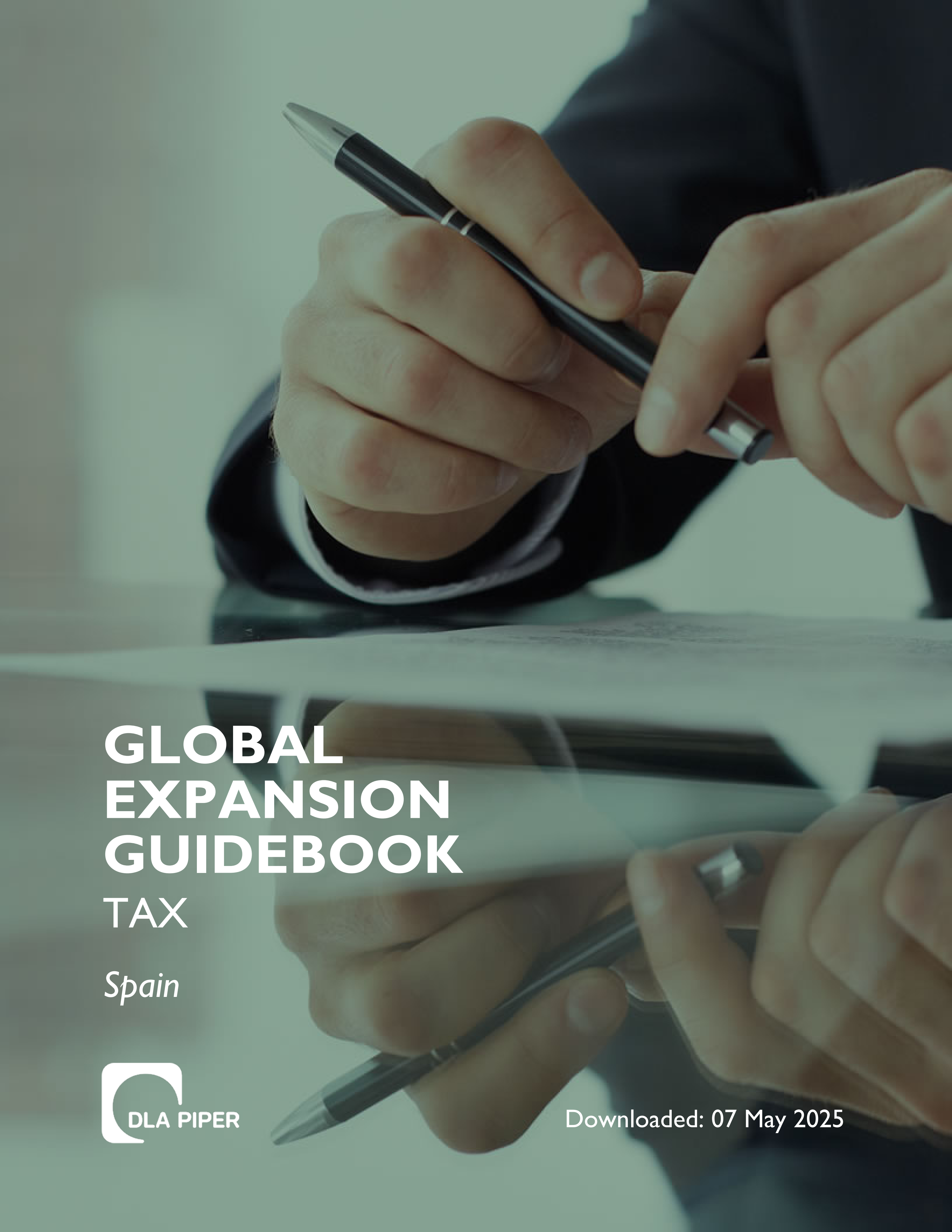


GLOBAL EXPANSION GUIDEBOOK

TAX

Spain

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

SPAIN

Last modified 20 June 2024

RESIDENCE AND BASIS FOR TAXATION

A corporation will be tax resident in Spain if:

- It has been registered under Spanish laws
- It is domiciled in Spain or
- Its center of effective management is located in Spain.

Domestic

A resident corporation is subject to Spanish tax on its worldwide income. A resident corporation generally is not subject to Spanish tax on the income of its foreign subsidiaries unless an anti-deferral provision applies (*ie*, the CFC rules).

Foreign

Foreign corporations are not subject to Spanish tax except on:

- Income effectively connected with the conduct of Spanish trade or business
- Taxable income under the Spanish CFC rules or
- Look-through entities.

Tax treaties can reduce or eliminate these taxes.

TAXABLE INCOME

Domestic

Taxable income of a domestic corporation is equal to all net income less applicable deductions.

Foreign

Foreign corporations operating in Spain through a permanent establishment (PE) are subject to Spanish tax at regular tax rates, as a general rule on a net income basis, with limitations on the deductibility of certain expenses (eg, interest and royalties paid to the head office). Branch profits tax may also apply to income repatriated to a foreign entity.

TAX RATES

The general corporate income tax rate is 25 percent. Reduced tax rates of 23 percent, 20 percent, 15 percent, 10 percent and 1 percent are applied to certain corporations. An increased tax rate of 30 percent applies to credit institutions and certain oil companies.

TAX COMPLIANCE

The return shall be submitted within 25 days following the next 6 months after the end of the fiscal year to which the return refers.

ALTERNATIVE MINIMUM TAX

Taxpayers with net turnover exceeding a EUR20 million threshold, or those taxed under a consolidated basis, will be taxed using, in general, a minimum tax quota of 15 percent of the taxable base.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

Rulings are available and they are binding for the Spanish Tax Authorities.

Tax incentives

There are several tax reliefs for the engagement in certain activities such as R&D credits, employment generation credits and incentives to the film industry.

CONSOLIDATION

Eligible corporations that are affiliated (generally based on at least 75-percent stock ownership or 70-percent stock ownership for listed companies and the majority of the voting rights) may elect to file corporate income tax returns on a consolidated basis. A Spanish group may apply tax consolidation when the dominant company is tax resident in a foreign country (horizontal consolidation) provided that it has legal personality, is taxed by a foreign tax identical or analogous to the Spanish corporate income tax, and is not resident in a tax haven.

PARTICIPATION EXEMPTION

Spanish resident corporations are entitled to the application of the participation exemption on dividends and capital gains received from foreign or domestic subsidiaries provided the following conditions are met:

- Direct or indirect participation of at least 5 percent. If the participation has been acquired before January 1, 2021, during a provisional period of 5 years, there is the possibility of applying this exemption to holdings with an acquisition value of over EUR20 million even though the 5-percent participation is not reached.
- The participation shall be held during the previous fiscal year.
- Subsidiaries must qualify as "active companies" under Spanish regulations, and
- In the case of foreign subsidiaries, they shall be subject to corporate income tax in its country of residence similar to the Spanish Corporate Income Tax. This requirement will be satisfied when the foreign entity is subject to a Corporate Income Tax rate of at least 10 percent or the country of residence has signed a Double Tax Treaty with Spain which includes an information exchange clause.

The above-mentioned dividends and capital gains are exempt, although, for the purposes of applying the exemption, the amount of the dividends and capital gains shall be reduced by 5 percent as management expenses, resulting in an effective taxation of 1.25 percent of the amount of the dividend or capital gain.

CAPITAL GAIN

Capital gain recognized by a corporation is taxed at the same rate as ordinary income (*ie*, 25 percent).

DISTRIBUTIONS

As a general rule, distributions paid by a corporation are treated as dividends to shareholders to the extent of the current and accumulated earnings and profits. A distribution in excess is treated as a return on capital up to the limit of the shareholder's tax basis and thereafter is treated as taxable income.

LOSS UTILIZATION

Net operating losses (NOLs) can be carried forward with no time limit. However, the following limitations apply:

- Companies with net turnover in the previous fiscal year of less than EUR20 million can only offset NOLs up to the limit of 70 percent of the net taxable income.

- Companies with net turnover in the previous fiscal year between EUR20 million and EUR60 million can only offset NOLs up to the limit of 50 percent of the net taxable income.
- Companies with net turnover in the previous fiscal year of more than EUR60 million can only offset NOLs up to the limit of 25 percent of the net taxable income.

Nevertheless, NOLs up to EUR1 million can be offset with no limit.

TAX-FREE REORGANIZATIONS

A special Spanish tax regime is applied to corporate reorganizations such as mergers and spinoffs. This regime establishes a tax deferral scheme for these transactions.

ANTI-DEFERRAL RULES

Generally, CFC rules apply when a controlled entity resident outside of the EU is subject to a tax rate below 75 percent of the effective Spanish Corporate Income Tax rate and obtains certain passive income, which shall be allocated to the Spanish controlling entity.

FOREIGN TAX CREDITS

If the participation exemption does not apply, withholding taxes and underlying tax can be deducted, under certain rules.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Not applicable for this jurisdiction.

TRANSFER PRICING

Arm's-length principles generally are applied under Spanish law to transactions between related entities. The Spanish rules are in accordance with OECD guidelines.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc.

A 19-percent withholding tax applies to dividends and interest paid by a domestic corporation to a foreign person. Royalties are subject to a 24-percent withholding tax, except for payments made to EU residents which are subject to a 19-percent withholding tax. These rates could be subject to reduction by an applicable Double Tax Treaty.

Under the EU Parent-Subsidiary Directive and the EU Interest and Royalties Directive, dividends and royalties paid to an associated company may qualify for an exemption. In addition, as a general rule, interest payments to EU residents are exempt from withholding tax in Spain.

Service fees

As a general rule, withholding tax only applies to service fees if the services are performed in Spain, provided that a double tax treaty does not apply.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

1 percent capital duty applies to share capital distributions and to dissolution of Spanish entities, to be paid by the shareholders.

Transfer tax is applicable on certain transactions, including the transfer of real estate and the lease of real estate exempt from VAT. Transfer tax is not recoverable and paid by the buyer or lessee.

Stamp duty is applicable to notarial deeds over a valuable right or asset which can be registered in a public registry, among other transactions, with rates generally ranging from 0.5 percent to 3 percent depending on the region and the transaction.

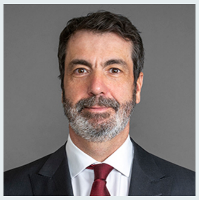
EMPLOYMENT TAXES

Employers must withhold income tax. Employers also must pay social security contributions. Social security contributions are deductible by the employer for Spanish income tax purposes.

OTHER TAX CONSIDERATIONS

Not applicable for this jurisdiction.

KEY CONTACTS



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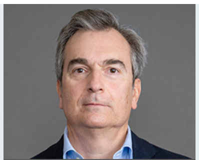

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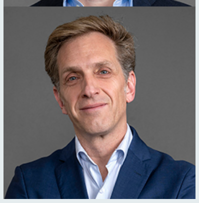

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