



GARRIGUES

ABOGADOS Y ASESORES TRIBUTARIOS

Visit to the Chamber of Commerce of Luxembourg  
Special features of the Spanish Corporate Tax regime

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## CORPORATE TAX – TAXABLE BASE

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- ✧ Closely follows accounting rules. Few exceptions
- ✧ Goodwill and intangibles amortizable (except if acquired from group companies)  

New Accounting plan (2008): special rules for this amortization (even in absence of accounting depreciation?)
- ✧ Interest expenses deductible  

D/E: 3/1 but not applicable to EU lenders
- ✧ Portfolio depreciation provision
- ✧ Qualifying capital gains: 18% effective tax rate, subject to the reinvestment of the sale proceeds  

2007: the scope has been substantially narrowed
- ✧ Look through rules (“international tax transparency”) for passive investments not applicable to EU corporates....but be aware of the partnerships or civil law companies where income may be allocated for Spanish tax purposes (“income attribution”)

## CORPORATE TAX: PARTICIPATION EXEMPTION

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- ✧ Dividends and capital gains from 5% or more qualifying participations are exempt
- ✧ Related expenses (interest deriving from the borrowings, capital losses) are deductible against Spanish source income
- ✧ Qualifying test (comparable tax, business activities) easy to comply with
- ✧ Investments in tax havens do not qualify. Indirect investments in tax havens may hamper the whole regime

## CORPORATE TAX: THE SPECIAL HOLDING COMPANY REGIME (ETVE)

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- ✧ It is simply an improvement to the standard participation exemption regime
  - The 5% holding may be substituted by a Euro 6 million investment threshold
  - No WHT on dividends to non Spanish resident shareholders
- ✧ Any Spanish company (pure holding or operating, taxed on an individual basis or on a Tax Unit basis) may choose to use this regime
- ✧ A non Spanish group may equally take advantage by means of its existing Spanish affiliates or through a new company which may be included in the same Tax Unit with the operating companies
  - It is convenient to make a reasonable use of the advantages of this regime

## CORPORATE TAX: FINANCIAL GOODWILL DEPRECIATION

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- ✧ Applicable to investments qualifying for the participation exemption
- ✧ 5% deduction of the “financial goodwill” deriving from the acquisition of these investments
- ✧ It does not require a depreciation charge to be registered
- ✧ Under pressure from the EU Commission?

It is only a way to match the goodwill allowance for Spanish asset deals or “stock acquisition + merger deals” (difficult in cross border scenarios)

## CORPORATE TAX RATE AND TAX CREDITS

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- ✧ 32,5% in 2007

- ✧ 30% in 2008 onwards

Prone to future reductions?

- ✧ Progressive phase out of the traditional tax credits, but

  - R&D tax credits remain in place at very substantial levels

## SPECIAL TAX REGIMES

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- ✧ Tax consolidation (75% holding requirement / PE may be the “parent” entity / EU subs not included, but portfolio depreciation provision available)
- ✧ Venture capital
- ✧ UCITS (Instituciones de inversión colectiva): 1% tax

## NON RESIDENT TAXATION

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- ✧ General rule: full subjection of income arising from Spain, but multiple exemptions
- ✧ General tax rate: 24%
- ✧ Interest / Dividends / Capital Gains: 18%
- ✧ Treaties reduce WHT on interest / dividends to 15% / 10% and frequently exempt capital gains

## NON RESIDENT TAXATION: SPECIAL RULES

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### Interest:

- Exempt if collected by EU resident

### Capital Gains on quoted shares

- Exempt if obtained by residents in countries with a Tax Treaty with Spain with a broad “exchange of information clause”



## NON RESIDENT TAXATION: THE CASE OF THE TAX HEAVENS

- ✧ Spanish legislation is not particularly friendly with tax heavens
- ✧ The qualifications of a jurisdiction as a tax heaven started with the Decree 1080/91, which has not been modified (48 jurisdictions)
- ✧ The new Ant avoidance law effective December 1, 2006 introduces two fundamental changes:
  - A new case of Spanish residence for tax heavens companies whose assets (directly or indirectly held) are mainly Spanish assets
  - A definition of “non tax” jurisdictions, to whom the abovementioned rule also applies
- ✧ There is a perceived shift to a stronger focus in the exchange of information in detriment of the low level of taxation
- ✧ The list of tax heavens will be established by the Government. The former Decree is still applicable
- ✧ The tax heavens jurisdictions will be excluded from the list when they sign a Treaty with Spain or an Exchange of Information Agreement that explicitly allows for this exclusion

## NON RESIDENT TAXATION: THE CASE OF LUXEMBOURG (I)

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### ✧ Protocol to the Tax treaty:

- Excludes from treaty protection the 1929 and 1938 Luxembourg holdings and similar entities
- Spanish Tax Authorities originally included the 1988 UCITs among the referred holdings
- Later, they excluded the UCITs with EU passport and registered for distribution in Spain (agreement with the Luxembourg Tax Authorities)

## NON RESIDENT TAXATION: THE CASE OF LUXEMBOURG (II)

- ✧ Open issues affect SICAR / SIF / SICAV part I (EU passport) / SICAV part II
- ✧ Questions:
  - Access to treaty protection
  - International tax transparency (CFC) rules
  - Look through regime (income attribution)
- ✧ Some thoughts:
  - EU law and case law may exclude the international tax transparency rules, on top of Spanish law exclusion for EU resident companies
  - The access to Treaty protection should not be denied on the basis of the low tax burden applicable to these vehicles
    - Is the exchange of information the key?
- ✧ Overarching question: is the inclusion of Luxembourg companies in the list of tax heavens contrary to EU law?