projects are aimed at enhancing the added value of innovation made at international level, and enable Spanish companies to strengthen their technological capacities, while extending the impact of their products, processes and services on global markets.

Aid for the project will take the form of partially repayable aid, with a financial coverage of up to 75% of the total approved budget, able to rise to 85% on an exceptional basis, with the following tranches:

- A tranche repayable over 10 years, starting with the project's center of gravity, which is calculated having regard to the duration of the project and the amount of the budgetary milestones. The first repayment is made 3 years after the project's center of gravity, with a minimum of 2 years after its completion date. This repayable tranche will have a fixed interest rate equal to 1-year Euribor, to be established upon approval of the project.
- A non-repayable tranche for the international nature of the project. In order to qualify for this reduction phase, projects must be in possession of the related stamp certifying the existence of cooperation between entities and the international nature of the proposal. Depending on the characteristics of the project, the non-repayable tranche can be up to 30% of the financial coverage.

The CDTI also provides personalized advice to companies and entrepreneurs on the **financing instruments** that are best suited to their R&D&I-related needs and projects. To access this service, interested companies need to fill out an electronic form and attach to it the documentation on the project being submitted to the CDTI for its assessment (more information at <http://www.cdti.es>).

### 3.2. Tourism industry

Against the backdrop of the European Monetary Union and economic and social convergence, and in a competitive environment characterized by the globalization of supply and demand and the internationalization of tourism companies, the Spanish tourism industry is seeking to strengthen its leadership position based on quality.

For this purpose, the **Spanish Tourism Plan Horizon 2020** is aimed at reaching the following objectives: (i) to increase the social and economic benefits of tourism; (ii) to achieve a social/territorial rebalance which boosts the tourist business at new destinations; or (iii) to improve the quality of the national and cultural environment by reducing the potential negative impact of the tourist business.

Notwithstanding the foregoing, the Integral National Tourism Plan (Plan Nacional Integral de Turismo or PNIT) 2012-2016 was approved in order to palliate the consequences of the global financial crisis for the Spanish tourist industry, and with a view to boosting the competitiveness of tourist enterprises and destinations, recovering the industry's leadership position.

Specifically the essential objectives of this Plan are as follows: (i) to increase tourism and its profitability; (ii) to generate quality jobs; (iii) to boost market unity; (iv) to improve international positioning; (v) to improve cohesion and public knowledge of the Spanish brand; (vi) to favor joint public/private responsibility; and (vii) to overcome the seasonal nature of tourism.

Although the Plan is no longer formally in force, contacts made with the Ministry of Energy, Tourism and Digital Agenda have not disclosed whether there are plans to prepare a new Tourism Plan in 2017, given the current situation of budgetary extension. Notwithstanding the foregoing, until now, the following have been the main programs that have been instrumented in order to meet the objectives described in connection with the tourism industry:

#### 1) Emprendetur – Young Entrepreneurs

Order IET/2482/2012 regulates the specifications for the grant of aid under this program. The last call for aid applications for projects and actions within this program was the one issued for the year 2015 by way of the Decision of November 24, 2014, of the Secretary of State for Tourism. In general, the aid included in this program had the following characteristics:

- It took the form of **loans**, with maximum financing of up to 100% of the eligible cost (although the financed amount could not exceed €1,000,000 or the net worth figure evidenced by the enterprise when applying for the aid). The maximum **repayment** period was 5 years, including a maximum 2-year grace period.
- The applicable **interest rate** was determined in each call for aid applications (specifically, in the call for 2015, the applicable interest rate was 0.967%).
- Its potential **beneficiaries** were individuals resident in Spain under 40 years of age and legal entities validly incorporated in Spain at which the average age of the partners was equal to or less than 40, which were SMEs, with a corporate form incorporated not more than 24 months prior to the application.
- The grant of the aid did not require the beneficiary to provide a guarantee.
- In connection with their **purpose**, eligible projects and business models were those which complied with the measures identified in the PNIT and with certain areas of scientific and technological knowledge of the tourist industry provided for in the above-mentioned Decision (energy and sustainability, CIT, materials and construction, humanities, society and legal sciences, transportation and associated services, business management and accessibility). These projects and business models (or the expenses funded out of the loan) had to be executed within not more than 2 years.
- **Eligible expenses** were, *inter alia*, rental or leasing expenses; personnel, advisory or outsourcing expenses, and other operating expenses.
- It was **compatible** with other aid, subject to certain rules regarding aid received with a charge to other calls for aid applications.

- Applications for aid had to be addressed to the Secretary of State for Tourism and filed with the electronic register of the Ministry of Industry, Energy and Tourism.

## 2) Emprendetur R&D&I Program

Comprising the “Emprendetur R&D” and “Emprendetur Development of Innovative Products” lines, the essential characteristics of this program are contained in Order IET/2481/2012, establishing the specifications for this aid. The last call for aid applications for projects and actions within this program for the year 2016 was made by way of the Decision of May 6, 2016 of the Secretary of State for Tourism, without it having been possible to confirm, having regard to the information furnished by the Ministry of Energy, Tourism and Digital Agenda, whether a new call is foreseen for 2017.

In general, the aid included in this program had the following characteristics:

- It took the form of **loans**, with maximum financing of up to 75% of the eligible cost of the projects or initiatives, although the financed amount could not exceed €1,000,000 or the net worth figure evidenced by the enterprise when applying for the aid. The estimated maximum amount allocated to financing the call for 2016 was €45,000,000 (€10,000,000 for the R&D Emprendetur line and €35,000,000 for the Emprendetur Development of Innovative Products Line).
- The maximum **repayment** period was 5 years, including a maximum 2-year grace period.
- The applicable **interest rate** for the aid granted under the 2016 call for aid applications was 0.698%.
- Potential **beneficiaries** were individuals resident in Spain and legal entities validly incorporated in Spain (excluding public corporate enterprises, state-owned business entities and any other enterprise formed under or governed by public law).

- For this aid to be collected, it was necessary to provide, in the 2016 call, a guarantee that covered 36% of the amount of the proposed loan. The arrangement of the guarantee had to be evidenced for the proposed loan to be considered accepted and the status of beneficiary acquired.

- The projects and business models that were deemed eligible for financing were those which fell within the areas of technological and scientific knowledge of the tourism industry provided for in the call (energy, sustainability, CIT, materials and construction, humanities, society and legal sciences, transportation and associated services, business management and accessibility). These projects and business models (or the expenses funded out of the loan) had to be executed within not more than 3 years.

- **Eligible expenses** were, *inter alia*, personnel expenses, the cost of inventories of instruments and other materials, the costs of contractual research, technical knowledge and patents acquired or obtained under license.

- It was **compatible** with other aid, subject to certain rules regarding aid received with a charge to other calls for aid applications.

## 3) Applications for aid

These had to be addressed to the Secretary of State for Tourism and filed with the electronic register of the Ministry of Energy, Tourism and Digital Agenda, Emprendetur Internationalization Program.

Regulated in Order IET/2200/2014, of November 20, 2014, the ultimate goal of this program was the internationalization of the Spanish tourism industry by opening up new international tourism markets, increasing or enhancing pre-existing ones and exporting Spanish tourism products or services to third countries.

The last call for aid applications published within this program was that relating to 2016, called in the Decision of December 28, 2015 of the Secretariat of State for Tourism, by early processing.

### 3.3. Audiovisual industry

One of the priority objectives of Cinema Law 55/2007 is to bolster the promotion and development of the production, distribution and showing of films and audiovisual works, as well as to establish terms favoring their creation and dissemination and to adopt measures for the preservation of film-making and audiovisual heritage.

Apart from the tax incentives applicable to the film-making industry, the following are some of the main incentives included

in the Cinema Law, as well as in Order CUL/2834/2009, of October 19, 2009, and in Order ECD/279/2015, of December 18, 2015, setting forth the rules for applying Cinema Royal Decree 1084/2015, of December 4, 2015 (regulatory implementation of Law 55/2007), in connection with the acknowledgement of film costs and producers' investments, the establishment of the terms of reference for State aid and the structure of the Administrative Register of Cinematographic and Audiovisual Enterprises.

Spanish-resident individuals and Spanish companies and companies from other European Union or European Economic Area

Member States may qualify for these incentives, provided that they have their residence or establishment in Spain at the time of the actual receipt of the aid.

The structure of the aid system is as follows:

Table 11  
CREATION AND DEVELOPMENT

Line of aid	Eligible for aid	Maximum amount (€)
Scriptwriting of full-length motion projects.	Projects for the preparation of full-length motion picture scripts which comply with the terms of the call for aid applications (i.e., they are in any of the official languages of Spain, they are original, etc.)	€40,000 per project with a maximum of 15 grants of aid per call.
Development of full-length motion picture projects.	The expenses need to develop the projects (improve the script, search for locations, identification of cast, initial sales plans, etc.)	It cannot exceed €150,000, provided that such amount does not exceed 50% of the budget for developing the project or of the producer's investment.
Cultural and non-regulated training projects.	Projects (i) belonging to the theoretical field or the field of editing, <i>inter alia</i> , which are capable of enriching the Spanish audiovisual panorama from a cultural standpoint or (ii) supporting specific non-regulated training programs: for professionals (including creative and technical personnel) or for the general public.	It cannot exceed €50,000, provided that such amount does not exceed 50% of the project's budget.

Table 12

## PRODUCTION

Line of aid	Eligible for aid	Maximum amount (€)
Production of full-length motion pictures projects.	General	Projects with proven cultural nature in a position to obtain Spanish nationality.
	Selective	Projects (i) of special cinematographic, cultural or social value, (ii) for a documentary, or (iii) incorporating new producers.
Production of TV movie and documentary projects.	TV movie and documentary projects which are longer than 60 minutes and shorter than 200 minutes, and which are not to be shown in movie theaters, provided that, among other requirements, they are filmed on photochemical medium or high definition digital medium. For a project to be eligible for aid, there must be a contract or a statement of interest in the project from one or more radio or television broadcast service providers.	It can be up to €1,400,000, provided that this amount does not exceed 40% of the cost acknowledged to the full-length motion picture by the Institute of Film-making and Audiovisual Arts (Instituto de Cinematografía y de las Artes Audiovisuales or ICAA)
Production of animated series projects.	Animated series projects. For the project to be eligible for aid there must be a contract or a statement of interest in the project from one or more radio or television broadcast service providers.	The call for aid applications will stipulate the maximum amount of the aid which, within the annual credit assigned to them, can be up to €500,000, provided that such amount does not exceed 40% of the project's cost. Not less than 15% and not more than 25% of the annual credit must be used for documentary projects.
Amortization of full-length motion pictures*.	General	Amortization of the cost of producing full-length motion pictures which meet a number of requirements (Spanish nationality, classed by age groups, acknowledged cost and producer's investment, etc.).
	Supplementary	Amortization of the cost of producing full-length motion pictures (i) whose acknowledged cost is at least €600,000, (ii) which have not obtained aid for the production of full-length motion picture projects, and (iii) which meet a number of requirements (Spanish nationality, classed by age groups, acknowledged cost and producer's investment, etc.).
		Calculated by applying the appropriate percentage, according to different tranches, to the amount of the budget (which cannot be less than €700,000), with maximum annual credit of €300,000, provided that such amount does not exceed the independent producer's investment or 50% of the budget.
		It cannot exceed €500,000 for budgets exceeding €2,500,000, and €300,000 for budgets of lower amounts. In both cases, said amounts cannot exceed the independent producer's investment or 60% of the budget.
		The maximum amount of the general aid for amortization cannot exceed €400,000, provided that such amount does not exceed 50% of the film's cost or 75% of the producer's investment. The aid will be conditional on the liquidation resulting from the number of spectators. The total maximum amount of the supplementary aid plus the general aid cannot exceed €1,500,000.
		The maximum amount of the aid cannot exceed €1,200,000, provided that such amount does not exceed 50% of the film's cost or 75% of the producer's investment. The amount is calculated according to a number of parameters (type of full-length motion picture, invitation to the official section of film festivals of recognized international prestige, nature of the production company, investment, etc.). The total maximum amount of the general aid plus the supplementary aid cannot exceed €1,500,000.

(\*) The aid for the amortization of full-length motion pictures provided for in the previous wording of article 26 of the Cinema Law was eliminated by virtue of Royal Decree-Law 6/2015, of May 14, 2015 (amending the Cinema Law). Nonetheless, the Sole Transitional Provision of said Royal Decree-Law stipulates a transitional regime under which (i) the general aid for the production of full-length motion picture projects stipulated in the current wording of said article 26 will progressively replace the aid for the amortization of full-length motion pictures in the budget of the various lines of aid financed by the Film-making and Audiovisual Protection Fund, and (ii) in 2016, 2017 and 2018, in addition to the call for general aid applications pursuant to the current wording of article 26, the ICAA will issue calls for aid applications for amortization, for which only full-length motion pictures whose filming commenced prior to the first call for general aid applications can apply, provided that they are premiered prior to December 31, 2016.

Table 12 (Cont.)

## PRODUCTION

Line of aid	Eligible for aid	Maximum amount (€)
Production of short film projects.	Short film projects.	The maximum amount of the aid cannot exceed the producer's investment or 75% of the cost acknowledged by the ICAA. Compatible with aid for the production of completed short films, although the sum of the two types of aid cannot exceed the cost of the film or the maximum ceiling of €70,000 per beneficiary film.
Production of completed short films.	Completed short films.	The maximum amount of the aid cannot exceed 75% of the cost acknowledged by the ICAA. Compatible with aid for the production of short film projects, although the sum of the two types of aid cannot exceed the cost of the film or the maximum ceiling of €70,000 per beneficiary film.

Table 13

## OTHER AID

Line of aid	Eligible for the aid	Maximum amount (€)
Distribution of Spanish, EU or Latin American films.	Distribution of full-length and short films, where less than 2 years have elapsed since they opened in the country of origin, which were destined for distribution in movie theaters, mainly in the original version, during the calendar year prior to the publication of the call for aid applications in which they participate.	The maximum amount of the aid cannot exceed €150,000 per full-length beneficiary film or group of short films. The aid may be subsidized up to 50% of the cost of the making of copies, dubbing, subtitling and advertising and promotional expenses, and of the technical means and resources invested in order to prepare the film for persons with disabilities. For the purpose of this aid, the aforesaid costs cannot be subsidized where they have been acknowledged, in whole or in part, as an expense attributed to the producer.
For the preservation of cinematographic heritage.	Making of duplicates necessary to guarantee the preservation of cinematographic and audiovisual works and their original media, for the production companies or owners of films which undertake not to export for at least 10 years the original negative of the films and, among other requirements, deposit the related medium with the Spanish Film Library or the Film Library of the appropriate Autonomous Community.	The maximum amount of the aid cannot exceed €75,000, and the amount of each grant of aid cannot exceed 50% of the cost of making such duplicates as are necessary to perform the preservation function.
For promotion.	For the participation of Spanish films in festivals.	Participation of films that have (or are in a position to obtain) Spanish nationality in festivals and award ceremonies of recognized prestige.
	For the organization of film festivals and competitions in Spain.	Organization and holding of film festivals or competitions of recognized prestige in Spain, and which devote special attention to the programming and dissemination of Spanish, EU and Latin American cinema, animated films, documentaries and short films, provided that at least two consecutive editions of those festivals or competitions have been held in the three years preceding the date of publication of the call for aid applications.

Table 13 (Cont.)

## OTHER AID

Line of aid	Eligible for the aid	Maximum amount (€)
For the production of audiovisual works using new technologies	Production of audiovisual works which use new technologies in the audiovisual and cinematographic field and are distributed using any electronic means of transmission which allows for the broadcast and receipt of both image and sound other than as transmitted for movie theaters, television or domestic videos.	The maximum amount of the aid cannot exceed €100,000, provided that such amount does not exceed 50% of the project's budget.

Notwithstanding the foregoing, please note that the ICAA is authorized to set up cooperation agreements with banks and other credit institutions with a view to facilitating and extending the financing of production, distribution and projection activities, technical industries and the video-making sector and for the development of infrastructures or the technological innovation of those sectors.

This financing alternative is materialized in various types of aid:

- Aid for reducing interest on loans granted for production aimed at facilitating cinematographic production activities by production companies which had not received aid for the production of full-length motion picture projects.
- Aid for reducing interest on loans granted for distribution and dissemination as film, video and via internet, or the technological renewal of these sectors.
- Aid for reducing interest on loans for the financing of film projection and post-production infrastructures used by enterprises, laboratories, studios and the production and post-production technical industry.

### 3.4. Other specific industries

#### 3.4.1. Mining

##### 3.4.1.1. Aid for risk prevention and mining safety

Regulations governing the mining sector are included in Order IET/227/2015, of October 28, 2015, which sets forth the specifications for the grant of aid for risk prevention and mining safety in the area of sustainable mining, for non-energy mining activities.

The aim of the subsidies regulated in the aforesaid Order is to encourage the development of projects related to mining safety, from the standpoint of investment and training, carried out by non-profit enterprises and entities, for the ultimate purpose of attempting to help to reduce mining accidents in Spain and, by extension, to attain sustainable growth in this industry.

The call for aid applications for projects and actions under the aforesaid Order for the year 2017 was made in the Decision of November 7, 2016 of the Secretariat of State for Energy, subsequently amended by the Decision of January 27, 2017, of the same Secretariat of State.

Projects eligible for financing are those carried out in Spain in the area of non-energy mining, included in the following areas: (i) fixed asset investments in safety at mines and beneficiation establishments and (ii) training programs.

Potential **beneficiaries** of this aid are private enterprises and groupings of such enterprises, provided that they hold the title to the mining public domain covered in the project and do not pursue their activity in the coal-mining industry (and are therefore not affected by the prohibitions on state aid for the closure of mines). Non-profit institutions can also be beneficiaries of this aid, in which case they will not have to hold the title to the mining public domain, it being sufficient for them to provide evidence that they have a lawful interest relating to the mining activity.

The **amount** of this aid will consist of a percentage of the approved eligible investment and varies according to the following scheme:

- Aid for fixed assets investments in mining safety: the minimum amount of the aid granted will be €4,000, while the maximum amount cannot exceed 20% of the eligible costs, in the case of SMEs and micro-enterprises, or 10% of such costs in the case of medium-sized enterprises.

- Mining safety training projects: the intensity of the aid will be (i) up to 100% of the cost of the accepted eligible investment, where the applicant is a non-profit institution; and (ii) up to 50% of the cost of the eligible investment in the case of large enterprises, 60% in the case of medium-sized enterprises, and 70% in the case of SMEs and micro-enterprises. For its part, the minimum amount of the aid will be €12,000. In the specific case of these projects, the maximum amount of the aid will be subject to the following restrictions:
  - If the projects are provided by mining enterprises or groupings of mining enterprises, it cannot be higher than €100,000 per enterprise or grouping and project.
  - A single enterprise cannot receive more than €200,000 of aid for training in this area within a period of three consecutive fiscal years.

#### 3.4.1.2. Action Framework for Coal Mining

Of special relevance within the mining industry is the Action Framework for Coal Mining and Mining Districts in the 2013-2018 Period, which has, among others, the following objectives:

- (i) To foster the continuation of competitive local coal production that makes it possible to guarantee a certain level of electricity production which, in addition to supporting the security of supply, contributes to developing renewable energy sources.
- (ii) To ensure a sufficient share of national coal in the electricity generation mix, within the limits set by the European legislation, and for the entire period covered by this Framework.
- (iii) To facilitate the orderly closure of non-competitive coal mines.

Against this backdrop, the government has launched a host of new aid initiatives aimed at alternative development in mining regions, including most notably the following:

- 1) Aids to job creating business projects (regulated in Order IET/1158/2014, of June 30, 2014), which promote alternative development in mining regions. These aids are aimed at promoting the establishment of business investment projects (of at least €100,000) in areas affected by the restructuring of coal mining and their surrounding areas in order to generate alternative economic activities to coal mining.

These aids are available to business investment projects that are established in municipalities affected by the restructuring and modernization of coal mining, subject to the restrictions set out in the new Map of regional aid for the 2014-2018 period.

The last call for aid applications in connection with this line of aid was that relating to 2016, published in the Decision of June 23, 2016, of the Institute for the Restructuring of Coal Mining and Alternative Development of Mining Districts, the total budget of which is €40,000,000, extendable by a further €10,000,000.

- 2) *De Minimis* Aids (regulated in Order IET/1157/2014, of June 30, 2014), aimed at small business projects that create jobs, which promote alternative development in mining regions. These aids have the same purpose and cover the same type of project as those under section 1) above, although they focus on projects of not less than €30,000 and not more than €500,000.

Lastly, please note that until 2015 calls for specific aid applications were made to facilitate the **closure of non-competitive coal mines** (social aid for labor costs relating to older workers, for labor costs through terminations with severance pay, to cover losses on the current production of production units, and to cover extraordinary costs deriving from closure and environmental impact mitigation), in compliance with EU legislation. This aid was aimed at covering, in whole or in part, the current losses incurred on native coal production used in the generation of electricity, from the production units of coal mining companies subject to closure plans to be completed on December 31, 2018 at the latest.

However, based on information provided by the Ministry of Economy, Industry and Competitiveness, it is not possible to confirm whether new calls for aid will be made with this aim.

#### 3.4.2. Industrial investment

The process of adapting certain traditional industrial sectors to new forms of production, against a backdrop of processes to rationalize and modernize the business segment, has caused severe losses in the productive fabric and a significant elimination of jobs.

In an effort to mitigate and, to the greatest extent possible, avoid such noxious effects on the industrial fabric as a whole and, in particular, on the areas most affected by the aforesaid adaptation process, the Ministry of Economy, Industry and Competitiveness has been launching support initiatives with a view to promoting, regenerating or creating the industrial fabric.

The current initiative is Order IET/619/2014, of April 11, 2014, setting forth the specifications for the grant of financial aid for industrial investment in the context of the public policy on reindustrialization and fostering industrial competitiveness, which regulates the grant of aid for initiatives in strategic industrial sectors under the aforesaid policy (that amended by Order IET/10/2015, of January 12, 2015, with respect to the restrictions on the amounts of the loans to be granted and to the criteria for evaluating applications).

The specifications bring the criteria of former Reindustrialization Programs into line with that of Programs for the Development of Strategic Industrial Sectors, placing special interest in enterprises which incorporate advanced technologies in their processes and products, create qualified jobs with the greatest possible contribution of added value and, in short, contribute to increasing the country's export base.

The last call for applications for this type of aid was published in 2016 in the Order of March 4, 2016 of the Secretariat-General of



Industry and of SMEs, without it having been possible to confirm, having regard to the information furnished by the Ministry of Economy, Industry and Competitiveness, whether a new call for aid is foreseen for 2017.

Notwithstanding the foregoing, it is important to note that the aid contemplated in the Order setting forth the Specifications was to be used for reindustrialization and competitiveness fostering projects and actions executed throughout Spain. In particular, the Order distinguished between projects that were executed in specific areas (established around certain municipalities considered as meriting special protection) or in the general area (consisting of the rest of the municipalities not included in the above areas). In general, the financial support that these projects could receive was instrumented through **long-term loans**, with the following types of actions eligible for financing:

- Creation of industrial establishments: start-up of a new production activity anywhere in Spain.
- Relocation: changing the location of a prior production activity to anywhere else in Spain.
- Increases in the production capacity of existing production centers by installing new production lines. For the purposes of classifying the project, “installation of a new production line” means the acquisition of a set of equipment that makes it possible to manufacture a product independently. Actions taken on an existing line, such as replacing the machinery and auxiliary production elements and adapting or improving the line, are excluded from this definition.
- Improvements and/or modifications to pre-existing production lines.

In this regard, the Order setting forth the Specifications clarified that (i) implementations of technologies from “Connected Industry 4.0.” could form part of the investments arising from

each of the above typologies; and (ii) industrial investments arising from any of the above typologies had to be technically viable according to the current state or situation of the technology on an industrial scale.

Potential **beneficiaries** contemplated in the two initiatives were private enterprises which pursued or were going to pursue a productive industrial activity.

The following were the **eligible expenses**:

- For investments in the formation of industrial establishments:
  - expenses incurred on civil works (tangible investments in development and piping, expressly excluding land);
  - building expenses (tangible investments for the acquisition, construction, expansion or fitting out of industrial premises, as well as installations and equipment not directly related to production, and tangible assets directly associated with production).

The sum of the civil works and building items could not exceed 70% of the total eligible budget.

- For investments intended to be made in the context of other actions eligible for financing:
  - civil works expenses (tangible investments in development and piping, expressly excluding land);
  - building expenses (tangible investments for the acquisition, construction, expansion and fitting out of industrial premises, as well as installations and equipment not directly related to the production process);
  - production device and equipment expenses (acquisition of fixed assets directly related to production, excluding external transportation elements); and

- production process engineering expenses (expenses of own staff, necessary materials and external partnerships required to design and/or redesign processes – including those aimed at implementing technologies from “Connected Industry 4.0” – directly linked to the above-mentioned production devices and equipment).

Any form of civil engineering or consultancy associated with the management and processing of the financing requested is expressly excluded.

The sum of the civil works and building items could not exceed the budget of devices and equipment linked to production (except where industrial establishments are relocated, in which case it could reach 70% of the total eligible budget). In addition, production process engineering expenses could not exceed 30% of the acquisition cost of the production devices and equipment.

The financed actions had to be executed from January 1 of the year of the related call, up to the maximum time limit of 18 months from the date of the grant decision.

The minimum eligible budget for the investments was regulated in the relevant call and the funding to be granted will be 75% of that budget. It also stipulated that for enterprises formed in the year to which the call relates, or in the immediately preceding year, the loan could not exceed three times their demonstrable equity. In all other cases, the limit was set at five times the applicant’s equity, notwithstanding the fact that the calls for aid applications could stipulate proportions lower than those indicated in both cases.

The aid was granted in competitive tender procedures in each one of the specific areas and in the general area, and the applicable interest rate was determined according to the classification obtained by the beneficiary in the application evaluation process and to the guarantee provided before the grant decision, according to the following table.

Table 14

Classification category	Guarantee as percentage of the loan granted		
	Greater than or equal to 70% and lesser than or equal to 100%	Greater than or equal to 41% and lesser than or equal to 70%	Lesser than or equal to 41% and greater than or equal to 10%
<b>Excellent (AAA-a)</b>	1.705%	1.705%	1.705%
<b>Good (BBB)</b>	1.705%	1.705%	2.29%
<b>Satisfactory (BB)</b>	1.705%	2.29%	4.09%

Pursuant to the provisions of the aforesaid Order IET/619/2014, the repayment period of the loan is 10 years, with a 3-year grace period, over which the loan is to be repaid in equal annual installments once the grace period ends.

Please note that, in accordance with the specifications of this aid, the applicant must provide, upon submitting the application, a **guarantee** to the General Depository Agency, in cash or, alternatively, in another one of the forms provided for in the legislation. The amount of the guarantee will be 10% of the loan requested in the application unless the call in question establishes another amount.

## 4. Incentives for investment in certain regions

### 4.1. Granted by the State

Regional incentives are financial subsidies granted by the State to productive investment to promote business activity in previously-determined areas, thus helping to alleviate territorial imbalances and to reinforce each region's endogenous potential for development.

The State grants such aid in accordance with the demarcation of eligible areas and maximum aid intensities stipulated by the European Commission. The functions relating to regional incentives are attributed to the Directorate-General of Community Funds, under the Secretariat of State of Budgets and Expenses of the Ministry of the Finance and Civil Service.

These incentives are aimed at promoting business activity and directing its location toward previously determined areas, and they consist of financial aid for the financing of investment projects to be executed in areas with the lowest level of development, or in those whose special circumstances so recommend.

This policy involves the promotion of start-ups, expansions or modernization of investment projects undertaken by enterprises located in the less developed geographical regions and in areas experiencing particular economic difficulties.

The incentives available for grant are, in general, (i) non-returnable subsidies; (ii) subsidies for the interest on loans obtained by the beneficiary from financial institutions; (iii) subsidies for the repayment of those loans; (iv) a combination of the foregoing; (v) reductions in the employer's social security contribution for common contingencies, etc.

They are granted for investment in projects that must be located in one of Spain's eligible areas, which are demarcated having regard to the GDP per inhabitant and the rate of unemployment.

The geographic demarcation of the eligible areas and the specific definition of the maximum financing limits, as well as of the specific industry requirements regarding economic sectors, eligible investments and conditions, are regulated in the respective Royal Decrees demarcating economic development areas.

The Royal Decrees demarcating economic development areas have been affected by the new "Guidelines on regional State aid for 2014-2020" published on July 23, 2013 in the *Official Journal of the European Union* (OJEU), as well as by the new "Regional Aid Map for Spain (2014-2020)" approved by the Commission on May 21, 2014.

Indeed, within the framework of the Guidelines, the European Commission approves an aid map for each Member State, stipulating the maximum limit of financial aid or subsidies that can be received by each region under regional incentives during the reference period.

The above notwithstanding, within the context of the mid-term review envisaged in the Guidelines for the year 2016, the Commission published Communication 2016/C 231/01 asking the States to present their proposals for the amendment of their respective regional maps.

Spain communicated a proposal for the amendment of its regional aid map to the Commission on July 28, 2016, and the Commission, in its Decision of November 7, 2016, resolved to approve the amendment of the Spanish regional aid for the period January 1, 2017 through to December 31, 2020.

In particular, according to the amended aid map for the Kingdom of Spain, the Spanish region for which the greatest incentives are envisaged continues to be the Autonomous Community of the Canary Islands, with a maximum aid intensity percentage of up to 35% of the eligible investment.

The Autonomous communities of Castilla-La Mancha, Extremadura, Andalucía, the Murcia Region, and the Autonomous City of Melilla are nevertheless included as Spanish regions eligible for regional incentives with a maximum aid percentage of up to 25%, since their GDPs were found to have fallen to below 75% of the average for the EU-28 over the period examined.

Similarly, the provinces of Soria and Teruel continue to feature prominently, with the grant of aid to these regions of up to a maximum intensity of 15% of the net eligible investment being permitted through to December 31, 2020.

Finally, the maximum aid intensity percentage for the Autonomous Community of Galicia has been reduced to 15% of the eligible investment for this year 2017, and to 10% for the sub-period 2018-2020. The maximum intensity for the Autonomous City of Ceuta, on the other hand, has been reduced to 15%.

In any case, during this period the Autonomous Community of Madrid, the Basque Country, Navarra and Cataluña, as well as the municipality of the provincial capital of Valencia continue to be regarded as regions ineligible for subsidies, pursuant to the State legislation on regional incentives.

The aforementioned amendments to the regional aid map were incorporated into Spanish legislation through amendments of the corresponding Royal Decrees, approved on December 30, 2016.

The Royal Decrees stipulate the maximum intensity of permitted aid (stipulated as a percentage of the eligible investment), distinguishing among large, medium-size and small enterprises, according to the following table:

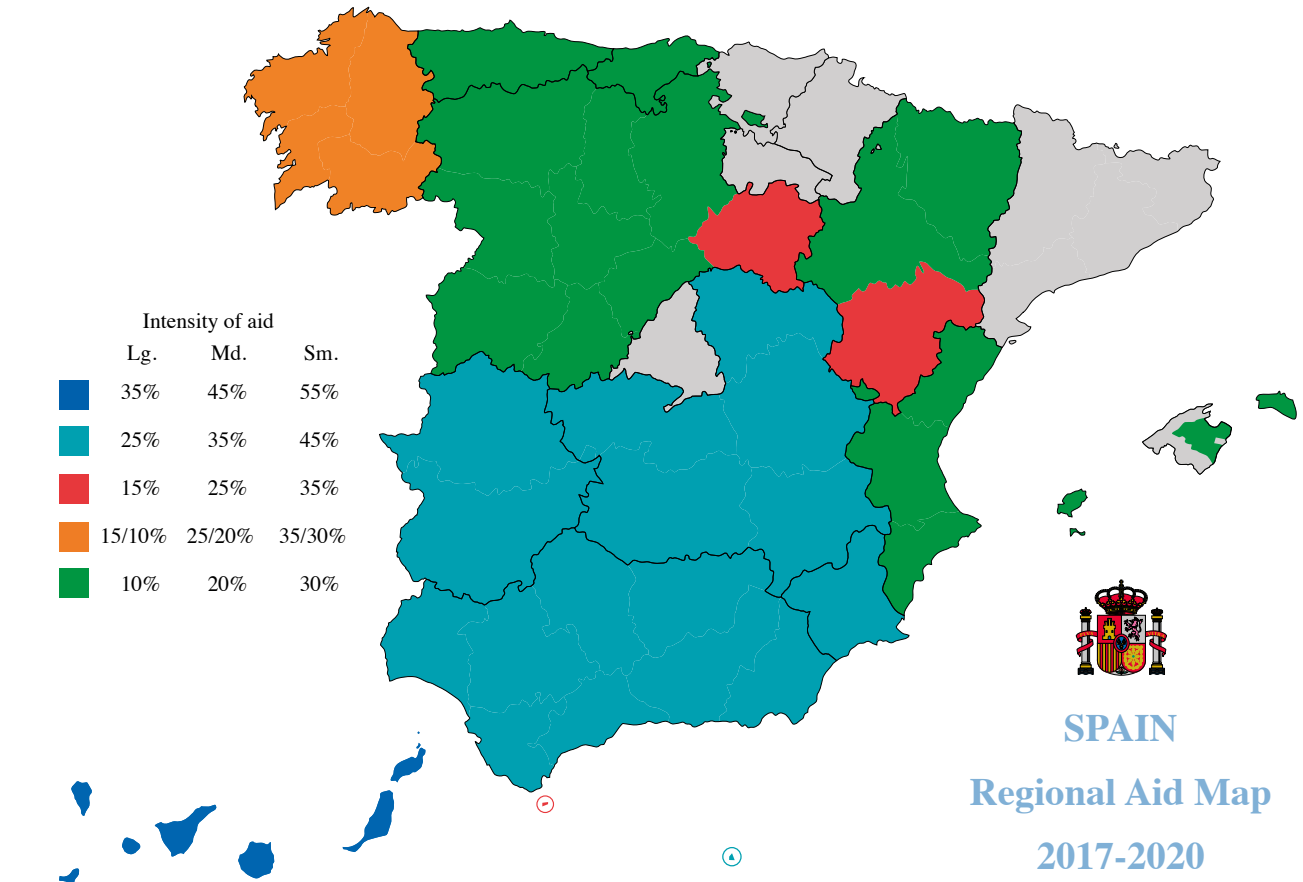
Table 15

ECONOMIC DEVELOPMENT AREAS	PREVIOUS ROYAL DECREES	NEW ROYAL DECREES 2014-2020		
	ALL ENTERPRISES	Large	Medium sized	SME
Canary Islands	40%	35%	45%	55%
Extremadura	40%	25%	35%	45%
Castilla-La Mancha, Andalucía, Murcia <sup>1</sup>	40%	25%	35%	45%
Melilla	20%	25%	35%	45%
Soria and Teruel / Ceuta	15% / 20%	15%	25%	35%
Galicia	30%	15%	25%	35%
Other Areas + previous category from 2018	From 10% al 20%	10%	20%	30%

<sup>1</sup> Castilla-La Mancha, Andalucía, Murcia and Melilla, from December 30<sup>th</sup>, 2016.

Chart 1

MAP OF REGIONAL INCENTIVES (2014-2020)



Source: <http://www.dgfc.sepg.minhap.gob.es/sitios/dgfc/es-ES/ipr/ir/ia/Paginas/IncentivosRegionalesCA.aspx>

Notwithstanding the foregoing, the main characteristics of the regional incentives, in general, are as follows:

### 4.1.1. Eligible economic sectors

These are stipulated in each Royal Decree demarcating the respective geographical area.

The main eligible sectors, however, notwithstanding what is established in the definition under each Royal Decree of demarcation, are as follows:

- Processing industries and production support services, particularly those which apply advanced technology, pay attention to environmental enhancement and enhance the process or the product.
- Industries favoring the introduction of new technologies and the provision of services in the information technologies and communication subsectors.
- Services which significantly enhance trade networks and structures.
- Specific tourist facilities with an impact on development in the area which are innovative, especially in terms of environmental improvement, and contribute significantly to the area's endogenous potential.

### 4.1.2. Types of eligible investments

The types of investment eligible for incentives are new or first-time use fixed assets, referring to the following investment items:

- Civil engineering.
- Capital equipment, excluding external transportation items.

- In the case of SMEs, up to 50% of the costs incurred on the project's preliminary studies, which could include: planning, project engineering and project management of the projects.
- Intangible assets, provided that they do not exceed 30% of the total eligible investment, are used exclusively at the center where the project is carried out, are able to be inventoried and amortized and are acquired at arm's length from third parties not related to the purchaser.
- Other items, on an exceptional basis.

The possibility of including lands as an eligible fixed asset was eliminated by the Regulations implementing the Regional Incentives Law when the regional financing Guidelines for the previous period (2007-2013) came into force.

### 4.1.3. Eligible projects

- Definition
  - Projects for the creation of new establishments that give rise to the commencement of a business activity and also generate new jobs (which must be maintained for at least two years after the end of the term stipulated in the Individual Resolution granting the aid) and are of an amount of no less than the minimums stipulated in the Royal Decrees of demarcation (generally, at least €900,000).
  - Projects for the expansion of existing activities with a significant increase in production capacity or commencement of new activities in the same establishment which entails the creation of new jobs and the maintenance of existing jobs during the same period stipulated in the preceding paragraph.
  - Projects for the modernization of the business which meet the following requirements:

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- The investment must be an important part of the tangible fixed assets of the establishment being modernized and must entail the acquisition of technologically advanced machinery which produces a notable increase in productivity.
- The investment must give rise to the diversification of an establishment's production in order to attend to new and additional product markets or must entail a fundamental transformation of the overall production process of an existing establishment.
- Existing jobs must be maintained during the aforesaid periods.

Replacement investments consisting of (i) the technological updating of a machine outfit which has already been depreciated, implying no fundamental change to the product or production process; (ii) the remodeling or adaptation of buildings as a result of the aforesaid investments, in compliance with safety or environmental provisions or by statutory imperative; and (iii) the incorporation of cutting edge technology without fundamental changes to the process or to the product, are excluded.

- Requirements
  - The project must relate to an eligible sector and activity and be located in one of the designated areas.
  - It must be technically, economically, and financially viable.
  - Generally, at least 25% of the investment must be self-financed. However, depending on the features of the project, a higher rate may be required in the Royal Decrees of demarcation.

- The company developing the project must have a minimum level of equity, which will be stipulated in the Individual Resolution granting the incentive and must be maintained through the last day on which the subsidy is in force.
- The application for regional incentives must be submitted before the investment in question begins to be made.

In this connection, the investment will be held to have begun upon the commencement of the construction works entailed in it, or upon the first firm commitment for the order of equipment or any other commitment making the investment irreversible, whichever comes first. The purchase of lands and preparatory work such as the obtainment of permits and the performance of preliminary viability studies are not regarded as the commencement of work.

The applicant must prove to the Autonomous Community, using the standardized form known as the “solemn declaration of non-initiation of investments”, that the investments had not been initiated prior to the filing of the application for regional incentives. The Autonomous Community may also request a notarial certificate as evidence of the foregoing (*acta notarial de presencia*) or perform an on-site inspection of the land, with a view to ensuring that the investment has not been initiated.

- The aid should serve as an “incentive”—i.e. the applicant undertaking the project would not have done so without the aid—and an explanation must be given of the impact that would be produced on the decision to invest or on the decision regarding location if the regional incentives were not received (large companies must submit documentary evidence).

#### 4.1.4. Types of incentive

The regional incentives available for grant consist of:

- a) Non-returnable subsidies for the approved investment.
- b) Subsidies for the interest on loans obtained by the beneficiary from financial institutions.
- c) Subsidies for the repayment of those loans.
- d) Any combination of the foregoing.
- e) Reductions in the employer’s social security contribution for common contingencies during a maximum number of years, to be determined by regulation, subject to the provisions of the legislation on incentives for hiring and for fostering employment.

In the cases under letters b), c) and d) above, there is also a possibility of regional incentives being converted into a percentage of the subsidy on the approved investment.

The form of incentive most commonly granted, however, is the non-returnable subsidy.

#### 4.1.5. Project assessment

Projects must be evaluated using the methods stipulated in each Royal Decree of demarcation, which will also determine the percentage of subsidy to be granted for each project. Notwithstanding the specific provisions of each Royal Decree, the main parameters considered to date by the relevant bodies are as follows:

- Total amount of the eligible investment.
- Number of jobs created.

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- Contribution to the area’s economic development and use of its production factors.
- Added value of the project (if newly created) or increase in productivity in other cases.
- Use of advanced technology.
- Location in an area considered a “priority” (defined as such in the demarcation Royal Decree).

#### 4.1.6. Compatibility of different incentives

No investment project can receive other financial aid if the amount of the aid granted exceeds the maximum limits on aid stipulated for each approved investment in the Royal Decrees of demarcation of eligible areas.

Therefore, the subsidy received is compatible with other aid, provided that the sum of all the aid obtained does not exceed the limit established by the Royal Decree of demarcation and EU rules do not preclude it (incompatibilities between Structural Funds).

#### 4.1.7. Application procedure

- Documentation:
  - Standardized application form addressed to the Ministry of Finance and Civil Service, although it is required to be presented to the competent body of the corresponding Autonomous Community.
  - Documentary evidence of the applicant’s personal circumstances or, in the case of an incorporated company, of its registry data. If the company is in the process of being incorporated, the projected registry data and the data of the developer acting in its name.

- Standardized explanatory investment project memorandum, together with documentation evidencing compliance with all environmental requirements.
  - Formal declaration, on a standardized form, of other aid applied for or obtained by the applicant for the same project.
  - Evidence of the company's compliance, as of the date in question, with its tax and social security obligations or, as the case may be, authorization to the Directorate-General of Community Funds to obtain the certificates to be issued by the State Tax Agency and by the Social Security General Treasury. In the case of a company being incorporated, the obligation will be deemed to refer to the developer.
- Where to submit
 

The appropriate body of the Autonomous Community where the project is to be carried out.
  - Granting agency
 

The Government Delegate Committee for Economic Affairs if the eligible investment exceeds 15 million euros.

In all other cases, the Ministry of Finance and Civil Service (in particular, through the Sub-directorate General of Regional Incentives, under the Directorate-General of Community Funds).
  - Decision deadline
 

The maximum deadline for deciding on applications and serving notice thereof is 6 months from the date on which the application is registered with the Ministry of Finance and Civil Service (although this deadline may be extended).

If the initial term and, as the case may be, any extended term ends without a decision have been issued, the aid application may be deemed to have been rejected.

- Acceptance of the grant of aid
 

Express notice of acceptance of the aid must be served by applicants on the relevant agency of the Autonomous Community, within the first 15 business days after the date on which notice of the decision to grant the aid is received.

If no notice is served by the end of such period, the grant of aid will be rendered null and void and the dossier will be shelved.
- Submission of decisions at the Mercantile Registry
 

If notice of acceptance is served, the beneficiary must file the Decision granting the aid with the Mercantile Registry **within one month** from the date of acceptance.

All decisions subsequent to the grant of incentives (extensions, amendments, etc.) must also be filed by the same deadline.

In general, compliance with this requirement must be evidenced to the relevant Autonomous Community agency within four months after acceptance of the related decision. If evidence is not submitted by the deadline, the Directorate-General of Community Funds will render null and void the grant of aid not filed with the Mercantile Registry.

#### 4.1.8. Execution of the project and alterations subsequent to grant

Investments may be initiated without having to wait for the final decision to be adopted, provided that applicants can prove, suitably, as stipulated by the Ministry of Finance and Civil Service, that such investments had not been initiated before the application was filed, without this being able to influence the decision finally adopted.

In general, subsequent incidents in the project (i.e., alteration of the initial project, change in the location of the project, etc.) will be resolved by the Directorate-General of Community Funds.

Applications for alteration of the projects must be submitted to the relevant Autonomous Community agency and addressed to the Ministry of Finance and Civil Service, and must specify the conditions which have been altered since the filing of the initial application. The deadline for deciding on applications and serving notice thereof will be six months following their receipt by the Directorate-General of Community Funds.

#### 4.1.9. Payment procedure

Following issue of a report confirming the degree of compliance with the requirements imposed by the relevant agency on the project in question, the beneficiary must file a request for payment of the subsidy (on a standardized form) together with the other required documentation (evidence of fulfillment of tax and social security obligations, etc.) at the relevant Autonomous Community agency from which it will be referred to the Directorate-General of Community Funds.

#### 4.1.10. Payment system

Subsidies may be paid using the following methods:

- Final payment: after the end of the term, the beneficiary may only request payment in full of the subsidy granted or to which he is entitled if there have been cases of breach.
- Payment in full: during the term, the beneficiary may only request a single payment of the total subsidy after the entire investment has been made and subject to the submission of the related bank guarantee. This payment may only be requested subsequent to the dates of compliance, once each and every one of the conditions imposed on the holder have been verified and prior to the end of the term.
- Payment in part: during the term, the beneficiary may request partial payments of the subsidy as he justifies the partial making of the investment, provided that this is authorized in the individual decision to grant the subsidy.

For more information, please consult the website of the Ministry of Finance and Civil Service (<http://www.dgfc.sepg.minhap.gob.es>).

## 4.2. Regional aid granted by the Autonomous Communities

Some Spanish Autonomous Communities also provide similar incentives, on a smaller scale, for investments made in their regions. Only some of these incentives are compatible with EU and State regional incentives. Specifically, if State regional incentives have been applied for in connection with a given project, the limits established in each Royal Decree of demarcation must be taken into account.

In fact, some Autonomous Communities grant investment incentives in areas not covered by State legislation but which are included in EU regional financial aid maps.

Most Autonomous Community incentives are granted on an annual basis, although the general conditions of the incentives do not usually change from year to year.

In view of the impossibility of including a detailed description of the aid granted by each Autonomous Community, we summarize below their main and traditional features (which are generally very similar to those of State regional incentives).

Nonetheless, bear in mind that the incentives granted by the Autonomous Communities have also been affected by the content of the new Guidelines on regional State aid and by the limits and maximum aid intensity percentages established in the new regional aid Map, recently amended (2014-2020), and the regulation of these incentives should therefore be adapted to the new framework established.

### 4.2.1. Types of project

Opening of new establishments, expansion of activities, modernization and technological innovation. The creation of new jobs is normally required.

### 4.2.2. Main industries

In general, the main eligible industries are industrial support services, processing industries, tourism, culture, industrial design, electronics and computing, renewable and environmental energies.

### 4.2.3. Project requirements

They are basically the same as those imposed at State level.

### 4.2.4. Types of incentive

The main incentives are:

- Nonrefundable subsidies.
- Special conditions for loans and credit.
- Technical counseling and training courses.
- Tax incentives.
- Guarantees.
- Social security relief.

## 4.3. Special reference to investments in the Canary Islands

The Canary Islands Autonomous Community has traditionally enjoyed a regime of commercial freedom involving less indirect tax pressure and exclusion from the sphere of certain State monopolies. These conditions have given rise to an economic and tax system which is different from that existing in the rest of Spain.

Of course, an attempt has been made to reconcile these special circumstances with the requirements of Spanish membership of the European Union.

In this regard, the Central Government has been increasing flexibility as much as possible in connection with the functioning of regional incentives and localization of investments in the Canary Islands, imposing no further limitations than those stipulated in EU legislation and giving preferential treatment to investments in the peripheral islands by requiring a minimum level of investment lower than that established for the rest of Spain.

These efforts led the European Commission to authorize the creation of the Canary Islands Special Zone (*Zona Especial Canaria* or “ZEC”) in January 2000, with a view to attracting and encouraging the investment in the Canary Islands of international capital and companies which make a decided contribution to the economic and social progress of the Canary Islands. Use of the benefits of the ZEC is currently in force through December 31, 2026, and may be extended when authorized by the European Commission (please see also Chapter 3 and [www.zec.org](http://www.zec.org)).

It is important to note that incentives aimed at upgrading and modernizing the banana and tomato growing and fishing-related industries are also available.

Along these same lines, please note the approval of the **Integral Strategy for the Canary Islands Autonomous Community** by decision of the Council of Ministers dated October 9, 2009, the main objectives of which were implemented in Additional Provision Fourteen of the Sustainable Economy Law as a guide for initiatives of the Government and of the General State Administration on the Canary Islands. In particular, priority is to be given to initiatives connected with the policy to internationalize the Canary Island economy, renewable energies, ground, airport and port infrastructures, subsidies for goods transport to or from the Canary Islands, the fostering of tourism and the contribution to the development of industrial sectors and of telecommunications in the Canary Islands.

In particular, from the standpoint of internationalization, the Sociedad Canaria de Fomento Económico, S.A. (PROEXCA) was formed with a view to fostering the internationalization of the



Canary Island enterprises and attracting strategic investments to the Islands. PROEXCA acts as an official agent for the promotion of investments on a regional scale, serving companies which seek to invest in the Islands and which offer them high added value and sustainability.

## 5. Aid for innovative SMEs

Notwithstanding the special treatment usually given to SMEs in the context of the public financing programs or initiatives examined in other sections of this Chapter, the following is a list, to be taken as an example, of some lines specifically targeted at this type of entity when developing innovative activities. In particular, it is worth mentioning two programs promoted by the National Innovation Enterprise (*Empresa Nacional de Innovación* or ENISA), which provides financing to SMEs through various lines targeted at the formation of enterprises, corporate growth and the consolidation of enterprises.

As an example, we indicate below the main characteristics of some of the lines of financing currently granted by ENISA, in the terms approved for 2017.

- **ENISA Young entrepreneurs:** aimed at stimulating the formation of enterprises backed by young entrepreneurs (not older than 40 years of age), to which is provided access to preferred financing with the sole guarantee of their business project.

Potential beneficiaries are SMEs (i) which pursue their activity, have their registered office and make the investment in Spain; (ii) which are incorporated as a corporate enterprise or, if already incorporated, whose incorporation took place not more than 24 months prior to the submission of the application; (iii) whose business model is innovative or has obvious competitive advantages; (iv) which evidence the technical/economic viability of the project; (v) whose financial statements for the last year ended were filed with the Commercial Registry; (vi) the

majority of whose capital is subscribed by young entrepreneurs (aged under 40); and (vii) which are active in any area of activity other than real estate and finance, and minimum contributions are required from shareholders (of at least 50%), in the form of capital, depending on the amount of the loan.

Eligible investments are those required by the business project in the initial phase and, specifically, the acquisition of the fixed and current assets required for the activity.

Aid will take the form of a participating loan of not less than €25,000 and not more than €75,000, with an applicable interest rate equal to EURIBOR plus 3.25% in the first tranche and, in the second tranche up to 4.5%, depending on the financial return of the enterprise, maturing after a maximum of 7 years and with a grace period of not more than 5 years for the repayment of principal.

- **ENISA Entrepreneurs:** aimed at providing financial support to recently formed SMEs, promoted by entrepreneurs of any age, so that they are able to make the investments necessary for carrying out their business project.

Potential beneficiaries are SMEs (i) which pursue their activity and have their registered office in Spain; (ii) which are incorporated as a corporate enterprise not more than 24 months before the application is filed; (iii) whose business model is innovative or has competitive advantages; (iv) whose shareholders' contributions are equal to at least the amount of the loan; (v) who evidence the technical/economical viability of the project; (vi) whose financial statements for the last year ended were filed with the Commercial Registry, which have a balanced financial structure and management of a professional nature; (vii) which have co-financing for the financial needs associated with the business project; and (viii) which are active in any area of activity other than real estate and finance.

This aid will take the form of a participating loan of not less than €25,000 and not more than €300,000, at an applicable

fixed interest rate equal to EURIBOR plus 2.5% in the first tranche and, in the second tranche, up to 8%, maturing after a maximum of 7 years and with a grace period of not more than 5 years for the repayment of principal (but not for the payment of interest).

- **ENISA Competitiveness:** aimed at financing projects promoted by SMEs which envisage competitive improvements, at consolidation, growth and internationalization projects or corporate transactions, based on viable and profitable business models, focused on (i) the competitive improvement of production systems and/or a change in production model; or (ii) expansion through an increase in production capacity, technological advances, an increase in the range of products/services, diversification of markets; seeking out capitalization and/or debt on regulated markets, and the financing of business projects through corporate transactions.

The same requirements imposed on the preceding line must also be met in this case. The participating loans granted under this line will range between €25,000 and €1,500,000, repayable in a maximum of 9 years, with a grace period of not more than 7 years for the repayment of the principal, at an interest rate equal to Euribor + 3.75%, in the first tranche, and up to 8% for the second tranche.

- **ENISA Digital Agenda:** a product of the cooperation between SETSI and ENISA, this line of financing is aimed at providing financial support for the start-up and development of business projects in the ICT sectors, with a view to boosting the development and launch of new products and services, thus contributing to the creation of jobs and wealth in an industry with a high growth potential.

The requirements are similar to those described for the above lines, with the exception that, in this case, eligibility for this type of loan will require being part of the TIC industry (services, applications and contents in the area of telecommunications and the information society).



Participating loans will be for a minimum of €25,000 and a maximum of €2,000,000, with a maximum repayment term of 9 years, and interest will be charged at a rate of Euribor + 3.75%, for the first tranche, and up to 8% in the second tranche, according to the enterprise's profitability and the transaction's rating, and with a maximum deferral period of 7 years for repayment of the principal.

## 6. Preferred financing of the Official Credit Institute (*Instituto de Crédito Oficial* or ICO)

Consistent with its objective to contribute to economic growth and to the improvement of the distribution of national wealth, the ICO cooperates with other national and international bodies and institutions which work for the benefit of industries which, given their social, cultural, innovative or ecological significance, merit priority attention.

Thus, for a number of years the ICO has been executing multilateral institutional and/or financial cooperation agreements with similar bodies, Autonomous Communities, ministries and financial institutions with a view to helping Spanish enterprises start up new investment projects.

Notwithstanding other lines intended for certain specific sectors, **the following are the main ICO lines of financing for 2017:** (i) Enterprises and Entrepreneurs, (ii) Mutual Guarantee Society Guarantee/State-owned Agricultural Surety Corporation, (iii) Commercial Credit, (iv) Exporters 2017, (v) International Tranche I "Investment and Liquidity", and (vi) International Tranche II "Medium and Long-term Exporters", whose most notable characteristics are:

- **Línea ICO Empresas y Emprendedores 2017** (ICO Enterprises and Entrepreneurs Line):

Independent professionals and public and private enterprises—both Spanish and foreign—who make productive investments

in Spain and/or need to cover their liquidity needs may apply for these loans.

Transactions are processed directly via credit institutions with which the ICO has executed a cooperation agreement for the implementation of this line.

The loans may be used to finance:

1. Liquidity: working capital needs such as current expenses, payroll, payments to suppliers, purchase of goods, etc.
2. Productive investments within Spain:
  - New or second-hand productive fixed assets (including VAT).
  - Cars whose price does not exceed €30,000 plus VAT. Industrial vehicles may be financed 100%.
  - Acquisition of enterprises.
  - Value added tax (VAT) or similar taxes.
  - Liquidity with a limit of 50% of the financing obtained for this form of investment.

The maximum amount that can be applied for is €12.5 million, in one or more transactions per client per year. Where used to finance "Investment", it can be requested in the form of a loan or leasing arrangement, and where it is used to finance "Liquidity", it will be requested in the form of a loan.

Investments made prior to the execution of the operation can be financed, provided that their commencement date is not before January 1, 2016. As from the execution of the operation, the client has a one-year period in which to make the investment which is being financed.

Regarding the applicable interest rate, the client can choose between a fixed or variable rate:

- For 1-year forward transactions: fixed or variable interest rate plus a 2.30% margin.
- For 2- and 3- or 4-year forward transactions: fixed or variable interest rate, plus a 4.00% margin.
- For forward transactions of more than 5 years: fixed or variable interest rate plus a margin of up to 4.30%.

If the transaction is carried out at a variable interest rate, the rate will be reviewed half-yearly by the credit institution in accordance with the provisions of the financing agreement.

The repayment period will be of 1, 2, 3 and 4 years, with the possibility of a grace period of up to 1 year, if 100% is used to finance "Liquidity", and of 1, 2, 3, 4, 5, 6, 7, 8 and 9 years, with a year grace period of up to 1 year, and of 10, 12, 15 and 20 years, with a grace period of up to 2 years, if used to finance "Investment". And for transactions relating to "Investment" and "Liquidity", any of the repayment periods for "Investment" may be chosen.

With regard to fees, it should be noted that credit institutions can charge a fee at the start of the operation, although the cost of such fee plus the interest rate may not exceed the maximum annual percentage rate, or APR, which the institution is able to apply based on the term.

Lastly, an early repayment fee may be applied (voluntary—which in general will be 2.50% of the amount cancelled, if the remaining life of the transaction is more than 1 year, and 2% if it is 1 year or less—or mandatory, in which case it is 3% of the amount cancelled).

Transactions can be executed with the credit institution up to December 15, 2017.

- **Línea ICO Garantía SGR/SAECA (Sociedad de Garantía Recíproca/Sociedad Anónima Estatal de Caucción Agraria)** (ICO Mutual Guarantee Society / SAECA Guarantee):

Independent professionals, public and private enterprises and entities that have a guarantee or surety from a Mutual Guarantee Society or the SAECA regardless of their registered office or tax domicile, and who make productive investments inside or outside Spain or who wish to cover their liquidity needs can apply for these loans. However, an entity applying for financing to make an investment outside Spain must be domiciled in Spain or its capital must be at least 30% Spanish owned.

These transactions are processed directly through credit institutions with which the ICO has executed a cooperation agreement for this product, at Mutual Guarantee Societies or at the SAECA.

Loans may be used to finance:

1. Liquidity: working capital needs such as operating expenses, payroll, payments to suppliers, purchase of goods, etc.
2. Productive investments inside and outside Spain:
  - New or second-hand productive fixed assets (including VAT).
  - Cars whose price does not exceed €30,000 plus VAT. Industrial vehicles may be financed 100%.
  - Acquisition of enterprises.
  - Formation of enterprises abroad.
  - VAT or taxes of an analogous nature.
  - Liquidity up to a limit of 50% of the financing obtained for this form of investment.

Investments made before the execution date of the transaction can be financed, provided that the commencement date is not before January 1, 2016. After the execution date of the transaction, the client will have one year to make the investment for which the financing was obtained.

The maximum amount that can be applied for is €2 million, in one or more transactions per client and year. Where the financing is intended for “Investment”, it may be requested in the form of a loan or leasing arrangement and can finance up to 100% of the project, and where it is intended for “Liquidity”, it may be requested in the form of a loan.

The Mutual Guarantee Society/SAECA may decide the amount of the transaction to be guaranteed, which may be up to 100%.

As regards the applicable interest rate, the client may choose between a fixed or variable rate. If the transaction is carried out at a variable interest rate, the rate will be reviewed half-yearly by the credit institution in accordance with the provisions of the financing agreement.

The maximum annual cost of the transaction will be the sum of the amount of the initial fee and the interest rate established by the credit institution, plus the cost of the Mutual Guarantee Society guarantee. This maximum annual cost may not exceed the fixed or variable interest rate plus up to 2.3% for forward transactions equal to 1 year; 4% for forward transactions of 2, 3 or 4 years, and 4.30% for forward transactions equal to or over 5 years.

The repayment period and grace period will be stipulated according to the use of the financing: 1, 2, 3 or 4 years with the possibility of a 1-year grace period if 100% is financed under a “Liquidity” transaction, and 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 years, with the possibility of a grace period of up to 1 year, and 12 and 15 years, with the possibility of a grace

period of up to 2 years, for financing under an “Investment” transaction. For loans used to finance “Investment” and “Liquidity”, any of the repayment periods stipulated for “Investment” may be chosen.

The Mutual Guarantee Society/SAECA or the credit institution, as the case may be, may charge an application fee equal to 0.5% of the amount guaranteed. Additionally, the Mutual Guarantee Society may charge a fee based on the amount guaranteed and up to 4% in respect of a mutual society fee, such amount being refundable when the client terminates its relationship with the Mutual Guarantee Society. SAECA does not charge a mutual society fee.

Finally, the credit institution may charge a single fee at the start of the operation and, in the event of voluntary early repayment), a cancellation fee (generally 2.50% of the amount cancelled when the remaining life of the operation is more than one year, the fee being 2% when the remaining life is one year or less). If the early repayment is mandatory, the penalty accruing is 3.00% of the amount cancelled.

Transactions can be executed up to December 15, 2017.

- **Línea ICO Crédito Comercial 2017** (ICO 2017 Commercial Credit Line):

These loans can be applied for by independent professionals and enterprises with registered office in Spain who (i) seek to obtain liquidity through the payment of advances on their billings in respect of their commercial activity within national territory, or (ii) wish to cover prior production or manufacturing costs of goods sold in Spain.

The advance payment of invoices with a maturity of not more than 180 days after the transaction’s execution date can be made. Similarly, pre-financing can be provided to meet the business’s liquidity needs to cover the costs of production and manufacturing of goods or services sold in such territory.

The pre-financing operation must in any event be cancelled prior to formalizing an operation for the payment of advances on billings in respect of assets for which pre-financing was provided.

Transactions are processed directly through credit institutions with which the ICO has executed a cooperation agreement for this product.

Up to 100% of the amount of the invoice can be financed, provided that it does not exceed the maximum amount of €12.5 million of outstanding balance per client per year, in one or more installments.

As regards the applicable interest rate, a variable interest rate will be applied (6 months), the conditions and amount being those agreed upon with the credit institution in the corresponding financing agreement.

As for fees, the credit institution may charge an initial fee at the start of the operation, although the cost of such fee plus the interest rate established may not exceed the maximum APR which the credit institution is able to apply (interest rate plus up to 2.30%). However, no additional fee can be charged to the client, except in cases of mandatory early repayment, in which case a penalty equal to 1.50% of the amount cancelled will accrue.

Transactions can be executed with the credit institution up to December 15, 2017.

- Lastly, given its purpose, the ICO 2017 International, Tranche I “Investment and Liquidity” Line and the lines relating to Exporters 2017 and International 2017 Tranche II “Medium- and Long-term Exporters” will be examined in section 7 below, on “Internationalization Incentives”.

For more information in this connection, please see the ICO website: [www.ico.es](http://www.ico.es)

## 7. Internationalization incentives

Although it is not the aim of this publication to address incentives for Spanish investment abroad, this section is included in view of the obvious interest that Spanish investment abroad has sparked in foreign investors as a platform for international expansion.

In this context, please note that the official financial instruments approved by the Spanish government to provide official support for the internationalization of business are:

- FIEM (enterprise internationalization fund, managed by the Ministry of Economy, Industry and Competitiveness through the Office of the Secretary of State for Trade).
- FIEEX (fund for investments abroad, managed by COFIDES).
- FONPYME (operating fund for SME investments abroad, managed by COFIDES).
- FINTEC (line of financing for investments in the electronics and the information and communication technologies industry, managed by COFIDES).
- FINCONCES (line of financing for investments in the infrastructure concession industry, managed by COFIDES).
- Country Lines (managed by COFIDES).
- Commercial Start-up line 3.0 and Commercial Start-up line 4.0 for Young Entrepreneurs (managed by COFIDES).
- Programs for the Conversion of Debt into Investment managed by the Ministry of Economy, Industry and Competitiveness.
- The ICO Internationalization and Support for Exports Lines.

Of all the foregoing financial instruments, particular regard must be had to the FIEM, the FIEEX and the FONPYME, as well as to the

lines of financing for investments in the electronics and information and communication technologies industry, or in the infrastructure concession industry, the Commercial Start-up Lines 3.0 and 4.0 for Young Entrepreneurs and, lastly, the “Línea ICO-Internacional 2016” (2014 ICO International Line) and the “Línea Exportadores a Corto, Medio y Largo plazo” (Short-, Medium- and Long-term Exporters Line).

### 7.1. FIEM

The FIEM is an instrument intended for the direct financing of international contracts for the supply of goods and services or the execution of projects undertaken by Spanish companies in order to support direct investment by Spanish companies abroad. Its aim is to promote export operations by Spanish companies and direct Spanish investment abroad.

The FIEM finances (i) transactions and projects of special interest to the internationalization strategy of the Spanish economy; (ii) the technical assistance required by such transactions and projects and (iii) technical assistance and consultancy services of special interest to the internationalization strategy, the objective of which is the preparation of viability, feasibility and pre-feasibility studies, studies related to the modernization of economic sectors or regions, and consulting services aimed at institutional modernization of an economic nature or by regions.

In this connection, a transaction or project, technical assistance or consultancy service is deemed to be of special interest to the internationalization strategy where (i) it promotes the internationalization of Spanish SMEs; (ii) it entails the direct investment or exportation of goods and services of Spanish source and manufacture in a sufficiently significant percentage of the financing or (iii) otherwise, where there are circumstances justifying the interest.

In this respect, operations or projects which entail the creation of, or participation in, a productive or concessionaire company or

entity (i.e. special purpose entities, provided that there are Spanish companies investing in them), are eligible for financial support to supplement other sources of public financing.

In any case, the following will not be financed: (i) exports of defense, paramilitary and police materials to be used by the armed forces, police forces and security forces or the anti-terrorist services or (ii) projects related to certain basic social services such as education, health and nutrition.

Potential recipients of financing from this Fund are foreign central governments and foreign public, regional, provincial and local authorities, as well as enterprises, groupings and consortiums of foreign publicly-owned and private enterprises, not only from developed countries but also from developing countries.

In exceptional cases, FIEM aid may be granted to international organizations, provided that there is a clear commercial interest, from the point of view of the internationalization of the Spanish economy, in the corresponding contribution.

## 7.2. FIEX

The purpose of the FIEX is to foster the internationalization and business activities of Spanish companies and, in general, the Spanish economy, through short-term and minority interests in the equity of companies located, in juridical terms, outside Spain, specifically through holdings in the capital (equity) or quasi-equity instruments (coinvestment loans, etc.).

The maximum amount of the **financing** is €30 million subject to a minimum amount of €250,000.

## 7.3. FONPYME

The FONPYME is intended to finance direct short-term and minority holdings in the capital stock or equity of Spanish companies located

in Spain, for their internationalization, or of Spanish companies located abroad, through any participative financial instruments. Additionally, as introduced by Royal Decree 321/2015, of April 24, 2015, direct short-term and minority holdings may also be acquired in “capital expansion funds” or vehicles with official support, whether already existing or to be established, or in private investment funds, which foster the internationalization of the Spanish enterprise or economy. The maximum amount of the financing is €5 million, with a minimum of €75,000 per transaction.

If the project being funded is located in a country in which COFIDES can operate, the Fund’s participation may be instrumented, if so approved by the Company’s Board of Directors and the Fund’s Executive Committee, through joint financing with COFIDES, using identical or differing financial instruments. Under the joint financing arrangement, different remuneration schemes can be established for each of the support instruments. The percentage of the COFIDES funding in transactions funded with FONPYME will be decided on a case by case basis by its Board of Directors.

## 7.4. FINTEC

This instrument is aimed at funding, on the medium- and long-term, private and viable projects for investment abroad undertaken by enterprises in the electronics and the information and communication technologies industry in which there is a Spanish interest.

The activities at which this line is targeted are those which require, due to the enterprise’s international expansion, a permanent establishment to be set up in the country in which the investment is made, whether through new production or commercial facilities, the expansion of existing ones or the acquisition of foreign enterprises in the same industry (i.e. consumer electronics, electronic components, telecommunication industries, digital contents, etc.).

The financial support will take the form of: (i) holdings in capital; (ii) instruments similar to quasi-capital; (iii) ordinary loans to the

Spanish enterprise; (iv) ordinary loans to the project enterprise and (v) multi-project loans.

The maximum financing provided is €30 million and cannot exceed 50% of the long-term needs of the project, up to the limit of the contribution made by the backer, the minimum amount being €72,000.

## 7.5. FINCONCES

This line is used to fund projects for investment abroad in concessions of infrastructures and public services owned mostly by Spanish enterprises, under concession or under a public-private partnership (PPP).

Eligible for this funding are projects under concession aimed at, *inter alia*, the design, construction, operation, maintenance, management and exploitation of a public good or service, the performance of which requires the incorporation of long-term financial resources (i.e. infrastructure for transportation, water and waste, energy, services management, telecommunications).

The financial support may be given in the form of holdings in capital or instruments similar to quasi-capital.

The maximum financing is €30 million and cannot exceed 50% of the long-term needs of the project, up to the limit of the contribution made by the backer, the minimum amount being €75,000.

**7.6. Commercial Start-up Lines 3.0 and 4.0 for Young Entrepreneurs** are two lines which offer financing for the start-up of commercial activities abroad by Spanish companies, through (i) co-investment loans (with remuneration linked to the results of the project) or (ii) ordinary loans made to the Spanish company, to the subsidiary or the branch located abroad.

Such funds are intended primarily for the financing of expenses associated with the start-up of the company’s commercial activities

(structural costs, wages and salaries and promotions expenses assumed by the subsidiary). Depending on the guarantees offered, the percentage financed can be up to 80%.

The limit to this financing is €1,000,000 for Line 3.0 and €500,000 for Line 4.0 Young Entrepreneurs. The minimum amounts financed are €75,000 and €50,000, respectively.

The difference between the two lines is basically that to obtain financing under the 4.0 Young Entrepreneurs Line, the company must belong to a Young Entrepreneurs Association. Similarly, for financing under the 4.0 Young Entrepreneurs Line, the requirement that the company have audited financial statements may be replaced by the requirement that it present a limited review of its accounts.

**7.7. “Country Lines”** offer financing for investment projects in specific international areas with special characteristics: US Line, India Line, EU Expansion Countries Line, Mexico Line, China Line, Brazil Line, Morocco Line, Sub-Saharan Africa Line, Russia Line, Australia Line, Indonesia Line, Singapore Line, South Africa Line, Egypt Line, Algeria Line, Chile Line, Turkey Line, Cuba Line and Golf Cooperation Council Countries Line, of which the following are most notable:

- **US Line:** aimed at providing financial support to viable private projects with a Spanish interest performed in the US, independent of the activity with which they are connected, although priority will be given to the following industries: (i) infrastructures; (ii) renewable energies; (iii) environment; (iv) biotechnology and (v) information technology.
- **Brazil Line:** aimed at providing financial support to viable private projects with a Spanish interest performed in Brazil, independent of the activity with which they are connected, although priority will be given to the following industries: (i) capital goods, (ii) automobile parts, (iii) renewable energies, (iv) transport infrastructures, (v) environment and clean-up, (vi) transmission of electricity, and (vii) tourism.

- **China Line:** aimed at providing financial support to viable private projects with a Spanish interest performed in China, independently of the activity with which they are connected, although priority will be given to the infrastructures and public services industry, which includes: (i) renewable energies and cogeneration, (ii) transport and telecommunications infrastructures, (iii) environment and waste treatment, (iv) platforms of logistics services, (v) water purification and treatment.

In all three lines the financial support is to be instrumented through holdings in capital, subordinate loans, participating loans and joint investment loans.

Maximum financing is €30 million and cannot exceed 70% (FIEX) and 80% (FONPYME) of the volume of the investment in the project, although for holdings in capital, the limit will be up to 49% of the enterprise’s capital stock. The minimum amount is €75,000.

The budget for 2016 was €60 million for the US Line, €35 million for the Brazil Line and €55 million for the China Line.

### 7.8. “Línea ICO-Internacional 2017 Tramo I “Inversión y Liquidez” (2017 ICO International Line Tranche I “Investment and Liquidity”)

“Línea ICO-Internacional 2017” is aimed at Spanish independent professionals and publicly-owned and private entities (i.e., not only enterprises with registered office in Spain but also those in which, despite having their registered office abroad, at least 30% of capital stock is Spanish-owned, foundations, NGO’s, public authorities) which carry out investment projects abroad. It will be in force until December 15, 2017.

The loans granted under this line may be used to finance operating expenses (payroll, payments to suppliers, purchases of goods) or certain production-related investments outside national territory:

- (i) new or second-hand productive fixed assets;

- (ii) acquisition of vehicles, whose price does not exceed €30,000 (plus VAT). Industrial vehicles may be financed 100%;
- (iii) acquisition of companies;
- (iv) creation of enterprises abroad;
- (v) value added tax (VAT) or analogous taxes, if the assets are acquired in Europe.
- (vi) liquidity up to the limit of 50% of the financing obtained.

The investment must not have been made prior to January 1, 2016 and must be made within not more than one year after the execution of the financing.

The maximum financing is €12.5 million or its equivalent in US dollars (USD) per customer per year, in one or more transactions. If the financing is used for “Investment”, it may be requested in the form of a loan or leasing arrangement, and where it is for “Liquidity”, it will be requested in the form of a loan.

Depending on the eligible item, the repayment period and grace periods are 1, 2, 3 and 4 years with the possibility of up to 1 year’s grace for the repayment of principal if the financing corresponds 100% to “Liquidity”, and 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 years, with up to 1 year’s grace and 12, 15 and 20 years with up to 2 years’ grace if the financing is for “Investment”.

Where loans are made for “Investment” and “Liquidity”, any of the repayment periods listed for “Investment” may be chosen.

The APR on the operation may not exceed the following thresholds:

- For operations with a term equal to 1 year: a fixed or variable rate (euros or US dollars), plus up to 2.30%.
- For operations with a term of 2, 3 or 4 years: a fixed or variable rate (euros or US dollars), plus up to 4%.

- For operations with a term of 5 years or more: a fixed or variable rate (euros or US dollars), plus up to 4.30%.

This type of financing may be combined with other aid granted by the Autonomous Communities and other public institutions.

Lastly, with regard to fees, it is to be noted that the financial institutions can charge a fee at the start of the operation, although the cost of such fee plus the interest rate may not exceed the maximum APR which the institution is able to apply to the operation based on its term.

Similarly, credit institutions can apply a voluntary early repayment fee which is generally 2% of the amount cancelled if the remaining life of the transaction is one year or less, and 2.5% if it is more than one year. In the event of mandatory early repayment, a penalty equal to 3% of the amount cancelled accrues.

### 7.9. Línea ICO Internacional 2017 Tramo II “Exportadores Medio y Largo Plazo” (2017 ICO International Tranche II “Medium- and Long-Term Exporters Line”)

This financing may be requested by: (i) enterprises with registered office in Spain, for the sale of goods or services, with deferred payment, to enterprises with registered office outside Spain; and (ii) enterprises with registered office outside Spain for the acquisition of goods or services, with deferred payment, from enterprises with registered office in Spain.

In particular, the following items are eligible for financing:

- a) Supplier facility: financing targeted at enterprises with registered office in Spain for the sale, with deferred payment, of new or second-hand goods or services to enterprises with registered office outside Spain.
- b) Purchaser facility: financing targeted at enterprises with registered office outside Spain, for the acquisition, with

deferred payment, of new or second hand goods or services exported by enterprises with registered office in Spain.

- c) Supplementary financing: financing required by enterprises with registered office outside Spain which acquire goods or services exported by enterprises with registered office in Spain, the full amount of which was not entirely covered by a Purchaser facility.

The financing may take the form of a loan, with the possibility of disbursement in multiple operations, for a maximum amount of €25 million, or its equivalent in US dollars (USD), per customer, in one or more transactions.

The customer may choose between a fixed or variable interest rate (euros or USD) in the currency in which the transaction is executed. The maximum annual cost of the operation may not, however, exceed the following thresholds:

- For operations with a term of 2, 3 or 4 years: a fixed or variable rate plus up to 4%.
- For operations with a term of 5 years or more: a fixed or variable rate plus up to 4.30%.

In turn, the repayment deadline and grace period will be agreed between the customer and the credit institution, the minimum term of the total financing being 2 years and the maximum 12 years, including, where appropriate, any grace period for the repayment of principal, which cannot be more than 3 years.

Lastly, it is to be noted that the credit institution may charge a fee at the start of the operation. It may also apply application costs or arrangement fees of up to 1% for transactions with a term of less than 5 years and up to 1.50% for transactions with a term of 5 years or more. Fees may also be charged for early repayment, whether voluntary (2.50% of the amount cancelled if the remaining life of the transaction is more than 1 year, and 2% if it is 1 year or less) or mandatory (3% of the amount cancelled).

Transactions may be executed until December 15, 2017.

### 7.10. Línea ICO Exportadores 2017 (ICO Short Term Exporter Line)

This line of financing may be requested by independent professionals and enterprises with registered office in Spain who wish to obtain liquidity through an **advance on the invoices** from their export activity. In particular, the financing is limited to invoices issued within the framework of a transaction consisting of the final sale of goods and services supplied to a customer located outside Spain or to those with a document agreed with an enterprise that has its registered office outside Spain, evidencing that the purchaser undertakes to acquire goods from the enterprise that has its registered office in Spain, independent of the name and form given to such document. Invoices must be payable not more than 180 days after the transaction’s execution date.

Financing is also available in the form of **pre-financing** of the company’s liquidity needs to cover the production and manufacturing costs of the goods or services to be exported. This transaction is required to be executed cancelled prior to the formalization of the transaction consisting of an advance on invoices relating to the goods which were pre-financed.

In both cases, up to 100% of the amount of the invoice or up to 100% of the amount from the sale of the goods will be financed, provided that it does not exceed a maximum of €12.5 million per customer and year, in one or more transactions.

The APR on the operation may not exceed the variable interest rate plus up to 2.30%.

The interest rate applied to the customer will be variable (reviewable six-monthly) plus a margin of up to 2.30%, with the dates and method of payment of the interest being agreed between the credit institution and the customer, according to the type of agreement entered into.

In both cases, up to 100% of the amount of the invoice or up to 100% of the amount from the sale of the goods will be financed,

provided that it does not exceed a maximum of €12.5 million per customer and year, in one or more transactions.

Lastly, it should be mentioned that the credit institution can charge a fee at the start of the operation, although such fee plus the interest rate set may not exceed the maximum APR applicable to the operation. Also, the client may be charged a fee in the event of mandatory early repayment, equal to 1.50% of the amount cancelled.

Transactions may be executed until December 15, 2017.

## 8. EU aid and incentives

Most European Union incentives (specifically loans and subsidies) generally supplement aid programs financed by the Spanish Government. Such aid is routed through the Spanish public authorities and institutions, as well as through finance entities, which act as intermediaries between the granting of aid and beneficiary. Accordingly, the related applications for subsidies must be addressed to these entities, save in the case of the direct aid under, *inter alia*, programs to support research, development and innovation (R&D&I) for which applications must be submitted in the respective calls for proposals issued by the European Commission.

The broad range of instruments at the EU's disposal includes most notably the following:

### 8.1. European Investment Bank (EIB)

Projects eligible for EIB support are basically those which promote the development of less favored regions and those of common interest to several Member States or benefiting the EU as a whole, such as environmental protection, improved use of energy resources, improved industrial competitiveness in the EU, the development of SMEs and middle capitalization enterprises (MID-

CAPs) and improved European transport and telecommunications infrastructures. Additionally, projects aiming at extending and modernizing infrastructure in the health and education sectors may also qualify for EIB support.

The EIB is jointly owned by the EU countries and borrows money on the capital markets. It makes loans on favorable terms to projects that support EU objectives, with none of the money coming from the EU budget.

On this basis, the EIB offers two types of loans:

#### 8.1.1. Global loans ("Intermediated loans")

Global loans are similar to credit lines granted to financial institutions, which lend the funds to small or medium-scale investment projects meeting the EIB's own criteria. This is the main instrument with which the EIB supports SMEs and MID-CAPs since, by granting loans to banks or other intermediaries, access to funding is provided indirectly to small and medium-scale business initiatives.

The loans are granted by the EIB to banks or other institutions in all the Member States, which act as intermediaries. These financial intermediaries conduct an analysis of the investment, and of the economic, technical and financial viability of each of the projects. They are responsible for granting the loans for small and medium-scale investments and for the administration of such loans.

Specifically in Spain, global loans are routed mainly through Instituto de Crédito Oficial (ICO), Banco Bilbao-Vizcaya Argentaria (BBVA), Santander, Bankinter, Sabadell, Banco Cooperativo, Kutxabank, Banca March, Laboral Kutxa, La Caixa, Unicaja, Bankia and Banco Popular. There are many different types of loans and credits, with varying maturities, amounts and interest rates, but their general terms can be summarized as follows:

## Chapter 4 – Investment aid and incentives in Spain

- Coverage of up to 50% of the overall investment costs and, in certain cases, up to 100% of the investment with a guarantee from the intermediary bank.
- Grace period: up to three years.
- Repayment period: to be determined by the financial institution acting as intermediary and the EIB, although it tends to fluctuate between 2 and 15 years.
- Beneficiaries: local authorities, SMEs (for these purposes, SMEs are deemed to be companies that have less than 250 workers) or MID-CAPs (which have up to 3,000 workers).
- The amount awarded under a global loan may not exceed €12.5 million, including the possibility of working-capital financing.
- Free of fees and other charges, except for minor administrative expenses.

Applications must be filed with financial institutions or other intermediaries.

#### 8.1.2. Individual loans ("Project loans")

The EIB grants individual loans directly to investors or through financial intermediaries for projects of over €25 million.

In general, the following are the main characteristics of these loans:

- Coverage of up to 50% of the total cost of the project.
- Eligible projects are public or private investments made mainly in the infrastructure and industrial sector.
- Long-term loans, with repayment periods of between 5 and 12 years for industrial projects, and between 15 and 20 years for infrastructure projects, although the repayment period may be extended in special cases.



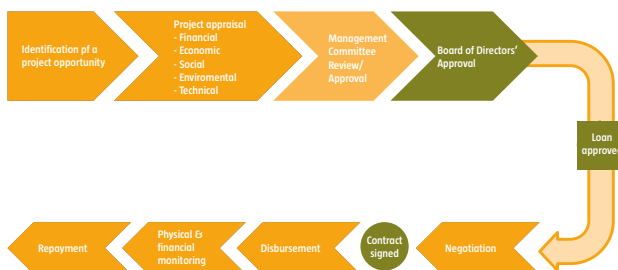
- These loans can be for as much as 50% of the cost of the project, although as a general rule, one third of their amount is secured.
- Grace period: depends on the nature of the project, usually up to five years.
- In granting these loans, the EIB requires security, on which the financial terms of the loan will depend.

Once finance has been obtained, the project's progress is monitored regularly in order to ensure that it reaches its objectives.

The EIB does not directly grant interest relief, although this may be financed by third-party institutions.

Thanks to a €10,000 million capital extension which was approved by the EU in 2012, the EIB considerably increased its lending activity, up to €80.3 billion in 2014 (the lending activity increasing by 40% between 2013 and 2015). The projection and commitment assumed by the EIB have been maintained throughout 2016, reaching a figure of €180 billion in that year.

**Figure 2**  
**OPERATING SCHEME**



SOURCE: [http://www.eib.org/attachments/documents/mooc\\_factsheet\\_eib\\_framework\\_loans\\_en.pdf](http://www.eib.org/attachments/documents/mooc_factsheet_eib_framework_loans_en.pdf)

In 2016, the EIB financed 112 projects in Spain alone, amounting to a total of €11,540 billion, down 3.3% on the figure for 2015. Spain nevertheless continues to rank first among the recipients of EIB investments.

Lastly, an essential role is being played by the EIB in starting up the European Fund for Strategic Investments (EFSI), created by the European Commission to help meet the objective of mobilizing at least €315 billion in new investments during the 2015-2017 period. It should be noted in this respect that since September 2016, the European Council has been working on a new proposal aimed at extending the EFSI and bringing the total investment to €500 billion. The initial objective is to extend this Fund through to 2020.

Based on these premises, the Commission created the figure of the national development bank so that, together with the European Investment Bank and private investors, such banks make an effort, based on their supplementary nature, which makes it possible to reach the objective of the European Investment Plan. In this connection, Spain has made available to the ICO, as the Spanish national development bank, €1.5 billion for projects that receive financing from the EFSI.

### 8.2. European Investment Fund (EIF)

The EIF is an EU body which specializes in providing guarantee and venture capital instruments to SMEs for better access to funding. It uses equity capital or funds provided by the EIB or the European Union for its activities. It is neither a lending institution nor does it provide subsidies to enterprises or directly invest in them. All of its work is carried out through banks and other financial intermediaries. Moreover, it ensures the continuity required in the management of EU programs and has accumulated extensive experience in this area.

The EIF was created for the purpose of fostering EU objectives, particularly in the areas of entrepreneurship, growth, innovation,

research and development, employment and regional development. Today, the core mission of the EIF is to provide support to SMEs and grant them access to funding at a time of reduced financing granted by credit institutions. To meet this objective, the EIF designs innovative financial products aimed at its partners (financial institutions), according to the needs of each regional market, to reach the local market through such financial intermediaries.

The EIF generally operates by providing guarantees for loans of all kinds and by investing in venture capital to support SMEs. In short, the work of the EIF can be classed according to the financial products (capital and debt) offered, notably including:

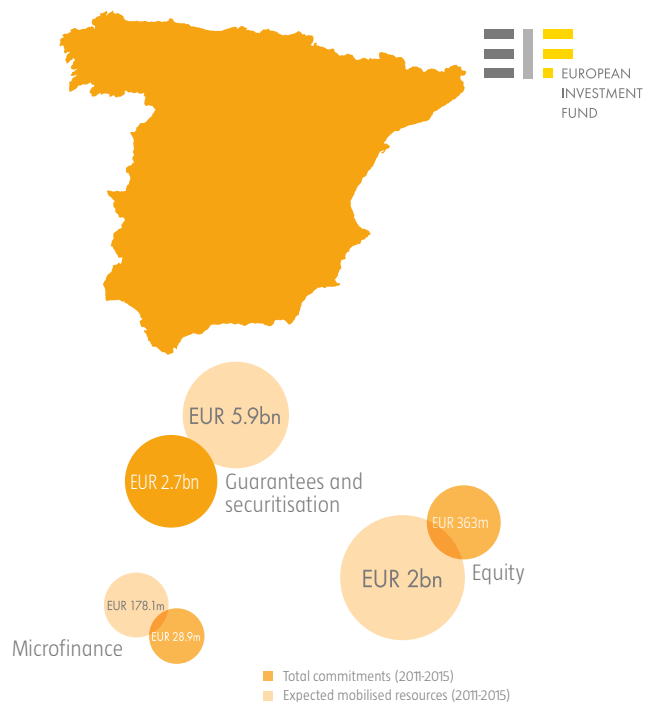
- Venture Capital Products: the EIF invests in venture capital funds that provide financing to innovative SMEs.
- Debt Products: in these cases, the EIF provides security and credit enhancements to financial intermediaries to facilitate the flow of funds from financial institutions to SMEs.
- Microfinance: the EIF provides financing, security and technical assistance to financial institutions for their microfinance activities.

Indeed, although the EIF supports venture capital instruments with a view to making capital more available to high-growth innovative SMEs, it also offers debt instruments, since many SMEs seek financing from this more traditional route. From this standpoint, the EIF offers security and credit enhancements by means of the securitization of credit, in order to improve the lending capacity of financial intermediaries and, as a result, the ultimate availability and terms of the debt for the SME beneficiaries.

During 2015 the EIF mobilized €25 billion in European investments, managing to reach one third of the financing objective set for the 2015-2018 period.



**Figure 3**  
**EIF IN SPAIN**



#### Key figures (at 31.12.2015)

- First EIF operation in Spain: 1997
- 49 supported Spanish private equity funds
- 24 partner finance and guarantee providers
- Over 131 000 Spanish SMEs supported

SOURCE: [http://www.eif.org/news\\_centre/publications/country-fact-sheets/EIF\\_factsheet\\_spain.pdf](http://www.eif.org/news_centre/publications/country-fact-sheets/EIF_factsheet_spain.pdf)

**Table 16**

Who is eligible?	What is available?	Intermediary	Initiative
• Innovative SMEs and small Mid-Caps	• Loans	• Bankinter	• SME InnovFin guarantee agreement
• Innovative SMEs and small Mid-Caps	• Loans	• Bankinter • Deutsche Bank España	• Risk sharing instruments (RSI)
• Micro-enterprises (including individuals)	• Micro-loans	• Cajas Rurales Unidas • Colonya Caixa Pollença • Fundació Pinnae • ICREF • Laboral Kutxa	• “Progress” microfinance
• Micro-enterprises (including individuals)	• Loans	• CERSA	• EFSI • COSME + Loan guarantee mechanism
• SMEs and micro-enterprises (including individuals) with registered office in Extremadura	• Loans	• MicroBank	• Erasmus + Loan guarantee mechanism
• SMEs and micro-enterprises (including individuals)	• Loans, micro-loans and guarantees	• CERSA • Caixa Capital Micro • MicroBank	• CIP
• SMEs	• Equity	• Persons looking for equity capital should refer to the funds in which the EIF invests, accessible via its web site	• EIF resources and resources from third parties

SOURCE: Own compilation based on information available at: <http://www.eif.org/index.htm>

### 8.3. European Structural and Investment Funds

#### 8.3.1. European policy for 2014-2020

In line with the “Europe 2020 Strategy”, while all regions contribute to the general goal by investing in jobs and growth, the methods and scope of the intervention differ according to the level of economic development of each of them, settling down three categories for such purpose.

- The first category relates to “less developed” regions, those whose GDP per capita is less than 75% of the average GDP of the EU-27<sup>3</sup> which remain an important priority for EU cohesion policy. The community co-financing rate for this group is capped at 75%-85%.

**Table 17**  
**ELIGIBILITY FOR LESS DEVELOPED REGIONS**

2007-2013	2014-2020
NUTS 2 regions whose GDP per capita is less than 75% of the EU average	No change
Transitional support for regions which would have remained eligible for the convergence objective if the threshold remained 75% of the average GDP of EU-15 and not of EU-25	Separate category for transition regions
Cohesion Fund: Member States whose GNI per capita is less than 90% of the average GNI of EU-27	No change

<sup>3</sup> Based on figures previous to the entry of Croatia in July 2013.

#### 2007-2013

Transitional support to Member States who would have been eligible for the Cohesion Fund if the threshold remained 90% of the average GNI of EU-15 and not of EU-27

#### 2014-2020

Transitional support to Member States eligible for funding from the Cohesion Fund in 2013, but whose GNI per capita exceeds 90% of the average GNI per capita of the EU-27

- The second category comprises the “transition” regions, which are those whose GDP per capita falls between 75% and 90% of the EU average. In this case, the community co-financing can reach up to 60%;

**Table 18**  
**ELIGIBILITY FOR TRANSITION REGIONS**

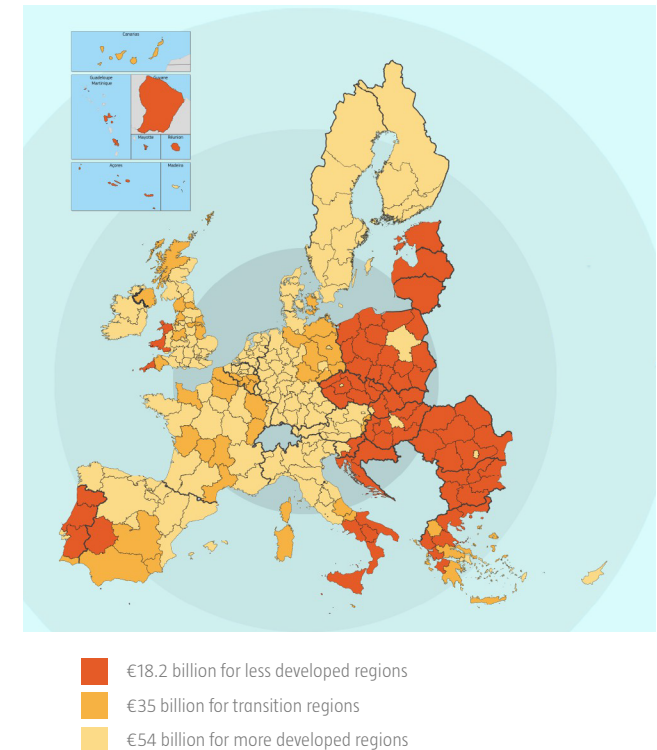
2007-2013	2014-2020
Transitional support for NUTS 2 regions which would have been eligible for the convergence objective if the threshold remained 75% of the average GDP of EU-15 and not of EU-25 (Convergence phasing-out)	NUTS 2 regions whose GDP per capita is between 75% and 90% of the average GDP of EU-27 with a differentiated treatment for regions which are eligible under the Convergence objective in 2007-2013
Transitional support for NUTS 2 regions which were covered by Objective 1 in 2000-2006 but whose GDP exceed 75% of EU-15 GDP average (RCE phasing-in)	

### Chapter 4 – Investment aid and incentives in Spain

- The last are the “more developed” regions, whose GDP per capita is more than 90% of the average. The co-financing rate may not exceed 50%.

Having regard to the foregoing classification, the map of the EU by regions is as follows:

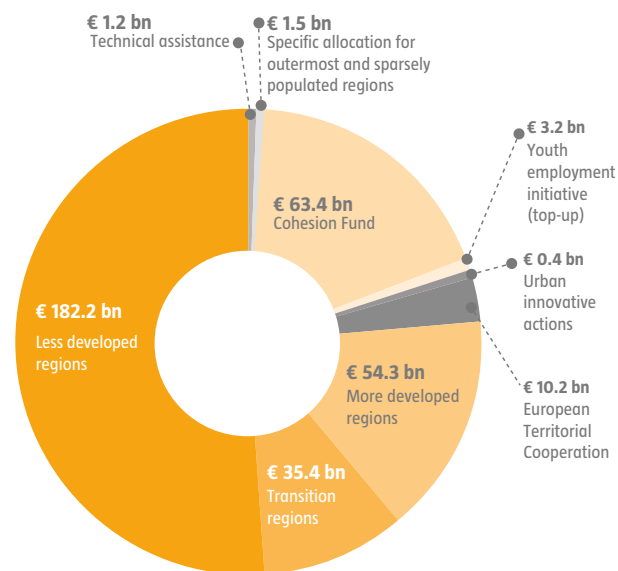
**Figure 4**  
**ALLOCATION OF AID BY REGION**



SOURCE: [http://ec.europa.eu/regional\\_policy/sources/docgener/infographic/cohesion\\_policy\\_20142020\\_es.pdf](http://ec.europa.eu/regional_policy/sources/docgener/infographic/cohesion_policy_20142020_es.pdf)

On the basis of the foregoing, the budget established in the Community cohesion policy is distributed as follows:

**Figure 5**  
**COHESION POLICY FUNDING 2014-2020**  
**(€ 351.8 billion)**

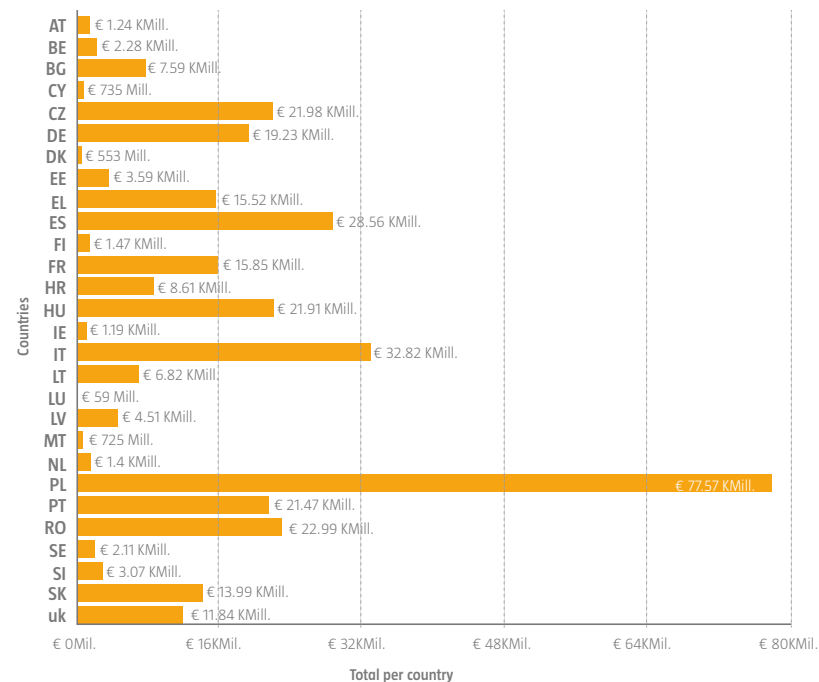


SOURCE: [http://ec.europa.eu/regional\\_policy/sources/docgener/informat/basic/basic\\_2014\\_es.pdf](http://ec.europa.eu/regional_policy/sources/docgener/informat/basic/basic_2014_es.pdf)

By country, the budget for the 2014-2020 period is distributed as follows:

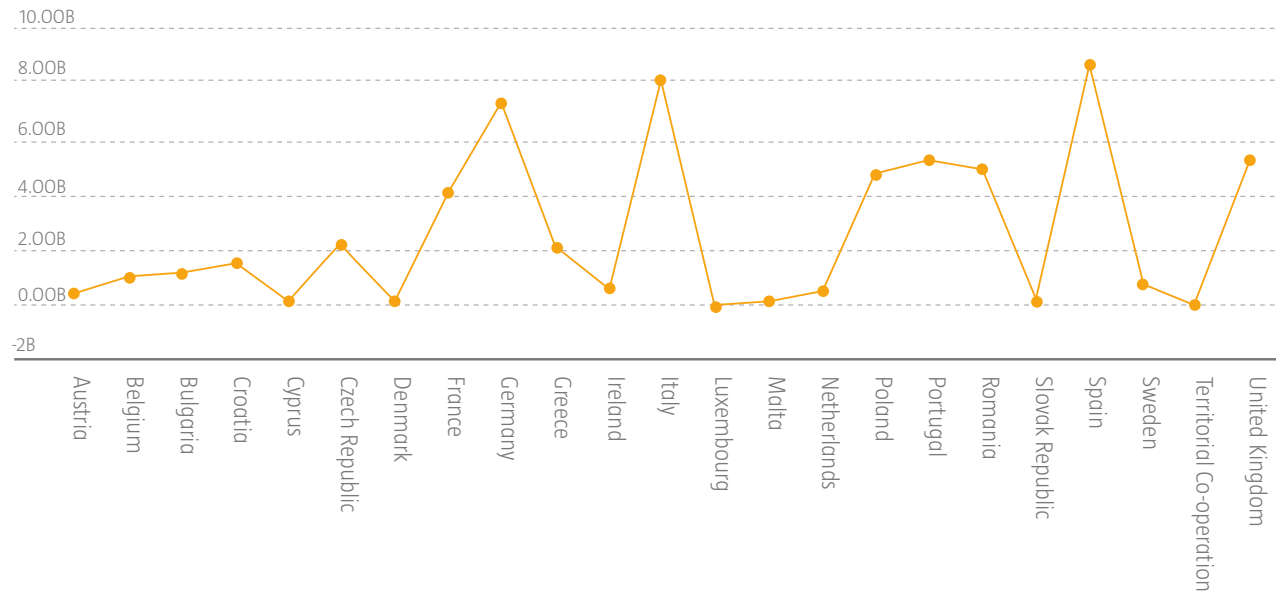
**Figure 6**  
**FINANCIAL ALLOCATIONS 2014-2020**

Total EU allocations of Cohesion Policy 2014-2020 (million €, current prices)



SOURCE: [http://ec.europa.eu/regional\\_policy/en/funding/available-budget/](http://ec.europa.eu/regional_policy/en/funding/available-budget/)

Figure 7  
TOTAL AMOUNT OF ALLOCATION



SOURCE: <https://cohesiondata.ec.europa.eu/dataset/Financial-allocations-2014-2020-Available-Budget-b/upfh-jcep>

### 8.3.2. Common provisions on the European Structural and Investment Funds (ESI Funds)

Regulation (EU) No 1303/2013 of 17 December lays down common provisions applicable to all of the European Structural and Investment Funds (ERDF, ESF, Cohesion Fund, EAFRD and EMFF) and general provisions applicable to some of them, in order to ensure the effectiveness of the ESI Funds and their coordination with one another and with other EU instruments, notwithstanding the specific rules regulating each Fund and which are set out below.

The purpose of this Regulation is to improve the coordination and harmonize the execution of the Structural Investment Funds (ESI

Funds) to ensure “smart, sustainable and inclusive growth” focused on the attainment of eleven thematic objectives:

- 1) Strengthening research, technological development and innovation;
- 2) Enhancing access to, and use and quality of ICT;
- 3) Enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF);
- 4) Supporting the shift towards a low-carbon economy in all sectors;

- 5) Promoting climate change adaptation, risk prevention and management;
- 6) Preserving and protecting the environment and promoting resource efficiency;
- 7) Promoting sustainable transport and removing bottlenecks;
- 8) Promoting sustainable and quality employment and supporting labor mobility;
- 9) Promoting social inclusion, combating poverty and any discrimination;
- 10) Investing in education, training and vocational training for skills and lifelong learning;

11) Enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

To this end, a Common Strategic Framework (CSF) is created (which can be reviewed by the Commission where there are major changes in the social and economic situation in the Union), setting a number of common recommendations and criteria for those opting for financing from the ESI Funds.

Based on the foregoing premises, the aim of the Funds is to supplement the financing provided through national, regional and local interventions, in order to achieve the “2020 Strategy”, as well as the objectives specific to each Fund. The Member States, in accordance with their institutional, legal and financial framework, and the bodies designated by them, shall be responsible for preparing and implementing programs and carrying out their tasks, in partnership with the relevant partners. To this end, each Member State must promote a partnership which, in addition to the competent local and regional authorities, counts with the participation of the following partners:

- Economic and social partners, and
- Other bodies representing civil society, including environmental partners, non-governmental organizations and bodies responsible for promoting social inclusion, gender equality and non-discrimination.

With this premise, the Partnership Agreement is the national document prepared by each Member State for the period between January 1, 2014 and December 31, 2020, which explains the investment strategy and priorities of the respective Funds (ERDF, ESF, EAFRD and EMFF) in such State and must be approved by the Commission. Such strategy must be based on a previous analysis of the current situation of the Member State and its regions (in particular of the disparities existing between those regions), the opportunities for growth and the weaknesses of all its regions and territories, focusing on the thematic objectives, which will entail the identification of the actions deemed to be the priorities of each Fund in that State. In the case of Spain, the Partnership Agreement for the

period 2014-2020 was approved by the European Commission on November 4, 2014. It establishes as specific objectives of the Funds, in Spain, to promote the competitiveness and the convergence of all territories, giving priority (i) to the thematic areas included in the recommendations given by the European Council, (ii) to those contained in the Position Paper prepared by the Commission<sup>4</sup>, as well as (iii) to those set forth in the National Reform Program approved by the Council of Ministers on April 30, 2014.

This Partnership Agreement promotes an investment of €28,580 million aimed at financing the entire Community cohesion policy in Spain for the period 2014-2020<sup>5</sup>, a figure which must be increased by €8,290 million to be used for the performance of Rural Development Programmes and €160 million intended for the fisheries and maritime sectors.

This financing is to be used to execute the specific proposal for action described in the Partnership Agreement in connection with each of the thematic objectives listed above, their main priorities being the following:

- Increasing participation in the labor market and labor productivity, as well as enhancing education, training and social inclusion policies, giving special attention to youth and vulnerable groups;
- Supporting the adaptation of the productive system toward activities with greater added value, by increasing the competitiveness of SMEs;
- Promoting a suitable business environment targeted at innovation and strengthening R&D&I systems;
- Attaining a more efficient use of natural resources.

<sup>4</sup> Report on the *Position of the Commission Services on the development of a Partnership Agreement and Programmes in SPAIN for the period 2014-2020*. October 2012.

<sup>5</sup> Including the financing of European territorial cooperation and the allocation for the youth employment initiative.

Notwithstanding the foregoing, the material implementation of the Funds is to be carried out through the respective Operational Programs prepared by each Member State in accordance with the terms of the Partnership Agreement and presented to the Commission for its approval. Each program will define priorities and proposals for action, specifying the projected investment and breaking it down by each of the years of the period in which it is applied. In the case of Spain, almost all of the Operational Programs have now been approved by the European Commission<sup>6</sup>.

**Table 19**  
**STRATEGIC PROGRAMMING 2014-2020**

	Common Strategic Framework (ERDF, ESF, CF, EAFRD, EMFF)					
<b>EU level</b>	Establishes strategic priorities and territorial challenges in line with Europe 2020.					
	Partnership Agreement (ERDF, ESF, CF, EAFRD, EMFF)					
<b>National level</b>	Prepared by the Member State Translates the elements of the MEC to national context. Includes commitments to Fund programming.					
	Operating Programmes					
<b>National or regional level</b>	MEC and Partnership Agreements will be implemented in Member States through OPs. Prepared in close collaboration with the various agents (partnership).					
	O.P. ERDF	O.P. ESF	O.P. CF	O.P. EAFRD	O.P. EMFF	Multi-fund O.P. (ERDF, ESF, CF)

SOURCE: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1303&from=EN>

<sup>6</sup> In this line, the ERDF Regional Operational Programs have been approved for all of the regions of Spain, as have the Multi-regional and most of the Territorial Cooperation Operational Programs of the same Fund; two of the ESF Operational Programs have also been approved. Approval has also been given for the Operational Program for Spain of the European Maritime and Fisheries Fund and the EAFRD. Spain no longer has access in this period to the Cohesion Fund.

### 8.3.3. Funds under the Cohesion Policy: ERDF, ESF and Cohesion Fund

The Funds under the Cohesion Policy include Structural Funds (ERDF and ESF) and the Cohesion Fund, which contribute to enhancing economic, societal and territorial cohesion.

The Community cohesion policy pursues two objectives:

1. Investment in growth and jobs in Member States and their regions:

The resources for this objective amount to 97% of the projected total investment in Spain (approximately €28.58 billion) and are allocated as follows:

- a) €2 billion to less developed regions (Extremadura);
- b) €13.4 billion to transition regions (Andalucía, Canary Islands, Castilla-La Mancha, Melilla and Murcia);
- c) €11 billion to more developed regions (Aragón, Asturias, Balearic Islands, Cantabria, Castilla y León, Cataluña, Ceuta, Valencia, Galicia, La Rioja, Madrid, Navarra, Basque Country);
- d) €484.1 million as special funding for the outermost regions (Canary Islands).

2. European Territorial Cooperation:

The resources earmarked for this objective amount to approximately 3% of the total resources allocated to Spain with a charge to the ESI Funds during the 2014-2020 period (i.e., a total of €643 million).

In summary, the articulation of the Cohesion Policy during this new budgetary period will be instrumented according to the following scheme:

**Table 20**  
**COHESION POLICY ARCHITECTURE**

2007-2013		2014-2020	
OBJECTIVES	GOALS	CATEGORY OF REGIONS	FUNDS
Convergence		Less developed regions	ERDF
Convergence Phasing Out	ERDF		ERDF
Regional Competitiveness and Employment Phasing In	ESF	Transition regions	ESF
	Cohesion Fund		Cohesion Fund
Regional Competitiveness and Employment	ERDF	More developed regions	ERDF
	ESF		ESF
European Territorial Cooperation	ERDF	European Territorial Cooperation	ERDF

SOURCE: [http://ec.europa.eu/regional\\_policy/en/information/publications/presentations/2011/eu-cohesion-policy-2014-2020-proposals-from-the-european-commission](http://ec.europa.eu/regional_policy/en/information/publications/presentations/2011/eu-cohesion-policy-2014-2020-proposals-from-the-european-commission)

Based on the foregoing premises, the following is a description of the main characteristics of the Structural Funds (ERDF and ESF) and the Cohesion Fund:

#### 8.3.3.1. European Regional Development Fund (ERDF)

This Fund will contribute to the funding of aid targeted at enhancing economic, societal and territorial cohesion by correcting the Union's main regional imbalances through sustainable development and the structural adjustment of regional economies, as well as by restructuring industrial regions in decline and less developed regions.

The activities that can be cofinanced by the ERDF are the following:

- a) Investments in production which contribute to creating or preserving long-term employment, through direct aid and investment in SMEs;
- b) Productive investments, independent of the size of the company in question, which contribute to boosting research, technological development and innovation and to supporting a shift towards a low-carbon economy in all sectors. Also, where such investment entails cooperation between large companies and SMEs to enhance access to,

and use and quality of information and communication technologies.

- c) Investments in societal, health, research, innovation, business and educational infrastructures;
- d) Investment in the development of native potential through ongoing investments in capital goods and small infrastructures, including small cultural and sustainable tourist infrastructures, corporate services, aid to research and innovation bodies and investment in technology and applied research at companies.
- e) Online interconnection, cooperation and exchange of experiences between competent regional, local, urban and other public authorities, economic and social partners and the related bodies representing civil society referred to in article 5.1 of Regulation (EU) No 1303/2013, as well as the performance of studies, preparatory actions and the development of capacities.

However, the following activities are not eligible for funding under this Fund: (i) disassembly or construction of nuclear power plants; (ii) investments aimed at reducing greenhouse gas emissions pursuant to Annex 1 of Directive 2003/87/EC; (iii) manufacture, processing and marketing of tobacco and manufactured tobacco; (iv) enterprises undergoing difficulties; as well as (v) in general, investments in airport infrastructures, unless they are related to environmental protection or are accompanied by the investments necessary to mitigate or reduce their negative impact on the environment.

Although the ERDF Fund contributes to financing the eleven thematic objectives described above, its main priority is targeted at the attainment of Objectives nos. 1 through 4, more related to the business context (infrastructures, service enterprises, support for corporate activities, innovation, CIT and research) as well as to the provision of services to citizens in certain areas (energy, online services, education, health, societal and research infrastructures, accessibility, environmental quality).

**Table 21**  
**EUROPEAN REGIONAL DEVELOPMENT FUND**

INVESTING IN GROWTH
Research and Innovation
Information and communication technologies
Competitiveness of SMEs
Low-carbon economy

SOURCE: [http://ec.europa.eu/regional\\_policy/sources/docgener/infographic/cohesion\\_policy\\_20142020\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/infographic/cohesion_policy_20142020_en.pdf)

During the 2014-2020 period Spain will manage 22 Operational Programmes co-financed by the ERDF with an amount of €19,408,883,778, pursuant to the Partnership Agreement approved by the Commission.

Under the objective entitled **“Investment in growth and jobs”**, the ERDF will use the respective Operating Programmes to support sustainable urban development through strategies which establish measures to meet economic, environmental, climate, demographic and societal challenges with an impact on urban areas, also bearing in mind the need to promote the relationship between the urban and rural environments. For such purpose, at least 5% of the resources of the ERDF assigned at national level will be used for sustainable urban development.

The Partnership Agreement signed by Spain and the Commission also includes a specific reference to the attainment of the **“Investment in growth and jobs”** objective, through which financing will be obtained for a number of proposals targeted at promoting the development of cities from a threefold perspective: (i) sustainable city (aimed at enhancing the physical and environmental dimension); (ii) smart city (aimed at enhancing the economic and competitiveness dimension); and (iii) inclusive city (aimed at enhancing the social dimension).

In turn, under the objective **“European Territorial Cooperation”**, the ERDF will support:

- Cross-border cooperation between adjoining regions aimed at favoring regional development between regions with terrestrial and maritime borders between two or more Member States or with a third country on the Union’s outer borders.

It is sufficient to indicate, in this connection, that Spain participates in the following cross-border cooperation programs:

- Territorial Cooperation Programme Spain-France-Andorra (POCTEFA) 2007-2013.
- INTERREG V A Cooperation Programme Spain-Portugal (POCTEP) 2014-2020.
- European Neighbourhood Instrument Cross-border Cooperation Programme (ENI-CBC).
- INTERACT III.

- **Transnational cooperation** in large transnational areas in which national, regional and local partners participate and which also includes maritime cross-border cooperation in cases not covered by cross-border cooperation, with a view to attaining a higher degree of territorial integration in those territories.

**Figure 9**



SOURCE: [http://ec.europa.eu/regional\\_policy/sources/docgener/informat/basic/basic\\_2014\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/informat/basic/basic_2014_en.pdf) (“An Introduction to Reformed Cohesion Policy 2014-2020”)



Spain participates in the following transnational cooperation programmes:

- Madeira-Azores-Canary Islands Territorial Cooperation Programme (POMAC) 2014-2020
- Atlantic Area European Territorial Cooperation Programme (2014-2020)
- iNTERREG V B MED Programme
- Southwest Europe Interreg V-B Transnational Cooperation Programme (Interreg V-B SUDOE)

- **Interregional cooperation** to enhance the efficiency of the cohesion policy, its scope of application being the entire territory of the EU.

Spain participates in the following interregional cooperation program:

- INTERREG EUROPE

For more detailed information on these programmes, please visit the website of the Ministry of Finance and Civil Service:

[http://www.dgfc.sggp.meh.es/sitios/dgfc/es-ES/ipr/fcp1420/p/pa/Documents/20141022\\_AA\\_Espa%c3%b1a\\_2014\\_2020.pdf](http://www.dgfc.sggp.meh.es/sitios/dgfc/es-ES/ipr/fcp1420/p/pa/Documents/20141022_AA_Espa%c3%b1a_2014_2020.pdf)

### 8.3.3.2. European Social Fund (ESF)

The mission of the ESF is: (i) to promote high levels of employment and of job quality, (ii) improve access to the job market, (iii) foster the geographical and professional mobility of workers, (iv) facilitate their adaptation to the industrial change and to the changes in production systems necessary to guarantee sustainable development, (v) favor a high level of

education and training for all and support the transition from education to employment among youth, (vi) combat poverty, back social inclusion and (vii) foster equality between the sexes, non-discrimination and equal opportunity, thus responding to the EU's priorities in matters of improving economic, societal and territorial cohesion.

The Fund seeks to benefit citizens and, in particular, disadvantaged persons, such as long-term unemployed persons, disabled persons, immigrants, ethnic minorities, outcast communities and persons of any age living in poverty and social exclusion. The ESF will also provide aid to workers, enterprises, including agents of the social economy, and entrepreneurs, as well as to systems and structures, with a view to facilitating their adaptation to new challenges (including greater suitability of professional qualifications), and fostering good governance, social progress and the implementation of reforms, especially in the area of employment, education, training and social policies.

Similarly, the European Parliament, in its Resolution of July 5, 2016, stressed that professional integration is the first step towards social inclusion and that the ESF can therefore be applied to for the financing of measures designed to facilitate the integration of refugees.

**Table 22**  
**EUROPEAN SOCIAL FUND**

INVESTING IN PEOPLE
Employment and Mobility
Better education
Social inclusion
Better public administration

SOURCE: [http://ec.europa.eu/regional\\_policy/sources/docgener/infographic/cohesion\\_policy\\_20142020\\_es.pdf](http://ec.europa.eu/regional_policy/sources/docgener/infographic/cohesion_policy_20142020_es.pdf)

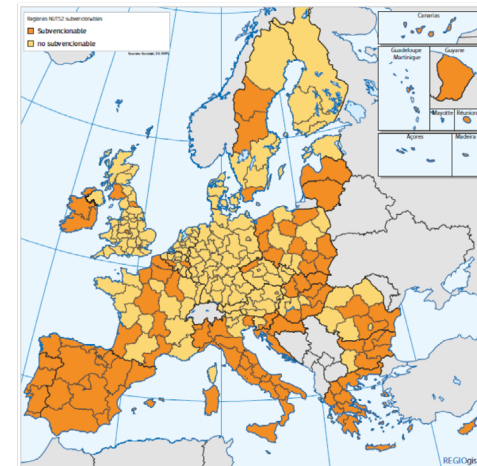
Although the ESF is aimed at attaining specifically the following four investment priorities of the eleven thematic objectives (i.e., objectives 8 through 11) [(i) employment and labor mobility; (ii) education, skills and lifelong learning; (iii) promoting social inclusion and combating poverty; and (iv) enhancing institutional capacity], this does not mean that the initiatives supported by the ESF cannot also contribute to the achievement of other objectives.

According to the terms of the Partnership Agreement, Spain will manage 23 Operational Programmes with ESF co-financing of at least €7.6 billion (28.1% of the total budgets of the Cohesion Policy), without counting the budget to be used for the Youth Employment Initiative.

In particular, and in connection with the **youth employment** initiative, Spain has been allocated an additional €943.5 million to be used to back the fight against youth unemployment among youths under 25 years of age who are not integrated in educational or training systems and are inactive or unemployed.

The regions eligible for funding under the Youth Employment Initiative are:

**Figure 10**



SOURCE: <http://ec.europa.eu/esf>



### 8.3.3.3. Cohesion Fund

The Cohesion Fund is targeted at Member States with GNI (gross national income) per capita of less than 90% of the average income of the EU. The primary objective of the Fund is to reduce the socio-economic disparities among Member States and to promote sustainable development. The Cohesion Fund allocates a total of €63.4 billion to activities in the following categories:

- a. **Trans-European transport networks:** in particular priority projects of European interest identified by the EU. The Cohesion Fund backs infrastructure projects in the context of the Connecting Europe Facility;
- b. **Environment:** in this connection, the Cohesion Fund will support projects relating to energy or transport, provided that they are clearly beneficial to the environment in terms of energy efficiency, using renewable energies, developing rail transport, enhancing intermodality, strengthening public transport, etc.

As indicated, the Cohesion Fund is currently subject to the same programming, management and supervisory rules as the ERDF and the ESF, under Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006 the common provisions regulation. During the 2014-2020 period, the Cohesion Fund may finance projects and initiatives taking place in Bulgaria, Croatia, Cyprus, Slovakia, Slovenia, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, the Czech Republic and Romania. In other words, Spain, during the 2014-2020 period will not receive financing from this Fund.

**Table 23**  
**ANUAL BREAKDOWN OF COMMITTED CREDITS FOR THE 2014-2020 PERIOD**

YEAR	€ MILLION
2014	36.196
2015	60.320
2016	50.837
2017	52.461
2018	54.032
2019	55.670
2020	57.275
<b>TOTAL</b>	<b>366.791</b>

SOURCE: [http://www.congreso.es/docu/pge2016/pge2016/PGE-ROM/doc/L\\_16\\_A\\_A6.PDF](http://www.congreso.es/docu/pge2016/pge2016/PGE-ROM/doc/L_16_A_A6.PDF)

### 8.4. The funding policy of the Common Agricultural Policy (CAP)

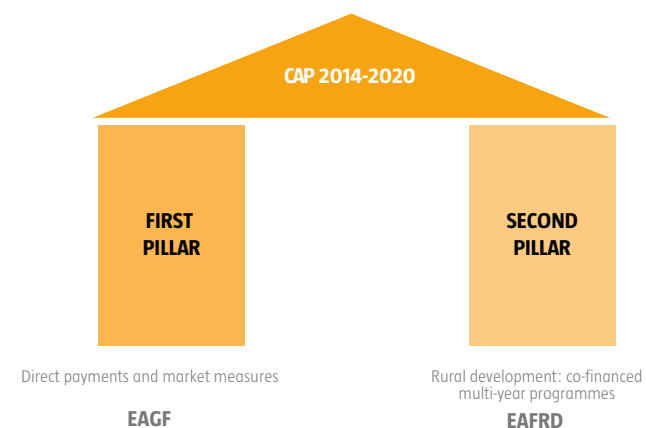
The Common Agricultural Policy (CAP) absorbs around 40% of the total budget of the EU for this period. Despite its heavy budgetary weight, justified in part by its being one of the few sectors whose policy is financed principally by the EU, its specific weight has been reduced substantially over the last 30 years, dropping from 75% to the current 40%. The budget for direct payments assigned to Spain is equal to €29,227,900,000,000, which entails 11.56% of the total.

The financing and functioning of the CAP is regulated under **Regulation No. 1306/2013 of the European Parliament and of the Council, of 17 December 2013**, on the financing, management and monitoring of the Common Agricultural Policy, and repealing Council Regulations (EC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008, which sets up the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD).

In particular, the CAP for the 2014-2020 period is based on two structural pillars:

- The first pillar, instrumented through the EAGF, provides direct support to farmers and funds market measures. The direct support and market measures are funded in their entirety and exclusively by the EU budget, with a view to guaranteeing the application of a common policy throughout the single market and with the integrated management and control system.
- The second pillar, instrumented through the EAFRD, improves the competitiveness of agricultural and forestry industries and promotes the diversification of economic activity and quality of life in rural areas, including regions with specific problems, i.e. it is primarily intended to support rural development. Member States must co-finance these measures.

**Table 11**  
**THE TWO-PILLAR STRUCTURE IS MAINTAINED**



SOURCE: [http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/red-de-autoridades-ambientales-raa-/FEADER\\_RAA\\_23oct2012\\_tcm7-228928.pdf](http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/red-de-autoridades-ambientales-raa-/FEADER_RAA_23oct2012_tcm7-228928.pdf)

The following is a description of the main characteristics of these two Funds:

## 8.4.1. EAGF

In general, the EAGF funds the following **actions**, managed jointly by the Member States and the Commission:

- Measures aimed at regulating or supporting agricultural markets;
- Direct payments to farmers established within the scope of the CAP;
- The financial participation of the Union in the measures taken by Member States to report and promote agricultural products on the Community domestic market and in third countries;
- The financial participation of the Union in the Union school fruit and vegetable scheme referred to in article 23 of Regulation (EU) No. 1308/2013 and the measures concerning animal diseases and loss of consumer confidence referred to in article 155 of the same Regulation.

In turn, the EAFRD provides direct funding for the following **expenditure**:

- Promotion of agricultural products, undertaken either directly by the Commission or through international organizations;
- Measures, taken in accordance with Union law, to ensure the conservation, characterization, collection and utilization of genetic resources in agriculture;
- The establishment and maintenance of agricultural accounting information systems.

The Commission provides Member States with the credit necessary to cover the expenses financed by the EAGF, in the form of monthly reimbursements.

## 8.4.2. EAFRD

In the field of local development, consideration must be given to **Regulation No. 1305/2013, of the European Parliament and of the Council, of 17 December 2013**, on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) n<sup>o</sup> 1698/2005.

In particular, the EAFRD has three basic objectives in the context of the 2020 European Strategy:

- a) Fostering the competitiveness of agriculture;
- b) Ensuring the sustainable management of natural resources, and climate action;
- c) Achieving a balanced territorial development of rural economies and communities including the creation and maintenance of employment.

In order to meet these objectives, the EAFRD has six priorities:

- Fostering knowledge transfer and innovation in agriculture, forestry, and rural areas;
- Enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests;
- Enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests;

## Chapter 4 – Investment aid and incentives in Spain

- Restoring, preserving and enhancing ecosystems related to agriculture and forestry;
- Promoting resource efficiency and supporting the shift towards a low carbon and climate resilient economy in agriculture, food and forestry sectors;
- Promoting social inclusion, poverty reduction and economic development in rural areas.

Pursuant to the Partnership Agreement approved by the Commission for Spain, 18 Operational Programmes will be eligible for co-financing with a charge to the EAFRD, its allocation for the entire period amounting to €8,209,828,821.

## 8.5. European Maritime and Fisheries Fund (EMFF)

For the 2014-2020 period, a new Fund has been created for EU maritime and fishery policies known as the European Maritime and Fisheries Fund (EMFF) and regulated in Regulation (EU) No. 508/2014 of the European Parliament and of the Council, of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No. 2328/2003, (EC) No. 861/2006, (EC) No. 1198/2006 and (EC) No. 791/2007, and Regulation (EU) No. 1255/2011 of the European Parliament and of the Council.

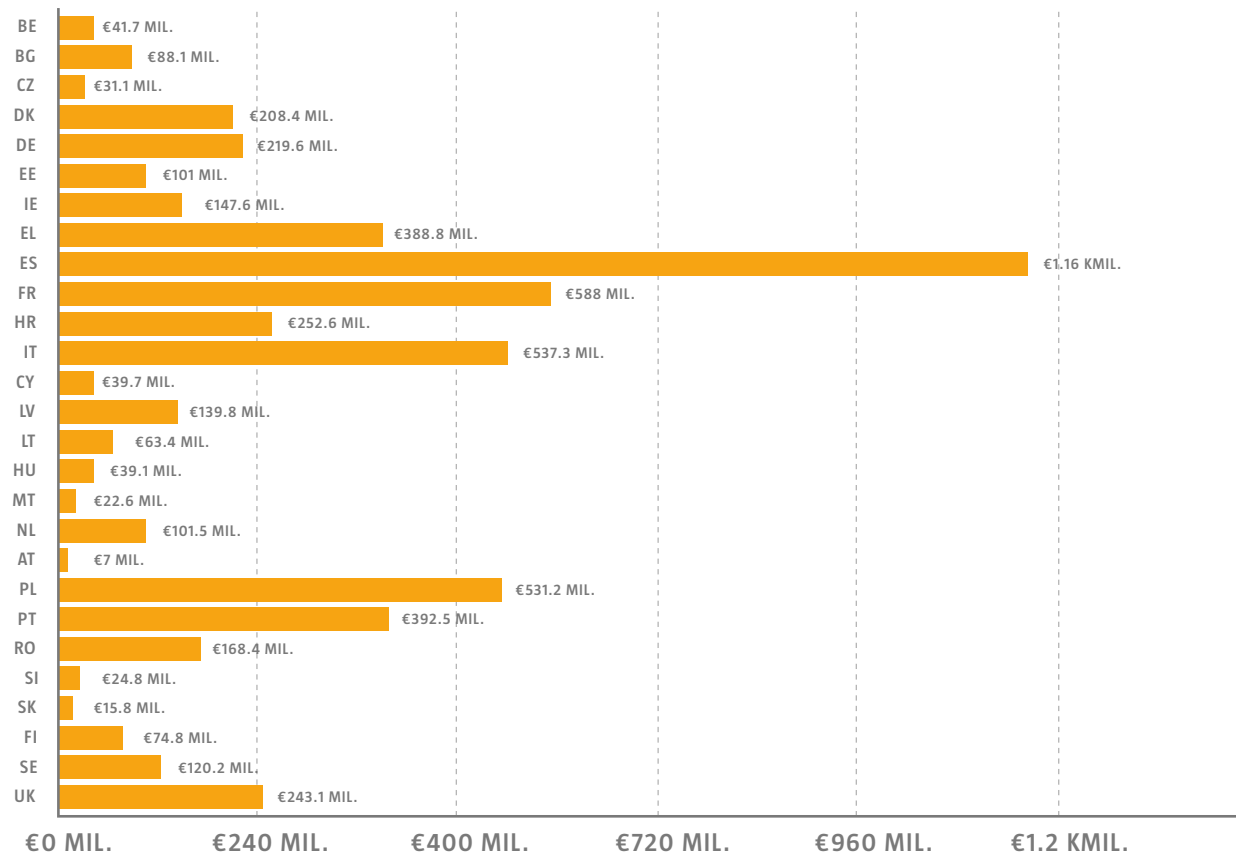
Pursuant to the aforesaid Regulation and in line with the “2020 European Strategy” and with the start-up of the Common Fisheries Policy, the Fund pursues the following priorities concerning the sustainable development of fishing and aquaculture activities and connected activities:

- **Fostering environmentally sustainable**, resource efficient, innovative, competitive and knowledge-based **fisheries**, by pursuing the following specific objectives
  - a) The reduction of the impact of fisheries on the marine environment, including the avoidance and reduction, as far as possible, of unwanted catches;

- b) The protection and restoration of aquatic biodiversity and ecosystems;
  - c) The ensuring of a balance between fishing capacity and available fishing opportunities;
  - d) The enhancement of the competitiveness and viability of fisheries enterprises, including small-scale coastal fleet and the improvement of safety and working conditions;
  - e) The provision of support to strengthen technological development and innovation, including increasing energy efficiency and knowledge transfer;
  - f) The development of professional training, new professional skills and lifelong learning.
- **Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge-based aquaculture,** by pursuing the following specific objectives:
    - a) The provision of support to strengthen technological development, innovation and knowledge transfer;
    - b) The enhancement of the competitiveness and viability of aquaculture enterprises, including the improvement of safety and working conditions, in particular of SMEs;
- c) The protection and restoration of aquatic biodiversity and the enhancement of ecosystems related to aquaculture and the promotion of resource-efficient aquaculture;
  - d) The promotion of aquaculture having a high level of environmental protection, and the promotion of animal health and welfare and of public health and safety;
  - e) The development of professional training, new professional skills and lifelong learning.
- **Fostering the implementation of the Common Fisheries Policy** by pursuing the following specific objectives:
    - a) The improvement and supply of scientific knowledge as well as the improvement of the collection and management of data;
    - b) The provision of support for monitoring, control and for the enhancing of institutional capacity and the efficiency of public administration, without increasing the administrative burden.
- **Increasing employment and territorial cohesion** by pursuing the following specific objective:
 

The promotion of economic growth, social inclusion and job creation, and providing support to employability and labor mobility in coastal and inland communities which depend on fishing and aquaculture, including the diversification of activities within fisheries and into other sectors of maritime economy.
- **Fostering marketing and processing** by pursuing the following specific objectives:
    - a) The improvement of market organization for fishing and aquaculture products;
    - b) The encouragement of investment in the processing and marketing sectors.
- Lastly, **fostering the implementation of the Integrated Maritime Policy**, i.e., the Union policy whose aim is to foster coordinated and coherent decision-making to maximize the sustainable development, economic growth and social cohesion of Member States, in particular, promoting the developing of maritime industries in the coastal, insular and outermost regions in the Union, through coherent maritime-related policies and international cooperation criteria.
- The EMFF has a budget of €5,749,331,600 for the shared management measures, i.e., those taken in cooperation with the Member States and in compliance with the common provisions set forth in Regulation (EU) No. 1303/2013. A breakdown of allocations between the Member States is provided below:

Figure 11  
TOTAL EU ALLOCATION OF EMFF (2014-2020)



SOURCE: [http://ec.europa.eu/fisheries/cfp/emff/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/emff/index_en.htm)

In the case of Spain, there has been a specific Operating Program pertaining to this Fund in force since November 13, 2015, managed by the Directorate-General of Fisheries under the Secretariat-General of Fisheries of the Ministry of Agriculture, Fisheries, Food and the Environment, with a total budget of €1,161,620,889.

## 8.6. European Union Research and Innovation Programs

### 8.6.1. Horizon 2020

The EU has been approving successive multi-year programmes which set out the lines of action of the Community research and

innovation policy, allocating considerable economic resources to their performance.

Currently the EU Research and Innovation Programme for the 2014-2020 period is called “Horizon 2020” and is regulated by Regulation (EU) No. 1291/2013 of the European Parliament and of the Council, of 11 December 2013, which was amended by

Regulation (EU) No. 1017/2015 of the European Parliament and of the Council, of 25 June 2015.

The objective of the programme is to contribute to building a society and an economy based on knowledge and innovation across the Union mobilizing, for this purpose, financing aimed at attaining, over this period, a target of 3% of GDP used to promote research, development and innovation (R&D&I) throughout the EU.

This programme has a total budget of €74,828.3 million to finance research, technological development and innovation initiatives and projects with obvious European added value.

Horizon 2020 is based on **three fundamental pillars**:

1) **Excellent Science** (with a budget of €24,232.1 million), with the target to raise the level of excellence in European basic science and to ensure a constant flow of quality research with a view to guaranteeing Europe's long-term competitiveness. In order to reach this goal, it supports the best ideas and seeks to develop talent within Europe. It also aims to ensure that researchers have access to priority research infrastructure, making Europe an attractive place for the best researchers in the world.

It has four specific objectives:

- **Providing attractive and flexible funding through the European Research Council (ERC)** to enable talented and creative individual researchers and their teams to pursue the most promising avenues at the frontier of science, on the basis of Union-wide competition.
- **Supporting collaborative research in Future and Emerging Technologies** in order to expand Europe's capacity for advanced innovation capable of changing the established research paradigms, in particular, by fostering scientific collaboration across disciplines on radically new, high-

risk ideas and promoting the development of the most promising emerging areas of science and technology and well as the structuring of the scientific communities existing Union wide.

- **Providing**, through *Marie Skłodowska-Curie* (MSCA) actions, excellent and innovative research training as well as attractive career and knowledge-exchange opportunities through cross-border and cross-sector mobility of researchers, all in order to prepare them to face optimally both current and future societal challenges.
  - Developing and supporting excellent European research infrastructures and assisting them to contribute to the European Research Area by fostering their innovation potential, attracting world-level researchers and training human capital, and complementing these initiatives with the related Union policy and international cooperation.
- 2) **Industrial Leadership** (with a budget of €16,466.5 million). This priority has a twofold aim: (i) speeding up the development of the technologies and innovations which serve to create tomorrow's businesses, and (ii) helping innovative SMEs to grow into world-leading companies. It has three specific objectives:
- Leadership in enabling and industrial technologies, provides specific support for research, development and demonstration (and, where appropriate, for standardization and certification), on information and communications technology (ICT), nanotechnology, advanced materials, biotechnology, advanced manufacturing and processing and space. Emphasis is placed on the needs of users in all these fields, promoting enabling technologies able to be used in multiple sectors, industries and services.

- **Access to risk finance**, aims to overcome deficits in the availability of debt and equity finance for R&D and innovation-driven companies and projects at all stages of development. Thus SMEs have available to them a group of financial intermediaries to which they may apply for capital, guarantees or counterguarantees for their R&D projects. The development of Union-level venture capital is also fostered with the equity instrument of the *"Programme for the Competitiveness of Enterprises and SMEs"* (currently the COSME programme).
- **Innovation in SMEs**, provides SME-tailored support to stimulate all forms of innovation, targeting those SMEs with the potential to grow and internationalize across the single market and beyond. In particular, under the "Horizon 2020" programme at least 20% of the funding budgeted for the areas "Leadership in enabling and industrial technologies" and "Societal Challenges" is to be allocated to SMEs, which means that, throughout the period, they will be able to receive approximately €7.6 billion, distributed as follows:

- 7% through the **SME Instrument** (a total of approximately €2.7 billion);
- the remaining 13%, through the strategies of each Challenge or Technology where SMEs are involved in their **"normal" collaborative projects**, either with SME-targeted calls for applications or with more or less relevant topics to encourage SMEs to participate in projects.

The **"SME Instrument"** is a 3-phase scheme of funding aimed at supporting SMEs showing a strong ambition to grow, develop and internationalize, through an innovation project with a European dimension. The Programme has 3 phases which cover the complete innovation cycle:

- **Phase 1: Concept and assessment of feasibility (Optional):** SMEs receive funding of €50,000 per project for an assessment of the scientific or technical feasibility and commercial potential of a new idea (concept test) in order to develop an innovative project. A positive result of this assessment will allow them to access funding through the following phases.

This phase has a term of approximately 6 months.

- **Phase 2: R&D, demonstration and market replication:** This phase supports Research and Development focused on demonstration activities (testing, prototype, scale-up studies, design, innovative processes, products and services, performance verification, etc.) and the analysis of their possible implementation and commercial development.

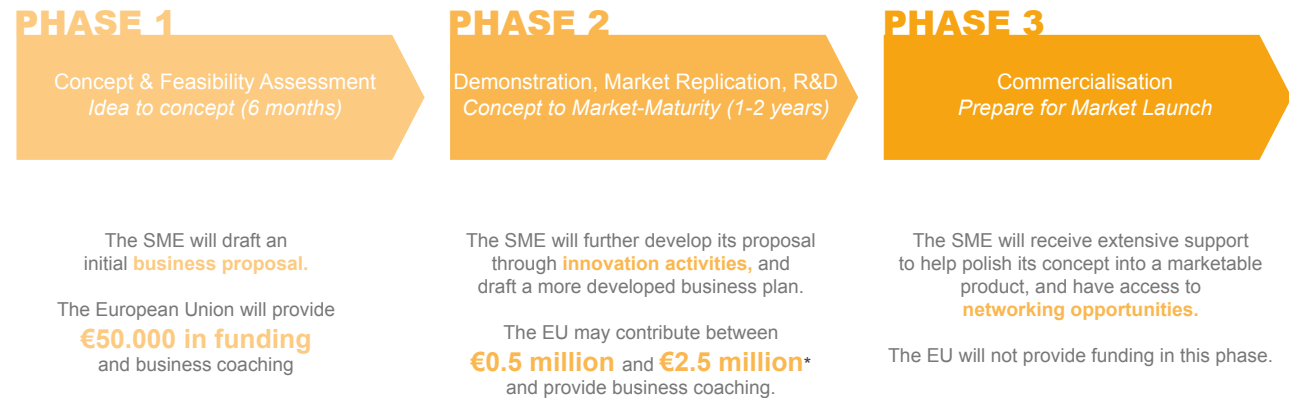
The R&D projects selected could obtain funding of up to €2.5 million, which could be as much as €5 million for health-related biotechnology projects.

This phase has an approximate term of between 1 and 2 years.

- **Phase 3: Commercializing:** This phase does not provide direct funding (apart from support activities), but rather aims to facilitate access to private capital and to environments enabling innovation. Links are to be established with access to risk finance.

Each phase is open to all SMEs and the transition between one phase and another is immediate, provided that evidence has been given of the need to receive additional funding based on the success of the previous phase.

Figure 13



\*Up to €5 million for health projects.

Source: <http://bookshop.europa.eu/en/horizon-2020-s-sme-instrument-pbEA0114596/?CatalogCategoryID=Y.cKABstnJsAAAEjxZEY4e5L>

The SME Instrument has the following characteristics differentiating it from collaborative projects:

- Each thematic or societal challenge of Horizon 2020 has at least one “topic” or theme for the SME Instrument with an open content in the context of each technology or societal challenge.
- SMEs are the only ones able to apply for it, although projects may be submitted together with entities of any type, which may be subcontracted.
- The formation of a previously-defined minimum consortium is not required. The SME is free to choose the consortium most suitable to its needs, and may even go

it alone, but it is important to remember that European added value is a fundamental selection criteria.

- It functions with various submission deadlines per year both for Phase 1 and for Phase 2.
- SMEs which have received funding in Phases 1 and/or 2 will have priority access to the financial instruments made available under the “Access to Risk Finance” programme.
- All SMEs participating in the SME Instrument will benefit from a coaching scheme associated with the Instrument.
- A “Seal of Excellence” has been created to set apart projects which were evaluated as satisfactory but have

not yet been able to access funding under the “SME Instrument”, and thus to provide them with access to other alternative sources of funding.

3) **Societal Challenges** (with a budget of €28,629.6 million), aimed at researching the major issues affecting European citizens. This line of action focuses on six areas essential to achieve a better life:

- Health, demographic change and wellbeing.
- Food security, sustainable agriculture and forestry, marine, maritime and inland water research and the bioeconomy.
- Safe, clean and efficient energy.
- Smart, green and integrated transport.
- Climate action, environment, resource efficiency and raw materials.
- Europe in a changing world: inclusive, innovative and reflective societies.
- Secure societies: protection of the freedom and security of Europe and its citizens.

The focus of all activities must be based on responding to the challenges facing society, including basic or applied research, technology or innovation transfer, targeting political priorities without predetermining the technologies or solutions which will have to be developed. Emphasis is placed on bringing together a critical mass of resources and knowledge of different fields, technologies, scientific disciplines and research infrastructures in order to meet the challenges. The activities must cover the complete cycle, from research through to placement on the market, emphasizing activities relating to innovation, such as pilot projects, demonstration activities, testing banks, support for public contracting, design, innovation promoted by the end user, social innovation, technology transfer and assimilation of innovations by the market.

**Table 21**  
**BREAKDOWN OF THE BUDGET FOR “HORIZON 2020”**

<b>I Excellent science, of which:</b>	<b>24,232.1</b>
1. European Research Council (ERC)	13,094.8
2. Future and Emerging Technologies (FET)	2,585.4
3. Marie Skłodowska-Curie actions	6,162.3
4. Research infrastructures	2,389.6
<b>II Industrial leadership, of which:</b>	<b>16,466.5</b>
1. Leadership in enabling industrial enabling and industrial technologies	13,035
2. Access to risk finance	2,842.3
3. SME innovation	589.2
<b>III Societal challenges, of which:</b>	<b>28,629.6</b>
1. Health, demographic change and wellbeing	7,256.7
2. Food security, sustainable agriculture and forestry, marine, maritime and inland water research and the bioeconomy	3,707.7
3. Secure, clean and efficient energy	5,688.1
4. Smart, green and integrated transport	6,149.4
5. Climate action, environment, resource efficiency and raw materials	2,956.5
6. Europe in a changing world - inclusive, innovative and reflective societies	1,258.5
7. Secure societies – protecting freedom and security of Europe and its citizens	1,612.7
<b>IV Spreading excellence and widening participation</b>	<b>816.5</b>
<b>V Science with and for society</b>	<b>444.9</b>
<b>VI Non-nuclear direct actions of the Joint Research Centre (JRC)</b>	<b>1,855.7</b>
<b>VII The European Institute of Innovation and Technology (EIT)</b>	<b>2,383</b>
<b>TOTAL</b>	<b>74,828.3</b>

SOURCE: Annex II “Breakdown of the Budget” of Regulation 1291/2013.

With respect to funding, most of the activities are instrumented as **competitive tenders** in “Horizon 2020” managed by the European Commission with pre-established priorities in the respective working programmes which are previously published.

The calls for proposals have, in general, fixed launch and closing dates (generally comprising between three and four months) and can refer to a certain priority and/or area of action of “Horizon 2020”.

Based on these premises, the Working Programme of “Horizon 2020” approved by the Commission for 2016-2017 focuses its interest on the following priorities:

- A new boost for jobs, growth and investment;
- A connected digital single market;
- A resilient energy union with a forward-looking climate change policy;
- A deeper and fairer internal market with a strengthened industrial base;
- A stronger global actor, towards a new policy on migration, and an area of justice and fundamental rights based on mutual trust.

In general, any European enterprise, university, research center or legal entity that wishes to develop a R&D&I project whose content is consistent with the lines and priorities stipulated in any of the pillars of “Horizon 2020” may participate in the calls.

To be able to participate in most of the actions included in this programme, it is developed through consortium projects, which must involve at least three independent legal entities, each one established in a different EU Member State or associated State.

Nonetheless certain exceptions are provided, such as research initiatives “on the frontiers of knowledge” of the European Research Council (ERC), coordination and support initiatives and mobility and training initiatives, in which legal entities or individuals can participate on an individual basis.

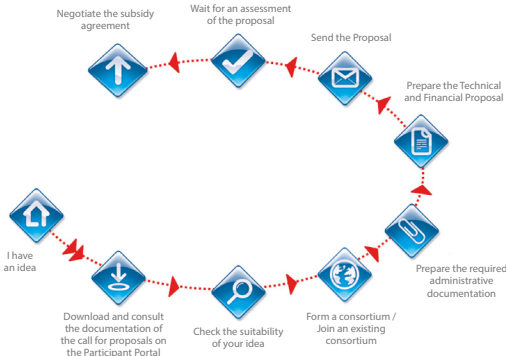
In any case, the working plans or programmes under the calls for proposals may stipulate terms additional to those mentioned above, depending on the nature and objectives of the initiative in question.

Lastly, in order to apply for funding for any R&D&I project a proposal must be submitted in a previously published call for proposals. Calls for proposals, as well as all documents related thereto, in which submission deadlines and forms are indicated, are posted on the participant portal made available on the website of the European Commission, through which participants can access the electronic system for submitting proposals.

Normally a potential participant in “Horizon 2020” has two forms of taking part in a proposal: (i) based on his own idea (either as coordinator of the project or by participating individually in the instruments which so permit); or, on the contrary, (ii) by participating in a consortium led by a third party.

Schematically, the basic steps to take from the time the idea arises until the project becomes a reality would be:

Figure 14



SOURCE: [http://www.cdti.es/recursos/doc/5811\\_10111011201320716.pdf](http://www.cdti.es/recursos/doc/5811_10111011201320716.pdf)

For more information on “Horizon 2020” as well as on the calls for proposals, please check the Participant Portal and the “Horizon 2020” online manual on the following website of the European Commission (<http://ec.europa.eu/research/participants/portal/desktop/en/funding/index.html>)

Finally, it should be mentioned that the European Commission has already published its guidelines for the “Horizon 2020” 2018-2020 Work Program. It is expected that the work programme will be approved and published in 2017.

### 8.6.2. Other Research and Innovation Programmes

Parallel to “Horizon 2020”, the European Commission extends funding opportunities through additional programmes of significance in the context of the European Research and Innovation Strategy.

This section includes two programmes with differentiated objectives and targets.

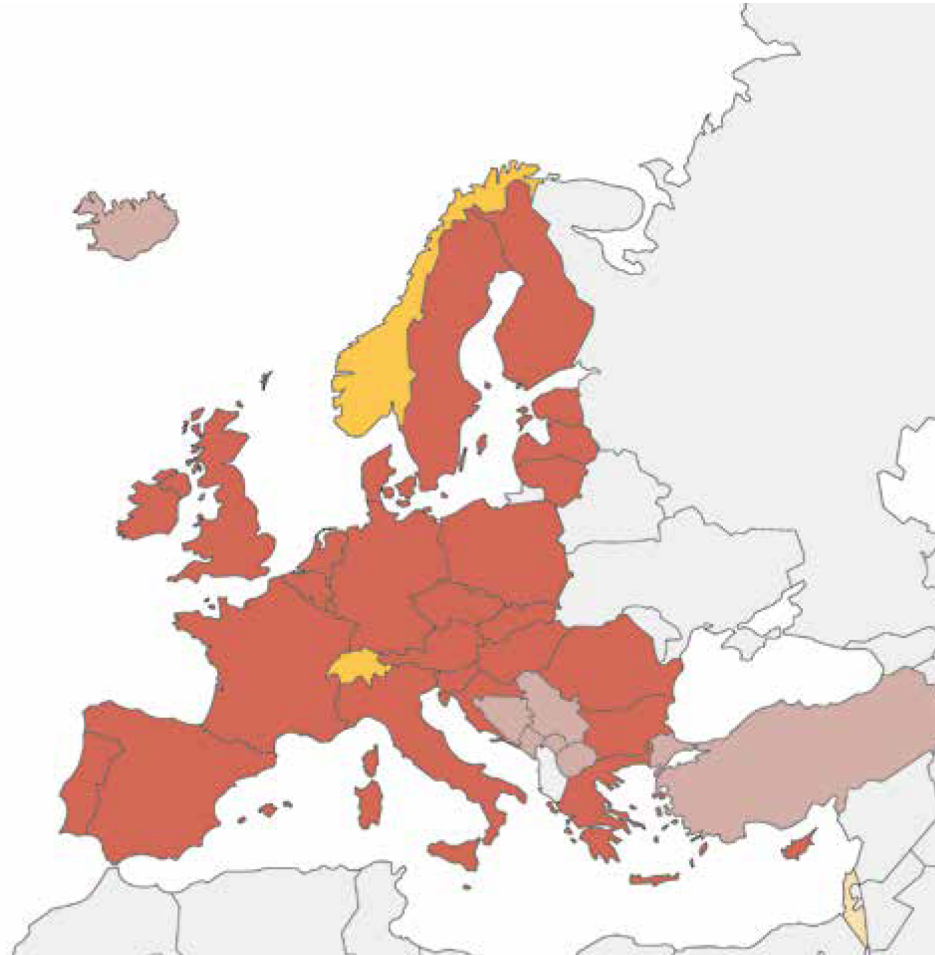
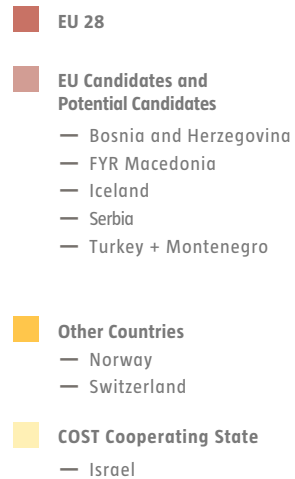
The *COST (European Cooperation in Science and Technology)* programme was initiated in 1971 and is one of the oldest European framework programmes supporting cooperation among scientists in all of Europe in different areas of research. On the other hand, the *EURATOM (European Atomic Energy Community)* programme arose under the Treaty of the same name, with a view to coordinating the research programmes of Member States in the peaceful use of nuclear energy.

- **COST Program**

The COST programme is the first, as well as one of the largest, intergovernmental European networks for the coordination of European scientific and technical research and currently involves 36 countries and Israel as a cooperating State. It also has four reciprocity agreements (with Australia, New Zealand, Argentina and South Africa).



Figure 13  
37 COST COUNTRIES



SOURCE: <http://www.cost.eu/>

Chapter 4 – Investment aid and incentives in Spain

The programme is targeted at researchers who work: (i) in universities and research centers, regardless of size, both public and private, in any of the 36 COST countries or Israel (cooperating State); (ii) in any technological or scientific field; and (iii) provided that they have an original and innovative idea.

Its objective is to strengthen scientific and technical research in Europe, financing the establishment of cooperation and interaction networks between researchers, organized around a specific scientific objective.

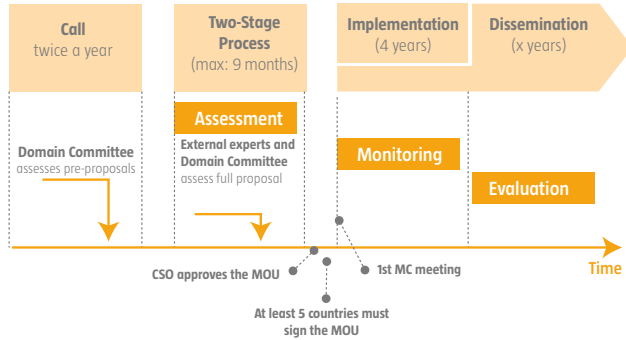
The programme functions through networks known as **COST Actions**, which are established at the initiative of researchers without pre-defined thematic priorities. At least five participants from different COST countries must join together in order to apply for an Action.

The projects selected will receive funding for the activities previously established in the joint working programme, for a term of 4 years, to carry out the following networking activities:

- Scientific meetings of working groups
- Workshops and seminars
- Short-term Scientific Missions (STSMs)
- Training workshops and scientific conferences
- Dissemination publications and activities

COST calls for proposals are permanently open, with two submission deadlines per year (spring and autumn). The procedure for selection and grant of aid is carried out in accordance with the following scheme:

**Figure 16**  
**COUNTRY'S PARTICIPATION IN COST ACTIONS**



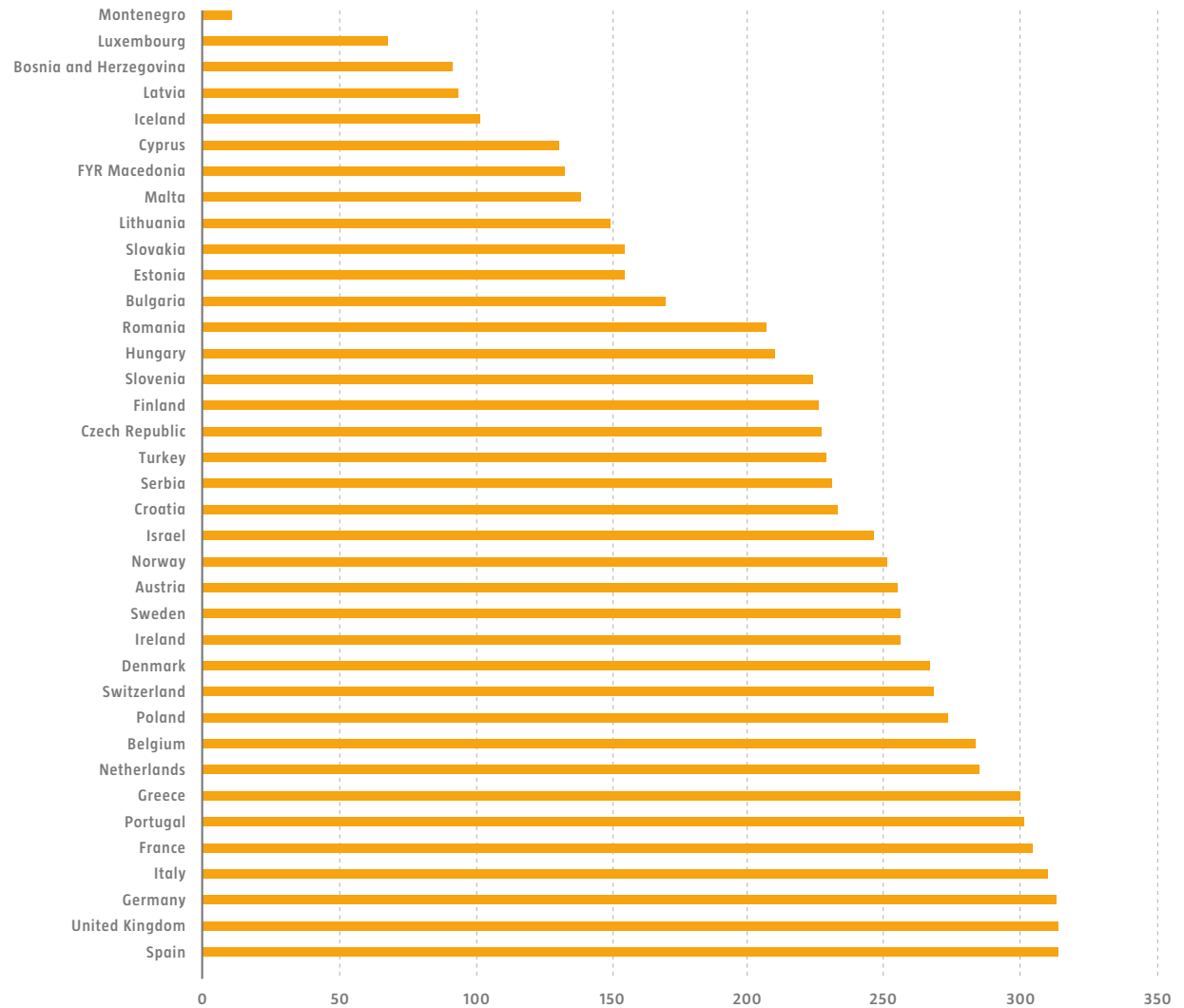
SOURCE: <http://eshorizonte2020.es/content/download/23551/278009/file/Presentación%20COST%20junio%202013.pdf>

Spain is one of the countries which is most active in COST, since it is present in more than 300 actions, approximately, which makes it third in the ranking of countries with the highest degree of participation.

The representative of Spain in the COST program (delegate in the committee of senior officials, CSO, and COST National Coordinator, CNC) is the Ministry of Economy, Industry and Competitiveness through the Subdirectorato-General of International Relations and with Europe (SGRIE).

The following Figure shows each country's participation in COST actions:

**Figure 17**  
**COUNTRY'S PARTICIPATION IN COST ACTIONS**



SOURCE: <http://www.cost.eu/>

- **EURATOM program**

EURATOM energy research activities are carried out under the treaty with the same name, which in 1957 established the European Atomic Energy Community (EURATOM). EURATOM is legally separated from the European Community and has its own Framework Research and Training Programme, that is managed by the common Community institutions and regulated in Council Regulation (EURATOM) No. 1314/2013 of 16 December 2013 on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 Framework Programme for Research and Innovation.

Although Member States retain most competences in energy policy, whether based on nuclear or other sources, the EURATOM Treaty has achieved an important degree of harmonization at European level. It legislates for a number of specific tasks for the management of nuclear resources and research activities.

The general Objective of the EURATOM programme, with a budget of €1,603,329 for the full period (2014-2018) is to pursue nuclear research and training activities with an emphasis on continuous improvement of nuclear safety, security and radiation protection, in particular with a view to contributing to the long-term decarbonization of the energy system in a safe, efficient and secure way.

This objective is implemented through:

- Indirect actions targeted at:
  - supporting safety of nuclear systems;
  - contributing to the development of safe, long-term solutions for the management of ultimate nuclear waste;
  - supporting the development and sustainability of nuclear expertise and excellence in the Union;

- supporting radiation protection and development of medical applications of radiation;
- moving towards demonstration of feasibility of fusion as a power source;
- laying the foundations for future fusion power plants;
- promoting innovation and industrial competitiveness;
- insuring availability and use of research infrastructures of pan-European relevance.

- Direct actions focused on:

- improving nuclear safety;
- improving nuclear security;
- increasing excellence in the nuclear science base for standardization;
- fostering knowledge management, education and training;
- supporting the policy of the Union on nuclear safety and security.

EURATOM is supplementary to “Horizon 2020” since both have the same rules on participation. Under “Horizon 2020” there is also a possibility of carrying out transactions within the EURATOM programme and between the EURATOM programme and “Horizon 2020” through co-funding and externalization.

## 8.7. Community initiatives in favor of corporate finance

The Community initiatives aimed at favoring corporate finance include most notably the COSME programme and the Gate2Growth initiative:

- **COSME Programme**

The **COSME** (*Competitiveness of Enterprises and Small and Medium-sized Enterprises*) programme is an EU programme aimed at improving the competitiveness of enterprises, with special emphasis on small and medium-sized enterprises, during the 2014-2020 period.

COSME helps entrepreneurs and small and medium-sized enterprises to begin to operate, access financing and internationalize, in addition to supporting the authorities in the improvement of the business environment and boosting economic growth in the European Union. It is regulated in Regulation (EU) No. 1287/2013 of the European Parliament and of the Council, of 11 December 2013, establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014-2020) and repealing Decision No. 1639/2006/EC.

COSME has a budget of approximately €2.3 billion and supplements the policies implemented by the Member States themselves in their support of SMEs, helping to strengthen the competitiveness and sustainability of the Union’s enterprises and encouraging entrepreneurial culture.

The programme’s objectives are:

- to improve access to finance for SMEs in the form of equity and debt through financial intermediaries;
- to improve access by enterprises to markets, in particular within the Union: The Enterprise Europe Network will provide support services aimed at facilitating the expansion of enterprises inside and outside the European Union and will fund international industrial cooperation with a view to reducing the differences between the EU and its main commercial partners;
- to improve the general conditions for the competitiveness and sustainability of SMEs, including those pursuing their activity in the tourism industry;

- to promote entrepreneurship and business culture: to develop the entrepreneurial abilities and attitudes, especially among new entrepreneurs, youth and women.

In addition to supporting internationalization, competitiveness and entrepreneurial culture, COSME is, above all, a financial instrument which will make it possible to improve a SME's access to financing, since at least 60% of the programme's total budget (€1.4 billion) is earmarked for this purpose.

The allocation of these funds is managed by the intermediary entities and bodies of each country that have been previously selected by the EIF. These bodies will be in charge of launching the financial products they have selected, in order to offer them to the SMEs, so that they can benefit from the terms of the programme's aid and, accordingly, they will also develop the financial instruments contained therein.

The promotion and dissemination of COSME among the business sector depends on the active participation of the nearly 600 members of the Enterprise Europe Network, in more than 60 countries, which, in addition to furnishing information on European financing, help enterprises to develop their businesses on new markets and to license new technologies.

In Spain there are 9 nodes which provide support throughout the national territory:

- **GALACTEA PLUS:** Galicia; Principality of Asturias; Cantabria and Castilla y León.
- **Basque Enterprise Europe Network:** Basque Country.
- **ACTIS:** La Rioja; Navarra; Aragón; Castilla La Mancha and Extremadura.
- **Enterprise Europe Network madri+d:** Madrid Autonomous Community
- **CATCIM:** Cataluña.

- **SEIMED:** Valencia and Murcia.
- **IB SERVICES:** Balearic Islands.
- **CESEAND:** Andalucía.
- **EEN CANARIAS:** Canary Islands.

For more information on the COSME programme and the calls open in Spain, see the following websites:

- [https://ec.europa.eu/growth/smes/cosme\\_en](https://ec.europa.eu/growth/smes/cosme_en)
- <http://www.ipyme.org/es-ES/UnionEuropea/UnionEuropea/PoliticaEuropea/Marco/Paginas/Convocatorias-programa-cosme.aspx>
- <http://www.een-canarias.org/>

#### • **Iniciativa InvestorNet - Gate2Growth**

The **InvestorNet - Gate2Growth** initiative ([www.gate2growth.com](http://www.gate2growth.com)) is a one-stop shop for innovative entrepreneurs seeking financing. It also offers investors, intermediaries and innovation service-providers, a community for sharing knowledge and good practice.

The initiative incorporates all knowledge acquired through the implementation of previous pilot programs, some of the most noteworthy of which are the I-TEC project, the LIFT project and the FIT project.

One of the most notable characteristics of this initiative is that it acts as a meeting point for innovative entrepreneurs, innovation professionals and potential investors. **InvestorNet – Gate2Growth** aids innovative European companies with the processes of marketing, internationalization and financial growth, by:

- Being a partner in commercialization and value chain modeling. Consulting in term-sheet and shareholder agreement negotiations.
- Raising capital for high-tech ventures and public private partnerships.
- Finding strategic partnerships for spin-offs from universities and research institutions.
- Conducting master classes in “How to Attract Investors” “Horizon 2020 SME Instrument” & “Train the Trainers in How to Attract Investors”.

Particularly noteworthy is the fact that, within the framework of the InvestorNet - Gate2Growth initiative, the following projects are currently being carried out:

- **MEMAN:** integral material and energy flow management in manufacturing metal-mechanic sector (value optimization chain in the metal sector) (2015-2018).
- **ProBio:** innovation and business development for knowledge based bio economy projects (conversion of organic waste into useful products) (2015-2017).
- **SCIM:** promotes low-impact sustainable solutions for the exploitation of mineral deposits using advanced environmental technologies.

On the other hand, together with other initiatives such as the one analyzed, business financing initiatives according to activity sector are also available at Community level.

## 9. Compatibility

As a general rule, the compatibility of these different incentives depends on the specific regulations governing each one, some of

which identify certain incompatibilities (either absolute or up to certain limits), while for others it is expressly stated that they are compatible with other forms of aid (subsidies or other forms of public funding), without prejudice to the maximum limits on the accumulation of state aid established in EU legislation.

In general, without limitation and notwithstanding the legislation applicable in each specific case, the general situation in relation to compatibility is as follows:

## 9.1. General State initiatives

### 9.1.1. Training

In principle, there are no incompatibilities with other types of aid.

### 9.1.2. Employment

In principle, there are no incompatibilities with other types of aid. However, taken in conjunction with other incentives, this aid cannot

exceed 60% of the social security cost of each contract created under these programs.

## 9.2. State incentives for specific industries

These incentives are compatible with the other types of aid, but they cannot exceed (in terms of net subsidy) the limits set by the EU for incentives in certain areas.

## 9.3. Regional incentives

### 9.3.1. Granted by the State

In principle, no investment project will be able to receive additional financial or industry subsidies (of any nature or from any granting agency) if the maximum percentage stated in each Royal Decree of demarcation is exceeded, since both types of aid are combined

with the regional aid received for the project when computing the related ceilings. In no case may the limits established by the EU in the Guidelines on regional aid and maps approved for each State be exceeded.

### 9.3.2. Granted by Autonomous Communities and Municipalities and Municipal Authorities

The general limit applicable to regional and industry financial aid also covers these incentives.

## 9.4. EU aid and incentives

These are, in principle, compatible with other types of aid, with the specific limitations described above.

In fact, EU funds habitually finance many of the incentives (industry and regional) described in previous sections.

**Table 19**  
**SUMMARY OF AIDS AND INCENTIVES TO INVESTMENT**

Level of grant	Where to apply	When to apply	How to apply	On-line information
<b>EU</b>				
EIB	EIB Spanish intermediary entities (banks, etc.)	No specific rules.	Ask intermediaries.	<a href="http://www.eib.org/">http://www.eib.org/</a>
EIF	EIF, Spanish intermediary entities.	No specific rules.	Ask intermediaries.	<a href="http://www.eif.org/">www.eif.org/</a>
ERDF	Autonomous Communities. Ministry of Finance and Public Authorities. General-Subdirectorate of Regional Incentives. Other granting agencies.	Depends on national rules.	Depends on national rules.	<a href="http://ec.europa.eu/regional_policy/thefunds/regional/index_es.cfm">http://ec.europa.eu/regional_policy/thefunds/regional/index_es.cfm</a>
ESF	Provincial offices of the Ministry of Labor and Social Security. Autonomous Community in which investment will be located.	Depends on each program.	See Regulation 1081/2006.	<a href="http://ec.europa.eu/regional_policy/thefunds/social/index_es.cfm">http://ec.europa.eu/regional_policy/thefunds/social/index_es.cfm</a>
EAGF and EAFRD (financing the Common Agricultural Policy)	Autonomous Community in which investment will be located.	Depends on each program.	See Regulation 1306/2013.	<a href="http://europa.eu/legislation_summaries/agriculture/general_framework/l11096_es.htm">http://europa.eu/legislation_summaries/agriculture/general_framework/l11096_es.htm</a> <a href="http://europa.eu/legislation_summaries/agriculture/general_framework/l60032_es.htm">http://europa.eu/legislation_summaries/agriculture/general_framework/l60032_es.htm</a>
EMFF	Autonomous Communities. Ministry of Agriculture, Food and the Environment.	Depends on national rules.	See Regulation 508/2014	<a href="http://www.magrama.gob.es/es/pesca/temas/fondos-europeos/femp/">http://www.magrama.gob.es/es/pesca/temas/fondos-europeos/femp/</a>
R&D&I Programs	European Commission General Directorate of Science, Research and Development.	See rules on each program.	See rules on each program and Regulation 1291/2013.	<a href="https://ec.europa.eu/programmes/horizon2020/">https://ec.europa.eu/programmes/horizon2020/</a> <a href="http://ec.europa.eu/research/index.cfm?pg=dg">http://ec.europa.eu/research/index.cfm?pg=dg</a>

# Chapter

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## Labor and social security regulations

# 5

# 5

## Labor and social security regulations

Spanish labor legislation has been subject to different modifications during the last years mainly to modernize and make flexible the labor market. The most significant and ambitious has been Law 3/2012, of July 6, 2012, on urgent measures to reform the labor market, which was intended to establish a clear labor and employment law framework that contributed to more efficient

management of employment relationships and facilitated job creation and stable employment. Likewise, amongst other relevant laws, stands out Law 14/2013 of September 27, 2013 on support to entrepreneurs and their internationalization, that established measures to encourage multiactivity and self-employment, and the entry of investment and talent in Spain.



# 5

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## 1. Introduction

Employment contracts are generally regulated by the provisions of Legislative Royal Decree 2/2015, of October 23, approving the Workers' Statute (WS).

A major characteristic of Spanish labor legislation is that important employment issues can be regulated through collective bargaining, by means of collective labor agreements, that is, agreements signed between workers' representatives and employer representatives that regulate the employment conditions in the chosen sphere (areas within a company, company-wide or industry-wide).

Spanish labor legislation has been adapted and updated through legislative modifications in order to be more flexible and to improve the labor market in terms of employability and investment.

## 2. Contracts<sup>1</sup>

### 2.1. General aspects

This section deals with the main aspects to be considered when hiring workers in Spain.

In general, discrimination in hiring or in the workplace on the grounds of gender, marital status, age, race, social status, religion

or political ideology, membership of a labor union or otherwise, or on the basis of the different official languages in Spain is prohibited.

The minimum employment age is 16 years old and there are certain special rules applicable to the employment of persons under the age of 18 (who, for example, cannot work overtime or at night).

### 2.2. Types of contract

Contracts can be made verbally or in writing, unless there are express provisions that require a written contract (for example, temporary contracts, part-time contracts and training contracts). If this formal requirement is not met, the contract is understood to be permanent and full-time, unless evidence is provided to the contrary.

Companies must provide the workers' statutory representatives (if any) with a basic copy of all contracts to be made in writing (except for senior management contracts). The hiring of workers must be notified to the Public Employment Service within ten days of the contracts being made.

There are various different types of contract, including indefinite-term, temporary, fixed-term, training, distance work and part-time contracts.

In the website of the National Public Employment Service<sup>2</sup> any can access a virtual assistant for employment contracts which, based on four basic types of employment contracts (indefinite-term, temporary, training and work-experience contracts), suggests and prepares the type of employment contract that best suits the characteristics of each new hire.

The principal features of these types of contracts are explained below.

#### 2.2.1. Fixed-term contracts

Spanish legislation sets out specific grounds for the execution of fixed-term or temporary contracts.

All temporary contracts must be made in writing and must specify the reason for their temporary nature in sufficient detail. Otherwise, or if the ground for the temporary contract does not truly correspond to one of the legally-established grounds, the contract will be deemed to be made for an indefinite term, unless evidence of its temporary nature is provided.

If the fixed-term employment contract is made for a term of more than one year, the party intending to terminate the contract must serve notice at least fifteen days in advance or, as the case may be, give the advance notice established in the applicable collective labor agreement.

<sup>1</sup> <https://www.sepe.es/>  
<http://www.empleo.gob.es/index.htm>

<sup>2</sup> <http://www.sepe.es/contratos/>

Table 1

Type	Ground	Term	Observations
Contract for project work or services	Performance of a specific independent and self-contained project or service within the company's business.	In principle, uncertain. It will depend on the time taken to perform the project or service, with a maximum of 3 years, which may be extended for a further 12 months under a nationwide industry collective agreement or under an industry collective agreement of a more limited scope.	The temporary grounds for the contract must be stated clearly and precisely. For contracts entered with after 2014, their termination entitles the employee to receive a severance equal to 12 days' salary per year worked (for contracts entered into in 2014, their termination entitles the employee to receive a severance equal to 11 days' salary per year worked).  When the maximum periods established for any temporary contract have elapsed, workers will acquire the status of indefinite-term employees of the company.
Casual contract to cover temporary demand for production	To meet market demand or backlogs or work or orders.	Maximum of 6 months within a 12-month period (may be extended under an industry-wide collective labor agreement to an 18-month period but may not exceed 3/4 of that period in length, or the maximum term of 12 months).	When workers have been hired for more than 24 months within a 30-month period, with or without interruption, for the same or different position at the same company or group of companies, under two or more temporary contracts, whether directly or through temporary employment agencies, using the same or different types of fixed-term contract, the contract will be automatically converted into an indefinite-term contract.
Contract of first youth employment	To acquire the first professional experience.	Minimum length of 3 months and up to 6 months which can be extended by a sector-wide Collective Business Agreement up to 12 months.	These contracts are regulated by the provisions applicable to contracts to cover temporary demand for production.  The employees must be up to 30 years old, unemployed and must not have professional experience or it must be less than 3 months.  The contract can be entered into full time or part-time as long as the work time is at least 75% of the work time of a comparable employee.
Relief contract	To substitute workers entitled to return to their job due to a statutory provision, or the provisions of a collective labor agreement or individual agreement.	From the beginning of the period until the return of the substituted worker or expiry of the term established for the substitution.	One of the formal requirements is that the contract must state the name of the substituted worker and the grounds for the substitution.

### 2.2.2. Training contracts

Table 2

Contract	Purpose	Term	Other information of interest
Work experience contract	Hiring of university graduates or workers with higher or advanced vocational training qualifications (first degree, master's degree or doctorate) or officially recognized equivalent qualifications, or workers holding a vocational qualification certificate ( <i>certificado de profesionalidad</i> ) entitling them to work in their profession.	Minimum of 6 months and maximum of 2 years.  Sick leave, leave due to risk during pregnancy, maternity leave, leave for adoption or custody for adoption or fostering, leave due to risk during breastfeeding and paternity leave all toll the duration of the contract.	As a general rule, no more than 5 years may have elapsed since completion of the relevant studies, or 7 years if the contract is made with a disabled worker.  The minimum salary is 60% (during first year) and 75% (during second year) of the fixed salary established in the collective labor agreement for a worker with a similar or identical position.
Trainee and apprenticeship contract	Contract targeted at young people who lack the occupational qualifications recognized by the vocational training system or education system required for a work experience contract for the position or occupation for which the contract is made.	Minimum of 1 year and maximum of 3 years. Term may be modified by a collective labor agreement but may not be less than 6 months or more than 3 years.  Sick leave, leave due to risk during pregnancy, maternity leave, leave for adoption or custody for adoption or fostering, leave due to risk during breastfeeding and paternity leave all toll the duration of the contract.	Although there are special cases, as a general rule, this contract is aimed at workers of between 16 and 25 years of age (while the Spanish unemployment rate remains above 15%, the upper age limit is extended to 30 years). This age limit is not applicable where the contract is with disabled workers or socially excluded personnel.  Compensated employment at a company must be alternated with training activities at a vocational training center or educational center.  Part-time contracts cannot be made. Workers cannot work overtime (except to prevent or repair extraordinary and urgent damage), at night or in shifts.

### 2.2.3. Part-time contracts

An employment contract will be a part-time contract when a number of hours of work has been agreed with the worker per day, week, month or year which is less than the working hours of a “comparable full-time worker”, that is, a full-time worker at the same company and workplace who performs identical or similar work.

Part-time workers have the same rights as full-time workers, although at times, according to their nature, such rights will be recognized proportionally, according to the time worked.

Part-time workers cannot work overtime, except to prevent or repair losses and other urgent and extraordinary damages.

However, supplementary hours (hours worked in addition to those agreed in the contract, the performance of which is agreed beforehand) can be carried out. Supplementary hours may not

exceed 30% of ordinary working hours (except where they are increased up to 60% in a collective labor agreement).

However, the employer is allowed to offer the employee hired indefinitely on a part-time basis no less than 10 weekly hours (on an annual basis), supplementary hours which are voluntary, which may not exceed 15% of the ordinary hours of the employment contract (30% if agreed in the applicable collective labor agreement).

The total ordinary hours and supplementary hours may not exceed the statutory limit for part-time work.

### 2.2.4. Distance work (telework)

A distance work or telework arrangement may be reached provided it is formalized in writing (whether in the initial contract or a subsequent agreement).

Where work is predominantly carried out at the worker's home or a place chosen by the worker, it is considered as distance work.

### 2.2.5. Indefinite-term employment contract in support of entrepreneurs

This is a new type of full-time or part-time, indefinite-term employment contract available to companies with less than 50 workers. It may be used until the Spanish unemployment rate falls below 15%.

The contract carries a trial period of one year and may not be used by companies that have dismissed workers on objective grounds held to be unjustified or implemented collective layoffs in the preceding six months. This contract is also eligible for tax incentives and reductions in social security contributions for certain groups of workers, provided that the company employs the worker for at least 3 years and that the level of employment reached at the company

using this contract is maintained for at least one year from the date of the contract.

(For further information on the requirements to be met to qualify for reductions, see section 2 on State Incentives for Training and Employment in Chapter 4).

### 2.3. Trial period

Employers can assess a worker's abilities by agreeing on a trial period during which the employer or the worker can freely terminate the contract without having to allege or prove any cause, without prior notice and with no right to any indemnity in favor of the worker or the employer.

Where a trial period is agreed (provided that the worker has not performed the same functions before at the company under any type of employment contract, in which case the trial period would be null and void), it must be put in writing. Collective labor agreements may establish time limits for trial periods which, as a general rule and in the absence of any provision in the collective labor agreement, cannot exceed:

- Six months for college and junior college graduate specialists.
- Two months for all other employees. At companies with fewer than twenty-five employees, the trial period for employees who are not college or junior college graduate specialists cannot exceed three months.
- One month in the case of temporary fixed-term employment contracts agreed for a time-period of less than six months.

Training contracts, indefinite-term employment contracts in support of entrepreneurs and special employment contracts (domestic workers, senior managers, among others) have their own specific trial periods.

### 2.4. Working hours

The following table summarizes the fundamental legislation governing working hours:

Table 3

Item	Regulation
<b>Maximum working hours</b>	The maximum working hours are those agreed in collective labor agreements or individual employment contracts. In general, the maximum working week is 40 hours of time actually worked, calculated on an annualized average basis, and the irregular distribution of working hours throughout the year may be agreed. In the absence of any agreement, the company may distribute 10% of the working hours on an uneven basis.
<b>Overtime</b>	Overtime is time worked in excess of the maximum ordinary working hours. Paid overtime may not exceed 80 hours per year. Overtime can be taken as time in lieu within four months of the date on which the overtime was worked. Overtime is generally voluntary.
<b>Rest periods / public holidays / vacation / paid leave</b>	A minimum of one and a half days off per week is mandatory, which may be accumulated by periods of up to 14 days. Official public holidays may not exceed 14 days per year. Workers are entitled to a minimum vacation period of 30 days, and cannot be paid in lieu of that period. Workers are entitled to paid leave in certain circumstances, such as marriage, performance of union duties, performance of unavoidable public or personal duties, breastfeeding, birth of children, relocation of main residence, serious illness or accident, hospitalization or death of relatives up to the second degree of kinship, etc.
<b>Reduction in working hours</b>	Workers may be entitled to a reduction in their working hours in certain cases, for example: to directly care for children under 12 or family members who cannot take care of themselves, and during the hospitalization and continuing treatment of a child in their care with cancer or any other serious illness that entails a long hospital stay and who requires direct, continuing and full-time care, until the child reaches 18 years.

## 2.5. Wages and salaries

The official minimum wage is established by the Government each year and amounts to €707.70 per month or €9,970.80 per year for persons over 18 years of age (including 12 monthly and 2 extra payroll payments) for 2017 (given the exceptional increase in the interprofessional minimum wage in 2017 compared to the established for 2016, there are special cases in which the previous salary, which amounted to €655.20 per month or €9,172.80 per year, continue being applicable).

However, the minimum wages for each professional group are usually regulated in collective labor agreements.

Salaries cannot be paid at intervals of more than one month.

At least two extra payroll payments must be paid each year: one at Christmas and the other on the date stipulated in the relevant collective labor agreement (generally before the summer vacation period). Thus, an employee's gross annual salary is usually spread over 14 payroll payments; however, the prorating of the extra payroll

payments within the 12 ordinary monthly installments can be agreed on in a collective labor agreement.

## 3. Material modifications to working conditions<sup>3</sup>

Employers may make material modifications to the working conditions of their employees (working hours, timetable, salary, functions, among others) provided that there are proven economic, technical, organizational or production-related grounds and that the legally provided procedure is followed (15 days' advance notice where individual workers are affected or a consultation period with the workers' representatives in the case of collective modifications).

There is also a specific procedure to opt out of the working conditions established in the applicable collective labor agreement (whether at industry or company level) on economic, technical, organizational or production-related grounds. In this case, since the conditions were established by collective bargaining, a consultation period must be followed. The agreement must establish the new working conditions applicable at the company

and their duration, which may not extend beyond the moment at which a new collective labor agreement applies at the company.

## 4. Termination of employment contracts<sup>4</sup>

### 4.1. Dismissals

An employment contract may be terminated for a number of reasons which normally do not give rise to any dispute, such as mutual agreement, expiration of the contractual term, death or retirement of the employee or of the employer, and so on.

In the event of termination by the employer, there are three main grounds for dismissal of an employee:

- Collective layoff
- Objective grounds
- Disciplinary action

The following table summarizes the grounds and main features of the various types of dismissal:

<sup>3</sup> <http://www.empleo.gob.es/index.htm>

<sup>4</sup> <http://www.empleo.gob.es/index.htm>

Table 4

Dismissal	Legal grounds	Observations
<p><b>Collective layoff</b></p>	<p><b>Grounds:</b></p> <p>Economic, technical, organizational or production-related grounds, whenever these affect, in a 90-day period, at least:</p> <ul style="list-style-type: none"> <li>• The entire payroll, if more than 5 workers are affected and the activity of the company ceases entirely;</li> <li>• 10 workers at companies with less than 100 employees;</li> <li>• 10% of the employees at companies with between 100 and 300 workers;</li> <li>• More than 30 workers, at companies with 300 or more employees.</li> </ul> <p>According to the interpretation made by the Supreme Court, following the doctrine of the Court of Justice of the European Union, the above thresholds refer to the company as a whole and to each work center with more than 20 employees.</p> <p><b>Definition of legal grounds:</b></p> <ul style="list-style-type: none"> <li>• Economic: where a negative economic situation transpires from the results of the company, in cases such as current or expected losses, or a persistent decline in ordinary revenues or sales. In all cases, the decline will be deemed persistent if for three consecutive quarters the level of ordinary revenues or sales in each quarter is lower than the figure recorded in the same quarter of the preceding year.</li> <li>• Technical: where there are changes in the methods or instruments of production, among others.</li> <li>• Organizational: where there are changes in the personnel working methods and systems or in the manner of organizing production, among others.</li> <li>• Production-related: where there are changes in the demand for the products or services that the company intends to place on the market, among others.</li> </ul>	<ul style="list-style-type: none"> <li>• Collective layoffs must follow the legal procedure established under article 51 of the Workers' Statute. This procedure involves a period of negotiation with the workers' representatives of no more than 30 calendar days, or 15 days at companies with less than fifty employees, and the outcome and final decision must be notified to the labor authorities.</li> <li>• The employer must give 7 or 15 days' prior notice of its intention to start a collective layoff procedure, depending if the communication is issued to the workers' representatives or the own employees (in case there are no workers' representatives).</li> <li>• After notifying the decision to the workers' representatives, the employer would be entitled to individually notify the workers concerned of the layoffs. At least 30 days must elapse between the date on which the commencement of the consultation period is notified to the authorities and the effective date of dismissal.</li> <li>• If the collective layoff affects more than 50 workers (except at companies subject to insolvency proceedings), the company must offer the workers concerned an outplacement plan through an authorized outplacement company, of at least six months' duration, which must include professional guidance and training measures, personalized assistance and an active job search.</li> <li>• The statutory severance consists of 20 days' salary per year worked, up to a maximum of 12 months' salary, or more if so agreed.</li> <li>• In general (except at companies subject to insolvency proceedings), when workers aged 55 or over are affected, special agreements must be signed with the social security authorities.</li> <li>• In some cases, if workers affected in the collective layoff are aged 50 or over, an economic contribution must be made to the Public Treasury.</li> </ul>

Table 4 (Cont.)

Dismissal	Legal grounds	Observations
<b>Objective grounds</b>	<ul style="list-style-type: none"> <li>Ineptitude of the worker coming to light or not foreseen until after being hired by the company.</li> <li>Inability of the worker to adapt to changes made to his job. Before dismissing the worker, employers must offer the worker a training course to facilitate adaptation to such changes. Workers cannot be dismissed until a minimum period of two months has elapsed since the changes were made or the training was completed.</li> <li>In case of economic, technical, organizational or production-related reasons (see definition of the reasons under collective layoff).</li> <li>Intermittent absences from work, even where justified, accounting for 20% of the working hours in 2 consecutive months, provided that the total absences in the preceding 12 months accounted for 5% of working hours or 25% in any 4 months out of a 12-month period.</li> <li>In indefinite-term contracts arranged directly by public authorities or by not-for-profit entities to implement public plans and programs for want of the appropriate allocation of funds to enable the contracts to continue.</li> </ul>	<ul style="list-style-type: none"> <li>The employer must serve at least 15 days' advance notice in writing on the worker (or pay the corresponding salary).</li> <li>Severance (20 days' salary per year worked, up to a maximum of 12 months' salary) must be made available to the worker at the same time the written notice of dismissal is served.</li> </ul>
<b>Disciplinary action</b>	<p>Serious and culpable breach by the worker:</p> <ul style="list-style-type: none"> <li>Repeated and unjustified absenteeism.</li> <li>Insubordination or disobedience.</li> <li>Physical or verbal abuse towards the employer.</li> <li>Breach of contractual good faith or abuse of trust.</li> <li>Willful reduction in job performance.</li> <li>Habitual drug or alcohol abuse which adversely affects job performance.</li> <li>Harassment by reason of race or ethnic origin, religion or beliefs, disability, age or sexual orientation, and sexual or gender harassment towards the employer or persons working at the company.</li> </ul>	<ul style="list-style-type: none"> <li>The employer must serve written notice of disciplinary dismissal, stating the grounds and the effective date of dismissal.</li> <li>If a workers' representative or labor union delegate is dismissed, a disciplinary procedure in which all parties are heard (<i>expediente contradictorio</i>) must be followed. If the worker is a labor union member, the union delegates should be granted a hearing. These safeguards may be increased by collective agreement.</li> <li>If these formalities are not met, a further dismissal may be made in a period of twenty days by paying the employee the salary accrued in the meantime, with effect as of the date of the new notice.</li> </ul>



## 4.2. Classification of the dismissal

A worker dismissed on any objective or disciplinary ground may appeal the decision made by the employer before the labor courts, although a conciliation hearing must first be held between the worker and the employer to attempt to reach an agreement. This

conciliation hearing is held before an administrative mediation, arbitration and conciliation body.

The dismissal will be classified in one of the three following categories: justified, unjustified or null.

Table 5

Classification	Events	Effects
<b>Justified</b>	Conforming to law.	Disciplinary dismissal: validation of the dismissal, meaning the worker is not entitled to severance pay.  Objective dismissal: payment of 20 days' salary per year worked, up to a limit of 12 months' salary.
<b>Unjustified</b>	No legal ground exists for the dismissal or the procedure followed is incorrect.	The employer may choose between: <ul style="list-style-type: none"> <li>reinstating the worker, in which case the worker will be entitled to back pay accrued from the date of dismissal until the notification of the decision or until the worker found a new job, if this occurred prior to the decision; or</li> <li>terminating the contract, by paying severance of 33 days' salary per year worked, up to a maximum of 24 months' salary (for contracts formalized before February 12, 2012, severance will be calculated at 45 days' salary per year of service for the time worked up to such date and at 33 days' salary per year of service for time worked thereafter, case in which the severance can be no more than 720 days of salary, unless the severance corresponding to the period prior to February 12, 2012 results in an amount of days above, case in which this shall be the maximum severance, notwithstanding the 42 monthly installments cap.</li> </ul> <p>If the dismissed worker is a workers' representative or a union delegate, the choice will rest with the worker and back pay will accrue in all cases.</p>
<b>Null</b>	<ul style="list-style-type: none"> <li>The alleged ground is a form of discrimination.</li> <li>It implies a violation of fundamental rights.</li> <li>It affects pregnant workers, during the period of holding in abeyance of the contract due to maternity or paternity, risk during pregnancy, adoption, custody for adoption or fostering, reduction in working hours to care for children or relatives or for breastfeeding, and, in certain circumstances, female workers who have been the victims of gender violence. It also affects workers who have gone back to work after the period of holding in abeyance of the contract due to maternity, adoption or custody for adoption or fostering, or paternity has ended, provided that no more than nine months have elapsed since the date of birth, adoption, custody for adoption or fostering of the child.</li> </ul>	<ul style="list-style-type: none"> <li>Immediate reinstatement of the worker.</li> <li>Payment of salaries not received.</li> </ul>

## 5. Senior management contracts<sup>5</sup>

Special rules apply to certain types of employee, including most notably the special senior management labor relationship governed by Royal Decree 1382/1985, of August 1, 1985.

A senior manager is an employee who has broad management authority in relation to the company's general objectives and exercises that authority independently and with full responsibility, reporting only to the company's supreme governing and managing body.

The working conditions of senior managers are subject to fewer constraints than those for ordinary employees and, as a general rule, the parties (employer and senior manager) have ample room for maneuver in defining their contractual relationship.

The following provisions are established in relation to the termination of senior management employment contracts:

- Senior managers' contracts can be terminated without cause by serving notice at least 3 months in advance, in which case they are entitled to severance pay of seven days' pay per year worked, up to a maximum of six months' pay, unless different terms of severance have been agreed on.
- Alternatively, a senior manager can be dismissed on any of the grounds stipulated in general labor legislation (objective grounds, disciplinary action). If the dismissal is held to be unjustified, the senior manager is entitled to 20 days' pay in cash per year worked, up to a maximum of 12 months' pay, unless different terms of severance have been agreed on.
- In addition, the law establishes certain grounds on which the senior manager can terminate his or her contract and receive

the agreed-upon severance pay and, failing that, the severance pay established for termination due to employer withdrawal.

- Senior managers may freely withdraw from their contracts by serving at least three months' advance notice.

Although the statutory severance for senior managers is currently lower than that for ordinary employees, in practice, senior management contracts usually provide for severance payments that are higher than the statutory minimum.

## 6. Contracts with temporary employment agencies<sup>6</sup>

Under Spanish law, the hiring of workers in order to lend them temporarily to another company (the user company) may only be carried out by duly-authorized temporary employment agencies (ETT) and in the same scenarios in which temporary or fixed-term contracts can be made, including work-experience and apprenticeship contracts.

Therefore, the hiring of workers through ETTs can only be used in specific cases and is expressly prohibited in the following cases:

- To replace workers on strike at the user company.
- To perform work and activities subject to regulation because they pose a particular hazard to health or safety (such as jobs which involve exposure to ionizing radiation, carcinogenic, mutagenic or reprotoxic chemicals, or to biological agents).
- Where the company has abolished the job positions it intends to fill by unjustified dismissal or on the grounds provided for termination of the contract unilaterally by the worker, collective

dismissal or dismissal on objective grounds in the twelve months immediately preceding the hiring date.

- To lend workers to other temporary employment agencies.

Workers hired in order to be loaned to user companies will be entitled, during the period they provide services at the user company, to the basic working conditions and terms of employment (remuneration, working hours, overtime, rest periods, nighttime work, vacation and public holidays, among others) they would have enjoyed, had they been hired directly by the user company for the same position. The remuneration of the loaned workers must include all economic components, fixed and variable, linked to the position to be filled in the collective labor agreement applicable at the user company.

In addition to temporarily loaning workers to other companies, ETTs can also act as placement agencies where they meet the legal requirements to do so.

## 7. Worker representation and collective bargaining

Workers are represented by labor unions. At company level, workers are represented by directly-elected representatives (workers' delegates or works committees, which may or may not belong to a union) and by labor union representatives (workplace union branches and union delegates representing a labor union at the company).

Employers are not obliged to have workers' representatives if workers have not requested union elections. However, if requested by the workers, employers are obliged to allow union elections and appoint such representatives on the terms provided by law.

<sup>5</sup> <http://www.empleo.gob.es/index.htm>

<sup>6</sup> <http://www.empleo.gob.es/index.htm>

In general, the function of directly-elected workers' and labor union representatives is to receive certain information specified in the Workers' Statute in order to monitor compliance with labor legislation. They are entitled to participate in negotiations prior to the execution of collective procedures (such as material changes to working conditions, collective layoffs, etc.) and to request the issue of reports prior to full or partial relocation of facilities, mergers or any other modification to the legal status of the company, among others.

In addition, unions (within a company) or directly-elected workers' or labor union representatives can negotiate collective labor agreements with the employers' association (in the first case) or with the company (in the second case).

Collective labor agreements are agreements executed between the workers' representatives and the employers' representatives to regulate working conditions and terms of employment and are binding on the parties.

## 8. Non-employment relationships

### 8.1. Economically dependent self-employed workers

Although this is not strictly an employment matter, brief reference should be made to Law 20/2007, of July 11, 2007, on the Self-Employed Workers' Statute, which regulates the concept of economically dependent self-employed workers.

This concept defines independent professionals (self-employed workers) who pursue an economic or professional activity for profit, habitually, personally, directly and predominantly for one individual or legal entity, known as the client, on which they depend economically because they receive from that client at least 75% of their income from work performed and from economic or professional activities. Certain requirements must be met simultaneously by self-employed workers if they are to be treated as economically dependent self-employed workers.

The above Law establishes specific regulations on the terms on which self-employed workers provide services to their clients.

### 8.2. Internships without the statutory employment rights at companies

There are a number of cases in which a person can carry on activities at a company without such activities being treated as employed work:

- External academic placements for university students, defined as training completed by university students and supervised by their universities, with a view to enabling those students to apply and supplement the knowledge acquired in their academic training.
- Internships without the statutory employment rights at companies or business groups that enter into agreements with the Public Employment Service, aimed at young people (between 18 and 25 years of age) who, due to their lack of work experience, have difficulty finding employment. These internships can be taken by people in the above age group who have not had an employment relationship or other type of work experience of more than three months in the same activity, and may last between three and nine months. Interns will receive a grant from the company of at least 80% of the monthly Public Multi-Purpose Income Indicator (IPREM) in force at any given time (currently €532.51 per month).

## 9. Acquisition of a Spanish business

Certain labor law provisions are particularly relevant when acquiring or selling a going concern in Spain. For example, if a business is transferred, both the seller and the buyer are jointly and severally liable in the three years following the transfer for any labor obligations arising prior to the transfer.

When a business is transferred, the new employer is subrogated to the previous employer's labor and social security rights and

obligations, including pension commitments on the terms provided in the specific legislation and, in general, to as many supplementary employee welfare obligations as may have been entered into by the previous employer.

The seller and buyer must inform their respective workers' representatives in advance of certain aspects of the upcoming transfer. Specifically, the information provided must comprise at least the following:

- Proposed date of transfer.
- Reasons for the transfer.
- Legal, economic and social consequences of the transfer for the workers.
- Envisaged measures with respect to the workers.

If there are no workers' statutory representatives at the affected companies, the information must be supplied directly to the workers affected by the transfer.

There is also a binding obligation to hold a consultation period with the workers' statutory representatives where, as a result of the transfer, labor measures are adopted for the personnel affected. The consultation period will address the envisaged measures and their consequences for the workers and must be arranged sufficiently in advance of the date on which such measures are to be implemented.

In the case of business succession or a significant change in ownership, which results in the renewal of the governing bodies or changes to the content and purpose of its core activity, senior management personnel will be entitled to terminate their employment contract within the three months following the occurrence of such changes and to receive severance equal to seven days' pay in cash per year worked, up to a maximum of six months' pay, or such severance as may have been agreed on.

## 10. Practical aspects to be considered when setting up a company in Spain

In general, from a labor and social security standpoint, the following essential formalities must be performed in order to open a company or workplace in Spain.

Table 6

Formality	Basic aspects
<b>Registration of the company with the Spanish social security authorities (obtainment of a social security contribution account code)</b>	Registration must take place prior to commencement of activities.  In general, companies register with the Social Security General Treasury by submitting the relevant official form and documentation identifying the company (deed of formation, document issued by the Ministry of Finance and Civil Service assigning the tax identification number and stating the economic activity of the company, powers of legal representation of the company, document of affiliation to the collaborator mutual insurance company, among others).
<b>Notification of hiring of employees</b>	The hiring of employees must be notified for social security purposes once the company has been registered with the social security authorities and before the workers start work.  Notifications are generally made electronically, using the RED electronic document submission system.
<b>Notification of opening of workplace</b>	The commencement of activities at the workplace must be notified to the labor authorities within 30 days of its opening using the official form provided for such purpose in each Autonomous Community. An occupational risk prevention plan must usually also be attached.

## 11. Relocation of workers under a cross-border working arrangement within the EU and the EEA (“impatriates”)

### 11.1. Temporary cross-border working of local hiring

As a general rule, foreign employees temporarily posted to Spain under cross-border working arrangements can maintain the employment contract signed in their country of origin.

Both Regulation 593/2008 of the European Parliament and of the Council of June 17, 2008, on the law applicable to contractual obligations (Rome I) and Article 10.6 of the Civil Code, allow the parties to choose the applicable law, save for any mandatory matters under Spanish law.

Law 45/1999, of November 29, 1999 establishes that in certain temporary secondments a number of minimum working conditions must be observed.

This Law applies to workers relocated by employers from the European Union, and from the European Economic Area (the EU plus Norway, Iceland and Liechtenstein) in a cross-border working agreement for a limited time period in the following cases:

- Within the same company or within a group of companies.
- Under international services contracts.
- When the workers of a temporary employment agency are posted to a client company in Spain.

The only exceptions to the above are in the case of employee relocations during training periods and postings lasting less than eight days, unless they involve workers employed by temporary employment agencies.

The minimum working conditions to be guaranteed by employers in the above countries in accordance with Spanish labor legislation and, regardless of the law applicable to the employment contract, are: (i) working time, (ii) salary (which must be at least the amount provided for the same position under a statutory or regulatory provision or collective labor agreement), (iii) equality of treatment, (iv) the rules on underage work, (v) prevention of occupational risks, (vi) nondiscrimination against temporary and part-time workers, (vii) respect for privacy, dignity, and the freedom to join a union, and (viii) rights of strike and assembly. However, if employees relocated to Spain enjoy more favorable conditions in their country of origin, those conditions will apply.

Employers in such cases must also notify postings to the Spanish Labor Authorities before the worker starts work and regardless of the duration of the posting (except for those lasting less than eight days).

The legislation on labor infringements and penalties classifies a series of infringements in this connection. Formal defects in notifying the relocation of workers to Spain constitute a minor infringement, while notification of the relocation after it has taken place is classed as a serious infringement. Failing to notify the relocation or any misrepresentation or concealment of the data contained in the notification are considered very serious infringements.

Failing to meet the minimum working conditions mentioned above, which are classified according to the penalties applicable to Spanish employers, are considered administrative infringements.

We will be under situations of local hiring instead of temporary transfers when companies without establishment in Spain hire workers in the country.

If it is not a temporary secondment, but rather, the provision of services in Spain has a vocation of permanence, the employer will sign an employment contract with the employee in accordance with Spanish regulation (“local hiring”). Foreign companies without an establishment in Spain hire locally without the need to establish

a Spanish company. The foreign company, however, will have to follow the steps set out in section 10 above, (Practical aspects to be considered when setting up a company in Spain), but referred to the foreign company.

## 11.2. Applicable Social Security

Council Regulations (EC) 883/2004 and 987/2009 on the coordination of social security schemes apply within the European Union, the Economic European Area, and Switzerland and ensure that the workers to whom they are applicable are not adversely affected from a social security standpoint by moving from one Member State to another.

There are a number of bilateral social security agreements between Spain and other countries, which regulate the effects on Spanish public benefits of periods of contribution to the social security systems of other States. These agreements also determine the State in which social security contributions are to be paid in cases of relocation and temporary or permanent assignments abroad.

The following bilateral agreements are currently in force:

Table 7

Bilateral Agreements with Spain	Persons to whom it applies
Andorra	Any nationality
Argentina	Any nationality
Australia	Any nationality
Brazil	Any nationality
Canada	Any nationality
Cape Verde	Spaniards and Cape Verdeans
Chile	Spaniards and Chileans
Colombia	Spaniards and Colombians
Dominican Republic	Spaniards and Dominicans
Ecuador	Spaniards and Ecuadorians
Japan	Any nationality
Morocco	Spaniards and Moroccans
Mexico	Spaniards and Mexicans
Paraguay	Any nationality
Peru	Any nationality
Philippines	Spaniards and Philippines
Republic of Korea	Any nationality
Russia	Spaniards and Russians
Tunisia	Spaniards and Tunisians
Ukraine	Spaniards and Ukrainians
Uruguay	Any nationality
USA	Any nationality
Venezuela	Spaniards and Venezuelans

Finally, the Multilateral Latin American Social Security Agreement is also applicable in Spain, an instrument coordinating the different social security legislation on pensions of the different Latin American States that have ratified it and signed the Implementation Agreement (currently Bolivia, Brazil, Chile, Ecuador, El Salvador Paraguay, Portugal and Uruguay, as well as Spain).

Workers posted to Spain under the relevant social security agreements or regulations who continue to be subject to the legislation of their country of origin and evidence this by way of the relevant certificate, generally will not be registered with the Spanish social security system for the period envisaged in same, according to the terms of the agreement.

On the contrary, when a worker is employed in Spain to carry out services in this country on a permanent basis, the general rule of registration into the Spanish Social Security System shall apply irrespective of the worker's nationality.

## 12. Visas and work and residence permits<sup>7,8</sup>

EU nationals and their family members may live and work (as employees or self-employed workers) in Spain without needing to obtain a work permit. However, in general they must obtain the relevant EU citizen registration certificate or EU citizen family member residence card.

Non-EU nationals must obtain prior administrative authorization to be able to live and work in Spain.

<sup>7</sup> [http://prie.comercio.es/es-ES/Paginas/Programa-de-Residencia-para-Inversores-y-Emprendedores-\(PRIE\).aspx](http://prie.comercio.es/es-ES/Paginas/Programa-de-Residencia-para-Inversores-y-Emprendedores-(PRIE).aspx)  
[http://www.empleo.gob.es/es/sec\\_emi/areas/inmigracion/index.htm](http://www.empleo.gob.es/es/sec_emi/areas/inmigracion/index.htm)

<sup>8</sup> (We refer to Chapter 2, section 3 on the Tax Identification Number (NIF) and Foreigner Identity Number (NIE) regarding the procedure for obtaining a NIF for directors not resident in Spain).

With the approval of Law 14/2013, of September 27, 2013, to support entrepreneurs and their internationalization, new situations of visas and residence and work permits have been introduced, including the following noteworthy examples:

- Visa and residence permit for investors:

Non-resident foreigners seeking to enter Spain may apply for the relevant visa, provided they make a significant capital investment in the country. The following cases will be deemed to constitute a significant investment of capital:

- An initial investment for an amount equal to or greater than €2 million in Spanish public debt instruments, or for an amount equal to or greater than one million euros in shares in Spanish companies or deposits in bank accounts at Spanish financial institutions, or a million euros in investment funds, closed investment funds, capital risk funds constituted in Spain, or a million euros in bank deposits in Spanish financial institutions.
- The acquisition of real estate in Spain with an investment of an amount equal to or greater than €500,000 per applicant.
- A business project to be developed in Spain and deemed and evidenced to be of general interest, having regard to compliance with at least one of the following conditions:
  - Creation of jobs.
  - Making of an investment with a relevant socioeconomic impact in the geographic region in which the activity is to be pursued.
  - Relevant contribution to scientific and/or technological innovation.

- Visa and residence permit for entrepreneurs:

Provision is made for an entry and residence visa, as well as a residence permit, for any entrepreneurs pursuing an activity of an innovative nature in Spain with special economic interest for the country, obtaining a favorable report from the central government authorities.

When it comes to issuing the relevant assessment on the part of the central government authorities, special regard will be had, on a priority basis, to the creation of jobs in Spain. Moreover, regard will be had:

- To the professional background of the applicant.
- To the business plan, including an analysis of the market, service or product, and the financing.
- To the added value for the Spanish economy, innovation and investment opportunities.

- Visa and residence permit for highly qualified professionals:

Applications for this permit may be made by companies who need to recruit foreign professionals in Spain in order to develop a professional or labor relationship, and who fall within one of the following categories:

- Executive or highly qualified personnel, where the company or group of companies meet one of the requirements indicated in Article 71 a) of Law 14/2013 (average headcount during the three months prior to the application of 250 workers in Spain; annual net revenues in Spain in excess of €50 million or annual net equity in Spain above €43 million euros; gross average annual inbound foreign investment of not less than €1 million in the three years prior to submission of the application; companies with a stock value or position in excess of €3

million; belonging, in the case of Spanish SMEs, to an industry deemed strategic).

- Executive or highly qualified personnel forming part of a business project entailing, alternatively and providing the circumstance alleged is deemed and evidenced to be of general interest:
  - A significant increase in the creation of direct employment on the part of the company seeking to hire.
  - The maintenance of employment.
  - A significant increase in job creation in the industry or geographic region in which the labor activity is to be pursued.
  - An extraordinary investment with a relevant socioeconomic impact in the geographic region in which the labor activity is to be pursued.
  - The concurrence of reasons of interest for Spain's commercial and investment policy.
  - A relevant contribution to scientific and/or technological innovation.
- Graduates and postgraduates from prestigious universities and business schools.
- Visa and residence permit for training, research, development and innovation activities:

Any foreigners looking to enter Spain and to pursue training research, development and innovation activities at public or private entities may apply for the relevant entry visa or residence permit provided they fall within one of the following categories:

- The research personnel referred to in Article 13 and Additional Provision no. 1 of Science, Technology and Innovation Law 14/2011, of June 1, 2011.
  - Scientific and technical personnel performing scientific, development and technological innovation work at Spanish businesses or R&D&I centers established in Spain.
  - Researchers taken on under an agreement by public or private research bodies.
  - Lecturers hired by universities or higher education and research centers, or business schools established in Spain.
- Visa and residence permit for intra-company transfers:

An application for the relevant visa and residence permit may be made in the case of foreigners transferring to Spain under a labor or professional relationship or for professional training reasons, within a company or group of companies established in Spain, provided the following circumstances are evidenced:

- The existence of an actual business activity and, as the case may be, of the business group.
- Graduate qualification or the like or, where appropriate, at least 3 years' professional experience.
- The existence of a prior, ongoing professional relationship of 3 months with one or more group companies.
- Company documentation evidencing the transfer.

As a general rule, the visas referred will be valid for one year and must be issued by the Spanish Diplomatic Missions and Consulates.

The residence permits also provided for will be issued by the Large Businesses and Strategic Collectives Unit and granted by the Directorate-General of Migration. A decision on the application will be made in not more than twenty days and will be deemed to have been approved by administrative silence.

Residence permits will as a general rule have a one-year term and applications for two-year extensions may be made, provided the conditions giving rise to the right are maintained.

In addition there are the following administrative authorizations in place a summary of which can be found in the following table:

Table 8  
ADMINISTRATIVE AUTHORIZATIONS

Authorization type	Scenario	Duration/requirements
<b>Initial residence and employed work permit</b>	Non-EU nationals intending to work in Spain must obtain a special work visa and a work and residence permit beforehand.	Granted for a period of one year and limited to a specific geographical area and occupation. After the one-year period, initial permits can be renewed for a two-year period. Once renewed, a permit will allow its holder to engage in any type of work anywhere in Spain.
<b>Residence and self-employed work permit</b>	Non-EU nationals intending to pursue a gainful activity for their own account must obtain a residence and self-employed work permit and the relevant visa.	Granted for a period of one year. After this period, they can be renewed for a two-year period. Where a foreign worker has resided legally and continuously in Spain for five years and has renewed his or her work and residence permits, he or she may obtain a long-stay residence permit.
<b>Frontier workers</b>	Employed or self-employed work permit for workers residing in the frontier area of a neighboring State to which they return each day. Its validity is restricted to the territory of the autonomous community or city where the worker has his residence.	Initial duration of a minimum of three months and a maximum of one year. It may be extended at the end of the initial period, and each successive renewal may not exceed one year.
<b>Fixed-term employed work permits</b>	Permitted types of work: <ul style="list-style-type: none"> <li>• Seasonal work: maximum of 9 months within a period of 12 consecutive months.</li> <li>• Project work or services (assembly of industrial plants, infrastructure, etc.).</li> <li>• Senior management, professional sportsmen and women, artists in public performances, and such other groups as may be determined by legislation.</li> <li>• Training and professional work experience.</li> </ul>	The term of the contract or activity, subject to a one-year limit (except in the case of seasonal permits, which may not exceed 9 months within a period of 12 consecutive months). Non-renewable, except in exceptional circumstances.
<b>Residence and work of highly qualified professionals in possession of an EU blue card</b>	Granted to those who provide evidence of higher education qualifications (understood as those deriving from higher education lasting at least three years) or, exceptionally, have a minimum of five years' professional experience that could be considered comparable. Holders of EU blue cards that have resided for at least eighteen months in another EU country may obtain this authorization.	Duration of one year, renewable for two-year periods, unless a long-stay residence permit is applicable.



## 13. Social security system<sup>9</sup>

### 13.1. Introduction

As a general rule, all employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel and civil servants who reside and/or perform their duties in Spain are required to be registered with, and pay contributions to, the Spanish social security system (except in specific cases of temporary secondments of employees, as indicated in section 11.2 above).

There are different contribution programs under the Spanish social security system:

- a) General social security program.
- b) There are other situations included within the general social security program that qualify for special treatment, namely:
  - Artists.
  - Railroad workers.
  - Sales representatives.
  - Bullfighting professionals.
  - Professional soccer players and other professional sportsmen and women.
  - Agricultural workers.
  - Domestic personnel.

c) Special social security programs for:

- Seamen.
- Self-employed workers.
- Civil servants and military personnel.
- Coal miners.
- Students.

Classification under these programs depends on the nature, conditions and characteristics of the activities carried on in Spain.

As a general rule, employers and their employees will be subject to the general social security program.

### 13.2. Basic aspects of the General Social Security Program

In those cases in which the employees or employers are subjected to the General Social Security program, social security contributions are paid partly by the employer and partly by the employee. Personnel are classified under a number of professional and job categories for the purposes of determining their social security contributions. Each category has a maximum and minimum contribution base, which are generally reviewed on a yearly basis. Employees whose total compensation exceeds the maximum base, or does not reach the minimum base, must bring their contributions into line with the contribution base for their respective category.

For 2017, the maximum contribution base will be €3,751.20 per month for all professional categories and groups. Therefore the situation for 2017 under the general social security program (applicable to the great majority of workers) is as follows<sup>10</sup>:

Table 9

Category	Minimum Base (Euros/month)	Maximum Base (Euros/month)
Engineers and graduates	1,152.90	3,751.20
Technical engineers and assistants	956.10	3,751.20
Clerical and workshop supervisors	831.60	3,751.20
Unqualified assistants	831.60	3,751.20
Clerical officers	831.60	3,751.20
Messengers	831.60	3,751.20
Clerical assistants	831.60	3,751.20

Category	Minimum Base (Euros/day)	Maximum Base (Euros/day)
Class 1 and class 2 skilled workers	27.52	125.04
Class 3 skilled workers and specialists	27.52	125.04
Laborers	27.52	125.04
Workers under 18 years of age	27.52	125.04

The contribution rates applicable to employers and employees under the general social security program in 2017 are as follows:

<sup>9</sup> [http://www.seg-social.es/Internet\\_1/index.htm](http://www.seg-social.es/Internet_1/index.htm)  
<http://www.empleo.gob.es/index.htm>

<sup>10</sup> Order ESS/70/2016, of January 29.

Table 10

	Employer (%)	Employee (%)	Total (%)
<b>General contingencies</b>	23.60	4.7	28.30
<b>Unemployment</b>			
• General rule <sup>11</sup>	5.50	1.55	7.05
• Fixed-term contracts	6.7	1.6	8.3
<b>Professional training</b>	0.6	0.1	0.7
<b>Wage Guarantee Fund</b>	0.2	-	0.2
<b>Total general rule</b>	<b>29.9</b>	<b>6.35</b>	<b>36.25</b>
<b>Total fixed-term contracts</b>	<b>31.1</b>	<b>6.4</b>	<b>37.5</b>

The total employer contribution rate is increased by additional percentages relating to the occupational accident and disease contingencies provided for in the State Budget Law which will depend, as a general rule, on the activity of the company, although a common percentage will be applied across the board in the case of some occupations or situations.

Employers deduct the employees' portion of contributions from their paychecks and pay them over, together with the employer's portion of contributions, to the social security authorities. Similarly, following the above-mentioned Royal Decree-Law 16/2013 of December 2013, employers must notify the Social Security General Treasury in each settlement period of the amount of all the remuneration items paid to their employees, irrespective of whether or not they are included in the social security contribution base and even if single bases are applicable.

<sup>11</sup> It includes: indefinite-term contracts (including part-time indefinite-term contracts and indefinite-term contracts for seasonal work), and fixed-term contracts (in the form of training contracts, hand-over and relief contracts and any type of contract made with disabled workers who have been recognized as having a degree of disability of at least 33% of their physical or mental capacity).

### 13.3. Applicable program to administrators or members of the Board of Directors

The administrators or members of the Board of Directors of a company could be included in the General Program ("RGSS"), in the General Program as "assimilated" or in the Special Program for Self-Employed Workers ("RETA").

The following table explains the different scenarios:

Table 11

Collective	Conditions and characteristics	Contribution scheme	Observations
	If the worker has the effective control of the company	RETA	
	They are employees of the company and the administrator post does mean carrying out the functions of direction and management.	RGSS	It is presumed, unless there is proof to the contrary, that the worker has the effective control of the company when any of the following circumstances exists: <ol style="list-style-type: none"> <li>i. At least half the company capital for which they render their services is distributed amongst partners in the company with whom they live and with whom they are linked by marriage or by blood, affinity or adoption family ties of up to a second degree.</li> <li>ii. Their participation in the company capital is equal to or greater than one third.</li> <li>iii. Their participation in the company capital is equal to or greater than one fourth, if they have been attributed with functions of direction and management of the company.</li> </ol>
<b>Administrators or members of the Board of Directors</b>	If the worker has not the effective control of the company	RGSS as assimilated to employees (excluding unemployment protection and that of the Salary Guarantee Fund).	
	The post as administrator means carrying out the functions of direction and management.	Non-affiliation in the Social Security system.	
	The post as administrator does not mean carrying out the functions of direction and management.		

## 14. Occupational risk prevention<sup>12</sup>

Employers must guarantee the health and safety of their employees but without merely complying with legislation and remedying risk situations, meaning that they have an obligation to perform risk assessments, adopt measures in emergency situations, provide protective equipment and to guarantee the health of employees,

including pregnant or breastfeeding women (ensuring they do not perform tasks which could put them or their unborn child/baby at risk).

All employers must have a risk prevention service to provide advice and assistance in prevention tasks and employers must appoint one or more workers to take charge of these activities. At companies

with less than ten workers, this service may be provided directly by the employer, provided that it habitually pursues its business at the workplace and has the necessary capacity to do so. An external risk prevention service may also be used in certain cases.

Failure to comply with occupational risk prevention obligations may give rise to administrative, labor, criminal and civil liability.

<sup>12</sup> <http://www.empleo.gob.es/index.htm>

# Chapter 6

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## Intellectual property law

# 6

## Intellectual property law

Spanish Intellectual Property (“IP”) legislation is consistent with other EU Member States’ IP laws. Spain has ratified the most relevant international treaties in this field, which entails that non-Spanish nationals may obtain protection of their IP rights in Spain, and that Spanish nationals may obtain such protection in virtually every other country in the world.

This chapter describes the different ways existing in Spain to protect IP rights (trade marks, patents, utility models, plant varieties, industrial designs, topographies of semiconductor products, copyright and computer software), also focusing on the legal remedies available against IP infringements.

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## 1. Introduction

### 1.1. What is intellectual property?

Intellectual property (IP) guarantees businesses protection of their intangible assets through the legal recognition of exclusive

rights in such assets (copyrights in creative works and industrial property rights in industrial assets, such as trademarks, patents, designs etc.). Before launching in a new market, the company must take the necessary steps to ensure that its intangible assets are correctly managed and protected.

Table 1

	Trade secrets	Trademarks ®	Copyright ©	Patents - Utility models	Spanish designs	Community designs
What is protected	Information	Identifiers	Creations	Inventions	Designs	Designs
Duration	It will depend on the policies of the company regarding know-how and confidential information	10 years, renewable indefinitely	70 years from the death of the author	Patents: 20 years maximum, renewable annually  Utility models: 10 years maximum, renewable annually	5 years extendible up to 25 years	Unregistered: 3 years  Registered: 5 years, renewable for up to 25 years
Protection requirements	Secrecy and confidentiality  Value of the information	Distinctiveness and use	Originality	Novelty, useful and non-obvious subject matter	Novelty and individual character	Novelty and individual character

## 1.2. What is the registration principle?

In Spain, registration at the relevant industrial property office is a prior requirement in order to obtain protection of intellectual property (as we will see, this principle does not govern copyright).

Spain, unlike the United States for example, follows the “first-to-file” system, which means that the first person to apply for registration will have prior rights. Use does not afford any rights against third parties except in the case of well-known marks.

Registration entails payment of the official fees, whose amount will depend on circumstances such as the specific type of right applied for, the number of classes, territory, etc.<sup>1</sup>

## 1.3. What is the territoriality principle?

The principle of territoriality means that the protection conferred by intellectual property rights is only available, in principle, in the country or countries in which registration has been obtained (or in the case of copyright, in the country where protection is sought).

Thus, the registration of a trademark or a patent in the country of origin by the owner does not confer automatic protection in other countries. Consequently protection must be sought through additional registrations in each relevant country.

<sup>1</sup> Appendix I to this Chapter includes a list with links to the official fees corresponding to the different types of rights for 2017.

## 1.4. How to overcome the limits of territoriality?

In order to make it easier to protect intellectual property rights in different territories, Spain has ratified the main international conventions in this area.

With rare exceptions, international intellectual property treaties allow non-Spanish nationals to protect their rights in Spain, and

Spanish nationals to enjoy protection in most other countries. Spain’s membership of the European Union has also ensured that Spanish legislation is in line with that of the rest of EU Member States.

## 1.5. What are the most important conventions signed by Spain?

Table 2

International convention	Intellectual property rights regulated	Organization
Agreement on Trade-related aspects of intellectual property rights (TRIPS)	Intellectual Property	World Trade Organization (WTO)
Paris Convention	Industrial Property	World Intellectual Property Organization (WIPO)
Patent Cooperation Treaty (PCT)	Patents	World Intellectual Property Organization
European Patent Convention	Patents	European Patent Organization
Madrid Agreement	Trademarks	World Intellectual Property Organization
Madrid Protocol	Trademarks	World Intellectual Property Organization
Berne Convention for the Protection of Literary and Artistic Works	Copyright	World Intellectual Property Organization



## 1.6. Can intellectual property rights be marketed?

Intellectual property rights are assets, and may therefore be assigned, encumbered or transferred by any means provided by Law.

Licenses are the contracts most frequently used in this area, through which a third party is authorized to use the rights granted in exchange for payment.

## 2. Trademarks

### 2.1. What is a trademark?

A trademark is an exclusive right in a distinctive sign the main function of which is to distinguish the goods and services of one undertaking from those of its competitors. It also plays an important role in advertising and goodwill consolidation.

### 2.2. What factors need to be borne in mind to register a trademark in Spain?

1. That it is free to be used.
2. That it is free to be registered.
3. That it has no negative connotations, *i.e.* it is commercially suitable.

Before marketing goods or services, it is advisable to verify that no identical or similar mark has been registered previously for identical or similar goods or services, since this could prevent the use of the sign in the relevant territory.

After confirming that no prior third-party rights are being infringed, one of the various procedures for obtaining registration should be

chosen in order to secure exclusive rights and prevent the mark from being used by other companies. Obtaining registration also involves assessing that the mark is not generic, deceptive, descriptive or contrary to public policy or accepted principles of morality.

### 2.3. What are the ways of registering a mark in Spain?

- National system
- International system: Madrid Agreement/Madrid Protocol
- European Union Trademark

### 2.4. How do you obtain a Spanish trademark?

By filing an application at the Spanish Patents and Trademarks Office (OEPM).

The application process takes approximately between 8 and 15 months.

Spanish trademarks may consist of words, names or surnames, signatures, numbers and number combinations, slogans, drawings, sounds, colors and three-dimensional shapes, including packaging.

### 2.5. What checks does the OEPM make when it receives the application?

The OEPM only examines *ex officio* whether the trademark falls within absolute grounds for refusal (mainly, that the mark is not generic, misleading, descriptive or contrary to public policy), but does not carry out an examination of relative grounds for refusal, that is, the existence of identical or similar earlier marks registered

for identical or similar goods, likely to be confused with the new trademark. Relative grounds for refusal are only examined where the owners of prior marks file an opposition against the trademark application.

In short, the OEPM will not refuse trademarks *ex officio* based on relative grounds, and instead performs a computer search to notify the holders of prior identical or similar signs, for informative purposes only, of the application, in case they are interested in filing an opposition.

### 2.6. How long does Spanish trademark registration last?

Trademark registration is valid for **10 years** and can be renewed indefinitely for further ten-year periods. However the registration may lapse or be revoked if the trademark is not renewed, if it is not effectively used during an uninterrupted 5-year period, or if it becomes generic or deceptive in connection with the goods and/or services it covers.

### 2.7. What is an international trademark?

An international trademark is linked to the Madrid system for the international registration of trademarks “Madrid System”, comprising the Madrid Agreement of 1891 and the Madrid Protocol of 1989, and administered by the World Intellectual Property Organization (WIPO), with headquarters in Geneva.

Although known as “international trademarks”, this is not strictly speaking the case since the Madrid system unifies administrative procedures at one sole national office, enabling various national registrations to be obtained, but does not offer protection worldwide.

## 2.8. How do you obtain an international trademark?

The applicant must designate the countries where it wishes to obtain protection from among those countries that have ratified either the Agreement or the Protocol. WIPO subsequently proceeds to notify the national offices of the designated countries and if no oppositions are filed pursuant to the national laws of each of the countries concerned within one year (pursuant to the Agreement) or 18 months (pursuant to the Protocol), the international trademark will be registered.

Since April 1, 2004 international trademark applications filed under the Madrid system for the international registration of marks may be processed in Spanish.

The application process usually takes between 12 and 20 months.

## 2.9. Who can file an international trademark?

International trademarks can only be filed by natural or legal persons who have ties to a State that is party to one or both of the treaties (due to nationality, domicile, or real and effective establishment) and may, on the basis of an application filed at the Trademark Office of such State, obtain an international registration effective in all or some of the countries of the Madrid Union.

## 2.10. What is an EU trademark<sup>2</sup>?

An EU trademark confers upon its proprietor the right to prevent unauthorized use of the trademark by third parties throughout the entire European Union, as well as the use of identical or

<sup>2</sup> Previously designated as Community Trademark.

similar signs that could generate a likelihood of confusion among consumers.

Therefore, an undertaking that seeks to market its products or provide its services in Europe, does not have to file an application in each EU Member State, but rather is able to obtain one sole EU registration that automatically gives it exclusive rights in all of them.

Another important advantage of the EU trademark is that no evidence of use is required to obtain registration, and use of a mark in any one Member State is sufficient to maintain its validity.

The EU trademark does not replace trademark rights in each Member State. The national, international and EU trademark systems coexist and, in some cases, complement each other.

EU trademark infringement actions are brought before EU trademark courts, which are national courts designated by each of the Member States.

## 2.11. Who can file an EU trademark?

Any person domiciled or with an establishment in the European Union or in a country which is a party to the Paris Convention, or domiciled in a Member State of the World Trade Organization.

## 2.12. How do you obtain an EU trademark?

The EU trademark is administered by the European Union Intellectual Property Office (EUIPO), which is based in Alicante, Spain. The application may be submitted in any of the official languages of the European Union, although the applicant is required to designate a second language out of the EUIPO's five official languages (German, Spanish, English, Italian and French)

which may be used as the language of opposition, revocation or invalidity proceedings.

The application process takes approximately 7 months if there are no oppositions.

## 2.13. What checks does the EUIPO make when it receives the application?

The EUIPO only examines marks on absolute grounds for refusal (i.e. it mainly verifies that the mark is not descriptive, generic or deceptive in any of the European Union countries).

However, it does not examine applications *ex-officio* on relative grounds for refusal, i.e. it will not refuse registration on account of the existence of any earlier trademark registrations in the European Union), but rather it is up to the owners of these registrations to file an opposition against such marks at the EUIPO.

## 2.14. EU trademark... and international?

The European Union's accession to the Madrid Protocol connects the registration procedure of an EU trademark application to the International trademark registration system. Thus, any person based in an EU State may file an application at the EUIPO not just to protect his mark as an EU trademark but also as an international trademark in the Member States of the Madrid Protocol.

## 2.15. How long does an EU trademark last?

10 years. This period can be renewed for further 10-year periods subject to payment of the appropriate fees.

### 2.16. What is the reform of the trademark system in the EU?

As from March 23, 2016, the date on which Regulation No. 2015/2424<sup>3</sup> enters into force, the Office for Harmonization in the Internal Market (OHIM) will be called the European Union Intellectual Property Office (EUIPO), and the Community trademark will be called the European Union trademark.

Some of the most important changes introduced by the Regulation are as follows:

- An EU trademark application may only be filed at the EUIPO, and not at the industrial property offices of the Member States.
- The requirement of graphic representability of the mark is eliminated.
- A specific fee for each class designated is established.
- Uniform criteria will be adopted for the classification of the goods and services designated by the trademark.

## 3. Protection of inventions in Spain

Inventions may be protected in Spanish law through patents and utility models.

### 3.1. What is a patent?

Patents are exclusive rights granted by the State to the inventor in his invention for a specific term (**20 years**) on the understanding

<sup>3</sup> However, certain paragraphs of article 1 of Regulation 2015/2424, amending the current Community trademark registration, will enter into force on October 1, 2017.

that once this period has expired, the invention will enter the public domain. Thus society benefits from the technical advantage provided by the invention.

### 3.2. How can you register a patent in Spain?

In addition to filing a patent application at the OEPM, regional registration systems are also available. Such systems allow the applicant to obtain protection for the invention in one or more countries and each country determines whether or not to protect the patent in its territory pursuant to applicable legislation.

The application process before the OEPM can take a minimum of 30 months.

The patent owner may exploit the invention and prevent third parties from exploiting, marketing, or launching it onto the market without consent. While the patent is in force, third parties may only exploit the invention if the owner has granted a license.

### 3.3. What kinds of inventions are patentable?

In order for an invention to be patentable, it must be new, involve inventive step and be capable of industrial application. Consequently, the three main requirements to obtain a patent are as follows:

- Absolute novelty.
- Inventive step.
- Industrial application.

Scientific discoveries or theories, mathematical methods, literary, scientific, artistic works and any other aesthetic creations, rules and methods of performing a mental act,

playing a game or doing business are not considered patentable. Neither is it possible to obtain a patent for inventions that are contrary to public policy, plant varieties (which have their own special legislation), animal breeds, essentially biological processes for the production of plants or animals and the human body.

### 3.4. Are bio-technological inventions patentable in Spain?

The Spanish Patents Law includes the legal protection of bio-technological inventions, although clear restrictions are established based on ethics and public policy.

### 3.5. Are pharmaceutical products patentable in Spain?

In Spain both product and process patents are admitted and pharmaceutical products have been patentable since 1992.

Indeed, the inclusion of the “Bolar clause” or “Bolar exemption” in the Spanish Patent Law refers precisely to pharmaceutical products. According to this clause performing within certain time periods the necessary studies, tests and trials to obtain authorization for generic drugs does not constitute patent infringement.

Patents are granted for a period of 20 years from the date on which the application is filed. However, a maintenance fee, which is subject to a gradual annual increase, is due yearly.

Once the 20-year period has lapsed, the subject matter of the patent passes into the public domain and may be used by any third party. The Complementary Protection Certificate for pharmaceutical and phytosanitary products, which has been in force since 1998, extends the patent by up to a maximum of five years for the time it took to obtain the relevant administrative authorization, which is essential in order to market such products.

### 3.6. What is a European patent?

Since Spain's ratification of the European Patent Convention (EPC) in 1973, Spain may be designated with a European patent application. European patents are administered by the European Patent Office, based in Munich. Via a single procedure and applying legislation in common (the European Patent Convention), this system allows the registration of a bundle of national patents enforceable in the countries designated by the applicant.

### 3.7. What is a unitary patent?

The new unitary patent system<sup>4</sup> will provide uniform protection and will have equal effect in all participating Member States. The aim is to provide legal certainty and to reduce the costs of protecting a patent, in order to encourage investment in R+D+i.

A European patent with unitary effect may only be limited, transferred, revoked or lapse in respect of all the participating Member States, but it may be licensed for all or some of those States.

Following Italy's<sup>5</sup> decision to join the system for enhanced cooperation in the area of the creation of unitary patent protection, Spain is the only major economy in the EU which, for the time being, remains outside the system.

The entry into force of the Agreement on the Unified Patent Court ("UPC Agreement"), which will in turn determine the entry into

<sup>4</sup> (i) Regulation (EU) 1257/2012, of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, (ii) Regulation (EU) 1260/2012, of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements and (iii) Agreement on a Unified Patent Court of February 19, 2013.

<sup>5</sup> Commission Decision (EU) 2015/1753 of September 30, 2015.

force of Regulation (EU) 1257/2012, will enter into force on the latest of the following events:

- The first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the UPC Agreement takes place (Germany, France and the United Kingdom).
- The first day of the fourth month after the date of entry into force of the amendments to Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I") in order to clarify the jurisdiction of the UPC.

To date, the following countries have ratified the UPC Agreement: Austria, France, Sweden, Belgium, Denmark, Malta, Luxembourg, Portugal, Finland, Bulgaria, Netherlands and Italy.

### 3.8. What is the PCT?

Spain has ratified the Patent Cooperation Treaty (PCT) which unifies the initial filing of applications and the performance of search reports which are necessary to determine the novelty of the invention and the inventive step, with a view to reducing costs and simplifying the grant of a patent. However, as opposed to the European patent, registration is granted by each of the relevant national Offices.

### 3.9. What is a utility model?

A utility model is a form of protection for inventions which although new and with inventive step, only give the subject matter a configuration, structure, or constitution that results in an advantage, appreciable for its use or manufacture, but with a lower standard of inventiveness.

A lower standard of inventiveness is therefore required for utility models than for patents and, unlike patents, utility models require only national and not absolute novelty. They are granted for a non-extendable period of 10 years, and therefore have a shorter term than patents. This system of protection is particularly suitable for protecting tools, objects and devices used for practical purposes. The application process usually takes between 8 and 14 months.

## 4. Plant varieties

### 4.1. What are plant varieties?

Plant varieties constitute a category of intellectual property with a legal status similar to that of patents. A plant variety is a group of plants that are distinguishable from any other group since they have specific features that remain unchanged after repeated propagation processes and can propagate without changing.

In Spain, applications for plant varieties are processed by the Autonomous Community authorities.

Finally, the Spanish Criminal Code expressly includes the counterfeiting of plant varieties, the unauthorized propagation or multiplication of a plant variety, and the unauthorized use of the name of said varieties as criminal offences, which are punishable with fines, special disqualification and even prison.

## 5. Industrial designs

### 5.1. What are industrial designs?

Industrial designs are industrial property rights that protect the aesthetic appearance of goods rather than their functional

novelty. Therefore, the owner of an industrial design has exclusive rights in the appearance of the whole or part of a product (in particular, the lines, contours, colors, shape, texture or materials of the product itself or its ornamentation), if it is novel and has individual character.

## 5.2. What is novelty and individual character?

A design is considered to meet the novelty requirement if no other identical design has been made available to the public beforehand. Two designs are deemed to be identical where they only differ in irrelevant aspects.

As far as **individual character** is concerned, a design is considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced by any design that has been made available to the public beforehand.

## 5.3. How can you obtain protection in a design?

At present there are three procedures through which designs may be protected:

- Spanish system.
- Community designs.
- International system.

## 5.4. How do you obtain a Spanish design?

Industrial designs are filed at the OEPM. The application process can take approximately between 6 and 10 months.

The most relevant feature includes the so-called “grace period”, which consists of a 12-month period during which the disclosure of

the design by its author or a related third party does not jeopardize the possibility of registration by its lawful owner. The aim of this grace period is to grant the owner of the design a term before registration without such term destroying its novelty.

Once the design has been granted, the owner is entitled to use it and to obtain relief should any third party use it after its grant has been published.

## 5.5. How long does a Spanish design last?

Registration is granted for a period of 5 years from the filing date, renewable for further 5-year periods up to a maximum of 25 years.

## 5.6. How do you obtain a Community design?

Community designs are protected in the European Union by Council Regulation 6/2002<sup>6</sup>.

The essential feature of the Community design system is the recognition of exclusive rights throughout the EU, via a dual system of protection: registered and unregistered designs. In both cases the design must meet the requirements of novelty and individual character.

A registered community design is filed at the OHIM. The application process is very fast, it can take six days, but there is not a fixed term for third parties opposition.

Once granted it confers upon its owner the exclusive right to use and prevent use of said design by unauthorized third parties.

<sup>6</sup> Council regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

## 5.7. How long does a Community design last?

Registration is granted for a period of 5 years from the filing date, renewable for further 5-year periods up to a maximum of 25 years.

## 5.8. What does an unregistered Community design consist of?

An unregistered Community design is a form of protection under Community legislation, through which rights are acquired automatically without the need for filing, simply by disclosing the products to which the design is applied.

Protection of an unregistered Community design is restricted to a period of three years from the date on which the design was first made available to the public within the EU. These types of designs are particularly advantageous for those commercial sectors, such as the fashion industry, which produce short-lived designs and in which the three-year protection period without the need for registration is sufficient and reasonable.

## 5.9. How do you obtain an international design?

There is an international registration system consisting of filing the application at the World Intellectual Property Organization (WIPO), pursuant to the Hague Agreement.

Through this Treaty nationals of the contracting States of the Hague Agreement can obtain protection for their designs in all those States by filing those designs — or a graphic reproduction pursuant to WIPO requirements — at WIPO’S headquarters in Geneva.

A single application is sufficient to protect the design in the member States, subject to the conditions envisaged in each national legislation.

The European Union's accession to the Hague Agreement on January 1, 2008, means that the applicants of an international design may designate the 28 EU Member States with a single application and also base the application for an international design on a Community design. This is aimed at simplifying registration procedures, reducing the costs deriving from the international protection of designs and simplifying the management of such rights.

Spanish is one of the working languages of the Hague System, which means on the one hand that it is an excellent tool for the international protection of Spanish companies' designs, and on the other acts as an incentive to attract more Spanish-speaking Member States to the System.

## 6. Topographies of semiconductor products

### 6.1. What are topographies of semiconductor products?

Spanish legislation grants a period of protection of 10 years for topographies of semiconductor products (integrated semi-conductor circuits known as "chips"). The subject-matter of protection is not the integrated circuit itself but the way in which it is physically mounted, that is, the physical arrangement of all its elements.

### 6.2. How do you obtain topographies of semiconductor products?

In order for the OEPM to grant protection of the semiconductor product, the topography must be the result of the creator's own intellectual efforts and must not be commonplace in the semiconductor industry, that is, the law requires originality and creativity<sup>7</sup>.

<sup>7</sup> The governing provisions are to be found in Law 11/1988, the result of the transposition to Spanish law of Directive 87/54/EEC of December 16, 1986.

## 7. Copyright

### 7.1. What is copyright?

Copyright generates various types of rights, economic rights and "moral" rights. Moral rights cannot be waived or assigned and they entitle the author to decide, *inter alia*, whether his work is to be published and to demand acknowledgement as author of the work. Consequently, economic or exploitation rights can be traded and transferred to third parties.

All literary, artistic or scientific works which are original are protected by copyright, in particular, books, music compositions, audiovisual works, projects, plans, graphics, computer programs and databases. The Copyright Law<sup>8</sup> also grants related rights to performers, phonogram producers, producers of audiovisual recordings and broadcasting organizations.

### 7.2. How do you obtain copyright protection?

In Spain, copyright protection is automatic, since it exists from the very moment the work is created. However, it is also possible to register the work on the Copyright Register in order to obtain stronger evidence vis-à-vis third parties.

The application for registration in the Copyright Registry requires payment of the corresponding fees to the Provincial Registry in question. The time for the Registry to issue a decision is approximately 6 months.

<sup>8</sup> In Spain, copyright is governed by Legislative Royal Decree 1/1996 of April 12, 1996. In addition, Spain is party to the Berne Convention for the Protection of Literary and Artistic Works.

### 7.3. Who owns the rights?

In Spain, the rights are always owned by the author of the work, unless the work was created in the course of an employment relationship, is a collective work or the rights are assigned to a third party.

### 7.4. How long does copyright protection last?

Copyright protection is granted for 70 years from the death of the author, where the author is a natural person. In those cases in which the author is a legal person, the term of protection is 70 years from January 1 of the year following that in which the work was lawfully published, or following the year of its creation, if the work has not been published.

## 8. Unfair competition

### 8.1. What does unfair competition consist of?

Any conduct objectively contrary to good faith is deemed to be unfair. The amendments introduced by Law 29/2009 significantly extend the scope of consumer protection, whereby in relations between businesses or professionals and consumers, there are two requirements for behavior to be deemed unfair: that the behavior of the business or professional be contrary to professional diligence and capable of significantly distorting the economic behavior of the average consumer. Intellectual property can often be protected via unfair competition legislation.

### 8.2. What acts are deemed unfair?

Unfair competition torts include acts of confusion, misleading acts and omissions, aggressive acts, acts of denigration, comparison, imitation, exploitation of a third party's reputation, violation of

trade secrets, incitement to breach of contract, infringement of laws relating to discrimination and selling at a loss. The 2009 reform also considers the breach of industry codes of conduct to which businesses have freely adhered, an act of unfair competition.

Unfair competition regulations also include the protection of know-how by deeming unfair the disclosure or exploitation, without the consent of their proprietor, of industrial or business secrets obtained lawfully, in the understanding that they would be kept confidential.

## 9. Action against infringement of intellectual property rights

The owner of intellectual property rights may take both civil and criminal action against those that infringe its rights in Spain:

### 9.1. Civil actions

The procedure for bringing action before the Civil Courts is governed by the Civil Procedure Law, which establishes the ordinary trial as the procedural means for the trademark owner to defend its rights against third parties.

The IP owner whose rights have been infringed may claim:

- The cessation of the infringing acts;
- damages;

- seizure of the infringing goods;
- to be awarded the seized objects or their means of production;
- the adoption of necessary steps to prevent the continuation of the infringement;
- publication of the judgment against the infringer.

The owner of the rights may also seek injunctive relief to ensure the effectiveness of the available actions.

### 9.2. Criminal actions

Industrial property rights are also covered by criminal law.

In addition to activities related to the marketing, use, manufacture and imitation of inventions and distinctive signs without the IP owner's consent, the Criminal Code also includes the counterfeiting of plant varieties and parallel imports.

Another aspect that should be underscored is the extension of the grounds for determining that an offense is particularly serious. In this regard the Criminal Code establishes sterner penalties consisting of imprisonment (from one to four years), a fine (from twelve to twenty-four months) and special disqualification from practicing the profession related to the offence committed (for a period ranging from two to five years).

## Appendix I. Reference to official fees for 2017

- A) Trademarks
  - i. National Trademark
  - ii. International Trademark
  - iii. EU Trademark
- B) Patents and utility models
  - i. National Patent
  - ii. European Patent
  - iii. PCT
  - iv. Utility Model
- C) Industrial designs
  - i. Spanish Design
  - ii. Community Design
  - iii. International Design
- D) Topographies of semiconductor products
- E) Copyright

## Appendix II. Intellectual property conventions

Table 3

Country	IP		Trademarks			Patents		Designs	Copyright
	Paris Convention	WTO <sup>9</sup> (Trip's) <sup>10</sup>	Madrid Agreement	Madrid Protocol	EUTM <sup>11</sup>	PCT <sup>12</sup>	EPC <sup>13</sup>	Hague Agreement	Berne Agreement
Afghanistan	X	X							
African Intellectual Property Organisation (OAPI)				X				X	
Albania	X	X	X	X		X	X	X	X
Algeria	X	O <sup>14</sup>	X			X			X
Andorra	X	O							X
Angola	X	X				X			
Antigua and Barbuda	X	X		X		X			X
Argentina	X	X							X
Armenia	X	X	X	X		X		X	X
Australia	X	X		X		X			X
Austria	X	X	X	X	X	X	X		X
Azerbaijan	X	O	X	X		X		X	X
Bahamas	X	O							X
Bahrain	X	X		X		X			X
Bangladesh	X	X							X
Barbados	X	X				X			X
Belarus	X	O	X	X		X			X
Belgium	X	X	X	X	X	X	X	X	X
Belize	X	X				X		X	X
Benin	X	X				X		X	X
Bhutan	X	O	X	X					X
Bolivia	X	X							X

9. WTO: World Trade Organization.

10. TRIP'S: Trade-Related aspects of Intellectual Property Rights.

11. EUTM: European Union Trademark.

12. PCT: Patent Cooperation Treaty.

13. EPC: European Patent Convention.

14. O: Observer Governments which should commence negotiations for adhesion within 5 years of becoming observers.



Table 3 (Continuation)

Country	IP		Trademarks			Patents		Designs	Copyright
	Paris Convention	WTO <sup>9</sup> (Trip's) <sup>10</sup>	Madrid Agreement	Madrid Protocol	EUTM <sup>11</sup>	PCT <sup>12</sup>	EPC <sup>13</sup>	Hague Agreement	Berne Agreement
Bosnia and Herzegovina	X	O <sup>14</sup>	X	X		X	E <sup>15</sup>	X	X
Botswana	X	X		X		X		X	X
Brazil	X	X				X			X
Brunei	X	X		X		X		X	X
Bulgaria	X	X	X	X	X	X	X	X	X
Burkina Faso	X	X				X			X
Burundi	X	X							X
Cambodia	X	X				X		X	
Cameroon	X	X				X			X
Canada	X	X				X			X
Cape Verde		X							X
Central African Republic	X	X				X			X
Chad	X	X				X			X
Chile	X	X				X			X
China	X	X	X	X		X			X
Colombia	X	X		X		X			X
Comoros	X	O				X			X
Congo	X	X				X			X
Costa Rica	X	X				X			X
Côte d'Ivoire	X	X				X		X	X
Croatia	X	X	X	X	X	X	X	X	X
Cuba	X	X	X	X		X			X
Cyprus	X	X	X	X	X	X	X		X
Czech Republic	X	X	X	X	X	X	X		X
Democratic People's Republic of Korea	X		X	X		X		X	X

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14. O: Observer Governments which should commence negotiations for adhesion within 5 years of becoming observers.

15. E: Non-Member States that have executed extension agreements with the European Patent Organization.

Table 3 (Continuation)

Country	IP		Trademarks			Patents		Designs	Copyright
	Paris Convention	WTO <sup>9</sup> (Trip's) <sup>10</sup>	Madrid Agreement	Madrid Protocol	EUTM <sup>11</sup>	PCT <sup>12</sup>	EPC <sup>13</sup>	Hague Agreement	Berne Agreement
Democratic Republic of the Congo	x	x							x
Denmark	x	x		x	x	x	x	x	x
Djibouti	x	x				x			x
Dominica	x	x				x			x
Dominican Republic	x	x				x			x
Ecuador	x	x				x			x
Equatorial Guinea	x	o				x			x
Egypt	x	x	x	x		x		x	x
El Salvador	x	x				x			x
Estonia	x	x		x	x	x	x	x	x
Ethiopia		o							
European Communities		x		x				x	
Fiji		x							x
Finland	x	x		x	x	x	x	x	x
France	x	x	x	x	x	x	x	x	x
Gabon	x	x				x		x	x
Gambia	x	x				x			x
Georgia	x	x		x		x		x	x
Germany	x	x	x	x	x	x	x	x	x
Ghana	x	x		x		x		x	x
Greece	x	x		x	x	x	x	x	x
Grenada	x	x				x			x
Guatemala	x	x				x			x
Guinea	x	x				x			x
Guinea-Bissau	x	x				x			x
Guyana	x	x							x

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Haiti	X	X							X
Honduras	X	X				X			X
Hong Kong		X							
Hungary	X	X	X	X	X	X	X	X	X
Holy See	X	0							X
Iceland	X	X		X		X	X	X	X
India	X	X		X		X			X
Indonesia	X	X				X			X
Iran (Islamic Republic of)	X	0	X	X		X			
Iraq	X	0							
Ireland	X	X		X	X	X	X		X
Israel	X	X		X		X			X
Italy	X	X	X	X	X	X	X	X	X
Jamaica	X	X							X
Japan	X	X		X		X			X
Jordan	X	X							X
Kazakhstan	X	0	X	X		X			X
Kenya	X	X	X	X		X			X
Kuwait	X	X				X			X
Kyrgyzstan	X	X	X	X		X		X	X
Laos	X	X		X		X			X
Latvia	X	X	X	X	X	X	X	X	X
Lebanon	X	0							X
Lesotho	X	X	X	X		X			X
Liberia	X	X	X	X		X			X
Libya	X	0				X			X
Liechtenstein	X	X	X	X		X	X	X	X

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Lithuania	X	X		X	X	X	X	X	X
Luxembourg	X	X	X	X	X	X	X	X	X
Macao		X							
Madagascar	X	X		X		X			X
Malawi	X	X				X			X
Malaysia	X	X				X			X
Maldives		X							
Mali	X	X				X		X	X
Malta	X	X			X	X	X		X
Mauritania	X	X				X			X
Mauritius	X	X							X
Mexico	X	X		X		X			X
Micronesia									X
Monaco	X		X	X		X	X	X	X
Mongolia	X	X	X	X		X		X	X
Montenegro	X	X	X	X		X	E	X	X
Morocco	X	X	X	X		X		X	X
Mozambique	X	X	X	X		X			X
Myanmar		X							
Namibia	X	X	X	X		X		X	X
Nepal	X	X							X
New Zealand	X	X		X		X			X
Nicaragua	X	X				X			X
Niger	X	X				X		X	X
Nigeria	X	X				X			X
Niue									X
Norway	X	X		X		X	X	X	X

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Oman	X	X		X		X		X	X
Pakistan	X	X							X
Panama	X	X				X			X
Papua New Guinea	X	X				X			
Paraguay	X	X							X
Penghu, Kinmen and Matsu (Customs Territory other than Taiwan)		X							
Peru	X	X				X			X
Philippines	X	X		X		X			X
Poland	X	X	X	X	X	X	X	X	X
Portugal	X	X	X	X	X	X	X		X
Qatar	X	X				X			X
Republic of Korea	X	X		X		X		X	X
Republic of Macedonia (the former Yugoslav Republic of Macedonia)	X	X	X	X		X	X	X	X
Republic of Moldova	X	X	X	X		X		X	X
Romania	X	X	X	X	X	X	X	X	X
Russian Federation	X	X	X	X		X			X
Rwanda	X	X		X		X		X	X
Saint Kitts and Nevis	X	X				X			X
Saint Vincent and the Grenadines	X	X				X			X
Saint Lucia	X	X				X			X
Samoa	X	X							X

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San Marino	X		X	X		X	X		
Sao Tome and Prince	X	0		X		X		X	X
Saudi Arabia	X	X				X			X
Senegal	X	X				X		X	X
Serbia	X	0	X	X		X	X	X	X
Seychelles	X	X				X			
Sierra Leone	X	X	X	X		X			
Singapore	X	X		X		X		X	X
Solomon Islands		X							
Somalia		0							
Slovakia	X	X	X	X	X	X	X		X
Slovenia	X	X	X	X	X	X	X	X	X
South Africa	X	X				X			X
Spain	X	X	X	X	X	X	X	X	X
Sri Lanka	X	X				X			X
Sudan	X	0	X	X		X			X
Suriname	X	X						X	X
Swaziland	X	X	X	X		X			X
Sweden	X	X		X	X	X	X		X
Switzerland	X	X	X	X		X	X	X	X
Syria	X	0		X		X		X	X
Tajikistan	X	X	X	X		X		X	X
Thailand	X	X				X			X
The Netherlands	X	X	X	X	X	X	X	X	X
Timor-Leste		0							
Togo	X	X				X			X
Tonga	X	X							X

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Trinidad and Tobago	X	X				X			X
Tunisia	X	X		X		X		X	X
Turkey	X	X		X		X	X	X	X
Turkmenistan	X			X		X		X	X
Uganda	X	X				X			
Ukraine	X	X	X	X		X		X	X
United Arab Emirates	X	X				X			X
United Kingdom	X	X		X	X	X	X		X
United Republic of Tanzania	X	X				X			X
United States of America	X	X		X		X			X
Uruguay	X	X							X
Uzbekistan	X	0		X		X			X
Vanuatu		X							X
Venezuela	X	X							X
Viet Nam	X	X	X	X		X			X
Yemen	X	X							X
Zambia	X	X		X		X			X
Zimbabwe	X	X		X		X			X

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# Chapter

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## Legal framework and tax implications of e-commerce in Spain

# 7



# 7

## Legal framework and tax implications of e-commerce in Spain

The main legal and tax issues to take into consideration regarding e-commerce, digital economy and privacy are discussed in this Chapter.

In Spain, as in neighboring countries, e-commerce-related activities are currently the object of specific regulation. In transactions involving e-commerce, regard should be had to the legislation on distance sales, advertising, standard contract terms, electronic signatures, data protection, intellectual and industrial property, and e-commerce and information society services, among others. Apart from these specific laws, it is also necessary to examine the general legislation on civil and commercial contracts and, in the case of e-commerce addressed to consumers (B2C), the specific regulation on consumers' protection should also be considered.

E-commerce raises tax issues that can be addressed with difficulty from a purely Spanish perspective. For this reason, the Spanish tax authorities have preferred to wait until a consensus is reached on the measures to be adopted regionally and even worldwide. Fair progress has been made in reaching a consensus on the VAT treatment of "on-line e-commerce". As for the direct taxation issues, it is foreseeable that any consensus will take the form of a coordinated, uniform interpretation of the various criteria determining the tax treatment of e-commerce, rather than a legislative change. A good example of this is the amendments made to the commentaries on the OECD Model Convention.

# 7

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3. Tax implications of e-commerce in Spain .....	234

## 1. Introduction

E-commerce-related activities are regulated by diverse rules contained in Spanish legislation. Moreover, a fundamental point to bear in mind when undertaking any initiative in the area of electronic transactions is that the applicable legislation varies depending on the potential recipient of the related offer. Consequently, there is greater leeway for the parties to agree if the transaction takes place between companies (business to business, B2B) than if the commercial dealings are between a company and a private consumer as the final recipient (business to consumer, B2C), since, among others, consumer protection legislation will apply in the latter case.

In the tax sphere, e-commerce raises issues that are difficult to address from a purely Spanish perspective. Perhaps for that reason, the Spanish tax authorities have not seen fit to adopt unilateral measures, preferring to wait until a consensus is reached on the measures to be adopted regionally and even worldwide.

## 2. Defining regulatory principles

### 2.1. Civil and Commercial Legislation

#### 2.1.1. Civil and Commercial Codes

Electronic contracts are fully subject to the rules established by the Spanish Civil Code on obligations and contracts and by the Commercial Code.

Electronic contracts are also subject to EC Regulation 593/2008, of June 17, 2008, on the law applicable to contractual obligations (Rome I) which will apply to contractual obligations in the civil and commercial area in situations involving a conflict of laws.

#### 2.1.2. Distance sales

Equally applicable to electronic sales are the rules related to distance sales and other related relevant rules:

1. Regarding commercial operations in which the buyer is an undertaking or a business man, Act 7/1996 ordering the Retail Trade should be taken into consideration, in particular the Chapter regarding Distance Sales, which makes a specific referral to Title III of Book II of the Legislative Royal Decree 1/2007, of 16th of November, which approved the Revised General Consumer and User Protection Law and other supplementary laws.
2. Whenever e-commerce activities are targeted at consumers, it is necessary to comply with consumer protection legislation, regulated in the mentioned Legislative Royal Decree 1/2007, of November 16, 2007.

This Law defines “distance sales” as sales concluded without the simultaneous physical presence of the buyer and the seller, where the seller’s offer and the buyer’s acceptance are conveyed exclusively by a means of distance communication of any nature and within a distance contract system organized by the seller.

This Law establishes that distance sale offers (either to consumers or to undertakings) must contain at least the following:

- The seller’s identity.
- The special features of the product, the price, and the shipping expenses and, if applicable, the cost of using the distance communication technique if it is calculated on a basis other than the basic rate basis.
- The payment method, and form of delivery or types of fulfillment of orders.

- The period for which the offer remains valid and, if applicable, the minimum term of the contract.
- The existence of a right to withdraw or terminate the contract and, if applicable, the circumstances and conditions in which the seller could supply a product of equivalent price and quality.
- The out-of-court dispute resolution procedure, if applicable, in which the seller participates.
- Reminder of the existence of a legal guarantee depending on the type of goods or services.
- Information of the cases in which the costs of returning the goods must be borne by the Seller.

This Royal Decree sets out, among other matters affecting the consumers, the rules governing unfair conditions of contracts concluded with consumers, and the right to withdraw that consumers have in distance sales (fourteen calendar days).

3. It should also be noted that Law 22/2007, of July 11, 2007, on the distance marketing of consumer financial services, shall also be taken into consideration when dealing with consumers in the financial sector. The Law specifically regulates the protection granted by the general law to the users of remote financial services by establishing, among others, the generic requirement to provide the consumer with precise and exhaustive information on the financial contract prior to its signature and by granting the consumer a specific right to withdraw from the distance contract previously concluded.
4. In making the contract, where there is an intention to incorporate predisposed clauses into a plurality of contracts, regard must be had to Standard Contract Terms Law 7/1998.

5. If the activity carried out is related to the sale of consumer goods, the aforementioned Legislative Royal Decree must be taken into consideration regarding the warranties on consumer goods, because it establishes the measures aimed at ensuring a minimum uniform standard of consumer protection. The Royal Decree establishes a free 2-year warranty for consumers on all consumer goods and offers consumers a range of possible remedies when the goods acquired are not in keeping with the terms of the contract, enabling consumers to demand their repair or substitution.

### 2.1.3. Other applicable regulations

1. In accordance with Law 56/2007, enterprises that provide services of special economic significance to the general public and that are of a certain size are required to provide their users with an electronic means of communication which, through the use of qualified electronic signature certificates, enables them to perform at least the following steps: (a) conclude contracts electronically and amend and terminate them; (b) consult their customer data (including a record of billing covering at least the past 3 years) and the concluded contract, with its general conditions; (c) submit complaints, incidents, suggestions and claims (while guaranteeing a record of their submission and direct personal assistance); and (d) exercise the rights of access, rectification, cancellation and objection (known as “ARCO” rights) provided for in the data protection legislation.

This requirement applies to enterprises providing services of special economic significance to the general public provided that they employ more than 100 workers or have an annual turnover (according to the VAT legislation) of more than €6,010,121.04. The enterprises that Law 56/2007 includes in this category are those operating in the following industries: (i) electronic communications services

to consumers; (ii) financial services aimed at consumers (banking, credit or payment, investment services, private insurance, pension plans and insurance brokerage); (iii) supplying water to consumers; (iv) supplying retail gas; (v) supplying electricity to final consumers; (vi) travel agencies; (vii) carriage of travelers by road, railway, by sea, or by air; and (viii) retail trade (although for these last-mentioned ones, the electronic means of communication need only enable what is set out in points 3 and 5 above).

2. Due to their particular importance in electronic commerce, it is worth noting some legal provisions concerning payment services:
  - a. Payment Services Law 16/2009, of November 13, 2009, which mainly affects the payment transactions that are most commonly used in an electronic commerce environment: transfers, direct debiting and cards, establishing as a general rule that the payer and the payee of the transaction must each bear the charges levied by their respective payment services providers. In any event, in the case of transactions with consumers, the specific legislation (Legislative Royal Decree 1/2007) prohibits the trader from charging the consumer fees for the use of payment methods that exceed the cost borne by the trader for the use of such payment methods.
 

Lastly, both the Payment Services Law and the consumer protection legislation envisage for distance contracts that, where the amount of the purchase or of a service has been charged fraudulently or incorrectly using the number of a payment card, the consumer may request the immediate cancellation of the charge.
  - b. The legislation on interchange fees has been introduced by Royal Decree-Law 8/2014, of July 4 and

Law 18/2014, of October 15. This legislation establishes a system of caps on interchange fees in transactions with credit or debit cards in Spain (applying them to POS terminals located in Spain), regardless of the trade channel used (that is, including physical and virtual POS terminals), provided that they require the involvement of payment services providers established in Spain.

The caps applicable on or after September 1, 2014 are as follows:

- i. Debit cards: the interchange fee per transaction may not exceed 0.2% of the value of the transaction, subject to a cap of 7 euro cents. But if the amount does not exceed twenty euros, the interchange fee may not exceed 0.1% of the value of the transaction.
- ii. Credit cards: the interchange fee per transaction may not exceed 0.3% of the value of the transaction. But if the amount does not exceed twenty euros, the interchange fee may not exceed 0.2% of the value of the transaction.

These caps do not affect transactions performed with company cards or withdrawals of cash from automatic teller machines. In addition, three-party payment card systems are excluded from the application of these caps, except for certain cases identified by the legislation.

3. Lastly, worthy of note is Law 29/2009, of December 30, 2009, modifying the legal regime governing unfair competition and advertising in order to enhance consumer and user protection. Special mention should be made of the unfair practice status to be granted to the making of unwanted and reiterated proposals by telephone, fax, e-mail and other means of long-distance communication, unless such proposals are legally justified for the purpose

of complying with a contractual obligation. Moreover, when issuing such communications, traders and professionals must use systems that enable consumers to place on record their opposition to continuing to receive commercial proposals from such traders or professionals. Thus, when making such proposals by telephone, calls must be made from an identifiable number.

## 2.2. Electronic invoicing

Article 88.2 of Value Added Tax Law 37/1992 states that VAT shall be charged on an invoice, on the conditions and with the requirements determined by regulations. A clear indication that the new invoicing regulations approved by Royal Decree 1619/2012, of November 30, 2012, aim to promote electronic invoicing is that they establish the same treatment for electronic invoices as for paper invoices. A new definition is provided for electronic invoice, i.e., an invoice that meets the requirements established in the Royal Decree but which has been issued and received on electronic format.

Therefore, this equal treatment for paper and electronic invoices broadens the possibilities for the supplier to be able to issue invoices electronically without needing to use specific technology to do so.

Moreover, Order EHA/962/2007<sup>1</sup>, issued by the Ministry of Finance and Civil Service establishes and further develops particular obligations regarding, telematic invoicing. That Order clarifies that any Advanced Electronic Signature based on a certain certificate and generated through safe signing procedures will be valid in order to guarantee the authenticity

<sup>1</sup> Order EHA/92/2007, of April 10, 2007, implementing certain provisions concerning telematic billing and electronic invoice storage, contained in Royal Decree 1496/2003, of November 28, 2003, approving the regulations governing billing obligations.

and origin of the bill. The Order also clarifies the legal requirements that electronic invoices issued abroad must meet in order to be validly accepted in Spain.

Since January 15, 2015, there has been an obligation in Spain (by application of Law 25/2013, of December 27, 2013, on the promotion of electronic billing and the creation of a public sector accounting register of invoices) to issue invoices in electronic format that affects enterprises operating in certain industries (according to a list included in the Law) and providing services “of special economic significance” to the general public.

This obligation to issue electronic invoices applies regardless of the contracting channel used (face-to-face or distance, electronic or non-electronic), provided that the customer agrees to receive them or has expressly requested them.

However, travel agencies, carriage services and retail trade businesses are only required to issue electronic invoices where the contracting has taken place by electronic means.

In any event, it is the recipient of the invoices who has the power to give his or her consent to the issuance and sending of invoices in electronic format and to revoke such consent in order to receive them on paper again. In the absence of consent, the trader should issue and send the invoices on paper.

## 2.3. Electronic signature

The Electronic Signature Law 59/2003 of December 19 aims to promote more widespread use of electronic signatures as an instrument that generates trust and security in telematic communications, thereby contributing to the development of e-commerce and of the “e-government”.

“Electronic signature” is defined by the Law as a set of data, in electronic form, attached to or associated with other electronic

data, which can be used as a method for identifying the signatory. A separate class of electronic signature is the “advanced electronic signature,” which is recognized as a signature which permits the signatory to be identified and the integrity of the data signed to be verified, since it is linked exclusively to the signatory and to the data to which it relates and since it has been created by means that the signatory can keep under his sole control.

The Law includes the concept of “recognized electronic signature”, defining it as an advanced electronic signature based on a certificate recognized and generated through a secure-signature-creation device.

Under the referred Law, both individuals and legal entities can act as signatories. In this way, the Law aims to encourage the placing of orders and issuing of invoices by telematic means, while at the same time safeguarding legal certainty for the entity holding the electronic signature and for the third parties who have dealings with it. However, electronic certificates of legal entities will not alter civil and commercial legislation as regards the provisions governing the concept of the hierarchical or voluntary representative.

Furthermore, the Electronic Signature Law regulates the activity of certification service providers issuing certificates that link signature verification data to a certain signatory. The Government also has a service to publicize information on the certification service providers operating in the market.

Furthermore, in order to be able to offer their services, certification service providers must arrange liability insurance of at least €3 million to cover any risk of liability for damage or loss.

Lastly, Electronic Signatures Law 59/2003 contains provisions regulating the electronic national identity card, which is defined as a recognized electronic certificate intended to popularize the use of secure electronic instruments capable of conferring

the same integrity and authenticity as currently surround communications on physical medium.

On the 28th of August 2014 the European Regulation on Electronic Signature was published in the *Official Journal*. This Regulation came into force on the 17th of September of the same year and it is obligatory since the 1st of July 2016. **Directive 1999/93/CE was then automatically repealed.**

## 2.4. Personal data protection

Another aspect that may have e-commerce implications is the possible processing of any personal data in transactions of this nature.

Constitutional Law 15/1999, of 13 December, on Personal Data Protection, regulates the processing of an individual's personal data.

On May 4th 2016 the General Data Protection Regulation of the European Union (GDPR) was published in the *Official Journal*; it will come into force on May 25th 2018. Until then, the local Data Protection Law will continue to be obligatory.

The Organic Law applies to "personal data," meaning any information concerning identified or unidentified individuals. Accordingly, it does not apply to data concerning legal entities; in addition, it does not apply to data concerning individual entrepreneurs or individuals being the contact person of a legal entity where the personal data is used exclusively in a "B2B" framework and where such data is limited to the following: name and surname(s), functions or jobs performed, as well as the postal or e-mail address and professional telephone and fax numbers.

Personal data protection legislation revolves around the following principles:

- The data subject must give prior consent to the processing of his or her personal data, with the exceptions envisaged by the Law.
- The processing of specially protected data (i.e., data referring to ideology, labor union membership, religion, beliefs, ethnicity, health, and sex life) require the data subject's express consent (in writing in the first four cases).
- The data subject must be informed of a number of matters in relation to the envisaged processing of his or her personal data.
- Personal data may only be processed where they are adequate, relevant and not excessive in relation to the purpose for which they have been obtained.
- Personal data may only be communicated to a third party if the data subject has given his or her prior consent for such purpose, unless such communication is permitted by the Law.
- When the communication is addressed to a third party classified by the Law as a data processor, which provides a service entailing access to such data, prior consent by the data subject is not required, but the relationship must be regulated in a contract for services that includes a number of provisions established by the Law.
- Data subjects are afforded the rights of access, rectification, cancellation, and opposition to and of the processing of their personal data.
- The creation of personal data filing systems must be previously notified to the Spanish Data Protection Agency<sup>2</sup>, the agency in charge of enforcing this legislation.

<sup>2</sup> www.agpd.es

- The establishment of minor, serious or very serious infringements as a result of breaches of the obligations imposed by this Law, with penalties of up to €600,000 for each data unlawfully processed.

It should also be noted that communications of data involving the international movement of personal data require the prior authorization of the Director of the Spanish Data Protection Agency, when such data is to be sent to countries without a level of protection comparable to that of Spain, except in a number of specific cases such as, for example, when the data subject gives his or her unambiguous consent to the transfer of his or her data. In this connection, it is assumed that States that are part of the European Economic Area ensure an adequate level of protection. In other cases, a decision in this connection is required from the EU Commission<sup>3</sup>, or a ruling from the Spanish Data Protection Agency, that the data protection offered by the country in question is appropriate.

In relation to penalties, worthy of note is the power of the Spanish Data Protection Agency not to commence, in certain exceptional cases, disciplinary proceedings and, instead, require the party responsible for the offense to evidence that it has taken the corrective measures applicable in each case

Also of special note are the Regulations implementing Personal Data Protection Organic Law 15/1999, approved by Royal Decree 1720/2007, of December 21. These Regulations include many of the standards and recommendations that the Spanish Data

<sup>3</sup> Up to now, according to different Decisions the European Commission considers that the following countries provide an adequate level of protection: Switzerland, Canada, Argentina, Guernsey, Isle of Man, Jersey, Faeroe Islands, Andorra and Israel. As for the transfers of data to the United States, after the annulment of the "Safe Harbor" principles by the European Union Court of Justice on October 6th 2015, the transfers to that country will be allowed to be made in a simplified manner when the importing entity has adhered to the "Privacy Shield" system.

Protection Agency has been issuing in recent years on the practical application of, and ways to execute, the various principles that govern personal data protection. In this respect, the Regulations govern matters such as ways of obtaining consent, in particular where data is processed for marketing purposes, the outsourcing of personal data processing or the way in which data subjects can exercise their rights of access, cancellation, rectification and opposition. The Regulations also include a chapter on the security measures that must be taken by data controllers, regardless of whether the data is processed by automatic or manual means.

Most of the formal obligations in Organic Law 15/1999 will disappear when the GDPR is obligatory, which bases its regulatory structure on the “accountability”, which implies the obligation for the data controller to assess the processing that it carries out and the risks attached thereto, adopting the security measures that are more accurate for each case.

## 2.5. Intellectual and industrial property and domain names

### 2.5.1. Intellectual property

The legal protection of intellectual property is hugely important when engaging in e-commerce in the “information society”, since digital content protected by intellectual property (copyright, trademarks, image rights, etc.) constitutes the real value added of the internet.

The **Copyright Law**<sup>4</sup> establishes in Article 10 that all original literary, artistic or scientific creations expressed by any means or on any medium, whether tangible or intangible, currently

<sup>4</sup> Legislative Royal Decree 1/1996, of April 12, 1996, approving the Revised Intellectual Property Law, regulating, clarifying and harmonizing the legal provisions in force in this area.

known or invented in the future, are copyrightable. Accordingly, all original creations are subject to protection, including graphic designs and source codes of, and information contained on, websites.

Website content will be afforded such protection as pertains to the specific category of the content (graphics, music, literary works, audiovisual, databases, etc.) and, therefore, the person in charge of the website must hold the related rights, either as the original owner (of the collective work under his management or developed by employees) or as a licensee.

In protecting intellectual property, the owner may seek both civil and criminal remedies. The Copyright Law affords the holder of the rights of exploitation the possibility of applying for the cessation of unlawful activities (e.g., a website unlawfully disseminating a protected work could be closed down) and of seeking damages. From a criminal law standpoint, the protection of intellectual property on the Internet is based on Article 270 of the Criminal Code, which imposes prison sentences or fines for crimes against intellectual property.

Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society, was implemented in Spain through Law 23/2006, which amends the Copyright Law in order to harmonize the economic rights of reproduction, distribution and public communication (including new forms of interactive on-demand availability of works), with the rest of EU Member States and to adapt the rules governing these rights to the new operating procedures existing in the Information Society. Recently, Spain has placed itself at the forefront of the fight to strengthen copyright protection on the Internet in Europe. Law 21/2014, of November 4, broadens the powers of the administrative body within the Ministry of Culture (the “Second Section of the Copyright Commission”), strengthening an expedited hybrid procedure of administrative and judicial nature to fast-track action for copyright infringement on the Internet. The purpose of this amendment is to force

Internet Service Providers (ISPs) to take down unlawful content and, in some cases, to shut down websites which openly violate copyright legislation (including websites which actively provide lists of links to unlawful content). However, the amendment is not focused on individuals who share unlawful content through “peer to peer” networks.

Lastly, we must underline the elimination of the private copying levy, applied in Spain until January 1, which required collaboration from manufacturers, distributors and retailers of products “suitable for reproducing copyrighted works”. The former system was replaced in 2012 with a new form of compensation which shall be satisfied directly by the State to the copyright owners. Law 21/2014 consolidates the State-funded system.

### 2.5.2. Industrial property

When engaging in e-commerce, regard should also be had to industrial property matters. Article 4.c of Patents and Utility Models Law 11/1986<sup>5</sup> provides that plans, rules, and methods for conducting a business, as well as software, cannot be patented.

### 2.5.3. Domain names

Another essential issue to take into account is the registration and use of domain names. In this respect, Order ITC/1542/2005 approved the National Plan for Internet Domain Names under the country code for Spain (“.es”). The function of assigning domain names under the “.es” code is performed by the public for-profit entity Red.es.

<sup>5</sup> On April 1 2017 Law 24/2015 will enter into force, repealing Law 11/1986, except in those cases mentioned in its transitional provisions.

Order ITC/1542/2005, following international trends, simplified the system for assigning “.es” domain names, which can be requested directly from the granting authority or through an agent.

Thus, second-level domain names under the code “.es” are assigned on a “first come, first served” basis. This assignment can be requested by individuals or legal entities and entities without legal personality that have interests in or ties with Spain. However, those which coincide with a first-level domain name or with generally known names of Internet terms will not be assigned.

It is also established that domain names under the codes “.com.es,” “.nom.es,” “.org.es,” “.gob.es” and “.edu.es” may be assigned in the third level. The persons or entities that can apply for the domain names will vary according to the codes. Thus, for example, the Spanish Public Authorities and public law entities can request domain names under the “.gov.es” code.

Furthermore, the National Plan establishes that the right to use a domain name under the currently in force “.es” code is transferable provided that the acquirer meets the requirements necessary to own the domain name and that the transfer is notified to the assigning authority.

Also, one of the main features of Order ITC/1542/2005 is the establishment of an extrajudicial body of mediation and arbitration for the resolution of disputes concerning the assignment of “.es” domain names.

## 2.6. Law 34/2002 on E-Commerce and Information Society Services

Law 34/2002 on E-Commerce and Information Society Services (ECISSA) defines as “information society services” any service provided for a valuable consideration, long-distance, through electronic channels and upon individual request by the recipient,

also including those not paid for by the recipient, to the extent that they constitute an economic activity for the provider. Specifically, the following are deemed to be information society services:

- Contracting for goods and services through electronic means;
- Organization and management of auctions using electronic means or of virtual shopping centers or markets;
- Management of purchases on the network by groups of persons;
- Sending of commercial communications;
- Supply of information through telematic channels; and
- Video upon demand, as a service that the user may select through the network and, in general, the distribution of contents upon individual request.

The ECISSA applies to information society service providers established in Spain. In this respect, the provider is considered to be established in Spain when its place of residence or registered office is located in Spanish territory, provided that it coincides with the place where its administrative, management and business administration are actually centralized. Otherwise, the place where such management or direction is performed will be considered.

Likewise, the ECISSA will apply to services rendered by providers who are resident or have a registered office in any other State when the services are offered through a permanent establishment located in Spain. Therefore, the mere use of technological means located in Spain to provide or access the service will not of itself determine that the provider has an establishment in Spain.

The above notwithstanding, the requirements of the ECISSA will apply to service providers established in another State of the European Union or the European Economic Area when the recipient of the services is located in Spain and the services affect:

- intellectual or industrial property rights;
- advertising issued by collective investment institutions;
- direct insurance activities;
- obligations arising from contracts with consumers; or
- the lawfulness of unsolicited commercial communications by e-mail.

The ECISSA establishes the basic legal regime for information society service providers and e-commerce activities, including:

- The principle of freedom to provide services not subject to prior authorization applies to information society services, except in certain cases. In the case of service providers established in States that do not belong to the European Economic Area, this principle will apply in accordance with the applicable international agreements.
- The following obligations are imposed on information society service providers:
  - To put in place the means to permit the recipients of the services and the responsible bodies to access easily, directly and free of charge, the information on the provider (corporate name, registered office, registration particulars, tax identification number, etc.), on the price of the product (stating if it includes applicable taxes and shipping costs) and on the codes of conduct to which it has adhered.



- For providers of intermediation services, to cooperate with the responsible authorities in interrupting the provision of information society services or in withdrawing contents.

Please note that depending on the specific services that these intermediation service providers carry out (access to the internet, e-mail services), they are obliged to furnish certain information such as, for example, the security measures in place, the filters for certain persons to access the site or the responsibility of the users.

- A specific system of liabilities is established for information society service providers, without prejudice to the provisions of civil, criminal and administrative legislation.
- A specific system is established for commercial communications through electronic channels, without prejudice to the legislation in force on commercial, publicity and personal data protection matters. In this regard, commercial communications through electronic channels must be clearly identifiable, stating the individual or corporation for whom they are made, and spelling out the conditions for access and participation, in the case of discounts, prizes, gifts, competitions or promotional games.

Additionally, advertising or promotional communications sent by e-mail or similar form of communication that have not been previously requested or expressly authorized by the recipients are prohibited. Express consent will not be necessary when there is a pre-existing contractual relationship, provided that the supplier had lawfully obtained the recipient's contact data and that the commercial communications refer to goods or services of the provider's own company which are similar to those for which the recipient initially made a contract. In any case, the provider must offer the recipient the possibility to object to the processing of his data for promotional purposes, through a procedure that is

simple and free of charge, both at the time the data is collected and in each of the commercial communications sent to him. Where the communications have been sent by e-mail, that medium shall necessarily include a valid e-mail address where the recipient can exercise this right, it being prohibited to send communications that do not include such address.

- Service providers may use devices for storage and recovery of data on computer terminals of the recipients (commonly known as "cookies"), on the condition that the recipients have given their consent after having received clear and complete information on their use.

Where technically possible and efficient, the recipient may give his consent to the processing of his data through the use of the appropriate parameters of the browser or of other applications, provided that the recipient must configure it during installation or updating through express action for that purpose.

The foregoing will not prevent the possible technical storage or access for the sole purpose of transmitting a communication through an electronic communications network or, to the extent that it is strictly necessary, providing an information society service expressly requested by the recipient.

The Spanish Data Protection Agency is the body with authority to impose monetary penalties on the information society providers for the use of cookies without the proper informed consent from users of an information society service. The fines can reach the amount of €30,000.

- Contracts through electronic channels are regulated, recognizing the effectiveness of the agreements made through electronic channels when consent has been granted and other requirements necessary for their validity are met. Additionally,

the following provisions are established for contracts made through electronic channels:

- The requirement that a document should be placed on record in writing is considered to be met when it is contained on electronic medium.
- The admission of documents on electronic medium as documentary evidence in lawsuits.
- Determination of the legislation applicable to the contract made through electronic channels will be governed by the provisions of international private law.
- Establishment of a series of obligations to be met prior to commencement of the contracting procedures, relating to the information that must be furnished on the formalities for the making of the contract, the validity of offers or proposals of contracts and the availability, if any, of general contracting conditions.
- Obligation on the offeror to confirm receipt of the acceptance within 24 hours after its receipt, by an acknowledgement sent by e-mail or equivalent means to that used in the contracting procedure which enables the recipient to give such confirmation.
- Assumption that agreements made through electronic channels in which the consumer participates have been made in the place where the consumer has his customary place of residence. When these contracts are made between entrepreneurs or professionals, they will be assumed to have been made, in the absence of a provision on the matter, in the place where the service provider is established.

When dealing with agreements entered into with customers, the Revised General Consumer and User Protection Law should be taken into account, in particular in connection with distance sales.

- Recognition of a ground to claim cessation against conduct that contravenes the ECISSA which is detrimental to collective or general consumers' interests, and promotion of out-of-court settlement of disputes.
- Establishment of minor, serious and gross infringements due to failure to comply with the obligations imposed by the ECISSA, with penalties of up to €600,000.

### 3. Tax implications of e-commerce in Spain

#### 3.1. Problems, general principles and initiatives taken in relation to taxation

Except for Spain's commitments to the European Union ("EU") on value added tax ("VAT"), at present there is no tax regime in Spain that specifically regulates the trading of goods and services on the Internet. Therefore, the same taxes and the same rules as those for other forms of commerce apply to e-commerce. This approach is in tune with the principles enunciated by the Spanish Tax Agency in the Report of the Commission analyzing the impact of e-commerce on the Spanish tax system, prepared by the Office of the Secretary of State for Finance.

Below is a list of the basic pieces of VAT legislation emanating from the EU:

- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. Council Directive 2008/8/EC of 12 February 2008 has amended Directive 2006/112/EC as regards the place of supply of services, introducing, in particular, rules applicable to telecommunications,

broadcasting and electronically supplied services, with effect from January 1, 2015.

- Council Implementing Regulation (EU) No. 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax. This Regulation has been amended by Council Implementing Regulation (EU) No. 1042/2013 of 7 October 2013 as regards the place of supply of services.
- Council Regulation (EU) No. 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, which recast Council Regulation (EC) No. 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No. 218/92 on administrative cooperation in the field of indirect taxation (VAT), in respect of additional measures regarding electronic commerce.
- Council Regulation (EU) No. 967/2012 of 9 October 2012 amending Council Implementing Regulation (EU) No. 282/2011, as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons. Among other matters, this Regulation regulates the existence, starting January 1, 2015, of a single point of electronic contact for suppliers of EU electronic, telecommunications, and broadcasting services which will enable enterprises to declare and pay over the VAT in the Member State where they are established rather than doing so in the customer's country.

The provisions of these pieces of legislation and their transposition into Spanish law are examined in Section 3.3. on the indirect taxation of e-commerce.

Member countries of the Organisation for Economic Co-operation and Development (OECD) and the G20 are currently working on the developing and implementing of international standards in tax

matters. This work has its origin in the 15 measures of the Action Plan against of the Base Erosion and the Profit Shifting (BEPS Action Plan) published in 2013. Action 1 of this project (*Addressing the Tax Challenges of the Digital Economy*, OECD, 2015) addresses the current fiscal challenges of the digital economy.

The EU has also been concerned about the growing digital economy of our day. In this sense, it has long promoted the European Strategy eEurope2020 (now eEurope2020) which encourages e-commerce. It has also set up a group of experts on taxation of the digital economy whose first report entitled *Commission Expert Group on Taxation of the Digital Economy*, was issued in May, 2015. This report refers, among others, to the BEPS Action Plan, as well as, in tax matters, to Corporate Income Tax and VAT.

It is also worth noting that last December 2016, the European Commission published four legislative proposals relating to different aspects of the tax treatment of e-commerce transactions in their broadest sense, in the context of the Action Plan contained in the Communication to the European Parliament, to the Council and to the Economic and Social Committee dated 7 April 2016.

The proposals put forward by the Commission have a dual aim: on the one hand, in light of the successful functioning of the special reporting regime system applicable to services provided electronically, telecommunications, radio broadcasting and television services, through the Mini One-Stop Shop, it proposes extending this system to other types of e-commerce transactions (with both goods and services); on the other hand, it seeks to improve and simplify the system in light of the experience of the last two years.

#### 3.2. Direct taxation

Despite there being no differences in the tax treatment of income obtained electronically, the following chart shows the main potential issues of contention in the area of e-commerce:

Table 1

**MAIN CONTENTIOUS ISSUES IN RELATION TO DIRECT TAXATION**

a) The permanent establishment problem
b) Legal characterization of the income generated from the sale of goods and services on the Internet
c) Determination of taxable income and transfer pricing problems
d) Application of the place-of-effective-management rule to determine the tax residence of taxable persons engaging in e-commerce activities

The most relevant considerations and the progress made in analyzing those issues are summarized below:

**3.2.1. The permanent establishment problem**

The issue concerns whether the paradigmatic elements of e-commerce, such as a server, a website, etc., can be deemed a permanent establishment (“PE”) in the country where a company supplying a good or service on the Internet is located.

The Commentary published in July 2014 on article 5 of the OECD Model Tax Convention (concerning the definition of permanent establishment) remains unchanged from that published in 2003, in which the elements defining the new forms of commerce were already foreshadowed. Based on the observations made in the Commentary, the following chart shows the scenarios in which a PE can be deemed to exist and those in which it cannot:

Table 2

Can constitute a PE	Cannot constitute a PE
Server	Software
	Website
	ISP (Internet Service Provider)
	Hosting

The reasons justifying the characterization of a PE in each case are as follows:

- A computer or server can constitute a PE whereas the software used by that computer cannot. This distinction is important because the entity that operates the server hosting the website is normally different from the entity that engages in the online business (hosting agreements).

In order to characterize a server as a PE, regard must be had to the following considerations:

- A server will constitute a fixed place of business only if it is permanent and located in a certain place for a sufficient length of time. What is relevant here is whether it is actually moved from one place to another, rather than whether it can be moved. A server used for e-commerce can be a PE regardless of whether or not there is personnel operating that server, since no personnel is required to perform the operations assigned to the server.
- In determining whether or not the server installed by a given enterprise in a country constitutes a PE, it is particularly important to analyze whether the enterprise engages in business activities specific to its corporate

purpose through that server, or whether, on the contrary, it only engages in activities of a preparatory or auxiliary character (such as advertising, market research, data gathering, providing a communications link between suppliers and customers, or making backup copies).

- A website does not, in itself, constitute tangible property and, therefore, cannot be deemed a “place of business,” defined as facilities, equipment, or machinery capable of constituting a PE. ISPs do not generally constitute a PE of enterprises that engage in e-commerce through websites since ISPs are not generally dependent agents of those nonresident enterprises.

**3.2.2. Legal characterization of income**

The second relevant issue is the characterization of income and, in particular, the possibility that certain goods supplied online may, merely by virtue of the fact that they are protected by intellectual or industrial property laws (such as music, books and, particularly, software), be characterized as generators of royalties and, therefore, be taxable in the country of source.

The Commentaries on the OECD Model Tax Convention characterize as business profits (instead of royalties) almost all payments made for all intangible goods delivered electronically, on the ground that the subject-matter of those transactions are copies of images, sounds or text, rather than the right to exploit them commercially.

Initially, Spain included an observation on the relevant Commentary on the 2003 Model Tax Convention qualifying the treatment of the acquisition of rights to software by arguing that payment for those rights could constitute a royalty. Specifically, Spain considered that payments relating to software were royalties where less than

the full rights to it were transferred, either if the payments were in consideration for the use of a copyright on software for commercial exploitation or if they related to software acquired for business or professional use when, in this latter case, the software was not absolutely standardized but somehow adapted to the purchaser.

However, the relevant Commentary on the OECD Model Tax Convention published in July 2008 takes the novel line that payments made under arrangements between a software copyright holder and a distribution intermediary do not constitute a royalty if the rights acquired by the distributor are limited to those necessary for the commercial intermediary to distribute copies of the software. Thus, if it is considered that distributors are paying only for the acquisition of the software copies and not to exploit any right in the software copyrights (without the right to reproduce the software), payments in these types of arrangements would be characterized as business profits. The Commentary published in July 2010 maintains this position.

In light of this change in the Commentary on royalties in the Model Tax Convention, Spain introduced a qualification in its observations on the Commentary published in July 2008 (which was kept in the Commentary on the OECD Model Tax Convention published in July 2010), indicating that payments in consideration for the right to use a copyright on software for commercial exploitation constitute a royalty, except payments for the right to distribute standardized software copies, not comprising the right to customize or to reproduce them.

Therefore, as acknowledged by the Directorate-General of Taxes in its binding ruling of November 10, 2008 and other subsequent rulings, Spain considers that payments made for the right to distribute standardized software copies are business profits, although it continues to treat as royalties any payments made for the right to distribute software where the software has been adapted. In any case, as was clarified in a binding ruling of November 23, 2010, the transfer, together with the distribution right, of other rights, such as

a license to adapt the software being distributed, will mean that the payments are treated as royalties.

It should also be noted that article 13 of the Revised Nonresident Income Tax Law, approved by Legislative Royal Decree 5/2004, of March 5, 2004, treats as royalties amounts such as those paid for the use of, or the right to use, rights in software.

Also, in some tax treaties signed by Spain, income derived from the licensing of software is expressly characterized as a royalty. In this regard, one should note the Supreme Court judgment of March 25, 2010, which defined the licensing of software as a license of the rights to exploit a literary work, although the Court's definition addressed a situation pre-dating the entry into force of the Spanish legislation specifically listing the items deemed to be royalties. However, in a judgment dated March 22, 2012, the National Appellate Court held that such a definition was no longer possible after the entry into force of the above-mentioned legislation. The Supreme Court confirmed this view in a judgment handed down on March 19, 2013, in which it held that characterization as a literary work is no longer correct after the change in the legislation.

### 3.2.3. Determination of taxable income and transfer pricing problems

The widespread use of intranets among different companies belonging to multinational groups, and the enormous mobility of transactions over computer networks, create highly complex problems when applying the traditional arm's-length principle to pricing transactions within groups. This has been accentuated by the increase in transactions between group companies and the downloading of digital content or of free services.

Accordingly, the tax authorities of OECD countries (including Spain) are advocating the development of bilateral or multilateral systems for advance pricing agreements, applying the OECD transfer pricing

guidelines to e-commerce. Noteworthy in this regard is the creation of an EU Joint Transfer Pricing Forum in which, among other matters, non-legislative measures are being proposed to enable a uniform application of the OECD guidelines across the EU.

In BEPS, Actions 8 to 10 of the BEPS Action Plan have the ultimate aim of ensuring that the results of transfer pricing are in line with the creation of value. The implementation of the measures of the BEPS Action Plan has not yet been done, as it is expected to be developed and implemented in 2016 and 2017.

### 3.2.4. Application of the place-of-effective-management rule

Due to the special characteristics of e-commerce (which include easy detachability from location, relative anonymity, and the mobility of the parties involved), the traditional rules on taxation of worldwide income, based on the principles of residence, registered office or place of effective management, are more difficult to apply to taxpayers engaging in e-commerce.

Indeed, the parameters established in the tax treaties for apportioning the revenue powers among States in the event of a conflict (most of them based on the "place-of-effective-management" principle) are exceeded in the context of e-commerce, since the various managing bodies of the same enterprise can be located in different jurisdictions and be totally mobile during the same year. It can therefore be extremely difficult to determine where the enterprise's place of effective management is situated, and this can lead to double taxation or to no taxation at all.

Although this issue is being studied by international organizations and by the Spanish tax authorities themselves, they have yet to arrive at clear conclusions on how to resolve it. Accordingly, a close watch will have to be kept on progress with the work being done in this area.

### 3.3. Indirect taxation

It is in the area of VAT where the most relevant coordinated legislative measures have been adopted.

The indirect taxation implications for e-commerce mainly concern “online e-commerce,” a term that refers to products supplied on the Internet in digitized format (books, software, photographs, movies, music, and so on) and downloaded by a user in real time onto his or her computer, having clicked on to the supplier’s website and paid for the products in question (in contrast to offline supplies where products sold on the Internet are subsequently delivered by using conventional means of transportation). In offline e-commerce, where goods are still physically supplied, the traditional VAT concepts apply.

The main VAT issues arising in relation to e-commerce (especially in the area of online e-commerce) are basically the following:

- The definition of “taxable event” as a supply of goods or services and the application of the resultant rules for determining the place of supply.
- The determination of the VAT rates applicable to the different types of e-commerce.
- The adaptation of the formal obligations and management of VAT to the realities of e-commerce and, particularly, the invoicing obligations.

- The problems already raised in relation to direct taxation, regarding the determination of the existence of a permanent establishment and of the effective place of business, are also applicable in the area of indirect taxation. Council Implementing Regulation (EU) No. 282/2011 has clarified these concepts, defining them as follows:

- “Place of establishment of a business”: the place where the functions of the business’s central administration are carried out, i.e., the place where essential decisions concerning the general management of the business are made, the place where the registered office is located or the place where management meets. The Regulation clarifies that if, having regard to the above criteria, the place of establishment of a business cannot be determined with certainty, the place where essential management decisions are made will take precedence. It also clarifies that a postal address cannot be taken to be the place of establishment of a business.
- “Permanent establishment”: any establishment, other than the place of establishment of a business, with a degree of permanence and a suitable structure in terms of human and technical resources to enable the services supplied it to be received and used for its own needs.

Each of these issues is briefly examined below.

#### 3.3.1. Definition of “taxable event” as a supply of goods or services for the purpose of determining the place of supply

Directive 2002/38/EC was based on the premise that transactions performed electronically are deemed supplies of services:

- Services will be deemed to be electronically supplied services where their transmission is sent initially and received at destination by electronic data processing equipment. The fact that the supplier of a service and his customer communicate by e-mail does not of itself mean that the service performed is an electronically supplied service.

In relation to the concept of “electronically supplied service”, article 7 of Council Implementing Regulation (EU) No. 282/2011 further defined it by including a list of services that must be regarded as electronically supplied services and others that are not. In this regard, article 7 established that electronically supplied services are those “delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology”.

Implementing Regulation 1042/2013, to which we refer above because it regulates the new rules applicable from January 1, 2015, has revised the list of electronically supplied services as set out in the following table:

Table 3

Electronically supplied services	Services not supplied electronically
a) the supply of digitized products generally, including software and changes to or upgrades of software;	a) radio and television broadcasting services;
b) services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;	b) telecommunications services;
c) services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient;	c) goods, where the order and processing is done electronically;
d) the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by e-mail automatically generated from a computer;	d) CD-ROMs, floppy disks and similar tangible media;
e) Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e., packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports; playgrounds; website hosting; access to online debates etc.);	e) printed matter, such as books, newsletters, newspapers or journals;
f) the services listed in Annex I.	f) CDs and audio cassettes;
	g) video cassettes and DVDs;
	h) games on a CD-ROM;
	i) services of professionals such as lawyers and financial consultants, who advise clients by e-mail;
	j) teaching services, where the course content is delivered by a teacher over the Internet or an electronic network (namely via a remote link);
	k) offline physical repair services of computer equipment;
	l) offline data warehousing services;
	m) advertising services, in particular as in newspapers, on posters and on television;
	n) telephone helpdesk services;
	o) teaching services purely involving correspondence courses, such as postal courses;
	p) conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made;
	q) tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events, booked online;
	r) accommodation, car-hire, restaurant services, passenger transport or similar services booked online.

- The services are deemed to have been supplied in Spanish VAT territory if:
  - The recipient is a trader or professional and his place of business is in Spain;
  - The supplier is established in Spain and the recipient is a non-trader residing in the EU or having an unidentifiable domicile;
  - The services are supplied from outside the EU and the recipient is a non-trader domiciled in Spain;
  - The recipient is a trader or professional, the services are actually consumed in Spain, and the services have not been deemed supplied pursuant to the above rules in the EU, Canary Islands, Ceuta or Melilla.
  - Directive 2006/112/EC provides that starting on January 1, 2015, the electronically supplied services will be taxed in the Member State where the recipient is established, regardless of where the taxable person supplying them is established. Thus, effective that date, where the recipient, including non-traders, is established in Spain, the services will be deemed supplied in Spanish VAT territory.

In this connection, the place of supply of electronically supplied services can be summarized as follows:

Table 4

Supplier	Recipient	Place of Supply
EU / Non-EU	Trader established in Spain	Spain
EU / Non-EU	Non-EU trader and actual consumption in Spain	Spain
Spain	Non-trader resident in the EU	Spain
EU	Non-trader resident in Spain	Spain
Non-EU	Non-trader resident or domiciled in Spain	Spain (Application of special scheme)

- As regards determining who is the taxable person, it has been decided to fully apply the current legislation (article 84 of the VAT Law), which establishes that:
  - In general, the supplier of services is the taxable person, regardless of where he is established.
  - In special circumstances, the recipient of the services (rather than the supplier) is the taxable person and is obliged to charge the VAT under the “reverse charge mechanism” (where the supplier is a trader not established for VAT purposes in Spain and the customer receiving the services is a trader or professional established in Spain), notwithstanding the amendments that apply from January 1, 2015 onwards.
  - Furthermore, in cases where the supplier of the services is not established in the EU and the customer is a final consumer (in business-to-consumer, or “B2C”, transactions), the supplier of the services is the taxable person. However, with a view to simplifying their

obligations, suppliers only have to register (electronically) for VAT in one Member State, although they will have to charge the VAT relating to each of the jurisdictions where their customers are located and pay it over (also by telematic means) to the tax authorities of the Member State in which they are registered. Subsequently, that Member State will reapportion the VAT collected among the other countries.

Non-established traders or professionals that apply this special regime in Spain will be entitled to a refund of input VAT in accordance with the refund procedure for non-established traders, without being subject to the reciprocal treatment requirement generally established in the legislation.

Council Implementing Regulation (EU) No. 282/2011 has modified this special regime by introducing certain special VAT management rules in the case of exclusion from the regime, rectification of VAT returns, impossibility of rounding off the VAT payable, etc.

### 3.3.2. Rules applicable from January 1, 2015

As noted above, Council Directive 2008/8/EC, as fleshed out by Regulation (EU) No 967/2012, introduces specific changes that will apply to electronic services from January 1, 2015 onwards. Specifically, as from that date, services supplied electronically by an EU-established trader to persons who are not traders and are established in a Member State or have their permanent address or usually reside there will be deemed to be supplied in the place where the non-taxable person is established, or where he has his permanent address or usually resides.

In order to implement the above provisions, Implementing Regulation 1042/2013 has introduced the relevant amendments. Accordingly, the Regulation contains provisions:

- To define and update the list of services that are affected by the rules discussed here and to clarify who the supplier is where several traders are involved (e.g. sale of applications).
- To define the place of establishment of the customer (legal person not acting as a trader).
- To clarify —since certain rules already exist in this respect in the Regulation— how to evidence the trader’s status as a recipient.
- To specify the place of actual consumption of the services through presumptions on the customer’s permanent address or residence and the evidence that can be required, if applicable, to rebut them.
- To establish transitional provisions.

The Regulation also addresses the supply of services through a portal or telecommunications network such as a marketplace for applications, in order to clarify who will be deemed the supplier in these cases.

The Regulation contains a number of provisions aimed at defining the place of business, establishment, permanent address or habitual residence according to the type of customer, in order to clarify the application of the place-of-supply rules for supplies of services that depend on these circumstances.

These definitions are kept intact, although a specific rule is added for legal persons who do not act as traders whose place of establishment will be where the functions of their central administration are carried out (place of business) or where they have a permanent establishment that is suitable for receiving or using the services.

As regards determining the location of the recipient, the place-of-supply rules that apply from 2015 are those for supplies to parties acting as final consumers, that is, natural or legal persons not acting as traders.



For these purposes, the supplier may regard the recipient as the final consumer as long as the recipient has not communicated his individual VAT identification number to the supplier but, unlike other supplies of services, the supplier may consider the recipient as the final consumer regardless of whether he has information to the contrary.

In the case of legal persons that have several establishments or of natural persons who have a permanent address other than their habitual residence, the Regulation establishes that:

- For non-trader legal persons the “place of business” prevails on the terms defined in the preceding section.
- For natural persons, priority will be given to their habitual residence (a concept which is already defined in the Regulation in its current wording) unless there is evidence that the service is used at the person’s permanent address.

However, these rules are not sufficient to determine the place of supply of services where the same recipient can access them from several places or by various means. To try to cover the most frequent cases, the Regulation includes specific rules such as the following:

- If the services are supplied requiring the physical presence of the customer (e.g. an internet café, a wi-fi hot spot or a telephone booth), the services will be taxed at that location. This rule also applies to services supplied by hospitality establishments where they are supplied in connection with accommodation services.
- If the service is supplied on board a ship, aircraft or train, at the place of departure of the transport operation.
- A service supplied through a fixed land line, at the permanent address of the customer where it is installed.
- If it is supplied through mobile networks, at the country identified by the mobile country code of the SIM card.

- If the service requires a viewing card or decoder or similar device (without being supplied through a fixed land line), where the decoder or similar device is located, or if that place is not known, at the place to which the viewing card is sent.

In any other case, at the place identified as such by the supplier on the basis of two items of evidence: billing address, IP address, bank details (e.g. place of demand deposit account), the mobile country code stored on the SIM card, location of the land line, other commercially relevant information.

The presumptions on the place of supply of the service described can be rebutted by the supplier if three of the items of evidence listed in the preceding point determine a different place of supply.

The tax authorities may, in turn, rebut any of the presumptions described where there are indications of misuse or abuse by the supplier.

Lastly, note should be taken of what has been called the “mini one-stop shop” system, similar to the one existing for supplies of services by non-EU traders so as to permit the taxable person to file in the Member State of identification a single return which includes transactions addressed to final consumers of different Member States. In Spain, the form for registering with the system is already available.

### 3.3.3. Determination of the VAT rates applicable to the various types of e-commerce

In keeping with the view held by the Spanish tax authorities, the standard VAT rate of 21% will apply in all cases, since it is a kind of service for which the VAT Law makes no special provision.

It should be noted that the Directorate-General of Taxes, in a ruling dated March 26, 2010, as well as in a ruling dated July

1, 2011, has clarified that as the Directive does not provide for the application of reduced rates for electronic services, the reduced VAT rate can only be charged for e-books when they are included on physical media. This confirms the stance taken by the Spanish authorities not to apply reduced rates to electronic services even where they involve goods which, when supplied physically, are subject to a reduced VAT rate.

In this regard, the Commission launched infringement proceedings against Member States, such as France, that established reduced rates for e-books. In fact, the European Commission set up an Expert Group on Taxation of the Digital Economy. Specifically, the Group was tasked with analyzing and finding solutions for the distortion of competition that arose from the difference in rates between electronic and physical books. It is worth noting in this connection that the Court of Justice of the EU, in its judgment of September 11, 2014 (Case C-219/13), concluded that national legislation that subjects books published in paper form to a reduced VAT rate and books published on other physical supports such as CDs, CD-ROMs or USB keys to the standard VAT rate, is not contrary to EU Law, provided that it respects the principle of fiscal neutrality inherent in the common system of value added tax.

### 3.3.4. Formal obligations and management of taxes

Both the EU and the Spanish tax authorities ascribe to the principle that this form of commerce should not be hindered by the imposition of formal obligations that reduce the speed with which transactions should be performed.

Of particular relevance in this regard are the rules already contained in Council Regulation (EEC) No. 1798/2003 on administrative cooperation in the field of value added tax, which, among other matters, provides that individuals and legal entities involved in intra-Community transactions can access the databases kept by the tax authorities of each Member State.



This possibility of identifying reliably the status under which the recipient is acting (trader, professional or final consumer) is absolutely decisive for the proper tax treatment of each transaction.

Royal Decree 1619/2012, approving the Regulations on Invoicing Obligations, establishes the legal regime applicable to electronic invoices, which are defined as invoices that have been issued and received in electronic format without the use of a certain technology being required. This Royal Decree supersedes its predecessor, Royal Decree 1496/2003, and stipulates that paper and electronic invoices are treated similarly. In addition, it permits invoices to be kept in an electronic format provided that the conservation method ensures the legibility of the invoices in the original format in which they were received, and the data and mechanisms that guarantee the authenticity of their origin and the integrity of their contents.

The requirements that must be met by electronic invoices are as follows:

- The recipient must have given his consent.
- The invoice must reflect the reality of the transactions documented in it and guarantee this certainty throughout its period of validity.

- The authenticity, integrity and legibility of the invoice must be ensured.

These aspects must be guaranteed by any legally admissible proof and, in particular, through the “usual management controls over the business or professional activity of the taxable person” which must enable the creation of a reliable audit trail establishing the necessary connection between the invoice and the supply of goods or services documented in it.

The authenticity of the origin and integrity of the contents will, in all cases, be guaranteed by:

- the use of an advanced electronic signature based either on a qualified certificate and created using a secure-signature-creation device, or on a qualified certificate;
- an EDI that envisages the use of procedures that guarantee the authenticity of the origin and integrity of the data;
- other means that have been communicated prior to their use and validated by the authorities.

On the other hand, regarding formal obligations, it must be noted that from 1 July 2017, taxable persons who have to file monthly VAT returns (generally, those whose turnover in the previous year

exceeded €6,010,121.04; any taxable person registered in the monthly refund scheme, and any taxable person applying the VAT grouping regime) must also keep their business records on the website of the Spanish tax agency (AEAT) by electronically providing the information requested therein, together with some additional data of the invoices (but not the invoices themselves).

Under this system (generally known as “SII”), taxable persons will have to submit the information related to invoices issued within 4 calendar days from the date of issuance. If they are invoices issued by the recipient or by a third party, a longer time period of 8 calendar days is allowed. In both cases, subject to a limit ending on the 16th day of the month following that in which VAT on the transaction became chargeable.

Invoices received must also be reported within 4 calendar days, in this case from the date when they are recorded in the accounts. A limit is laid down, also ending on the 16th day of the month following the assessment period in which the transactions are included. A similar rule applies to import transactions.

Saturdays, Sundays and public holidays are excluded from the calculation of the time periods.

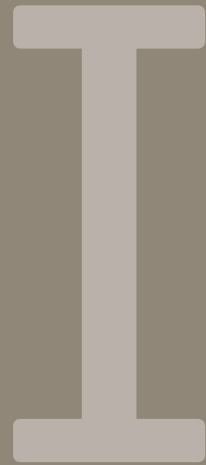
In 2017, according to a transitional period, the period for submitting the information has been extended to 8 calendar days.

# Annex

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Company and commercial law





## Company and commercial law

This Exhibit explains the basic legislative aspects that govern the various vehicles, corporate or otherwise, that can be used by foreign investors in order to operate in Spain. Specifically, the legal requirements that must be observed for both formation (minimum capital and the time at which it must be paid, minimum number

of members, requirement to be met by the bylaws, etc.), and the subsequent pursuit of its business (rules governing the adoption of business resolutions, powers of the managing body, the rules on liability of partners and shareholders, etc.).



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## 1. Applicable legislation

Legislative Royal Decree 1/2010, of July 2, 2010, approving the Revised Capital Companies Law (hereinafter, the “**Capital Companies Law**”) constitutes the basic legal text that regulates the various legal forms of capital companies envisaged in Spanish law, i.e., the corporation (S.A.), the limited liability company (S.L.), the partnership limited by shares, the new limited liability company (S.L.N.E.) and the European company (S.E.), as well as the special features of listed corporations.

The Capital Companies Law is supplemented by: (i) Royal Decree 1784/1996, of July 19, 1996, approving the Commercial Registry Regulations; (ii) Law 3/2009, of April 3, on Structural Modifications to Commercial Companies, which regulates business restructuring processes under current commercial law practices, including changes in corporate form, mergers, spin-offs, global transfers of assets and liabilities and international transfers of registered offices; (iii) the Royal Decree of August 22, 1885, approving the Commercial Code; and (iv) Law 2/2007 on Professional Services Firms, which regulates the formation of commercial undertakings by members of professional associations (see **Section 9 of this Annex**). These texts constitute the core legislation in the area of Spanish company and commercial law.

## 2. Forms of business enterprise

Spanish law envisages various different kinds of business enterprises, all of which can be used by foreign investors.

The most significant are:

- Corporation (Sociedad Anónima, abbreviated as “S.A.”).
- European Public Limited-Liability Company (Sociedad Anónima Europea, abbreviated as “S.E.”). Possibility offered by EU legislation to companies that operate in various Member States to create a single company capable of operating in the EU in accordance with a single set of rules and a unified management system.
- Limited Liability Company (Sociedad de Responsabilidad Limitada, abbreviated as “S.L.” or “S.R.L.”).
- New Limited Liability Company (“Sociedad Limitada Nueva Empresa” abbreviated as “S.L.N.E.”), a variation on the S.L. specially intended for small and medium-sized companies that simplifies the requirements for its formation.
- General Partnership (Sociedad Regular Colectiva, abbreviated as “S.R.C.” or “S.C.”).
- Limited Partnership (Sociedad en Comandita, abbreviated as “S. en Com.” Or “S. Com.”) or Limited Partnership by Shares (Sociedad en Comandita por Acciones, abbreviated as “S. Com. p. A.”).
- Professional Services Firm (“Sociedad Profesional”, abbreviated as “S.P.”)<sup>1</sup>, the purpose of which is the common pursuit of an activity regulated by professional association, and which may be formed in accordance with any of the corporate forms legally established under their specific legislative provisions.

<sup>1</sup> The corporate name of this kind of firm should include, together with the corporate form in question, the expression “Professional” or the abbreviation “P”, (for example, “Sociedad anónima profesional” [Professional corporation] or “S.A.P”).

The corporation (S.A.), which is the archetypal trading company and has traditionally been the most commonly used form, has become less popular and today the limited liability company (S.L.) is the most common form of trading company. The reasons for this include the fact that a limited liability company requires less capital than an S.A. However, the limited partnership and the general partnership forms are hardly used at all.

Some of the salient features of each of the above corporate forms are summarized below. It should be noted that in many instances the Law provides only minimum standards or general rules. The founders of a company have a great deal of flexibility when it comes to tailoring the structure of the company to their specific needs through the inclusion of certain clauses in the bylaws, for which they should seek the appropriate legal advice.

## 3. The treatment of liability at the types of business enterprises

The following table summarizes the liability regime governing shareholders and partners at the various business enterprises:

Table 1

Corporate form	Liability
<b>Corporation (S.A.) / Limited Liability Company (S.L.)</b>	<p>The liability of the shareholders is generally limited to the amount of the capital stock contributed by each of them.</p> <p>However, in exceptional circumstances, liability may be sought from shareholders in order to protect the interests of third parties.</p> <p>In these exceptional cases, the courts have followed the doctrine of “piercing the corporate veil” (“levantamiento del velo”) as a reaction to misconduct by the shareholders while fraudulently sheltering behind the company’s legal personality; in such event, the courts may look behind it and not differentiate between the company’s assets and those of each of the shareholders when establishing liability.</p>
<b>General partnership (S.R.C.)</b>	<p>Liability is not limited. General partners are personally and jointly and severally liable with the whole of their net worth for the debts of the partnership.</p>
<b>Limited partnership (S. Com.)</b>	<p>There is at least one general partner and one or more limited partners. General partners are personally and jointly and severally liable with the whole of their net worth for the debts of the partnership. Limited partners are only liable for the amount of capital they contribute or promise to contribute to the partnership. The capital of limited partnerships may be divided into shares.</p>
<b>Professional services firm (S.P.)</b>	<p>The professional members will be jointly and severally liable with the firm for its professional acts, and they will be subject to such general rules on contractual and noncontractual liability as may apply.</p>

Notwithstanding the above, Organic Law 5/2010, of June 22, 2010, amending Organic Law 10/1995, of November 23, 1995, on the Criminal Code, introduced into Spanish law the criminal liability of legal entities in certain activities and cases (among others, for example, trafficking in human beings, discovery and disclosure of secrets, fraud, criminal insolvency, damage to others’ property, offenses against intellectual and industrial property, the market and consumers, concealment of criminal property and money laundering, money laundering offenses against the tax and social security authorities, foreign citizens’ rights, offenses against zoning and urban planning, offenses against natural resources and the environment, bribery, influence peddling or corruption in international commercial transactions).

#### 4. Main characteristics of corporations and limited liability companies

This section summarizes some of the major substantive aspects that commonly interest foreign investors with respect to the most widely used forms of business entity in Spain, the S.A. and the S.L.

##### 4.1. Main differences between corporations and limited liability companies

The main differences between S.A.s and S.L.s are as follows:

Table 2

	S.A.	S.L.
<b>Minimum capital stock</b>	€60,000.	€3,000 <sup>2</sup> .
<b>Payment upon formation</b>	At least 25% and any share premium.	Payment in full.
<b>Contributions</b>	A report from an independent expert on any non-monetary contributions is required.	No report from an independent expert on non-monetary contributions is required, although the founders and shareholders are jointly and severally liable for the authenticity of any non-monetary contributions made.
<b>Shares</b>	They are marketable securities. Debentures and other securities can be issued.	They are not marketable securities. Debentures and other securities can be issued.
<b>Transfer of shares</b>	Depends on how they are represented (share certificates, book entries, etc.) and on their nature (registered or bearer shares). In principle, they may be freely transferred, unless the bylaws provide otherwise.	Must be recorded in a public document. S.L. shares are generally not freely transferable (unless acquired by other shareholders, spouse, ascendants, descendants or companies within the same group). In fact, unless otherwise provided in the bylaws, the Law establishes a pre-emptive acquisition right in favor of the other shareholders or the company itself in the event of a transfer of the shares to persons other than those referred to above.
<b>Amendments to the bylaws</b>	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
<b>Venue for shareholders' meetings</b>	As indicated in the bylaws (in any event, it must be in Spain). Otherwise, in the municipality where the company has its registered office.	
<b>Attendance and majorities at shareholders' meetings</b>	Different quorums and majorities are established for meetings on first and second call and depending on the content of the resolutions. These can be increased by the bylaws.	Different majorities are established depending on the content of the resolutions. These can be increased by the bylaws.
<b>Right to attend shareholders' meetings</b>	A minimum number of shares may be required to attend the shareholders' meeting.	This right cannot be restricted.
<b>Number of members of the board of directors</b>	Minimum: 3. No maximum limit.	Minimum: 3. A maximum of 12 members.
<b>Term of the office of director</b>	Maximum 6 years. They may be reelected for periods of the same maximum duration.	May be indefinite.
<b>Issue of bonds</b>	Bond issues may be used as a means to raise funds. Bonds convertible into shares can be issued and guaranteed.	Bond issues can be used as a way of raising funds, although such issues cannot, in total, amount to more than twice the company's equity, unless the issue is secured by a mortgage, a pledge of securities, a government guarantee or a joint and several guarantee provided by a credit institution. If the issue is secured by a joint and several guarantee provided by a mutual guarantee society, the limit and other terms of the guarantee will depend on the guarantee capacity of such society at the time of providing it, in accordance with the specific rules applicable to it. Bonds convertible into S.L. shares can be neither issued nor guaranteed.

<sup>2</sup> Except in the case of the entrepreneurial limited liability company, the rules for which are described in Section 4.2 below.

## 4.2. Formation and capital stock

Table 3

	S.A.	S.L.
<b>Minimum capital stock</b>	€60,000, fully subscribed and at least 25% of the par value of the shares paid in <sup>3</sup> .	€3,000, fully subscribed and paid in (except in the case of the entrepreneurial limited liability company for which the law permits lower capital stock).
<b>Debt ratios</b>	There are currently no mandatory minimum debt-equity ratios under Spanish law for any type of business enterprise (however, there is a debt-equity ratio for tax purposes: see Chapter 3, section 2). Moreover, certain legal requirements may be applicable to companies operating in regulated sectors.	
<b>Special rules on mandatory winding up or capital reduction</b>	There must be a certain balance between the capital stock and the net worth of a company, meaning that if losses incurred reduce the net worth to less than one-half of the capital stock figure, the company will be subject to mandatory grounds for dissolution (article 363.1 of the Capital Companies Law), unless the capital stock is sufficiently increased (or reduced) and, as from September 1, 2004, provided that it is not necessary to petition for insolvency pursuant to Insolvency Law 22/2003, of July 9, 2003.	
	Capital must be reduced at a corporation where losses have reduced the net worth of the corporation to less than two-thirds of its capital stock figure and one fiscal year has elapsed without its net worth having been restored (article 327 of the Capital Companies Law).	
<b>Number of shareholders</b>	<ul style="list-style-type: none"> <li>No minimum number of shareholders is required by Spanish law to incorporate a company, although sole shareholder companies are subject to a special system of disclosure.</li> <li>Shareholders can be individuals or companies of any nationality and residence.</li> </ul>	

<sup>3</sup> Nonetheless, bear in mind that:

- When the capital stock is not fully paid in, the bylaws must state the manner and time period for the payment of the remaining portion of subscribed capital. No maximum time period for payment of outstanding capital by contributions in cash is stated in the Law but five years is the maximum term for full payment of contributions in kind.
- The specific regulations governing certain activities (banking, insurance, etc.) may require that the minimum amount under the Capital Companies Law be exceeded.



As an exception to the general rule of minimum capital of €3,000 that applies to limited liability companies, Law 14/2013, of September 27, 2013, on support to entrepreneurs and their internationalization (the “Entrepreneurs Law”) amended the Capital Companies Law

to regulate the concept of the “Entrepreneurial Limited Liability Company”, which can have capital lower than €3,000 subject to the following requirements:

Table 4

No.	Requirements
1	<p><b>Continued submission to the entrepreneurial limited liability company regime:</b></p> <ul style="list-style-type: none"> <li>In the bylaws; and</li> <li>The Commercial Registrar will automatically state this circumstance in the clearance notes for any registrable documents and any certificates that are issued.</li> </ul>
2	<p><b>Legal reserve:</b></p> <p>At least 20% of the income for the year must be allocated to the reserve without any limit on the amount.</p>
3	<p><b>Distribution of dividends:</b></p> <p>Once the legal and bylaw reserves have been covered, dividends may be distributed to the shareholders only if the net worth is not or, as a result of the distribution, does not become, lower than 60% of the minimum legal capital.</p>
4	<p><b>Compensation to shareholders and directors:</b></p> <p>The sum of the compensation paid to the shareholders and directors for discharging such offices may not exceed 20% of the net worth for the year in question, notwithstanding the compensation to which they may be entitled as self-employed workers or for the provision of professional services.</p>
5	<p><b>Liquidation:</b></p> <p>In the case of voluntary or mandatory liquidation, if the net worth of the company is insufficient to pay its obligations, the shareholders and directors of the company will be jointly and severally liable for the payment of the minimum capital figure stipulated in the Capital Companies Law.</p>
6	<p><b>Substantiation of monetary contributions:</b></p> <p>It will not be necessary to substantiate the existence of the monetary contributions from the shareholders when forming entrepreneurial limited liability companies, as the founders and those who acquire the shares subscribed in the formation will be jointly and severally liable to the company and its creditors for the existence of such contributions.</p>

#### 4.2.1. Formalities for formation

The shareholders (or their representatives) must appear before a notary in order to execute the public deed of formation of a corporation or limited liability company. Subsequently, the deed of formation must be registered at the Commercial Registry. Upon registration, the company acquires legal personality and legal capacity<sup>4</sup>.

<sup>4</sup> Moreover, there is an alternative little-used procedure for formation called “successive formation”, consisting of a public offering to subscribe shares prior to execution of the deed of formation. To this end, means such as advertising or financial intermediaries may be used.

#### 4.2.2. Contracts made in the corporation’s name prior to registration

The formation of an S.A. is a two-step process involving, as noted, execution of a public deed before a notary and registration at the Commercial Registry. It is only after registration of the public deed of formation that the corporation acquires legal personality and legal capacity. Persons who enter into contracts for and on behalf of the corporation prior to its registration are jointly and severally liable for their performance, unless such performance was made conditional on the corporation’s registration and, if applicable, on later assumption by the corporation of compliance

with their terms. Contracts made in the corporation’s name and on its behalf may generally be ratified by the corporation prior to its registration at the Commercial Registry or within three months of registration.

However, a corporation in the process of formation and its shareholders (but not its directors or representatives) are liable, up to the limit of the amount they have undertaken to contribute, for the following types of contract prior to registration:

- Contracts that are essential for registration of the company.

- Contracts entered into by the directors within the scope of the powers granted to them in the pre-registration stage.
- Contracts entered into by virtue of a specific mandate granted by all the shareholders.

Upon registration, the corporation becomes bound by the foregoing acts and contracts.

In these cases, and if the corporation ratifies acts performed prior to its registration within three months of the date of registration, the joint and several liability of the shareholders, directors or representatives lapses.

Moreover, it should be noted that directors will be deemed to have authority to fully pursue the corporate purpose and to perform and make all kinds of acts and contracts if the date of commencement of the company's operations coincides with the date of execution of the deed of formation.

#### 4.2.3. Acquisitions following the registration of a corporation at the Commercial Registry

In the case of corporations, in the two years following its formation, the shareholders' meeting must grant its prior approval for acquisitions of assets for consideration involving amounts in excess of 10% of the capital stock, unless such acquisitions are within the ordinary scope of business of the corporation or the purchase is made on a stock exchange or by public auction. Where prior approval of the shareholders' meeting is required, the following are basically necessary:

- Issuance of a report prepared by the directors.
- An independent valuation by the expert appointed by the Commercial Registry.

### 4.3. Company Bylaws

An S.L. and an S.A. are governed by the Capital Companies Law and by their bylaws. The bylaws should therefore be drafted in accordance with the requirements of the above Law and must at least include reference to:

Table 5

Mandatory references	
<b>Corporate name</b>	The corporate name must be included.
<b>Corporate purpose</b>	This should be stated in a concrete and precise manner, since: <ul style="list-style-type: none"> <li>• It serves to establish the general framework for the activities of the company.</li> <li>• The completion of the stated purpose automatically leads to the dissolution of the company, unless the bylaws provide for an indefinite duration.</li> </ul> If the corporate purpose is modified in such a way as to be entirely different, any dissenting shareholders and non-voting shareholders can withdraw from the company and are entitled to be reimbursed for their shares.
<b>Registered office</b>	Must be located in Spain.
<b>Capital stock</b>	Must indicate the capital stock and the shares into which it is divided. In the case of the entrepreneurial limited liability company, the bylaws must state this circumstance (see Section 4.2 above).
<b>Managing body</b>	The management of the company can be entrusted to a sole director, a number of directors acting severally or jointly or a board of directors. The bylaws may establish different means of organizing the management, giving the shareholders' meeting authority to choose between any of them without the need to amend the bylaws. In the case of collective management bodies, the procedures for debating matters and adopting resolutions must be specified, as must the system for director remuneration, if any.

Additionally, the public deed of formation, which includes the bylaws, may contain such agreements and covenants as the founders may deem fit, provided that they do not contravene any law or the fundamental principles that govern companies. Thus, the bylaws may include, *inter alia*, the following aspects:

- Duration of the company. The bylaws will ordinarily stipulate that the duration is indefinite in order to avoid triggering automatic dissolution.
- The date on which activities commence, which cannot be earlier than the date of execution of the public deed of formation (except in cases of reregistration).
- Restrictions, if any, on share transfers and the grounds for removal of any of the shareholders.
- Ancillary obligations, if any. If ancillary obligations are created, the bylaws must state the content of such obligations, whether or not they are remunerated, and the penalties, if any, for a breach thereof.
- The fiscal year-end. Where not expressly indicated, the company's fiscal year will be understood to end on December 31. The fiscal year may not exceed twelve months.
- Special rights reserved to founders or promoters, if any.

## 4.4. Types of shares

### 4.4.1. Types of shares at a corporation

A distinction can be made between the following share categories:

Table 6

<b>Registered vs. bearer shares</b>	<p>The shares of an S.A. can be registered or bearer shares. However, the shares must be registered in the following cases:</p> <ul style="list-style-type: none"> <li>• If they are not fully paid in.</li> <li>• If their transferability is subject to restrictions.</li> <li>• If they are subject to ancillary obligations (see below).</li> <li>• When so required by special regulations (e.g. shares of banks and insurance companies).</li> </ul>
<b>Common vs. preferred stock</b>	<p>Preferred stock may be created as a separate class or classes pursuant to the same procedural formalities applicable to bylaw amendments (i.e. quorum and voting requirements and method of calling the shareholders' meeting), and may include shares entitled to a preferential dividend.</p> <p>In any event, issues of shares will not be valid in the following cases:</p> <ul style="list-style-type: none"> <li>• Shares remunerated in the form of interest.</li> <li>• Shares which directly or indirectly alter the proportionality between their par value and voting rights or the existing shareholders' preferential right to subscribe new shares in capital increases.</li> </ul> <p>Specific regulations on the issuance of preferred stock differ according to whether or not a company is listed on a stock exchange.</p> <p>In the case of <i>listed companies</i>, the following obligations are established:</p> <ul style="list-style-type: none"> <li>— Where the privilege consists of the right to obtain a preferential dividend, when distributable profits exist the company is obliged to distribute such preferential dividend.</li> <li>— The company bylaws must establish the consequences of any failure to pay some or all of the preferential dividend, whether or not it is cumulative as regards unpaid dividends, and the possible rights of holders of privileged shares in connection with any dividends to which the ordinary shares may be entitled.</li> <li>— Higher ranking is provided for shareholders owning privileged shares, since collection of dividends by ordinary shares against the profits of one fiscal year is strictly prohibited until the preferential dividend for the same fiscal year has been paid.</li> </ul> <p>In the case of <i>non-listed companies</i>, a more flexible system is in place, since there are no mandatory statutory rules making specific regulations in the bylaws obligatory. Nevertheless, the company is obliged to declare a dividend whenever distributable profits exist, unless otherwise provided for in its bylaws.</p>

Table 6 (Continuation)

<b>Shares issued with a premium</b>	Shares may be issued with a premium payable to the company above their par value. In such cases the premium must be fully paid in upon subscription of the shares.
<b>Non-voting stock</b>	<p>Non-voting stock may be issued for a total par value that does not exceed one-half of the total paid-in capital. The special rights attached to non-voting stock are as follows:</p> <ul style="list-style-type: none"> <li>• <i>Minimum annual dividend:</i> The minimum annual dividend shall be set by the bylaws as a percentage of the paid-in capital corresponding to each non-voting share. The minimum annual dividend and ordinary dividends are cumulative for a period of five years in the case of non-listed companies. In the case of listed companies this period will be indefinite. Accordingly, non-voting shares also participate in company profits proportionately with the other shares if an ordinary dividend is distributed.</li> <li>• <i>Preferential rights in liquidation:</i> In the event of liquidation of the company, non-voting shareholders rank above common shareholders with respect to their right to obtain reimbursement of the paid-in portion of their shares.</li> <li>• <i>Capital reduction:</i> If capital is reduced to offset losses, the reduction must first be applied against all other classes of stock before it can affect non-voting stock.</li> <li>• <i>Shareholder rights:</i> Non-voting stock has the same basic rights as common stock except for the right to vote at shareholders' meetings (see description of basic shareholder rights below). However, under certain exceptional circumstances, holders of non-voting shares may acquire a transitional right to vote at shareholders' meetings. Two examples follow: <ul style="list-style-type: none"> <li>• Non-voting shareholders acquire the right to vote if the minimum annual dividend is not distributed.</li> <li>• If, due to a capital reduction, all common shares are redeemed, then non-voting stock becomes voting stock until such time as equilibrium is restored between voting and non-voting stock (i.e. new common shares are issued in sufficient number so that the total par value of non-voting stock does not exceed one-half of the total paid-in capital). If equilibrium is not restored within two years, the company is subject to mandatory dissolution.</li> </ul> </li> </ul>
<b>Redeemable shares</b>	<p>Redeemable shares are a type of preferred shares at listed companies, subject at all times to various terms and conditions. Redeemable shares are those whose redemption or full or partial purchase by the issuer or by third parties is fixed in time or released at the discretion of the shareholder, according to the conditions of the issue; or those whose redemption or full or partial purchase by the issuer or by third parties is undertaken in any other manner, excluding that detailed above.</p>
<b>Shares with ancillary obligations</b>	<p>An ancillary obligation is an obligation to perform or refrain from performing certain acts. Ancillary obligations do not form part of the capital stock of the company. The shares of an S.A. can only be paid for with money or assets and not with work or services. The ancillary obligation is a device whereby the work, services or other obligations of individual shareholders can be tied to the corporation.</p>

#### 4.4.2. Share certificates

In general, shares of an S.A. may either be issued physically as certificates or recorded by a book-entry system. The conditions for recording shares under a book-entry system and the regulations governing this system are set out in the Revised Securities Market Law (Legislative Royal Decree 4/2015, of October 23, approving the Revised Securities Market Law), and its various legislative amendments.

#### 4.5. Basic rights of corporation and limited liability company shareholders

The basic rights of shareholders are as follows:

- Right to share in corporate earnings and assets upon liquidation.
- Preferential right to subscribe new shares or convertible bond issues.

- Right to attend shareholders' meetings. At limited liability companies, the bylaws cannot require a minimum number of shares in order to attend meetings. Nonetheless, in the case of corporations, the bylaws may require that a minimum number of shares (regardless of their class or series) be held with respect to all of the shares in order to attend shareholders' meetings. However the number required may not exceed one thousandth of the capital stock under any circumstances.
- Right to attend and vote at shareholders' meetings (except non-voting stock) and to challenge corporate resolutions.
- Right to obtain information about the company's affairs.
- Right of withdrawal, as from the fifth year following the registration of the company at the Commercial Registry, if at least one-third of the profit obtained from pursuit of the corporate purpose in the preceding year is not distributed as a dividend<sup>5</sup>. This right is recognized to shareholders who voted in

favor of the distribution of dividends and they will have a period of one month as from the date of the annual shareholders' meeting in which to exercise this right.

#### 4.6. Governing bodies

The governing bodies of a company (a limited liability company or a corporation) are the shareholders' meeting and the directors (who may or may not be organized as a board of directors, as explained below).

##### 4.6.1. Shareholders' meetings

The shareholders' meeting is the supreme governing body of an S.A. or S.L.

The following table sets out the main aspects and characteristics of shareholders' meetings:

<sup>5</sup> Article 348.bis of Legislative Royal Decree 1/2010, of July 2, 2010, approving the Revised Capital Companies Law, the application of which was suspended until December 31, 2016.

Table 7

Shareholders' meeting	
<b>Types</b>	<p><b>Ordinary:</b> An ordinary shareholders' meeting may be held as and when stipulated by the bylaws, provided it takes place within the first six months of the financial year, in order to review the management's conduct of the business and to approve, if appropriate, the financial statements of the prior year and the proposed distribution of profit. If the ordinary shareholders' meeting is not held within the legal term, it may be called, at the request of any shareholder and subject to a prior meeting with the directors, by the Court Clerk or the Commercial Registrar pertaining to the registered office.</p> <p><b>Special:</b> Any meeting of the shareholders other than an ordinary meeting is a special shareholders' meeting. A special shareholders' meeting may be called:</p> <ul style="list-style-type: none"> <li>• By the company's directors if and when they consider it in the company's interests to do so.</li> <li>• By the company's directors when requested to do so by shareholders representing at least 5% of capital stock. In this case, the directors must call the meeting so requested to be held within two months of the date of the notarial notification in such connection.</li> <li>• By a court if the directors disregard the notification referred to above.</li> </ul>
<b>Venue</b>	Unless established otherwise in the bylaws, both ordinary and special shareholders' meetings must be held in the municipality in which the company has its registered office (Spanish corporations must be domiciled in Spain).
<b>Meeting call</b>	<ul style="list-style-type: none"> <li>• The formal requirements for calling a meeting, which relate to publicity and advance notice, are the same for ordinary and special meetings.</li> <li>• Shareholders' meetings must be called by way of an announcement published on the website of the company where it has been created, registered and published on the terms provided for in the Capital Companies Law. Where the company has not resolved on the creation of its website or the website is not yet duly registered and live, the call must be published in the Official Commercial Registry Gazette and one of the large circulation newspapers of the province in which its registered office is located.</li> <li>• As an alternative to the call methods detailed in the preceding paragraph, the bylaws of corporations and limited liability companies with registered shares may provide for calls to be made by any form of individual written notice ensuring the receipt of the notice by all of the shareholders at the address designated for such purpose or that recorded in the company documentation. In the case of shareholders residing abroad, the bylaws may provide that they will only be individually called if they have designated an address for notifications in Spain.</li> </ul>
<b>Universal shareholders' meetings</b>	Regardless of the type of shareholders' meeting (ordinary or special), the formal call requirements need not be followed if shareholders representing one hundred percent of the capital stock are present and unanimously agree to hold a shareholders' meeting. Such meetings are called universal shareholders' meetings.
<b>Quorum for meetings to be deemed to have been validly convened</b>	<p><b>S.L.:</b> One third of the votes corresponding to the shares into which the capital stock is divided.</p> <p><b>S.A.</b></p> <ul style="list-style-type: none"> <li>• <b>On 1<sup>st</sup> call:</b> <ul style="list-style-type: none"> <li>— <b>General rule:</b> where the attendees represent at least 25% of the voting capital stock (the bylaws may provide for a higher percentage).</li> <li>— <b>Special resolutions:</b> in order to validly resolve on a capital increase or reduction or any other amendment to the company bylaws, the issue of debentures, the elimination or limitation of preemptive acquisition rights over new shares, as well as reregistrations, mergers, spin-offs and the global transfer of assets and liabilities or the relocation of the registered office abroad, the shareholders present in person or by proxy must represent at least 50% of the subscribed voting capital stock.</li> </ul> </li> <li>• <b>On 2<sup>nd</sup> call (due to the absence of sufficient quorum on 1<sup>st</sup> call):</b> <ul style="list-style-type: none"> <li>— <b>General rule:</b> the meeting will be deemed to have been validly convened regardless of the percentage of the capital stock present or represented.</li> <li>— <b>Special resolutions:</b> in order to validly resolve on a capital increase or reduction or any other amendment to the company bylaws, the issue of debentures, the elimination or limitation of preemptive acquisition rights over new shares, as well as reregistrations, mergers, spin-offs and the global transfer of assets and liabilities or the relocation of the registered office abroad, the shareholders present in person or by proxy must represent at least 25% of the subscribed voting capital stock.</li> </ul> </li> <li>• The company bylaws may provide for special requirements for meeting calls and quorums that may not be less than those required by the Capital Companies Law (those described above) under any circumstances.</li> </ul>

Table 7 (Continuation)

Shareholders' meeting		
Majorities for the adoption of resolutions	S.L.	<ul style="list-style-type: none"> <li>• <b>General rule:</b> a majority of the votes validly cast where they represent at least one-third of the votes under the shares into which the capital stock is divided (blank votes do not count).</li> <li>• <b>Qualified majorities:</b> <ul style="list-style-type: none"> <li>— A capital increase or reduction and any other amendment to the company bylaws will require the affirmative vote of at least one half of the votes corresponding to the shares into which the capital stock is divided.</li> <li>— Authorization so that directors may pursue, for their own account or the account of others, the same, similar or supplementary types of activities as those under the corporate purpose; the elimination or limitation of preemptive rights under capital increases; reregistrations, mergers, spin-offs, global transfers of assets and liabilities and relocations of the registered office abroad and the removal of shareholders will require the affirmative vote of at least two-thirds of the votes corresponding to the shares into which the capital stock is divided.</li> </ul> </li> <li>• In addition to the proportion of votes established by the Law and the bylaws, the bylaws may require the affirmative vote of a certain number of shareholders.</li> </ul>
	S.A.	<ul style="list-style-type: none"> <li>• <b>General rule:</b> A simple majority (more votes in favor than against) of the votes of the shareholders present in person or by proxy.</li> <li>• <b>Qualified majorities:</b> A capital increase or reduction and any other amendment to the company bylaws, the issue of debentures; the elimination or limitation of the right to acquire new shares; reregistrations, mergers, spin-offs, global transfers of assets and liabilities and relocations of the registered office abroad, and the removal of shareholders: where the capital stock present in person or by proxy exceeds 5%, it will be sufficient for the resolution to be adopted by an absolute majority. However, the affirmative vote of at least two-thirds of the capital stock present in person or by proxy at the shareholders' meeting will be required where, on second call, shareholders are present that represent twenty-five percent or more of the subscribed voting capital stock but less than fifty percent.</li> <li>• The company bylaws may increase the above majorities.</li> </ul>
Proxies	S.L.	<ul style="list-style-type: none"> <li>• Shareholders may only be represented at shareholders' meetings by their spouse, ascendants or descendants, by another shareholder or by a person with general powers conferred in a public document with authority to manage all of the assets owned by the principal in the country.</li> <li>• The bylaws may authorize representation by other persons.</li> <li>• Representative authority must be conferred in writing. Where not recorded in a public document, it must be specially conferred for each shareholders' meeting.</li> <li>• The representative authority will relate to all of the shares held by the represented shareholder.</li> </ul>
	S.A.	<ul style="list-style-type: none"> <li>• All shareholders entitled to attend may be represented at the shareholders' meeting by another person, even where such person is not a shareholder, unless otherwise provided for in the bylaws.</li> <li>• Representative authority must be conferred in writing or by a means of distance communication that meets the requirements established by the Law for the exercise of distance voting rights and on a special basis for each shareholders' meeting.</li> </ul>

#### 4.6.2. Directors

An S.A.'s executive governing body is its director or directors, who need not be Spanish citizens.

The board of directors represents the company in dealings with third parties in all acts within the scope of its corporate purpose. The company is bound to any third parties who have acted in good faith and without serious negligence, even with respect to acts outside the scope of its corporate purpose as registered at the Commercial Registry. Any limitation on the representative powers of the managing body, even if registered at the Commercial Registry, is not binding on third parties.

The management may be entrusted to:

- A sole director;
- Several directors acting on a several or joint basis; or

- A board of directors. Resolutions may be validly adopted in writing and without holding a meeting, provided certain requirements are met.

The bylaws may establish different means of organizing the management, granting the shareholders' meeting authority to choose between any of them without the need to amend the bylaws.

Where there is a board of directors, it must comprise (i) in the case of limited liability companies, a minimum of three and a maximum of twelve members; and (ii) in the case of corporations, a minimum of three members, with no maximum statutory limit whatsoever.

A director is normally not required to be a shareholder unless the bylaws expressly provide otherwise.

Directors are appointed by the shareholders' meeting.

Appointment as a director becomes legally effective when accepted by the appointee and must be registered at the Commercial Registry within a stipulated period of time.

The term of office of directors is expressed in the bylaws. In the case of limited liability companies, the term may be indefinite, while in the case of corporations it may not exceed six years, and directors may be reelected for one or more additional periods of not more than six years. The term of office must be the same for the board members.

The shareholders' meeting can freely dismiss the directors at any time.

The following Table refers to some special features of a board of directors:

Table 8

Board of directors	
<b>Powers</b>	<p>The board may delegate its functions to one or more managing directors or to an executive committee of board members, except for the following powers which may not be delegated in any circumstances:</p> <ol style="list-style-type: none"> <li>a) The power to supervise the effective functioning of any committees which it may have formed and the actions of delegated bodies and of any senior management personnel it has appointed.</li> <li>b) To determine the company's general policies and strategies.</li> <li>c) To authorize or discharge obligations deriving from the duty of loyalty incumbent upon directors.</li> <li>d) Its own organization and functioning.</li> <li>e) To prepare the financial statements and present them to the general meeting.</li> <li>f) To prepare any kind of report which the managing body is required to issued by law, whenever the transaction to which the report refers is one which cannot be delegated;</li> <li>g) To appoint and remove the company's managing directors and establish the terms and conditions of their contracts.</li> <li>h) To appoint and remove senior management personnel who report directly to the board or to any of its members, and establish the basic terms and conditions of their contracts, including compensation.</li> <li>i) To reach decisions with respect to directors' compensation, within the framework of the bylaws and, where appropriate, of the compensation policy approved by the general meeting;</li> <li>j) To call the general meeting and draw up the agenda and resolution proposals.</li> <li>k) To determine the policy with respect to treasury stock shares.</li> <li>l) Any powers delegated to the board of directors by the general meeting, unless the board has been expressly authorized to sub-delegate them.</li> </ol>



Table 8 (Continuation)

Board of directors	
<b>Adoption of resolutions by the board</b>	The quorum for a board meeting is the presence, either in person or by proxy, of one-half plus one of the board members.
<b>Majorities for the adoption for resolutions</b>	<ul style="list-style-type: none"> <li>• Generally, by an absolute majority of the directors attending (in person or by proxy).</li> <li>• Exceptionally, for permanent delegation of board powers, by the affirmative vote of two-thirds of the board's members; such delegation is not legally valid until it has been registered at the Commercial Registry.</li> </ul>
<b>Liability of directors</b>	<p>Directors must comply with the duties of diligent administration, faithful defense of the corporate interests, loyalty and secrecy.</p> <p>Directors are liable to the company, its shareholders and its creditors for damage caused by acts that are illegal, contrary to the bylaws or carried out in breach of the duties specific to the office.</p> <p>In such cases, all directors are jointly and severally liable. A director can only be released from liability if he/she proves that he/she did not participate in the adoption or execution of the resolution and that he/she was unaware of the existence of the harmful act or, if he/she was aware of it, did everything reasonably possible to mitigate it or at least expressly opposed the resolution giving rise to the harm.</p>
<b>Powers of attorney</b>	In addition to the powers vested in the board of directors, general powers of attorney may be conferred upon any person, whether or not a director, in which case they must be documented in a public deed of power of attorney registered at the Commercial Registry.
<b>Meetings</b>	The board must meet at least once a quarter; that is, four times a year.
<b>Contract with managing director or director assigned executive functions</b>	<p>Where a member of the board of directors is appointed as managing director or assigned executive functions by virtue of any other title, a contract must be entered into between the board member concerned and the company, with such contract having been approved beforehand by the board of directors with the affirmative vote of two thirds of its members. The board member in question must refrain from attending the deliberations and participating in the voting. The contract approved must be attached as an exhibit to the minutes of the meeting.</p> <p>The contract must indicate all items for which compensation may be received for the performance of executive functions, including, where appropriate, potential severance for early removal from such functions and amounts payable by the company in the form of insurance premiums or contributions to savings plans. The board member may not receive any other compensation for the performance of executive functions which is not envisaged in his/her contract.</p>
<b>Compensation</b>	<p>As a general rule, the office of director is not compensated, unless the bylaws establish otherwise and stipulate the compensation system to be applied, which must determine the compensation item or items payable. These may consist, among others, of the following: a fixed allocation; per diems; a share in profits; variable compensation based on reference parameters or indicators of a general nature; compensation in shares or linked to share performance; severance for removal, provided that the removal is not due to a breach of directorial duties; or contributions to such saving or welfare plans as may be deemed appropriate.</p> <p>The maximum annual compensation payable to the directors overall must be approved by the general meeting, with such limit remaining in force until its amendment is approved. Unless otherwise determined by the general meeting, the distribution of such compensation among the directors is to be established by agreement among them. The compensation paid is nevertheless required to be reasonable and proportionate taking into consideration the company's importance, its economic situation at any given time, and market standards among comparable companies. It should be geared towards promoting the company's long-term profitability and sustainability, while incorporating such safeguards as may be necessary to avoid excessive risk-taking and poor results.</p>

#### 4.6.3. Requirements for the adoption of resolutions at shareholders' and board meetings

The legal or bylaw requirements for the exercise of certain rights and the adoption of resolutions at both shareholders' and board meetings of S.A.s and S.L.s are as follows:

Table 9

Corporations		Capital Companies Law	Limited Liability Companies	
Article	Minimum stake required	Minority shareholders' rights at an S.A. or S.L.	Minimum stake required	Article
<b>a) Common general aspects:</b>				
Art. 203	1%	Right to request the presence of a notary to record the minutes of the shareholders' meeting.	5%	Art. 203
Art. 168	5%	Right to request the calling of a shareholders' meeting.	5%	Art. 168
Art. 238.2	5%	Right to oppose a waiver of an action for liability against directors.	5%	Art. 238.2
Art. 239	5%	Right to file an action for liability of directors if such claim has not been filed by the company itself.	5%	Art. 239
Art. 251	1%	Right to contest any resolution adopted by the board of directors.	1%	Art. 251
Art. 265.2	5%	Right to request that the Commercial Registry appoint an auditor.	5%	Art. 265.2
Art. 381	5%	Right to request that the Commercial Court appoint a receiver to monitor the liquidation process.	Not Regulated	
Art. 266	5%	Right to request that the Commercial Court revoke the appointment of an auditor.	5%	Art. 266
Art. 197	25%	Right to request the information deemed appropriate for the holding of shareholders' meetings (which cannot be refused by the directors).	25%	Art. 196
Art. 172	5%	Right to request an addition to the notice calling a shareholders' meeting in order to include one or more items on the agenda.	Not Regulated	
<b>b) The quorums of attendance and majorities required to adopt resolutions at shareholders' and board meetings of corporations are as follows:</b>				
Art. 193.1	25%	Quorum on first call for shareholders' meetings. No quorum is required on second call. In any event, a simple majority is required for the adoption of resolutions.		
Art. 194.1	50%	Quorum on first call for meetings in special circumstances, such as issuance of debentures, increase or reduction of capital, re-registration, merger, spin-off or any other amendment of the bylaws.		
Art. 194.2	25%	Quorum on second call for meetings in special circumstances, such as issuance of debentures, increase or reduction of capital, re-registration, merger, spin-off or any other amendment of the bylaws. If shareholders representing less than 50% of the subscribed voting capital are present at such meetings, a 2/3 majority of the capital present or represented is required for the adoption of resolutions.		
Art. 248	≥ 50%	Required majority of votes cast by members present or represented for the adoption of resolutions by the board of directors.		
Art. 249.3	66%	Required majority of votes cast by members of the board of directors present or represented for the permanent delegation of authority to the Executive Committee or in the managing director.		
<b>c) The quorums and voting majorities required for the adoption of resolutions at shareholders' and board meetings of limited liability companies are as follows:</b>				
Art. 198	33%	Quorum for meetings the agenda of which includes resolutions not listed in Article 199.a) or 199.b). In any event, a simple majority of the votes cast is required, provided that it represents at least one-third of the votes under the shares into which the capital is divided.		
Art. 199.a)	≥ 50%	Required majority of votes for resolutions to increase or reduce capital or to amend the bylaws in any way.		
Art. 199.b)	≥ 66%	Required majority of votes for resolutions such as re-registration, merger, spin-off, removal of members, etc.		
Art. 245.1		Majority of votes required in the bylaws.		
Art. 249.3	≥ 66%	Required majority of votes cast by members of the board of directors present or represented for the delegation of authority to the Executive Committee or the managing director.		

## 5. European public limited-liability company (S.E.)

Regulation (EC) No. 2157/2001, of October 8, 2001, approving the bylaws for a European Company (S.E.), regulates the legal framework currently in force within the EU for this new type of European corporate entity. Law 19/2005, of November 14, 2005, which regulates S.E.s domiciled in Spain, adopted the necessary measures to guarantee the effectiveness of the directly applicable rules included in the Regulation, amending the repealed Corporations Law and including a new chapter. Moreover, this Regulation has been supplemented in Spain by Law 31/2006, of October 18, 2006 regulating the involvement of employees of European corporations and cooperatives, transposing Council Directive 2001/86/EC, of October 8, 2001.

- **Concept:** An S.E. offers companies carrying on business in various Member States the possibility of setting up as a single company under EU regulations and operating in the EU under a single legislation and a unified administrative and declaration system. For companies acting in different Member States, an S.E. offers the possibility of reducing administrative costs with a legal framework adapted to EU regulations.
- **Main characteristics:**
  - An S.E. will always be considered a *derivative company* since it can only be founded by other pre-existing companies. In other words, individuals are not allowed to create this type of company.
  - Need for the existence of a *European multinational nature* in the process of association giving rise to the formation of an S.E. In this regard, although there are different procedures for forming an S.E., there are two unavoidable requirements common to all with a view to preserving this European multinational nature:

- That only entities formed pursuant to the legislation of a specific Member State be involved in the formation of an SE, and their registered office and central management must also be located in the EU, and
  - At least two of the entities involved must be subject to the legislation of different Member States.
  - The subscribed capital may not be less than €120,000, although the minimum required capital can be higher in specific cases contemplated under Spanish legislation for companies pursuing certain activities (i.e. lending institutions). The Spanish legislation governing corporations will also apply to share subscription, payment, ownership and transfers.
  - S.E.s can only be formed as follows:
    - Merger: The merged companies must be subject to the legislation of different Member States.
    - Formation of a holding S.E.: Provided that at least two of the companies are governed by the law of a different Member State, or for at least two years have had a subsidiary company governed by the law of another Member State or a branch located in another Member State.
    - Formation of a subsidiary S.E.: Provided that at least two of the companies are governed by the law of a different Member State, or for at least two years have had a subsidiary company governed by the law of another Member State or a branch located in another Member State.
    - Re-registration of an existing S.A.: Provided that for at least two years it has had a subsidiary company governed by the law of another Member State.
  - An S.E. must be registered at the Commercial Registry of its registered office.
  - The governing bodies are:
    - A shareholders' meeting; and
    - A managing body (one-tier system) or a managing body and an oversight body (dual system), per the option adopted in the bylaws.
  - Shareholder's liability is, in principle, limited to the subscribed capital.
  - The name of an S.E. must be preceded or followed by the abbreviation S.E.
  - From a labor standpoint, Law 31/2006 regulates the application of certain rights of information, consultation and participation of the workers in the corporate bodies of an S.E. where such participation already existed within the founding companies at the time of the formation of the S.E. (as is currently the case in Germany, Austria and the Nordic countries). This is to ensure the participation of the workers in the S.E. for the purposes of allowing them to have an influence on any decisions adopted at the company which directly affect them.
- Furthermore, Law 10/2011 attempts to reinforce the influence employees have on a company's intentions, emphasizing the need for employees to exercise their rights of information and consultation before decisions are effectively made.
- In general terms, an S.E. is an effective investment vehicle for companies that already have a business presence in the EU and wish to invest in Spain.

While an S.E. has the disadvantage of being a new legal vehicle which, in certain cases, may allow greater employee participation in the management decisions of the company, it has the advantage that its legal framework is known in all EU countries.

## 6. New limited liability company

The intention of the lawmakers is to encourage the creation of small and medium-sized companies, simplifying the requirements for their formation and the pursuit of their

activity, as can be inferred from the main features that distinguish an S.L.N.E. from a limited liability company, as detailed below:

Table 10

<b>Registration</b>	An S.L.N.E. can be registered, using a single electronic document together with the public deed of formation, within 48 hours of the execution of the deed.
<b>Name</b>	When forming the company, the corporate name must include the name and two surnames of one of the shareholders followed by an alphanumeric code, and the reference "Sociedad Limitada Nueva Empresa" or the abbreviation "S.L.N.E.". This must be modified where the shareholder ceases to hold such status. The corporate name must include the name of one of the shareholders only on formation of the company. Subsequently, under an amendment to the company's bylaws and subject to prior clearance from the Central Commercial Registry, any name may be adopted.
<b>Capital stock</b>	The capital stock may not be less than €3,000 or more than €120,000, and may only be paid in with monetary contributions. If the capital stock exceeds €120,000, the company must be reregistered.
<b>Shareholders</b>	Only individuals can be shareholders of a New Limited Liability Company. On the date of formation, an S.L.N.E. may not have more than 5 shareholders, although this number can be increased later. A shareholder may only be a sole shareholder of one S.L.N.E.
<b>Members of the managing body</b>	Must have shareholder status. This body may never take the form of a board of directors.
<b>Corporate purpose</b>	It will be any or all of the following activities: agriculture, livestock, forestry, fishing, industrial, construction, commercial, tourism, transportation, communications, brokerage, professional services or services in general. In addition, other different individual activities may be included.
<b>Tax and legal obligations</b>	An S.L.N.E. may fulfill its accounting and tax duties by means of a single record.
<b>Deferral of tax payments</b>	Additional Provision Six of the Capital Companies Law indicates that an S.L.N.E. may defer the payment of certain taxes and/or withholdings and prepayments by between one and two years, without having to grant any security albeit paying late-payment interest.

## 7. Professional services firm (S.P.)

Pursuant to Professional Services Firms Law 2/2007, of March 15, 2007 (partially amended by Law 25/2009, of December 22, 2009,

amending various laws to bring them into line with the Law on Free Access to, and Pursuit of, Service Activities), the regulations governing a type of company known as a Professional Services Firm (S.P.) entered into force. The purpose of the above Law is to set in place a regulatory framework governing the common pursuit

by several members of a professional activity under a specific corporate form.

Thus, professional services firms are characterized by three specific general features:

Table 11

<b>Corporate purpose</b>	Their corporate purpose can only be the common pursuit by various members of a professional activity (meaning an activity the pursuit of which requires an official university or professional qualification and registration with a professional association). This feature also implies that all firms that have such purpose must necessarily be formed as professional services firms.
<b>Professional members</b>	The professional members must have a stake in the company's capital ("professional members" meaning individuals or other professional services firms that meet the requirements necessary to engage in the professional activity).
<b>Corporate forms</b>	Professional services firms may be formed in accordance with any of the forms provided for in the law, provided that they meet the specific requirements included in the Professional Services Firms Law.
<b>Specific requirements</b>	<ul style="list-style-type: none"> <li>• Three quarters of the capital and of the voting rights, or three quarters of the firm's assets and of the number of members at non-corporate enterprises, must belong to professional members.</li> <li>• Three quarters of the members of the managing body must be professional members. Where the managing body has a single member or there are managing directors, such duties must necessarily be performed by a professional member. In any event, the resolutions of collective managing bodies will require the affirmative vote of the majority of the professional members, regardless of the number of the members present.</li> <li>• The professional activity will be pursued in accordance with the code of ethics and disciplinary rules specific to the professional activity in question, with the grounds for incompatibility or disqualification of the members affecting the company itself. A professional services firm may also be fined on the terms established in the disciplinary rules that apply under its professional code.</li> <li>• Broadly speaking, to transfer the status of professional member, it is necessary to have the consent of all of the professional members, unless the firm's bylaws permit transfers by an agreement of the majority of the members.</li> <li>• Must be registered at the Commercial Registry and the Registry of Professional Services Firms of the relevant professional association.</li> <li>• The distribution of income or allocation of loss may be based on or modified according to the contribution made by each member to the sound running of the firm.</li> <li>• Professional services firms must arrange for an insurance policy that covers the liability they may incur in the course of the activity or activities that make up their corporate purpose.</li> </ul>

## 8. Sole-shareholder companies

Under the Law, which applies in this respect to both S.A.s and S.L.s, either of these corporate forms can be set up as, or can subsequently become, a sole-shareholder company.

Such companies are subject to a specific regime entailing special reporting and registration requirements. For example, the fact that a company has a single owner has to be registered at the relevant Commercial Registry and acknowledged on all company correspondence and commercial documentation. Likewise, contracts between the company and its sole owner need to be recorded in a special company register (the book of contracts with the sole shareholder).

In general, such requirements may be deemed for the purpose of providing information, although compliance is of the utmost importance since, if six months elapse from the date on which the company acquires sole shareholder status without such circumstance having been registered at the Commercial Registry,

the sole shareholder will bear personal, unlimited and joint and several liability for any company debts assumed during the period of sole-shareholder status.

## 9. Branches

### 9.1. Creation of a branch

In addition to the forms of business enterprise created under Spanish law with separate legal personality, a foreign investor may operate in Spain through a branch.

The opening of a branch requires the execution of a public deed, which must be registered at the Commercial Registry, together with the formalities indicated in Section 5.1 of Chapter 2.

From a foreign investment legislation viewpoint, the branch must have an allocated capital, which is not subject to any minimum amount requirement.

The branch must have a legal representative who is empowered by the head office to administer the affairs of the branch. Apart from this requirement, there are no formal governing or management bodies.

Aside from the obvious differences in terms of internal structure and organization, a branch operates much like a company in its dealings with third parties.

The choice between forming a branch or a legal entity in Spain may be affected by commercial reasons; for example, a company may be deemed to provide a more “solid” presence than a branch.

There are also other differences which are addressed in different chapters of this publication.

### 9.2. Branch vs. subsidiary (whether S.A. or S.L.)

From a legal standpoint, the main differences between a branch and a subsidiary are as follows:

Table 12

	S.A.	S.L.	Branch
<b>Concept</b>	Company of a commercial nature engaging in the pursuit of an economic activity, with a capital stock divided into shares and consisting of contributions by the shareholders, who, as a general rule, will be personally liable for company debts only up to the limit of the contribution made or promised.		Secondary establishment with a permanent representation and certain management independence, through which the activities of the head office are totally or partially pursued, and with no legal personality independent of that of the head office.
<b>Capital stock</b>	€60,000	€3,000 <sup>6</sup>	No capital is required for the establishment of a branch, although for practical reasons it is advisable.
<b>Monetary and non-monetary contributions</b>	Monetary contributions must be made in the national currency, while non-monetary contributions, in the case of corporations, will require a report by an independent expert appointed by the Commercial Registrar.		
<b>Registration</b>	The company must be formed under a public deed to be filed with the Commercial Registry, acquiring legal personality upon registration.		Together with the public deed creating the branch, the documents evidencing the existence of the head office, the current bylaws, its directors and the decision to open the branch, duly legalized, must be registered with the Commercial Registry.

<sup>6</sup> Except in the case of the entrepreneurial limited liability company, for which the rules are described in Section 4.2 above.

Table 12 (Continuation)

	S.A.	S.L.	Branch
<b>Shareholders' meeting calls</b>	See Section 9 above.		A branch does not have a decision-making body in the form of a board or meeting, since its legal personality is that of the parent company.
<b>Directors</b>	The bylaws may establish various types of managing bodies, granting the shareholders' meeting authority to choose between them, without any need to amend the bylaws. The position of director will be not remunerated, unless the bylaws otherwise provide and establish the method of remuneration. See Section 4.3 above.		The managing body of the head office will appoint a branch director to act as an attorney-in-fact of the head office at the branch. The director (as a general rule and subject to the limitations provided for in the powers of attorney) may pursue all the activities entrusted to the branch and registered at the Commercial Registry.
<b>Share transfers</b>	Depends on how they are represented (book entries, detachable certificate books, etc.) and on their nature (registered or bearer).  In principle, they are free transferable, unless the bylaws establish otherwise.	Transfers must be recorded in a public document executed before a Spanish notary. Any bylaw provisions enabling practically unrestricted share transfers are prohibited.	A branch cannot be transferred since it does not have any legal personality.
<b>Financial statements</b>	The directors of the company must, within not more than three months of the fiscal year-end, prepare the financial statements, the management report and the proposal for the distribution of profit, to be approved by the shareholders' meeting within six months of the fiscal year-end.		As permanent establishments in Spain for tax purposes, branches must keep their own accounts with respect to the transactions they perform and their assets. Moreover, branches must deposit their parent company's financial statements at the Commercial Registry or, in certain cases, the statements prepared in relation to the branch's activity.
<b>Dividend distribution</b>	Should the profit be distributed as dividends, such distribution shall be made to the shareholders in proportion to the capital they have contributed. Payment of interim dividends is also possible.		Dividends do not exist, since profits pertain strictly to the parent company.

## 10. Representative office

In addition to commercial entities and branches, foreign investors may operate in Spain via a representative office. Noteworthy key features include:

Table 13

<b>Legal personality</b>	It does not have its own legal personality independent from the parent company.
<b>Formalities for opening</b>	No commercial formalities are required to open a representative office, although for tax, labor and social security reasons it might be necessary to execute a public deed (or document executed before a foreign public notary, duly certified by apostille or any other applicable legalization system), which must indicate the opening of the representative office, the funds allocated to the office, the identity of its tax representative, which must be a legal entity or individual resident in Spain, and its powers. The opening of a representative office need not be registered at the Commercial Registry.
<b>Managing body</b>	There are no formal managing bodies, but rather the representative of the office acts under the powers granted to him/her.
<b>Activities</b>	In principle, the activities of a representative office are limited, essentially comprising coordination, collaboration, etc.

The non-resident company is liable for all debts incurred by the representative office.



# Annex

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## The Spanish financial system

# II



## The Spanish financial system

Spain has a modern diversified financial system which is competitive and fully integrated with the international financial markets.

In Spain, as well as in the European Union, the deregulation of capital movements is complete, which enables the Spanish companies to obtain financing from abroad, as well as it makes investment much easier for foreign companies in Spain.

The Spanish markets are endowed with great transparency, liquidity and efficacy.

Since 2007, the economic and financial slowdown had a great impact on Spanish stock markets, as well as in other economies. Currently, volatility on the stock markets has moderated, associated to the growth in advanced economies. Likewise, the policies undertaken to promote the competitiveness of the Spanish economy have represented big investment opportunities. Even if 2013 was a challenging year, at the end of the year 2014 the stabilization of the economy could be observed, helped by an increasing foreign investment, the increase of exports and the recovery of the equity markets. This tendency has continued and

been reinforced throughout 2014, 2015 and 2016. At the 2016 year end, the recovery of the Spanish economy is on a sound footing and the imbalances present have been reduced. This trend is expected to continue in 2017, driven by positive figures for private consumption, foreign investment and tourism, with the International Monetary Fund forecasting overall growth of 2.3% in the Spanish economy.

As for the money market, this has become increasingly important as a result of the deregulation and greater flexibility of the Spanish financial system as a whole in the past few years, with a substantial volume of trading in money market instruments.

Lastly, more general and stronger protection for financial services customers has been provided. A stronger protection of the financial systems has also been provided through the regulation of obligations and procedures to prevent the use of said systems for money laundering and terrorist financing.

All these and other aspects of interest, such as the tax regime applicable to the main financial products available on the Spanish market are discussed in this chapter.



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## 1. Introduction

From an institutional standpoint, a financial system can be defined as the group of institutions which generate, muster, administer and manage savings and investment in a political and economic system.

Spain has a diversified, modern, and competitive financial system, which is fully integrated within international financial markets.

## 2. Financial institutions

The main operators in the Spanish financial system can be classified as follows:

Table 1

Financial system operators	
Central bank	Bank of Spain
Credit institutions	Spanish and foreign banks
	Official Credit Institute ( <i>Instituto de Crédito Oficial, ICO</i> )
	Savings Banks. Spanish Confederation of Savings Banks ( <i>Confederación Española de Cajas de Ahorro, CECA</i> )
	Credit Cooperatives
Financial auxiliaries	Credit Financial Establishments
	Payment Institutions
	Electronic Money Institutions
	Mutual Guarantee and Counter-guarantee Societies
	Valuation Companies
Collective investment Schemes	Investment Funds <ul style="list-style-type: none"> <li>• Financial</li> <li>• Non-financial</li> </ul>
	Investment Companies <ul style="list-style-type: none"> <li>• Financial</li> <li>• Non-financial</li> </ul>
	Management Companies of Collective Investment Schemes

Table 1 (Continuation)

Financial system operators	
Investment Firms	Broker-Dealers
	Brokers
	Portfolio Management Companies
	Financial Advisory Firms
Closed-ended type Collective Investment Entities	Venture Capital Entities, including SME Venture Capital Entities
	Closed-ended type collective investment entities
	European venture capital funds
	European social entrepreneurship funds
	Management companies of Closed-ended type Collective Investment Entities
Insurance and reinsurance companies and insurance intermediaries	Insurance and Reinsurance Companies
	Insurance Intermediaries
	<ul style="list-style-type: none"> <li>• Insurance Agents</li> <li>• Insurance Brokers</li> <li>• Reinsurance Brokers</li> </ul>
Pension Plans and Funds	Pension Plans
	Pension Funds
	Management Companies of Pension Funds
Securitization vehicles	Securitization Funds <sup>1</sup>
	Securitization Fund Management Companies

<sup>1</sup> Until the promulgation of Law 5/2015 of April 27, 2015 on the Promotion of Business Financing (“Law 5/2015”), which has brought changes to the regime governing securitization funds in Spain, a distinction was drawn between mortgage securitization funds and asset securitization funds. This distinction has been eliminated in the new Law, which now refers to securitization funds as a single concept (without prejudice to those mortgage securitization funds and asset securitization funds created prior to Law 5/2015 and which remain in existence).

The key features of the financial system operators are described below.

## 2.1. Central bank

The Spanish Central bank is the Bank of Spain. It is the national central bank, entrusted with supervising the Spanish banking

system, and its activities are regulated by the Law on the Autonomy of the Bank of Spain.

Following the creation of the European System of Central Banks (ESCB) and the European Central Bank (ECB), the Bank of Spain's functions have been redefined as follows:

Table 2

Functions of the bank of Spain	
<b>Participation in the functions of the European System of Central Banks (ESCB)</b>	Defining and implementing monetary policy in the euro zone with the aim of maintaining price stability in the euro zone.
	Conducting foreign currency exchange transactions and holding and managing the Spanish State's official foreign exchange reserves.
	Promoting the sound working of the euro zone payment system.
	Issuing legal tender banknotes.
<b>Functions established in the Law on the Autonomy of the Bank of Spain</b>	Supervising the solvency and behavior of credit institutions and the financial markets.
	Promoting the sound working and stability of the financial system and of Spain's payment systems.
	Preparing and publishing statistics on its functions.
	Providing treasury services and acting as a financial agent for government debt.
	Advising the Government and preparing the appropriate reports and studies.
	Holding and managing currency and precious metal reserves not transferred to the ECB.
	Placing coins in circulation and performing, on behalf of the State, all other functions entrusted to it in this connection.

### The inclusion of the Bank of Spain in the Single Supervisory Mechanism

Council Regulation (EU) 1024/2013 of October 15, 2013, has created a Single Supervisory Mechanism (SSM), which introduces a new financial supervision system made up of the European Central Bank (ECB) and the Competent National Authorities (CNA) of the participating EU member states, which include the Bank of Spain. The ECB's Regulation (EU) No 468/2014 of 16 April 2014 establishes the framework for cooperation within the SSM between the ECB and CNA and with national designated authorities.

Its main objectives are to ensure the safety and soundness of the European banking system and to enhance financial integration and stability in Europe. In addition, the SSM plays a crucial role in ensuring a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions.

Under additional provision sixteen of Law 10/2014, of June 26, 2014, on regulation, supervision and solvency of credit institutions, the Bank of Spain was included in the SSM in its capacity as a competent national authority, whereby the Bank of Spain will exercise its regulatory and supervisory powers, notwithstanding

the functions entrusted to the ECB in the context of the SSM and in conjunction with this institution.

## 2.2. Credit institutions

The main credit institutions, i.e. banks, savings banks and credit cooperatives, play a particularly important role in the financial industry in Spain, because of the volume of their business and their presence in all segments of the economy. Credit institutions are authorized to engage in what is referred to as "universal banking",

i.e. not to confine themselves to traditional banking activities consisting merely of attracting funds and financing by granting loans and credit facilities, but also to provide para-banking, securities market, private banking and investment banking services.

However, with the aim of removing imbalances in the Spanish financial industry to permit its restructuring, significant changes have been made in the industry, mainly affecting groups of national banks and savings banks. Accordingly, the restructuring process is being carried out through concentrations of savings banks, banks and credit cooperatives, the conversion of savings banks into banks and recapitalization processes at certain institutions. The trend in the Spanish credit institutions sector is therefore towards a reduction in the number of institutions registered with the Bank of Spain.

As of December 31, 2016, there are officially registered at the Bank of Spain the Official Credit Institute 60 banks, 2 savings banks, 63 credit cooperatives, 39 representative offices in Spain of foreign credit institutions, 77 branches of non-Spanish EU credit institutions, 5 branches of non-EU credit institutions, 579 non-Spanish EU credit institutions operating in Spain without an establishment, 4 financial institutions which are subsidiaries of a non-Spanish EU credit institution, operating in Spain without an establishment, and 4 non-EU credit institutions operating in Spain without an establishment<sup>2</sup>.

### 2.2.1. Banks

Banks are corporations (*sociedades anónimas*) legally authorized to perform the functions reserved to credit institutions.

Their key features are summarized below:

Table 3

<b>Basic regulations</b>	<ul style="list-style-type: none"> <li>• Law 10/2014, of June 26, 2014, on regulation, supervision and solvency of credit institutions.</li> <li>• Royal Decree 84/2015 of February 13 2015, implementing Law 10/2014 of June 26, 2014 on the regulation, supervision and solvency of credit institutions.</li> <li>• Regulation (EU) No. 575/2013 of the European Parliament and of the Council, of 26 June 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.</li> </ul>
<b>Corporate purpose</b>	<ul style="list-style-type: none"> <li>• Restricted to the pursuit of typical banking activities and of the reserved activity for credit institutions, consisting of the attracting of repayable funds from the public —whatever the use to which they are to be put— in the form of deposits, loans, temporary assignments of financial assets or similar.</li> </ul>
<b>Minimum capital</b>	<ul style="list-style-type: none"> <li>• A sum of €18 million, which must be fully subscribed and paid in.</li> </ul>
<b>Managing body</b>	<ul style="list-style-type: none"> <li>• The Board of Directors must have no fewer than five members.</li> <li>• The members of the Board of Directors, individuals representing directors who are legal entities, and general managers or persons in similar positions, those in charge of the internal control functions, and those holding other positions which play a key part in the day-to-day pursuit of the activities of the credit institution or its parent Company, must be persons of good repute in business and professional terms, have the knowledge and experience required for the performance of their functions and be committed to the good governance of the entity. The meeting of these requirements is to be assessed in accordance with the provisions of the pertinent legislation.</li> <li>• Registration of the managers, directors and similar executives on the Register of Senior Officers.</li> </ul>
<b>Shares</b>	<ul style="list-style-type: none"> <li>• Shares must be registered.</li> </ul>
<b>Formation of banks</b>	<ul style="list-style-type: none"> <li>• It is up to the Bank of Spain to submit to the European Central Bank an authorization proposal for the formation of a bank.</li> <li>• Must be registered on the Register of credit institutions of the Bank of Spain.</li> </ul>

<sup>2</sup> [http://www.bde.es/f/webbde/SGE/regis/ficheros/es/LIBRO\\_31122016.pdf](http://www.bde.es/f/webbde/SGE/regis/ficheros/es/LIBRO_31122016.pdf)

### 2.2.2. Official Credit Institute (ICO)

It is a State-owned credit institution, attached to the Ministry of Economy, Industry and Competitiveness through the Office of the Secretary of Economy and Business Support.

It acts as the State's finance agency, providing financing pursuant to express instructions from the Government to those affected by serious economic crises or natural disasters. It also manages official export and development financing instruments.

### 2.2.3. Savings banks

Savings banks are credit institutions with the same freedoms as and full operational equality with the other members of the Spanish financial system. They have the legal form of private foundations and a community-welfare purpose and operate in the open market, although they reinvest a considerable portion of their earnings in community outreach projects<sup>3</sup>.

These long-standing institutions with deep roots in Spain have traditionally attracted a substantial portion of private savings, with their lending business characteristically focused on the

private sector (through mortgage loans, etc.). They have also been very active in financing major public works and private-sector projects by subscribing and purchasing fixed-income securities.

Currently, as a result of the savings bank restructuring process, a number of savings banks have emerged which, while retaining their status as credit institutions, have stopped engaging directly in their traditional financial activity, as their financial business has been transferred to banks formed for that purpose and owned by the savings banks via the creation of Institutional Protection Schemes (IPSS).

Of a total of 45 Savings Banks (at the beginning of 2010), 43 —which in terms of volume of total average assets represent 99.9% of the sector— have taken part or are currently taking part in some kind of consolidation process. As a result, the sector has gone from having a total of 45 entities with an average size of €29,440 million (December 2009) to being made up of 11 entities or groups of entities, with an average volume of assets of €89,550 million (March 2015)<sup>4</sup>.

The Spanish savings banks are members of the Spanish Confederation of Savings Banks (CECA), a credit institution formed

in 1928 to act as the national association and financial institution of the Spanish savings banks. The “special foundations”, the central institutions of the IPSS, the instrumental banks through which the savings banks engage in their financial activity and the institutions whose financial business derives from a savings bank all form part of the CECA. The CECA aims to strengthen the position of the savings banks, it acts as a forum for strategic reflection for all savings banks and other member entities, it advises them and it provides them with competitive products and services.

### 2.2.4. Credit cooperatives

Credit cooperatives are credit institutions that combine the corporate form of a cooperative and the activity and status of a fully operational credit institution.

Their uniqueness and importance lies in the fact that they function as a nonprofit organization, since their members combine their funds to make loans to each other, with any excess revenues being returned to the members in the form of dividends.

Their key features are described below:

<sup>3</sup> As a result of the credit institution restructuring process, almost all the savings banks have agreed to separate their financial activities from their community welfare activities, so that today the community welfare activities are carried out by foundations and the financial activities by credit institutions (typically banks) owned by the savings banks.

<sup>4</sup> Source: CECA.



Table 4

<b>Basic regulations</b>	<ul style="list-style-type: none"> <li>State: Law 10/2014, of June 26, 2014, on regulation, supervision and solvency of credit institutions, Law 13/1989 on Credit Cooperatives, Royal Decree 84/1993 approving the Implementing Regulations for Law 13/1989 of May 26, 1989 on Credit Cooperatives, and Royal Decree 84/2015 of February 13, 2015 expanding upon Law 10/2014. Law 27/1999 on cooperatives applicable secondarily.</li> <li>Autonomous communities: Corporate / cooperative regulations.</li> </ul>
<b>Corporate purpose</b>	They may perform all types of lending and deposit-taking operations and provide all the services permitted to banks and savings banks, provided they give <b>priority to the financial needs of their members</b> .
<b>Minimum capital</b>	<p>Each member must have a holding of at least €60.01 in the capital.</p> <p>No legal entity may hold more than 20% of the capital, unless it is a cooperative, in which case the holding cannot exceed 50% of the capital.</p> <p>No individual may hold more than 2.5% of the capital of a credit cooperative.</p>
<b>Governing bodies</b>	<ul style="list-style-type: none"> <li>General Assembly: each member is to have one vote, regardless of the member's shares in the capital stock. However, if the bylaws so provide, the vote of the members may be in proportion to their contribution to the capital, to the activity pursued, or to the number of members of associated cooperatives; in this case, the bylaws must clearly indicate the criteria for such proportional voting.</li> <li>Governing Board comprising at least five members, two of whom may be non-members.</li> <li>General Manager, without governing functions, subordinated to the Governing Board.</li> <li>All members of the Governing Board must be persons of good repute in business and professional terms, have the knowledge and experience required to perform their functions, and be committed to the good governance of the entity.</li> <li>The requirements with respect to good repute, knowledge and experience also apply to general managers or persons holding similar positions, to those in charge of the internal control functions and to those holding other positions which play a key part in the day-to-day pursuit of the entity's activities.</li> <li>Registration of managers, directors or similar executives on the Register of Senior Officers.</li> </ul>
<b>Contributions</b>	<ul style="list-style-type: none"> <li>They are for an indefinite term.</li> <li>Their remuneration is conditional on the existence of net income or sufficient unrestricted reserves to cover the remuneration.</li> <li>Their redemption is subject to compliance with the solvency ratio.</li> </ul>
<b>Formation of credit cooperatives</b>	<ul style="list-style-type: none"> <li>It is up to the Bank of Spain to submit to the European Central Bank an authorization proposal for the formation of a credit cooperative.</li> <li>Must be registered on the Special Register of the Bank of Spain.</li> </ul>

#### Additional considerations regarding credit institutions:

- A) The regime governing significant holdings and changes of control at credit institutions

Any individual or legal entity that, acting alone or in concert with others, intends to acquire, directly or indirectly, a significant holding<sup>5</sup> in a Spanish credit institution or to increase, directly or indirectly, the holding in that institution so that either the percentage of voting rights or capital held is equal to or greater than 20, 30 or 50 percent, or that, by virtue of the acquisition could control the credit institution, must give prior notice to the Bank of Spain in order to secure a statement of non-opposition to the proposed acquisition, indicating the amount of the expected holding and including all the information required by law. Likewise, any individual or legal entity that has taken a decision to dispose, directly or indirectly, of a significant holding in a credit institution, must first notify the Bank of Spain of such circumstance.

It is the task of the Bank of Spain to assess proposed acquisitions of significant holdings and submit a decision proposal to the European Central Bank so that it can decide whether or not to oppose the acquisition.

Furthermore, any individuals or legal entities that, acting alone or in concert with others, have acquired, directly or indirectly, a holding in a credit institution, so that the percentage of voting rights or of capital that they hold is equal to or greater than 5%, must give immediate written notice of such circumstance to the Bank of Spain and the credit institution in question.

<sup>5</sup> "Significant holding" means a holding in a Spanish credit institution that amounts, directly or indirectly, to at least 10 percent of the capital or voting rights of the institution. Where a holding makes it possible to exert a notable influence at the institution, it will also be considered a significant holding even if it does not amount to 10 percent.

Similarly, any individual or legal entity that decides to cease to hold, directly or indirectly, a significant holding in a credit institution, must notify the Bank of Spain of such decision beforehand, indicating the shareholding percentage it intends to hold. It must also notify the Bank of Spain if it intends to reduce its significant shareholding in such a way that the percentage of voting rights or capital held by it falls to below 20, 30 or 50 percent, or results in the loss of control over the credit institution.

B) Cross-border activities of credit institutions

With regard to the cross-border activities of credit institutions, the following may be noted:

- A Spanish credit institution may operate abroad by opening a branch or under the freedom to provide services.
- Credit institutions authorized in another EU Member State may engage in Spain, either by opening a branch

or under the freedom to provide services, in activities that benefit from mutual recognition within the European Community.

- Likewise, credit institutions not authorized in an EU Member State may provide services through a branch or under the freedom to provide services, but they will require prior authorization.

In all cases, the credit institutions must fulfill a number of statutory requirements.

Furthermore, credit institutions may operate in Spain through representative offices. However, representative offices may not perform credit operations, collect deposits, or engage in financial intermediation, nor may they provide any other kind of banking services. They are confined to engaging in merely information-related or commercial activities regarding banking, financial or economic matters. However, they may promote the channeling of third-party funds, through credit institutions operating in Spain, to

their credit institutions in their countries of origin, and serve as a medium to provide services without a permanent establishment (that is, under the freedom to provide services).

## 2.3. Financial auxiliaries

### 2.3.1. Credit financial establishments

Credit financial establishments (*establecimientos financieros de crédito*) are institutions specialized in certain activities (e.g. financial leasing, financing, mortgage loans, etc.) which cannot raise deposits from the general public.

Their key features are summarized below:

Table 5

<b>Basic regulations</b>	<ul style="list-style-type: none"> <li>• Law 5/2015 of April 27, 2015 on the promotion of business financing.</li> <li>• Law 3/1994, of April 14, 1994, adapting Spanish legislation on credit institutions to the Second Council Directive on Banking Coordination and introducing other modifications relating to the financial system, in the area of credit financial establishments.</li> <li>• Royal Decree 692/1996, of April 26, 1996, establishing the legal regime for credit financial establishments.</li> </ul>
<b>Corporate purpose</b>	<p>Their scope of operations is the pursuit of banking and para-banking activities:</p> <ul style="list-style-type: none"> <li>• Financial leasing with certain complementary activities.</li> <li>• Lending and the provision of credit facilities, including consumer credit, mortgage loans, and the financing of commercial transactions.</li> <li>• Factoring with or without recourse.</li> <li>• Issuing guarantees and similar commitments.</li> <li>• The granting of reverse mortgages.</li> </ul>

Table 5 (Continuation)

	<p>They may perform any <b>accessory activities</b> necessary for the better pursuit of their principal activity.</p> <p>Credit financial establishments may carry out, in addition to the aforementioned activities, the provision of payment services and the issuing of electronic money<sup>6</sup>, by obtaining one specific authorization. This being the case, credit financial establishments shall be deemed as hybrid payment institutions or hybrid electronic money institutions and would be subject to the provisions applicable to such institutions.</p> <p>They are <b>prohibited</b> from raising funds from the general public and are therefore not required to form part of a Deposits Guarantee Fund. They can nevertheless take repayable funds through the issue of securities, in accordance with the provisions of Legislative Royal Decree 4/2015, of October 23 2015, approving the revised Securities Market Law (LMV) and its enabling regulations, subject to the requirements and limitations imposed specifically in respect of EFCs. EFCs are able to securitize their assets, in accordance with the provisions of the legislation on securitization funds.</p>
<b>Minimum capital</b>	<ul style="list-style-type: none"> <li>• Minimum capital stock of €5 million. Must be fully subscribed and paid in.</li> </ul>
<b>Managing body</b>	<ul style="list-style-type: none"> <li>• The Board of Directors must have no fewer than three members.</li> <li>• All members of the entity’s Board of Directors, and those of the Board of Directors of its parent company where there is one, must be persons of good repute in business and professional terms, have the knowledge and experience necessary for the performance of their functions, and be committed to the good governance of the entity.</li> <li>• The requirements with respect to good repute and knowledge and experience also apply to general managers or persons holding similar positions, to those in charge of the internal control functions, and to those holding other positions which play a key part in the day-to-day pursuit of the activities of the entity and of its parent company</li> <li>• Registration of managers, directors or similar executives on the Register of Senior Officers.</li> </ul>
<b>Shares</b>	<ul style="list-style-type: none"> <li>• Shares must be registered.</li> <li>• Divided into number and class.</li> <li>• Possible restrictions on their transferability.</li> </ul>
<b>Formation of credit financial establishments</b>	<ul style="list-style-type: none"> <li>• It is up to the Ministry of Economy and Competitiveness to authorize the formation of credit financial establishments.</li> <li>• Must be registered on the Special Register of the Bank of Spain.</li> <li>• Must take the form of a corporation incorporated under the simultaneous foundation procedure for an indefinite term.</li> </ul>

<sup>6</sup> In the terms described in sections 2.3.2 and 2.3.3. of this Annex.

Royal Decree-Law 14/2013, of November 29, 2013, on urgent measures to adapt Spanish law to the EU legislation on supervision and solvency of financial institutions (hereinafter, “Royal Decree-Law 14/2013”) modified the legal regime for Credit Financial Establishments which, from January 1, 2014, and until a new regime is approved for them (envisaged in the Bill on Promoting Business Finance), lose their status as credit institutions.

This regime has been approved by Law 5/2015 of April 27, 2015 on the promotion of business financing, according to which credit financial establishments cannot be classed as credit institutions. This law nevertheless envisages the supplementary application of the legislation on credit institutions in all areas not specifically addressed by the legislation on credit financial establishments. In particular, the rules established for credit institutions which are applicable to credit financial establishments include the following: those on significant holdings, suitability and incompatibility of persons in senior management positions, corporate governance, solvency, transparency, the mortgage market, the regime on insolvency and prevention of money laundering and financing of terrorism.

As of December 31, 2016, 35 Credit Financial Institutions had registered on the Bank of Spain’s Administrative Register.

### 2.3.2. Payment Institutions

Introduced by Payment Services Law 16/2009, payment institutions<sup>7</sup> are those legal entities, other than credit institutions and electronic money institutions, which have been granted authorization to lend and execute payment services, that is, services that permit effective deposits in a payment account, and those enabling cash withdrawals, the execution of payment transactions, and

<sup>7</sup> Payment institutions have their origin in currency-exchange bureaux.

the issuance and acquisition of payment instruments and money remittances. Payment institutions are not authorized to collect deposits from the general public or to issue electronic money. In this regard, it should be noted Ministerial Order EHA 1608/2010, of June 14, 2010, on transparency of conditions and reporting requirements applicable to payment services, and Royal Decree 712/2010, of May 28, 2010, on the legal regime for payment services and payment institutions, which supplement the above-mentioned Law 16/2009.

As of December 31, 2016, there are officially registered at the Bank of Spain 41 payment institutions, 16 branches of non-Spanish EU payment institutions, 579 non-Spanish EU payment institutions operating in Spain without an establishment and 3 networks of agents of EU payment institutions.

### 2.3.3. Electronic Money Institutions

Electronic money institutions (introduced by Law 44/2002 on Measures for the Reform of the Financial System or Financial Law) are credit institutions specialized in issuing electronic money, that is, monetary value represented by a claim on its issuer: a) stored on an electronic device; b) issued on receipt of funds of an amount not less in value than the monetary value issued; and c) accepted as a means of payment by undertakings other than the issuer. As a consequence of the development of the sector, which made it advisable to amend the regulatory framework of the electronic money institutions and of the issuance of electronic money, the Electronic Money Law 21/2011, of July 26, 2011 has been approved and implemented by Royal Decree 778/2012, of May 4, 2012, on the legal regime for electronic money institutions. The aim of this law is threefold: (i) to make regulation of the issuance of electronic money more specific, clarifying the definition of electronic money and the scope of application of the law; (ii) to remove certain requirements that are deemed inappropriate for electronic money institutions; and (iii) to guarantee consistency between the new legal regime

for payment institutions, described above, and electronic money institutions. In this regard, electronic money institutions are also authorized to provide all the payment services typical of payment institutions. As in the case of payment institutions, these entities cannot take deposits or other repayable funds from the public.

As of December 31, 2016, there are 4 electronic money institutions officially registered at the Bank of Spain, 2 branches of non-Spanish EU electronic money institutions and 1 network of agents of EU electronic money institutions.

### 2.3.4. Mutual Guarantee and Counter-Guarantee Societies

Mutual guarantee societies were first introduced in 1978 and since then have operated in the area of medium- and long-term financing of small and medium-sized enterprises, to which they provide guarantees, mainly, through endorsements. The legal regime by which they are regulated is established in Law 1/1994 of March 11, 1994 on the Legal Regime governing Mutual Guarantee Societies and the corresponding enabling regulations.

As of December 31, 2016, there were a total 21 mutual guarantee societies registered at the Bank of Spain.

Their corporate purpose is as follows:

- To provide their members with access to credit and to credit-related services.
- To improve the financial conditions of their members.
- To provide personal guarantees in any lawful form, other than in the form of an insurance surety.
- To provide financial advice and assistance to their members.

- To take holdings in companies and associations whose sole purpose is to engage in activities for small and medium-sized companies. To this end, they must have the required reserves and obligatory provisions.

Members of mutual guarantee societies can be of two types: (i) participating members and (ii) protector members.

Counter-guarantee societies, which are classed as financial institutions for the purposes of Law 1/1994, with the legal form of corporations, and which necessarily have an ownership interest held by the State, coexist with these mutual guarantee societies. Their purpose is to provide sufficient coverage and assurance for the risks assumed by the mutual guarantee societies, also furnishing the cost of the guarantee for the members. The legal regime applicable to them is supplemented by Royal Decree 2345/1996 of November 8, 1996 setting out the rules on the administrative authorization of and solvency requirements applicable to counter-guarantee societies, and Royal Decree 1644/1997 of October 31, 1997 setting out the rules on the administrative authorization of and solvency requirements applicable to counter-guarantee societies.

### 2.3.5. Valuation companies

These companies are authorized to perform appraisals of real estate for certain types of financial institutions, in particular those related to the mortgage market.

Officially approved valuation companies are registered and supervised by the Bank of Spain. Their administrative rules, which aim to enhance the quality and transparency of appraisals, are established in Royal Decree 775/1997 of May 30, 1997 and Law 2/1981 regulating the mortgage market.

As of December 31, 2016, there are 37 valuation companies officially registered at the Bank of Spain.

## 2.4. Collective Investment Schemes

### 2.4.1. Features

Collective investment schemes (*instituciones de inversión colectiva*, or *IICs*) are vehicles designed to raise funds, assets or rights from the general public to manage them and invest them in assets, rights, securities or other instruments, financial or otherwise, provided that the investor's return is established according to the collective results.

The favorable tax treatment enjoyed by collective investment schemes in Spain has led to a considerable increase both in the number of these vehicles and the volume of their investments.

According to data published by INVERCO, (the Spanish Association of Collective Investment Schemes and Pension Funds), financial saving (financial assets) by Spanish households at the end of September 2016 amounted to Euros 1.99 billion, allowing for the almost full recovery of the adjustment seen in the first quarter of 2016. In 2016 overall, net acquisitions of financial assets by households have remained at above 4% of disposable income, based to a great extent on Investment Funds which, as has been the case for four years now, continue to attract the interest of Spanish investor-savers, with net inflows amounting to over Euros 12,000 million as at September 2016<sup>8</sup>.

In these four years, Spanish households have doubled their investments in Investment Funds, which are the financial instrument whose balance has recorded the highest increase over this period. At the end of 2016, the total volume of IICs (Investment Funds and Companies) in Spanish household investment portfolios amounts to Euros 264,000 million, accounting for over 13% of total household financial savings<sup>9</sup>.

<sup>8</sup> <http://www.inverco.es/archivosdb/1609-ahorro-financiero-de-las-familias-espanolas.pdf>

<sup>9</sup> <http://www.inverco.es/archivosdb/ahorro-financiero-de-las-familias-iics-y-fp-2016.pdf>

In addition to the abundant sectorial legislation, the basic rules for IICs are contained in Collective Investment Scheme Law 35/2003, of November 4, and its implementing regulation, approved by Royal Decree 1082/2012, of July 13, 2012. This legislation transposes the latest version of Directive 2009/65/EC<sup>10</sup> of the European Parliament and of the Council of July 13, 2009 on the coordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS).

Spanish collective investment schemes may be of two types:

- Financial: Their primary activity is to invest in or manage transferable securities. These include investment companies and securities funds, money market funds and other institutions whose corporate purpose is to invest in or manage financial assets.
- Non-financial: They deal mainly in real asset assets for operation purposes and include real estate investment companies and funds. Of note in this regard is the creation of Listed Corporations for Investment in the Real Estate Market (*Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario, SOCIMIs*) whose main activity is to acquire and develop urban real estate for lease activities.

As for the legal form that the various schemes may take, the legislation envisages two alternatives:

- Investment Companies: These are collective investment schemes that take the form of a corporation (and therefore

<sup>10</sup> Modified by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

have legal personality) and whose corporate purpose is to raise funds, assets or rights from the general public to manage them and invest them in assets, rights, securities or other instruments, financial or otherwise, provided that the investor's return is established according to the collective results. The management of an Investment Company is entrusted to its board of directors, although the general meeting —or the board of directors by delegation— has the authority to resolve upon the appointment of an SGIIIC as the party responsible for guaranteeing compliance with the provisions of Royal Decree 1082/2012 of July 13, 2012 approving the enabling Regulations for Law 35/2003 of November 4, 2003 on collective investment institutions (the IIC Regulation). If the Investment Company does not appoint a SGIIIC, the company itself shall be subject to the regime for SGIIICs established in Royal Decree 1082/2012. The SGIIIC appointed, or the Investment Company if a SGIIIC has not been appointed, may in turn delegate the management of investments to another financial institution or institutions in the manner and subject to the requirements set out in the IIC Regulation. The number of shareholders may not be less than 100. In the case of multiple compartment SICAVs, the number of shareholders may not be less than 20, and the total number of shareholders of the SICAV may not be less than 100 under any circumstances.

Financial Investment Companies will be formed as open-ended investment companies (*sociedades de inversión de capital variable*, or SICAV) with variable capital, that is, capital that may be increased or reduced within the maximum or minimum capital limits set in their bylaws, by means of the sale or acquisition by the company of its own shares. Shares will be issued and bought back by the company at the request of any interested party according to the corresponding net asset value on the date of the request. The acquisition of own shares by the SICAV, in an amount between the initial capital and the limit per the bylaws, will not be subject to the restrictions established for the derivative acquisition of own shares in the Capital Companies Law. Since they are listed

companies, SICAV shares must be represented by book entries (the unofficial market habitually used for trading the shares of SICAVs is the Alternative Stock Market (*Mercado Alternativo Bursátil*, MAB)). Non-financial Investment Companies will be closed-end companies, i.e. they will have a fixed capital structure.

It is obligatory for SICAVs to have a depositary.

- Investment Funds: These are pools of assets with no legal personality divided into a number of transferable units (with no par value) with identical properties belonging to a group of investors ("unit-holders") who may not be fewer than 100. In the case of multiple compartment investment funds, the number of unit-holders in each of the compartments may not be less than 20 and the total number of unit-holders of the investment fund may not be less than 100 under any circumstances. The subscription or redemption of the units depends on their supply or demand, so their value ("net asset value") is calculated by dividing the value of the assets of the fund by the number of units outstanding. Payment on redemption will be made by the depositary within a maximum of three business days from the date of the net asset value applicable to the company.

A fund is managed by Management Company of Collective Investment Schemes that has the power to dispose of the assets, although it is not the owner of the assets. A Depositary is the company responsible for the liquidity of the securities and, as the case may be, for their safe-keeping. Both companies are remunerated for their services through fees.

Listed investment funds are those whose units are admitted to trading on a stock exchange, for which purpose they must meet a number of requirements.

A distinction may also be drawn between collective investment schemes according to whether they are subject to Spanish or European legislation:

- Spanish Collective Investment Scheme (IIC) legislation:  
Spanish IICs are investment companies with registered office in Spain and investment funds formed in Spain. They are subject to Spanish IIC legislation, which reserves the corresponding activity and name for them.

Foreign IICs are any IICs other than those mentioned in the preceding paragraph. If they wish to be traded in Spain, they must meet certain requirements established in the applicable legislation.

- European Collective Investment Scheme (IIC) legislation:  
Harmonized IICs are IICs authorized in an EU Member State in accordance with the UCITS legislation.

Non-harmonized IICs are IICs domiciled in an EU Member State that do not meet the requirements established in the UCITS legislation and IICs domiciled in non-EU Member States. In addition, Collective Investment Schemes of Free Investment, commonly known in the market as *Hedge Funds*<sup>11</sup>, are in any

<sup>11</sup> Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011, on alternative investment fund managers, lays down the rules applicable to the ongoing operation and transparency of the managers of alternative investment funds which manage and/or market alternative investment funds throughout the EU. Royal Decree 1082/2012, of July 13, 2012, approving the implementing regulations of Law 35/2003, introduced some of the new requirements set forth under Directive 2011/61/EU. In addition, on November 13, 2014, the Official State Gazette published Law 22/2014, of November 12, 2014, regulating venture capital entities, other closed-ended type collective investment entities and the management companies of closed-ended type collective investment entities, and amending Law 35/2003, of November 4, 2003 on collective investment schemes the main purpose of which is to transpose Directive 2011/61/EU, on Alternative Investment Fund Managers into Spanish law.

case considered as non-harmonized IICs. Collective Investment Schemes of Free Investment may invest in financial assets and instruments and in derivatives, regardless of the nature of the underlying assets. Such investments must respect the general principles of liquidity, risk diversification and transparency, but are not subject to the rest of the investment rules established for IICs.

The Spanish National Securities Market Commission (CNMV) is the body in charge of supervising IICs. In this respect, both investment companies and investment funds require prior authorization from the CNMV for their formation. After their formation and registration at the Commercial Registry (the registration requirement is not obligatory for investment funds), the CNMV registers the IIC and its prospectus on its register.

The asset and capital requirements of the main types of IICs include the following:

- Financial investment funds will have minimum assets of €3,000,000. In the case of multiple compartment funds, each compartment must have at least €600,000 in assets and the total minimum capital paid in may not be less than 3,000,000 under any circumstances.
- The minimum capital of Open-End Investment Companies (SICAVs) will be €2,400,000, which must be fully subscribed and paid in. In the case of multiple compartment SICAVs, each compartment must have minimum capital of €480,000 and the total minimum capital paid in may not be less than 2,400,000 under any circumstances.
- The minimum capital stock of real estate investment companies will be €9,000,000. In the case of multiple compartment companies, each compartment must have capital of at least €2,400,000 and the total capital of the company may not be less than 9,000,000 under any circumstances.

A brief comment should also be made regarding the trading<sup>12</sup> of foreign IICs in Spain which, subject to fulfillment of the formalities and requirements established in the legislation, requires that a distinction be drawn between:

- Harmonized IICs, which may trade in Spain unrestricted once the competent authority in the home Member State informs them that it has sent the CNMV a notification with the relevant information.
- Non-harmonized IICs and IICs authorized in a non-EU Member State, which require express authorization from the CNMV and registration on its registers.

#### 2.4.2. Management Companies of Collective Investment Schemes

The key features of Management Companies of Collective Investment Vehicles (SGIICs) are as follows:

- They are corporations which have as their corporate purpose the management of investments, the control and management of risks, administration, representation and the management of subscriptions and redemptions of investment funds and companies. They may also market the participation units or shares of IICs.
- Moreover, SGIICs may be authorized to engage in the following activities:
  - (a) Discretionary and individualized investment portfolio management.
  - (b) Administration, representation, management and marketing of venture capital entities, closed-ended collective

investment entities, European venture capital funds (EVCF) and European social entrepreneurship funds (ESEF).

- (c) Investment advice.
  - (d) Safe-keeping and management of units of investment funds and, as the case may be, of shares of investment companies, EVCFs and ESEFs.
  - (e) Receipt and transfer of customer orders relating to one or more financial instruments.
- It falls on the CNMV to grant prior authorization for the formation of an SGIIC. Once formed, in order to commence its operations, the SGIIC must be registered at the Commercial Registry and on the appropriate CNMV register.
  - SGIICs must, at all times, have equity<sup>13</sup> that may not be less than the larger of the following amounts:
    - (a) Minimum capital stock of €125,000 fully paid in and increased by certain proportions established in the IIC regulations according to certain circumstances.
    - (b) 25% of the overheads charged in the income statement for the prior year. Overheads will comprise personnel expenses, general expenses, levies and taxes, amortization/depreciation charges and other operating charges.

<sup>12</sup> Subject to the requirements laid down in Directive 2011/61/EU.

<sup>13</sup> SGIICs may be exempt from compliance with some of the obligations of the Law, as provided for in the regulations, where they meet the following requirements: they only manage investment firms and the managed assets are less than a) €100 million, including assets acquired by using leverage; or b) €500 million where the investment firms they manage are not leveraged and have no right of reimbursement that may be exercised during a period of five years after the date of initial investment.



- The current legislation introduces the necessary provisions to ensure the correct functioning of the cross-border fund management company passport, enabling Spanish SGIICs to manage funds domiciled in other EU Member States and SGIICs from other Member States to manage Spanish funds.
- In addition, regarding cross-border activities of SGIICs, the following may be noted:
  - SGIICs authorized in Spain may engage in the activity to which the foreign authorization refers, either through a branch or under the freedom to provide services, after fulfilling all formalities and requirements established by law.
  - Foreign SGIICs may engage in their activities in Spain either by opening a branch or under the freedom to provide services, provided that they satisfy the relevant statutory formalities and requirements.
- Any individual or legal entity that, alone or acting in concert with others, intends to, directly or indirectly, acquire a significant holding<sup>14</sup> in a Spanish SGIIC or to, directly or indirectly, increase their holding in that SGIIC so that either the percentage of voting rights or of capital they hold is equal to or greater than 20, 30 or 50 percent, or by virtue of the acquisition they could come to control the SGIIC, they must first notify the CNMV in order to secure a statement of non-opposition to the proposed acquisition, indicating the amount of the expected holding and including all the information required by law. Acquiring

<sup>14</sup> Where “significant holding” means a holding in a SGIIC that amounts, directly or indirectly, to at least 10 percent of the capital or voting rights of the institution. Where a holding makes it possible to exert a notable influence at the institution, it will also be considered a significant holding even if it does not amount to 10 percent.

or increasing significant holdings in breach of the law constitutes a very serious infringement. In addition, any individual or legal entity that, directly or indirectly, intends to dispose of a significant holding in an SGIIC, to reduce their holding so that it falls below the thresholds of 20, 30 or 50 percent, or that, as a result of the proposed disposal, may lose control of the credit institution, must give prior notice to the CNMV.

Likewise, any individual or legal entity that, alone or acting in concert with others, has acquired, directly or indirectly, a holding in a management company, so that the percentage of voting rights or of capital that they hold is equal to or greater than 5 percent, must give immediate written notice to the CNMV and the SGIIC in question, indicating the amount of the resulting holding.

## 2.5. Investment Firms

### 2.5.1. Features

Investment Firms are companies whose main activity is to provide professional investment services to third parties on financial instruments subject to securities market legislation.

Under Spanish law, investment firms provide the following investment and ancillary services:

Table 6

Investment and ancillary services	
Basic regulation	a) Reception and transmission of client orders relating to one or more financial instruments.
	b) Execution of those orders on behalf of clients.
	c) Dealing on own account.
	d) Discretionary and individualized investment portfolio management in accordance with client mandates.

### Investment and ancillary services

- Placement of financial instruments, whether on or not on a firm commitment basis.
- Underwriting of an issue or a placement of financial instruments.
- Provision of investment advice.
- Management of multilateral trading systems.

### Corporate purpose

- Safekeeping and administration of financial instruments for the account of clients.
- Granting credits or loans to investors to allow them to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
- Advising companies on capital structure, industrial strategy and related matters, and providing advice and services relating to mergers and acquisitions.
- Services related to operations for the underwriting of issues or placing of financial instruments.
- Preparation of investment and financial analysis reports or other forms of general recommendations relating to transactions in financial instruments.
- Foreign exchange services where these are related to the provision of investment services.
- Investment services and ancillary services related to the non-financial underlying of certain financial derivatives when these are related to the provision of investment services or to ancillary services.

No person or entity may professionally provide the investment services or ancillary services listed in letters a), b), d) f), and g) above in relation to financial instruments unless they have been granted the mandatory authorization and are registered on the appropriate administrative registers. In addition, only the institutions authorized for that purpose may market investment services or solicit clients professionally, either directly or through regulated agents.



The legal regime for Investment Firms is contained in the Securities Market Law and in Royal Decree 217/2008. These pieces of legislation transpose into Spanish law the EU MiFID legislation<sup>15</sup>.

There are four types of Investment Firms:

- **Broker-dealers (*sociedades de valores*):** These are investment firms that can operate both for their own and for the account of others, and that provide the full range of investment and ancillary services. Their capital stock must be at least €730,000.

As of December 31, 2015, there were 39 broker-dealers registered on the CNMV's Administrative Register.

- **Brokers (*agencias de valores*):** Investment firms that can only operate professionally for the account of others, with or without representation, and that provide the full range of investment services except for those described in letters c) and f) above, and the full range of ancillary services except for those mentioned in letter b).

Their capital stock will depend on the activities they pursue. As a general rule, their share capital cannot be less than €125,000. However, brokers which are not authorized to take deposits of funds or transferable securities from their clients are able to have a share capital of €50,000.

As of December 31, 2016, there were 46 brokers registered on the CNMV's Administrative Register.

<sup>15</sup> It should be noted that in 2014, Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II), which repeals Directive 2004/39/EC of the European Parliament and of the Council, of 21 April 2004, on markets in financial instruments (MiFID I) and a new Implementing Regulation (MiFIR), which replaces the former legislation 648/2012, were approved. However, to date, MiFID II has not yet been transposed into Spanish legislation.

- **Portfolio management companies (*sociedades gestoras de carteras*):** These investment firms can only provide the investment services described in letters d) and g) and the ancillary services described in letters c) and e). They are required to have (i) an initial capital of €50,000; or (ii) a professional indemnity insurance, surety or some other comparable guarantee against liability arising from professional negligence, covering the whole territory of the European Union and providing coverage of at least €1,000,000 applying to each claim and in aggregate €1,500,000 per year for all claims; or (iii) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (i) and (ii) above.

As of December 31, 2016, there were 2 portfolio management companies registered on the CNMV's Administrative Register.

- **Financial advisory firms (*empresas de asesoramiento financiero*):** These are individuals or legal entities that can only provide the investment services listed in letter g) and the ancillary services indicated in letters c) and e). In the case of legal entities, they must have (i) initial capital of €50,000, or (ii) a civil liability insurance policy that covers the entire territory of the European Union, a guarantee or other comparable guarantee, with a minimum coverage of €1,000,000 for claims for damages, and a total of €1,500,000 per year for all claims, or (iii) a combination of initial capital and a professional civil liability insurance policy that gives rise to coverage equivalent to that described in points (i) and (ii) above.

As of December 31, 2016, there were 158 financial advisory firms registered on the CNMV's Administrative Register.

In addition, credit institutions may provide on a regular basis the full range of investment and ancillary services where their legal regime, their bylaws and their specific authorization enables them to do so. Likewise, collective investment scheme management companies (SGIICs) may provide certain investment and ancillary services provided that they are authorized to do so.

The conditions for taking up business can be summarized as follows:

- **Internal organization:** The Securities Market Law and Royal Decree 217/2008 are very exhaustive on the internal organization requirements that investment firms must meet.
- **Authorization and registration:** It falls to the CNMV to authorize investment firms.

In order to secure authorization as an investment firm, the following broad requirements must be met:

- Its sole corporate purpose must be to engage in the specific activities of investment firms.
- It must take the form of a corporation, incorporated for an indefinite term, and the shares comprising its capital stock must be registered shares.
- The minimum capital stock must be fully paid in in cash.
- It must have a board of directors made up of no fewer than three members.
- The chairmen, deputy chairmen, directors or administrators, general managers and persons holding equivalent positions are required to be of good repute and to have the knowledge and experience necessary for the performance of their functions, and be committed to the good governance of the investment firm. In the case of the parent companies of investment firms, the honorability requirement also applies to the chairmen, deputy chairmen, directors or administrators, general managers and persons holding equivalent positions and a majority of the members of the board of directors are required to have the knowledge and experience required for the performance of their functions.

The requirements with respect to good repute, knowledge and experience also apply to the persons in charge of

the internal control functions and to those holding other positions which play a key part in the day-to-day pursuit of the activities of an investment firm and its parent company.

- It must have an internal code of conduct.
- It must join the Investment Guarantee Fund where so required.
- It must have presented a business plan reasonably evidencing that the investment firm's project is viable in the future.
- It must have submitted appropriate documentation on the conditions and the services, functions or activities to be subcontracted or outsourced, to permit verification that this fact does not invalidate the requested authorization.

### 2.5.2. The regime governing significant holdings and changes of control at investment firms

Pursuant to the regime governing significant holdings for investment firms, they must notify the CNMV, for its preliminary assessment, of any acquisitions amounting to more than 10% of capital or of voting rights, and of any significant holding that is increased so that the percentage of capital or voting rights becomes equal to or greater than 20%, 30% or 50%, or control of the firm is acquired. In addition, any individual or legal entity that has decided to dispose, directly or indirectly, of a significant holding in an investment firm, must first notify the CNMV of such circumstance.

Also, any individual or legal entity that, alone or acting in concert with others, has acquired, directly or indirectly, a holding in a Spanish investment firm, so that the percentage of voting rights or of capital that they hold is equal to or greater than 5%, must give immediate written notice to the CNMV and to the investment firm in question, indicating the amount of the resulting holding.

### 2.5.3. Cross-border activities of investment firms

- Spanish investment firms may provide, in other EU Member States, the investment services and ancillary services for which they are authorized, either through a branch or under the freedom to provide services, subject to the fulfillment of the established legal formalities.
- Investment firms authorized in another EU Member State may provide investment and ancillary services in Spain, either by opening a branch or under the freedom to provide services, subject to the statutory notification procedure.
- Non-EU investment firms intending to open a branch in Spain or to operate under the freedom to provide services are subject to the authorization procedure.

## 2.6. Closed-ended type Collective Investment Entities

### 2.6.1. Features

Law 22/2014, of November 12, 2014, regulating venture capital entities, other closed-ended type collective investment entities and the management companies of closed-ended type collective investment entities, and amending Law 35/2003, of November 4, 2003 on collective investment schemes ("Law 22/2014") amends the law on venture capital entities in Spain, by repealing Law 25/2005, of November 24, 2005, on venture capital entities and their management companies.

The term "closed-ended type investment" is defined as that performed by venture capital entities and other collective investment entities at which, in accordance with their divestment policies, (i) all divestments by their members or unit-holders must take place at the same time and (ii) the sums received in respect of divestment must be received according to the amount due to each member or unit-holder by reference to the rights they hold under the terms established in the bylaws or regulations.

Closed-ended type collective investment must be carried out in Spain by two types of entities:

- "Venture capital entities" or "ECR" (*Entidades de Capital Riesgo* with a similar definition to that provided in Law 25/2005), which can take the form of funds ("FCR" – *Fondos de Capital Riesgo*) or companies ("SCR" – *Sociedades de Capital Riesgo*); and
- Other types of entities which the Law 22/2014 calls "closed-ended type collective investment entities" ("EICC" – *Entidades de Inversión Colectiva de Tipo Cerrado*), a new vehicle created by the Law 22/2014 which are defined as collective investment entities which, without having any commercial or industrial purpose, obtain capital from a number of investors, through marketing activities, to invest it in all types of assets, financial or otherwise, subject to a predefined investment policy. Closed-ended type investment entities can be either funds ("FICC") or companies ("SICC"). This new type of entity will include any companies that might have been operating in Spain by investing in non-listed securities but failed to meet the requirements under the regime for investments and diversification of venture capital.

Both types of entities must be managed by an authorized management company in accordance with the Law 22/2014<sup>16</sup>. The basic difference between venture capital entities (ECRs) and closed-ended type collective investment entities (EICCs) is that venture capital entities have a smaller investment scope than closed-ended type collective investment entities. Mirroring the requirement in the now repealed Law 25/2005, venture capital entities have to

<sup>16</sup> In the case of the SCR and the SICC, the company itself can act as management company, if its managing body decides not to designate an external manager. These "self-managed" SCRs and SICCs are subject to the regime set out in Law 22/2014 for SGEICs, on which further information is provided in point 2.6.2 below.

restrict their investment activities to acquiring temporary interests in the capital of enterprises other than real estate or financial enterprises which, when the interest is acquired are not listed on a primary stock market or on any other equivalent regulated market in the European Union or of the in any other OECD member participants, whereas, as mentioned above, closed-ended type collective investment entities can invest in “all types of assets, financial or otherwise”.

At December 31, 2016, there were 5 SICCs and 1 FICC entered on the CNMV’s Administrative Register.

Law 22/2014 also regulates three new types of entities:

- (a) European venture capital funds (“EVCF”), subject to the rules in Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013, on European venture funds. They must be registered in the register set up for them at the CNMV; and
- (b) European social entrepreneurship funds (“ESEF”), subject to the rules contained in Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds. They must be entered in the register set up for them at the CNMV.
- (c) It creates a special type of SME venture capital entity, an “ECR-Pyme”, taking the form of either SME venture capital companies (SCR-Pyme) and SME venture capital funds (FCR-Pyme) (art. 20 Law 22/2014). These must hold, at least, 75% of their computable assets in certain financial instruments providing funding to small and medium-sized enterprises meeting a number of requirements at the time of the investment.

Therefore, Law 22/2014 regulates the legal regime of such entities as well as marketing regime of their shares or units in Spain and abroad.

### 2.6.2. Management companies of Closed-ended type Collective Investment Entities

Collective investment entity management companies are Spanish corporations (*sociedades anónimas*) whose corporate purpose is to manage the investments of one or more venture capital entities and/or closed-ended type collective investment entities, and monitor and manage their risks. Each venture capital entity and closed-ended type collective investment entity will have only one manager which must be a collective investment entity management company. Venture capital companies and closed-ended type collective investment companies can act as their own management company (“self-managed companies”).

A description has been provided of the activities that can be carried on by collective investment entity management companies (there are some specific provisions in relation to self-managed companies and certain restrictions have been imposed), and a distinction is drawn between:

- (a) Primary activity: Investment portfolio management and risk monitoring and management with respect to the entities they manage (venture capital entity, closed-ended type collective investment entities, European venture capital funds or European social entrepreneurship funds).
- (b) Additional activities: Administrative and marketing tasks and activities related to the entity’s assets.
- (c) Ancillary services: Discretionary investment portfolio management, advisory services on investment, safe-keeping and administration of the units and shares of venture capital entities and closed-ended type collective investment entities (and, if applicable, European venture capital funds and European social entrepreneurship funds) and receipt and transmission of orders of customers in relation to one or more financial instruments.

A strict regime for obtaining the CNMV’s authorization is established. Additionally, the CMNV must be notified of any

significant change to the circumstances in which the original authorization was granted.

### 2.7. Insurance and reinsurance companies and insurance intermediaries

In light of the security it provides to individuals and traders and the positive role it plays in encouraging and channeling savings into productive investments, the insurance industry is subject to comprehensive legal regulations and tight administrative control. In this regard, insurers are required to invest part of the premiums they receive in assets that ensure security, profitability and liquidity.

The industry is supervised by the Directorate-General of Insurance and Pension Funds (DGS), attached to the Ministry of Economy and Competitiveness, and the basic legal regime for insurance in Spain is as follows:

- Insurance firms:
  - (a) The legislation on insurance firms is contained in Law 20/2015 of July 14, 2015 on the Regulation, Supervision and Solvency of insurance and reinsurance entities, and Royal Decree 1060/2015 of November 20, 2015 on the regulation, supervision and solvency of insurance and reinsurance entities, which contain, in revised form, the provisions of the previous legislation which remain in force, the new solvency system introduced by the so-called Solvency II Directive (Directive 2009/138/EC of the European Parliament and of the Council of November 25, 2009) and other rules intended to bring the legislation into line with the sector’s development.
  - (b) The legislation on insurance intermediaries is contained in Private Insurance and Reinsurance Intermediation Law 26/2006, of July 17, 2006.

- The legislation on insurance contracts is contained in the Insurance Contract Law 50/1980, of October 8, 1980.
- An *insurer* is a company that engages in the business of performing direct insurance transactions and which may also accept reinsurance transactions in the lines for which it is authorized to do direct insurance business. This is an exclusive and excluding business, that is, insurance contracts can only be formalized by insurers that are duly authorized by the Ministry of Economy and Competitiveness and registered on the register of the DGS, and insurers cannot perform transactions other than those defined in the above-mentioned insurance legislation. In this respect, the applicable legislation has established a specific authorization procedure for entities wishing to engage in these activities.

Insurance entities are permitted to adopt the form of a corporation (*sociedad anónima*), a European public limited liability company (*sociedad anónima europea*), a mutual insurance company (*mutua de seguros*), a cooperative society (*sociedad cooperativa*), a European cooperative society (*sociedad cooperativa europea*), or a welfare mutual insurance company (*mutualidad de prevision social*). Prior administrative authorization is required to operate in each line of insurance, which authorization implies registration on the register of insurance entities of the DGS. Foreign insurers are permitted to operate in Spain through a branch or under the freedom to provide services, if they are domiciled in other countries of the European Economic Area, and through a branch if they are domiciled in third countries.

The Spanish insurance industry continues to be characterized by the co-existence of a certain degree of concentration of the business volume in highly-competitive lines and types of insurance (life, health, motor, multi-risk insurance) which require considerable size in terms of assets and administration, with the dispersion of a

minimum part of that business volume among a large number of entities operating in other types of insurance which do not require such size.

On the other hand, *reinsurance entities* are entities that undertake to reimburse insurers for the obligations they may hold vis-à-vis third parties under arranged insurance contracts, and which are covered by reinsurance. Reinsurance business can be undertaken in Spain by Spanish reinsurance companies whose sole corporate purpose is to arrange reinsurance, insurance entities themselves with respect to classes of insurance for which they are authorized and, lastly, foreign reinsurance entities which are domiciled in another country

from the Economic European Area (under the freedom to provide services or through branches in Spain) or in third countries, in this latter case, either through a branch established in Spain or from the country in which their registered office is located (but not from branches located outside Spain).

The following table shows the changes in the numbers of operating Spanish insurance and reinsurance entities. The figures are broken down between direct insurance entities and pure reinsurance entities and, within the former category, by the various legal forms they take. There are currently no insurance cooperatives on the register<sup>17</sup>.

Table 7

## SPANISH INSURANCE AND REINSURANCE ENTITIES

	2008	2009	2010	2011	2012	2013	2014	2015
<b>DIRECT INSURANCE ENTITIES</b>								
• Corporations	204	202	195	188	183	178	168	156
• Mutual insurance societies	35	34	35	34	32	32	31	31
• Welfare mutual insurance societies	55	56	55	55	53	52	53	50
<b>TOTAL DIRECT INSURANCE ENTITIES</b>	294	292	285	277	268	262	252	237
SPECIALIZED REINSURERS	2	2	2	2	2	2	3	3
<b>TOTAL INSURANCE AND REINSURANCE ENTITIES</b>	296	294	287	279	270	264	255	240

<sup>17</sup> <http://www.dgsfp.mineco.es/sector/documentos/Informes%202015/INFORME%20SECTOR%202015.pdf>

*Insurance intermediaries* are individuals or legal entities that, being duly entered in the DGS's special administrative register of insurance intermediaries and brokers and their senior officers, pursue the mediation between insurance or reinsurance policyholders, on the one hand, and insurance or reinsurance entities, on the other. The following are mediation activities:

- (a) Introducing, proposing or carrying out work preparatory to the conclusion of insurance or reinsurance contracts.
- (b) Concluding insurance and reinsurance contracts.
- (c) Assisting in the administration and performance of such contracts, in particular in the event of a claim.

Intermediaries are classified as follows:

- Insurance agents: individuals or legal entities that conclude an agency agreement with an insurance entity. Insurance agents may be:
  - (a) Exclusive insurance agents: they carry on the activity of insurance mediation for one insurance entity on an exclusive basis, unless the insurance entity authorizes the agent to operate solely with a different insurance entity in certain lines of insurance in which the authorizing entity does not operate.
  - (b) Tied insurance agents: they carry on the activity of insurance mediation for one or more insurance entities.
  - (c) Bancassurance operators: these are credit institutions, credit financial establishments or companies owned or controlled by them that carry on the activity of insurance mediation through an insurance agency contract for one or more insurance entities using the distribution networks of the credit institutions or credit financial establishments (in the case of

companies owned or controlled by credit institutions or credit financial establishments, such entities are required to have assigned their distribution networks to the investee or controlled company for insurance distribution purposes). The bancassurance operators may be exclusive or non-exclusive.

- Insurance brokers: individuals or legal entities that carry on the commercial activity of private insurance mediation without any contractual ties to insurance entities and that offer independent, professional and impartial advice to the client.
- Reinsurance brokers: individuals or legal entities that carry on the activity of mediation in relation to reinsurance transactions.

In the event of acquisition of holdings amounting to 5% of the share capital or the voting rights of a Spanish insurance or reinsurance entity, the DGS is required to be informed within a maximum of ten business days counted as from the acquisition date. In cases of acquisition of significant holdings (i.e. those amounting directly or indirectly to 10% of share capital or voting rights) or increases in holdings which bring them up to or over the limits of 20%, 30% or 50%, or when the acquisition may result in the control of a Spanish insurance entity, reinsurance entity or insurance brokerage being assumed, the transaction can only go ahead if the DGS has not objected to it. Where a holding makes it possible to exert a notable influence on the management of the insurance entity, reinsurance entity or insurance brokerage, it will also be considered a significant holding even if it does not amount to 10 percent.

## 2.8. Pension plans and funds

### 2.8.1. Features

The insufficiency of the Spanish social security system, and the threat of a potential crisis in the system, prompted the sentiment that social security benefits, especially retirement benefits,

would have to be supplemented. Thus saving and funded pension plans emerged to ensure an adequate pension upon retirement. In 1987 the Pension Plan and Fund Law introduced in Spain a savings arrangement that has given rise to a solid long-term instrument through which investors can provide for the future. This Law resulted in the institutionalization of pension plans sponsored by employers, certain associations and financial institutions.

The savings are invested in a pension fund and are returned, capitalized, upon retirement, death, death of a spouse, orphanhood, permanent and absolute inability to work in the regular occupation or permanent and absolute inability to work, and complete disability or severe or complete dependency of the participant. This system is of great social import, since it ensures future income for the participant or beneficiary. Moreover, pension funds have high investment potential as they have to invest the funds they receive, which gives them great financial power.

The current legislation on pension plans and funds is contained in the Revised Pension Plan and Fund Law, approved by Legislative Royal Decree 1/2002, and in Royal Decree 304/2004 approving the Pension Plan and Fund Regulations.

A *pension plan* is a contract that regulates the obligations and rights of the parties to it (participants, sponsors and beneficiaries) with the aim of determining the benefits that the participant or the beneficiary is entitled to, the conditions of that entitlement and the manner in which the plan is financed. These plans are based on contributions of savings which, duly capitalized, ensure future pensions.

The various characteristics of pension plans include, most notably, their favorable tax treatment and the restrictions on being able to draw out any of the accumulated savings prior to the occurrence of the contingency covered, except in cases of long-term unemployment or serious illness. Furthermore, the individual and associated pension plan participants may

be able to draw out the savings related to contributions made at least 10 years ago. In the case of employment pension plan participants, employer contributions and appropriations made at least 10 years earlier can only be drawn on if this is permitted under the terms of the commitment and is envisaged in the plan specifications.

Pension plans, regardless of their type, must necessarily be included in a pension fund, which are asset pools without separate legal personality created for the sole purpose of complying with pension plans, and are the investment instrument for the savings. All financial contributions from the sponsors and from the plan participants must be immediately and necessarily included in the position account of the plan in the pension fund, out of which any benefits arising under the plan will be paid.

A *pension fund* has no legal personality and must be administered, necessarily, by a management company, which keeps its accounting records, selects its investments and orders the depositary to purchase and sell assets. The following may be management companies:

- Corporations formed for this sole purpose and which have obtained the prior administrative authorization required.
- Life insurance companies authorized to operate in Spain which have obtained the prior administrative authorization required in order to manage pension funds.

In order to set up a pension fund, prior authorization from the Ministry of Economy and Competitiveness and registration of the corresponding public deed at the appropriate Commercial Registry are required.

With regard to the investments made by pension funds, the regulations currently in force have aimed to lend greater legal certainty to the investment process, with measures to encourage transparency in investment and the supply of information to participants.

In this respect, the applicable legislation has established a specific authorization procedure for entities wishing to engage in these activities.

### 2.8.2. Developments

At the end of 2015, the number of pension plans appearing in the DGS Register totaled 2,857, compared with 2,914 the year before<sup>10</sup>, which represents a decrease of 1.96%.

Although there was a decrease in pension plans of all types, this decrease was more marked in individual pension plans (-3.45%). Furthermore, the number of participants fell slightly in 2015 compared with the previous year (3.3%, from 9,942,270 to 9,908,788). 78.48% of the total number of participants are individual plans participants, 20.48% are participants of employment plans, and 0.68% are participants of associated plans.

The latest figures, corresponding to December 2015, set the cumulative return in 2015 at a positive 2.48% which is nevertheless less down on the figure for 2014 (and 1.20% for individual system plans).

In 2015, the total volume of contributions made to employment system pension plans has fallen by 2.71%. It is to be borne in mind that these contributions fell by 14% from 2012 to 2103 due primarily to temporary suspensions of contributions by sponsors in some companies and of contributions to the pensions plans of public authorities. The temporary suspension of contributions to public authority pension plans has continued in 2015 whereas many companies have resumed their contributions. In the case of individual pension plans, contributions have fallen in relation to 2014, with a decrease of 5.41%. Contributions to associated plans have also fallen.

The assets managed by Pension Funds increased D thanks to the improvement in the situation of financial markets and of the economy in general. At December 31, 2015, assets managed by Pension Funds amounted to over 104,000 million euros.

The table below shows the changes in pension funds in Spain by number of registered pension funds and managed assets.

Table 8

#### SPANISH PENSION FUNDS AND MANAGED ASSETS

Year	Registered funds	Assets (€ million)
1988	94	153.26
1989	160	516.87
1990	296	3,214.21
1991	338	4,898.25
1992	349	6,384.95
1993	371	8,792.74
1994	386	10,517.48
1995	425	13,200.44
1996	445	17,530.61
1997	506	22,136.26
1998	558	27,487.25
1999	622	32,260.64
2000	711	38,979.45
2001	802	44,605.62
2002	917	49,609.91
2003	1,054	56,997.34
2004	1,163	63,786.80
2005	1,255	74,686.70
2006	1,340	82,660.50
2007	1,353	88,022.50
2008	1,374	79,753.20
2009	1,420	86,318.91
2010	1,504	85,852.31
2011	1,570	83,954
2012	1,684	87,122
2013	1,761	93,096
2014	1,777	100,579.12
2015	1,688	104,532.36

The number of management companies entered at December 31, 2014 in the DGS Administrative Register totaled 84 whereas the number of management companies registered at December 31, 2015 was 82.

## 2.9. Securitization vehicles

In general, securitization consists of the conversion of collection rights into standardized fixed-income securities for possible subsequent trading on regulated securities markets, where they can be purchased by investors.

Securitization in Spain is carried out through securitization funds (“Securitization Funds” or “SF”). The SF is a separate pool of assets that has no legal personality, with a net asset value of zero, whose assets are made up of present or future collection rights, grouped in the manner indicated in Law 5/2015, and whose liabilities are made up of the fixed-income securities which they issue and of credit facilities granted by any third party.

Securitization funds are regulated by Law 5/2015.

SFs can be set up as closed-end funds (in which neither the assets nor the liabilities of the fund change after it is formed) and open-end funds (in which their assets and/or liabilities may be modified after they are formed).

Asset securitization vehicles are managed by specialized management companies (“securitization fund managers”) whose purpose is the formation, administration and legal representation of the fund and of banking asset funds in the terms envisaged in Law 9/2012 of November 14, 2012 on the Restructuring and Resolution of Credit Institutions. Management Companies can also set up, manage and represent funds and special purpose vehicles equivalent to securitization funds which are set up abroad in accordance with whatever legislation may be applicable.

## 3. Markets

### 3.1. Securities Market

The Spanish securities market continues to see major growth, primarily due to harmonization with the markets of neighboring countries through the adoption of common European rules, and the introduction of new rules designed to streamline requirements and procedures in relation to public offerings and the admission to trading of securities on regulated secondary markets. Also, present-day securities market technical, operating and organizational systems allow for greater investment volumes. These factors have been resulting in greater transparency, liquidity and efficiency in Spanish markets.

The global financial crisis prompted large-scale volatility in stock prices, both at national and international level, associated with incipient but weak growth in the developed economies.

Spain’s basic securities market legislation is contained in Legislative Royal Decree 4/2015 of October 23, 2015 approving the revised Securities Market Law (“Securities Market Law”).

The key features of the Spanish securities market are as follows:

#### 3.1.1. Spanish National Securities Market Commission

The Spanish securities market regulations are based on the Anglo-Saxon model, focused on protecting small investors and the market itself. This was the aim behind the creation of the National Securities Market Commission (CNMV<sup>18</sup>), which is the body responsible for supervision and inspection of the Spanish securities markets and for the activities of all who operate in them, overseeing market transparency, investor protection, and proper price formation.

<sup>18</sup> www.cnmv.es

The CNMV was created by Securities Market Law 24/1988, which has been adapted on an ongoing basis to the requirements of the European Union for the development of the Spanish securities markets in the European context.

Broadly speaking, its functions may be summarized as follows:

- Supervising and inspecting the Spanish securities market and the activity of all market players.
- Exercising sanctioning powers.
- Advising the Government on securities market-related matters.
- Legislative power (through circulars) for the proper functioning of the markets.

In the exercise of its powers, the CNMV receives a large amount of information, both from and about the market players, much of which is recorded in its official registers and is publicly accessible.

The CNMV’s activities are aimed primarily at companies that issue or make public offerings of securities, the secondary securities markets, investment firms and collective investment schemes. Regarding the latter and also the secondary securities markets, the CNMV performs prudential supervision to ensure the security of their transactions and the solvency of the system.

The CNMV, through the National Numbering Agency, also assigns the internationally-valid ISIN and CFI codes to all issues of securities made in Spain.

#### 3.1.2. Primary market

The primary market means the set of rules and procedures applied to offerings of new securities and to public offerings of existing securities (OPS — public offering for subscription and OPV— public offering for sale).



Notwithstanding the freedom of issue, any issue or placement of securities requires among others, the registration of a prospectus that includes a summary of the operation, the content of which can vary depending on the type of operation<sup>19</sup>. The prospectus provides the investor with complete information on the issuer, its economic/financial position, the risks associated with the investment, and other details of interest to allow an informed investment decision to be made. The summary is a condensed version of the prospectus in terms more accessible to the unsophisticated investor.

One of the key primary market operations is the initial public offering (IPO), where one or more shareholders offer their shares to the public in general. There is no change in the capital stock, which simply changes owner (in whole or in part). In other words, no new shares are created in a secondary offering, but rather a certain number of existing shares are made available to the public in general.

### 3.1.3. Secondary markets

Secondary markets are markets where existing securities are transferred by their holders to other investors.

Official secondary markets operate in accordance with established rules on conditions of access, admission to trading, operational procedures, reporting and disclosure. These rules provide assurance for the investor and compliance is overseen by the governing company of each market (which lays down the rules) and by the CNMV.

These rules aim to guarantee market transparency and integrity, focusing on aspects such as the correct disclosure of market-sensitive information (transactions performed or events which may affect the stock price, among others), correct price formation, and

<sup>19</sup> An exception is made to this obligation where the requirements of article 35.2 of the Securities Market Law are met.

the monitoring of irregular conduct by market participants, such as the use of inside information.

The Spanish secondary markets are mainly the equity markets (stock exchanges), the fixed-income markets (public and private) and the futures and options markets.

The issuers, whose securities (whether equity or fixed-income) are listed on Spanish secondary markets, are primarily corporations and Spanish credit institutions, as well as foreign subsidiaries of Spanish companies. There are also foreign companies (European, mainly) whose shares are traded on Spanish stock exchanges.

In relation to the functioning of the regulated markets, 2002 saw the formation of *Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A.* (BME<sup>20</sup>). This was the response of the Spanish markets to a new international financial environment in which investors, intermediaries and companies demand a growing range of services and products within a secure, transparent, flexible and competitive framework. BME comprises the various companies responsible for directing and managing Spain's securities markets and financial systems, including within a single group for the purposes of actions, decision-making and coordination, the following members:

- The Madrid, Barcelona, Valencia and Bilbao Stock Exchanges<sup>21</sup>.
- Sociedad de Bolsas, which is the company entrusted with the management and functioning of the Sistema de Interconexión Bursátil (SIBE), the electronic trading platform of the Spanish securities market<sup>22</sup>.

<sup>20</sup> [www.bolsasymercados.es](http://www.bolsasymercados.es)

<sup>21</sup> [www.bolsamadrid.es](http://www.bolsamadrid.es); [www.borsabcn.es](http://www.borsabcn.es); [www.bolsavalencia.es](http://www.bolsavalencia.es); [www.bolsabilbao.es](http://www.bolsabilbao.es)

<sup>22</sup> [www.sbolsas.com](http://www.sbolsas.com)

- The AIAF, Fixed-Income market, which is the financial bond (or fixed-income) market where securities issued by industrial companies, financial institutions and regional public bodies to raise funds to finance their activities are listed and traded<sup>23</sup>.

- Sociedad Rectora de Productos Derivados, S.A.U. (MEFF RV) and MEFF, Derivados de Renta Fija, S.A. (MEFF RF), responsible for the official Spanish futures and options market (equities and fixed-income securities, respectively)<sup>24</sup>.

- SENAF, the Electronic System for the Trading of Financial Assets, which is an electronic platform where Spanish public debt securities are traded<sup>25</sup>.

- Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (IBERCLEAR)<sup>26</sup>, which is the Spanish central securities depository, responsible for registering in the accounts and for clearing and settling securities admitted to trading on the Spanish stock exchanges, the Public Debt Book-Entry Market, the AIAF Fixed Income Market, and the Latibex (the Latin American Securities Market denominated in Euros). IBERCLEAR uses two technical platforms: the Securities Clearance and Settlement System (SCLV) and the Bank of Spain's Public Debt Book-Entry Office (CADE). In the former, the securities traded on the stock market are settled, while in the latter, fixed income securities (public and private) are settled.

The BME Group is carrying out a reform of the system for clearing, settling and registering securities in Spain. The reform introduces three core changes which, in turn, generate numerous operating changes:

<sup>23</sup> [www.aiaf.es](http://www.aiaf.es)

<sup>24</sup> [www.meff.com](http://www.meff.com)

<sup>25</sup> [www.senaf.net](http://www.senaf.net)

<sup>26</sup> [www.iberclear.es](http://www.iberclear.es)



(i) transfer to a balance-based registration system; (ii) introduction of a Central Counterparty Clearing House (“CCP”) (BME CLEARING), and (iii) integration of the current CADE and SCLV into a single platform. The establishment of this new system is expected to take place in two successive phases: first phase (April 7, 2016), establishment of the CCP

and move of SCLV (variable income) to the new system, and second phase (September 18, 2017), move of CADE (fixed income) to the new system and connection to T2S.

The main secondary markets in Spain are as follows:

Table 9

#### MAIN SECONDARY MARKETS IN SPAIN

Type of market		Purpose	Supervision, clearing and settlement	Comments
<b>Fixed Income</b>	Public Debt Book-Entry Market	Trading of fixed-income securities represented by book entries issued both by national and supranational public bodies.	Bank of Spain; Iberclear	<ul style="list-style-type: none"> <li>Interest rates and bond markets subject to great pressure due to worsening of worldwide financial crisis.</li> <li>Significant increase in public debt held by nonresidents.</li> </ul>
	AIAF	Trading of all kinds of private fixed-income securities, except for instruments convertible into shares.	CNMV; Iberclear	<ul style="list-style-type: none"> <li>Expansion in recent years due to growth of Spanish fixed income market.</li> <li>Members include Spain’s main banks, broker-dealers and brokers.</li> </ul>
<b>Equity</b>	Stock exchanges	Exclusively for trading of shares and securities which are convertible or which carry rights of acquisition or subscription.	CNMV; Iberclear.	<ul style="list-style-type: none"> <li>Trading system: trading floor and SIBE electronic trading platform.</li> <li>Decrease in volume in recent years due to crisis.</li> <li>Foreign investment has made a significant contribution to the growth of the Spanish securities market.</li> <li>The IBEX-35, the benchmark index of the Spanish continuous market, operates in real time and reflects the capitalization of the 35 most liquid companies of the SIBE.</li> </ul>
	Latibex	Trading of Latin American marketable securities with a price formation reference in European business hours.	CNMV; Iberclear.	<ul style="list-style-type: none"> <li>Uses the SIBE as its trading platform.</li> <li>Not considered an official secondary market, although it operates in a very similar manner.</li> </ul>
<b>Futures and options market</b>	Spanish financial futures market (MEFF)	Trading of financial futures and options.	CNMV and Ministry of Finance; MEFF is in charge of clearing and settlement.	<ul style="list-style-type: none"> <li>Internationally recognized.</li> <li>Positive results in recent years due to growth in member numbers, new technological facilities and improvements and greater standardization in procedures.</li> </ul>

## A) Fixed Income

### (i) Public Debt Book-Entry Market

The purpose of the Public Debt Book-Entry Market is to trade fixed-income securities represented by book entries issued both by national and supranational public bodies.

The Bank of Spain is responsible for supervision and management of the Public Debt Book-Entry Market through the Public Debt Book-Entry Office.

In contrast to the traditional telephone trading system, in 2001 and 2002 the creation of the Electronic System for the Trading of Financial Assets (SENAF) was authorized, and in 2002, that of the Organized System for the Trading of Fixed-Income Securities (MTS ESPAÑA SON) managed by Market for Treasury Securities Spain, S.A. (MTS ESPAÑA). Both are Organized Trading Systems supervised by the CNMV and the Bank of Spain.

The Public Debt Book-Entry Market is particularly important in Spain and attracts both resident and non-resident investors. The favorable tax treatment enjoyed by non-residents on investments in these securities makes it a particularly attractive market. There has been a sharp increase in debt held by non-residents since the introduction of the single currency. These investors hold mainly 10- or 15-year highly-liquid strippable bonds. They come chiefly from France, Germany and the United Kingdom; beyond the EU, the growing presence of Japanese and Chinese investors is particularly noteworthy.

Mention should also be made of the centralization of money market transactions through a book-entry system and the creation of the futures and options markets, linked to the book-entry system through which public debt securities are traded.

Iberclear is in charge of registering and settling transactions in securities admitted to trading on the Public Debt Book-Entry Market. Iberclear has links with the central securities

depositories of Germany, France, Italy and the Netherlands, meaning that Spanish public debt securities can be traded in those countries. Meffclear, a central counterparty in Public Debt Book-Entry securities managed by MEFF RF, began its operations in 2004.

### (ii) AIAF Fixed-Income Market

This is the market for trading of all kinds of private fixed-income securities (companies and private institutions), except for those instruments which are convertible into shares (which are only traded on stock exchanges), and public debt (traded through the Public Debt Book-Entry Market). It is an organized secondary market specialized in large-volume trading, meaning that it is geared towards wholesale investors (i.e. it caters primarily for qualified investors).

The AIAF market has grown rapidly in recent years owing to the expansion of fixed-income securities in Spain. It was formed in 1987, through an initiative of the Bank of Spain, aiming to put new mechanisms in place to encourage business innovations which could be carried out by raising funds through fixed-income assets. The regulatory and supervisory authorities have gradually provided it with the features required to be able to compete in its environment.

In recent years the AIAF market has grown in size and is now comparable with the fixed-income markets of other EU countries, with the special feature that it is one of the very few Official Organized Markets in Europe dedicated exclusively to private fixed-income securities.

Through the AIAF and in accordance with their fundraising strategies, issuers offer investors a variety of assets and products across the full range of maturities and financial structures.

Under the supervision of the CNMV, the AIAF market guarantees the transparency of transactions and foment the liquidity of assets admitted to trading.

The AIAF Fixed-Income Market currently has about 65 members, including the leading banks, broker-dealers and brokers in the Spanish financial system. Transactions are cleared and settled through Iberclear.

## B) Equity

### (i) Stock exchanges

The Spanish stock exchanges (Madrid, Bilbao, Barcelona and Valencia) are the official secondary markets engaged in the exclusive trading of shares and securities which are convertible or which carry rights of acquisition or subscription. In practice, equity issuers also use the stock exchanges as a primary market for initial public offering (IPO) or capital increases.

The manner in which each stock exchange functions and is organized depends on the related stock exchange governing company.

There are currently two trading systems:

1. The trading floor (i.e. the traditional system). Each of the four stock exchanges has its own trading floor. Under this system, the stock exchange members trade through an "electronic floor called a "pit" (which was the place in the stock exchange where securities were traditionally traded).
2. The SIBE electronic trading platform is managed by Sociedad de Bolsas which connects up the four Spanish stock exchanges. It is an order-driven market, which offers real-time information on all stock price fluctuations and permits the issue of orders through computer terminals to a central computer. In this way, a single Market Order Book is managed for each security.

Practically all the share trading in Spain is made through the SIBE. All securities admitted to trading on at least two stock exchanges

can, at the request of the issuer and subject to a favorable report by the Sociedad de Bolsas and the agreement of the CNMV, be traded through this system.

The value of shares admitted to trading on Spanish securities markets amounted to 626,700 million in 2015, up 2.8% on the total at the close of 2014.

Table 10

## STOCK MARKET IN SPAIN

	Total stock exchanges	Continuous Market				Trading Floor	Second Market
		Total	Domestic	Foreign			
Listed on 12/31/14	155	129	121	8	20	6	
Listed on 12/31/15	152	129	122	7	18	5	
Listings in 2015	8	8	8	0	0	0	
New listings	7	7	7	0	0	0	
Listings due to mergers	1	1	1	0	0	0	
Change of market	0	0	0	0	0		
Delistings in 2015	11	8	7	1	2	1	
Delistings	10	7	6	1	2	1	
Delistings due to mergers	1	1	1	0	0	0	
Change of market	0	0	0	0	0	0	
Net variation in 2015	-3	0	1	-1	-2	-1	

SOURCE: Annual report on securities markets and their activities for 2014. CNMV ([https://www.cnmv.es/DocPortal/Publicaciones/Informes/IA2015\\_Web.pdf](https://www.cnmv.es/DocPortal/Publicaciones/Informes/IA2015_Web.pdf))

Stock market activity is measured in terms of performance indexes, based on share prices as the best indicator of market price. Thus the index shows price fluctuations and the market trend at different points in time.

The IBEX-35 is the benchmark index of the Spanish continuous market. It operates in real time and reflects the capitalization of the 35 most liquid companies traded on the electronic stock market, making it an essential information tool for brokers and dealers. The index is not subject to any kind of manipulation and the securities forming part of it are reviewed twice annually.

To be included in the index, certain guidelines must be observed, such as:

- The company must be traded on the continuous market for at least six months (control period).
- Companies with a market capitalization of less than 0.3% of the average capitalization of the IBEX-35 cannot be included.
- The security must have been traded in at least one third of the sessions in the six-month control period. If this is not the case, the security could still be chosen if it were within the top 15 securities by capitalization.
- Rules on the weighting of companies according to their free float must be observed.

The following chart shows the variations in this index in the past year.

Chart 1



SOURCE: Bolsa de Madrid ([www.bolsamadrid.es](http://www.bolsamadrid.es))

### (ii) Latibex Market

The Market for Latin American Securities in Euros (“Latibex”) came into operation at the end of 1999. This market was formed to provide Latin American listed companies with a price formation reference in European business hours, supported by the key role played by the Spanish economy in Latin America. This market uses the SIBE as its trading platform.

Latibex is not classed as an official secondary market, although it operates in a very similar way to a stock market. It is a multilateral market, where the trades executed on the market are cleared by Iberclear in three days. There are

currently 206 entities which have issued securities included in Latibex, all of which are listed on a Latin American stock exchange.

Table 11

Main characteristics
<b>Market</b> authorized by the Spanish government
<ul style="list-style-type: none"> <li>• Platform for trading and settlement in Europe of securities of the main Latin American companies.</li> </ul>
<ul style="list-style-type: none"> <li>• Currency: euros.</li> </ul>
<ul style="list-style-type: none"> <li>• Trading: through the SIBE electronic trading platform.</li> </ul>
<ul style="list-style-type: none"> <li>• Connected to the home market by agreements between Iberclear and the Latin American central depositories or through a liaison institution.</li> </ul>
<ul style="list-style-type: none"> <li>• Intermediaries: all of the members of the Spanish stock market currently operate. Latin American market operators have also joined recently.</li> </ul>
<ul style="list-style-type: none"> <li>• Specialists: intermediaries who undertake to offer bid / ask prices at all times.</li> </ul>
<ul style="list-style-type: none"> <li>• Indexes:                             <ol style="list-style-type: none"> <li>i) FTSE Latibex All Share, which includes all the companies listed on Latibex.</li> <li>ii) FTSE Latibex Top, which brings together the 15 most liquid securities in the region listed on Latibex.</li> <li>iii) FTSE Latibex Brazil, which brings together the most liquid Brazilian securities listed on Latibex.</li> </ol> </li> </ul>
The three indexes are produced in conjunction with FTSE, the Financial Times Group firm that designs and prepares indexes.
<ul style="list-style-type: none"> <li>• Transparency of information: the listed companies provide the market with the same information they supply to the regulators of the markets where their securities are traded.</li> </ul>

SOURCE: BME

## C) Futures and Options Market

The Futures and Options Markets are derivatives markets, and their role is to allow the risks arising from adverse fluctuations, and in relation to a particular positioning of an economic agent, to be hedged.

Up until September 9, 2013, MEFF Sociedad Rectora de Productos Derivados S. A. (MEFF) acted as both official secondary market and central counterparty (CCP) in respect of instruments classed in the financial derivatives segment and for electricity derivatives (MEFF Power). In addition, MEFF acted as CCP for Public Debt repos (MEFFREPO). This activity has been assumed by the new entity BME Clearing.

In order to comply with the requirements of EMIR legislation ((European Market Infrastructure Regulation, Regulation (EU) 648/2012), it became necessary to separate the market activities from the CCP activities. It is for this reason that the market activity relating to financial derivatives and electricity derivatives is carried on through MEFF Sociedad Rectora del Mercado de Productos Derivados (MEFF Exchange for short) and the CCP activities are pursued through BME Clearing.

MEFF Exchange is the official secondary market for financial futures and options, where fixed-income and equity financial futures and options contracts are traded. It commenced operations in November 1989 and its main activity is the trading, clearing and settlement of futures and options contracts on government bonds and the IBEX-35, S&P Europe 350 indexes, and futures and options on shares. It is fully regulated, controlled and supervised by the relevant authorities (the CNMV and the Ministry of Economic Affairs and Competitiveness), and performs trading functions as well as clearing and settlement functions, which are perfectly integrated within the electronic market developed for that purpose.

As a result of the development of derivatives markets, 2010 saw the approval of Royal Decree 1282/2010, of October 15, 2010, regulating the official markets for futures, options and other derivative instruments. Royal Decree 1282/2010 regulates in

particular the creation, organization and operation at national level of official secondary markets for futures and options, i.e. the necessary authorization of these markets, the registration of derivative instruments contracts, contracts for derivative financial instruments (general conditions, suspension of trading, exclusion of contracts), the governing companies and the market members, as well as the guarantees and non-compliance schemes.

Any individual or legal entity, whether Spanish or foreign, can be a client and trade on the MEFF Market, buying and/or selling futures and options.

The following chart reflects the trend, over the period 2012 to 2015, in contracts traded on MEFF Exchange.

Table 12

Contracts traded on MEFF Exchange <sup>27</sup>					
Figures in thousand contracts					
	2012	2013	2014	2015	% var. 15/14
<b>Debt contracts</b>	45,238	13,667	4,690	8,012	70.8
10-year bond futures <sup>28</sup>	45,238	13,667	4,690	8,012	70.8
<b>Contracts on Ibex 35</b>	5,410,311	6,298,106	7,228,959	8,007,732	10.8
Futures on Ibex 35 <sup>29</sup>	4,989,706	5,780,863	7,252,898	7,735,524	6.7
Plus	4,745,067	5,578,607	6,924,068	7,384,896	6.7
Mini <sup>28</sup>	242,477	198,736	304,891	318,129	4.3
Dividend impact	2,162	3,520	23,939	32,499	35.8
Options on Ibex 35 <sup>29</sup>	420,606	517,243	731,996	544,416	-25.6
<b>Contracts on stocks</b>	56,989,129	55,753,236	41,938,920	38,611,291	-7.3
Futures on stocks	27,578,789	21,220,876	14,927,659	12,740,105	-14.7
Futures on dividends		25,0000	66,650	236,151	254.3
Options on stocks	29,410,340	34,507,360	26,944,611	25,635,035	-4.9
<b>Total</b>	62,803,380	61,208,785	48,250,693	46,600,875	-3.4

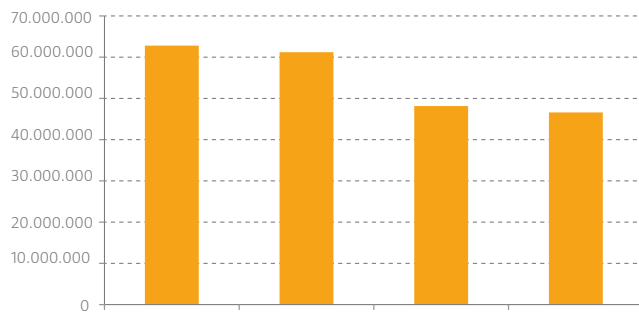
SOURCE: Annual report on securities markets and their activities in 2015. CNMV.

<sup>27</sup> Differences in the nominal value of individual products preclude comparisons between them based on the number of contracts traded; however, a follow-up of the temporal evolution of the contracting in each type of product can be carried out.

<sup>28</sup> Until 2012 the negotiation corresponds to MEFF Renta Fija.

<sup>29</sup> In the case of the future Mini and the options, the number of contracts traded is divided by ten to homogenize the individual size of the contract with that of the future Plus Ibex 35 (it is taken into account that the multiplier of the index used to calculate the nominal value of the contract is one euro in the two first and ten euros in the second).

Chart 2



SOURCE: Annual report on securities markets and their activities in 2015. CNMV

### 3.1.4. Other securities market-related figures

#### A) Takeover Bid

“Takeover bid” means a public offer made to the holders of shares or other securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the target company.

The Spanish legislation on takeover bids is mainly contained in the Securities Market Law for modification of the regime on tender offers and the transparency of issuers, and in Royal Decree 1066/2007 of July 27, 2007, on Takeover Bids. The aim of this legislation is to protect minority shareholders of listed companies.

Under that Royal Decree (subject to the exceptions it specifies), a takeover bid must be made for all the securities and addressed to all the holders of the securities, for an equitable price where:

- (i) Control of a listed company is attained:

A person is deemed to have attained control where:

- (a) He/she attains, directly or indirectly, a percentage of voting rights equal to or greater than 30% of the capital stock of the target company;
- (b) Having attained, directly or indirectly, a percentage of voting rights lower than 30%, he/she appoints, within two years after the date of the above acquisition, a number of directors who, when added as the case may be to those already appointed, represent more than half of the members of the board of directors.

Where a takeover bid is not mandatory because the control thresholds for these purposes have not been reached, or because control was acquired before the new legislation on tender offers entered into force, takeover bids may be made on a voluntary basis.

- (ii) The shares of a listed company are delisted from the stock market.
- (iii) The capital of a listed company is reduced through the purchase of its own shares.

#### B) Multilateral Trading Systems (MTSs) and Systematic Internalizers

MTSs mean any system operated by an investment firm or by the governing body of an official secondary market which bring together, within the system and in accordance with its non-discretionary rules, the buyers and sellers of financial instruments to give rise to contracts, in accordance with the provisions of the Securities Market Law<sup>30</sup>.

<sup>30</sup> This reflects one of the main changes introduced by Directive 2004/39/EC, which is the enhancement of competition among different ways of executing transactions on financial instruments, so that competition contributes to the completion of the common market of investment services. This way, investment firms and financial institutions providing investment services will be able to compete with stock exchanges and other official secondary markets in the trading of financial instruments.

It’s noteworthy that the Spanish clearing, settlement and registry system is currently undergoing a reform process, to bring Spain’s current post-trade processes into line with European standards and practices.

The most important MTSs authorized in Spain are the Alternative Stock Market (MAB) and the Alternative Fixed-Income Market (MARF).

The **Alternative Stock Market (MAB)** is a market for small-cap companies looking to expand, with a special set of regulations designed specifically for them with costs and processes tailored to their particular characteristics.

The ability to offer customized services is the hallmark of this alternative market. The aim is to adapt the system, as far as possible, to companies that are unique in terms of their size and phase of development and that have financing needs and wish to enhance the value of their business and improve their competitiveness with all of the tools that a securities market places at their disposal. The MAB offers an alternative way to finance their growth and expansion.

This flexibility involves adapting all of the existing procedures to enable these companies to be listed on a market without renouncing a suitable level of transparency. To achieve this, a new concept has been introduced, that of the “registered advisor”, whose mission is to help companies comply with their reporting requirements.

In addition, companies will also have a “liquidity provider”, or intermediary, which helps to find the counterparties required for efficient share price setting, and also provides liquidity. It should be noted, however, that companies that are listed on the MAB will, given their size, have certain liquidity and risk characteristics that are different from those of companies listed on the stock exchange<sup>31</sup>.

<sup>31</sup> Source: <http://www.bolsasymercados.es/>

Spanish or foreign corporations with fully paid-up capital stock represented by book entries and no share transfer restrictions may apply for listing on the MAB.

At March 2, 2017, there are 39 entities listed on the MAB in the growth companies segment, 31 listed corporations for investment in the real estate market (*SOCIMIS*), 3191 SICAVs, 1 private equity firm and 12 free investment companies.

The **Alternative Fixed-Income Market** (MARF) was approved in 2012, which is an initiative aimed at channeling financial resources to a large number of solvent companies that can obtain financing using this market on the issuance of fixed-income securities.

The MARF adopts the legal structure of the Multilateral Trading Facility (MTF), making it an alternative unofficial market, similar to those in some neighboring European countries and within BME, as with the case of the MAB.

Therefore, the access requirements to this market are more flexible than those for the official regulated markets and provide greater speed in processing the issues. In this way, the companies that use MARF are able to benefit from the process simplification and lower costs.

As established in its Regulations, approved by the Spanish Securities Market Regulator (CNMV), MARF is operated by AIAF Mercado de Renta Fija, S.A.U.

MARF is aimed mainly at Spanish and foreign institutional investors that wish to diversify their portfolios with fixed-income securities from medium-sized companies that are usually not listed and with good business prospects.

One of the players are the registered advisors, whose function will be to provide advice to companies that use MARF in terms of the regulatory requirements and other aspects about the issuance when preparing it, and their advice must be provided throughout the issuance life.

Because of the importance of this market at present and in the future as a source of financing and business boost, the regulatory and supervisory authorities have been amending the necessary regulations so that this market works smoothly<sup>32</sup>.

At March 2, 2017, 29 companies have issued bonds which are listed on MARF and have registered programs for the issue of promissory notes.

#### C) Market abuse regime

On April 16, 2014, Regulation (EU) 596/2014, of 16 April 2014, on market abuse (“Market Abuse Regulation”) was approved to establish a common European legislative framework in relation to insider dealing, unlawful disclosure of inside information and market manipulation, and different measures to prevent market abuse and preserve the integrity of EU financial markets, improve investor protection and enhance investor confidence in those markets. The Market Abuse Regulation has had direct applicability in all Member States since July 3, 2016, and thus applies to any financial market of the Union.

One of the new aspects introduced by the Market Abuse Regulation is precisely the extension of its scope of application, as it also applies to financial instruments traded not only on regulated markets but also in any multilateral trading facilities, such as the MARF or the MAB in Spain, or in organized trading facilities.

Spanish legislation establishes a number of provisions applicable to issuers of securities in relation to:

- (i) The obligation to draw up internal codes of conduct.
- (ii) The prohibition on using inside information.

<sup>32</sup> Source: www.bmerf.es

- (iii) The obligation to publish and disclose relevant information.

The Regulation and the Securities Market Law contain a similar definition of “Inside information”, as being any specific information that has not been made public and refers directly or indirectly to one or more issuers or to one or more financial instruments or their derivatives and which, if it were to become public, could have a considerable influence on the prices of those instruments or of the derived instruments related to them. The legislation establishes a general prohibition to use, establishing that no person may:

- (i) Perform or attempt to perform transactions using Inside Information.
- (ii) Recommend to another person that he perform transactions with Inside Information or induce him to do so.
- (iii) Unlawfully disclose Inside Information.

The Securities Market Law establishes that issuers of securities, during the study or negotiation phase of any type of legal or financial transaction which may have a considerable influence on the market price of the securities or financial instruments concerned, among others, must:

- (i) Restrict knowledge of the information strictly to the essential persons inside or outside the organization.
- (ii) Keep a documentary record for each transaction of the names of the persons referred to in the previous paragraph and the date on which each of them learned of the information.
- (iii) Expressly inform the persons included in the record of the nature of the information, the duty of confidentiality and the prohibition on its use.
- (iv) Establish security measures for the purposes of safekeeping, filing, accessing, reproducing and distributing the information.

- (v) Supervise the market performance of the securities issued by them and the news reported by professional economic broadcasters and the mass media and which may affect them.
- (vi) In the event there is an abnormal change in the trading volumes or prices and there is reasonable evidence that such change is due to a premature, partial or distorted disclosure of the transaction, immediately publicize a relevant event which clearly and precisely informs of the status of the transaction in course or contains advance notice of the information to be provided.

“Relevant information” means any information of which knowledge may reasonably influence an investor to acquire or transfer securities or financial instruments and therefore may have a considerable effect on their price in a secondary market.

Issuers of securities must make public and disclose to the market all relevant information. In addition, they must send such information to the CNMV for inclusion on the official register of regulated information.

### 3.2. Lending market

The Spanish lending or banking market is structured around banks, savings banks and credit cooperatives, which channel most savings and use their funds to provide financing for the private sector. In this way, credit institutions take funds from savers and assume the obligation to return them, acting for their own account and at their own risk when it comes to granting loans and other types of financing to the end consumers of financial resources.

Credit institutions also operate as investors and subscribers in the stock market, and adjust their liquidity by means of interbank and money market transactions.

The deregulation of capital movements in the EU has also made it easier for Spanish companies to obtain financing abroad.

The idea of granting enhanced protection to the integrity of financial systems led to the adoption of Law 10/2010<sup>33</sup>, of April 28, 2010, on the prevention of money laundering and terrorist financing. The purpose of this Law is to regulate the obligations and procedures to prevent the financial system and other economic systems being used for money laundering. This Law includes certain new provisions relating to: (i) the persons subject to the Law (increasing the number of persons covered, establishing common rules for all types of individuals); (ii) reporting obligations (notification in case of signs of illicit activity, record-keeping obligation increased from 6 to 10 years); (iii) internal control of the fulfillment of obligations (external expert examination for all non-individual subjects, greater employee training obligations); and (iv) introduction of the concept of beneficial owner and the need to identify such owner.

### 3.3. Money market

The money market in Spain is based fundamentally on the issuance of short-term securities by the Bank of Spain which are taken up by banks, finance institutions and money market operators which subsequently place a portion of them with individual investors and businesses.

In a broader sense, the money market is also deemed to encompass interbank deposits (whose interest rates are used as a reference rate for other transactions) and trading commercial paper.

The money market has become increasingly important as a result of the deregulation and move towards greater flexibility

<sup>33</sup> Implemented by Royal Decree 304/2014, of May 5, approving the regulations to Law 10/2010 on prevention of money laundering and terrorist financing.

of the Spanish financial system overall in recent years, given that interest rates are ordinarily higher than the rate of inflation and given the substantial volume of trading in money market securities.

## 4. Safeguards to protect financial services customers

### 4.1. Deposit guarantee fund and investment guarantee fund

#### 4.1.1. Deposit Guarantee Fund

The Deposit Guarantee Funds fall within the mechanisms of control and special support that seek to prevent the occurrence of insolvency situations at credit institutions. They are entities with public legal personality which credit institutions must necessarily join, as must the branches of credit institutions authorized in a non-EU Member State where their deposits in Spain are not covered by a similar guarantee system in their home country. The assets of the funds basically consist of the annual contributions made by the credit institutions that are members of the fund.

As a result of the events that have affected the international financial economy since August 2007, Europe is in financial turmoil. With the aim to coordinate the acts of the various Member States and secure the stability of the financial system, the Economic and Financial Affairs Council of the European Union welcomed the European Commission’s proposal to carry out urgently an appropriate initiative to promote convergence of deposit guarantee schemes and agreed to raise the minimum coverage level to €50,000. This decision was implemented in Spain in Royal Decree 1642/2008, of October 10, 2008 (now repealed by Royal Decree 628/2010, of May 14, 2010), in which it was decided to strengthen the Spanish deposit and investment guarantee system by raising the protection for existing deposits to one hundred thousand euros (€100,000) per holder and institution, for situations that could arise in the future.



The intention behind this measure is to maintain and increase the confidence of deposit holders and investors at Spanish credit institutions.

The aim of the Deposit Guarantee Fund legislation<sup>34</sup> is to reinforce the solvency and functioning of credit institutions, thereby supporting the essential principle established by the international financial authorities and by the Spanish government as the basis of public intervention in light of the financial crisis, i.e. that the financial sector itself assume the costs incurred in the restructuring and recapitalization of the sector, so that the reform package will imply no cost for the public purse and, in short, for the taxpayer.

#### 4.1.2. Investment Guarantee Fund (FOGAIN)

The FOGAIN was set up as a requirement of Directive 97/9/EC of the European Parliament and of the Council of March 3, 1997 on investor-compensation schemes, and is regulated in article 198 of the Securities Market Law.

The purpose of the FOGAIN is to offer the clients of broker-dealers, brokers and portfolio management companies a compensation scheme in the event that any of these institutions

<sup>34</sup> The applicable rules are contained in Royal Decree Law 16/2011 of October 14, 2011 on the creation of the Deposit Guarantee Fund for Credit Institutions and Royal Decree 2606/1996 of December 20, 1996 on the Legal Regime governing Deposit Guarantee Funds. The latter was recently amended by Law 11/2015 of June 18, 2015 on the recovery and resolution of credit institutions and investment firms and by Royal Decree 1012/2015 of November 6, 2015 which lays down the enabling regulations for Law 11/2015 of June 18, 2015 on the recovery and resolution of credit institutions and investment firms and amends Royal Decree 2606/1996 of December 20, 1996 on deposit guarantee funds for credit institutions, through which Directive 2014/49/EU of April 16, 2014 for the harmonization of the functioning of deposit guarantee schemes throughout the European Union is transposed into Spanish legislation.

enters into insolvency proceedings or is declared insolvent by the CNMV.

If one of these situations arises, and as a result of it, the institution is unable to repay or return to its clients the cash and securities they have entrusted to it, the FOGAIN will provide coverage and compensate those clients up to a maximum of €100,000 for clients of institutions that enter into one of these situations after October 11, 2008.

The FOGAIN also covers clients of SGICs that have entrusted one of these institutions with securities and cash to manage portfolios, provided that the institution in question has entered into one of the above-mentioned insolvency situations.

#### 4.2. Other safeguards to protect financial services customers

Some of the most important safeguards to protect financial services customers can be summarized as follows:

- The replacement of the Commissioner for the defense of banking services customers with the respective Claims Services of the three supervisory institutions (Bank of Spain, National Securities Market Commission and Directorate-General of Insurance and Pension Funds) pursuant to Sustainable Economy Law 2/2011.

The Claims Service resolves any complaints and claims filed by users of the supervised institutions that are related to their legally recognized interests and rights and arise from alleged breaches by those institutions, from the legislation on transparency and customer protection or from best financial practice.

It also addresses any customer queries about the applicable rules on transparency and customer protection, and about the existing legal channels for exercising their rights.

The Claims Service operates under the one-stop shop principle (Claims Services of the Bank of Spain, of the CNMV and of the Directorate-General of Insurance and Pension Funds), with any claims being referred to the corresponding supervisory body. It is an independent service that operates in compliance with the principles of transparency, the right of reply, efficacy, legality, freedom and representation.

Before filing a claim with the Claims Service, the interested party must have had the opportunity to solve it beforehand and therefore must evidence that he/she already filed the claim with the Customer Service Department or Ombudsman of the institution in question.

- With regard to the above point, an obligation is placed on credit institutions, investment firms and insurers to deal with and resolve their customers' complaints and claims relating to their interests and rights. For these purposes, they must have a customer care department consisting of an independent body or expert, whose decisions will be binding.

The purpose of the customer care department or service is to handle and resolve complaints and claims filed by customers. This department or service must be separate from the organization's other operating services and must act in accordance with the principles of speed, security, effectiveness and coordination. It must also have the human, material, technical and organizational resources that ensure adequate knowledge of the legislation on transparency and the protection of financial services customers.

The customer ombudsman is an optional body which may be external to the organization of financial institutions. Its purpose is to handle and resolve the claims which are submitted to it for a decision and to promote compliance with the legislation on transparency and customer protection, and with best financial practice. The customer ombudsman must act as an independent body and with full autonomy with respect to the criteria and guidelines to be applied in the performance of its duties.

Both bodies were implemented by Ministerial Order ECO/734/2004 of March 11, 2004, which regulates the creation of customer care departments and services and the customer ombudsman for financial institutions.

- Financial institutions must prepare and approve a set of Customer Protection Rules to regulate the work done by the customer care department or service and by the customer ombudsman, where appropriate, and the relationship between the two. Lastly, the customer care department or service and the customer ombudsman, where appropriate, must issue an annual report or summary which must be included in the financial institutions' Annual Report.
- Law 22/2007 of July 11, 2007, on the distance marketing of consumer financial services was published in the Official State Gazette on July 12, 2007, thereby completing the implementation in Spanish legislation of Directive 2002/65/EC of the European Parliament and of the Council of September 23, 2002 concerning the distance marketing of consumer financial services.

The aim of Law 22/2007 is to establish a specific regime for the protection of users of financial services which is applicable to contracts offered, traded and concluded at a distance. This Law applies both to contracts and the offers related to them, provided that they generate obligations on the part of the consumer, and their subject matter must be the provision to consumers of all kinds of financial services, within the framework of a system of sale or provision of services at a distance organized by the supplier, when such system employs exclusively distance communication techniques, even in the actual conclusion of the contract.

The most noteworthy aspects of Law 22/2007 are the following:

- (a) It establishes the obligation for the financial service provider to notify the terms and conditions of the

contracts and provide prior information to the consumer. Any breach by the provider of the disclosure obligations imposed by Law 22/2007 may result in the contract being rendered null and void.

- (b) It recognizes a right of withdrawal: this is the consumer's right to withdraw from a validly concluded contract without being required to state the reasons and without incurring any penalty. This is a kind of "right to repent". The period for exercising this right is generally 14 calendar days, although in the case of contracts relating to life insurance it is 30 calendar days.
- (c) It provides further guarantees in addition to the two basic consumer protection mechanisms described above (transparency and withdrawal). These guarantees serve two purposes:
  - (i) They protect the consumer from fraudulent or incorrect charges when the financial services have been paid for by card: the cardholder may demand the immediate cancellation of the charge.
  - (ii) They protect the consumer from harassment by suppliers in relation to unsolicited services and communications.
- Ministerial Order EHA/2899/2011 on transparency and protection for banking services customers was approved on October 28, 2011. The aim of this Ministerial Order is to concentrate the basic transparency regulations in one single text, bringing together the existing disperse regulations into one single document in such a manner so as to make them clearer and more accessible to the general public.

It also aims to update the existing provisions relating to the protection of bank customers who are individuals, to rationalize, improve and enhance, where necessary, credit institutions' transparency and conduct obligations. Thus, the requirements

in aspects such as information on interest rates and charges, customer communications, contractual information, related financial services, etc., have been enhanced. The Ministerial Order also includes express mention of advisory services, with a view to ensuring that this banking service is provided with the customers' best interests at all times, and that it includes an appropriate assessment of their position and of the services available on the market. It therefore draws a distinction between this service and direct marketing by institutions of their own products, an activity that is subject to the general transparency regime and requires the appropriate explanations. In addition, it definitively establishes that electronic means will be deemed equivalent, for all effects and purposes, to traditional paper documents, in the relationship between credit institutions and their customers. This Order is implemented by Bank of Spain Circular 5/2012.

Lastly, the Ministerial Order implements the general principles of the Sustainable Economy Law concerning responsible lending, introducing the obligations needed to ensure that the Spanish financial industry raises its prudential standards in respect of lending, to the benefit of its customers and of market stability. For these purposes, a system has been designed based on an assessment of creditworthiness which aims to assess the risk of nonpayment of a possible loan. This system should not, in any case, represent an obstacle to access to credit by the general public, but rather a legal incentive for healthier and more prudent conduct on the part both of institutions and their customers.

- In addition, the rules of conduct that investment firms must observe are contained both in Securities Market Law and in Royal Decree 217/2008 on the legal regime for investment firms. In this connection, note should also be made of CNMV Circular 7/2011, of December 12, 2011, on fee schedules and standard contracts. With a view to encouraging transparency, the aim is for investors to have sufficient information to enable them to assess whether or not the fees charged are proportional to the quality of the service provided. It is an incentive for institutions to effectively

set their fee ceilings in keeping with those generally applied to retail customers.

It also establishes that fee schedules and standard contracts must be available to customers and potential customers in all customer branches, including external agencies, and that they must also be easily accessible on their websites.

Note should also be taken of the publication of two ministerial orders: Order EHA/1717/2010 and Order EHA/1718/2010<sup>35</sup>, of June 11, on regulation and control of advertising of investment and banking products and services, respectively.

Finally, mention should be made of Order ECC/2316/2015 of November 4, 2015, establishing obligations in relation to

the classification and provision of information on financial products, which aims to ensure that clients or potential clients of financial products receive adequate protection through the implementation of a standard information and classification system which informs them of the level of risk involved and enables them to choose the product best suited to their savings and investment needs and preferences.

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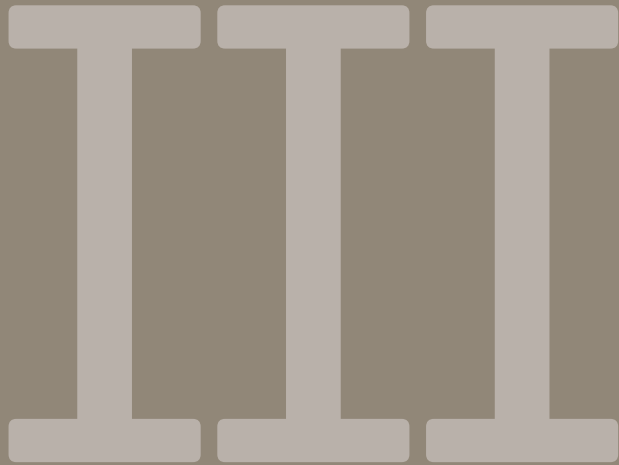
<sup>35</sup> Implemented by the Bank of Spain Circular 6/2012, of September 28, aimed at credit and payment institutions, on advertising of banking products and services.

# Annex

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Accounting  
and audit issues

III



## Accounting and audit issues

This chapter contains details of the main accounting, commercial bookkeeping and audit obligations to be observed by Spanish enterprises. According to Spanish legislation, all enterprises are required to keep orderly accounts, in keeping with their business, including a book of inventories and balance sheets book and a journal.

Companies must also keep one or more minutes books in which all the resolutions adopted by the annual and special shareholders' meeting and other collective bodies of the company must be recorded.

The Spanish National Chart of Accounts approved by Royal Decree 1514/2007, of November 16, 2007, establishes, in accordance with the European Union's accounting convergence process, the accounting principles that aim to ensure that financial statements, prepared clearly, present fairly a company's equity, financial position and results of operations, incorporating the accounting criteria contained in the International Accounting Standards.



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## 1. Legal framework

The basic legislation setting out the legal framework in the sphere of accounting law is embodied in Spanish corporate legislation and has been amended in recent years in response to the mandatory harmonization of that legislation with EU Directives, specifically, with Directive 2013/34/EU of the European parliament and of the council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC and Directive 2006/43 on statutory audits of annual accounts and consolidated accounts.

In this regard, the aforementioned Community legislation had been approved as a result of the need for international accounting harmonization, in order to, inter alia, (i) ensure the transparency and comparability of financial statements; (ii) achieve efficient operation of EU capital markets; (iii) close the legal vacuums in the somewhat scant regulations for the accounting Directives and their similarly low level of implementation and (iv) clarify the diversity of legislation.

From the standpoint of accounting, the approval of Regulation (EC) no. 1606/2002 of the European Parliament and of the European Council, of July 19, 2002, in relation to the application of International Accounting Standards (IASs) in the European Union, and the report on the current situation of accounting in Spain and the basic lines to undertake its reform, also known as the White Paper on Accounting Reform in Spain, published by the Spanish Accounting and Audit Institute (ICAC) on June 25, 2002, marked the starting point for the direction that was to be taken in the accounting reform process as a whole in Spain.

That Regulation made it obligatory for companies to apply the IASs approved by the IASB (International Accounting Standards Board), for each financial year starting on or after January 1, 2005, with respect to their consolidated financial statements if at their balance sheet date

their securities are admitted to trading on a regulated market of any member state.

The Member States were also given the option to allow or require those standards to be applied to the separate financial statements of listed companies, to the consolidated financial statements of unlisted companies and to the separate financial statements of unlisted companies.

In this regard, in Spain it was established that the general approach to be adopted should not be the direct application of IASs or IFRSs (International Financial Reporting Standards) in their most recent version, but rather to adapt Spanish GAAP thereto, solely introducing the accounting treatments that the aforementioned standards establish on an obligatory basis, and where IFRSs establish different accounting treatment options, taking the option that the legislature considered to be the most prudent and in keeping with the tradition in Spanish accounting practice.

Also, a hierarchy of sources was established to distinguish between (i) fundamental legislation, i.e. the Commercial Code and the Revised Spanish Corporations Law<sup>1</sup>, which must contain basic, stable and lasting principles; (ii) implementing regulations, i.e. the Spanish National Chart of Accounts, its industry adaptations (as described below) and (iii) the resolutions of the ICAC, which would contain more detailed rules, the contents of which could be modified with greater ease.

<sup>1</sup> The legislation on Spanish corporations is now contained in the Revised Corporate Enterprises Law, approved by Legislative Royal Decree 1/2010, of July 2, 2010, which repealed both the Revised Spanish Corporations Law and the Spanish Limited Liability Companies Law, to recast both of these laws in a single instrument which also includes the provisions in the Spanish Securities Market Law governing the more purely corporate matters of corporations whose securities are admitted to trading on an official secondary market, and the articles related Spanish partnerships limited by shares in the Spanish Commercial Code.

This point marked the start of a process of reform in Spain, firstly, with the approval of Law 62/2003, of December 30, 2003, on Tax, Administrative, Labor and Social Security Measures which was the first step taken in the adaptation of Spanish corporate accounting legislation for its international harmonization based on European legislation.

This process reached its maximum expression in 2007 when important legal provisions were passed, wrapping up the main areas in the process of adapting Spanish accounting legislation to international accounting legislation:

- Law 16/2007, of July 4, 2007, reforming and adapting Spanish corporate accounting legislation for its international harmonization based on European legislation, which made significant amendments to the Commercial Code, and to the then in force Revised Spanish Corporations Law, Limited Liability Companies Law and other industry-based accounting standards and, lastly, adapted for the first time the Corporate Income Tax Law to the new accounting legislation.
- Royal Decree 1514/2007, of November 16, 2007 approving the Spanish National Chart of Accounts (the Spanish National Chart of Accounts).
- Royal Decree 1515/2007, of November 16, 2007 approving the Spanish National Chart of Accounts for small and medium enterprises (SMEs) and the specific accounting rules for very small enterprises (VSEs).
- Royal Decree 1159/2010, of September 17, approving the Standards for the Preparation of Consolidated Financial Statements and amending the National Chart of Accounts approved by Royal Decree 1514/2007, of November 16, and the National Chart of Accounts for Small and Medium Enterprises, approved by Royal Decree 1515/2007, of November 16.

In addition, there has been a process for the adoption of additional industry-based accounting legislation, as a result of which the

following industry adaptations to the new Spanish National Chart of Accounts have been approved:

- Royal Decree 1317/2008, of July 4, approving the Spanish National Chart of Accounts for insurance companies.
- Order EHA/3360/2010, of December 21, approving accounting standards for cooperative companies.
- Order EHA/3362/2010, of December 23, approving the rules adapting the Spanish National Chart of Accounts to concession holders for public infrastructure.
- Order EHA/733/2010, of March 25, approving accounting standards for public companies operating in certain circumstances.
- Royal Decree 1491/2011, of October 24, approving the provisions adapting the Spanish National Chart of Accounts to not-for-profit entities and the model action plan for not-for-profit entities.

Mention should be made, in view of their importance, to the changes to Spanish accounting legislation introduced by Royal Decree 602/2016 of December 17, 2016. These changes were obligatory in view of the eighth final provision of the Accounting Audit Law 22/2015 of July 20, 2015 and the first final provision of Law 16/2007 of July 4, 2007 for the reform and adaptation of commercial accounting legislation for the purposes of its international harmonization in line with European Union legislation, their purpose being to lay down the implementing regulations necessary as a result of the changes made to Spanish accounting law by Law 22/2015 of July 20, 2015 (as a result of the process for the transposition of Directive 2013/34/EU of June 26, 2013). Specifically, Royal Decree 602/2016 has introduced important changes to the following rules:

- The Spanish National Chart of Accounts, approved by Royal Decree 1514/2007 of November 16, 2007.

- The Spanish National Chart of Accounts for Small and Medium-sized Enterprises approved by Royal Decree 1515/2007 of November 16, 2007.
- The Rules on the Preparation of Consolidated Financial Statements approved by Royal Decree 1159/2010 of September 17, 2010.
- The Rules on the Adaptation of the Spanish National Chart of Accounts to not-for-profit entities, approved by Royal Decree 1491/2011 of October 24, 2011.

This draft is currently at the public consultation stage.

In relation to the other industries for which an adaptation was adopted before the approval of the currently in force Spanish National Chart of Accounts (such as, for example, construction companies, real estate companies, sports federations, healthcare companies, sports corporations, electricity companies, companies in the grape growing and wine producing industry), the earlier industry adaptations remain in force, insofar as they do not conflict with the new legislation, in conformity with Transitional Provision number five of Royal Decree 1514/2007, of November 16, approving the new Spanish National Chart of Accounts.

From the audit perspective, Accounting Audit Law 22/2015 of July 20, 2015 marked the culmination of a process for the adaptation of Spanish legislation to Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (following its amendment by Directive 2014/56) and Community Regulation 537/2014 on specific requirements applicable to so-called public-interest entities.

The existing new legislation is supplemented and construed with the ICAC's resolutions and responses to requests. Particularly in relation to the interpretation of accounting legislation, it must be borne in mind that the ICAC stated in Ruling 1 of its Official Gazette 74/June, 2008, that where the legislation does not provide for a given matter or there are doubts as to its interpretation, the

directors must use their professional judgment while respecting the framework of the new Spanish National Chart of Accounts and "generally accepted accounting principles in Spain". Also, the ICAC states that, although IFRSs may serve as an interpretative criterion, their mandatory application on a supplementary basis to separate financial statements is not envisaged. Notwithstanding this, IFRSs will apply directly to the consolidated financial statements of listed entities.

## 2. Accounting records

The rules governing the accounting records that have to be kept by companies are contained in the Commercial Code, which requires all traders to keep orderly books of account that are suitable for their business and to keep a book of inventories and balance sheets and another journal, without prejudice to the records required under laws or special provisions.

Companies are also required to keep a book or books of minutes containing, at least, all the resolutions adopted by the shareholders at the Annual General or Special General Meetings and by the companies' other collective bodies.

As regards the formal requirements applicable to the accounting records, the Commercial Code provides that companies must present their mandatory books of account to the Mercantile Registry of the place in which they have their registered office in order that they be officially certified and stamped before they start to be used.

Entries and notes may be made by any suitable procedure on separate sheets that must subsequently be bound sequentially to form part of the mandatory books of account, which must be legalized within four months from the end of the related reporting period.

These formal requirements also apply to the share registers of corporations, partnerships limited by shares and limited liability companies, which may be kept on electronic files.



### 3. Financial statements

Both the Commercial Code and the Revised Spanish Corporate Enterprises Law state that a set of financial statements comprises a balance sheet, an income statement, a statement reflecting the changes in equity during the period, a cash flow statement and notes to the financial statements, with these documents constituting a set of information for these purposes (a directors' report is also required, although it is not considered to be a constituent part of the financial statements). However, the cash flow statement is not obligatory where so established by a legal provision (e.g. for companies that are permitted to prepare a balance sheet and statement of changes in equity in abridged format, as explained below).

Both the Spanish Commercial Code and Revised Spanish Corporate Enterprises Law provide for accounting principles and measurement bases. Also, the Revised Spanish Corporate Enterprises Law specifies the disclosures to be included in the notes to the financial statements.

The Spanish National Chart of Accounts sets out the contents to be included in the separate financial statements, and its application by all companies is mandatory, regardless of whether their legal form is that of a sole proprietorship or a company, without prejudice to such companies as are in a position to apply the Spanish National Chart of Accounts for small and medium enterprises (SMEs) or the relevant industry adaptations, and constitutes the implementation for accounting purposes of Spanish corporate and commercial legislation.

The content of the Spanish National Chart of Accounts is as follows:

- Part one: conceptual accounting framework.
- Part two: recognition and measurement bases.
- Part three: financial statements.
- Part four: chart of accounts.
- Part five: accounting definitions and relationships.

The Standards for the Preparation of Consolidated Financial Statements were approved in Royal Decree 1159/2010.

### 4. Conceptual accounting framework and recognition and measurement bases

In relation to the practical application of the Spanish National Chart of Accounts, after a first part which sets out the conceptual accounting framework, part two establishes recognition and measurement bases for the various asset, liability and income statement items.

Following is a brief summary of the main features contained in the conceptual framework and in the most significant recognition and measurement bases introduced by the Spanish National Chart of Accounts currently in force.

Table 1

#### MAIN FEATURES OF SNCA

Area	Spanish national chart of accounts (SNCA)
Components of financial statements	The financial statements comprise a balance sheet, an income statement, a statement of changes in equity a cash flow statement and notes.
Statement of changes in equity and cash flow statement	These are added as new documents to be included in the financial statements along with the balance sheet, income statement and notes. The cash flow statement is to be prepared using the indirect method. The statement of changes in equity has two parts: the statement of recognized income and expense and the statement of total changes in equity.
Requirements concerning information to be included in the financial statements	The information included in the financial statements must be relevant and reliable. A quality deriving from reliability is completeness. Also, the financial information must be comparable and clear.
Accounting principles	The obligatory accounting principles are: going concern, accrual, consistency, prudence, no offset and materiality.
Offsetting	Except when a standard expressly provides otherwise, the no offset principle shall be applied. The SNCA defines the conditions for being able to present a financial asset and a financial liability and tax assets and tax liabilities for their net amount.
Items included in the financial statements	The following items are defined: assets, liabilities, equity, income and expenses, which shall be recognized when the probability criteria regarding the inflow or outflow of resources embodying economic benefits are met and their value can be determined reliably. The SNCA defines the concepts of historical cost or cost, fair value, net realizable value, value in use and present value, costs to sell, amortized cost, transaction costs, carrying amount and residual value.

Table 2  
CONCEPTUAL ACCOUNTING FRAMEWORK

Preparation of financial statements	
Comparative information	The balance sheet, income statement, statement of changes in equity and cash flow statement must disclose the figures for the preceding period. The quantitative information in the notes must also refer to the preceding period.
Income statement format	The SNCA provides a model using a defined and obligatory vertical format. Companies that do not have a given volume of assets, amount of revenue and number of employees may opt for an abridged model.
Classification of expenses in the income statement	Classified on the basis of their nature.
Current/Non-current distinction in the balance sheet	Obligatory distinction in the balance sheet between current and non-current items.
Presentation, functional and foreign currencies	Presentation, functional and foreign currencies are defined in a similar way to EU-IFRSs.
Exchange differences – Non-monetary items at fair value	Exchange differences are recognized in equity or in profit or loss depending on where the changes in value of the item concerned are recognized.
Exchange differences – Monetary items	Exchange gains and losses are recognized in profit or loss for the year in which they arise.
Hyperinflationary economies	The SNCA lists circumstances that are indicative of high levels of inflation. It refers entities to the Rules for the Preparation of Consolidated Financial Statements, which implement the Commercial Code, for the applicable accounting treatment.

Table 3  
RECOGNITION AND MEASUREMENT BASES

Intangible assets, property, plant and equipment and investment property	
Property, plant and equipment	Tangible items held for use on a lasting basis in the production or supply of goods or services or for administrative purposes.
Intangible assets	Identifiable non-monetary assets without physical substance. To be amortized based on their estimated useful lives. When the estimated useful life cannot be reliably estimated, however, they are required to be amortized over a 10-year period by the straight-line method.
Investment property	Non-current property held to earn rentals or for capital appreciation or both.
Costs of dismantling, removing or restoring assets	The initial estimate of the present value of the obligations to dismantle, remove or restore an asset shall be included in its cost.
Capitalization of borrowing costs	Certain borrowing costs must be capitalized in the case of non-current assets that will take more than one year to be ready for their intended use. As a general rule, interest can only be capitalized before the asset has been brought into use.
Asset swaps	<p><b>Swaps with a commercial substance.</b> The asset received is recognized at the fair value of the asset given up plus the monetary amounts delivered as consideration, unless there is clearer evidence of the fair value of the asset received and up to the limit of the latter value.</p> <p><b>In swaps without commercial substance</b> or in those in which fair value cannot be reliably measured, the asset received is measured at the carrying amount of the asset given up plus the monetary amounts delivered as consideration, up to the limit, if available, of the fair value of the asset received if this value is lower.</p>

Table 3 (Continuation)

**RECOGNITION AND MEASUREMENT BASES**

<b>Intangible assets, property, plant and equipment and investment property</b>	
Non-monetary capital contributions	The assets received are measured at their fair value at the date of contribution, unless it may be treated as a swap without commercial substance. There are specific rules if the contribution consist directly or indirectly on a business. For the contributor, the rules relating to financial instruments shall apply.
Impairment losses	Impairment losses arise when the carrying amount of an asset exceeds its recoverable amount. Impairment losses are recognized and reversed through profit or loss.
Major repairs to property, plant and equipment	The effect of costs of major repairs is taken into account when determining the carrying amount of property, plant and equipment. These costs are amortized over the period remaining until the repair is made. When the repair is made, its cost is recognized as a replacement if the related recognition criteria are met.
Research and development expenditure	<b>Research expenditure.</b> Period expense, although it may be capitalized in certain circumstances. <b>Development expenditure.</b> Capitalized when the conditions established for the capitalization of research expenditure are met.
Start-up costs	Period expense.

Table 4

**INVENTORIES AND NON-CURRENT ASSETS CLASSIFIED AS HELD FOR SALE**

<b>Inventories</b>	
Definition	Refers expressly to inventories in the rendering of services.
Trade and financial discounts	Trade discounts, rebates and other similar directly attributable items are deducted in determining the costs of purchase.
Borrowing costs	Borrowing costs are included in the acquisition or production cost of inventories that necessarily take more than one year to get ready for their sale.
<b>Non-current assets (disposal groups) classified as held for sale</b>	
Non-current assets classified as held for sale	These are differences arising from the different values for accounting and tax purposes attributed to assets, liabilities and certain equity instruments, to the extent that they have a bearing on the tax charge. Temporary differences include, but are not limited to, timing differences. Based on the balance sheet method.

Table 5

**INCOME TAX**

Consideration of temporary differences	These are differences arising from the different values for accounting and tax purposes attributed to assets, liabilities and certain equity instruments, to the extent that they have a bearing on the tax charge. Temporary differences include, but are not limited to, timing differences. Based on the balance sheet method.
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**Table 6**  
**LONG TERM EMPLOYEE BENEFITS AND PROVISIONS**

Long term employee benefits	
Classification of pension plans for the purposes of their accounting treatment	Draws a distinction between long-term defined contribution plans and long-term defined benefit plans.
Provisions	
Measurement	Present value of the best possible estimate of the expenditures required to settle or transfer the obligation, recognizing the adjustments arising from their discounting as a finance cost as incurred. In the case of provisions maturing at one year or less, no discounting is required, provided that the effect of the time value of money is not material.

**Table 7**  
**FINANCIAL INSTRUMENTS**

Loans and receivables – Initial recognition and subsequent measurement.	Loans and receivables are initially recognized at fair value plus directly attributable transaction costs. They are subsequently measured at amortized cost using the effective interest method.
Marketable securities (other than investments in Group companies and jointly controlled entities)	<p>These items are initially recognized at the fair value of the consideration paid plus, in the case of held-to-maturity investments and available-for-sale financial assets, the directly attributable transaction costs.</p> <p>They are subsequently measured at fair value, except for held-to-maturity investments, which are measured at amortized cost using the effective interest method. Investments whose fair values cannot be determined reliably are measured at cost minus valuation adjustments.</p> <p>Changes in the fair value are recognized in profit or loss, except in the case of available-for-sale financial assets, changes in the fair value of which are recognized in equity until the asset is disposed of or it is determined that it has become impaired.</p>
Investments in Group companies, jointly controlled entities and associates	<p>Initially recognized at cost and subsequently measured at cost less any accumulated impairment losses.</p> <p>Valuation adjustments are made for the difference between the carrying amount and the recoverable amount (i.e. the higher of fair value less costs to sell and the present value of the cash flows). Unless there is better evidence of the recoverable amount, when estimating the impairment an entity shall take into account the equity of the investee adjusted by the unrealized gains existing at the balance sheet date that relate to identifiable items in the balance sheet of the investee.</p>
Held-to-maturity investments - Impairment	Difference between the carrying amount and the present value of the discounted cash flows or market value of the instrument.
Available-for-sale financial assets - Impairment	Difference between cost or amortized cost minus valuation adjustments recognized previously in profit or loss and the fair value at the measurement date. In the case of investments in equity instruments measured at cost because their fair value cannot be determined reliably, the provisions concerning the impairment of investments in Group companies, jointly controlled entities and associates shall apply.
Financial liabilities held for trading and other financial liabilities at fair value through profit or loss	Initial recognition: fair value. Subsequent measurement: fair value without deducting costs to sell. Changes in fair value are recognized in profit or loss.
Transactions involving equity instruments	Recognized in equity as a change therein, and in no case may they be recognized as financial assets.

Table 7 (Continuation)

**FINANCIAL INSTRUMENTS**

Gains and losses on transactions involving equity instruments	No gain or loss may be recognized in the income statement.
Compound financial instruments	Their components of liability and equity are recognized, measured and presented separately.
Derivatives	<i>Initial recognition:</i> fair value. <i>Subsequent measurement:</i> fair value without deducting costs to sell. Changes in fair value are recognized in profit or loss. Some specific rules apply to some financial instruments designated as hedged items
Preference shares	Not expressly addressed. They could be considered as a liability from an accounting point of view.
Participating loans	Does not address participating loans.

Table 8

**BUSINESS COMBINATIONS**

General consideration of business combinations	<p>Mergers or spin-offs or business combinations arising from the acquisition of all the assets and liabilities of a company or of a part of a company that constitutes one or more businesses are accounted for using the purchase method.</p> <p>Acquisitions of shares, including those received through non-monetary contributions in the formation of a company, or other transactions resulting in the acquisition of control without any investment being made are governed by the rules for measuring financial instruments.</p>
Business combinations between Group companies	<p>In mergers between group companies in which the parent and a directly- or indirectly-owned subsidiary participate, the businesses acquired are measured at the amount attributed to them, after the transaction, in the consolidated financial statements of the group or subgroup. In the case of mergers between other group companies, where there is no parent/subsidiary relationship between them, the assets and liabilities of the business are measured at the amounts at which they had been carried prior to the transaction in the individual financial statements, and any difference that may be disclosed must be recognized in a reserves account.</p> <p>In spin-offs involving companies in the same group, criteria equivalent to those applied to mergers must be followed.</p>
Negative difference arising on business combinations	If, exceptionally, the value of the identifiable net assets acquired exceeds the cost of the business combination, such excess shall be recognized as income in the income statement, with some exceptions.
Goodwill arising on business combinations	<p>Initially measured as the difference between the cost of the business combination and the value of the identifiable assets acquired less the amount of the liabilities assumed, including contingent liabilities.</p> <p>Goodwill is amortized over its estimated useful life. This is presumed to be 10 years in the absence of evidence to the contrary, with amortization being required to be charged on a straight-line basis.</p>
Reverse acquisitions	The rules in the standards for the preparation of consolidated financial statements must be applied.
Separate transactions	The acquirer must identify separate transactions not forming part of the business combination and recognize them under the required recognition or measurement rule.

**Table 9**  
**JOINT VENTURES**

Concepts and classification of joint ventures	A joint venture is an economic activity controlled jointly by two or more natural or legal persons. The SNCA distinguishes between jointly controlled operations, jointly controlled assets and jointly controlled entities.
Concept of joint control	A by-law established or contractual agreement whereby two or more parties agree to share the power to govern the financial and operating policies of an economic activity so as to obtain economic benefits.
Jointly controlled operations and assets	The venturer shall recognize the proportional part of the jointly controlled assets and jointly incurred liabilities and shall recognize in its income statement the assets attributed to the jointly controlled operation controlled by it and the liabilities incurred as a result of the joint venture. Also, it shall recognize its share of the income earned and the expenses incurred by the joint venture, together with the expenses incurred in relation to its interest in the joint venture.
Jointly controlled entities	The venturer recognizes its interest in accordance with the rules governing investments in Group companies, jointly controlled entities and associates.

**Table 10**  
**SALES OF GOODS AND RENDERING OF SERVICES**

Trade and financial discounts	Revenue is measured at the fair value of the consideration received or receivable, net of discounts and price reductions.
Interest included in the face value of receivables	Deducted from the price agreed on, except in the case of trade receivables maturing within no more than one year for which no contractual interest rate has been established, provided that the effect of the time value of money is not material.
Swaps of goods and services	In swaps of goods or services of a similar nature and value in the ordinary course of business no revenue is recognized.

**Table 11**  
**GRANTS, DONATIONS AND LEGACIES RECEIVED**

Presentation	Repayable grants are recognized as liabilities. In general, non-repayable grants are initially recognized directly in equity and are allocated to profit or loss in proportion to the related expenses.
Allocation to profit or loss of grants related to assets	<i>Property, plant and equipment, intangible assets and investment property</i> recognized as income over the periods and in the proportions in which depreciation on those assets is charged or, where applicable, when the assets are sold, written down for impairment or derecognized. <i>Inventories and financial assets.</i> The year of the sale, valuation adjustment or derecognition.
Measurement of non-monetary grants	Measured at the fair value of the asset received at the date of recognition.
Grants provided by shareholders or owners	Must be recognized directly in shareholders' equity, regardless of the type of grant involved, except for grants received by public-sector companies from the parent public entity for the performance of activities in the public or general interest, which are allocated to profit or loss on the basis of their purpose.

**Table 12**  
**SHARE-BASED PAYMENT**

Concept	Transactions which, in exchange for receiving goods or services, including services provided by employees, are settled using equity instruments of the entity or an amount based on the price of the entity's equity instruments.
Recognition of equity-settled share-based payment transactions	The goods or services received are recognized immediately as an asset or as an expense on the basis of their nature. Also, an increase in equity is recognized. When it is necessary to complete a specified period of service, the items will be recognized as the services are rendered over that period.
Measurement of equity-settled share-based payment transactions	Measured at the fair value of the goods or services received with a balancing entry in an equity account. If that fair value cannot be estimated reliably, they are measured at the fair value of the equity instruments granted with reference to the date on which the company receives the goods or the other party renders the services. Transactions with employees are measured at the fair value of the equity instruments granted at the date on which the resolution to grant them is adopted.
Measurement of cash-settled share-based payment transactions	Measured at the fair value of the liability, referring to the date on which the requirements for recognition are met with a balancing entry in a liability account. Until the liability is settled, the entity shall remeasure its fair value at each reporting date, with any changes in fair value recognized in profit or loss.

**Table 13**  
**DISCONTINUED OPERATIONS**

Concept	This is a component of an entity that either has been disposed of, or is classified as held for sale and represents a separate major line of business or geographical area of operations, is part of a plan to dispose of a separate major line of business or geographical area of operations or is a subsidiary acquired exclusively with a view to resale.
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**Table 14**  
**INTRAGROUP TRANSACTIONS**

General rule	The items in an intragroup transaction must be recognized at their fair value.
Special rules	<p>These special rules are only applicable when the items in the transaction are a business and there is no monetary consideration:</p> <ol style="list-style-type: none"> <li>1. Contributions in kind: Measurement in consolidated financial statements (or individual statements if no consolidation statements are formulated).</li> <li>2. Mergers and spin-off: Measurement: <ul style="list-style-type: none"> <li>• If there is a parent/subsidiary relationship between them the value that should be considered in the consolidated financial statements is used;</li> <li>• If that parent/subsidiary relationship does not exist the value in the consolidated financial statements is used also (or individual statements if no consolidation statements are formulated).</li> </ul> <p>The effective date for accounting purposes will be the date of the commencement of the fiscal year in which the merger is approved provided it falls after the date on which the companies became part of the group.</p> </li> <li>3. Capital reduction, distribution of dividends and dissolution of companies.</li> </ol>

It should be noted that the Spanish National Chart of Accounts came into force on January 1, 2008, and was applied for the first time in the first reporting period that commenced on or after that date<sup>2</sup>.

In addition, as has been indicated in section one entitled “Legal Framework”, Royal Decree 602/2016 for the amendment, among other texts, of the Spanish National Chart of Accounts, approved by Royal Decree 1514/2007 of November 16, 2007, was published on December 17, 2016. Strictly from an accounting perspective, mention should be made—in view of their particular importance—of the main amendments envisaged in this draft, which are the following:

- Companies which are able to issue abridged financial statements and notes to the financial statements, and those entitled to apply the PGC for SMEs, are exempted from the obligation to issue a Statement of Changes in Equity.
- The treatment applicable to intangible assets is amended to bring it into line with Accounting Audit Law 22/2015 (LAC). The wording of recognition and measurement base 5 on “Intangible assets” is now as follows:

*“Intangible fixed assets are assets with a finite useful life which are therefore required to be amortized systematically over the period in which the economic benefits inherent in the asset can reasonably be expected to generate a return for the company.*

*When the useful life of these assets cannot be reliably estimated, they are to be amortized over ten years, without prejudice to the periods established in specific rules on intangible fixed assets.*

<sup>2</sup> As regards such first-time application, Royal Decree 1514/2007, of November 16, approving the Spanish National Chart of Accounts, establishes a transitional regime so that companies may adapt thereto by preparing a corresponding opening balance sheet (Transitional Provisions One to Six). The regime also has implications in the aforementioned measurement bases in this connection.

*These assets are nevertheless to be assessed for indications of impairment at least once a year, with any impairment loss incurred being verified.”*

According to the above wording, intangible assets of indefinite useful life no longer exist. They are all considered to have a finite useful life. It is only when this useful life cannot be reliably estimated that they are to be amortized over 10 years.

- The accounting treatment of goodwill is also amended, with specific provisions not applicable generally to intangibles which are intended to bring the treatment of goodwill into line with the wording of the LAC. The wording of recognition and measurement base 6 on “Specific rules on intangible fixed assets” is now as follows:

*“Goodwill is to be amortized over its useful life. Useful life is to be determined separately for each cash-generating unit to which goodwill has been allocated.*

***The useful life of goodwill shall be presumed, in the absence of evidence to the contrary, to be 10 years, with recovery being on a straight-line basis.***

*In addition, the cash-generating units to which goodwill has been allocated are to be checked for indications of impairment at least once a year, and in the event of any indications being found, testing for impairment losses is to be undertaken in accordance with the provisions of section 2.2 of the rule for tangible fixed assets.*

*Impairment losses recognized against goodwill are not reversible in subsequent periods.”*

- In relation to the amortization of both (i) intangibles whose useful life cannot be reliably estimated and (ii) goodwill pursuant to the two preceding points, the sole transitional provision of the LAC stipulates that they are to be amortized prospectively. It nevertheless leaves the company the option of

charging amortization retrospectively against reserves insofar as relates to the portion of the asset’s useful life elapsing between its registration date and the entry into force of the reform.

- New parameters are established for the preparation of Abridged Financial Statements and for the application of the PGC for SMEs.
- Finally, amendments to the Rules on the Preparation of Consolidated Financial Statements are made, essentially in relation to the treatment of consolidation goodwill.

## 5. Distributable profit

In the context of the accounting legislation reform process described above, the rules for distributing company profit contained in Article 273 of the Revised Corporate Enterprises Law have been amended, and, in general terms, currently provide that:

- The profit taken directly to equity may not be distributed either directly or indirectly.
- Any distribution of profit is prohibited unless the amount of unrestricted reserves is at least equal to the amount of research and development expenditure that appears on the asset side of the balance sheet.

It should be noted that with the entry into force of the new LAC, the obligation to set up a restricted reserve equal to the goodwill recognized under assets has been eliminated.

## 6. Consolidation

As mentioned above, within the process of adapting Spanish accounting legislation to EU law, Royal Decree 1159/2010, of September 17, approved the Standards for the Preparation of Consolidated Financial Statements.



The most important aspects ruled by that Royal Decree in this sphere are as follows:

- It widens the definition of “control” meaning the power to steer the financial and operating policies of an entity with the aim to obtain profits from its activities.
- Companies are exempted from the obligation to consolidate where the parent only has investments in subsidiaries that do not have a significant interest, individually or as a whole, to present fairly the equity, financial position and results of the group companies.
- It sets out the rules for recognizing eliminations of investments and net equity in cases of (i) inclusion of companies that constitute a business, (ii) consolidation of a company that does not constitute a business, and (iii) consolidation among companies that were already part of the group.
- It lays down rules for the conversion of financial statements in foreign currency.
- It contains more detailed rules on income tax expense.
- It amended the new Spanish National Chart of Accounts and the Spanish National Chart of Accounts for Small and Medium-Sized Enterprises, in relation to the recognition of business combinations, financial instruments and income taxes.

This Royal Decree applies to the consolidated financial statements, for financial years beginning on or after January 1, 2010, of the following:

- Groups of companies, including subgroups, whose parent company is Spanish<sup>3</sup>.

<sup>3</sup> If at the year-end date, any of the group companies has issued securities admitted for trading on a regulated market of any European Union member

- Cases in which any parent enterprise—whether an individual or a legal entity— voluntarily prepares and publishes consolidated financial statements.
- When consolidated financial statements are prepared and published by any individual or legal entity, to the extent that the substantive rules applicable to such entity require it to do so, or it does so voluntarily.

## 7. Requirements concerning disclosures in the notes to the financial statements

The Spanish Commercial Code states that the notes to the financial statements must complete, expand upon and discuss the contents of the other documents that make up the financial statements.

The minimum disclosure requirements are specified in the very wording of the Revised Spanish Corporate Enterprises Law, in the Spanish National Chart of Accounts, and in the Standards for the Preparation of Consolidated Financial Statements, all of which indicate that the notes to the financial statements form an integral part of the financial statements.

In response to the relative importance that the principle of fair presentation has in accounting legislation, there is a large number of disclosures to be included in the notes to the financial statements. Among other disclosures, the notes to the separate financial statements must at least contain, in addition to the disclosures specifically provided for in the Commercial Code, the Corporate Enterprises Law and the related implementing legislation, the following information:

state, only the first section of Chapter I and the first section of Chapter II are applicable obligatorily. This same criterion applies when the parent company opts to apply the international financial reporting standards adopted in European Union Regulations. The information referred to in points 1 to 9 of article 48 of the Commercial Code is required to be included in the notes to the financial statements in any event.

- The measurement bases applied to the various items in the financial statements and the methods used for calculating valuation adjustments.
- The name, registered office and legal form of the companies of which the company is a general partner or in which it holds, directly or indirectly, an ownership interest of not less 20%, or in which, even if this percentage is lower, it exercises significant influence.

The percentage of ownership of the share capital and the percentage of voting power held must be indicated, together with the amount of the equity in the investee’s last business year.

- Where there are several classes of shares, the number and par value of each class.
- The existence of “rights” bonds, convertible debentures and similar securities or rights, indicating the number of each and the scope of the rights that they confer.
- The amount of the company’s borrowings with a residual life of more than five years, and the amount of all the liabilities for which there is a security interest, indicating their form and nature. These disclosures must be shown separately for each liability item.
- The overall amount of the guarantee commitments to third parties, without prejudice to their recognition on the liability side of the balance sheet when it is probable that they will give rise to the effective settlement of an obligation.
- The pension obligations and those relating to group companies must be disclosed with due clarity and separation.
- The nature and business substance of the company’s agreements that are not included in the balance sheet and the financial impact thereof, provided that this information is

relevant and necessary for determining the company's financial position.

- The company's significant transactions with related third parties, indicating the nature of the relatedness, the amount of the transactions and any other information concerning the transactions that might be required in order to determine the company's financial position.
- The distribution of the company's revenue by line of business and geographical market, to the extent that, from the standpoint of the organization of the sale of goods and of the rendering of services or other revenue of the company, these categories and markets differ significantly from each other. These disclosures may be omitted by companies that can prepare abridged income statements.
- The average number of employees in the reporting period, broken down by category, and the period staff costs, distinguishing between wages and salaries and employee benefits, with separate disclosure of those covering pensions, when such amounts are not broken down in the income statement.
- The amount of the salaries, attendance fees and remuneration of all kinds earned during the year in all connections by senior executives and the members of the managing body, and the amount of the pension or life insurance premium payment obligations to the former and current members of the managing body and senior executives. Where the members of the managing body are legal persons, the aforementioned requirements refer to the natural persons representing them. These disclosures can be made on an overall basis by type of remuneration.
- The amount of the advances and loans to senior executives and members of the governing bodies, indicating the applicable interest rate, their essential features and such amounts as might have been repaid, together with the guarantee

obligations assumed on their behalf. Where the members of the managing body are legal persons, the aforementioned requirements refer to the natural persons representing them.

- Companies which have issued securities that are publicly traded on a regulated market of any EU Member State and which, pursuant to current legislation, only publish individual financial statements, are obliged to disclose in the notes to the financial statements the main changes in equity and profit or loss that would have arisen had EU-IFRSs been applied, indicating the measurement bases used.
- A breakdown of the fees for financial audit and other services provided by the auditors, together with those paid to persons or entities related to the auditors, in accordance with Spanish Audit Law 19/1988, of July 12, 1988.
- The group, if any, to which the company belongs and the Mercantile Registry at which the consolidated financial statements have been filed or, where applicable, the circumstances relieving the group from the obligation of presenting consolidated financial statements.
- When the company has the largest volume of assets from among the group of companies domiciled in Spain forming part of the same decision-making unit, because they are controlled in any way by one or several natural or legal persons not obliged to consolidate acting jointly, or because they are under single management due to agreements or clauses in the bylaws, a description of the companies must be given, indicating the reasons why they form part of the same decision-making unit, and the aggregate amount of the assets, liabilities, equity, revenue and profit or loss of those companies must be disclosed.

The company with the largest volume of assets is considered to be that which at the date of its inclusion in the decision-making unit has the largest figure under the total assets heading in the balance sheet model.

- According to the Resolution of the Accounting and Audit Institute, of December 29, 2010, the notes to the financial statements must contain information on deferred payments to suppliers in commercial transactions.

## 8. Auditing requirements

Accounting Audit Law 22/2015 of July 20, 2015 is the result of a sequence of legislative reforms which include most notably the following:

- Law 44/2002 of November 22, 2002, on Measures to Reform the Financial System, which introduced some substantial changes affecting a variety of aspects.
- Law 12/2010 of June 30, 2010 amending the Accounting Audit Law 19/1988, of July 12, 1988, the Securities Market Law 24/1988 of July 28, 1988, and the Revised Corporations Law approved by Legislative Royal Decree 1564/1989 of December 22, 1989, in order to adapt them to Community legislation.

The new law is intended to boost user confidence in economic and financial information by improving the quality of accounting audits within the European Union. Specifically, the new LAC sets out to:

- On the one hand, make transparency a fundamental attribute of both auditors and their work. Attention is drawn in this respect to the new requirements regarding the content of audit reports, which are stricter in the case of audit reports issued in respect of public-interest entities. The professionals by which entities of this kind are audited are placed under the obligation, on the one hand, to prepare and issue an additional report addressed to the Audit Committee which records and reflects the findings of the audit process; and on the other hand, to include in the annual transparency report certain financial information specified in the Directive. The aim of mechanisms of this kind is also to improve the channels of communication between auditors and the

supervisors of public-interest entities and enhance the auditor's independence and objectivity, by introducing into the Spanish legislation stipulations and requirements which are more restrictive than those contained in Directive 2006/43/EC.

- Make the audit market more dynamic, open it up and integrate it at Community level through new measures such as the so-called "European passport". These changes are intended to accompany the measures included in Regulation (EU) no. 537/2014 of April 16, 2014, relating to incentives to encourage entities to undergo joint audits, the participation of smaller firms in obligatory tender processes of a public and periodic nature—which are regulated by simplifying the rules on the selection of the auditor—, and mandatory external rotation.
- There are measures included to reduce the transaction costs of doing business within the European Union for small and medium-sized firms:
  - Application proportionate to the scale and complexity of the activity of the auditor or of the entity being audited.
  - The Member States are given the authority to simplify certain requirements in the case of small audit firms.
  - Specific provisions for small and medium-sized audit firms.
- The objective is to achieve a higher degree of harmonization in surveillance and disciplinary matters, and in both European Union and international cooperation mechanisms. The competences of the public supervisory authority are reinforced with this aim in mind, with particular emphasis being placed on the authority to establish minimum disciplinary rules, while at the same time establishing risk assessment as the guiding principle in the quality control reviews to be carried

out by such authority. In relation to audits of public-interest entities, there are two main changes:

- Inclusion of mechanisms aimed at detailed monitoring of the evolution of the market.
- Establishing of an anonymous sector dialog between auditors and the European Systemic Risk Board, as part of the process for the surveillance of risks affecting financial institutions classed as being of systemic importance.

The main changes introduced by the new LAC, with respect to the previous legislation, are the following:

- **Content of the audit report:**

The following changes affecting the content of the audit report are to be noted:

- The report must be free of material misstatements: It must be explained in it that the audit was planned and performed to obtain reasonable assurance that the financial statements are free of material misstatements, including any deriving from acts of fraud.
- Provision of non-audit services: It should include a declaration affirming that no services other than those consisting of the audit of the financial statements have been provided and that no situations or circumstances have arisen which have affected the necessary independence of the auditor or audit firm.
- Directors' report: Apart from expressing an opinion concerning the consistency or otherwise of the directors' report with the financial statements for the same year, the report is to include an opinion as to whether the content and presentation of the directors' report meets the requirements of the applicable

legislation, with any material misstatements which may have been detected in this respect being indicated.

- Just cause for failure to issue a report or relinquishment: It is stipulated that just cause shall be considered to exist whenever any of the following circumstances is present:
  - The existence of threats which compromise the independence or objectivity of the auditor or audit firm.
  - When it is absolutely impossible for the auditor or audit firm to perform the work for which they have been engaged owing to circumstances for which they cannot be considered responsible.
- Clear wording, without certain references: The audit report is to be clearly worded and with no ambiguity.

- **European audit firm:**

The possibility is envisaged of an audit firm authorized in another Member state pursuing its business in Spain, provided that the person signing the report on its behalf is authorized to practice in this country.

- **Obligation to abstain:**

The obligation to abstain from participation in any decision-making process in the entity is imposed upon any person—not just the auditor—who could have an impact on the final appraisal or outcome of the audit.

- **Measures designed to guarantee independence:**

Measures are introduced which aim to avoid conflicts of interest or in commercial relations, or any other kind of conflict—whether direct or indirect, actual or potential—which could compromise the independence of the audit function.

• **A requirement that there be no significant, directly held interest is introduced:**

The Law requires there to be no significant directly-held interest. It also establishes a ban on the performance of certain transactions with financial instruments issued by the audited entity, applicable to the auditor or audit firm, their personnel, or any persons providing services in the performance of the audit activity, plus certain relatives of the above persons.

• **Inclusion of systems to safeguard the audit function:**

The Law establishes the need to implement adequate systems to safeguard against any threats which could derive from conflicts of interest or from any commercial, employment, family or other kind of relationship.

• **The situations by which the auditor's duty of independence may be affected are defined:**

According to the Directive being transposed, the following can affect the auditor's duty of independence:

- The existence of relations, situations or provisions of services between the entity being audited and the auditor or audit firm.
- Between the entity being audited and the network of which the auditor or audit firm forms part<sup>4</sup>.

<sup>4</sup> In the rules which expand upon these provisions, a distinction is drawn between an audit network and a non-audit network, the rule being that if the persons or entities included within the scope of such a network are in any of the situations of incompatibility envisaged in this Law and in other legal provisions, this will result in the auditor or audit firm being considered incompatible in relation to the company in question, without prejudice to the specific provisions in this respect which the Law also lays down.

• **Audit principles and policies are established:**

These operational principles and policies are aimed—as is to be expected—at guarding against any kind of threat to independence and guaranteeing the quality, integrity and critical and rigorous nature of the audit process.

• **Two forms of monitoring of the audit activity are envisaged:**

The new rules provide more detailed provisions on the scope and purpose of the monitoring of the accounting audit activity, with two forms of monitoring being envisaged:

- Inspections (formerly known as external quality control) to be carried out on a regular or periodic basis which may result in the issue of recommendations or requirements, with the analysis of risk as the guiding principle.
- Investigations (which include what is currently referred to as technical control), the purpose of which is to detect and correct any deficiency in a specific audit engagement or activity performed by the auditor.

• **Cooperation between International Organizations:**

The duty of collaboration with the Member States of the European Union is extended to include European supervisory authorities. These mechanisms are reinforced by the possibility of data being transmitted to the European Central Bank, the European System of Central Banks and the European Systemic Risk Board, and by the possibility of creating colleges of supervisory authorities within which data can be exchanged, particularly in relation to the activities of auditors who operate within the framework of a network.

Finally, in relation to the company to be audited, Additional Provision One of the LAC stipulates that all companies and entities, irrespective of legal form, which meet any of the following requirements are to have their financial statements audited:

- a) Those issuing securities admitted to trading on official secondary securities markets or multilateral trading systems.
- b) Those issuing debentures for sale to the public.
- c) Those engaging habitually in financial intermediation activities and, in all cases, credit institutions, investment services companies, the governing companies of official secondary markets, the governing companies of multilateral trading systems, the Systems Company, central counterparties, the Stock Exchange Company, investment guarantee fund management companies, and other financial institutions, including collective investment institutions, securitization funds and their managers, entered in the corresponding Registers of the Bank of Spain and Spanish National Securities Market Commission.
- d) Entities whose corporate purpose includes any of the activities regulated by the revised Private Insurance (Regulation and Supervision) Law, approved by Legislative Royal Decree 6/2004 of October 29, 2004, within the limits established in the relevant implementing regulations, and pension funds and their management companies.
- e) Entities that receive government grants or aid or perform work for or render services or make supplies to the State and other public bodies, within the limits established in the implementing regulations to be laid down by the government in a Royal Decree.
- f) All other entities that exceed certain limits defined by the government in a royal decree. These limits shall refer, as a minimum, to turnover, total assets according to the balance sheet and the average number of employees for the year, and shall be applicable—all of them or each one individually—to the extent possible given the legal structure of each company or entity.

The limits referred to in the preceding paragraph coincide with those established in relation to the preparation of abridged balance sheets, according to the revised Capital Companies Law.

The rule established in this respect is that for two consecutive years leading up to the balance sheet date, at least two of the following requirements are to be met:

- Total assets of 2,850,000 euros or less.
- Annual turnover of 5,700,000 euros or less.
- Average number of employees during the year of 50 or fewer.

Companies lose this entitlement if they cease to meet two of the requirements referred to above for two consecutive years.

## 9. Financial statement publication requirements

The Revised Spanish Corporate Enterprises Law provides that companies must file their financial statements at the Mercantile Registry corresponding to the place in which they have their registered office, within one month from their approval, together with a certificate of the resolutions adopted by the shareholders at the Annual General Meeting at which they were approved and the proposed distribution of profit, copies of the financial statements, directors' report and auditors' report (if the company is obliged to have its financial statements audited or if its financial statements were audited at the request of the minority shareholders).

The Mercantile Registry is public and the corporate documentation filed thereat is publicized through certificates of the entries made

by the registrars or through an uncertified extract, or through the issuance of copies of the entries made and of the documents filed at the Registry, all in accordance with the Spanish Commercial Code.

Also, publicly-traded companies must (pursuant to Securities Market Law 24/1988) present copies of their financial statements and of the related auditors' report to the Spanish National Securities Market Commission.

The official registers and other documentation in the possession of the Mercantile Registry and the Spanish National Securities Market Commission are available to the public for their perusal.

## 10 APPENDIX I

### Appendix I

#### MODEL BALANCE SHEETS (DECEMBER 31, 20XX AND 20YY)

ACCOUNT NOS.	ASSETS	NOTES	200X	
<b>A) NON-CURRENT ASSETS</b>				
201, (2801), (2901)	<b>I. Intangible assets</b>			
202, (2802), (2902)				1. Development
203, (2803), (2903)				2. Concessions
204				3. Patents, licenses, trademarks and similar assets
206, (2806), (2906)				4. Goodwill
200, (2800), (2900); NECA 6.ª 4				5. Computer software
205, 209, (2805), (2905)				6. Research
	7. Other intangible assets			
210, 211, (2811), (2910), (2911)	<b>II. Property, plant and equipment</b>			
212, 213, 214, 215, 216, 217, 218 219, (2812), (2813), (2814),				1. Land and buildings
(2815), (2816), (2817), (2818),				2. Plant and other tangible xed assets
(2819), (2912), (2913), (2914),				3. Fixed assets under construction and advances
(2915), (2916), (2917), (2918),				
(2919)				
23				
220, (2920)	<b>III. Investments in fixed assets</b>			
221, (282) (2921)				1. Land
	2. Buildings			
2403, 2404, (2493), (2494), (293 2423, 2424, (2953), (2954) 2413, 2414,	<b>IV. Long-term investments in group companies and associates</b>			
(2943), (2944)				1. Equity instruments
NECA 6.ª 6				2. Loans to companies
				3. Debt securities
				4. Derivatives
				5. Other nancial assets
	6. Other investments			

Appendix I (Continuation)

MODEL BALANCE SHEETS (DECEMBER 31, 20XX AND 20YY)

ACCOUNT NOS.	ASSETS	NOTES	200X
2405, (2495), 250, (259) 2425, 252, 253, 254, (2955), (298) 2415, 251, (2945) (297) 255 258, 26 257; NECA 6.ª 6	<b>V. Long-term Investments</b> 1. Equity instruments 2. Loans to third parties 3. Debt securities 4. Derivatives 5. Other nancial assets 6. Other investments		
474	<b>VI. Deferred tax assets</b>		
NECA 6.ª 8	<b>VII. Non-current trade accounts receivable</b>		
<b>B) CURRENT ASSETS</b>			
580, 581, 582, 583, 584, (599)	<b>I. Non-current assets held for sale</b>		
30, (390) 31, 32, (391), (392) 33, 34, (393), (394) NECA 6.ª 7 NECA 6.ª 7 35, (395) NECA 6.ª 7 NECA 6.ª 7 36, (396) 407	<b>II. Inventories</b> 1. Merchandise 2. Raw materials and other supplies 3. Work in process a) Long production cycle b) Short production cycle 4. Finished goods a) Long production cycle b) Short production cycle 5. Secondary products, by-products and recovered materials 6. Advances to suppliers		
430, 431, 432, 435, 436, (437), (490), (4935) NECA 6.ª 8 NECA 6.ª 8 433, 434, (4933), (4934) 44, 5531, 5533 460, 544 4709 4700, 4708, 471, 472 5580	<b>III. Trade and other accounts receivables</b> 1. Trade accounts receivable a) Long-term trade accounts receivable b) Short-term trade accounts receivable 2. Receivable from customers, group companies and associates 3. Sundry receivables 4. Loans and advances to employees 5. Tax receivable 6. Other tax receivable 7. Called-up share capital (participation units)		

Appendix I (Continuation)

MODEL BALANCE SHEETS (DECEMBER 31, 20XX AND 20YY)

ACCOUNT NOS.	ASSETS	NOTES	200X
5303, 5304, (5393), (5394),(593) 5323, 5324, 5343, 5344, (5953),(5954) 5313, 5314, 5333, 5334, (5943),(5944) 5353, 5354, 5523, 5524 NECA 6.ª 6	<b>IV. Short-term investments in group companies and associates</b>		
	1. Equity instruments		
	2. Loans to companies		
	3. Debt securities		
	4. Derivatives		
	5. Other nancial assets		
	6. Other investments		
5305, 540, (5395), (549) 5325, 5345, 542, 543, 547, (5955), (598) 5315, 5335, 541, 546, (5945),(597) 5590, 5593 5355, 545, 548, 551, 5525, 565, 566 NECA 6.ª 6	<b>V. Short-term investments in group companies and associates</b>		
	1. Equity instruments		
	2. Loans to companies		
	3. Debt securities		
	4. Derivatives		
	5. Other nancial assets		
	6. Other investments		
480, 567	<b>VI. Current prepayments and accrued income</b>		
570, 571, 572, 573, 574, 575 576	<b>VII. Cash and cash equivalents</b>		
	1. Cash		
	2. Cash equivalents		
<b>TOTAL ASSETS (A+B)</b>			
<b>A) NET WORTH</b>			
<b>A-1) EQUITY AND LIABILITIES</b>			
100, 101, 102 (1030), (1040)	<b>I. Capital</b>		
	1. Registered capital		
	2. (Uncalled capital)		
110	<b>II. Additional paid-in capital</b>		
112, 1141 113, 1140, 1142, 1143, 1144, 115, 119	<b>III. Reserves</b>		
	1. Legal and statutory reserves		
	2. Other reserves		
(108), (109)	<b>IV. (Own shares and participation units held)</b>		



## Appendix I (Continuation)

## MODEL BALANCE SHEETS (DECEMBER 31, 20XX AND 20YY)

ACCOUNT NOS.	ASSETS	NOTES	200X
120 (121)	<b>V. Retained earnings (accumulated losses)</b> 1. Retained earnings 2. (Accumulated losses)		
118	<b>VI. Other capital contributions</b>		
129	<b>VII. Profit (loss) for the year</b>		
(557)	<b>VIII. (Interim dividend)</b>		
111	<b>IX. Other equity instruments</b>		
<b>A-2) EVALUATION ADJUSTMENTS</b>			
133	<b>I. Available-for-sale nancial assets</b>		
1340, 1341	<b>II. Hedging transactions</b>		
136; (NECA 6.ª 13)	<b>III. Non-current assets and related liabilities, held for sale</b>		
136; (NECA 6.ª 13)	<b>IV. Translation gain/loss</b>		
137	<b>V. Other</b>		
130, 131, 132	<b>A-3) SUBSIDIES, DONATIONS AND LEGAL CIES RECEIVED</b>		
<b>B) NON-CURRENT LIABILITIES</b>			
140 145 146 141, 142, 143, 147	<b>I. Long-term provisions</b> 1. Long-term post-employment obligations 2. Environmental measures 3. Provisions for restructuring 4. Other provisions		
177, 178, 179 1605, 170 1625, 174 176 1615, 1635, 171, 172, 173, 175, 180,, 185, 189	<b>II. Long-term debts</b> 1. Debt securities and other marketable securities 2. Liabilities to credit institutions 3. Finance lease liabilities 4. Derivatives 5. Other nancial liabilities		
1603, 1604, 1613, 1614, 1623 1624, 1633, 1634	<b>III. Long-term debts to group companies and associates</b>		

Appendix I (Continuation)

MODEL BALANCE SHEETS (DECEMBER 31, 20XX AND 20YY)

ACCOUNT NOS.	ASSETS	NOTES	200X
479	IV. Deferred tax liabilities		
181	V. Non-current accrued expenses and deferred income		
NECA 6.ª 16	VI. Non-current trade accounts payable		
15; (NECA 6.ª 17)	VII. Long-term debt with special characteristics		
<b>C) CURRENT LIABILITIES</b>			
585, 586, 587, 588, 589	I. Liabilities related to non-current assets held for sale		
499, 529	II. Current provisions		
500, 501, 505, 506 5105, 520, 527 5125, 524 5595, 5598 (1034) (1044) (190), (192), 194, 509, 5115, 5135, 5145, 521, 522, 523, 525, 526, 528, 551, 5525, 5530, 5532, 555, 5565, 5566, 560, 561, 569	III. Current liabilities 1. Debt securities and other marketable securities 2. Liabilities to credit institutions 3. Finance lease liabilities 4. Derivatives 5. Other nancial liabilities		
5103, 5104, 5113, 5114, 5123, 6124, 5133, 5134, 5143, 5144, 5523, 5524, 5563, 5564	IV. Current liabilities to group companies and associates		
400, 401, 405, (406) NECA 6.ª 16 NECA 6.ª 16 403, 404 41 465, 466 4752 4750, 4751, 4758, 476, 477 438	V. Trade and other payables 1. Trade accounts payable a) Long-term trade accounts payable b) Short-term trade accounts payable 2. Payable to suppliers, group companies and associates 3. Sundry creditors 4. Payable to employees (accrued wages and salaries) 5. Current tax payable 6. Other tax payable 7. Advances from customers		
485, 568	VI. Current prepayments and accrued income		
502, 507; NECA 6.ª 17	VII. Short-term debt with special characteristics		
<b>TOTAL LIABILITIES AND EQUITY (A + B + C)</b>			

## 11 Appendix II

### Appendix II

#### MODEL INCOME STATEMENTS FOR THE YEAR ENDED \_\_ 200X)

ACCOUNT NOS.	OPERATIONS	NOTES	200X
<b>A) CONTINUING OPERATIONS</b>			
700, 701, 702, 703, 704, (706),(708), (709) 705	<b>1. Net turnover</b>		
	a) From sales		
	b) From services		
(6930), 71*, 7930	<b>2. Increase (decrease) in finished goods and work-in-process inventory</b>		
73	<b>3. Own work capitalized</b>		
(600), 6060, 6080, 6090, 610* (601), (602), 6061, 6062, 6081, 6082, 6091, 6092, 611*, 612* (607)(6931), (6932), (6933), 7931, 7932, 7933	<b>4. Supplies</b>		
	a) Consumption of merchandise		
	b) Consumption of raw materials and other consumables		
	c) Work done by other companies		
	d) Impairment of merchandise, raw materials and other supplies		
75 740, 747	<b>5. Other operating income</b>		
	a) Ancillary and other current operating income		
	b) Operating grants transferred to income for the year		
(640), (641), (6450) (642), (643), (649) (644), (6457), 7950, 7957	<b>6. Staff costs</b>		
	a) Wages, salaries and similar expenses		
	b) Social security and other costs		
	c) Provisions		
(62) (631), (634), 636, 639 (650), (694), (695), 794, 7954 (651), (659)	<b>7. Other operating expenses</b>		
	a) Outside services		
	b) Taxes other than income tax		
	c) Losses, impairment and increase (decrease) in operating provisions		
	d) Other current operating expenses		
(68)	<b>8. Other current operating expenses</b>		

\* May be positive or negative.

## Appendix II (Continuation)

## MODEL INCOME STATEMENTS FOR THE YEAR ENDED \_\_ 200X)

ACCOUNT NOS.	OPERATIONS	NOTES	200X
746	9. Government and other grants related to tangible fixed assets		
7951, 7952, 7955, 7956	10. Excess provisions		
(690), (691), (692), 790, 791, 792 (670), (671), (672), 770, 771, 772	11. Impairment and gain (loss) on disposal of fixed assets a) Asset impairment and losses b) Gain (loss) on disposals and other		
774; (NECA7.ª 6)	12. Negative difference from business combinations		
(678),778;(NECA 7.ª 9)	13. Other gains (losses)		
<b>A1) PROFIT (LOSS) OF EXPLOITATION</b> <b>(1+2+3+4+5+6+7+8+9+10+11+12+13)</b>			
7600,7601	14. Financial income		
7602, 7603	a) From equity investments		
7610, 7611, 76200, 76201, 76210, 76211	a1) In group companies and associates		
7612, 7613, 76202, 76203, 76212, 76213, 767, 769	a2) In other companies		
746; (NECA 7.ª 4)	b) From marketable securities and other financial instruments		
	b1) Of group companies and associates		
	b2) Of other companies		
	c) Subsidies, donations and legacies of a financial nature		
(6610), (6611), (6615), (6620),(6621), (6640), (6641), (6650),(6651) (6654), (6655)	15. Financial expenses		
(6612), (6613), (6617), (6618),(6622), (6623), (6624), (6642), (6643), (6652),(6653), (6656), (6657), (669)	a) For debts to group companies and associates		
(660)	b) For debts to other companies		
	c) For updating of provisions		
(6630), (6631), (6633), 7630, 7631, 7633	16. Change in fair value of nancial instruments		
(6632), 7632	a) Financial assets held for trading and others		
	b) Credited (charged) to profit (loss) for the year for avalable for sale financial assets		
(668), 768	17. Exchange diferences		
(696), (697), (698), (699), 796, 797, 798, 799	18. Impairment and gain (loss) on disposal of nancial instruments		
(666), (667), (673), (675),766, 773, 775	a) Impairments and losses		
	b) Gain (loss) on disposals and others		

Appendix II (Continuation)

MODEL INCOME STATEMENTS FOR THE YEAR ENDED \_\_ 200X)

ACCOUNT NOS.	OPERATIONS	NOTES	200X
	<b>19. Other financial income and expenses</b>		
	a) Inclusion of borrowing costs in assets		
	b) Financial revenues from arrangements with creditors		
	c) Other financial revenues and expenses		
	<b>A2) NET FINANCIAL INCOME (EXPENSE) (14+15+16+17+18+19)</b>		
	<b>A3) PROFIT (LOSS) BEFORE TAXES (A.1+A.2)</b>		
(6300)*, 6301*, (633), 638	<b>20. Income tax</b>		
	<b>A.4) PROFIT (LOSS) FOR THE PERIOD FROM CONTINUING OPERATIONS (A.3+20)</b>		
	<b>B) DISCONTINUED OPERATIONS</b>		
	<b>21. Profit (loss) for the year from discontinued operations, net of taxes</b>		
	<b>A.5) PROFIT (LOSS) FOR THE YEAR (A.4+21)</b>		

\* May be positive or negative.

## 12 Appendix III

### Appendix III

#### MODEL STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED \_\_ 200X

#### 1. Statement of recognized income and expense for the year ended \_\_ 200X

ACCOUNT NOS.	NOTES
<b>A) RESULT OF THE INCOME STATEMENT</b>	
(800), (89), 900, 991, 992	<b>Income and expenses recognised directly in equity</b>
(810), 910	<b>I. For valuation of financial instruments</b>
94	1. Available-for-sale financial assets
(85), 95	2. Other income/ expenses
(860), 900; (NECA 8.ª 1.2)	<b>II. For cash flow hedges</b>
(820), 920; (NECA 8.ª 1.3)	<b>III. Subsidies, donations and legacies received</b>
(8300)*, 8301*, (833), 834, 835, 838	<b>IV. For actuarial gains or losses and other adjustments</b>
	<b>V. For non-current assets and related liabilities, held for sale</b>
	<b>VI. Translation gain/loss</b>
	<b>VII. Tax effect</b>
<b>B) TOTAL REVENUE AND EXPENSES RECOGNISED DIRECTLY IN EQUITY (I+II+III+IV+V+VI+VII)</b>	
(802), 902, 993, 994	<b>Transferred to profit or loss</b>
(812), 912	<b>VIII. For valuation of financial instruments</b>
(84)	1. Available-for-sale financial assets
(862), 902; (NECA 8.ª 1.2)(821), 921; (NECA 8.ª 1.3) 8301*, (836), (837)	2. Other income/ expenses
	<b>IX. For cash flow hedges</b>
	<b>X. Subsidies, donations and legacies received</b>
	<b>XI. For non-current assets and related liabilities, held for sale</b>
	<b>XII. Translation gain/loss</b>
	<b>XIII. Tax effect</b>
<b>C) TOTAL TRANSFERRED TO PROFIT OR LOSS (VIII+IX+X+XI+XII+XIII)</b>	
<b>TOTAL RECOGNISED INCOME AND EXPENSE (A + B + C)</b>	

\* May be positive or negative.

Appendix III (Continuation)

MODEL STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED \_\_ 200X

**2. Statement of total changes in equity for the year ended \_\_ 200x**

**A. CLOSING BALANCE 200X-2**

- I. Adjustments for changes of accounting policy 200X-2 and previous years
- II. Adjustments for errors 200X-2 and previous years

**B. ADJUSTED OPENING BALANCE, 200X-1**

- I. Total recognised income and expense
- II. Transactions with unitholders or shareholders
  - 1. Capital increases
  - 2. ( - ) Capital reductions
  - 3. Conversion of financial liabilities to equity (bond conversions, debt forgiveness)
  - 4. ( - ) Dividend distribution
  - 5. Transactions with own shares or participation units (net)
  - 6. Increase (decrease) in equity resulting from business combination
  - 7. Other transactions with unitholders or shareholders
- III. Other changes in equity

**C. CLOSING BALANCE, 200X-1**

- I. Adjustments for changes of accounting policy 200X-1
- II. Adjustments for errors 200X-1

**D. ADJUSTED OPENING BALANCE, 200X**

- I. Total recognised income and expense
- II. Transactions with unitholders or shareholders
  - 1. Capital increases
  - 2. ( - ) Capital reductions
  - 3. Conversion of financial liabilities into equity (bond conversions, debt forgiveness)
  - 4. ( - ) Dividend distribution
  - 5. Transactions with own shares or participation units (net)
  - 6. Increase (decrease) in equity resulting from business combination
  - 7. Other transactions with unitholders or shareholders
- III. Other changes in equity

**E. CLOSING BALANCE, 200X**

## 13 Appendix IV

### Appendix IV

#### MODEL CASH FLOW STATEMENTS FOR THE YEAR ENDED \_\_\_\_ 200X

##### A) CASH FLOWS FROM OPERATING ACTIVITIES

###### 1. Profit (LOSS) for the year before taxes

###### 2. Adjustments to profit or loss

- a. Deprecitation and amortization of fixed assets (+)
- b. Valuation allowances for impairment (+/-)
- c. Valuation of provisions (+/-)
- d. Government and other grants (-)
- e. Cash flows from retirements and disposals of fixed assets (+/-)
- f. Cash flows from retirements and disposals of financial instruments (+/-)
- g. Financial income (-)
- h. Financial expenses (+)
- i. Exchange differences (+/-)
- j. Change in fair value of financial instruments (+/-)
- k. Other income and expenses (+/-)

###### 3. Changes in working capital

- a. Inventories (+/-)
- b. Trade and other receivables (+/-)
- c. Other current assets (+/-)
- d. Trade and other payables (+/-)
- e. Other current liabilities (+/-)
- f. Other non-current assets and liabilities (+/-)

###### 4. Other cash flows from operating activities

- a. Interest paid (-)
- b. Dividends received (+)
- c. Interest received (+)
- d. Corporate income tax received (paid) (+/-)
- e. Other amounts received (paid) (+/-)

###### 5. Cash flows from operating activities (1+2+3+4)



Appendix IV (Continuation)

MODEL CASH FLOW STATEMENTS FOR THE YEAR ENDED \_\_\_\_ 200X

**B) CASH FLOWS FROM INVESTING ACTIVITIES**

**7. Payments for investments (-)**

- a. Group companies and associates
- b. Intangible fixed assets
- c. Property, plant and equipment
- d. Investment property
- e. Other nancial assets
- f. Non-current assets held for sale
- g. Business unit
- h. Other assets

**7. Received from divestments (+)**

- a. Group companies and associates
- b. Intangible assets
- c. Property, plant and equipment
- d. Investment property
- e. Other nancial assets
- f. Non-current assets held for sale
- g. Business unit
- h. Other assets

**8. Other cash ows from investing activities (7+6)**

**C) CASH FLOWS FROM FINANCING ACTIVITIES**

**9. Receipts and payments for equity instruments**

- a. Issuance of equity instruments (+)
- b. Amortization of equity instruments (-)
- c. Purchase of own equity instruments (-)
- d. Disposal of own equity instruments (+)
- e. Subsidies, donations and legacies received (+)

## Appendix IV (Continuation)

## MODEL CASH FLOW STATEMENTS FOR THE YEAR ENDED \_\_\_\_ 200X

**10. Receipts and payments for nancial liabilities**

- a. Issuance
  - 1. Debt securities and other marketable securities (+)
  - 2. Debts to credit institutions (+)
  - 3. Debts to group companies and associates (+)
  - 4. Debts with special characteristics (+)
  - 5. Other debts (+)
- b. Repayment and amortization of
  - 1. Debt securities and other marketable securities (-)
  - 2. Debts to credit institutions (-)
  - 3. Debts to group companies and associates (-)
  - 4. Debts with special characteristics (+)
  - 5. Other debts (-)

**11. Payments for dividends and remuneration of other equity instruments**

- a. Dividends (-)
- b. remuneration of other equity instruments (-)

**12. Cash ows from financing activities (9+10+11)****D) EFFECT OF CHANGES IN EXCHANGE RATES****E) NET INCREASE/DECREASE IN CASH OR CASH EQUIVALENTS (5+8+12+D)**

Cash or cash equivalents at beginning of year

Cash and cash equivalents at end of year

investinspain@investinspain.org  
investinspain.org

GARRIGUES



ICEX

INVESTIN  
SPAIN