GUIDE TO BUSINESS IN SPAIN 2022

GARRIGUES ICEX INVEST IN SPAIN

GUIDE TO BUSINESS IN SPAIN 2022

This guide was researched and written by Garrigues, on behalf of ICEX, on February 2022.

This guide is correct to the best of our knowledge. It is, however, written as a general guide so it is necessary that specific professional advice be sought before any action is taken.

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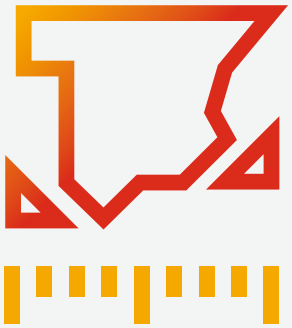

GUIDE TO BUSINESS IN SPAIN 2022

The 2022 Guide to Business in Spain is a document that summarizes the main regulatory aspects governing investments in Spain. This publication is useful not only for investors who are dealing with the Spanish regulatory system for the first time, but also for those who already have some prior knowledge and wish to learn more about the most important aspects of setting up and growing a company in Spain.

GARRIGUES ICEX INVESTIN SPAIN

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Spain: An attractive country for investment

Spain is in an outstanding position worldwide in terms of the importance of its economy: the 14th largest economy in the world by GDP, the 11th country most attractive for foreign direct investment (FDI), the 15th largest issuer of FDI, among the sovereign countries, and the 14th largest exporter of commercial services.

Spain has a modern economy based on knowledge, in which services represent over 74% 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 (over 47 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 important economies in the world, ranking 14th in size and has an immense capacity to attract foreign investment (currently ranked 9th in terms of foreign direct investment)[1]. 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 geo-strategic position within the European Union giving access to more than 2,300 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 over 74%[2] 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.

1 According to the 2021 A. T. K Kearney FDI Confidence Index.
2 National Statistics Institute. Data from 2021.

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/ 2 The country, its people and quality of life

2.1 GEOGRAPHY, CLIMATE AND LIVING CONDITIONS

The Kingdom of Spain occupies an area of 506,030 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 2021 was over 47 million people, with a population density of almost 94 inhabitants per square kilometer.

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

Table 1

THE BIGGEST CITIES IN SPAIN*	
	POPULATION
Madrid	3,305,408
Barcelona	1,636,732
Valencia	789,744
Sevilla	684,234
Zaragoza	675,301
Málaga	577,405
Murcia	460,349
Palma	419,366
Las Palmas de Gran Canaria	378,675
Bilbao	346,405

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

Source: Report on registered population of Spanish provincial capital cities at January 1, 2021. National Statistics Institute/Official State Gazette.

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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 more than 23 million people according to the Labor Force Survey (released in the fourth quarter of 2021). Spain's population is relatively young: 15% is under 16 years old, 65% is between 16 and 64 years old, and only 20% is 65 and over, according to 2021 figures. As highlighted in Table 2, Spain has a highly diverse and multicultural population.

Table 2

FOREIGNERS RESIDENT IN SPAIN BY CONTINENT OF ORIGIN			
	2019	2020	2021*
Europe	3,116,554	3,200,498	3,265,732
America	987,837	1,032,621	1,060,226
Asia	466,834	471,539	481,999
Africa	1,087,706	1,091,449	1,109,864
Oceania	2,906	2,827	2,888
Unknown	1,511	1,531	1,487
TOTAL	5,663,348	5,800,465	5,922,196

Source: Ministry of Inclusion, Social Security and Migrations[3]. *Data as of June 30, 2021.

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 some time ago, with 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.

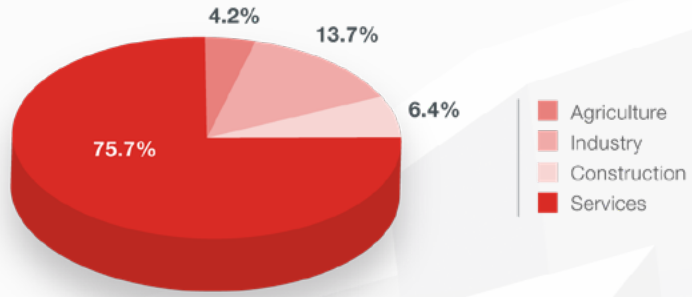
Like our neighboring countries, and as a result of the recent global crisis and the effects of the COVID-19 pandemic on the economy, Spain has launched an ambitious program of structural reform with a view to boosting economic growth and creating jobs.

The Spanish government, in keeping with the commitments entered into by the European Union to promote employment, 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 aimed to introduce greater flexibility, reduced the dual nature of the job market and improve the employability of workers. A new labor reform was passed in 2022 with the main objective of ensuring availability of skills in the Spanish labor market and tackling the mismatch between labor supply and demand.

This, among other factors, has led to the creation of 2.5 million jobs since 2014. This positive evolution, which was interrupted due to the negative impact of the COVID-19 public health crisis in 2020, resumed its upwards trend in 2021.

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 2021



Source: National Statistics Institute.

Table 3

EVOLUTION OF LABOR FORCE STRUCTURE BY ECONOMIC SECTOR (%)			
	2019	2020	2021
Agriculture	4.0	4.1	4.2
Industry	13.8	13.9	13.7
Construction	6.4	6.6	6.4
Services	75.8	75.4	75.7

Source: National Statistics Institute. 2021. Labor Force Survey.

3 https://extranjeros.inclusion.gob.es/ficheros/estadisticas/operaciones/con-certificado/202106/nota_analisis_3006_2021.pdf

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2.3 POLITICAL INSTITUTIONS

Spain is a parliamentary monarchy. The King is the Head of State[4] 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[5].

The Constitution of 1978 enshrined the fundamental civil rights and public freedoms as well as assigning legislative power to the *Cortes Generales* (Parliament)[6], 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.

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[7] 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 co-ordinates 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.

4 https://www.casareal.es/EN/Paginas/home.aspx
5 https://www.poderjudicial.es/portal/site/cgpj/?Template=default&vgnextlocale=en&lang_choosen=en
6 https://www.congreso.es/web/guest
7 http://www.lamoncloa.gob.es/lang/en/Paginas/index.aspx

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/ 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.

On July 1, 2013, with the addition of Croatia, the number of countries in the European Union was increased to 28 Member States[8]. Nonetheless, the referendum on whether the United Kingdom and Gibraltar should remain in the European Union was held on June 23, 2016, the result being in favor of their exiting the Union. Thus, on January 31, 2020 the United Kingdom left the European Union upon the entry into force of the Withdrawal Agreement, thus reducing the number of Member States to 27.

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[9].

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 on 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.

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;

8 https://europa.eu/european-union/about-eu/countries/member-countries_en
9 http://europa.eu/european-union/law/treaties_en

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for example, the Euro-Plus Pact designed to consolidate the coordination of the economic policy in the Economic and Monetary Union.

In May 2020 the European Commission presented a proposal for reviewing the Multiannual Financial Framework with a view to increasing investments in 2020 in order to confront the COVID-19 public health crisis.

Subsequently, on December 17, 2020 the Council of the European Union approved the Regulation laying down the multiannual financial framework of the European Union for the years 2021 to 2027, which will be a financing instrument aimed at supporting all areas of action of the European Union, with a particular focus on ecological and digital transitions, and will also help EU Member States to deal with the consequences of the COVID-19 public health crisis, stimulating their modernization and resilience. Spain thus remains committed to structural reforms, boosting 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 such Funds. During the 2020-2027 period, European financing under the Multiannual Financial Framework, together with the temporary recovery instrument "Next Generation EU", is expected to entail a positive contribution of over €2 trillion to help repair the damage brought about by the COVID-19 pandemic and to support the long-term priorities of the European Union in various areas of action.

European institutions are tasked with encouraging and supporting technological research and development. On December 11, 2020 the Council of the European Union reached a provisional political agreement with the European Parliament's negotiators on the proposed Regulation establishing Horizon Europe for the years 2021 to 2027.

Horizon Europe will be supported on three pillars:

1. Excellent Science.

2. Global Challenges and European Industrial Competitiveness.

3. Innovative Europe.

In this way it will help to 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.

On February 18, 2022, the Council of Ministers passed the bill for reform of the 2011 Science Law, which aims to provide resources, rights and stability for R&D&I personnel, as well as ensure stable and growing public funding, with a target of 1.25% of GDP which, coupled with private investment, would meet the European Union R&D funding target of 3%.

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 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, and which approved a €77 million R&D&I funding package in 2021. Both entities steadily promote transnational and bilateral research and cooperation projects.

From the outset of the pandemic in 2020, the Ministry of Science and Innovation established special employment measures to support COVID-19 research, in addition to budgetary measures, launching various lines of subsidies and special loans in the budget, targeted at R&D projects related to COVID-19. At the end of 2021 the Ministry of Science and Innovation presented the general outline of the General State Budget for 2022, which includes a large direct investment in R&D&i. Specifically, the budget has been increased by 19% with respect to 2021, i.e., up to €3,843 million.

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/ 4 Infrastructure

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

In this connection, the Infrastructure, 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. Additionally, the Spanish government will allocate 12% of the Next Generation program to resilient ecosystems and infrastructure policies, to be implemented through projects such as the Transport, Energy and Urban Infrastructure Preservation Plan.

The objectives of the PITVI 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 17,377 kilometers, has undergone constant renovation with a view to enhancing its efficiency. Today it is the leading European motorway and dual carriageway network. The improvement of the motorway and dual carriageway network and an increase in high-capacity roads, with investment of €36,439 million, is among the objectives of the plan.

As far as railway transport is concerned (where Spain has a network of almost 18,000 kilometers), high-speed networks have become a priority.

Madrid currently has high-speed train connections to 33 Spanish cities, meaning that approximately two-thirds of the Spanish population live within reach of a high-speed train station.

The Spanish high-speed network is constantly being expanded. The new Madrid-Orense section was inaugurated in December 2021 and is expected to be followed by the inauguration of the sections to Burgos and Murcia in 2022, while the Badajoz section will be connected to Madrid in 2023. The Spanish government estimates that construction of the entire rail corridor from Almeria to the French border will be completed by 2025-2026.

In fact, in recent years, Spain has become a global high-speed rail pioneer, having multiplied the kilometers of high-speed lines in service more than eight-fold, from just over 450 kilometers to more than 3,700 kilometers.

Since its inception, approximately €51,775 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. Looking toward to 2022, the General State Budget contemplates an increase in high-speed expenditure over preceding years, financed in part with European funding.

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. By way of example, since 2020, administrative licenses and concessions have been granted to Spanish companies for their participation in the construction of railway infrastructure and equipment in countries such as Australia, the

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United Kingdom, the United States (Dallas and Houston) and Mexico, among others. Additionally, Renfe operates the high-speed line connecting Medina and Mecca in Saudi Arabia.

Regarding the deregulation of rail passenger transport services, approval was recently given to Royal Decree-law 23/2018 of December 21, 2018, which transposes the Directive developing the single European railway area, allowing access to the railway infrastructures of all Member States and reinforcing the independence and impartiality of the administrators of such infrastructures. As a consequence of the deregulation, it was announced in 2020 that the high-speed "low cost" [railway infrastructure] known as *"Avlo"* would begin to operate, although its inauguration was postponed until June 2021, due to the COVID-19 public health crisis.

In addition to the entry into operation of "Avlo" trains, other high-speed "low cost" operators are also entering the market, such as "Ouigo" in March 2021 and the envisaged entry of "Iryo" at the end of 2022, fostering competition in the sector.

Finally, the ongoing liberalization of the freight sector since 2005 has led to the creation of private enterprises that transport goods by railroad. Following approval of the European Recovery Plan, the European Commission has authorized a €120 million support package designed by the Spanish government, with a time frame until June 2026, channeled through subsidies aimed at companies that substitute road transport for rail transport, compensating the difference in costs between the two modes of transport. This plan aims to incentivize rail transport over road transport, as well as improve the competitiveness.

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. AENA plans to invest €1,571 million up to 2026, the main objective being to increase capacity up to 80 million passengers. In 2020, as a consequence of the COVID-19 global health crisis, Spanish airports, like those in the rest of the world, saw a temporary drop in passenger numbers with respect to the positive evolution recorded in preceding years. However, the upward trend rebounded in 2021 with a 57.7% increase in passenger numbers compared to the previous year.

Despite the global paralysis suffered by the industry, which is still in the recovery phase, Spain has been chosen by many airlines as one of the top places for parking their fleet of aircraft, given the excellence of existing infrastructure.

The access to the high-speed rail network takes only 25 minutes from the Adolfo Suárez Madrid–Barajas International Airport; this means that travelers can easily combine both types of transport, placing Spain at the forefront of passenger transport.

The 2025 Flight Plan approved by ENAIRE provides for investment in excess of €100 million a year, with €168.7 million earmarked for 2022. By the end of the Plan in 2025, total investment will have reached €737 million, with the aim of adapting to the liberalization of services, as well as globalization and the consolidation of air navigation managers. The 2025 Flight Plan also seeks to enhance flight path efficiency as part of a commitment to sustainable aviation.

Furthermore, with over 46 international ports on the Atlantic and Mediterranean coasts, Spain boasts excellent maritime transport links, becoming a port and harbor powerhouse, only behind the Asian giants, the US, Germany and the Netherlands. The reinforcement of short-distance maritime transport, both domestic and European, and the development of seaside motorways are some other key initiatives. Moreover, the Motorway of the Sea between Spain and France is now in operation, linking Vigo with the French port of Nantes-Saint Nazaire. At the same time, work is underway to recover the connection between Gijón and Nantes-Saint Nazaire, which would reintroduce what was one of the first Spanish motorways of the sea and which operated until its closure in 2014. Furthermore, 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 links already on offer and operating with good results between the port of Barcelona and several Italian ports. The ferry line between Santander and the Irish port of Cork has also been reopened.

This will allow a more sustainable alternative in some of the main flows within the EU. In addition, with a view to improving the competitiveness of ports, the Ports Law was revised in 2021 to increase competitiveness, address the exceptional circumstances deriving from the COVID-19 pandemic and introduce the regulation of autonomous or unmanned ships.

In the same vein, the 2021-2025 Investment Plans for the port system were approved in 2021 to enhance port system connections, with an investment of more than €4,556 million. The 2022 budget for the port system in Spain was presented at the end of 2021, with an investment up to €925 million for port terminals, enhancements in land connectivity, environmental sustainability and digitalization.

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 top 100 ports worldwide in terms of container traffic[10], 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

10 https://lloydslist.maritimeintelligence.informa.com/-/media/lloyds-list/images/top-100-ports-2021/top-100-ports-2021-digital-edition.pdf.

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universities and R&D centers. There are currently 62 technological parks[11] housing 7,967 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 fiber optic cable network covering the country almost in its entirety, in addition to an extensive undersea cable network, aided by its privileged geographical position. The Spanish government plans to facilitate investment in this data transmission medium by eliminating administrative barriers.

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, the Spanish government is in the process of drawing up the 2022-2027 Water Plans for the Spanish River basins, following completion of the public consultation process in late 2021. The main objective of the new plans is to readjust water management to the effects of climate change, reducing allocations to adapt them to climatic conditions and improve the treatment of urban waste.

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

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/ 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. In 2021, these two sectors represented more than 91% of Spain's GDP, with agriculture's share today representing 2.96% of the total GDP, having declined sharply (see Table 4).

Table 4

STRUCTURE OF GDP (% OF TOTAL, CURRENT PRICES)			
SECTOR	2019	2020	2021
Agriculture and fishery	2.86%	3.45%	2.96%
Industry	15.95%	16.09%	17.00%
Construction	6.27%	6.22%	5.76%
Services	74.92%	74.24%	74.28%

Source: National Statistics Institute.

Throughout 2020 the impact of the COVID-19 public health crisis was felt by the Spanish economy due, principally, to the implementation of measures to contain the pandemic. This entailed a major change with respect to the growth trend which began in the second half of 2013. Nonetheless, during 2021, the GDP growth rate substantially improved, recording a variation of 2%[12] in the quarter-on-quarter rate in the fourth quarter of 2021 in terms of volume. Year-on-year growth in GDP amounted to 5.2%[13], reflecting a recovery of the Spanish economy and corresponding to the highest growth figure in the last 21 years. The GDP growth rate is expected to remain high in 2022.

Inflation in Spain had been gradually falling 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. For reference, the year-on-year inflation rate at December 2020 was -0.5%. However, 2021 saw a change in the inflation trend, due mainly to an upsurge in demand following the restrictions introduced as a result of the pandemic, leading to mismatches between supply and demand as a result of shortages of raw materials, particularly energy products.

This generalized increase in prices was reflected in a year-on-year inflation rate of 6.7% at the end of 2021, driven mainly by the rise in energy prices. Despite the sharp change in trend, inflation growth is expected to slow throughout 2022, bolstered by favorable financial conditions and the inflow of funds from the European Recovery Plan, although the impact of the Russian invasion of Ukraine has increased uncertainty as regards its evolution, due to the price of energy products.

12 National Institute of Statistics, Quarterly National Accounts of Spain. Principal Aggregates. Fourth Quarter of 2021.

13 National Institute of Statistics, Quarterly National Accounts of Spain. Principal Aggregates, Fourth Quarter of 2021.

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Table 5

GROWTH FOR OECD COUNTRIES (%)			
REAL GDP GROWTH			
	2019	2020	2021
EU countries			
Germany	1.1	-5.0	3.1
France	1.8	-8.0	7.4
Italy	0.5	-9.1	7.0
United Kingdom	1.7	-9.4	8.3
Spain	2.1	-10.8	5.5
Other countries			
United States	2.3	-3.4	5.8
Japan	0.2	-4.5	1.8
Total Euro Zone	1.8	-6.1	5.6
Total OECD	1.7	-4.7	5.7

Source: OECD Quarterly National Accounts.

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/ 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 over 47 million people with a per capita income in 2020 of €23,693 according to data from the National Statistics Institute, with additional demand coming from the 31.1 million tourists who visited Spain in 2021[14]. This marked a 64.4% increase in tourist numbers with respect to 2020, in which an exceptional drop was recorded with respect to the positive trend of previous years, due to the COVID-19 public health crisis. The progressive lifting of restrictions on international travel has fueled a global upturn in tourism.

Table 6 reflects the growth of production and demand components in the last year. The consolidated growth rate of the Spanish economy is mainly due to the contribution of national demand, as well as to foreign demand, given the increase in exports.

Table 6

GROWTH OF PRODUCTION AND DEMAND COMPONENTS (%)		
PRODUCTION COMPONENTS	**2020**	**2021**
Agriculture and fishery	4.3	-5.5
Industry	-10.2	6.2
Construction	-11.2	-3.3
Services	-11.5	6.5
DEMAND COMPONENTS	**2020**	**2021**
Private consumption	-13.6	6.9
Public consumption	3.3	3.0
Gross fixed capital formation	-11.4	7.2
National Demand	-8.7	5.1
Exports of goods and services	-20.1	15.7
Imports of goods and services	-15.2	14.6

Source: National Institute of Statistics.

14 Tourism Border Movements *(FRONTUR)* statistics. Data at December 2021. National Statistics Institute.

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/ 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, in 2020 Spain was ranked 18th in the world as an exporter and 16th as an importer; while in the trading of services it occupies 14th place as an exporter and 20th place as an importer[15].

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 1.8% and 1.3% respectively.

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

Table 7

DISTRIBUTION OF EXPORTS AND IMPORTS 2021 (AS A % OF TOTAL)			
EXPORTS		**IMPORTS**	
Capital goods	18.6%	Capital goods	20.7%
Food	18.0%	Chemical products	18.5%
Chemical products	17.0%	Energy products	13.6%
Automobile industry	12.8%	Food	11.5%
Semi-manufactured non-chemical products	11.2%	Consumer goods	11.3%
Consumer goods	9.6%	Automobile industry	9.5%
Energy products	6.7%	Semi-manufactured non-chemical products	7.7%
Raw materials	2.6%	Raw materials	3.6%
Other goods	1.8%	Durable consumer goods	2.9%
Durable consumer goods	1.7%	Other goods	0.6%

Source: Ministry of Industry, Trade and Tourism. January – December 2021 data.

As would be expected, the countries of the EU are Spain's main trading partners. Accordingly, during 2021[16], Spanish exports to the European Union accounted for 61.8% of total exports and sales to the Eurozone represented 54.5%. Imports from the European Union accounted for 49.9% of the total and those from the Eurozone represented 42.4%.

15 WTO "World Trade Statistical Review 2021".
16 Annual data published by the Spanish Ministry of Industry, Trade and Tourism. January – December 2021 data.

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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, 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 61.8% of total exports in 2021.

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

Specifically, Spain is the 11th largest sovereign country recipient of foreign investment worldwide in terms of stock (and 5th in the EU) with USD 853,291 million. Spain is the 15th largest source of FDI in terms of stock, with a volume equal to USD 624,839 million in 2020[17].

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 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)*, which were allocated a total of €282 million in 2022 to channel the internationalization support and mentoring programs managed by the Spanish Chamber of Commerce. Also notable are the credit facilities for business owners and independent contractors offered by the Official Credit Institute *(ICO)* and approved in 2022: the 2022 *ICO* International Facility and the 2022 *ICO*-Exporters Facility.

In order to foster internationalization and the inflow of funds from the European Recovery Plan, a new €50 million non-refundable FIEM financing line has also been approved, allocated to the performance of sectoral and institutional modernization and feasibility studies on projects of interest for internationalization, for the period 2021-2023.

The *ICO* has also managed various funds for enterprises and independent contractors, aimed at palliating the economic impact of the crisis through the approval of *ICO*-COVID-19 lines of security to be used as liquidity and investment instruments, with a budget of up to 100 and 40 billion euros, respectively. Lastly, the Ministry of Industry, Trade and Tourism has submitted a "crash" program to combat COVID-19 with measures whose objectives are focused on mitigating the impact of COVID-19 on foreign trade, promoting an image of Spain associated with competitiveness and excellence in production and keeping the markets open, influencing the EU and multilateral forums such as the OMC, inter alia, against the risks of protectionism and preference for national consumption.

Along these lines, the Spanish Economy Internationalization Strategy 2017-2027, together with the biennial Action Plans (for 2017-2018, 2019-2020 and 2021-2022) was approved. The "Internationalization Support Action Plan 2021-2022" forms part of the Spanish Economy Internationalization Strategy 2017-2027, and its priority objectives are focused on the following three lines of action: (i) to configure the foreign sector as a pillar of growth and employment; (ii) to achieve greater resilience in the production and export fabric; and (iii) to promote a structural change in internationalized enterprises toward digitalization and sustainable development.

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)	2020	2021
I. Current account	**9,251**	**8,429**
Goods and services	16,528	17,057
Primary and secondary income	-7,277	-8,628
II. Capital Account	**4,469**	**9,918**
III. Financial Account	**17,252**	**28,043**
Total (excluding Bank of Spain)	98,228	11,557
Direct investment	19,598	-2,144
Portfolio investment	53,675	-14,590
Other investment	32,044	20,709
Financial derivatives	-7,090	7,582
Bank of Spain	-80,975	16,486
Reserves	-346	10,315
Claims with the Eurosystem	-102,273	869
Other net assets	21,644	5,302

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.

Source: Bank of Spain. Data from January to December 2020 and 2021.

17 According to the UNCTAD "World Investment Report 2021".

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/ 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 International 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 International Trade and Investments, once the investment has been made[18]. 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).

18 The contents and instructions to complete each declaration can be found at the following link: https://comercio.gob.es/InversionesExteriores/Declaraciones_Inversion/procedimientos/Paginas/declaracion-inversiones.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 Industry, Trade and Tourism and may choose whether to file the declaration electronically or on paper.

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- 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.

8.1.1 FOREIGN INVESTMENTS - CHARACTERISTIC

Table 9

FOREIGN INVESTMENTS	
Investors[19]	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.
Regulated investments[20] **Reporting obligations**	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[21].
	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.

FOREIGN INVESTMENTS	
Parties subject to obligation	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).
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 Industry, Trade and Tourism.
	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.

19 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.

20 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.

21 http://www.cnmv.es/portal/home.aspx?lang=en

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8.1.2 MONITORING OF FOREIGN INVESTMENTS

The Directorate-General for International Trade and Investments *(DGCI)*[22] 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 the legal arrangements governing the movement of capital and economic transactions abroad 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 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.

In the case of bank accounts to be opened by non-resident legal entities, and without prejudice to the fact that each credit institution may request more or less information, the following is the basic information to be requested at the time the account is opened:

1. Identification document of the sole administrator or of the persons with powers of attorney to open the current account.
2. Document accrediting the nature and address of the company. For example:
   - Public deed of incorporation.
   - Bylaws (in the event that they are not included in the deed of incorporation).
   - Certificate issued by the commercial register or equivalent body in the country of residence, certifying the nature and domicile. The content of this certificate must be at least the following:
     - Date of issue (which must be less than two months old to be valid).
     - Company name.
     - Address.
3. Document accrediting the powers of attorney of the authorized person to operate the account (in the event that the powers of attorney do not appear in the above certificate).
4. Details of the shareholding structure of the company.

22 www.comercio.gob.es/

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5. Document verifying the nature of the business activity. For example:

   - Annual report.
   - Annual accounts.

   It is necessary to bear in mind that all documents issued outside Spain must be duly legalised and apostilled (Hague Convention), as well as duly translated into Spanish (sworn translation). 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 the 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[23].

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 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); negotiable instruments or bearer means of payment (those instruments which, on presentation, give their holders the right to claim a financial amount without the need to prove their identity or their entitlement to that amount. Included here are travellers’ cheques, cheques, promissory notes or money orders, whether made out to

23 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).

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bearer, signed but omitting the name of the payee, endorsed without restriction, made out to the order of a fictitious payee or otherwise by virtue of which title passes on delivery, and incomplete instruments); prepaid cards; commodities used as highly liquid stores of value, such as gold. 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 cheques, negotiable instruments, including cheques, 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 cheques, promissory notes and payment orders that are signed but omit the name of the payee.

8.5 EXCEPTIONAL MEASURES IN RESPONSE TO COVID-19

As a result of the appearance of the so-called "coronavirus" (COVID-19) in the international arena and the extraordinary effects it has had in all aspects, the Spanish government has approved a series of measures that aim to respond to the pandemic.

Among the various measures adopted, stand out the ones adopted to control foreign investment established through successive Royal Decree-Laws, the latest being Royal Decree-Law 27/2021 of 23 November extending certain economic measures to support the recovery, which amended the sole transitory provision of Royal Decree-Law 34/2020 of 17 November on urgent measures to support business solvency and the energy sector, and on tax matters.

Thus, Royal Decree-Law 27/2021 has extended until 31 December 2022 the application of the mechanism for the control of foreign direct investment in Spain (i.e., investments made by residents of countries outside of the European Union and of the European Free Trade Association where the investor comes to hold a stake equal to or greater than 10% of the share capital of the Spanish company, or where, as a result of the corporate transaction, act or legal transaction, they effectively participate in the management or control of that company), if:

- The investment is made in certain sectors affecting public policy, public security and public health.

- The foreign investor is directly or indirectly controlled by the government, including the public agencies or armed forces, of a third country; has made investments or participated in activities in sectors affecting security, public policy and public health in another member state; or if an administrative or judicial proceeding has been brought against the foreign investor in another member state or in the state of origin or in a third state due for carrying on criminal or illegal activities.

  Foreign direct investment shall also be deemed to be foreign direct investment made by residents of European Union or European Free Trade Association countries whose beneficial ownership is held by residents of countries outside the European Union and the European Free Trade Association. Such beneficial ownership shall be deemed to exist when the latter ultimately own or control, directly or indirectly, more than 25% of the capital or voting rights of the investor, or otherwise exercise control, directly or indirectly, over the investor.

Foreign direct investment in the following sectors will be subject to the monitoring mechanism:

a. Critical infrastructure, whether physical or virtual (including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities), as well as land and real estate that are key to the use of such infrastructure, understood as those referred to in Law 8/2011, of 28 April, which establishes measures for the protection of critical infrastructure.

b. Critical and dual-use technologies, key technologies for industrial leadership and capacity building, and technologies developed under programmes and projects of particular interest to Spain, including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, nanotechnologies, biotechnologies, advanced materials and advanced manufacturing systems.

c. Supply of fundamental inputs, in particular energy, understood as those regulated in Law 24/2013, of 26 December, on the Electricity Sector, and in Law 34/1998, of 7 October, on the Hydrocarbons Sector, or those referring to strategic connectivity services or raw materials, as well as food security.

d. Sectors with access to sensitive information, in particular personal data, or with the capacity to control such information, in accordance with Organic Law 3/2018 of 5 December on the Protection of Personal Data and Guarantee of Digital Rights.

e. Media, without prejudice to the fact that audiovisual communication services in the terms defined in Law 7/2010 of 31 March, General Law on Audiovisual Communication, shall be governed by the provisions of the aforementioned Law.

In order to carry out these investments, authorization must be obtained on the terms provided for in the applicable legislation (Law 19/2003, of July 4th, 2003).

Provisionally and until the minimum amount is established by regulations, investment operations the amount of which is less than 1 million euros will be deemed to be exempt from the prior authorization obligation.

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/ 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**")[24] and in Royal Decree 304/2014, of May 5, approving the Regulations of Law 10/2010 ("**Royal Decree 304/2014**").

Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries, entered into force on September 3, 2019.

Spanish AML/CTF legislation is the result of the transposition of EU legislation on the subject, in particular, the latest transposition being Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU (the "Fifth Directive"). 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, among others, 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*[25]. Admissible identifying documents are the following:

24 Amended by Royal Decree-Law 7/2021, of 27 April, on the transposition of European Union directives in the areas of competition, prevention of money laundering, credit institutions, telecommunications, tax measures, prevention and repair of environmental damage, posting of workers in the provision of transnational services and consumer protection.

25 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.

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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.

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 by-laws 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*[26]. 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:

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.

26 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.

GUIDE TO BUSINESS IN SPAIN 2022

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.

Further, it should be noted that, ordinarily, there is also almost total liberalization of foreign investment and exchange control in Spain, in line with EU legislation, notwithstanding the extraordinary measure consisting of the suspension of the regime for the liberalization of foreign investment in Spain, introduced by Royal Decree Law 8/2020 of March 17, 2020, on urgent extraordinary measures to deal with the economic and social impact of COVID-19, Royal Decree Law 11/2020 of March 31, 2020, adopting additional urgent measures in the social and economic field to deal with COVID-19, and Royal Decree-Law 34/2020, of November 17, 2020, on urgent measures to support the solvency of businesses and support the energy sector and in the tax field, which were approved by the Spanish Government on the occasion of the global COVID-19 pandemic.

2
Establishing a business in Spain

/ 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.

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Establishing a business in Spain

/ 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:

WAYS OF DOING BUSINESS IN SPAIN	
Creation of a Spanish company with its own legal personality	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.*).
Limited Liability Entrepreneur	Pursuit of the activity directly by the individual where certain requirements are met.
Branch or permanent establishment	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.
Joint venture	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: • A Temporary Business Association (*Unión Temporal de Empresas* or *UTE*). • An Economic Interest Grouping (EIG) and a European EIG (EEIG). • Under a type of silent partnership arrangement peculiar to Spanish law (*cuenta en participación*) with one or more Spanish entrepreneurs. • Participating loans. • Joint ventures through Spanish corporations or limited liability companies.
Without setting up a business or entering into an association with existing business or establishing a physical center of operations in Spain	The alternatives include: • Signing a distribution agreement. • Operating through an agent. • Operating through commission agents. • Franchising.
Acquisitions	Acquisition of shares, real estate located in Spain or businesses.
Venture capital	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.

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Establishing a business in Spain

/ 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 branch or 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, tax and legal representatives of branches located in Spain, permanent establishments or limited liability entrepreneurs; (ii) a *N.I.F.* for legal entities that are to be shareholders or directors of companies resident in Spain or owners of a branch in Spain or permanent establishments; 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, TAX AND LEGAL REPRESENTATIVES OF A BRANCH IN SPAIN, PERMANENT ESTABLISHMENTS OR LIMITED LIABILITY ENTREPRENEURS

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.	1. Original and copy of Official Form (EX15). 2. Fee Form (790 Code 12) with proof of payment at the relevant bank. 3. Authenticated and apostilled copy of passport (EU citizens may submit an identity document). If the applicant is not an EU citizen, a copy must be made of all of the pages of the passport. If the applicant is an EU citizen, the identification page of the passport will suffice. The notary's stamp and signature must be on all of the pages of the copies of the passport that is attached and not on a separate sheet. 4. If application made through a representative: (i) a copy of the applicant's passport authenticated before a notary and legalized and, where appropriate, certified by apostille[1]; (ii) evidence that the representative has sufficient powers, duly translated (sworn translation) and authenticated and/or certified by apostille.	€9.84/10 (Form 790 [2]).	1 week.
Abroad	Office of the Commissioner-General for Foreigners and Borders, through Spanish Consulates abroad.			

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

2 https://sede.policia.gob.es/Tasa790_012/ImpresoRellenar

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Establishing a business in Spain

3.2. *N.I.F.* FOR LEGAL ENTITIES THAT ARE TO BE SHAREHOLDERS OR DIRECTORS OF COMPANIES RESIDENT IN SPAIN OR OWNERS OF BRANCHES IN SPAIN OR PERMANENT ESTABLISHMENTS

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	1. Form 030[3] to obtain the instrumental N.I.E. of each and every one of the representatives in order to register them with the census, if applicable, at the Tax Agency (declaration of registration on the census of parties subject to tax obligations, change of address and/or change of personal particulars, box 109). In cases where the representatives already have the *N.I.E.* referred to in point 3.1 above, the representative may be entered on the census by telematic means with the relevant authorization through the "Registration on the census of individuals with *DNIE* or *N.I.E.* by approved tax agents", on the Tax Agency's website and provided that the representative has an electronic certificate with such status. Prior documents required: • Certificate or original 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) (in any event, the party appearing as representative must be the signatory of form 036 to be filed subsequently). The certificate must be recent and the apostille not over 3 months old. • Photocopy of each representative's passport, national identity card or *N.I.E.* 2. Form 036[4] to obtain the foreign entity's *N.I.F.* (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. Documentation required: • 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. • The original certificate of incorporation or extract from the Commercial Registry indicated in section 1 above. • To complete form 036, it will be necessary to indicate an address in Spain for notification purposes. • If applied for through a representative who is an attorney-in-fact: (i) photocopy of the Spanish national identity card or N.I.E. of the attorney-in-fact; (ii) proof that he/she has sufficient power and, where applicable, duly translated (sworn translation), with notarial certificate and legalized and/or certified by apostille.	First step: Assignment of the representative's instrumental *N.I.E.* by means of form 030 on the same day. Second step: One or two days later, the foreign entity's *N.I.F.* can be obtained by means of form 036.
Abroad	Spanish Consulates abroad or telematically		

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[5] 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, European Union 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.

3 https://www.agenciatributaria.gob.es/AEAT.sede/procedimientoini/G321.shtml
4 https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/G322.shtml.
5 Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

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3.3. PROVISIONAL AND DEFINITIVE *N.I.F.* OF THE COMPANY RESIDENT IN SPAIN THAT IS TO BE SET UP

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

PROCEDURE	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Ordinary procedure	State Tax Agency	• Form 036[6] (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[7]. • Copy of the *N.I.E.* or Spanish national identity card of the signatory. • Original clear name search certificate from the Central Commercial Registry. • Agreement of intent to form a company signed by the managing body and shareholders or copy of the deed of formation[8].	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 and must appear as previously registered on the census.		

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

PROCEDURE	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Ordinary Procedure [Telematic procedure]	State Tax Agency	• Form 036 (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 120, application for final *N.I.F.*, box 111, registration on the Census of Traders, Professional and Withholding Agents), signed by a representative of the company holding a *N.I.E* or Spanish national identity card. In this act, registering on the form the obligation to file a corporate income tax return is a mandatory minimum requirement. The other obligations regarding those related with the tax on economic activities, the personal income tax or *VAT* can be registered on the same form or at a later time. • Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036. • Copy of the *N.I.E.* or Spanish national identity card of the signatory. • Original and copy of the deed of formation bearing the registration stamp.	10 business days.

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[9] 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, European Union 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.

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 for in Spain, directly by the applicant or through a representative, and are free of charge.

6 Form 036 can be obtained at offices of the tax authorities or downloaded directly from the tax authority website: www.aeat.es (Templates and Forms/ Tax returns/All Tax Returns).

7 If the signatory of form 036 is not registered as a shareholder or member of the managing body in the agreement of intent, a power of attorney with a specific clause in favor of the signatory must be provided.

8 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.

9 Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

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Establishing a business in Spain

GUIDE TO BUSINESS IN SPAIN 2022

/ 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 (*Sociedad Limitada* -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:

	S.A.	S.L.
Minimum capital stock	€60,000	€3,000[10] [11]
Payment upon formation	At least 25% and any share premium.	Payment in full.
Contributions	A report from an independent expert on any non-monetary contributions is required[12].	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. In any case, a substitute report from the directors is required.
Shares	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.

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10 Except in the case of the entrepreneurial limited liability company, the rules for which are described in section 4.2 of Annex I.

11 In December 2021, the Council of Ministers approved the Enterprise Creation and Growth Bill, which is currently passing through parliament. This bill forms part of the reforms introduced by the Recovery, Transformation and Resilience Plan and will make it possible to form an S.L. (limited liability company) with share capital of 1 euro, eliminating the current requirement of 3,000 euros. This measure, according to the Spanish government, will enable Spain to come into line with its neighboring countries in terms of business creation.

12 The expert report is not required, but the substitute report from the directors is required in the following cases:

a. Contribution of transferable securities that are listed on an official secondary market or on another regulated market or in money market instruments, in which case they will be valued at the weighted average price on one or more regulated markets in the last quarter preceding the date on which the contribution was actually made, with the certificate issued by the relevant governing company.

b. Contribution of assets other than those indicated in letter a) above the fair value of which has been determined, within the 6 months preceding the date on which the contribution was actually made, by an independent expert not appointed by the parties.

c. Where in the formation of a new company by merger or spin-off a report has been prepared by an independent expert on the merger or spin-off plan.

d. Where the increase in share capital is carried out to deliver the new *S.A.* or *S.L.* shares to the shareholders of the absorbed or spun-off company and a report has been prepared by an independent expert on the merger or spin-off plan.

e. Where the increase in share capital is carried out to deliver the new *S.A.* shares to the shareholders of the company that is the target of a tender offer.

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Establishing a business in Spain

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	S.A.	S.L.
Transfer of shares	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.
Amendments to the bylaws	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
Venue for shareholders' meetings	As indicated in the bylaws. Otherwise, in the municipality where the company has its registered office.	
Attendance and majorities at shareholders' meetings	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.
Right to attend shareholders' meetings	A minimum number of shares may be required to attend the shareholders' meeting.	This right cannot be restricted.
Number of members of the board of directors	Minimum: 3. No maximum limit.	Minimum: 3. A maximum of 12 members.
Term of the office of director	Maximum 6 years (4 years at listed companies). They may be reelected for periods of the same maximum duration.	May be indefinite.
Issue of bonds	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.

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.*[13] and, where shares are held in the company and/or compensation is received for services as a director, it will be necessary to register for social security purposes[14] and therefore be a legal resident in Spain.

4.1. LEGAL FORMALITIES

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

13 Directorate-General of Registries and the Notarial Profession of January 18, 2012.

14 Articles 136 and 305 of Legislative Royal Decree 8/2015, of October 30, 2015, approving the revised General Social Security Law. See Chapter 5, section 13.3 for further information.

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Establishing a business in Spain

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY	
REQUIREMENTS	**APPLICABLE TO ANY KIND OF LIMITED LIABILITY COMPANY OR CORPORATION.**
1. Clear name search certificate	Application to the Central Commercial Registry by the interested party or anyone authorized by it (may contain up to 3 alternative corporate names, in order of preference)[15]. 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. However, the clear name search certificate will be valid for three months for the purposes of executing the deed, reckoned from the date of its issue by the Central Commercial Registry. Once the certificate has expired, an application may be submitted for its renewal with the same name. The expired certificate must be attached to the application.
2. Application for provisional *N.I.F.*	See section 3.3 above.
3. Opening of a bank account	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. Document containing representations by the beneficial owner	The founding shareholders must execute a document containing representations by the beneficial owner in accordance with Law 10/2010, of April 28[16].
5. Execution of deed before a notary	The founding shareholders must execute a public deed before a notary, containing: 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[17]. 2. Representations by the beneficial owner (see requirement 4 above). 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)[18]. 4. Clear name search certificate issued by the Commercial Registry (see requirement 1 above). 5. Company bylaws. 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. 7. Identification of and acceptance by the company directors. 8. Subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for International Trade and Investments ("*DGCI*") of the Ministry of Industry, Trade and Tourism (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). 9. Identification of the economic activity code describing the activity in accordance with the National Classification of Economic Activities (*CNAE*). 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.

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15 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/Deno_solicitud.aspx?lang=es).

16 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.
- Who ultimately owns or controls, directly or indirectly, more than 25% of the capital or voting rights of a legal entity, or who otherwise exercises control, directly or indirectly, over the management of a legal entity. An exception is made for companies listed on a regulated market in the European Union and subject to disclosure requirements consistent with EU law or with equivalent international standards that ensure that the information on ownership is suitably transparent. It is interesting to note that in the case of fideicomisos or fiduciary arrangements, such as common law/Anglo-Saxon trusts, all the following persons will be considered beneficial owners: 1. settlor, 2. trustee or trustees, 3. the protector, if any, 4. the beneficiaries or, where they have yet to be designated, the category of persons for whose benefit the legal structure has been created or acts; and 5. any other individual who exercises ultimate control over the trust by means of direct or indirect ownership or by other means. In the case of legal instruments similar to a trust, such as fiduciary arrangements or the "Treuhand" under German legislation, the obliged entities must identify and adopt the appropriate measures to verify the identity of the persons who hold positions equivalent or similar to those listed in numbers 1 to 5 above.
- Individuals who are considered beneficial owners must provide the following identifying particulars: first and last names, birth date, type and number of identity document, country that issued the identity document, country of residence, nationality, criteria by which he/she is classified as a beneficial owner, and in the case of beneficial ownership by direct or indirect ownership of shares or voting rights, percentage holding, including, in the case of indirect ownership, information on the interposed legal entities and their interest in each of them.
- Information relating to beneficial ownership must be kept for 10 years after beneficial owner status ends.

17 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.

18 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).

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Establishing a business in Spain

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STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY	
REQUIREMENTS	**APPLICABLE TO ANY KIND OF LIMITED LIABILITY COMPANY OR CORPORATION.**
6. Application for registration of the registered office at the Commercial Registry	The deed of formation will be submitted (i) telematically by the notary; or (ii) in person by the interested party.
7. Period for assessment and registration in the Commercial Registry	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.
8. Obtainment of definitive *N.I.F.*	See section 3.3 above.
9. Opening formalities for tax and labor purposes	Registration for the purposes of the Tax on Economic Activities: 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. The following, among others, are exempt from this tax: • Individuals are exempt in any case. • Legal entities during the first two years they pursue their activities. • Legal entities whose net turnover is less than one million euros. • Nonprofit associations and foundations for people with physical, mental or sensory disabilities, for teaching, scientific or welfare activities. • Taxpayers that qualify for the exemption under international treaties. This step must be completed before the company commences operations. Registration for the purposes of Value Added Tax (VAT). Obtainment of an opening/operating license, or sufficient enabling instrument for pursuit of the activity, from the relevant municipal council[19]. For labor purposes, please see Chapter 5, section 10.

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.

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[20]). This notwithstanding, according to the provisions of the Entrepreneurs Law, the regime will consist of the following steps:

19 In this connection, in accordance with the provisions of Law 12/2012, of December26, 2012, on Urgent Measures to Deregulate Trade and Certain Services, permanent establishments used for commercial retail purposes and the provision of certain services provided for in the Schedule to the Law with a useful sales and display area not to exceed 750 m^2 will not generally be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication. However, when the planned commercial activity implies the establishment of a large retail outlet, it will be necessary to hold industry authorization or an equivalent instrument granted by the competent body of the regional government.

20 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).

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A. Formation of a limited liability company with standard bylaws:

Nº	STEPS
1	At the Entrepreneur Service Point (*PAE*): 1. Completion of single electronic document (*DUE*) and commencement of electronic processing. 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. 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.
2	The notary will: 1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock[21]. 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. 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. 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 *PAE*.
3	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: 1. Assess the deed and register it within 6 business hours (business hours meaning those included within the opening hours established for the registries). 2. Send a certification of registration to the *(CIRCE)* on the same date of registration. 3. Request the definitive *N.I.F.*
4	The tax authorities will: 1. Notify the definitive status of the *N.I.F.* via the *(CIRCE)*. 2. Notify the *N.I.F.* via the *(CIRCE)*.
5	The formalities for commencement of the activity will be performed at the *PAE*, which will send the information contained in the *DUE* to: 1. The State Tax Agency. 2. The Social Security General Treasury. 3. The local and autonomous community authorities, as the case may be.

B. Formation of a limited liability company without standard bylaws:

Nº	STEPS
1	At the Entrepreneur Service Point (*PAE*), the founding shareholders may: 1. File a request to reserve the name of the company. 2. Set the date for the execution of the deed of formation.
2	The notary will: 1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock[22]. 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. 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. 4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost.
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: 1. Notify the definitive status of the *N.I.F.* via the *CIRCE*. 2. Notify the *N.I.F.* via the *CIRCE*.
5	The formalities for commencement of the activity will be performed at the *PAE*, which will send the information contained in the *DUE* to: 1. The State Tax Agency. 2. The Social Security General Treasury. 3. The local and autonomous community authorities, as the case may be.

21 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).

22 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).

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It should be noted that according to the Entrepreneurs Law:

- Entrepreneur Service Points (*PAE*) 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 (*DUE*) 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 and of July 1, 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 €6,010.12, 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.

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- 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.

  d. The fee for registering at the Commercial Registry for Limited Liability Entrepreneurs (see section 5 of this Chapter 2 for more information) will be €40. The publication of the Limited Liability Entrepreneur's registration in the Commercial Registry Official Gazette will be exempt from fees.In addition, in accordance with the Decision of April 5, 2019 of the Directorate-General of the State Tax Agency, which is temporarily suspended,[23] invoices that include any fee for the performance of any transaction before the Property, Commercial and Personal Property Registries, including that of formal disclosure, which arise from documents filed at the relevant registry after March 5, 2017, will not be certified or paid. The only exception will be the fees issued by registries located in the territory of the Cataluña Autonomous Community, until the Cabinet of the Cataluña Autonomous Community Government issues the relevant decree supplementing the central government decree that gives rise to the registry demarcation.

- Transfer tax under the "corporate transactions" heading, exempt in accordance with Royal Decree-Law 3/2010 (see Chapter 3)[24].

- 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[25]. Other expenses (*e.g.* professional fees) which are not readily quantifiable.

23 This decision is temporarily suspended by the Decision of June 3, 2019, of the Directorate-General of the State Tax Agency.

24 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.

25 In accordance with the provisions of Law 12/2012 of 26 December, on Urgent Measures to Deregulate Trade and Certain Services, permanent establishments used for commercial retail purposes and the provision of certain services provided for in the Schedule to the Law with a useful sales and display area of less than 750 m^2 will not generally be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication. However, the start-up of certain large retail outlets may require the obtainment of authorization or an equivalent instrument granted by the competent body of the regional government.

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/ 5 Limited liability entrepreneur

The Entrepreneurs Law created the concept of the "Limited Liability Entrepreneur" (*ERL*), the main characteristics of which are as follows:

Concept	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 8/2015, of October 30, 2015, approving the revised General Social Security Law.
Requirements	**1.Registration of *ERL* status at the Commercial Registry corresponding to the registered office:** 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 Entrepreneur.
	2.Value of the principal residence for which liability for business or professional debts does not extend to such asset[26]: 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). 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.
	3.Disclosure of *ERL* status It must be mentioned on all documentation, stating the registry particulars.
	4.Registration at the Property Registry Once the ERL has been registered, the Commercial Registrar issues a certificate and sends it by telematic means to the Property Registry, for subsequent registration of the fact that the principal residence is not tied to the professional activity.

26 A Limited Liability Entrepreneur can limit his/her liability stemming from business or professional debts, 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.

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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:

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	1. The PAE sends the DUE along with the relevant documentation to the Commercial Registry, requesting the registration of the limited liability entrepreneur. 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 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.

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

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.

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).

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/ 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

1. Clear name search certificate	Same procedure followed as for a company. However, according to the decision of the Directorate-General of Registries and the Notarial Profession (*DGRN*) of May 24, 2007, foreign companies do not have to obtain a clear name search certificate from the Central Commercial Registry in order to set up a branch in Spain.
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 (ii) 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 International Trade and Investments (*DGCI*) of the Ministry of Industry, Trade and Tourism. 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.

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6. Opening formalities	**Registration for the purposes of the Tax on Economic Activities:** Same procedure followed as for a company. **Registration for the purposes of Value Added Tax (VAT):** Same procedure followed as for a company. Payment of the charge for processing of the opening/operating license or solemn declaration: same procedure followed as for a company[27]. **Registration for Spanish social security purposes:** (See Chapter 5, section 13 for further information).

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.

	BRANCH	SUBSIDIARY
Minimum capital stock	Minimum capital stock No capital is required to set up a branch, although providing the branch with capital is recommended for practical reasons.	S.A.: €60,000. S.L.: €3,000[28]
Legal personality	No (no separate legal personality but rather the same legal identity as its parent company).	Yes.
Managing and government body	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[29]).	Shareholders' meeting and the managing body.
Shareholder liability	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).

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 and the exemption will not 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

27 In accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services, permanent establishments used for commercial retail purposes and the provision of certain services provided for in the Schedule to the Law with a useful sales and display area not to exceed 750 m^2 will not generally be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication. However, the establishment of a large retail outlet requires the prior obtainment of authorization from the competent body of the regional government.

28 Except in the case of an entrepreneurial limited liability company. For these purposes, please see section 4.2 of Annex I.

29 Article 10.1 of Legislative Royal Decree 5/2004, of March 5, approving the revised Nonresident Income Tax Law.

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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 taken 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 ancillary 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 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.

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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).

PARENT COMPANY IN	UE COUNTRY (1)	TREATY COUNTRY	NON-TREATY COUNTRY
SUBSIDIARY:			
Profit of Spanish subsidiary	100	100	100
Spanish income tax (25%) (2)	25	25	25
Dividends	75	75	75
Withholding tax on dividends	_(4)	7.5(5)	14.25(3)
Total tax in Spain	25	32.5	39.25
BRANCH:			
Profit of Spanish branch	100	100	100
Spanish income tax (25%) (2)	25	25	25
Profit remitted to the parent company	75	75	75
Withholding tax	_(4)	_(6)	14.25(3)
Total tax in Spain	25	25	39.25

(1) Spain has tax treaties in force with all EU countries except Denmark.
(2) The general corporate income tax rate is 25%.
(3) Withholding tax rate = 19%.
(4) Exempt, provided certain conditions are met.
(5)The withholding tax rate on dividends used.
(6) The branch profit tax will apply if provided for in the corresponding tax treaty (e.g. 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.

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/ 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:

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

b. As an economic interest grouping (see section 7.3 below).

c. Through a silent participation agreement (see section 7.4 below).

d. 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. 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.

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- **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.
  - 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 (C.E.P.)

- **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. PARTICIPATING LOANS

- **Concept**: It is a form of financing for companies subject to the terms and conditions described below.
- **Contributions**: As with a Silent Partnership Agreement, the funds corresponding to the principal of the participating loan are not considered share capital and therefore the lender is not considered a shareholder. However, participating loans will be considered equity for the purposes of determining whether the company is subject to a ground of mandatory capital reduction[30] or of mandatory winding-up[31]. In addition, in the order of payment of debts, participating loans rank below ordinary creditors.
- **Interest**: The lender will receive variable interest which will be determined on the basis of the business performance of the borrower. The indicator for determining said performance will be: net income, business volume, total equity or such other indicator as may be freely agreed upon by the parties. The parties may also agree on a fixed interest rate not related to the performance of the business.
- **Repayment**: The parties may agree to a penalty clause in the case of early repayment. In any event, the borrower may repay the participating loan early only if the repayment is offset by an increase in equity of an equal amount and if it does not arise from the revaluation of assets.
- **Tax implications**: Any fixed and variable interest that accrues on or after January 1, 2015 as a result of the arrangement of participating loans[32] will be deductible for corporate income tax purposes, unless the interest arises from participating loans in which the lender and borrower are companies in the same group within the meaning of article 42 of the Commercial Code. Such deduction is subject, however, to the restrictions on the deductibility of finance costs laid down in article 16 of the Corporate Income Tax Law. (For more information, see section 2.1.2.4 of Chapter 3).

30 In accordance with article 327 of the Capital Companies Law, "*in a public limited company, a capital reduction shall be mandatory where losses have reduced its equity to below two-thirds of its share capital and a fiscal year has elapsed without equity have been restored*".

31 In accordance with article 362.1e) of the Capital Companies Law, a capital company must be wound up "*as a result of losses that reduce its equity to an amount below half of its share capital, unless the share capital is sufficiently increased or reduced, and provided that it is not appropriate to petition for an insolvency order*". However, Royal Decree 27/2021 has extended the exceptional measures relating to grounds for winding up due to losses and the obligation to petition for an insolvency order in the case set out in article 363.1e). Accordingly, losses from fiscal years 2020 and 2021 will not be taken into consideration when determining whether the company is subject to ground of mandatory winding-up.

32 Only applicable to participating loans between group companies granted after June 20, 2014 (Transitional Provision Seventeen of the Corporate Income Tax Law).

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- **Regulation**: Article 20 of Royal Decree-Law 7/1996, on urgent measures of a tax nature and for the promotion and deregulation of economic activity.

7.6. 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).

7.7. 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.

7.7.1. 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.

7.7.2. 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 and competing, 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.

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- 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 systems.

7.7.3. 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.
  - 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.

7.7.4. 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.

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- **Registration**:
  - Royal Decree-Law 20/2018 of December 8, 2018, eliminates the Register of Franchisors. In accordance with Royal Decree 553/2019, of September 27, 2019, the only current requirement is for the franchisor – at least 20 business days prior to the signature of any franchise agreement or preliminary agreement or the delivery by the future franchisee to the franchisor of any payment – to deliver to the future franchisee in writing the information it needs to be able to decide in a free and informed manner whether it will join the franchise network and, in particular, (i) the main identifying particulars of the franchisor; (ii) a description of the sector of the business being franchised; (iii) the experience of the franchise company; (iv) the contents and characteristics of the franchise and its operation; (v) the structure and scope of the network, and (vi) the essential elements of the franchise agreement.

- **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.

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/ 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:

FORMALITY	S.A.	S.L.
Attestation by public authenticating officer	Necessary where required by Spanish law or by the bylaws or where so agreed by the parties.	Always required.
Documentation to be provided to the notary	• Title to the shares being transferred. • 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). • *N.I.E./N.I.F.* or Spanish national identity card of the buyer and the seller (see section 3 above). • 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). • 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).	
Subsequent declaration of the investment to the *D.G.C.I.*	Filing of form D-1A at the Ministry of Industry, Trade and Tourism. 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 for International Trade and Investments (*D.G.C.I.*). In some cases, a prior declaration is required (see Chapter 1, section 8 for further information).	
Payment of transfer tax and stamp tax under the "transfers for consideration" heading	See Chapter 3.	

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FORMALITY	S.A.	S.L.
Costs	Depending on the Spanish public authority before which the acquisition is made: • Notary fee: The scale applicable for the formation of a branch is also applicable here. • Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees.	
Financial transactions tax (Tobin Tax)	The financial transactions tax (Tobin Tax) is intended to levy 0.2% on transactions for acquiring the shares of listed Spanish companies with market capitalizations above €1,000 million, regardless of the places of residence of the agents acting in those transactions; and will not affect the primary market, transactions necessary for the functioning of market infrastructure, company restructuring transactions, transactions taking place between companies in the same group, or temporary transfers. The taxable person will be the acquirer of the shares. The taxable person that must pay over the tax to the State Tax Agency (regardless of where it is established) would be one the following ones, depending on the different cases envisaged in the law: the member of the market that executes the acquisition on behalf of others, the investment services company or credit institution that makes the acquisition on its own behalf, the financial intermediary, the systematic internalizer or, lastly, the depositary. The assessment of the tax will be monthly.	

In relation to this form of investment, it should be noted that shareholders of limited liability companies or corporations (except for (i) listed companies, companies whose shares are admitted to trading on a multilateral trading facility; (ii) companies in situations of insolvency or pre-insolvency; and (iii) sports corporations) are recognized a right of withdrawal in the event of a failure to distribute dividends once the fifth fiscal year since the company was registered at the Commercial Registry has elapsed.[33]

Following the latest amendment of article 348 bis of the Capital Companies Law, the requirements for shareholders to be able to exercise the right of withdrawal (within one month after the shareholders' meeting was held) are as follows:

a. The shareholder's protest due to the insufficiency of dividends recognized must be recorded in the certificate of distribution of income.

b. The shareholders' meeting must not approve the distribution as a dividend of a least twenty-five percent of the income obtained in the preceding year where such income is legally distributable, provided that the company has not obtained income in the past three fiscal years.

c. The total amount of dividends distributed in the past five years must be less than twenty-five percent of the legally distributable income recorded in that period.

Also, even if the above requirements are not met, this right of withdrawal is granted to the shareholder of the parent company of the group where the company in question is required to prepare consolidated financial statements, where: (i) the shareholders of the company do not approve the distribution as a dividend of at least twenty-five percent of the consolidated income attributed to the parent company in the prior year, provided that it is legally distributable; and (ii) consolidated income attributed to the parent company has been obtained in the past three fiscal years.

33 Following the entry into force of Royal Decree 7/2021, the shareholder's right to withdraw in the event of a failure to distribute dividends has been eliminated for credit institutions, credit financial establishments, investment services firms, payment institutions, electronic money institutions, and financial holding companies and mixed financial holding companies.

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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:

FORMALITY	ACQUISITION OF REAL ESTATE LOCATED IN SPAIN
Attestation by public authenticating officer	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.
Documentation to be provided to the notary	• Title to the property. • 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). • *N.I.E./N.I.F.* or Spanish national identity card of the buyer and the seller. • 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). • 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).
Subsequent declaration of the investment to the *D.G.C.I.*	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).
Taxes	See Chapter 3.
Registration at the relevant Property Registry	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.
Costs	• Notary fee: The scale applicable for the formation of a subsidiary is also applicable here. • Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees. • 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 0.175% and 0.02%. The total fee is capped and may not exceed €2,181.

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.

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
Requirements	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: • Global transfer plan, drawn up by the directors of the transferring company. • Report applying and justifying the global transfer plan drawn up by the directors of the transferring company. • Approval of the global transfer by the shareholders of the transferring company. • 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[34]. • 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[35]. • Execution of a public deed before a notary (see formality below "Documentation to be provided to the notary"). • Registration at the Commercial Registry of the transferring company (effectiveness of the transfer) (see formality below "Registration at the appropriate Registry").

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34 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.

35 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.

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FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
Attestation by public authenticating officer	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.	
Documentation to be provided to the notary	• Title of ownership of the assets. • Powers of attorney, if applicable, to appear on behalf of the seller and buyer, as appropriate. If granted abroad, it must be duly legalize (see requirement 5 of section 4 above). • Spanish *N.I.E./N.I.F./D.N.I.* of the seller and buyer. • 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.). • 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).	• Title of ownership of the assets. • Powers of attorney, if applicable, to appear on behalf of the transferor and transferee. If granted abroad, it must be duly legalize (see requirement 5 of section 4 above). • Spanish *N.I.E./N.I.F.* of the transferor and transferee. • 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). • 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). • Certificate of the resolution of the shareholders' meeting or the decision of the sole shareholder of the transferring company approving the global transfer. • Notice of the transfer in the BORME and in a large circulation newspaper in the province where the registered office is located, if applicable.

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
Subsequent declaration of the investment to the *D.G.C.I.*	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).	
Taxes	See Chapter 3.	
Registration at the appropriate Registry	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.
Costs	• Notary fee: The scale applicable for the formation of a subsidiary is also applicable here. • Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees. • 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. • 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.	• 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.

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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, contained in 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.

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/ 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

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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.

The Madrid International Arbitration Center ("CIAM" by its Spanish abbreviation) began to operate in 2020 following the merger of the international activity of the Madrid Arbitration Court, the Civil and Commercial Arbitration Court and the Spanish Arbitration Court. The CIAM has the jurisdiction to administer two types of international arbitration proceedings: (i) arbitration proceedings arising from agreements in which the parties stipulate the Madrid International Arbitration Center as the administering court, and (ii) arbitration proceedings originating from agreements in which the parties consented to arbitration administered by any of the four propelling entities as administering institutions and which are signed on or after January 1, 2020.

In addition, since June 2019, a Code of Good Arbitration Practices has existed which seeks to ensure that participants in arbitration proceedings abide by increasingly demanding standards for independence, impartiality, transparency and professional conduct.

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/ Appendix I Table summarizing the tax treatment given to the various ways of investing in Spain

WAYS OF INVESTING IN SPAIN	TAX TREATMENT
Incorporation of a subsidiary (Corporation (*S.A.*) / Limited liability company (*S.L.*))	General corporate income tax rules pursuant to the Corporate Income Tax Law. (See Chapter 3, section 2.1 for more detailed information).
Formation of a branch	Nonresident income tax, with permanent establishment. (See Chapter 3, section 2.3.1 for more detailed information).
Economic Interest Grouping (EIG), Temporary Business Alliance (*UTE*) and joint venture	Special rules for economic interest groupings, both Spanish and European, and temporary business alliances. In particular: • The part of the tax base attributable to members resident in Spain is not subject to corporate income tax. • The tax bases, tax credits and tax relief and the withholdings and prepayments of EIGs or *UTEs* are attributed to the resident members. • 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. (See Chapter 3, sections 2.1.13 for more detailed information).
Distribution agreement	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: • 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). • If a permanent establishment does not exist, it will be taxed pursuant to the rules set in Nonresident Income Tax Law for 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). 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.

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WAYS OF INVESTING IN SPAIN	TAX TREATMENT
Agency agreement	The tax treatment is similar to that stipulated for distribution agreements. Whether or not a permanent establishment exists will depend, in general, on whether or not the agent has powers to bind the nonresident. • Where a permanent establishment exists. (See Chapter 3, 2.3.1 for more detailed information). • Where a permanent establishment does not exist. (See Chapter 3, section 2.3.2 for more detailed information).
Commission agency agreement	The tax treatment is similar to that stipulated for distribution and agency agreements. 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. • Where a permanent establishment exists. (See Chapter 3, section 2.3.1 for more detailed information). • Where a permanent establishment does not exist. (See Chapter 3, section 2.3.2 for more detailed information).
Franchising agreement	The payment made by the franchiser to the franchisee may be given the following treatments, depending on the services provided and rights granted: • It may be treated in part as a royalty and in part as business profits. • It may be treated only as a royalty (See Chapter 2, section 7.7.4 for more detailed information).
Sale and purchase of business (assets and liabilities or global transfer of assets and liabilities)	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: • 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. • 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.

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The Spanish tax system is modern and competitive. The tax burden in Spain, (*i.e.* tax and social security contributions, measured as a percentage of GDP), is almost four points lower than the average ratio for the EU-27 zone[1].

The Spanish Tax Agency *(AEAT)*, which has been recognized as one of the most innovative and efficient tax agencies in the world, offers taxpayers a broad 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.

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

1 Total tax revenue (including social security contributions). 2020 in % of GDP.
Source: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en

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GUIDE TO BUSINESS IN SPAIN 2022

/ 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. Moreover, 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 (whether or not they are 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.

Due to the health crisis triggered by COVID-19, the Spanish Government approved various tax regulations in 2020 which, on general terms, affect the calculation of the time periods for administrative and judicial purposes (statute of limitations, duration of inspection proceedings, filing of appeals or claims) and of the periods for filing and paying some taxes. Also, the Autonomous Communities, municipal governments, the autonomous cities of Ceuta and Melilla, and the provincial governments, within their respective jurisdictional scopes competence area, approved numerous tax measures in 2020, 2021 and 2022, generally aimed at granting deferrals in the filing of tax returns and the payment of taxes, and in some cases even establishing tax relief and incentives.

Given the extraordinary and temporary nature of these measures, we have not included them in this Guide.

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/ 2 Central government taxes

National taxes in Spain can be classified as follows:

- Direct taxes:
  - On income:
    - Corporate Income Tax (CIT).
    - Personal Income Tax (PIT).
    - Nonresident Income Tax.
  - On assets (affecting only individuals):
    - Wealth Tax.
    - Inheritance and Gift Tax (IGT).
- 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).

2.1 CORPORATE INCOME TAX[2]

The regulation of Corporate Income Tax (CIT), 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.

The basic legislation applicable tax periods commencing as from January 1, 2021 is summarized below. For more detailed information on the legislation applicable to fiscal years beginning before that date, we 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 CIT 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.

2 Exhibit I: Tax incentives for investment.

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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[3] territories classified as such) will apply.

Starting in 2015, and following the amendment of Additional Provision One of Law 36/2006, the Directorate-General of Taxes published a report on the validity of the current list of tax havens, eliminating the possibility of such list being automatically updated. Previously, the list had to be expressly updated, in accordance with the criteria contained in that Additional Provision One of Law 36/2006, which came into force on January 1, 2015.

However, starting on July 11, 2021, Additional Provision One of Law 36/2006 has been given new wording, through the approval of Law 11/2021, of July 9, 2021 (known as the "Antifraud Law"), replacing the concept of tax haven with that of non-cooperative jurisdiction, which will apply to any jurisdiction included on the list to be approved by ministerial order. Until that list is approved, regard will be had to what is established in Royal Decree 1080/1991, of July 5, 1991.

In relation to the new concept, the following aspects are noteworthy:

a. Compatibility with the tax treaties: the concept of non-cooperative jurisdiction will be compatible with the existence of a tax treaty signed by Spain and such jurisdiction, to the extent the provisions of the tax treaty are observed.

b. Updating of the list: The list can be updated to include or exclude jurisdictions, pursuant to the criteria of the working groups of the EU or the OECD (the Code of Conduct on Business Taxation and the Forum on Harmful Tax Practices of the OECD, respectively), or according to the following three criteria:

   - The tax transparency of the jurisdiction in question, for which purpose regard shall be had to the following:
     - Whether there is mutual assistance legislation in relation to the exchange of tax information according to the terms established in the General Taxation Law ("LGT").
     - Whether there is an effective exchange of information with Spain.
     - The result of peer reviews by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.
     - Whether there is an effective exchange of information in relation to the beneficial owner, as defined by Spanish legislation on the prevention of money laundering and terrorist financing.
   - Whether those countries promote the execution or existence of offshore instruments or companies that attract profits which do not reflect an actual economic activity.
   - The low or nil taxation in such jurisdictions. This requirement shall be deemed met where a considerably lower tax level applies, including zero rate, than that charged in Spain, under a tax identical or similar to PIT, CIT or **nonresident income tax.**
   - Resident companies are taxed on their worldwide income. Taxable income includes all the profits from business activities, income 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 (NRIT) legislation are discussed in section 2.3.

The following section is structured in the same way as the CIT 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 is that established in the tax legislation.

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

3 The following States are currently deemed tax havens: Emirate of the State of Bahrain, Sultanate of Brunei, Gibraltar, Anguilla, Antigua and Barbuda, Bermuda, Caiman 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, San Vicente and Grenadines, Santa 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.

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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, as long as 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, 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 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)**[4] are in general to be included in the tax base, subject to a limit of 70% 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 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% does not apply to entities whose net revenues for the 12 months immediately preceding the start of the tax period amounts to at least €20 million. In these cases, the limits are lower:

4 DTAs can, in certain circumstances and subject to certain requirements being met, be converted into receivables from the tax authorities. Starting in fiscal year 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.

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

2.1.2.2 International "fiscal transparency" regime ("Controlled Foreign Corporations" provisions)

Under CIT 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.
- The tax (CIT 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, this case will not apply if it is proven that the transactions are carried out with the material and human resources existing at the nonresident entity that belongs to the same group, within the meaning of article 42 of the Commercial Code, irrespective of its residence and of the obligation to prepare consolidated financial statements, or if its formation and operations are based on valid economic reasons.

   Moreover, until fiscal year 2020, the income of the nonresident entity that corresponded to dividends, shares in income or gains on the transfer of holdings were not attributed if certain conditions were met[5].

   For the fiscal years initiated on or after January 1, 2021, this income is included in the tax base without any exceptions, provided the conditions regarding percentage holding and taxation mentioned previously are met.

   The nonresident entity's income consisting of dividends, shares in income or gains on transfers of holdings must be recognized in the taxpayer's taxable income without further particularities. This amount will be reduced, in respect of management expenses relating to such holdings, by 5% of the amount of the dividend distributed or of the share in income or, in the case of a gain on the transfer of holdings, by the amount of the corporate income that, without actual distribution, relates to gains that would have been attributed to the shareholders as gains on their shares or holdings during the period in which they owned them. This reduction will not be applicable at entities with net revenues below €40 million, subject to the same conditions and requirements as those which will be discussed for the purposes of the limit on the exemption regime in section 2.1.5.3.

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 or permanent establishment[6] deriving from:

   a. Ownership of real estate or rights in rem on them, unless such real estate is used for a business activity or has been 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.).[7]

   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.[8]

   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.

5 Mainly, (i) the holding entity had to own more than 5% of the entity that distributed the profits for a minimum period of one year, (ii) the holding entity directed and managed its stake with the relevant material and human resources, and (iii) the investee did not have the status of asset-holding company.

6 With the approval of the Antifraud Law, the objective scope of the regime is extended to non-business income obtained through a permanent establishment abroad that has borne a tax identical or analogous to CIT that is less than 75% of what would have been borne in Spain.

7 Up to fiscal year 2020, this income was not to be included in the tax base if the requirements mentioned in note 6 were met.

8 Up to fiscal year 2020, this income was not to be included in the tax base if the requirements mentioned in note 6 were met.

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h. Insurance and lending activities, finance lease transactions and other financial activities conducted by non-related parties, except where the activity concerned may be considered a business activity.

i. Transactions involving goods and services carried out with related persons or entities, in which the non-resident entity or establishment adds scarce or nil economic value.

Likewise, the amount that must be recognized in the taxable income for the items included in letters b) and e) above must be reduced in the same sense as that indicated in the preceding section for income from dividends, shares in income or gains on transfers of holdings.

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 CIT 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 CIT (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 CIT, is lower than the 75% that would have been applicable in accordance with the CIT rules.

   b. The income obtained by the investee arises from the mentioned classes of income which require attributing the income on a transparent basis.

   c. The income obtained by the investee is 15% of the acquisition cost of the holding.

   These assumptions are refutable.

a. 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 ("EU"), where the taxpayer evidences that it performs business activities.[9]

2.1.2.3 Market price valuation

As a general rule, assets must be valued under the methods provided in the Commercial Code. Also, 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 persons or 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.

9 Up to fiscal year 2020, it was also required that the nonresident entity's formation and operation were based on valid economic reason.

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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 CIT, PIT 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 CIT, PIT 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 fees that would result from applying 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 CIT). At the same time, if the parent company were Spanish rather than resident in Belgium, it would reduce its income subject to CIT.

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[10], regardless of whether that threshold is exceeded.

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 were made in relation to transfer pricing, which include most notably the introduction of **country-by-country reporting** obligations[11], which is an instrument for evaluating risks in the transfer pricing policy of a corporate group.

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

10 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.

11 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.

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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 that regard, it may be clarified that:

- Subsidiaries and permanent establishments located in Spanish territory are not required to submit documentation when:
  - The multinational group has appointed a group subsidiary resident in an EU Member State to submit the subject documentation.
  - The information has already been submitted by another nonresident company appointed by the group as a surrogate entity of the parent company for the purposes of submission of the documentation in its own tax residence territory. In any event, if the entity is not resident in an EU Member State, the conditions established in Annex III of Council Directive 2011/16/EU, of 15 February 2011, on administrative cooperation in the field of taxation must be met.
- If the nonresident entity refuses to provide all or part of the documentation corresponding to the group to the resident entity or permanent establishment located in Spanish territory that is required to submit the information, the resident entity or the permanent establishment shall submit any documentation available to it and report the circumstance to the Tax Administration.

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 CIT, PIT 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 it 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% 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[12].

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 nonresi-

12 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.

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dent related entities not resident in the EU, 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 applies in proportion to the duration of the tax period, so that in tax periods with a duration of less than a year, the limit is 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.

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 the 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 2.1.11).

The additional limit will not apply in the tax period in which the holdings 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, the taxpayer can request a postponement in the payment of the exit tax where the assets are transferred to a Member State of the EU or of the European Economic Area ("EEA") 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. With the approval of the Antifraud Law, starting in periods commencing on or after January 1, 2021, the taxpayer can only elect to divide the payment of that exit tax (the calculation of which does not change) in five equal parts per annum, with the accrual of late-payment interest, just as up to now, and the obligation to create guarantees for that payment in installments, where there is reasonable evidence to prove that the debt collection will be thwarted or seriously hindered.

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.

2.1.2.7 Value adjustments

a. Depreciation[13]

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. It consists of depreciating assets on a straight-line basis by applying a certain percentage to their cost. The law sets a range of percentages for each type of asset, which determines the minimum depreciation period (maximum depreciation rate) and the maximum depreciation period (minimum depreciation rate). Thus, for example, computer equipment may be depreciated in general between 12.5% (minimum rate for a maximum useful life of 8 years) and 25% (maximum rate).

  The current legislation modified the straight-line depreciation tables in order to simplify them. Traditionally, these depreciation tables (regulated in the tax regulations) were organized by economic sectors and activities, with a last group for "common assets". Under the current law, some new depreciation tables were approved (and included in the law itself) according to types of assets, without making a distinction by sectors, although the law states that the rates and periods established therein may be modified by regulations, or additional rates and periods may be established, although that possibility has not yet been implemented.

13 The regulations allow for unrestricted depreciation for investments made in the periods ending between April 2, 2020 and June 30, 2021, that are made available to the taxpayer and that enter into operation between said dates and that entail the sensorization and monitoring of the production chain, as well as the implementation of manufacturing systems based on modular platforms or that reduce the environmental impact, used in the automotive industry, provided certain requirements are met. Taxpayers must request a reasoned report establishing that the investment qualifies for this incentive, within two months from the date the assets became operational (for investments made prior to November 18, 2020, the deadline is January 18, 2021).

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Transitionally, the law establishes that for assets whose depreciation rates have been modified with the current depreciation tables (in relation to those existing previously), the depreciation rates will apply to the net tax value of the assets.

The use of the depreciation rates contained in the official tables relieves 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 may be applied to 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 decline in value will presumably be greater) by applying a rate to 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. 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

  For tax periods commenced as from January 1, 2016, the tax treatment of this type of assets was modified[14] , to align it with the accounting treatment.

The accounting treatment is as follows:

- There is no distinction between intangible assets according to whether their useful life is definite or indefinite, but rather it is understood that all intangible assets have a definite useful life.

- Intangible assets are amortized according to their useful life; it if cannot be estimated reliably, they are amortized over a period of 10 years, unless established otherwise by a provision of law.

- Goodwill only appears on 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. Goodwill can be amortized, not only impaired).

- There is no obligation to record a non-disposable reserve for the goodwill. Reserves recorded in past years (according to prior accounting legislation) must be reclassified as voluntary reserves and are disposable 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 tax treatment is as follows:

- Intangible assets with a definite useful life. Starting in fiscal year 2016, they are amortized according to their useful life (as is done for accounting purposes). When this useful life cannot be estimated reliably, the amortization will be deductible up to the maximum annual limit of one-twentieth its amount (that is, at a lower rate than the accounting amortization).[15]

  Nonetheless, this 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, as from January 1, 2016, these assets are amortized according to the rules for intangible assets with definite useful life.[16]

- Intangible assets recorded in respect of goodwill. They can be amortized with the maximum annual limit of one-twentieth their amount (5%). Unlike the previous regulation, starting on January 1, 2016, the tax deductibility of goodwill is conditional on its 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 affected assets subject to the financial lease regime).

The accounting depreciation that was not tax deductible by application of this limit was deductible 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.

14 Amendment made by the Audit Law 22/2015, of July 20, 2015.

15 Under the law in force until 2015, intangible assets with a definite useful life could be amortized with the maximum annual limit of one-tenth of their amount (10%), provided that certain requirements were met.

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

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As the non-deductible depreciation is deducted at lower tax rates than those applicable in preceding years (when a portion of the depreciation was nondeductible), the current law 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%[17] 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 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 introduced 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 on 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.

Moreover, bad debt provisions 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.

17 The deduction percentage in 2015 was 2%.

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- 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 CIT 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 was 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).
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 Administration.
- 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,

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according to article 42 of the Commercial Code, have the consideration of remuneration of equity. 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 CIT.
- 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.
- For fiscal years commencing on or after November 10, 2018, the transfer and stamp tax debt resulting in the case of public deeds documenting mortgage loans.
- Expenses that give the right to the tax credit for investments made by port authorities, including those relating to the depreciation of the assets in which the investment was made which has generated the right to the aforementioned tax credit.
- 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.
- As a result of the transposition of Council Directive (EU) 2016/1164, of 12 July 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market, the legislation regulating CIT establishes the non-deductibility of certain expenses where there is non-taxation or double deduction of expenses as a consequence of the existence of disparate legal classifications in different countries or territories.

  Accordingly, the CIT Law establishes that expenses cannot be deducted or that their deductibility must be deferred, or that taxable income must be added, in the following cases, provided the circumstances expressly stated in the law arise:

  - Deduction without inclusion of income: Cases in which an expense is deductible in a territory without it being taxable income in the country of the recipient (except the cases mentioned below, of exemption, financial contract subject to a special tax regime or valuation differences by application of the provisions on related-party transactions), or being subject to a reduction in the tax rate or to any tax credit or refund of taxes, other than a tax credit for the avoidance of double taxation, due to the existence of different classifications of the expense or of the legal nature of the taxpayers involved.
  - Double deduction: Cases in which the same expense is deductible in two countries or territories.
  - Hybrid permanent establishments: Cases of deduction without inclusion or of double deduction originated by the differences in the recognition of income and expenses, or even in the recognition of the actual existence of a permanent establishment, between the country where the permanent establishment is located and the country where the head office is situated.
  - Imported asymmetries, in which the hybrid asymmetries take place in relation to a third entity located in another country or territory, but which gives rise to a deductible expense in Spain.

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- Structured mechanisms, in which the generation of a deductible expense without the taxation of its correlative income or of a deductible expense in two or more countries or territories, forms part of the expected return from the mechanism (or the mechanism has been designed precisely to produce those results). For these purposes, a structured mechanism is any agreement, transaction, scheme or operation in which the tax advantage derived from the hybrid asymmetries is quantified or taken into account in its conditions or considerations, or which has been designed to produce the results of such asymmetries, unless the taxpayer or a related person or entity could not reasonably have known about them and does not share the tax advantage.

- Double use of withholdings, for purposes of the tax credit for international double taxation.

- Double tax residence, where it leads to an expense being tax deductible in two countries or territories at the same time.

However, this regime does not apply where the asymmetry:

- Is due to the fact that the beneficiary is exempt from CIT, given that, in this case, the asymmetry actually takes place due to the special tax regime of the beneficiary, not to the different classification.

- Is produced in the context of a transaction that is based on a financial instrument or contract subject to a special tax regime.

- Is due to value differences, including those derived from the application of the legislation on related-party transactions.

2.1.2.9 Capital gains and losses

By contrast with other countries, Spanish CIT 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 was eliminated in the 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 CIT base the total amount received as a result of 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 *SICAV*s and registered in another Member State of the EU (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.

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2.1.2.12 Income from the assignment of the right to use or exploit certain intangible assets (*patent box*)[18]

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

Law 6/2018, of July 3, 2018, of General State Budgets for 2018 ("GSB 2018"), adapting the regulations of the regime to the agreements adopted within the EU and the OECD, specified the income that qualifies for that regime, effective for tax periods starting on or after January 1, 2018. According to the GSB 2018, income derived from the license of the right to use or exploit patents, utility models, supplementary medicinal protection certificates and plant protection products, designs and models, protected by law, also derived from research and development and technological innovation activities and registered advanced software derived from research and development activities, qualifies for a reduction in the tax base.

On this basis, for tax periods that commenced between July 1, 2016 and December 31, 2017, regard must be had to the previous wording of the article, which established that the regime may be applied to income obtained from the licensing 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.

The reduction in the tax base is determined in relation to the percentage arrived at by multiplying by 60% the result of the following coefficient:

- As numerator: The expenses incurred by the licensing 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 licensing entity which are directly related to the creation of the asset, including any deriving from subcontracting , both with third parties not related to the licensing entity and with persons or entities related to it[19] and 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.

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.

Under the new wording, this tax benefit will not apply to income derived from the licensing of the right to use or exploit, or from the transfer of, brands, literary, artistic or scientific works, including cinematographic films, transferable personal rights, such as image rights, computer programs (other than registered advance software, mentioned previously), industrial, commercial or scientific equipment) as up to now, but it will also not apply to income derived from the license of the right to use or exploit, or from the transfer of, plans, formulae or secret procedures, rights on information relating to industrial, commercial or scientific experiences.

The definition of income is extended[20] and is now defined as the positive difference between income from both the licensing of the right to use or exploit the assets and the positive income derived from their transfer which exceeds the sum of the expenses incurred by the entity directly related to the creation of the assets which have not been included in the value of the assets, of the amounts deducted as amortization, impairment and expenses that have been included in the tax base, and of the expenses related directly to the assets, which have been included in the tax base.

Moreover, if a loss is incurred in a tax period because expenses exceed income (whereas, in prior tax periods, positive income was obtained to which the reduction was applied), that loss will be reduced by the aforementioned reduction percentage, as long as the losses generated do not exceed the positive income included in previous periods. The total excess will be included in the tax base and, in that case, the positive income obtained in a later tax period will be included in full up to that amount, and the aforementioned percentage may be applied to the excess.

In order to apply this benefit[21] :

- 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 an EU Member State and the taxpayer provides evidence of valid economic reasons for the transaction and of its engagement in economic activities.

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18 With effect as from July 1, 2016 there was 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 EU and OECD levels. Under the old rules, only 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.

19 The wording in force in fiscal years commencing before January 1, 2018 established that the denominator included exclusively the expenses incurred by the licensing entity related directly to the creation of the asset, including expenses derived from subcontracting and, if any, from acquisition of the asset.

20 In the tax periods commencing between January 1 2016 and January 1, 2018, income was defined as the positive difference positive difference between income from the license 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.

21 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.

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- Where the contract for the assignment of use includes the provision of other incidental services, the contract must specify the consideration corresponding to them.

- 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 with 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), a transitional regime has been regulated which functions as follows:

i. 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 CIT Law (Legislative Royal Decree 4/2004). The application of this regime should have been opted for in the tax return for 2016. This option shall, in any event, be applicable only though to June 30, 2021, and from then onwards, the regime regulated in the GSB 2018 becomes applicable.

ii. 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 CIT Law (Law 27/2014), according to the wording in force on January 1, 2015. The application of this regime should also have been opted for in the tax return for 2016. This option shall, in any event, be applicable only though to June 30, 2021, and from then onwards, the regime regulated in the GSB 2018 becomes applicable.

Transfers of intangible assets carried out from July 1, 2016 to June 30, 2021 can be subject to the regime established established in the current CIT Law, according to the wording in force on January 1, 2015. The application of this regime should be opted for in the tax return relating to the tax period in which the transfer was carried out.

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 subsequent reform of 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 may offset tax losses up to a limit equal to 70% of the positive pre-offset tax base.

b. Entities whose net revenues for the preceding 12 months amount to at least €20 million 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.

   ii. 25%, when its net revenues are above €60 million.

   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:

   a. It did not carry on any business activity during a three-month period prior to the acquisition.

   b. 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.

   c. It is a holding company.

   d. 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 only by exhibiting the

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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%[22] 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 CIT 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 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.

Notwithstanding, in 2021, a minimum tax system has been established, which is described in section 2.1.7 below.

2.1.4 TAX CREDITS, WITHHOLDINGS AND PREPAYMENTS

Under this heading we will describe the main tax credits applicable for 2021[23].

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%[24] 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 any member state of the EU or of the EEA. 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 EU or of the EEA.

   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.

22 This tax credit was 2% for tax periods commencing in 2015.

23 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 commenced in 2015 onwards, the tax credit for reinvestment of extraordinary income has been abolished.

24 Effective for tax periods beginning during the course of 2020 and 2021, this tax credit percentage will increase to 50% (for small and medium-sized enterprises) or to 15% (for large companies meeting certain requirements) for expenses incurred on projects initiated as from June 25, 2020 entailing the performance of technical innovation activities resulting in a technological advancement in obtaining new production processes in the automotive industry's value chain, or substantial improvements in pre-existing ones.

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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 the 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 credits for investments.

- Tax credit for investments in film productions, audiovisual series and live performing and musical arts productions:

a. A 30% tax credit is provided for the first €1 million of the tax base and a 25% tax credit for the excess in respect of investments in Spanish productions of feature films, short 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 €10 million, for years starting on or after January 1, 2020.[25]

   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.

   For fiscal years commencing on or after January 1, 2020, an additional tax credit of 30% is allowed (on the tax credit base established previously) where the producer is in charge of executing visual effects services, and the expenses incurred in Spain are less than €1 million. In this case, the tax credit will be limited to the amount that is established in Commission Regulation (EU) 1407/2013 of 18 December 2013.

   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 Administrative Register of the Institute of Cinema and Audiovisual Arts 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 30% tax credit with respect to the first €1 million of tax credit base, and 25% on the excess, provided the expenses are at least €1 million. However, for expenses on preproduction and post-production of animated films and visual effects incurred in Spain, the limit is set at €200,000.

   The tax credit generated in each tax period may not exceed the amount of €10 million for each production made.[26]

   Effective as from July 5, 2018, new obligations have been introduced for producers who avail themselves of the tax incentive (*e.g.* the inclusion of a specific reference to the tax incentive in the credits and in the advertising of the production, the submission of certain documentation relating to the production to the Spanish institute of film and audiovisual arts, etc.)

c. 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.

d. The taxpayers that participate in the financing, without acquiring intellectual property or other rights, of Spanish productions of feature or short films, series of fiction, animation or documentaries, or of the production and exhibition of live shows of performing arts and music, carried out by another taxpayer, shall be entitled to the aforementioned tax credits, provided they execute a financing agreement with the producer which stipulates, among other aspects, (i) the identity of the taxpayers that participate in the production; (ii) the description of the production; (iii) the production budget, and (iv) the form of financing, specifying the amount of funds provided.

25 For tax periods commencing prior to January 1, 2020, the tax credit was 25% for the first €1 million of the tax base and 20% for the excess.

26 For tax periods commenced prior to January 1, 2017, this amount was €2.5 million. For tax periods commenced between January 1, 2017 and December 31, 2019, it was €3 million.

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In all cases, the tax credit taken may not exceed 1.20 of the sums disbursed for the financing, although the excess may be applied by the producer.

The tax credit will be applied by the finance provider according to the funds disbursed in each tax period.

In any case, the finance providers must submit the financing agreement and certification of fulfillment of the requirements established for that purpose by filing a communication with the tax authorities, signed by them and by the producer, prior to the end of the tax period in which the tax credit is generated.

The reporting of the tax credit by the finance provider shall be incompatible, in full or in part, with the tax credit to which the producer would be entitled.

- 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 amount of the tax credits for research and development activities and technological innovation and for investments in film productions, audiovisual series and live shows of performing arts and music that relate to expenses incurred and investments made in the tax period itself exceeds 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.

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2.1.5 TREATMENT OF DOUBLE TAXATION

The tax credit and exemption scheme stipulated in the previous regulations based on the type of income was amended substantially by the current law (for tax periods commencing as from 2015), through a general exemption scheme for significant shareholdings applicable in both the domestic and international arenas. 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 in terms of the exempt amount and the related requirements.

d. Lastly, the 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 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 including 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 such shareholding must have been held uninterruptedly for one year prior to the year of 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 in subsequent tax periods.

In any event, for fiscal years commencing after January 1, 2021, a cap is placed on this tax credit, reducing the base used to calculate the tax payable which acts as a maximum amount for the credit, by 5% of the income received in respect of nondeductible management costs This limit is not applicable at entities with net revenues below €40 million, subject to the same conditions and requirements as those which will be discussed for the purposes of the limit on the exemption regime in section 2.1.5.3.

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 was established for entities whose net revenues for the preceding 12 months amount to at least €20 million. Specifically, 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%[27] and (ii) must be held uninterruptedly for at least one year, although any period during which the shareholding was owned by a different group company as defined in Article 42 of the Code of Commerce may be taken into account.

27 Law 11/2020, of December 30, 2020, on the General State Budgets for 2021 (2021GSB Law) eliminated, effective for periods commencing on or after January 1, 2021, the possibility that this minimum shareholding requirement be deemed fulfilled (for the purposes of the exemption) when the shareholding is below 5% but the acquisition value exceeds €20 million. However, transitional rules are established whereby the exemption will apply during the tax periods commencing in 2021, 2022, 2023, 2024 and 2025 in connection with dividends arising from shareholdings that, at January 1, 2021, while below 5%, met the requirement of the acquisition value exceeding €20 million. These transitional rules will also apply to the international double taxation tax credit in the case of dividends and shares in income.

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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 January 1, 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 occurs 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 CIT 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.

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 EU 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 Limitation of exemption to 95% of income obtained

For fiscal years commencing after January 1, 2021, the 2021 GSB Law limited the exemption to 95% of the income obtained by the taxpayer and, accordingly, the remaining 5% must be included in the tax base in respect of nondeductible management costs.

In the case of tax groups, this nonexempt 5% cannot be eliminated, despite relating to dividends and income obtained from the transfer of securities distributed and obtained within the tax group (in other words, this limitation also affects dividends and income generated within tax groups, even if the taxpayer is the group itself).

In any event, the limit on the exemption will not apply to dividends or shares in income where the following requirements are met:

- In relation to the entity receiving the dividends or shares in income:
  - It must have net revenues below €40 million in the immediately preceding tax period.
  - It must not be considered an asset-holding entity for the purposes of article 5 of the Corporate Income Tax Law.
  - It must not form part of a business group within the meaning of article 42 of the Commercial Code before the creation of the subsidiary distributing the income, regardless of where it has its residence and of the obligation to prepare consolidated financial statements.
  - It must not own, before the creation of the subsidiary distributing the income, a direct or indirect interest in the capital or equity of another entity equal to 5% or more.
- In relation to the entity distributing the dividends or shares in income, it must have been formed after January 1, 2021 and have been wholly owned, directly or indirectly, since its creation by the recipient of the dividends.

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- In relation to when the dividends or shares in income are distributed, they must be received in tax periods ending in the three years immediately preceding or following the year of creation of the subsidiary distributing them.

2.1.5.4 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 entity has not been subject to an "identical or analogous tax", with respect to CIT, 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 CIT 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 2.1.11).

  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 that regime.

2.1.5.5 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 CIT 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 CIT 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, 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 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% 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.

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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 such dissolution is the consequence of a restructuring transaction or in case of the cessation of the permanent establishment.

  In that case, the deductible amount of 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 EU 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[28].

    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[29] 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 MINIMUM TAXATION

Effective for periods commencing on or after January 1, 2022, a minimum taxation rule is introduced for the following taxpayers:

a. Those whose net revenues are at least €20 million in the 12 months prior to the first day of the tax period.

b. Those who are taxed on a consolidated basis, regardless of their net revenues.

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28 In fiscal years prior to 2017, the subtraction 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%.

29 Up to 2016, only if the restructuring was carried out under the special regime discussed in section 2.1.11.

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In all events, the minimum taxation shall not apply to taxpayers that are taxed at 10% (nonprofit organizations that are subject to Law 49/2002, of December 23, 2002, on the tax regime for not-for-profit entities and on tax incentives for patronage), 1% (harmonized collective investment undertakings) or 0% (pension funds and listed corporations for investment in the real estate market – SOCIMI).

In general, the net tax liability may not be below the so-called "minimum net tax payable" which corresponds to 15% of the tax base, reduced or increased by the amounts derived from the leveling reserve, and reduced by the investment reserve regulated in article 27 of Law 19/1994, of July 6, 1994, amending the Canary Island Economic and Tax Regime.

However, the minimum net tax payable will be:

- 10%, in the case of newly formed entities that are taxed at the rate of 15%.
- 18%, in the case of credit institutions and entities engaging in exploration, research and mining of mineral deposits and underground hydrocarbon storage facilities.
- Not less than the result of applying 60% to the gross tax calculated according to Law 20/1990, in the case of cooperatives.

In the case of application of (i) reductions, (ii) the tax credit for investments by port authorities, and/or (iii) tax credits for the avoidance of double taxation, the minimum net tax payable will be calculated as follows:

- If the reductions and said tax credits reduce the net tax liability to below the minimum net tax payable, the result of subtracting these reductions and tax credits from the gross tax shall be deemed the minimum net tax payable.
- If, after applying the reductions and said tax credits, the result is higher than the minimum net tax payable, the rest of tax credits shall be applied, with the applicable limits, until reaching the amount of the minimum net tax payable.

2.1.8 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.

In addition, with certain exceptions, leases of certain types of real estate are subject to withholding tax at source on the rent paid to lessors[30].

Moreover, Spanish companies are also required to make three advance payments (in April, October and December of each year) based on 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, as a general rule, 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 this 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.

   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.

2.1.9 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 certain advantages, most notably the fact that the losses obtained by some group companies can be offset against the profits of the 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[31] (see the previous comments on this issue). However,

30 Royal Decree-Law 20/2011, of December 30, 2011 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 was 20%, and 19% for 2016 onwards.

31 In such cases, the legislation excludes transactions performed within the tax group from the documentation obligation generally applicable to related-party transactions.

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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 either a resident or a nonresident entity has a direct or indirect ownership interest of at least 75%[32] 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 CIT, has the status of parent with respect to two or more subsidiaries, the tax group will be formed only by the subsidiaries (all of which are to be included obligatorily).

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 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.

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.

2.1.10 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 EU. 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:

2.1.10.1 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 (and with the same limits).

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.

The aforementioned €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).

2.1.10.2 Treatment of income distributed by the ETVE

If the recipient of the income is an entity subject to Spanish CIT, the income received will entitle the recipient to the exemption for domestic double taxation.

32 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 '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.

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In case the recipient is an individual subject to Spanish PIT, 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 PIT 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.

2.1.10.3 Treatment of the capital gains obtained on the transfer of the holdings in the ETVE

When the shareholder is an entity subject to Spanish CIT 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 and with the same limits).

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 PIT legislation.

2.1.10.4 Corporate purpose and application of the ETVE regime

The regime may be applied by notifying the Ministry of Finance (which need not grant permission to the taxpayer) of the fact that it has been opted for.

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.

2.1.10.5 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.

2.1.11 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 EU Member State to another), Spanish law 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 EU 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. Instead, there is now a general obligation to notify the tax authorities of the performance of transactions to which this regime is applicable.

In mergers, the absorbing entity can be subrogated to the right to offset tax loss carryforwards of the absorbed entity or branch of activity.

2.1.12 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 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 rates permitted per the official depreciation

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tables (even if it has not been recorded for accounting purposes) for new tangible fixed assets, investment property and intangible assets placed at the disposal of the taxpayer in the year in which it meets the requirements to be classed as an entity of reduced size (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.

  This 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 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 current law.

2.1.13 TAX INCENTIVES FOR VENTURE CAPITAL FUNDS AND COMPANIES

Venture capital entities (both venture capital companies and venture capital funds) are subject to Spanish CIT and to the rules established in the general regime, with the special characteristics set out below.

2.1.13.1 Tax treatment for venture capital companies:

- Gains obtained by venture capital companies: Two different cases apply depending on whether or not the requirements for applying the exemption for double taxation mentioned in section 2.1.5 of this chapter are met:

  - If the requirements for applying the exemption are met, the gains obtained by the venture capital company are fully exempt.

  - If the requirements for applying the exemption are not met, a partial exemption of 99% will apply to gains obtained on the transfer of holdings, providing the transfer occurs between the start of the second year in which the interest is held, calculated as from the time of acquisition or delisting, and the 15th year, inclusive. The 15 year period can be extended to 20 years in certain circumstances.

    In the cases listed below, application of the 99% partial exemption requires fulfilment of certain additional conditions:

    - When over 50% of the investee's assets comprise buildings, at least 85% of the total carrying amount of the buildings must be used, without interruption and during the entire time the securities are held, for carrying out a non-financial and non-real estate business activity.

    - When a stake is held in a company that is subsequently listed on an official stock exchange (given that the corporate purpose of venture capital funds and companies is not to hold interests in listed companies), the venture capital company or fund must transfer its holding in that company within a maximum of three years from the date the company was admitted for trading. After that period, the entire amount of the gains obtained on the transfer are included in taxable income and subject to no reductions whatsoever, although in this case the corresponding general CIT double taxation rules would still apply (see section 2.1.5).

- Dividends or share profits obtained by the venture capital company: The exemption indicated in section 2.1.5 can apply to dividends obtained by this type of entity, irrespective of the percentage interest held and the duration for which the shares have been held.

2.1.13.2 Tax treatment for shareholders of venture capital companies

The tax treatment applicable to both the gains generated on the transfer or reimbursement of shares or holdings in venture capital companies and the dividends or share profits distributed by these entities is as follows:

- Resident legal entity shareholder or nonresident legal entity shareholder with a permanent establishment: The

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gains in question are exempt, irrespective of the percentage interest held and the duration for which the shares or holdings have been held.

- Nonresident individual shareholder or nonresident legal entity shareholder without a permanent establishment: The gains in question will not be deemed to have been obtained in Spain.

- Resident individual shareholder: The gains in question will be taxed in accordance with the general rules set out in the PIT Law (see section 2.2).

2.1.14 OTHER SPECIAL TAXATION REGIMES

CIT 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 CIT 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 the activity performed by the members through the grouping gives rise to a permanent establishment in Spain.

b. Temporary Business Associations (joint ventures)

These entities are taxed in the same way as EIGs. However, the foreign-source income (derived from activities carried on abroad) of a joint venture is tax-exempt (subject to application to the tax authorities).

The losses obtained by a joint venture of Spanish entities abroad are imputed to the tax bases of its members. If, in future years, the joint venture 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 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.

2.1.15 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[33].

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.

2.2.1 PERSONS SUBJECT TO THE TAX

The following persons are subject to personal income tax (PIT):

- Individuals habitually resident in Spanish territory.

33 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.

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- 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 PIT (for 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 such territories 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 EU may elect to be taxed under Spanish PIT if they demonstrate that their habitual domicile or residence is in another EU 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 CIT, 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 PIT Law.

2.2.2 TAXABLE EVENT

Taxpayers subject to PIT 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 EU Member State. This international tax transparency regime is similar to that described above for CIT.

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 form 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.

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- 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 its 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, it being obligatory for the setoff to be made of the maximum amount that the rules allow.

a. 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 b) below) with the limit of 25% of that positive balance.

b. 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 a) 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.

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 PIT 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 preformed 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.

In addition, 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.

2.2.6 EARNED INCOME

The main aspects of the tax treatment of earned income are as follows:

a. Both cash income and income in kind are taxable.

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b. The most relevant rules affecting income in kind are explained below:

- In general,it is valued at the market value of the remuneration.

- However, the Law provides special rules for certain types of income:

  The valuation of the income 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 income 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 meals and accommodation expenses.

- In any event, the Law states that, irrespective of the above-mentioned general and special rules, the value of salary income in kind paid by companies engaged habitually in the performance of the activities that give rise to such income 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).

- Certain income in kind is 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 (indirect payment formulae that fulfill a number of conditions such as “transport passes / vouchers” are permitted).

  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 of 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 a 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.

- In addition, 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 (this limit is reduced for severance indemnities or termination benefits above €700,000, there being no reduction applicable to indemnities of €1,000,000 or more).

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Other types of reduction are applicable to certain earned income.

When calculating the income, certain expenses are also deducted such as Social Security contributions, or a general reduction of €2,000 per annum for other expenses is applied (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. This limit has been increased, with effect as from July 5, 2018, to €16,825, as a result of which a specific regime applicable exclusively from 2018 has been introduced.

d. Lastly, 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

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 EU 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[34] insurance and the income from capital deposits.

34 In the case of life insurance in which the policyholder assumes the investment risk, as a general rule, the difference between the redemption value of the assets assigned to the policy at the end and at the beginning of each fiscal year shall be allocated as income from movable capital in each tax period.

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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 in debtedness", 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 the entity 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:

a. 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 thereof, 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).

b. 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.* which is deemed to be generated after January 20, 2006 (inclusive) will be taxed in full.

   In any event, according to the legislation applicable, the maximum amount of the asset transfer value to which these coefficients can be applied is €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.

c. Certain capital gains and losses are not deemed as such (and, thus, are not taxed or their taxation differs), namely

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(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 (i) 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.

d. Since 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, have been treated as a capital gain for the transferor in the tax period in which the transfer takes place. This was 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.

e. There is an exemption for capital gains generated on the transfer of shares or holdings in newly or recently formed companies for which the tax credit for investment in newly or recently formed companies was applied (see section 2.2.13), providing the total amount obtained from the transfer is reinvested in the acquisition of shares or holdings that meet the following requirements:

   - Reinvestment in a public limited company, a limited liability company, a worker-owned corporation or worker-owned limited liability company that is not listed on any official stock exchange. This requirement must be met during all the years in which the shares or units are held.

   - Perform an economic activity with the personal and material means necessary to perform it. In particular, the activity of the company may not be the management of movable or real property assets in the terms established in the Wealth Tax Law, in any of the company's tax periods ended prior to the transfer of the holding.

   - The entity's equity 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.

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- 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 related 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.

In addition, it will be necessary to secure a certificate issued by the entity whose shares or holdings have been acquired, attesting to fulfillment of the first three requirements during the tax period in which the shares or holdings were acquired.

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 which is understood to be used to meet the taxpayer's basic and personal needs, which is 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 reductions file PIT 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. €1,500[35], except where the contributions relate to company contributions, in which case the limit could be increased by an additional €8,500, provided the contributions made by the employee are equal to or less than the company's contribution. In this case, the amounts contributed by the company that derive from a decision by the employee shall have the consideration of employee contributions.

   In the case of group care policies taken out by employers to cover pension obligations, it places an additional annual €5,000 cap for premiums paid by the company.

b. 30% of the sum of net income from work and business activities.

In addition, 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 €1,000[36] and the contribution is not subject to IGT.

35 Limit changed by the 2022 GSB Law for fiscal years commencing on or after January 1, 2022. In 2020, this limit was €2,000 as a general rule, and prior to that, it was €8,000, as a general rule.

36 Limit changed by the 2021 GSB Law for fiscal years commencing on or after January 1, 2021. This limit was previously €2,500.

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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 PIT 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 2022 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:

TOTAL TAX SCALE (GENERAL COMPONENT)

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	19%
12,450	2,365.50	7,750	24%
20,200	4,225.50	15,000	30%
35,200	8,725.50	24,800	37%
60,000	17,901.50	240,000	45%
300,000	125,901.50	Onwards	47%

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 2021 and following years is as follows:

TOTAL TAX SCALE (SAVINGS COMPONENT)

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	6,000	19%
6,000	1,140	44,000	21%
50,000	10,380	150,000	23%
200,000	44,880	Onwards	26%

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 above all. This tax benefit permits deducting 30% of the amounts paid for the subscription of shares or holdings in new or recently formed companies where the following requirements are 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

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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 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 related 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.

The maximum tax credit base will be €60,000 per annum and will be formed by the acquisition value of the shares or holdings subscribed.

Mention should also be made of the deduction introduced with effect as from January 1, 2018 for taxpayers whose other family members reside in another Member State of the EU or EEA, the purpose of which is to bring Spanish legislation into line with EU law and address situations in which a taxpayer is prevented from filing a joint tax return by the fact that other members of the family unit reside outside of Spain. The deduction is applied to make tax payable equal to the amount that the taxpayer would have borne had all the members of the family unit been resident for tax purposes in Spain.

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:

INCOME		BASE	RATE APPLICABLE IN 2016 ONWARDS
Salary income	General. (*)	Total compensation paid or satisfied.	See paragraph below table.
	Contracts of less than a year.		See paragraph below table (minimum 2%).
	Special dependent employment relationships.		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%.
Professional activities	General.	Amount of income or consideration obtained.	15%.
	Start of fiscal year + following 2 years.		7%.
	Certain professional activities (municipal collectors, insurance brokers, etc.).		7%.
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), for the 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%.

****** With effect as from January 1, 2019, a 15% withholding tax rate is applicable to revenues from intellectual property, when the taxpayer is not the author.

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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, to which the withholding scale is also to be applied separately. 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. In short, the calculation of the withholding tax rate is very similar to the calculation of the definitive tax rate, albeit with certain special features, indicating that the legislature's intention was to bring them closer together.

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 PIT 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 Finance. The deadline is usually June 30.

Taxpayers who are married and not legally separated, and who are obliged to file a PIT 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 EU country or in a Member State of the EEA 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 (PIT).

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 determine whether there is a permanent establishment in Spain.

One fundamental characteristic of permanent establishments is the lack of legal personality separate from that of the parent. In other words, 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 in Spain exists where the nonresident entity:

a. Uses in Spain, under any legal arrangement, on a continuous or habitual basis, any kind of facilities or workplaces 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, at 25%). 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.).

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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) 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 EU Member State (unless it resides 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% 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, the tax rate of 25% is 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, the change of residence of the head office or the transfer abroad of the permanent establishment's activity.[37]

  The permanent establishment may also take the tax credits and relief that might be applicable, in general, for Spanish resident companies.

The rules regarding minimum taxation explained in section 2.1.7 also apply.

- In the case of 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 account (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 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 CIT system may not be taken.

  The tax period and tax return filing (Form 200) deadlines are those envisaged in the standard tax rules.

- Likewise, expenses cannot be deducted, or their deductibility must be deferred, or otherwise taxable income must be added in certain cases (where there is a relationship of association between the parties involved in the transaction or significant influence is exerted, or they act jointly with respect to voting rights or ownership of capital, and where the asymmetry occurs in the context of a structured mechanism) that affect the deductibility of expenses in the tax base of permanent establishments located in Spain.

  In this regard, the following expenses are not deductible:

  - Expenses relating to transactions carried out between the aforementioned operators which, as a result of a tax difference in their allocation between the permanent establishment and its head office, or between two or more permanent establishments, do not generate income.

37 The Antifraud Law establishes the transfer of the permanent establishment's activity abroad to be a new case whereby the tax period is deemed to have ended.

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- Those estimated for internal transactions with the head office or with one of its permanent establishments, or those of a related person or entity which, due to the legislation of the country or territory of the beneficiary, do not generate income, in the portion that is not offset by revenues that generate double taxation (where the revenues in question are subject to taxation pursuant to Spanish legislation and to that of the other country or territory).

- Those relating to transactions of the permanent establishment that are tax deductible in the head office, in the portion that is not offset by revenues of that permanent establishment or related entity that generate double taxation.

- Those relating to transactions carried out with a permanent establishment of the head office or of a related person or entity which, since it is not recognized for tax purposes by the country or territory of location, do not generate revenues.

- Lastly, 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 transfers its activity abroad, as well as in the case of transfer abroad of the assets used in the activity.

  The payment of the tax debt resulting in the case of assets transferred to a Member State of the EU or of the EEA 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, which may not exceed the period of five years from the transfer.

  The tax debt deferral will lose its validity when the activity carried out by the permanent establishment is subsequently transferred to a third State outside the EU or the EEA, and in the case of transfer of assets to third parties, insolvency or lack of payment of the previous taxes owed.

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:

- 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 paid by persons or entities resident in Spanish territory or by permanent establishments in such 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 such establishments, if the consideration paid is 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 EU or EEA residents or by permanent establishments of those residents located in another Member State of the EU or the EEA. 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), or where the transfer does not meet the requirements to apply the exemption to avoid double taxation (domestic and international) established in CIT 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.

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- 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 EU or in a Member State of the EEA, provided that certain requirements are met (among others, 5% holding owned for one year).[38]

  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 EU or in a Member State of the EEA 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 EU or of the EEA) 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 CIT 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.

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 (this law refers to PIT legislation regarding the determination of the tax base for capital gains).

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 it should be considered the application of the abatement coefficients described in the section on PIT, with the new limits discussed therein.

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:

TYPE OF INCOME	RATE (%) APPLICABLE FROM 2016 ONWARDS
General.	24 (*)
Dividends.	19
Interest.	
Capital gains.	
Income derived from the transfer or redemption of securities representing the capital or equity of collective investment undertakings.	
Special cases:	
• Income from reinsurance transactions.	1.5
• Income from maritime or air navigation entities.	4
• Foreign seasonal workers.	2

* The rate is 19% for taxpayers resident in another Member State of the EU or of the EEA with which there is effective exchange of tax information.

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.

38 The 2021 GSB Law eliminated, effective for periods commencing on or after January 1, 2021, the alternative requirement for applying the exemption (*i.e.*, acquisition value of the shareholding being in excess of €20 million). Accordingly, in those cases in which the value of the shareholding exceeds €20 million but said holding does not reach a percentage above 5% of total capital, the exemption cannot be applied. However, transitional rules are established in the Nonresident Income Tax Law whereby the exemption will apply during the tax periods commencing in 2021, 2022, 2023, 2024 and 2025 for companies that at January 1, 2021 had an acquisition value above €20 million without complying with the subject shareholding threshold (*i.e.*, 5%).

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Royalty payments to entities or permanent establishments residing in the EU are subject to a 0% rate.

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 PIT 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 its 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.

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 PIT 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 PIT 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 2021 ONWARDS
Up to €600,000	24%
From €600,000 onwards	47%

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 47% (45% in tax periods commenced prior to January 1, 2021).

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.

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The regime described will apply as from 2015 and entails important changes with respect to that which existed up to 2014. For that reason, it was stipulated that taxpayers transferred to Spain prior to January 1, 2015 could elect to apply the regime in force as of December 31, 2014, by notifying the tax authorities.

Lastly, personal income taxpayers that elect to apply this special regime can request a tax residence certificate in Spain (although this is not the residence certificate required for the purposes of the corresponding double tax treaties subscribed by Spain).

2.3.4 CAPITAL GAINS DUE TO A CHANGE OF RESIDENCE ("EXIT TAX")

For 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 EU Member State or a country within the EEA with which 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[39]

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 Bahrain, 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.

39 For more detailed information, visit web page www.aeat.es, section *Fiscalidad internacional.*

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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)[40]. 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 persons and entities resident in countries or territories with which there is no effective exchange of information, that there 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.

b. Tax representatives of pass-through entities.

Shall be jointly and severally liable for paying over the tax debts corresponding to such establishments or entities.

The payer of income accrued other than through a permanent establishment by nonresident taxpayers, or the depositary or 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 in question, 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	3.5

40 With the entry into force of the Antifraud Law, the representative of the nonresident is not required to be resident in Spain, with a reference to what is stated in each tax law.

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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 is €700,000.

The gross wealth tax payable, together with the PIT 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 PIT. 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 PIT 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 ("CJEU"), of 3 September 2014 (case C-127/12), the provision has been amended to establish that nonresident taxpayers, that are resident in a Member State of the EU or of the EEA, 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. For 2021 onwards, this right has also been extended to nonresident taxpayers from third States.

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, deemed as the market value or as the most likely price for which an asset free of encumbrances could be sold between independent parties. In the case of real estate, for taxable events accruing after July 10, 2021, their value will be the reference value provided for in the legislation of the real estate Cadastre on the date on which the tax becomes due.

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 2020 (in the absence of rates and coefficients specifically approved by the relevant autonomous community) are the following:

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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 CJEU'S judgment of 3 September 2014 (Case C-127/12), specific connection points have been established for taxpayers resident in the EU or in the EEA that were extended, for taxable events accruing after July 10, 2021, for the residents of third States[41].

Accordingly:

i. When the **decedent** was a nonresident, the taxpayer 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 decedent'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 community in which the taxpayer resides.

ii. When the **decedent** was a resident in an **autonomous community** and the taxpayer is not a resident, the taxpayer will be entitled to apply the regulations approved by that autonomous community.

iii. In the event of the acquisition of **real estate located in Spain** by donation or any other *inter vivos* legal transfer for no consideration, non-resident taxpayers will be entitled to apply the legislation approved in the autonomous community in which the real estate is located.

iv. In the event of the acquisition of **real estate located abroad**, by donation or any other *inter vivos* legal transfer for no consideration, taxpayers resident in Spain will be entitled to apply the legislation approved in the autonomous community in which they reside.

v. In the event of the acquisition of **moveable property located in Spain** by donation or any other *inter vivos* legal transfer for no consideration, non-resident taxpayers will be entitled to apply the legislation approved in the autonomous community 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 communities are applicable in accordance with the rules explained above.

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 EU.

VAT is an indirect tax, the main feature of which is that it does not normally entail any cost for traders or professionals, only for the end consumer, because traders or professionals are generally entitled to offset their input VAT against their output VAT.

41 In 2018, the Supreme Court handed down various judgments (whose criteria have already been reiterated by the Directorate-General of Taxes and are being applied by the State Tax Agency), extending the effects of these provisions to inheritances and gifts in which the subjective elements (decedent, donor, heirs, legatees and donees) or objective elements (assets and rights) are or reside outside the EU or the EEA.

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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.
- Supplies of services.

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 and soft drinks, juices and fizzy drinks with added sugar or sweeteners.
- 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.

By way of exception, in response to the crisis triggered by COVID-19, a tax rate of 0% was approved for the supply, import and intra-Community acquisition (as applicable) of certain medical supplies where the customers in those transactions are public entities, hospitals and health clinics or private charitable entities as referred to in the VAT Law. Pursuant to Royal Decree-Law 34/2020, these measures will remain in force until June 30, 2022. In addition, a 4% rate will apply to supplies, imports and intra-Community acquisitions of disposable surgical masks, until June 30, 2022.

Moreover, in fiscal year 2021, measures have been approved in the area of energy, through Royal Decree-law 17/2021, which will apply until April 30, 2022, and basically consist of the application of the reduced rate of 10% in the components of the electricity bill of certain contracts and in the supplies made to certain holders of electricity supply contracts.

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 such activities, 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 intra-Community supplies of goods or exports) that do confer the right to deduct input VAT.

Precisely in relation to intra-Community supplies that grant the right to the deduction, despite being treated as exempt transactions (full exemption), the following measures have been approved, effective since March 1, 2020:

- In order to apply that exemption, along with the requirement of the transport of the goods to another Member State, the following substantive – not formal – conditions are established:
  i. The acquirer must have provided to the supplier a VAT identification number assigned by a Member State other than Spain.
  ii. The supplier must include that transaction in its recapitulative statement of intra-Community transactions (form 349).
- In order to evidence the transportation of the goods to another Member State (necessary requirement to apply the exemption in intra-Community supplies), a series of rebuttable presumptions are established. That transport must be proven with the following means of proof:

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- Where the acquirer is the one that handles the transportation:
  - Certificate by the acquirer stating that the goods have been transported by it or by a third party in its name, and specifying the destination of the goods.
  - At least two documents related to the dispatch or transport of the goods (signed letter or *CMR* documents, bill of lading, air freight bill or invoice from the carrier of the goods) issued by parties unrelated to the seller and the acquirer.
  - If at least two of the documents specified in the preceding paragraph are not available, at least one of the following means of proof issued by parties unrelated to the seller and the acquirer:
    - Insurance policy covering the dispatch or transportation of the goods, or bank documents proving the payment of the dispatch or transport.
    - Documents issued by an attesting official certifying the arrival of the goods.
    - Certificate by the warehouse keeper of the goods in the Member State, confirming the storage of the goods in that Member State.
- If the seller is the one that handles the transportation, the same provisions will apply except for the first certificate mentioned in the preceding point, which will be replaced by a mere statement by the seller that the goods have been dispatched or transported by it or by a third party in its name.

- Measures are also included to harmonize the taxation of chain transactions, that is, successive supplies of goods between different traders or professionals, which are transported directly from one Member State to another by the first supplier to the final acquirer of the chain.

  In order to determine which of the supplies has the status of exempt intra-Community supply, it is established that the transport is deemed linked to:
  - The supply by the initial supplier to the intermediary, which will constitute an exempt intra-Community supply of goods, provided the latter has communicated a tax identification number issued by a Member State other than Spain.
  - The supply made by the intermediary, where it has communicated a Spanish VAT number to the supplier. Thus, the supply by the supplier to the intermediary will be subject to and not exempt from VAT, and the supply made by the intermediary to its customer will be an exempt intra-Community supply.

- Lastly, in relation to the sales of buffer stock or consignment sales (agreements whereby a supplier sends goods from one Member State to another in order for them to be stored in the Member State of destination and available to another trader, that can acquire them after their arrival) new regulation is established which permit simplifying the VAT treatment of these transactions and reducing the administrative burden of traders, provided a number of conditions are met.

Thus, starting on March 1, 2020, these sales give rise to a single transaction[42]: an intra-Community supply of goods that is exempt in the Member State of dispatch by the supplier, and an intra-Community acquisition in the Member State of arrival, by the customer when it retrieves the goods from the warehouse.

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 establishes rules for determining the place where the various transactions are deemed to take place.

- Supplies of goods: The general rule is that goods are deemed to be supplied in Spanish VAT territory if 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 are deemed to be supplied at the recipient's place of business or permanent establishment, if 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 at 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.

42 Previously, these transactions constituted a transfer of goods exempt in the Member State of dispatch and a transaction treated as an intra-Community acquisition of goods in the Member State of arrival, both performed by the supplier. Subsequently, when the customer retrieved the goods from the warehouse, there was an internal supply in the Member State of arrival, to which the reverse charge mechanism applied. Also, the supplier was required to be identified for VAT purposes in the Member State of destination of the goods.

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- The intra-Community transportation of goods to final consumers will be taxed in Spain 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-EU 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 registration 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.

  It should be noted that Directive 2017/2455 establishes, effective from January 1, 2019, a threshold for determining the place of supply of these services, according to which where the total amount of this type of services provided by the supplier does not exceed €10,000, in the current or the preceding year, the services supplied to end consumers shall be deemed subject to VAT in the place of establishment of the supplier.

  According to Spanish legislation, traders or professionals may voluntarily elect taxation at destination, even if the €10,000 limit has not been exceeded, and this election has a minimum validity of two calendar years.

- 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.

- 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.

- Lastly, a catch-all rule is established whereby certain services that upon application of the preceding rules are not understood to be performed in the Community, Canary Islands, Ceuta or Melilla[43] but that are effectively used or enjoyed in Spanish VAT territory are taxed in Spain.

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. Also, as explained below, that definition is relevant for determining who the taxable person of those transactions is.

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.).

43 The 2021 GSB Law excluded application of the catch-all rule to services that are deemed to be supplied in the Canary Islands, Ceuta and Melilla. Prior to entry into force of that law, the VAT Law only referred to services whose place of supply was outside the Community.

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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[44]. 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.

In cases where a fixed establishment exists in Spanish VAT territory, due to being established 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.

Since April 1, 2015, the foregoing list includes 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

44 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.

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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 its transactions.
- Keep accounting records and official books (specific VAT books)[45].
- File periodically, or at the request of the authorities, information relating to its business transactions with third parties.
- File tax returns (monthly or quarterly, depending on its volume of transactions, and an annual summary return).
- Appoint a representative in order to comply with its 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 EU, 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 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:

$$\frac{\textit{Transactions entitling to deduction}}{\textit{Total transactions}} \times 100$$

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.

45 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.

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- 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 its 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 its 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 the obligation to keep VAT registers electronically.

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 EU or, otherwise, must evidence a reciprocal arrangement in their country of origin for traders or professional 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 non established 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 EU, those persons who are not established in the EU 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[46], and it may not be less than €400 if the claim is filed quarterly, or less than €50 if it is annual.

46 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.

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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 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 this 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

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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. 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 system *(SII)*[47] , 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.

For these purposes, according to Royal Decree 1512/2018, of December 28, 2018, amending, among others, the VAT Regulations, the legislation applicable to invoices issued by taxable persons subject to special regimes establishing a single point of contact for services supplied electronically, consisting of telecommunications, radio broadcasting and television services, which to date was that of the Member State of consumption, shall now be the legislation of the Member State of identification. This avoids the taxable person being subject to different legislations on invoicing.

Accordingly, Spanish invoicing legislation will apply to the supplier of the electronic services when Spain is the Member State of identification.

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 EU, 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.

47 Electronic submission of the VAT books.

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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 in rem (mainly guarantees, pensions, security or loans).	1
Certain 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 to 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)[48]; (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 CUSTOM 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 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*")[49] 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 TAX ON FINANCIAL TRANSACTIONS

This is an indirect tax levied on acquisitions for consideration of shares representing the capital stock of Spanish companies, when the following conditions are met:

48 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).

49 Currently the European Union.

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- The company' shares are listed on a stock exchange of Spain or another European Union Member State deemed to be a regulated market pursuant to Directive 2014/65/EU or an equivalent third-country market pursuant to article 25.4 of that Directive.

- The stock market capitalization of the company at December 1 of the year preceding the acquisition exceeds €1 billion.

This tax is required irrespective of where the acquisition is carried out and of the residence or the place of establishment of the parties participating in the transaction.

In any event, a series of exemptions are established affecting the primary market and the acquisitions required for the functioning of market infrastructure, regarding corporate restructurings, those performed between companies in the same group, temporary transfers and certain treasury stock purchases. This tax was required for the first time in 2021. Spanish companies whose stock market capitalization exceeds €1 billion in that first year had to be identified for the first time on December 16, 2020.

2.12 TAX ON CERTAIN DIGITAL SERVICES

This is an indirect tax, compatible with VAT, levied on the provision of certain digital services.

- The placing on a digital interface of advertising targeted at users of that interface (online advertising services).

- The making available of multi-sided digital interfaces to users which allow users to find other users and to interact with them, or even facilitate the provision of underlying supplies of goods or services directly between those users (online intermediation services).

- The transmission, including sales or assignments, of data collected about users which has been generated from such users' activities on digital interfaces (data transmission services).

For these purposes, supplies of digital services shall be deemed to be provided in Spanish territory when a user is located in that territory, regardless of whether such user has paid any consideration contributing to the generation of the revenue obtained from the service.

The taxpayers shall be those providers of digital services that exceed all of the following thresholds simultaneously:

- Net revenue above €750 million in the previous calendar year.

- Total amount of revenues derived from the provision of digital services subject to the tax, corresponding to the previous calendar year, after applying the rules for determining the taxable amount (in order to thus determine the part of such revenues that corresponds to users located in Spanish territory) above €3 million.

2.13 REPORTING OBLIGATIONS RELATING TO ASSETS AND RIGHTS ABROAD

The law regulates an obligation to report assets and rights abroad that applies to 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 comply with this obligation or the incorrect or late compliance with this obligation was subject to a costly penalty regime pursuant to which penalties were calculated per item or set of data not reported or reported inaccurately or late.

In addition, if this obligation was not fulfilled in a timely manner, the income detected was deemed undisclosed income or an unjustified capital gain for CIT or PIT purposes, respectively, attributable to the last earliest period of those not statute-barred, even if it were proven that the income was generated before that, unless it was evidenced that the income was reported and tax was paid on it or that it was generated when the taxpayer was not resident in Spain. If this undisclosed income or unjustified capital gain were attributed to the taxpayer, it could entail a penalty of 150% of the tax debt derived from that attribution.

These consequences (attribution of undisclosed income or unjustified capital gains, fixed penalties and penalty of 150%) were analyzed by the European Commission through an infringement proceeding brought against Spain (2014/4330 C (2017) 1064) in accordance with article 258 of the Treaty on the Functioning of the EU.

The CJEU finally ruled, in a judgment of January 27, 2022, that Spain had breached its obligations pursuant to the principle of free movement of capital, for the following reasons:

- Because the breach of, or the incorrect or late compliance with, the obligation entails taxing the undisclosed income without the possibility for the taxpayer to invoke the statute-barring of the tax obligation.

- Because it penalizes such conduct with a penalty of 150% of the tax payable relating to that attribution of unreported income, which can also be accumulated to fixed fines.

- Lastly, because it penalizes such breaches with unlimited fixed fines that are not proportional to the penalties established in a purely national context.

Pursuant to that judgment, Law 5/2022, of March 9, 2022, was approved, effective starting on March 11, 2022, eliminating

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the aforementioned penalty regime, and establishing that the income allocable to assets or rights that was not reported or that was reported late is an unjustified gain. Notwithstanding, the CJEU judgment should have immediate effects following its publication, and the State Tax Agency is already refunding the penalties charged previously.

The Central Economic-Administrative Tribunal ruled, in a recent decision from March 2022, that the effects of the judgment are applicable immediately, but remembering that Spanish legislation still includes a regime of attribution of unreported income or capital gains (that does not depend on the existence of this disclosure of assets and rights abroad through the aforementioned return). Thus if, due to filing that return, there is a disclosure of income not reported previously (and generated when the taxpayer was a resident), the taxpayer must be in a position to prove that it was generated in statute-barred periods, in order to avoid said attribution to the tax base.

For now, after the elimination of the specific penalty regime for the failure to file said return, Spain has not established any penalty regime other than the one established for the rest of informational returns.

The general return period runs from January 1 to March 31 of the year following that for which the return is filed.

2.14 SPECIAL REGIMES OF CERTAIN AUTONOMOUS COMMUNITIES

2.14.1 CANARY ISLANDS TAX REGIME (REF)

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. The set of such benefits is known as REF, from the Spanish acronym.

The REF was renewed for the period 2014 to 2020 through the approval of Royal Decree-Law 15/2014, of December 19, which included 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 (ZEC)**.

Royal Decree-Law 34/2020, of November 17, 2020, modified the time references contained in Law 19/1994, of July 6, 1994, amending the REF, affected by the extension of the Assistance Guidelines for regional purposes for 2014-2020:

1. Firstly, it amended the rules applicable to advance investments for future allowances to the RIC, whereby such investments can be applied to the allowances made with a charge to profit obtained up to December 31, 2021 (previously up to 2020).

2. Secondly, entry in the Official Register of Entities of the ZEC will be able to be authorized up until December 31, 2021 (previously up until 2020).

Furthermore, through Royal Decree-Law 39/2020, of December 29, 2020, the investment period for the 2016 RIC was extended for an additional year.

Accordingly, it will not be necessary to adjust the allowances corresponding to the years initiated in 2016 for which investment had not been made at December 31, 2020.

Likewise, subarticle 11 of the aforementioned article 27 of Law 19/1994 was amended on a transitional basis, whereby the period referred to in the first paragraph will be four years for advance investments made in 2017.

Recently, as a result of Spain's notification to the European Commission of its Map of Regional State Aid for 2022-2027, several timing references contained in Law 19/1994, of July 6, 1994, amending the Canary Islands Economic and Tax Regime (REF), have been modified, through Royal Decree-law 31/2021, of December 28, 2021:

a. On the one hand, the regime applicable to advance investments of future provisions to the RIC is modified, permitting such investments to be made with provisions recorded out of profits obtained up to December 31, 2023 (previously, December 31, 2021).

b. On the other hand, entries on the Official Register of Entities of the ZEC can be authorized up to December 31, 2023 (previously, December 31, 2021).

However, the Map of Regional State Aid (which includes the tax incentives of the REF) must be authorized by the European Commission, which means that the effectiveness of the foregoing amendments is conditional on obtaining that authorization.

The REF incentives are basically as follows:

2.14.1.1 Direct taxation

- 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.

- 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.

- The tax credits rates for investments made in the Canary Islands are higher than those applicable to investments in the Spanish mainland.

- Reduction of the taxable amount (by up to 90% of undistributed income per books for the year) by amounts recorded to the RIC. This reserve must be invested within a period of up to three years, and can be invested in certain investments (to create or expand establishments, create jobs, acquire certain assets, including the subscription of shares or other securities, investments contributing to the

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improvement and protection of the environment); these investments must be related (according to the requirements which are expressly regulated) with activities or entities/establishments in the Canary Islands, and they must be maintained for 5 years.

- Specific tax credits for entities domiciled in the Canary Islands (with an average workforce of 50 employees and revenues below €10 million):

  a. Tax credit for investments in territories of western Africa (Morocco, Mauritania, Senegal, Gambia, Guinea-Bissau and Cape Verde).

     This 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.

  b. Tax credit of 15% of expenses for advertising and publicity, product launches, opening and researching markets abroad and attending trade fairs and the like.

- Increase from 32% to 45% in the tax credit for technological innovation through activities carried on in the Canary Islands.

- ZEC

  Canary Islands legislation also regulates the special tax regime of the 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 on 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. However, the application of this special regime has been extended until 2026, and the period for requesting authorization has been extended to December 31, 2023.

  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 permanent establishments 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); (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.

  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 is subject to CIT 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:

  Since January 1, 2015, it is 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 non-residents with holdings in ZEC entities are exempt from nonresident income tax in Spain on the same conditions as for residents in the EU and the EEA, 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 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 its activity, provided they are located, can be exercised or must be met 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 are exempt from Canary Islands general indirect tax.

- Incentive for Cinematographic Activities in the Canary Islands

  Two tax credits are established for Cinematographic Activities in the Canary Islands:

  - Tax credit for Spanish cinematographic productions and audiovisual series, whereby, provided a number of requirements are met, a tax credit may be taken on the total costs of the production. That tax credit is 50% on the first million euros, and 40% to any excess over that amount. The total tax credit may not exceed €5.4 million.

  - Tax credit for expenses incurred in Spain for foreign productions of feature films or audiovisual works, whereby, provided a number of requirements are met, a tax credit may be taken of 50% of the first million

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euros, and of 45% of any excess above that threshold, provided certain requirements are met. The tax credit is capped at €18 million.

- Control of incentives and limits on the accumulation of aid derived from the application of EU Law

  As stated previously, the REF incentives are State aid. That aid is therefore subject to control measures, in accordance with the REF Regulations, and are 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.

  Moreover:

  a. It is established that the aid obtained by the beneficiaries of the REC shall be included in an informational return (form 282).

  b. Rules are established for computing the aid to determine the accumulation thereof, and limits on that accumulation are specified.

  c. The procedure is established for recovery of excess aid if those limits are exceeded.

  d. 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.

2.14.1.2 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% since January 1, 2020, (after the reduction to 6.5% in 2019). In addition, the increased tax rate was raised for 2020, going from 13.5% to 15%.

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 according to the regulations established in the RIC, where certain requirements are met **(article 25 of Law 19/1994).**

2.14.2 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 Vizkaya.
- PIT:
  - 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.

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- 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 2/2018, of June 11, 2018, of Tax on Wealth.
  - 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.

2.14.3 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 26/2016, of December 28.
- Personal Income Tax: Revised Provincial Personal Income Tax Law (Legislative Provincial Decree 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
Tax System

/ 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 Cadaster regulations, at different rates up to a maximum of 1.30% for urban property and 1.22% for rural property.

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 CIT 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 WORK

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 Tax System

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[50]: 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 certain limits. In any case, if the taxpayer proves that the amount of the value increase is lower than the tax base determined as stated above, the amount of that value increase shall be taken as the tax base.

This tax is deductible for personal income tax purposes from the transfer value of real estate.

50 The rules for determining the tax base were amended by Royal Decree-law 26/2021, of November 8, 2021, for the taxable events accruing after November 9, 2021, as a result of the Constitutional Court judgment 59/2017, of May 11, 2017, whereby the Constitutional Court declared the previous legislative regulation unconstitutional. In any case, that Royal Decree-law has been contested and is currently the subject-matter of an appeal for a ruling of unconstitutionality.

3
Tax System

GUIDE TO BUSINESS IN SPAIN 2022

/ Exhibit I Corporate income tax incentives for investment

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 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.

3
Tax System

/ Exhibit II **Treaty tax rates**[51]

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
Andorra	5 or 15	0 or 5	5
Argentina [52]	15 or 10	12 or 0	3, 5, 10 or 15
Armenia	10 or 0	5	5 or 10
Australia	15	10	10
Austria	15	10	10
Azerbaijan	10 or 5	0 or 8	5 or 10
Barbados	0 or 5	0	0
Belgium (**)	15 or 0	10 or 0	5
Belarus	5 or 10	0 or 5	5 or 0
Bolivia	15 or 10	15 or 0	15 or 0
Bosnia Herzegovina	10 or 5	7 or 0	7
Brazil	10 or 15	15, 10 or 0	15 or 10
Bulgaria	15 or 5	0	0
Canada	5 or 15	0 or 10	10 or 0
Cape Verde	10 or 0	0 or 5	5
Czech Republic	15 or 5	0	5 or 0
Chile	10 or 5	4, 5, 10 or 15	2, 5 or 10
China	10 or 5	10	10
China (Hong Kong)	0 or 10	0 or 5	5
Colombia	0 or 5	5 or 10	10
Costa Rica	12 or 5	5 or 10	10
Croatia	15 or 0	0[53]	0
Cuba	15 or 5	10 or 0	5 or 0
Cyprus[54]	5 or 0	0	0

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51 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. Further information is available at: http://www.minhafp.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx

52 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).

53 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.

54 Published on May 26, 2014, and entered into force on May 28, 2014.

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Tax System

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TYPE OF INCOME			
RECIPIENT COMPANY'S COUNTRY OF RESIDENCE	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
Denmark[55]	15 or 0	10	6
Dominican Republic	10 or 0	10 or 0	10
Ecuador	15	0, 5 or 10	10 or 5
Egypt	12 or 9	10 or 0	12
El Salvador	12 or 0	0 or 10	10
Estonia	15 or 5	10 or 0	0, 5 or 10
Finland	0, 5 or 15	0	0
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	0 or 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
Ireland	15 or 0	0	5, 8 or 10
Israel	10	10 or 5	7 or 5
Italy	15	12 or 0	8 or 4
Kazakhstan	5 or 15	10	10
Kuwait	5 or 0	0 or 10	5
Jamaica	10 or 5	0 or 10	10
Japan	10.5 or 0	0 or 10	0
Korea	10 or 15	10 or 0	10
Latvia	10 or 5	0, 5 or 10	0, 5 or 10
Lithuania	15 or 5	10 or 0	0, 5 or 10
Luxembourg	15 or 10	10 or 0	10
Northern Macedonia	15 or 5	5 or 0	5
Malaysia	5 or 0	10 or 0	7 or 5
Malta	5 or 0	0	0
Mexico	10 or 0	4, 9 or 10	0 or 10

TYPE OF INCOME			
RECIPIENT COMPANY'S COUNTRY OF RESIDENCE	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
Moldavia	0, 5 or 10	0 or 5	8
Morocco	15 or 10	10	10 or 5
Netherlands	15, 10 or 5	10	6
New Zealand	15	0 or 10	10
Nigeria	10 or 7.5	0 or 7.5	3.75 or 7.5
Norway	15 or 10	10 or 0	5
Pakistan	5, 7.5 or 10	10	7.5
Panama	0, 5 or 10	5 or 0	5
Philippines	15 or 10	0 or 15 or 10	15 or 20
Poland	15 or 5	0	10 or 0
Portugal	15 or 10	15	5
Qatar	0 or 5	0	0
Romania	0 or 5	0 or 3	3
Russia	15 or 10 or 5	5 or 0	5
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	0 or 15	10
Switzerland[56]	15 or 0	0	0 or 5
Thailand	10	0 or 15 or 10	5, 8 or 15

CONTINUE ON THE NEXT PAGE >

55 Denmark decided to terminate the Treaty with Spain as of January 1, 2009.

56 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.

3 Tax System

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TYPE OF INCOME			
RECIPIENT COMPANY'S COUNTRY OF RESIDENCE	**DIVIDENDS (%)**	**INTEREST (%)**	**ROYALTIES (%)**
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	5 or 15	0	0
United Kingdom	15, 10 or 0	0	0
United States	0, 5 or 15	0 or 10	0
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, 7 or 5	10	10 or 5
Former Soviet Union	18	0	5 or 0

3
Tax System

/ Exhibit III **Practical examples**

A Limited Liability Company tax resident in Spain (*Teleco, S.L.*) is engaged in the supply of telecommunications services. According to the 2022 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 CIT 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 CIT 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 CIT 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, 2017 amounting to €60,000. In this tax period it recorded a depreciation expenses 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.

3 Tax System

2021 CORPORATE INCOME TAX CALCULATION	
Income for the year	**7,225,000**
POSITIVE ADJUSTMENTS	
Corporate income tax expense 2020	2,167,500[57]
Provision for impairment losses on receivables	125,000[58]
Excess amortization of software	102,000[59]
Excess depreciation of computers	5,000[60]
Provision for incentives	225,000[61]
NEGATIVE ADJUSTMENTS	
Provision for impairment losses on receivables recorded in the previous tax year	<350,000>[62]
Reversal of 30% adjustment to amortization/depreciation	<2,000>[63]
Tax base	**9,497,500**
Tax rate	25%
Gross tax payable	**2,374,375**
DEDUCTIONS	
Investments in R&D	<240, 000>[64]
Deduction of reversal of adjustment to amort/depr.	<100>[65]
Net tax payable	**2,134,275**
Minimum net tax payable[66]	**1,424,625**
Withholdings and prepayments	
Withholdings on dividends	<21,000>
Withholdings on rental income	<20,000>
Tax installments payments	<2,400,000>
Net amount refundable	**<306,725>**

57 As stated previously, the CIT expense is nondeductible.

58 As this amount is less than 6 months old on the date when the tax falls due, it is deemed a nondeductible expense.

59 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).

60 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).

61 The provision for long-term incentives for personnel who will presumably leave the company is a nondeductible expense.

62 This expense becomes deductible once it is more than 6 months old.

63 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%).

64 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.

65 The current CIT Law has establishes, 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%).

66 Effective for tax periods starting on or after January 1, 2022, the net tax payable cannot be less than the minimum net tax, that is, 15% of the tax base, reduced or increased by the amounts derived from the levelling reserve and/or reduced by the Canary Island investment reserve, as appropriate.

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Tax System

GUIDE TO BUSINESS IN SPAIN 2022

/ Exhibit IV 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 2022, *Teleco, S.A*, has received exempt dividends from its US subsidiary. Moreover, in that year, *Teleco, S.A.* distributes dividends to its Argentinean 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.

a. Teleco, S.A. has elected to apply the ETVE regime

The dividends distributed by the *ETVE* to its Argentinean 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 Argentinean 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.

a. 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.

b. 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.

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

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Tax System

/ Exhibit V **Nonresident case study: Income obtained without a permanent establishment**

The Dutch company *TPC, B.V.* posted one of its employees to Spain in September 2022. This employee worked in the Netherlands until August of the same year. The employee's salary 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 2022, 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 2021, 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, in total and in the periods mentioned, to the tax authorities 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.

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Tax System

GUIDE TO BUSINESS IN SPAIN 2022

/ Exhibit VI **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 2021). Consequently, the input VAT for the Spanish company every month amounts to €196,875 (*i.e.* 937,500 x 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 2021 as follows:

- Spanish sales: €1,000,000 plus VAT.
- EU 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 x 21% = 210,000). However, the supply of goods to an EU 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 EU 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.

GUIDE TO BUSINESS IN SPAIN 2022

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. In this regard, it is also worth noting the particular importance that the "Next Generation EU" Program will have in the coming years as a special funding mechanism aimed at helping the Member States recover from the consequences of the COVID-19 pandemic, of which Spain will be one of the main recipients.

Against this backdrop and as part of Spain's Recovery, Transformation and Resilience Plan finally approved by the EU Economic and Financial Affairs Council (ECOFIN), major public reforms and investments will be undertaken in Spain to accomplish the so-called green and digital transition, strengthen social and territorial cohesion, promote gender equality, and boost private investment with the aim of contributing to the transformation of the current production model into a more resilient and inclusive structure that is better prepared to tackle future crises.

4
Investment aid and incentives in Spain

GUIDE TO BUSINESS IN SPAIN 2022

/ 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 ICEX-Invest In Spain 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.

In any case, this Chapter should be read bearing in mind the current health emergency caused by COVID-19. This emergency has given rise to the adoption of aid programs and additional incentives aimed precisely at mitigating the adverse effects caused in the various economic sectors of our country.

In this regard, and as will be explained in detail in section 8 of this Chapter, it is particularly important to also mention, when referring to the large number of aid programs and lines described herein, the approval and implementation of the European Recovery Instrument Next Generation Program, together with the new reinforced Multiannual Financial Framework for the period 2021-2027, as part of the measures approved by the European Council to boost the convergence, resilience and transformation of the economy of the Member States by accelerating the twin green and digital transition.

Bearing the foregoing in mind, and notwithstanding the tax incentives analyzed in other chapters (essentially investment tax credits -- for further information go to Chapter 3, section 2 --), the main State incentives for investors are described on the following pages.

4
Investment aid and incentives in Spain

/ 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 three types:

- Training incentives.
- Employment incentives.

2.1 TRAINING INCENTIVES

Law 30/2015, of September 9, 2015, regulating the Vocational Training for Employment System in the area of employment, regulates the training incentives system currently in force, with the following main goals: (i) to guarantee that workers, employees and unemployed workers, in particular the most vulnerable, can exercise their right to training; (ii) to contribute effectively to the competitiveness of Spanish companies; (iii) to increase collective negotiation aimed at bringing the offer of training initiatives into line with the demands of the productive system; and (iv) to offer efficiency and transparency in public resources management.

However, it should be borne in mind that in accordance with the Government's Annual Legislation Plan for 2022, the Ministry of Employment and Social Economy intends to reform regulations on vocational training for employment within the scope of its powers, in particular to make management processes and the inclusion of new legal instruments more flexible, and also with a view to including digital aspects in the training. This will entail the approval of a new law to replace Law 30/2015 and, as a result, important changes in this area are likely to arise in the short term.

In this case, the vocational training for employment system currently in force is aimed at companies and workers anywhere in Spanish territory. It is an initiative based on coordination, collaboration and cooperation between the Central Government, the autonomous communities, leading business associations and trade union organizations, and other agents, and it aims to guarantee the unity of the market and ensure that a strategic approach is adopted in relation to training, while at the same time respecting, naturally, the existing distribution of powers in this respect.

Such system is to be financed by the vocational training for employment contributions paid by companies and workers in accordance with the provisions of the annual General State Budget Laws, by the contributions included in the budget of the State Public Employment Service, and by whatever own funds the Autonomous Communities may decide to allocate to it within the framework of their own budgets.

According to the definition provided in Law 30/2015, a training initiative refers to any of the forms of training for employment which are intended to provide an immediate response to the different individual needs and needs of the productive system, and such initiatives should be geared, specifically, towards promoting the acquisition, improvement and ongoing updating of vocational skills and qualifications, favoring training throughout the entire working life of the active population, conjugating the needs of people, of enterprises, of territories and of productive sectors.

Based on this premise, the training initiatives considered eligible for financing within the framework of the vocational training for employment system currently in force must as a general rule, conform to any of the following four types (which

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are regulated in detail in Royal Decree 694/2017 of July 3, 2017 containing the implementing regulations for Law 30/2015):

- **Programmed training offered by employers to their workers**: Training initiatives that seek to respond to the real, immediate and specific training needs of employers and their workers, able to be carried out directly by employers or entrusted to an external agency accredited and/or registered at the appropriate registry.

- **Training offered by the relevant authorities to employed workers**: Aimed at fulfilling needs not covered by the programmed training offered by employers to their workers. These training initiatives are targeted at employed workers and take the following into consideration: (i) a company's productivity and competitiveness requirements; (ii) the need to adapt to changes at the workplace, and (iii) workers' aspirations for professional promotion and personal development.

- **Training offered by the relevant authorities to unemployed workers**: Training initiatives for unemployed workers in line with individual training needs and with the needs of the production system, aimed at enabling workers to acquire the skills which are required by the job market, thus improving their employability.

- **Other vocational training initiatives (including, inter alia, individual leaves of absence for training and work-linked training)**: Training initiatives aimed at favoring a worker's professional and personal development, while responding to the needs of the labor market.

With respect to **programmed training offered by employers to their workers** and **individual leaves of absence** from work, employers are eligible - for the financing of the costs generated - for a so-called "*training credit*", of which they may avail themselves through reductions to the corresponding employer social security contributions, applicable in line with the communication by the employer of the completion of the training initiatives provided.

The amount of this training credit will depend on the amount of the vocational training contributions paid in by each company in the previous year, and on the percentage stipulated annually in the General State Budgets Law*, depending on the size of the company, with the guarantee of a minimum training credit linked to the number of employees a company's workforce, which can be higher than the vocational training contributions paid by the company into the social security system. Companies shall contribute with their own resources to the financing of their workers' training with a variable percentage of 5% (for companies with between 6 and 9 employees), 10% (10 to 49 employees), 20% (50 to 249 employees) or up to 40% (250 or more employees).

It should be noted that the amount of the credit, and therefore the reduction which companies can apply to their contributions, varies according to the type of training provided:

	FEATURES OF THE AID	AMOUNT (ADDITIONAL PROVISION 122 LGPE 2022) *
Own training programs	Reductions in employer social security contributions so that the worker can take part in programs aimed at improving his qualifications.	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). 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, applied to the number of new workers.
Individual leaves of absence for workers	Reductions in employer social security contributions for companies granting individual leaves of absence for training to their workers.	Equal to the salary costs of the leaves of absence granted, for the amount that results from applying the criteria determined by regulations Ministerial Order (TAS/2307/2007)*, according to size of company. As an example, for 2020 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. During 2021, 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.

* According to information obtained from the authorities, until new limits are approved by Ministerial Order, those that are currently in force will continue to be applied, in this case those of Ministerial Order TAS/2307/2007.

Finally, it should also be taken into account that companies that train those affected by temporary layoff procedures will be entitled to an increase in credit to finance steps in the area of programmed training. The amount of that credit increase, which will vary according to the size of the company, is the figure set out in article 9.7 of Law 30/2015 (ranging from €425 to €320 per person), although it could be updated by regulations.

It should be noted that the Spanish State Public Employment Service, by means of its Decision of April 15, 2020, established, within its scope of management, extraordinary measures to confront the impact of COVID-19 on vocational training for jobs, which have been extended in 2022 by the subsequent Decision of December 9, 2021.

These measures include most notably those relating to the possibility of conducting training entirely through a "virtual classroom" and through a "bimodal" system (which enables the teacher to give the training in person to some of the students while others attend virtually) in training actions that are financed in the training initiative programmed by companies, with a

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charge to the loan available for fiscal year 2022, where they are conducted in the in-person mode or the in-person portion of the hybrid or tele-training mode (in addition, in the case of individual leaves of absence for training to enable attendance at the hybrid alternatives mentioned).

It should also be borne in mind that companies that receive social security contribution benefits applicable to temporary layoff procedures must provide training, in the terms established in additional provision forty-four of the revised General Social Security Law, approved by Legislative Royal Decree 8/2015, of October 30, 2015, and additional provision twenty-five of the revised Workers' Statute, approved by Legislative Royal Decree 2/2015, of October 23, 2015.

On the other hand, so that public commitments in this respect can be met and training initiatives aimed at both active and unemployed workers can be carried into effect, Law 30/2015 establishes a system of public subsidies, awarded through a competitive process, in which all training entities which meet the requirements in terms of accreditation and/or registration stipulated in the applicable legislation can take part. In the case of training programs entailing a hiring commitment, the process is open to companies and entities which undertake to formalize the corresponding contracts in the terms stipulated in the pertinent regulations.

The specific conditions to be met to be eligible for such subsidies are established by the Ministry of Employment and Social Economy in the corresponding Order.

Order TMS/368/2019, of March 28, 2019, linked to Royal Decree 694/2017 of July 3, 2017, which in turn implemented Law 30/2015 of September 9, 2015 regulating the Vocational Training for Employment System, currently applies to the training initiatives offered by the relevant authorities and their financing, and establishes the regulatory specifications for the grant of public subsidies to be used for said financing.

Pursuant to Order TMS/368/2019, the above-mentioned training initiatives for employed workers must be implemented through (i) industry-wide training programs; (ii) transversal training programs; and (iii) professional qualification and recognition programs.

In addition, in the case of unemployed workers, the training initiatives are to be implemented through (i) training programs offered by the public employment services, aimed at meeting the training needs detected in personalized insertion itineraries and in job offers; (ii) specific training programs targeted at unemployed workers with special training needs or difficulties for their insertion or professional requalification; and (iii) training programs including commitments to hire.

The regulations of Order TMS/368/2019 exclude, *inter alia*, training programmed offered by companies to their own workers and individual training leave, which will be regulated and financed pursuant to Law 30/2015, and to Royal Decree 694/2017, mentioned above.

The maximum and minimum limits of the subsidies that can be granted to finance these training initiatives (of which public or private training entities, accredited and/or registered in the Training Entities Register, may be beneficiaries) for each specialization included in the Catalog of Training Specializations will be set by regulation and will include the possibility of adjusting the specific units established by the relevant authorities for their management area*. Meanwhile, however, the following maximum general economic units, as set forth in Schedule I of the Order, may be considered:

MODE OF TEACHING	AMOUNT OF THE MAXIMUM ECONOMIC UNITS
In-person	€13
Teletraining	€7.5
Hybrid	The above units will be applied according to the hours of in-person training or teletraining that take place in the training initiative.

* The public authorities may increase these amounts by up to 50%, depending on the singular nature of certain training initiatives which, given their specialization and technical characteristics, require greater financing.

Lastly, training initiatives not related to professionality certificates, targeted at unemployed workers, may include the performance of unpaid work experience at companies, linked to the training initiatives and related to their training content, subject to the execution of an agreement between the company and the training entity. In this context, beneficiary companies can receive, as a direct concession, additional economic compensation per student per training hour, with a maximum amount of €6.00.

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 a victim 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 total amount, except in connection with incentives for hiring persons with disabilities through special employment centers).

The catalog of aid for the formalization of contracts, the basic parameters of which were just described above, is very exten-

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sive, as it varies according to the types 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.

It is worth noting that the Council of Ministers recently approved Royal Decree 818/2021, of September 28, 2021, on integrated employment activation programs in the Spanish National Employment system. This Royal Decree establishes the framework in which Active Employment Policies ("PAE") will be developed throughout Spain, through the State Public Employment Service ("SEPE") and the autonomous community governments, according to the scope of their powers, based on the reforms envisaged to encourage active employment policies in the Recovery, Transformation and Resilience Plan, within Component 23 *"New public polices for a dynamic, resilient and inclusive labor market"*, in Reform 5 *"The modernization of active employment policies"*.

However, as occurs with training initiatives, in accordance with the Government's Annual Legislation Plan for 2022, the Ministry of Employment and Social Economy aims to introduce reforms in legislation regulating incentives to hire workers in order to ensure their effectiveness and, as a result, the legislation regulating subsidies and discounts in social security contributions, in particular, the provisions of Law 43/2006, will be reviewed. Important changes in this area are therefore likely to arise in the short term.

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.

The following is a summary of the main reductions, currently applicable, for the hiring of workers:

A. INCENTIVES FOR HIRING UNDER INDEFINITE-TERM CONTRACTS (PURSUANT TO THE PROVISIONS OF LAWS 18/2014, 43/2006 AND 3/2012 AND TO ROYAL DECREE 8/2019)

GROUPS	DESCRIPTION	ANNUAL AMOUNT (€)	DURATION
Long-term unemployed	Persons who have been unemployed and registered at the employment office for at least 12 months in the 18 months prior to being hired (article 8 of Royal Decree-Law 8/2019 of March 8, 2019 on urgent social protection measures and to combat job insecurity in relation to working hours) ***.	**Full-time** Men: 1,300 / Women: 1,500 **Part-time** Men / Women Proportional to the working hours agreed upon in the contract.	3 years
Special situations	Socially-excluded workers (art. 2.5 Law 43/2006).	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).	Year 1: 1,650 Year 2: 600 Year 3: 600 Year 4: 600	
	Victims of domestic violence (art. 2.4 Law 43/2006)****.	1,500	4 years
	Victims of gender-based violence (art. 2.4 Law 43/2005)****.	1,500	4 years
	Victims of terrorism (art. 2.4 bis Law 43/2006)****.	1,500	4 years
	Victims of human trafficking (art. 2.4 ter of Law 43/2006)****.	1,500	2 years
	Persons with limited intellectual capacity (art. 2.4 quarter Law 43/2006)**	1,500	4 years

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GROUPS	DESCRIPTION	ANNUAL AMOUNT (€)			DURATION
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 Ley 43/2006).	5,100	5,950	6,300	
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		
	Conversion of contracts executed with socially-excluded workers into indefinite-term contracts (art. 2.6 Law 43/2006).	600			4 years
	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 Year 3: 600 Year 4: 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			

* For this incentive to be applicable, the company must keep the worker hired in employment for at least three years as from the start of the employment relationship. Similarly, the level of employment at the company reached with the contract entered into must be maintained for at least two years as from the date of its formalization. If these obligations are not met, the amount of the incentive must be refunded
The above requirements regarding the maintaining of employment levels are not considered breached in cases of termination of the employment contract on objective grounds or due to a disciplinary dismissal - where declared or acknowledged as being justified in either case - nor in cases of termination due to resignation, death, retirement or total, absolute permanent disability or comprehensive disability of the worker, or due to the expiry of the agreed term or the completion of the project or service forming the subject matter of the contract, or termination during the worker's trial period.

** Victims of gender-based and domestic violence, of terrorism and of human trafficking, as well as persons with limited intellectual capacity, do not have to meet the condition of being unemployed.

*** 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 of Law 3/2012 (article 3.5 Law 3/2012).

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B. INCENTIVES FOR HIRING UNDER TEMPORARY CONTRACTS (PURSUANT TO THE PROVISIONS OF LAW 43/2006)

GROUPS	DESCRIPTION	ANNUAL AMOUNT(€)				DURATION
Persons with disabilities hired under temporary contracts to foster employment (art. 2.2.4 Law 43/2006)	In general.	Men < 45 years	Men > 45 years	Women < 45 years	Women> 45 years	Throughout the term of the contract.
		3,500	4,100	4,100	4,700	
	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		

C. INCENTIVES FOR HIRING UNDER INDEFINITE-TERM CONTRACTS, UNDER TEMPORARY CONTRACTS OR FOR CONVERSION INTO INDEFINITE-TERM CONTRACTS THROUGH SPECIAL EMPLOYMENT CENTERS (PURSUANT TO THE PROVISIONS OF LAW 43/2006)

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.

D. 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 financial burden and other social security measures, regulates the incentive for indefinite-term employment and for independent professionals. This incentive consists 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 (i) be up to date on the performance of their tax and social security obligations; (ii) they must not have terminated employment contracts in the preceding 6 months; and (iii) they must execute indefinite-term contracts that entail an increase in the level of employment at the company; and (iv) maintain over a period 36 months not only the level of indefinite-term employment but also the level of total employment attained with such contracts.

The amount of the incentive can be up to €500, over 24 months, in cases of full-time hiring, and it is reduced proportionally, in the case of part-time contracts, based on the percentage of reduction in working time stipulated in each new contract.

Once the aforementioned period has elapsed, 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 throughout the following 12 months, although during this period, they may only apply the reduction up to the first €250 of the contribution base, (or, where appropriate, the relevant amount reduced proportionally, in cases of part-time hiring).

Nonetheless, this incentive will not be applicable to certain employment relationships, such as special employment relationships (senior management, 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.

Lastly, the application of this incentive will be incompatible with the application of any other social security contribution reduction in respect of the same contract, other than the relief envisaged for hiring beneficiaries of the National Youth Guarantee System.

E. SUPPORT FOR THE EMPLOYMENT OF SEASONAL WORKERS WITH INDEFINITE-TERM CONTRACTS IN THE TOURIST INDUSTRY, AS WELL AS IN THE TRADE AND HOSPITALITY INDUSTRIES RELATED TO SUCH INDUSTRY

Additional provision 122 of the 2021 State Budget Law establishes, with effect from January 1, 2021 and for an indefinite term, for companies engaging in activities forming part of the tourist industry, as well as the trade and hospitality industries related such sector, which generate productive activity in February, March and November of each year and commence or maintain the occupation of seasonal workers with indefinite-term contracts during those months, the possibility of

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applying a reduction in these months of 50% of the employer's social security contribution for common contingencies, as well as for items collected with the unemployment, wage guarantee fund (*FOGASA*) and vocational training contributions made for such workers.

F. MEASURES TO SUPPORT COMMON EMPLOYMENT ACTIVATION PROGRAMS

The above-mentioned Royal Decree 818/2021 on employment activation programs, establishes a series of aid measures, in the form of subsidies, for companies that hire workers in certain circumstances.

Although the subsidies still need to be specified once the conditions of participation have been approved (and their compatibility with other statutory incentives has been verified), the characteristics of the most important subsidies are summarized below:

- Program on integration of people with disabilities into the ordinary labor market (articles 47 to 50 of Royal Decree 818/2021)
    - Incentives to hire people with disabilities under indefinite-term, full-time contracts: Companies in the ordinary employment market that hire, under indefinite-term, full-time contracts, job seekers with disabilities who are registered in the public employment service, can receive a subsidy for each initial indefinite-term contract or transformation of a temporary contract into an indefinite-term, full-time contract, of €5,500 in general (€6,000 if the person initially hired under the indefinite-term contract is a woman, over 45 years of age, or is in any other vulnerable group). This amount may be increased by €2,000 when the workers with disabilities are from employment enclaves, in which case the collaborating company must hire the worker uninterruptedly, and at least three months after the worker has joined the enclave.
    - Subsidies for adaptation to the job position: aimed at financing measures for universal physical, sensory, cognitive and communication accessibility and adequate measures according to the needs of each specific situation, unless such measures involve an excessive burden for the business, and the implementation of personal protection measures to prevent occupational risks among the persons with disabilities who have been hired and the elimination of architectural barriers or obstacles that prevent or make it difficult for them to carry out their functions. The benchmark figure of said subsidy is €1,800 per employee hired for the minimum period established by each public employment service, without it exceeding the actual cost that is evidenced for the adaptation, provision or elimination.
    - Subsidies for supported employment services: Subsidies for individualized guidance and companion actions at work, provided by specialized employment trainers, aimed at facilitating the adaptation in social and employment terms of workers with disabilities, will be aimed at financing the salary and social security costs of the job support entities hiring said trainers. The benchmark figure of those subsidies will be determined according to the provisions of article 8.2 of Royal Decree 870/2007, of July 2, 2007, regulating job support programs as a measure to boost employment of persons with disabilities in the ordinary employment market.
- Program for the occupational integration of people at risk or in a situation of social exclusion (articles 58 to 64 of Royal Decree 818/2021)

  Specialized employment centers, with their own legal personality, registered as such on the relevant register, in which over 70% of the total workforce have disabilities, may receive subsidies (i) for fixed investment that creates employment, (ii) for the salary costs, (iii) for the adaptation of job positions and (iv) for personal and social adjustment services.
- Program for the occupational integration of people at risk or in a situation of social exclusion (articles 58 to 64 of Royal Decree 818/2021)

  Companies that hire participants in integration itineraries in the context of this program (namely, people at risk or in a situation of social exclusion, who are unemployed or in job accessibility companies, who have special difficulties in integrating in the ordinary employment market, as well as people with disabilities who have greater difficulties in accessing the employment market, women who are victims of gender violence, victims of human trafficking and transgender individuals who provide evidence as such in accordance with legislation in force) may take advantage of incentives for hiring participants in integration itineraries in the ordinary employment market.

  Those incentives consist of a subsidy of €7,000 for each participant in an integration itinerary that is hired in the ordinary employment market (€7,500 if the person is a woman, over 45 years of age, or is in any other vulnerable group).

  The public authorities may agree to an increase of up to 10% in the subsidies established in this program, where the beneficiaries are women who are victims of gender violence.
- Subsidies for returning talent (article 67 of Royal Decree 818/2021)

  In the case of persons who return to Spain to sign an employment contract after living abroad, a subsidy in the amount of €5,500 may be received for each full-time, indefinite-term contract signed (€6,000 if the person is a woman, over 45 years of age in the case of persons with disabilities or in any other vulnerable group determined by the public employment service), or €7,000 or €7,500, respectively, if the competent public employment service includes this scenario among those that require greater attention.

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The public authorities may agree to an increase of up to 10% in the subsidies established on this program, where the beneficiaries are women who are victims of gender violence.

- Program for equality between men and women (articles 68 to 72 of Royal Decree 818/2021)

  - Incentive to the hiring of women under indefinite-term contracts: companies that hire women, indefinitely, in sectors in which there is a higher concentration of men, and women who have been unemployed for over 24 months due to maternity, adoption, pre-adoptive guardianship, fostering and guardianship on legally-established terms, may receive a subsidy of €6,000. This amount may be increased to up to €7,500 where the persons hired indefinitely are women who are considered particularly vulnerable by the relevant public authority.

  - Aid for a work/life balance and shared work and family responsibilities: Companies may receive the following subsidies where:

    - They adopt, as part of their equality plans, measures to achieve a work-life balance and shared responsibility agreed with workers' statutory representatives or, if there are no such representatives, with the personnel affected by same. A subsidy of €2,250 per year may be granted for each worker that benefits from those measures, up to a maximum of €9,000 per company per year. Aid for each worker is proportional to the period in which the work/life balance is enjoyed if that period is less than one year.

    - The substitute workers who have taken leave of absence or reduced working hours to care for minors, for up to 3 years in the first case and 12 years in the second case, or family members who are dependent or have a serious illness. Individuals hired for such substitution must be registered as unemployed at the public employment services. For each month effectively worked full-time by the person hired for the substitution, part of the salary costs resulting from the contract up to an amount equivalent to the monthly national minimum wage may be subsidized during the period determined by the competent public employment service. This amount may be reduced proportionally if the individual works part-time or for the periods in which the substitution is less than one month.

    The public authorities may agree to an increase of up to 10% in the subsidies established on this program, where the beneficiaries are women who are victims of gender violence.

- Welfare/employment integration program for women who are victims of gender violence (articles 73 and 74 of Royal Decree 818/2021)

  Incentives may be granted for hiring, under indefinite-term contracts, women who are victims of gender violence registered as unemployed in public employment services, consisting of subsidies of €7,500 for each person hired.

- Program to avoid discrimination by reason of age (articles 75 and 76 of Royal Decree 818/2021)

  Incentives may be granted for the hiring under indefinite-term contracts of people aged over 45 who are registered as job seekers in the public employment services, consisting of subsidies of €5,500 for each person hired (€6,000 for women, people with disabilities or in any other vulnerable group), and of €7,000 where that person has been unemployed for a long period (€7,500 for women, people with disabilities or in any other vulnerable group).

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GUIDE TO BUSINESS IN SPAIN 2022

/ 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 potential for growth and their impact on the nation's overall economy. Additionally, Autonomous Community governments provide similar incentives for most of these industries.

Financial aid includes nonrefundable and partially refundable subsidies, as well as interest relief on loans obtained by beneficiaries, or any combination thereof.

The main official programs supporting the industrial development projects to support innovation currently in force are:

- Research, development and technological innovation.
- Tourist industry.
- Audiovisual industry.
- Other specific industries.

3.1. RESEARCH, DEVELOPMENT AND TECHNOLOGICAL INNOVATION

A) 2021-2027 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 evolution.

Science, Technology and Innovation Law 14/2011, of June 1, 2011 (the "*LCTI*") 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 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 end of 2020, the Council of Ministers approved, "*the **Spanish Strategy for Science and Technology and for Innovation***" for the 2021-2027 period, whose essential purpose is to promote based on a solid system for generating new knowledge, a productive system that is based on current strengths and is more dynamic and innovative. Overcoming the global crisis caused by COVID-19 and reestablishing a strong national R&D&I system are also urgent actions to which the Strategy attempts to respond. To this end, the following **7 general objectives** are established:

i. Position science, technology and innovation as key areas for achieving the Sustainable Development Goals of the **2030 *Agenda*.**

ii. **Contribute to the EU's political priorities** by aligning with its R&D&I programs, providing support to the agents responsible for the Science, Technology and Innovation System ("SECTI") in order to achieve this objective.

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iii. **Prioritize and respond to challenges confronting the national strategic industries** through R&D&I, in order to foster the social, economic, industrial and environmental development of the country.

iv. **Generate knowledge and scientific leadership**, optimizing the position of research staff and institutions, as well as the quality of their infrastructure and equipment. The aim is also to foster quality and scientific excellence, favoring a systemic effect that reaches and benefits a large number of groups, as well as the application of scientific knowledge to the development of new technologies that can be used by companies and to boost society's communication capacity and to influence the public and private sector.

v. **Boost Spain's ability to attract, recover and retain talent,** thereby facilitating professional progress and the mobility of research staff in the public and private sector and their ability to influence decision-making.

vi. Foster the **transfer of knowledge** and to forge **bidirectional links between** science and companies, through the mutual understanding of needs and objectives, particularly in the case of SMEs.

vii. Promote **research and innovation in the Spanish business world**, thereby increasing its commitment to R&D&I and broadening the scope of innovative companies to make the business world more competitive.

With the launch of this Strategy, the aim is to duplicate the sum of public and private investments, until reaching the European average in 2027 (from the 1.24% of GDP in investment in R&D&I recorded in 2018, to 2.12% in 2027).

In order to attain the foregoing objectives, and having regard to the characteristics of the environment in which the agents of the SECTI are to pursue their activities, **14 priority areas of cross-cutting action** were identified:

1. **Budgetary**: Aimed at increasing the budget devoted to R&D&I during the 2021-2027 period, and at providing incentives for private investment, until reaching, as noted above, the EU average, particularly through direct aid (subsidies), and fostering the establishment of suitable lines to facilitate the use of European funds.

2. **Instrumental:** With the goal of developing the instruments and bodies tied to the LCTI in order to increase the provision of advice by experts, simplify and make more flexible the instruments available and adapt them to agents' needs in order to improve the use of resources and strengthen the agents that finance the SECTI.

3. **Coordination:** To supplement in a synchronized manner national and industry policies with other policies at the European, regional and local level.

4. **Governance:** In order to address the development of a governance system and of indicators that facilitate the analysis, monitoring and evaluation of the results as compared to the objectives set.

5. **Capacities:** Aimed at fostering and supporting the generation of scientific and innovative capacities within the public and private SECTI agents in order to boost the aggregation and development of high-level R&D&I centers and promote excellence in scientific and technological infrastructure.

6. **Itinerary:** In order to establish a scientific and technological itinerary for entrance into the R&D&I system that facilitates the promotion and job security of workers and that considers the needs of the country's research and innovation staff, also at private R&D&I centers and companies.

7. **Talent:** In order to craft mechanisms to attract and develop research, technology and innovation talent in companies, industries and R&D&I centers and facilitate the mobility of this staff in the public and private sector.

8. **Promotion:** In order to enhance business innovation and its dissemination across all industries, particularly in SMEs.

9. **Multidisciplinary approach**: In order to foster inter- and multi-disciplinary approaches, boosting and providing support to the cross-cutting use of essential enabling technologies, disruptive digital technologies or deep technologies that enable business and society to advance.

10. **Opportunities**: Aimed at reinforcing national strategic industries, transforming social challenges into business development opportunities and fostering entrepreneurship and investment in private sector R&D&I, and attracting venture capital for innovative enterprises.

11. **Transfer:** To promote the existence of effective channels for the transfer and exchange of knowledge and cooperation between the public and private sector.

12. **Innovation**: In order to enhance value chains around focused innovation systems.

13. **Internationalization:** In order to step up of the internationalization of the SECTI agents through (i) the promotion of participation in international programs such as Horizon Europe and its joint programming initiatives; (ii) international collaboration with the support of scientific diplomacy; (iii) international cooperation for sustainable development; and (iv) the promotion of and participation in international scientific and technological installations and infrastructure.

14. **Social**: In order to boost Spanish society's commitment to R&D&I, encouraging scientific awareness and culture, as well as open and inclusive science and innovation.

In order to implement the objectives and key areas indicated, the Strategy will be carried out in **2 multiyear phases (2021-2023 and 2024-2027)**, each of which will have its corresponding Scientific and Technical Research State Plan, as a tool to implement, materialize and finance the actions and priorities established for the period in question:

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- The first phase (2021-2023) would focus on guaranteeing the strengths of the system, giving priority to supporting R&D&I in the healthcare area, and to investing in the green and digital transition, with strategic actions in priority industries and large growth-driving projects.

- The second phase (2024-2027) would be aimed at shoring up the value of R&D&I as a tool to develop a knowledge-based economy.

For more information please see the website of the Ministry of Science and Innovation.

B) 2021-2023 STATE PLAN FOR SCIENTIFIC AND TECHNICAL RESEARCH AND INNOVATION

The 2021-2023 State Plan for Scientific and Technical Research and Innovation ("PEICTI"), included in the 2021-2027 Spanish Strategy for Science and Technology and Innovation, focuses its objectives on strengthening R&D&I in the most strategic sectors following the pandemic: health, green and digital transition, as well as fostering the development and consolidation of the scientific career path.

This State Plan has the nature of a strategic plan for the purposes of Subsidies Law 38/2003, of November 17, 2003, and, accordingly, the funds allocated for its implementation must be granted in accordance with the principles of publicity, transparency, competition, objectivity, effectiveness and non-discrimination. Specifically, actions under the PEICTI include subsidies and loans that may be granted through calls for applications under a competitive process or other direct allocation mechanisms, as well as through the aid granted by the Center for Industrial Technological Development ("CDTI").

The PEICTI is targeted at all agents of the Spanish Science, Technology and Innovation System, both public and private, who are responsible for (i) conducting R&D&I activities; (ii) disseminating and promoting R&D&I results; and (iii) providing R&D&I services for the progress of the Spanish economy and society as a whole. In this respect, the orders establishing the specifications and calls for applications for the PEICTI will determine the beneficiaries to whom the aid is addressed, the participation conditions and eligibility criteria that must be fulfilled, as well as the criteria for evaluating and selecting proposals and the conditions for implementing the aid and monitoring it for scientific-technical and economic purposes.

The funding for actions under the PEICTI comes from Spain's General State Budgets and may also originate from other financing sources including such European funds as the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the European Agricultural Fund for Rural Development (EAFRD), the European Maritime and Fisheries Fund (EMFF), other EU financing and co-financing funds, such as Horizon Europe, the European Investment Bank and the funds originating from the Recovery and Resilience Facility, particularly, those included in the Spanish Recovery, Transformation and Resilience Plan (RTRP). Resources originating from other authorities at the local, autonomous community or international level, as well as the equity of the beneficiary institutions and co-financing from other entities, may also be used.

In brief, the key aims of the PEICTI are to: (i) improve the management model, establishing target-based financing; (ii) foster generational replacement, seeking to attract talent by developing a scientific career path; (iii) boost research along strategic lines (top-down); (iv) place a special focus on health and cutting-edge medicine; (v) establish a joint design between the central government and the autonomous community governments of the so-called Supplementary Plans; (vi) give priority to implementing the European Research Area; and (vii) step up incentives for transfers, strengthening the link between research and innovation, to help convert scientific advances into viable and profitable business models.

As regards the structure of the Plan, it comprises 4 State Programs along with 13 State Subprograms, which pursue 13 specific objectives:

STATE PROGRAMS (SP)	STATE SUBPROGRAMS / SPECIFIC OBJECTIVES (SOS)
SO to address the priorities of Spain's environment	Internationalization (SO1) Territorial Synergies (SO2) Strategic Actions (SO3)
SO to foster scientific-technical research and its transfer	Knowledge Creation (SO4) Knowledge Transfer (SO5) Institutional Strengthening (SO6) Scientific-Technical Infrastructure and Equipment (SO7)
SO to develop, attract and retain talent	Training (SO8) Hiring (SO9) Mobility (SO10)
SO to catalyze business innovation and leadership	Business R&D&I (SO11) Innovative Growth (SO12) Public-Private Partnership (SO13)

It should be noted that the State Subprogram of Strategic Actions (SO3) implements the following six strategic actions under the corresponding thematic clusters previously prioritized in the 2021-2027 Spanish Strategy for Science and Technology and Innovation: (i) health, (ii) culture, creativity and inclusive society, (iii) security for society, (iv) digital, industry, space and defense, (v) climate, energy and mobility, and (vi) food, bioeconomy, natural resources and environment.

The Plan also provides for the approval of Annual Action Programs as budget planning instruments that set out the actions to be taken during the year, the planned annual financing and the indicators for monitoring such actions.

The following table included in the Plan contains a breakdown of the ordinary budget envisaged in the 2021-2023 period for the various state programs and subprograms, including the special supplement of funds expected to be obtained from the RTRP:

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	BUDGET (€ MILLION)		
	Annual subsidies 2021, 2022, 2023	Annual loans 2021, 2022, 2023	RTRP 2021-2023
SUM OF THE STATE PROGRAMS	**2,858 *85**	**1,437**	**6,062**
STATE PROGRAM TO ADDRESS THE PRIORITIES OF SPAIN'S ENVIRONMENT	**787 *85**	**425**	**3,133**
State Subprogram for Internationalization	76	-	187
State Subprogram for Territorial Synergies	-	-	200
State Subprogram of Strategic Actions (SA1 – SA6)	711 *85	425	2,746
SA1: Health***	2		140
SA2: Culture, creativity and inclusive society	17	-	-
SA3: Security for society	-	-	-
SA4:Digital, industry, space and defense	647 *85	425	2,554
SA5: Climate, energy and mobility	-	-	50
SA6: Food, bioeconomy, natural resources and environment	45	-	2
STATE PROGRAM TO FOSTER SCIENTIFIC-TECHNICAL RESEARCH AND ITS TRANSFER	**978**	**341**	**1,605**
State Subprogram for Knowledge Creation	523	35	420
State Subprogram for Knowledge Transfer	51	300	450
State subprogram for Institutional Strengthening	65	6	477
State Subprogram for Scientific-Technical Infrastructure and Equipmentfico-Técnico	339	-	258
STATE PROGRAM TO DEVELOP, ATTRACT AND RETAIN TALENT	**436**	**-**	**378**
State Subprogram for Training	234	-	13
State Subprogram for Hiring	168	-	365
State Subprogram for Mobility	34	-	-
STATE PROGRAM TO CATALYZE BUSINESS INNOVATION AND LEADERSHIP	**657**	**671**	**946**
State Subprogram for Business R&D&I	138	415	180
State Subprogram for Innovative Growth	54	256	60
State Subprogram for Public-Private Partnership	465	-	706

* Cash delivery with consideration.

** RTRP. 2021-2023 Spanish Economy Recovery, Transformation and Resilience Plan.

*** Actions known as "SA in Health" in the previous PEICTIs, in the 2021-2023 PEICTI have been included in the STATE PROGRAM TO FOSTER SCIENTIFIC-TECHNICAL RESEARCH AND ITS TRANSFER and the STATE PROGRAM TO DEVELOP, ATTRACT AND RETAIN TALENT.

C) CENTER FOR INDUSTRIAL TECHNOLOGICAL DEVELOPMENT (CDTI)

The *CDTI* (state-owned business entity under the auspices of the Ministry of Science and Innovation) 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, the lines available to the *CDTI* for the financing of R&D&I projects include most notably the following:

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1) R&D Projects:

This line has the purpose of financing applied business projects linked to the creation and significant improvement of a productive process, product or services, including both industrial research activities and experimental development.

6 categories of projects are potentially for financing under this line:

- Individual R&D projects, presented by a single enterprise.
- National Cooperation R&D Projects submitted by business groupings (EIGs or consortiums), made up of a minimum of 2 and a maximum of 6 autonomous companies.
- *CIEN* (National Business Research Consortiums) projects of significant scope and aimed at conducting planned research in future strategic areas with a potential international impact (the main financing elements of which are detailed below in a separate section).
- International Technological Cooperation Projects presented by Spanish enterprises participating in international technological cooperation programs managed by the *CDTI* (multilateral, bilateral programs, international programs with certification and unilateral monitoring by this body).
- European Technological Cooperation R&D Projects, related to the boosting of the technological capacity of Spanish companies in order to participate in: (i) Important Projects of Common European Interest; (ii) Joint Technology Initiatives projects, and (iii) Projects deriving from *ERA-NETS* (European networks of public agencies dedicated to the financing of R&D&I at national/regional level).
- International Technological Training R&D Projects, related to the boosting of the technological capacity of Spanish companies in order to participate in bidding processes for projects and programs managed by international organizations in which Spain is represented by the *CDTI* and with which the *CDTI* has cooperation agreements (major international scientific-technological facilities and international space programs).
- R&D projects for the development of dual technologies, related to the boosting of the technological capacity of Spanish companies in order to bid in Defense and Security matters.

The minimum eligible **budget** for these projects of the participating companies is €175,000 and €5,000,000 in the specific case of *CIEN* Projects, the **duration** required being between 12 and 36 months for all individual projects and between 12 and 48 months for national cooperation projects, and 36 and 48 months for **CIEN** Projects.

The **instruments for financing** the projects included in this line consist of partially repayable loans (only a part of the aid granted must be repaid to the *CDTI*), for up to a maximum of 85% of the total budget of the approved project (the company must finance at least 15% of the budget for the project with its own funds). The non-repayable tranche is between 20% and 33% of the loan.

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 and audit costs.

Regarding the **advances** of the aid that can be obtained, the *CDTI* offers a 35% advance of the aid granted, up to a limit of €250,000, without requiring additional guarantees. The loan is repayable within a period of 10 to 15 years, including a grace period of 2 to 3 years.

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 which carry out technological innovation projects whose objectives cover one or more of the following cases: (i) active incorporation and adaptation of emerging 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 the improvement thereof; or (iii) application of a new or significantly improved production or supply method (including relevant changes in the area of techniques, equipment and/or software).

Projects cannot **last** less than 6 months or 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 which imply a major technological advance for the company carrying out the project, personnel costs, material and consumables, external collaborations, overhead costs and audit costs.

It will be possible to opt for an **advance** of 35% of the aid granted (up to €400,000) without additional guarantees, or of up to 75% by providing guarantees in respect of the difference which the *CDTI* regards as being adequate.

3) Science and Innovation Missions

This program seeks to provide support to pre-competitive collaborative research, led by enterprises, in order to: (i) conduct significant research that proposes solutions to Spanish society's cross-cutting and strategic challenges; (ii) enhance the knowledge and technology base on which Spanish enterprises rely to compete; and (iii) foster public-private partnerships.

The aim of the program is to contribute to the development of the following missions: (i) sustainable, smart and efficient agricul-

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ture for the 21st century; (ii) secure, efficient and clean energy for the 21st century, (iii) to boost Spanish industry in the industrial revolution of the 21st century; (iv) circular economy with polymer composite waste recycling and recovery technologies; (v) information security, privacy and cybersecurity; (vi) sustainable and smart intermodal transportation; (vii) to boost tourism by harnessing technological possibilities; (viii) advancement of and technological training for the biopharmaceutical industry in the field of advanced therapies, vaccines and targeted therapies; and (ix) to foster high-performance computing.

Aid granted under this program takes the form of **subsidies** targeted at large enterprises formed by between 3 and 8 shareholders, of which at least 1 must be an SME, and headed by a Large Enterprise ("Large Enterprises Mission"), and at SMEs formed by between 3 and 6 shareholders, all of which are SMEs, and headed by a Medium-Sized Enterprise ("SMEs Mission").

In the 2021 call for aid applications, which was already included among the actions of the National Recovery, Transformation and Resilience Plan approved at that time, the minimum eligible budgets were between €5,000,000 and €10,000,000 (Large Enterprises Mission) and between €1,500,000 and €3,000,000 (SMEs Mission), with a minimum budget per participant of €170,000, without any participant being responsible for more than 60% of the project's budget. Industrial research must represent at least 60% of the eligible budget of the Large Enterprises Mission and 35% in the case of the SMEs Mission. Also, at least 20% (Large Enterprises Mission) and 15% (SMEs Mission) of the budget must be outsourced to knowledge-generating centers.

The amount of the subsidies in the 2021 call for aid applications could attain the following **maximum limits** of the eligible budget, depending on the size of the applicant enterprise: 65% Large Enterprise, 75% Medium-sized Enterprise and 80% Small Enterprise.

Eligible expenses included staff costs, costs of instrumentation and materials able to be inventoried, costs of contractual research, technical know-how and patents acquired at market prices overhead expenses and additional operating expenses incurred directly on the project or audit costs.

4) *INNODEMANDA* Program

INNODEMANDA Program is a financing instrument to support the technological offer in innovative public procurement processes convened by the authorities. 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 tender.

To this end, it is necessary the formalization of an **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.

5) 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 2021 call for aid applications, which was financed with funds fro the Recovery and Resilience Facility, 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.

The **maximum budget** of the 2021 call for aid applications has been €36,460,000, based on subsidies of up to 70% of the budget of the action and subject to a maximum subsidy of €250,000 per beneficiary, and the **minimum budget** eligible for financing has been €175,000 per project. In addition, **eligible expenses** have included, among others, investments in equipment, expenses relating to staff, materials, external collaborations/advisory services, etc.

6) *CIEN* Strategic Projects

The Strategic Program of *Consorcios de Investigación Empresarial Nacional* (*CIEN*) (National Business Research Consortiums) finances, as noted above, 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. Each consortium must be made up of a minimum of 3 and a maximum of 8 companies, at least 2 of which must be autonomous companies and at least 1 must have SME status.

It also pursues the promotion of public-private cooperation in the area of R&D and, accordingly, requires the appropriate outsourcing of activities (representing at least 15% of the total budget) to research bodies (of which at least one must be public).

Industrial research activities must exceed 50% of the total budget.

Since 2019, applications for *CIEN* projects have been able to be submitted on an ongoing basis, for an entire year.

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The aid takes the form of partially repayable loans (with a fixed interest rate of 1-year Euribor) for up to 85% of the approved budget (the company must finance 15% of the project budget with equity), with a maturity period of between 7 and 10 years and a grace period of between 2 and 3 years. The loan includes a non-repayable tranche equal to 33% of the aid, calculated based on a maximum of 75% of the coverage of the loan.

The **minimum budget** which may be applied for is €5,000,000, the maximum being €20,000,000. The **minimum eligible budget** must be €4,500,000 per project and €175,000 per company, and no company can exceed more than 70% of the eligible budget. The expected duration of the project must be between 36 and 48 months. Lastly, beneficiaries may obtain advances equal to 35% of the aid, subject to a limit of €250,000, without having to provide any additional guarantees.

7) *INNVIERTE* Program

This program seeks to promote business innovation through support to venture capital investments in Spanish technologically based or innovative enterprises.

In 2019, as part of this program, the *CDTI* started up a **co-investment initiative** open to investors regulated by the *CNMV*, such as venture capital companies and investment companies, also including the possibility of supporting professional investors, such as corporate investors.

This initiative, in which *INNVIERTE* accompanies professional private investors in periods of investment, delegating the management of investees to them, is instrumented in **2 phases:** (i) official approval of professional private investors specializing in technology, through the execution of a co-investment agreement between them and *INNVIERTE;* and (ii) joint investment in technologically based companies that are in line with *INNVIERTE's* investment strategy, presented by the approved co-investors pursuant to the co-investment agreement.

In 2021, the objective of this initiative was also extended to **private equity vehicles specialized in the transfer of technology** with sufficient critical mass to be able to promote the projects in which they invest in the different business development stages that occur during their growth. This initiative seeks to encourage investment vehicles to target very early stages of business development, taking into account, in turn, that they must have sufficient funds to be able to accompany investees as they reach the milestones established in their business plans until an exit opportunity arises that allows the investment vehicle to obtain a return on the investment undertaken. As a final result of the selection process, *INNVIERTE* will acquire a commitment to investment in the private vehicles proposed by each of the managers selected.

8) Direct Expansion Line (LIC A)

This program is aimed at boosting innovation in certain Spanish regions, improving the capacities of companies that propose investment plans that help them to grow. Specifically, the program designs aid for initial investments and for initial investments in favor of a new economic activity, with a view to driving the growth of innovative companies.

Beneficiaries must have their tax domicile in Spain and must undertake an investment project in one of the regions assisted by the program.

The **minimum and maximum eligible budgets** within this line of aid, with a call for applications that is ongoing throughout the year, must be between €175,000 and €30,000,000 and have a duration of 6 to 18 months. The following can be financed through the program: projects belonging to all of the productive activities that qualify for aid, except for those excluded by the current legislation (steel, coal, naval construction, synthetic fibers, fisheries, agriculture, etc. industries). In addition, investments must be maintained in the beneficiary area for at least 5 years in the case of large companies and 3 in the case of SMEs.

The project financing instruments envisaged in this line are **partially repayable loans,** subject to the maximum amount of 75% of the total budget of the approved project (the company must finance at least 25% of the project budget with equity or external financing free of any type of public aid). The repayable tranche of the loan will be 5% (in the case of funds from the CDTI) or 10% (in the case of funds from ERDF), calculated based on a maximum of 75% of the approved budget. A fixed interest rate equal to 1-year Euribor + 0.5% will apply to these loans and they will be repaid within a 9-year term, with a 1-year grace period from the conclusion of the project.

In these projects, the acquisition of new fixed assets entailing an innovation and improvement in capacities at the company that carries out the project, the costs of investing in tangible assets (property, plant and equipment) and intangible assets (patents, licenses, technical knowledge or other intellectual property rights) will be considered **eligible expenses,** among others. In the case of large companies, the costs of intangible assets can only be financed up to the limit of 50% of the total of the project's eligible investment costs for the initial investment.

9) EIB Financing

The European Investment Bank (*EIB)* granted Spain a loan to serve as support for investment projects carried out by SMEs and mid-and small-cap 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 €25,000,000 can be financed, although the EIB's contribution cannot exceed €12,500,000.

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.

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Nearly all economic industries are eligible, save for certain exceptions relating, for example, to weaponry, arms and ammunition production; games of chance, tobacco-related industries, activities whose sole purpose is real estate speculation, etc.

10) "*Cervera*" Technology Transfer R&D Projects

This financing line is aimed at business research and development projects of an applied nature for the creation or significant improvement of a production process, product or service, which can be shown to have a technological aspect which makes them different from the technologies existing in the market.

The essential characteristic of projects of this type is that they must necessarily be developed by a limited group of technological areas (*Cervera* priority technologies) and state-level Technological Centers must be contracted to perform certain activities in the project.

The *Cervera* priority technologies pertain to 10 main areas: (i) advanced materials; (ii) eco-innovation; (iii) energy transition; (iv) intelligent manufacturing; (v) health technologies; (vi) safety and health in the food chain; (vii) deep learning and artificial intelligence; (viii) advanced mobile networks; (ix) intelligent transport, and (x) the protection of data.

State-level Technological Centers must be given a relevant role in the projects, which cannot represent less than 10% of the total budget approved for the project.

This line of aid consists of partially repayable loans, with financial coverage of up to 85% of the approved budget and a repayment period of 10 or 15 years, including a grace period of between 2 and 3 years. The non-repayable tranche accounts for 33% of the aid and advances equal to 35% of the aid may be obtained, up to maximum of €250,000, without additional guarantees being required.

The minimum project budget is €175,000 and, for individual projects, the duration is between 1 and 3 years.

The items eligible for funding in the case of these projects include staff costs, costs of instrumentation and materials, contractual research costs, technical know-how and patents, certain consulting costs and equivalent services used exclusively for the purposes of the research activity, plus supplementary general costs generated directly by the research project, and audit costs.

11) Technological Program for Sustainable Automotive Industry ("PTAS")

This program seeks to provide support to strategic collaborative R&D projects, led by enterprises, in technologies applicable in the automotive sector, with the aim of: (i) developing components and platforms for electric, plug-in hybrid and hydrogen-powered vehicles, (ii) fostering autonomous driving and connected mobility, and (iii) promoting the adaptation of production environments with secure and robust systems for human-machine interaction in a smart manufacturing environment, aimed at manufacturing components and systems for electric, plug-in hybrid and hydrogen-powered vehicles.

The aid granted under this program consists of **subsidies** targeted at clusters of enterprises made up of between 3 and 8 partners, of which at least 1 must be an SME and led by 1 large or medium-sized enterprise.

In the 2021 call for applications, the **duration** of projects was set at 3 years, starting in 2021, and the **minimum budgets** eligible for funding have been between €5,000,000 and 10,000,000, with a minimum eligible budget per enterprise of €175,000. The amount of the subsidies can be up to the following **maximum limits** of the eligible budget, according to the size of the enterprise: 65% Large Enterprise, 75% Medium-Sized Enterprise and 80% Small Enterprise.

Expenses eligible for subsidies include personnel costs, materials and instruments capable of being inventoried, contractual research costs, technical know-how and patents acquired at market prices, overhead expenses and additional operating expenses arising directly from the project or audit costs.

12) 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:

- 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 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 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.

  The Ministry of Science and Innovation, 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 preparing and carrying out joint calls for aid applications aimed at boosting cross-border research, technological development and innovation projects.

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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).

- PRIMA

  This research and innovation initiative in the Mediterranean area (Partnership on Research and Innovation in the *Mediterranean Area*), approved by the European Parliament, seeks to foster a more sustainable regional management of water, agricultural and agro-food chain systems, in line with the Sustainable Development Goals of the 2030 UN agenda.

  The consortium eligible in each case must be formed by 3 entities from three different PRIMA countries, of which at least 1 must be established in one of the following European States: Croatia, Cyprus, France, Germany, Greece, Italy, Luxembourg, Malta, Portugal, Slovenia and Spain, and at least one other in Algeria, Jordan, Egypt, Lebanon, Morocco, or in Israel, Tunisia or Turkey.

  This initiative is broken down into 3 sections: Section 1 (funded by the PRIMA Foundation) and Sections 2 and 3 (funded by the national financing bodies of the participating countries). Section 1 has a total estimated budget of €33,000,000, while that of Section 2 is €35,540,000 and that of Section 3, in 2020, was €31,000,000.

  The Annual Working Plan for 2022, with information on calls for aid applications, is posted on the initiative's website http://prima-med.org/.

13) COVID-19 aid

In the context of the economic and social impact of the health situation brought about by COVID-19 and of the measures adopted in Royal Decree-Law 8/2020, of March 17, 2020, on urgent and extraordinary measures in this connection, the CDTI implemented several significant response actions, such as granting subsidies to projects specifically aimed at addressing the health emergency, exempting SMEs and mid-caps from having to provide guarantees for fully or partially repayable aid, and making the repayment of such aid more flexible. As of today, the exceptional measures giving SMEs more flexibility when repaying the principal of such partially repayable aid remain in effect.

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. TOURIST INDUSTRY

A) SUSTAINABLE TOURISM STRATEGY FOR SPAIN 2030

Against the backdrop of the European Union and the corresponding economic and social convergence, and in a competitive environment characterized by the globalization of supply and demand and business internationalization, the Spanish tourist industry is seeking to continue to strengthen its leadership position based on quality.

Following the approval at the time of the **Spanish Tourism Plan Horizon 2020,** which defined the strategy for preparing and adapting the Spanish tourist industry and attaining a balanced increase in the social and economic benefits of tourism, the future **Sustainable Tourism Strategy for Spain 2030** is currently in the process of being drawn up, its main objective being to redefine the tourist development model so as to redirect the foundation of Spanish tourism toward a model of sustained and sustainable growth, enabling Spain to maintain its global leadership position.

In particular, this new tourism model is based on enhancing competitive capacity and profitability, protecting the natural and cultural values of the different tourist destinations and on the equitable distribution of the benefits and burdens of the tourism activity.

To this end, according to the information available to date, the Sustainable Tourism Strategy for Spain 2030 is instrumented around **5 strategic areas:**

1. **Collaborative governance,** with the aim of setting up participation areas for all public and private actors on the tourism stage, also increasing Spanish influence on international organizations, with the following lines of action:

   - Bolstering existing governance tools, and authorizing new mechanisms that enable management among the different levels of the public authorities, the private sector and social agents.

   - Developing territorial policy, through agreements between the central government and the autonomous community governments, as well as forums for meetings between the different public authorities.

   - Increasing Spain's international influence through tourism, within the European Union, enabling it to lead the agenda, debates and legislative output, as well as in international bodies.

2. **Sustainable growth**, aiming to boost a balanced development of the industry throughout Spain, to foster the industry's sustainability, to diversify demand and to reduce the negative externalities of tourism, through the following actions:

   - Driving the balanced development of tourism in the territory, taking advantage of the country's diversity and strengthening inland tourism, paying special attention to areas at risk of depopulation.

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- Promoting sustainability as a brand value of Spanish tourism, guiding tourism activity toward the circular economy, environmental protection and clean energy use.

- Sustaining demand by combining initiatives that enable demand to be diversified in new markets or segments in traditional markets, and developing new tourism products and digitalizing the sector. Reducing the negative externalities of tourism activity through formulas that balance society's common interest and the interests of companies and destinations.

3. **Competitive transformation** of the industry, emphasizing public-private forms of partnership, especially to foster digital transformation and the use of technological capacities, through such lines of action as:

   - Strengthening the public-private ecosystem supplying – within the scope of operations of each public or private agent – knowledge, programs and resources in this regard.

   - Deploying a digital strategy for the tourism industry, specially targeted at SMEs and destinations, with a view to adapting to the requirements of connected tourism and increasing the efficiency of local public management.

   - Developing the public standards for the digital transformation, establishing a common framework acceptable to public and private players.

   - Fostering the adaptation of existing regulations to the new tourism environment, through the joint work of international, national, autonomous community or local bodies and institutions.

4. Acting on the **tourist area, enterprises and persons,** protecting heritage and making progress on the construction of infrastructures and on the digitalization of all territories, while enhancing the quality and competitiveness of enterprises in the tourist industry (most of which are SMEs) and of jobs in tourism, based on actions consisting of:

   - Equipping the territory with new capabilities, infrastructure and management resources, thereby enabling a solid and diverse value proposition to be offered throughout the territory.

   - Boosting the quality of Spanish tourism, focusing efforts on improving competitive capacity, productivity, profitability, innovation, inclusivity and sustainability.

   - Promoting higher quality tourism jobs that make it possible, through a suitable certification or qualification, to offer an environment of trust to traders and workers.

5. Working on the **tourist product, marketing and intelligence,** with a view to fostering quality tourism, the diversification of demand and the opening of new markets, with the following lines of action:

   - Enhancing tourism promotion strategies differentiated according to type of source market, enabling Spain to maintain its position in its target markets, while increasing penetration into emerging long-distance markets.

   - Developing a unique, dynamic and competitive value proposition, focused on serving new niches of demand by promoting products and destinations that generate added value and differentiation.

   - Developing a tourism intelligence data-based model, enabling comprehensive management in decision-making through the incorporation of new data sources.

   - Reinforcing the digital marketing strategy that optimizes the impact of investment in advertising.

B) TOURISM INDUSTRY PROMOTION PLAN: TOWARD A SAFE AND SUSTAINABLE TOURISM

In the current landscape, it is important to note the **"Tourism industry promotion plan: toward a safe and sustainable tourism"**, approved by the Spanish government in June 2020 as a specific measure to revitalize the industry following the COVID-19 crisis.

This plan has a total financial allocation of €4.26 billion distributed over the 2020-2024 time horizon and is basically structured around 5 major pillars, namely:

1. **Restoring trust in the destination: for a 360º safe destination**

   To this end, the plan establishes measures consisting of (i) guidelines on how to reduce infection in the tourism industry; (ii) adapting public transportation as a safe mode of transportation; (iii) establishing the "Safe Tourism" logo, to highlight establishments that comply with the guidelines; and (iv) "safe tourism corridor" programs associated with the lifting of border and travel restrictions depending on the different waves of the pandemic.

2. **Measures to revitalize the industry**

   Precisely, the uncertainty regarding the duration of the pandemic and the debt that many tourism companies have been forced to take on have spurred the adoption of new measures to revitalize the industry, including most notably, among others, employment measures, particularly temporary layoff procedures ("ERTEs") due to force majeure events (which were extended in 2021) or certain training, skills development and mentoring programs, for workers in the tourism industry, in subjects like safety, hygiene and vocational retraining ("SCTE Safe Destination" Tourism Host Program, Tourism training program with FUNDAE, Specific plan for retraining and updating of occupational qualifications relating to hospitality and tourism, etc.).

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The plan also established various business liquidity and solvency measures aimed at helping companies meet their cash needs, such as:

- ICO guarantee lines.- Royal Decree-Law 8/2020, of March 17, 2020, approved a State Guarantee Line with an allocation of €10 billion aimed at facilitating continued employment and mitigating the economic effects from the health crisis. Against this backdrop, as will be described in greater detail when the privileged lines managed by this body are presented, the plan has established a preferential sub-tranche aimed at the tourism industry in the amount of €2.5 billion.

- Moratorium on the payment of mortgage principal on assets in the tourism industry.- The plan establishes a mechanism that allows for a moratorium of up to 12 months to be granted in financial transactions secured by a mortgage.

- Moratoriums on lease installments for buses used for occasional transport services and Post-COVID-19 commercial incentives to airlines.

3. **Improving tourism destination competitiveness**

The tourism industry needs to adapt to global trends, particularly to digitalization and sustainability, which are changing the traveler profile, how trips are planned and booked, as well as how they are enjoyed and shared. Against this backdrop, the following measures are introduced:

- State Financial Fund for Tourism Competiveness, for funding projects aimed at improving the competitiveness of tourism companies and accelerating their transformation to a more sustainable and digital model.

- Funding aimed at the implementation of projects for digitalization, innovation and internationalization in the tourism industry.

- Tourism Sustainability at Destination Plan Program, with a total budget set at €30 million (until 2022) and, intended for national, autonomous community and local levels of tourism management and aimed at pioneering and rural destinations or inland destinations.

- Strengthening the network of intelligent tourism destinations, based on technological infrastructure and which ensure sustainable development and with a total budget of €75,000,000 for the 2020-2023 period.

- "Fair, labor responsible hotels" program.

4. **Improving the Comprehensive Knowledge Model**

It is considered that the current production and information collection model in relation to the performance and functioning of the tourism industry in Spain should be strengthened and the benefits offered by the digital transformation harnessed. For this reason, a firm commitment is made to a *new tourism information and knowledge system* enhanced by through (i) the **analysis of international demand** by enhancing market information; (ii) the **strengthening of the Tourism Intelligence System for analyzing national supply and demand**; or (iii) the creation of a **tourism data viewer.**

5. **Marketing and promotion**

As key parameters for re-positioning Spain as a safe and sustainable destination, both nationally and internationally, there are plans to launch, among other initiatives, so-called TURESPAÑA 2020-2024 Marketing Plan with the aim of analyzing Spain's situation and image as a tourism destination based on a sociological research study in the main European markets and distant source markets. To this end, it will be endowed with a budget of €33,300,000 for the 2020-2024 period.

All of these initiatives have also received an additional boost as a result of their inclusion in the reforms and investments described in Component no. 14 of the National Recovery, Transformation and Resilience Plan specifically devoted to the modernization and competitiveness of the tourism industry with an anticipated public investment of €3.4 billion over the 2021–2023 period.

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 and in Royal Decree 1084/2015, of December 4, 2015, which approves its regulatory implementation, as well as, among others, in Order CUL/2834/2009, of October 19, 2009, in Order CUD/769/2018 of July 17, 2018, and in Order CUD/582/2020, of June 26, 2020, in connection, for example, with the acknowledgement of film costs and producers' investments, the establishment of the terms of reference for state aid in this area and the structure of the Administrative Register of Cinematographic and Audiovisual Enterprises.

In general, motion pictures or other audiovisual works, including those made under the regime for co-production with foreign companies, which intend to benefit from these incentives, must either have Spanish nationality or be in a position to obtain it by meeting the requirements for access to Spanish nationality pursuant to article 5 of Law 55/2007, of December 28, 2007. In this connection, works made by a Spanish production company or a production company from another EU Member State established in Spain, which had previously obtained the appropriate certificate from the competent body, are deemed to have Spanish nationality.

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In the case of works made under the regime for co-production with foreign companies, incentives are available only to the Spanish co-producer or co-producer with registered office or permanent establishment in Spain, for the Spanish participation in the co-production.

In fact, one of the obligations imposed, in general, on all beneficiaries is to have their legal residence or establishment in Spain at the time of the actual receipt of the aid.

When the eligible activity is to be carried on jointly by various legal entities, in order to obtain the status of beneficiaries they must form a grouping of companies that will act through a designated representative entity with the capacity to act in the name and for the account of all members of the grouping, not only for the purpose of submitting the aid application and the supporting documentation, but also for the performance of the obligations resulting from the grant of the aid and its justification. The grouping can therefore not be dissolved until the statutes of limitations on recovery action and on the infringements envisaged in the General Subsidies Law have lapsed.

The structure of the aid system is as follows:

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 and are evaluated on the basis of certain criteria (i.e. originality and quality, the film's viability, etc.).	€40,000 per project.
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.). Projects that have received aid at the script writing stage will be given preference.	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. The cost of the aid will be discounted from the cost of the motion picture when determining the producer's investment.
Cultural and non-regulated training projects.	Projects which are capable of enriching the Spanish audiovisual panorama from a cultural standpoint: (i) investigations or publications with particularly relevant content for the Spanish cinema and audiovisual industry or (ii) specific programs aimed at training the public.	The call will establish the maximum amount which may not exceed 60% of the project's budget. Receiving this aid is compatible with other public aid or subsidies and it will be paid in a single installment.

PRODUCTION

LINE OF AID		ELIGIBLE FOR AID	MAXIMUM AMOUNT (€)
Production of full-length motion pictures projects.	General.	Projects that meet the general requirements to qualify for beneficiary status (residence or establishment, suitability, relations with creative, artistic and technical staff compliant with applicable rules, reservation quotas, etc.) and that meet the requirements and conditions established by the common rules for general and selective aid (proven cultural nature, certain financial support, universal accessibility measures, etc.).	The maximum amount of the aid will be established in the call, within the annual credit allocated to the aid, which 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*). A minimum of 35% will be reserved for projects directed exclusively by women and a minimum of 8% of the total budget will be reserved for animation projects, in both cases, provided that they attain the minimum points established in the call. The part of the credit not used, if any, will again be transferred to the general line.
	Selective.	Projects (i) of special cinematographic, cultural or social value; (ii) for a documentary; (iii) imade by new film makers, (iv) or of an experimental nature. In addition to meeting the general requirements to qualify for beneficiary status and the requirements and conditions established by the common rules for general and selective aid mentioned above, the projects must evidence a minimum percentage of financing and points. In the specific case of experimental projects, certain requirements are added in connection with the maximum budget, demonstrable experience, and the percentage of the expense which impacts Spain.	The call for aid applications will stipulate the maximum amount of the aid which, within the annual credit used for them, can be up to €500,000, or €300,000 for coproduction with foreign companies in which the Spanish stake is a minority stake, provided that such amount does not exceed 40% of the project's cost recognized by the *ICAA* (with the possibility of extending it to 70% in the case of audiovisual works considered difficult). Within the annual credit reserved for this line, a minimum of 35% will be allocated to projects directed exclusively by women and not less than 15% and not more than 25% will be allocated to projects for a documentary. Furthermore, a minimum of 8% must be reserved for animation products, and up to 10% may also be reserved for experimental projects and a minimum of 5% for coproduction with foreign companies in which the Spanish stake is a minority stake. These reservations will be implemented provided that the projects attain the minimum points established by the call for aid applications. The portion of the credit that remains unused will be transferred to the general line. In the case of experimental projects, the maximum amount of the aid per project can be equal to the percentage of the cost acknowledged by the *ICAA* related to the applicable maximum intensity.

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PRODUCTION

Production of TV movie and documentary projects.	Projects belonging to independent producers of 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.	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 producer's investment or 50% of the budget.
Production of animated series projects.	Projects belonging to independent producers of 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 radio or television broadcast service providers at the state, autonomous community or EU level.	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.
Production of short film projects.	Short film projects and short firms made by independent producers.	Its amount can be equal to the percentage of the cost acknowledged by the ICAA related to the applicable maximum aid intensity. Aid for the production of short firms based on project plans is compatible with that for completed short films, up to the maximum ceiling of €70,000 per beneficiary film. Within the annual credit allocated to this type of aid, a minimum of 35% will be reserved for short films directed exclusively by women.

OTHER AID

LINE OF AID	ELIGIBLE FOR THE AID	MAXIMUM AMOUNT (€)
Distribution of Spanish, Community or Latin American films.	Independent distribution of full-length films and series of short films, mainly in their original versions, where, in the case of foreign films, less than 2 years have elapsed since they opened in the country of origin (in the case of a series of short films, at least 70% of the films making up the series must meet this requirement), which, in general, were destined for distribution in movie theaters with a minimum territorial scope, their opening complying with the conditions established in the call. The films that are the subject of the application must include, as universal accessibility measures, special audio description and subtitling systems that meet the relevant UNE standards.	The aid may subsidize up to 50% of the cost of the making of copies, subtitling and dubbing, advertising and promotional expenses, anti-piracy measures, the technical means and resources invested in order to make the films universally accessible to persons with disabilities and the technical means and resources invested for their sustainability. 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. Nonetheless, the maximum amount of the aid cannot exceed €200,000 per full-length beneficiary film or group of short films. In any case, the amount received by a company within the same budgetary year cannot exceed 20% of the amount to be used in said year for this line of aid.
For the preservation of cinematographic heritage.	Obtainment of media for cinematographic and audiovisual works, in analog or digital format, suited for the preservation of cinematographic heritage in the long term. The producers and owners of such works must undertake not to export such original medium for a minimum period of 10 years, as well as, among other requirements, to deposit the elements preserving the work at the Spanish Film Library.	The total amount will have a ceiling of €6,000, and cannot exceed 50% of the cost of making the necessary preservation duplicates.

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OTHER AID

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.	Each call will stipulate the eligible expenses to be incurred by the production company, between those inherent in the Spanish film's participation in the events for which it was selected or to which it was invited and the minimum percentage that must necessarily be used for advertising expenses, as well as, within what is available in the budget, the total amount to be used for such aid and the maximum amounts for each one of the festivals and, as the case may be, sections and for each award. The aid cannot exceed the cost incurred by the producer on its participation in the festival or on competing for the award.
	For the organization of film festivals and competitions in Spain.	Organization and holding by individuals or legal entities acting as promoters 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. Applicants must employ at least one person with a disability the degree of which is above or equal to 33%.	The aid may subsidize the preparation, organization, operation and promotion expenses of the festival or competition, as well as the technical means and resources invested to foster universal accessibility and the twin green and digital transition of the festival or competition. The amount of the aid will be determined in each call for aid applications and may not exceed €250,000. In any event, the aid cannot exceed 50% of the budget submitted for their organization and holding.
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.

In any event, 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 for 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.

It is also important to note, in this context, a new aid facility for film financed under the National Plan for Recovery, Transformation and Resilience that has been implemented by the Decision of the Directorate-General of the Institute of Cinematography and the Audiovisual Arts (ICAA) calling for applications for aid for the year 2022 for laboratories and incubators for the creation and for the development of audiovisual projects to be implemented in 2022 and 2023.

The Decision issues a call for applications for aid, under a competitive process, to these laboratories and incubators, by which are meant programs, forums, pitching platforms and residences where professionals and enterprises that previously pass a selection process participate and training, networking and tutoring activities are pursued with the aim of improving the skill and competitiveness of professionals and enterprises in the creative and development processes entailed in audiovisual projects.

It should be noted that this aid has a budget allocation of €9,000,000, and the maximum amount that may be granted to each laboratory and incubator is €500,000 for the two years, 2022 and 2023.

In addition, it is worth mentioning that, with a view to supporting the production of feature and short films in the context of the negative economic impact caused by COVID-19, the above-mentioned Order CUD/582/2020, amended by Order CUD/464/2021, contains several specific measures aimed at relaxing certain rules for the processing and management of aid, such as the following:

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- Specific measures (additional provision two)
  - When it comes to evidencing the financing required by means of agreements formalized by the companies applying for aid, the minimum fundraising required of the distribution company can reduced by half, if the year preceding that of the call is 2020, 2021 or 2022, or refers to 2019, at the choice of the applicant company.
  - The reduction in the percentage of expenses that must be allocated to copies, advertising and promotion for the premiere of feature films in movie theaters in Spain, where the premiere takes place in 2021 or 2022 (or already took place in 2020 but the recognition of the cost is requested in 2021), which will be 5% in the case of general aid and from 2% in the case of selective aid. This percentage will be reduced to the minimum limit of 3% in the case of general aid and 1% in the case of selective aid in proportion to the aid received by the project, in accordance with the formula that is established in the respective calls for applications. In addition, the obligation will be considered fulfilled where the above-mentioned expense is equal to or greater than €300,000.
  - The above-mentioned Order also relaxes and modifies the assessment of the applicants' solvency, the percentages of payment of the general aid to feature films based on project plans, the years of prior production of the applicants for selective aid or the periods for assessing the viability of short film production projects.
  - Eligible expenses that have been incurred by companies receiving general and selective aid for the production of feature films as a result of COVID-19 or of measures established to combat it that could not be applied to the project of the subsidy received, whether in whole or in part, are recognized as costs of the film.
- Extension of periods for fulfilling obligations (additional provision three)
  - For the commercial premiere in feature film cinemas of films receiving general and selective aid for the production of feature films based on project plans, which began the premiere in 2020 or which do so in 2021 or 2022 (10-month extension of the maximum period for the purpose).
  - For notifying the Institute of Cinematography and the Audiovisual Arts of the end of the filming and applying for the classification and nationality certificate of the film, where these periods expire in 2021 or 2022 for films receiving general and selective aid for the production of feature films based on project plans and aid for the production of short films based on project plans (5-month extension).
- Streamlining measures (additional provision four)

  It is established that aid for the production of feature films and short films included with the scope of application of the specifications of reference can be financed with funds from the European Recovery Instrument, by applying the proper streamlining measures.

Lastly, it may be noted that a preliminary draft of a new Film and Audiovisual Culture Law is currently passing through parliament and, for now, is in the submission of contributions phase.

3.4. OTHER SPECIFIC INDUSTRIES

3.4.1. MINING

3.4.1.1. Aid for risk prevention and mining safety

The regulations governing aid to the mining sector in the area of risk prevention and mining safety are currently set out in Order TED/1079/2020, of November 11, 2020, establishing the specifications in the context of native and sustainable mining.

The aim of the subsidies regulated in this Order is to encourage the development of projects related to mining safety (from the standpoint of investment and training) carried out by interested non-profit enterprises and entities, for the purpose of helping to reduce mining accidents in Spain, thereby effectively fostering, by extension, both the ecological transition process and the process of combating the demographic challenge.

The call for aid applications for projects and actions under the aforesaid Order for the year 2022 was made in the Decision of November 10, 2021, of the Secretariat of State for Energy (amended by the Decision of February 25, 2022).

Accordingly, and without limitation, suffice it to say that this most recent call for aid applications deems projects carried out in Spain in the area of mining and targeted at the areas of (i) significant investments in mining safety, including projects aimed at improving health and safety in mining sties, benefit mines and tunnels or galleries in the excavation and shoring phase and (ii); training programs in mining safety, to be **eligible for financing.**

Potential **beneficiaries** of this aid include SMEs that hold the title to the mining public domain to which the project relates or the authorization from the mining authority for the execution project for tunnels or galleries in the excavation and shoring phase, provided that they are not affected by Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive mines (Decision No 2010/787/EU). 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 and that they meet the requirements laid down by the above-mentioned Order.

The aid granted under a competitive procedure and its **amount** will consist of a percentage of the approved eligible investment and varies according to the following scheme:

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- Aid for significant investments in mining safety: Only SMEs can qualify for this aid, and the intensity of the aid cannot exceed 20% of the eligible costs in the case of small enterprises and micro enterprises, and 10% in the case of medium-sized enterprises, subject to a minimum amount of €12,000 for the aid granted.

- Mining safety training projects: Only non-profit institutions can apply for this aid. The intensity of the aid may be up to 100% of the cost of the approved eligible investment, tied to hours of instruction evidenced and to the performance of complete courses presented in the project. In any event, the maximum amount granted to a project of this kind is €65,000 per application, whereas its minimum amount is set at €4,000. As limits on this line, it should be noted (i) that the maximum number of eligible hours is 8 hours per course, with a mandatory minimum of 3 hours; and (ii) the maximum permissible cost per worker and hour, and the total cost per worker set in each annual call for aid applications may not exceed €350 under any circumstances.

The above-mentioned call for aid applications for 2022 has set the total amount of the subsidy to be granted as a result of the submitted applications at €2,122,834.46.

3.4.1.2. ACTION FRAMEWORK FOR COAL MINING

The series of measures in support of this industry is set out in the Framework Agreement for a Fair Transition in Coal Mining and the Sustainable Development of Mining Areas for 2019-2027 (Framework Agreement), executed with the Ministry for the Green Transition and the Demographic Challenge.

This Framework Agreement, which has been in force since December 31, 2018, bears in mind the current situation in the industry following the end of the aid granted to cover losses in the mines pursuant to EU requirements and in line with the current energy transition process.

Thus, the main objectives of this Framework Agreement are as follows:

i. To reactivate economic growth and encourage alternative development in mining areas in order to achieve their structural transformation, economic recovery and social welfare.

ii. To increase the flexibility of the conditions laid down for businesses that wish to continue to extract coal as from 2019 and that have to return the aid received in accordance with the above-mentioned Decision 2010/787/EU on State aid aimed at facilitating the closure of uncompetitive coal mines.

iii. To maintain lines of aid to encourage the creation of business projects aimed at generating employment and providing support for the creation of related infrastructures that enable workers that have become unemployed due to the closure of the mine to regain employment.

iv. To design specific measures to train workers in the coal mining industry and maintain aid that helps to cover the exceptional costs linked to closure set forth in EU legislation.

The Framework Agreement instruments the following principal lines:

1. Aid for exceptional costs incurred by coal businesses:

   This line of aid, envisaged for the period 2019-2025, is directed at mining companies included in the Spanish Plan for the Closure of Uncompetitive Coal Mines in accordance with the aforesaid Decision 2010/787/EU.

   It includes two types of aid:

   a. Social aid for workers in coal production units.

      This aid has already been specifically implemented by Royal Decree-Law 25/2018, of December 21, 2018 on urgent measures for a fair transition of the coal mining industry and the sustainable development of coal mining areas (amended by Royal Decree-Law 27/2021, of November 23, 2021, which extended to 2025 the social assistance for labor costs of workers affected by the closure of coal mines and employed in environmental restoration efforts) and, where not expressly regulated in this law, by Royal Decree 676/2014, of August 1, 2014 establishing rules on aid due to employment costs aimed at covering exceptional costs related to plans for the closure of production units in coal mining businesses.

      In particular, Royal Decree 676/2014 sets forth the direct grant of aid to companies that are pursuing or have pursued an activity related to coal production, to enable them to cover certain costs incurred on termination of their workers' employment contracts as a result of the closure of coal production units used for the generation of electricity included under the national Closure Plan.

      The purpose of this aid is to alleviate the social and regional consequences of the closure of mines and is projected to cover labor costs for older workers and compensated resignation.

      In addition, the Framework Agreement provides for other social aid aimed at workers affected who do not meet the requirements to access the above-mentioned aid.

   b. Aid of an exceptional nature aimed at covering the costs of closure of the production units and offsetting the environmental impact.

      The Framework Agreement implements this aid in order to cover the work or measures included in the restoration plans that have been authorized in advance by the competent mining authority. Eligible for this aid are mining companies that have requested authorization for, as applicable, the project to definitively abandon the facilities or the project for the definitive closure of the facilities, and which meet all other statutory requirements to be able to qualify for this aid.

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The Framework Agreement also includes the possibility of adopting measures in support of workers in the industry that continue mining after December 31, 2018 in the production units of the companies included in the Spanish Closure Plan and which intend to close between 2019-2025.

Other measures are also established for workers in the industry such as (i) the performance of restoration activities; (ii) inclusion in job vacancy services; or (iii) the grant of social aid for workers in processes of reviewable total disability.

For example, as regards the above-mentioned restoration activities, it is worth noting Royal Decree 341/2021, of May 18, 2021, regulating the direct grant of aid for the environmental restoration of areas affected by the energy transition in the context of the Recovery, Transformation and Resilience Plan relating to projects for areas degraded as a result of coal mining, in the Autonomous Communities of Asturias, Aragón and Castilla y León. The Royal Decree seeks to mitigate the difficult labor and social situation in these areas as a result of the closures and added difficulties resulting from the pandemic caused by COVID-19, by promoting the maintenance of employment, in particular of surplus miners and employees of ancillary enterprises and the creation of economic activity in these territories, thereby contributing to the maintenance of the population and the creation of jobs in the short term.

2. Measures to revive mining areas:

   Measures to revive coal-mining areas aimed at financing new business facilities and extending existing ones.

   Individuals who pursue the activities on which the grant of this aid is based in the areas affected by the restructuring and modernization of the coal mining industry qualify for this aid.

   Specifically, investment projects which generate employment in the area of economic activity that may receive aid, are eligible for finance, provided the following conditions are met:

   i. Business projects with an investment in excess of €100,000, which undertake to create 3 or more job positions and which also meet the other requirements of the Framework Agreement.

   ii. Aid to small investment projects under the following conditions:

      - Minimum amount of €30,000 and a maximum of €500,000, with minimum undertakings to create employment.

      - Fall within any of the economic activities that are eligible for finance, provided that they are carried out in any of the municipalities included in the territory covered by the Closure Plan.

   iii. Aid for alternative development in mining areas:

      Infrastructures located in the municipalities affected by closures of the coal mining industry are eligible for this aid.

      At present, aid aimed at boosting the development of mining areas is regulated by Royal Decree 675/2014, of August 1, 2014, regulating the direct grant of aid aimed at fostering the alternative development of coal mining areas, through the development of infrastructure projects and restoration projects in areas that have been degraded as a result of mining activities.

      Autonomous communities, municipal councils and other local entities included in the geographic area of the Royal Decree, in accordance with Annex I of same (i.e., the above-mentioned territories of Aragón, Castilla-La Mancha, Castilla y León, and Asturias), are eligible for this aid.

      The timeframe envisaged for this aid is until 2023, although in accordance with the regulation of the Framework Agreement, the material execution of the actions that can be financed may be extended until 2027.

   The Framework Agreement establishes, in addition to the aid to revive mining areas referred to above, that mining areas may qualify for other additional measures defined in the Plan for Urgent Action in Fair Transition, which must be agreed upon between the autonomous communities, local entities and social players.

With the aim of achieving the objectives proposed and implementing the measures established in the Framework Agreement, the following Orders were published on December 31, 2020:

1. Order TED/1293/2020, approving the specifications for the grant of aid aimed at small investment projects that create or maintain jobs, fostering the alternative development of mining areas, for the 2020-2023 period.

   The aim of this aid is to encourage individuals and entities to locate small business investment projects in areas affected by the restructuring of coal mining and their surroundings, thereby generating alternative economic activities to coal mining.

   Private individuals or legal entities, as well as the groupings of which they form part, tenancies in common and self-employed workers that are going to undertake small business investment projects that create jobs and are located in the municipalities recognized in the Order may be beneficiaries of this aid, which will be granted under a competitive procedure. The list of municipalities recognized by the Order in the above-mentioned Autonomous Communities of Castilla y León, Castilla-La Mancha, Asturias and Aragón has been updated by Order TED/340/2021, of April 8, 2021.

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The aid regulated is supplemental to and compatible with other state aid provided that the maximum amount of all the aid does not exceed the projected cost of the investment. In the event of an accumulation of aid received by a project, the overall amount that is considered "de minimis" may not exceed the maximum limit of €200,000 during any period of 3 fiscal years or the period that is stipulated in each call for aid applications.

Projects that apply for aid must meet the following requirements:

- They must have been able to start the investment 1 year before the date of the call for aid applications.
- They must have a minimum amount of €30,000 and a maximum of €500,000 for the eligible investment. Also, 50% of the investment must be executed and at least €30,000 must be invested.
- They must create at least 1 job or maintain workforces equal to or greater than 3 jobs.
- The execution period stipulated by the relevant call for aid applications must be complied with.

Their amount may not exceed the maximum limit of €200,000 if the aid is granted to a single enterprise. To determine the amount, the following criteria will be applied:

- Projects in municipalities hard hit by the coal mining company closure process (Group 1) may receive a subsidy of up to 100% of the maximum intensity limit or of the maximum amount applicable to the municipality in question.
- Projects in the other municipalities affected by the coal mining company closure process (Group 2), however, may only receive a subsidy of up to 50%.

Under this Order, the Office of the Head of the Institute for the Just Transition issued its Decision of April 16, 2021, calling for applications for the aid for that year for small business investment projects that generate or maintain employment, fostering the alternative development of areas affected by the restructuring of coal mining, subject to a cap of €7,000,000.

1. Order TED/1294/2020, approving the specifications for the grant of aid aimed at job creating business projects that promote the alternative development of mining areas for the 2020-2023 period (the list of municipalities included in these areas by Order TED/341/2021 having also been updated).

   The aim and the scope of application of the aid regulated under this Order are the same as those established by Order TED/1293/2020 described in the preceding section, with the difference that the projects are not required to be small in scale.

   Job creating business investment projects belonging to all of the economic activities that qualify to receive aid in accordance with the applicable Spanish and EU legislation, except for the steel, coal, transportation, etc. industries, are eligible for the aid.

   In the case of aid requested by large companies, it can only be granted for initial investments that attract new activities to the above-mentioned areas or for the diversification of existing establishments into new products or new innovative processes.

   The requirements applicable to the projects are similar to those laid down in Order TED 1293/2020, with the following differences:

   - The work that implements the investment must not have started before the application for aid was submitted.
   - The minimum planned investment eligible for a subsidy must be €100,000. Also, at least 50% of the planned investment be executed, guaranteeing at all times a minimum investment of €100,000.
   - Projects covered by the aid must create 3 jobs.
   - Prior to the 6 months following the date of notification of the final decision approving the aid requested for the project, 10% of the investment considered eligible must have been executed and paid.
   - For financing purposes, (i) at least 25% of the total of the eligible costs must be financed by the beneficiary with equity or external financing, free from any type of public aid; and (ii) the enterprise or beneficiary must evidence a financial contribution, via equity or external financing, entailing at least 5% of the eligible investment.
   - The execution period stipulated by the relevant call for aid applications must be complied with.

   To determine the **amount** of the aid, the same criteria defined in Order TED 1293/2020, as mentioned above, will be applied.

   Under Order TED/1294/2020, the Office of the Head of the Institute for the Just Transition issued its Decision of April 16, 2021, calling for applications for the aid for that year for business projects that foster the alternative development of coal mining areas, subject to a cap of €20,000,000.

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.

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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 Industry, Trade and Tourism has been launching support initiatives with a view to promoting, regenerating or creating the industrial fabric.

Against this backdrop, the Program for Reindustrialization and Strengthening of Industrial Competitiveness **(the "REINDUS" Program)** had been the specific instrument of financial support for the development of strategic industrial sectors until its last call for applications for the year 2019. Currently, it is the **Productive Industrial Investment Support Fund ("FAIIP")**, created by means of additional provision fifty-seven of Law 11/2020, of December 30, 2020, on the General State Budget for 2021 and managed by the state-owned company SEPI Desarrollo Empresarial S.A. SME or SEPIDES (www.sepides.es) which has been accomplishing similar aims, namely, that of fostering industrial development, strengthening competitiveness and maintaining Spain's industrial capacities.

By means of its Decision of June 4, 2021, the Evaluation, Monitoring and Oversight Committee of the FAIIP approved the call for applications for 2021 with an endowment of €600 million applicable to the combined transactions corresponding to the 2021 calendar year, distributed among ordinary loans (up to €300 million, i.e., 50% of the total), participating loans (up to €180 million, 30% of the total) and equity interests (up to €120 million, the remaining 20%). However, the endowment established for 2021 will be maintained for the 20-year term of this mechanism for fostering industrial investment, the main features of which are described below.

The financial support that these projects could receive, in general, is instrumented through **long-term loans,** with the following **types of actions eligible for financing**:

- Creation of industrial establishments, in the sense of stating up a new production activity anywhere in Spain.
- Relocation, understood as changing the location of a prior production activity to anywhere else in Spain.
- Improvements and/or modifications of production lines, that is, investing in equipment that enables the modernization of existing production or process lines or which generates the implementation of new production or process lines, in industrial establishments that are already in production at the time of the application, expressly including the productive implementation of technologies from the "Connected Industry 4.0" and of actions in the lines aimed at environmental sustainability (reduction in greenhouse gas emissions, reduction in vulnerability to climate change impacts, pollution prevention or introduction of the circular economy in the production process).

Merely replacing the machinery and/or part of the components or auxiliary production elements, as well as repairs and maintenance and the acquisition of companies are excluded from these definitions.

Projects must be located in Spain and for new projects not yet started, the start of their implementation must take place within not more than 2 years from the date on which the financing from the FAIPP Fund is formalized.

The potential beneficiaries are any commercial company or cooperative with registered office and establishment in Spain, duly incorporated and not belonging to the public sector, which pursues or is going to pursue an activity consisting of industrial production and industrial services, regardless of its size, and which must submit an application for financing via the Fund's website (https://www.sepides.es/fondo_faiip).

The **call** will be **open** until the **funds are used up** and, accordingly, applications will be processed in the order submitted.

The following are considered **eligible expenses**:

- Acquisition of fixed assets:
  - Tangible fixed assets: Expenses relating to (i) civil engineering (investments in urban development and pipelines), (ii) buildings and installations (investments to acquire, build, expand or fit out industrial buildings, as well as their installations), and (iii) production devices and equipment (acquisition of assets directly linked to production or the production process).
  - Intangible fixed assets: Expenses relating to (i) specific software linked to the production process, (ii) patents, licenses, trademarks and the like, and (iii) research and development directly linked to the production process and to production devices and equipment.
- Expenses relating to (i) own staff and external collaborative arrangements required to design and/or redesign processes, directly linked to the devices and equipment in question, (ii) credit rating linked to the application for financing, (iii) audits, during the term of the financing, in the case of companies not subject to statutory audit requirements, and (iv) audits associated with justifying the investment in the context of the financing.

The acquisition cost of the eligible investments and expenses may not exceed the market value under any circumstances. SEPIDES may ask the beneficiary to prove this point by providing the appropriate supporting documentation.

The minimum eligible budget for the investments is set at €200,000, the maximum amount of the funding to be granted will be 75% of the budget considered eligible, provided that the investments in production devices and equipment and specific software linked to the production are at least 50% of the budget.

In addition, the amount of the financing from the FAIIP will be limited to the enterprise's outstanding risk with the Fund, adjusted by the amount covered by first-demand guarantees, being a maximum of 5 times the applicant's duly evidenced equity. In the case of companies that form part of the same consolidated group, this rule extends to the group's consolidated amounts.

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The adjusted outstanding risk with the Fund – whether from an enterprise or consolidated group – must be at the most 10% of the cumulative amount of the Fund's budget allocations.

The financing that can be granted out of this Fund cannot, under any circumstances, constitute State aid and, accordingly, will always be granted at a market or higher interest rate/revaluation. Specifically, the applicable interest rate, which will vary according to the rating of each applicant and to the type of loan granted, is set as follows:

- For ordinary loans: 12-month Euribor plus a fixed spread between 1.5% and 4.5%, subject to a minimum equal to the applicable spread.
- For participating loans: A fixed tranche equal to 12-month Euribor plus a fixed spread between 2.5% and 5.5%, subject to a minimum equal to the applicable spread, and a variable tranche linked to activity performance parameters up to 2%.
- For equity interests: Fixed revaluation of between 5% and 8%.

However, a reduction in the interest rate of up to a maximum of 0.5% may be applied, according to the degree of fulfillment of the environmental impact criteria, provided that the percentage score obtained in the evaluation of these criteria exceeds the threshold of 55%, based on the following table:

CRITERION	WEIGHTING (%)
Priority area	50
Job creation	10
Impact on digital transition	20
Impact on green transition	20

The **repayment** period of the loan will, as a general rule, be 10 years, including a possible grace period of 3 years for ordinary loans and for participating loans, and with quarterly repayment installments, without a grace period.

Lastly, the grant of the ordinary or participating loan will require the provision of a bond or **guarantee**, enforceable at first demand, for 10% of the disbursed amount of the financing.

If the financing takes the form of an equity interest in the entity, the term of the transaction will also be a maximum of 10 years although the maximum period until the first term of the sale and purchase of the equity interest is set at 5 years.

Lastly, it should be noted that SEPIDES will **disburse the financing in tranches, conditioning the release of the funds on the fulfillment of the milestones** of the project submitted. These milestones must be expressly established in the financing agreement, and the beneficiary must provide documentation supporting the performance of the activities envisaged in each milestone, which must be certified by SEPIDES before releasing the respective disbursement.

3.4.3 PHARMACEUTICAL INDUSTRY

In its Decision adopted on November 26, 2021, the Government Delegate Committee for Economic Affairs approved the initiative to Boost Competitiveness in the Pharmaceutical Industry or **PROFARMA** for the **2021-2022** period. It is a joint initiative by the Ministry of Industry, Tourism and Trade, the Ministry of Health, and the Ministry of Science and Innovation, and it is aimed at boosting the competitiveness of the pharmaceutical industry in Spain by modernizing the industry and fostering activities that contribute more added value (such as investments in new industrial plants and in new technologies for production as well as through fostering research, development and innovation).

This modernization entails (i) **for national enterprises**, seeking wider markets through internationalization, incorporating the use of new technologies in their production processes and R&D&I, improving the focus of their lines of research and (ii) **for multinational enterprises**, increasing their commitment to developing the industrial structure, boosting their investment effort not only in infrastructures and production activities, but also in R&D&I in Spain, improving the trade balance.

In short, the aim is to enable pharmaceutical companies to **progress toward a production model that increases the ability to attract capital and generate stable and quality employment**, contributing positively to the increase in Spain's gross domestic product.

Against this backdrop, the PROFARMA Program seeks **to classify and rate enterprises in the pharmaceutical industry** which apply for inclusion in the program and which manufacture or market medicinal products for human use and which pursue pharmaceutical R&D&I activities in Spain, with the ultimate aim of publicly acknowledging the effort made by such enterprises in alignment with the general and specific objectives of the Program.

As new features of the call for applications for the PROFARMA Program for this period and in line with the new Pharmaceutical Strategy for Europe, adopted on November 25, 2020, the goal is to foster the manufacturing of medicines considered essential or strategic, research, development and manufacturing of new antimicrobial agents to reduce the threat that the development of resistance to antibiotics entails, research, development and manufacturing of medicines for the prevention and treatment of COVID-19, research that better respects animal protection principles, and the development of medicines with a lower environmental impact.

As is customary, it will **fall** to the **Office of the Secretary of PROFARMA** (made up of public officials from the Directorate-General of Industry and of Small and Medium-Sized Enterprises) to carry out the process of **assessment** of the enterprises that decide to apply for the Program according to the criteria established in an assessment guide adopted by the head of the Office of the Secretary General for Industry

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and SMEs. The assessment will consider, among other things, both the enterprise's **resources** (existence of a production plant, investment in new plants or expansion of existing plants, existence of a basic or preclinical R&D center, investment in new R&D centers, conduct of clinical trials in Spain, human team dedicated to R&D&I, participation in national and international consortiums, etc.) **and the results** obtained in certain areas (i.e. creation of new jobs, in both manufacturing and research, transfer of technology derived from licensing, improved trade balance, etc.) in the years 2020 and 2021.

Accordingly, and as a result of the assessment conducted, **enterprises are classified in three Groups** (A, B and C) depending on (i) whether or not they have their own pharmaceutical production plant or basic or preclinical R&D center and (ii) on the significance (or lack thereof) of the research activity they pursue. Equally, the head of the Office of the Secretary General for Industry and SMEs will **assign** them a rating (excellent, very good, good and acceptable) depending on the assessment and points obtained in accordance with the criteria and minimum score stipulated in the regulations.

The period for submitting applications for the 2022 call will run from September 14 to October 14, inclusive.

At the end of each year of the PROFARMA program (2021-2022), the progress made in the targets set will be measured using the following indicators:

INDICATORS	2021 CALL	2022 CALL
R&D investment	€40 million	€41 million
Production investment	€340 million	€344 million
R&D&I expenses	€1.25 billion	€1.255 billion
R&D&I employment	5,125	5,150
Production employment	15,200	15,250
Trade balance	€-3.5 billion	€-3.35 billion
% current expenditure on R&D / NHS sales	17.8%	18%

Beyond the PROFARMA Program, it should be noted that the Ministry of Science and Technology signed on March 3, 2021 a **Pact for Science and Innovation** in which a commitment was made that, as a general rule, public funding in R&D&I would regularly increase until reaching 1.25% of GDP in 2030, which would entail reaching 0.75% before 2024. The signatories to the Pact included both agents from the pharmaceutical industry and the National Business Association of the Pharmaceutical Industry *(FarmaIndustria)*.

These aims tie in directly with many of the investments and reforms included in Component no. 17 of the National Recovery, Transformation and Resilience Plan aimed at "Institutional reform and strengthening of the capacities of the national science, technology and innovation system", in its application to the health field and, particularly, with one of the **specific objectives** of the Strategic Economic Recovery and Transformation Project ("PERTE") in Avant Guard Health approved on November 30, 2021, and consisting of **fostering the development of advanced therapies and other innovative or emerging drugs** and facilitating their transfer to clinical practice, through the necessary alliances between the academic and business sectors and the strengthening of the industrial fabric based on the intensive use of knowledge, to which more than **€140 million in public funds** will be allocated between the different lines and programs applicable during the 2021-2023 period.

Lastly, at the European level, mention should be made of the approval, on February 17, 2021, of the **European bio-defense preparedness plan "HERA Incubator" against COVID-19 variants** as a mechanism with which, in the short term, to combat the new COVID-19 variants and, in the long term, to prepare the EU for health emergencies. The plan establishes measures to (i) speed up the regulatory approval of vaccines, (ii) create new advance purchase agreements for medicines, and (iii) study the possible grant of aid for vaccine production, intermediary inputs and infrastructures.

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GUIDE TO BUSINESS IN SPAIN 2022

/ 4 Incentives for investments in certain regions

4.1 GRANTED BY THE STATE

Regional incentives are financial subsidies granted by the Spanish State to productive investment projects carried out in previously-determined regions of Spain to promote and consolidate the pursuit of business activity in those areas and to boost the creation and maintenance of jobs in these areas. The aim is to help alleviate existing territorial imbalances and to reinforce the endogenous potential for development of regions with a lower level of growth. The State administration grants such aid in accordance with the demarcation of eligible areas and maximum aid intensities stipulated by the European Commission for regional state aid. The functions relating to regional incentives are attributed to the Directorate-General of European Funds, under the General Secretariat of European Funds, a new body created with the rank of sub-secretariat within the Secretariat of State of Budgets and Expenses of the Ministry of Finance.

As indicated, these incentives consist of financial aid to be used to finance investment projects that create jobs, to be executed in areas with the lowest level of development or less favored areas whose special circumstances so recommend, provided that they entail (i) the startup of a new industrial establishment; (ii) the expansion of an already established activity or the start of a new one or (iii) the modernization of facilities (provided that it is not a mere replacement investment).

Although the general regulations for this type of aid are found in Law 50/1985, of December 27, 1985, on regional incentives for the correction of territorial imbalances, and in its implementing Regulations approved by Royal Decree 899/2007, of July 6, 2007, 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 each one of the economic development areas.

To date, the Royal Decrees demarcating economic development areas currently in force are still in line with the "**Guidelines on regional State aid for 2014-2020**" published on July 23, 2013 in the Official Journal of the European Union, as well as with the "**Regional Aid Map for Spain (2014-2020)**" approved by the European Commission on May 21, 2014. Suffice it to recall that in the context of the health crisis caused by COVID-19, the validity of these provisions was extended to December 31, 2021 by means of the **prolongation and amendment of the Guidelines on Regional State Aid for 2014-2020** (2020/C 224/02) published in the Official Journal of the European Union of July 8, 2020, as well as by the **Decision of the European Commission of September 4, 2020 authorizing the extension of the Regional Aid Map for Spain**, State SA.57997 (2020/N), respectively.

However, following the conclusion of this extension period, the European Commission has approved the **Guidelines on regional State aid for 2022-2027** (2021/C 153/01), which were published in the Official Journal of the European Union on April 29, 2021.

These Guidelines ask the respective Member States to notify the Commission of their new regional aid maps which will apply from January 1, 2022 to December 31, 2027 so that they can be approved by the Commission. The Guidelines also establish the possibility of including changes in the aid maps that were approved for the 2014-2021 period.

For these purposes, suffice it to recall that within the framework of the respective Guidelines on regional State aid in force in each period, the European Commission is responsi-

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ble for approving the aid map applicable in each Member State, stipulating the maximum limit of financial aid or subsidies that can be received by investment projects in each regional area or zone under "regional incentives" during the reference period.

By **Order HFP/1479/2021, of December 22, 2021, the Spanish government has published the Decision of the Government Committee for Economic Affairs, extending the period of validity of the Royal Decrees demarcating** Economic Development Areas for the purposes of applying for regional incentive aid (Official State Gazette no. 313, of December 30, 2021). This extension will remain in force "*until the new Royal Decrees demarcating the different areas are approved or those currently in force are amended*".

As the approval of the new Royal Decrees depends on the prior approval of the regional aid maps by the Commission, it is not possible to foresee when the new legislative framework updated to this type of State aid will be available.

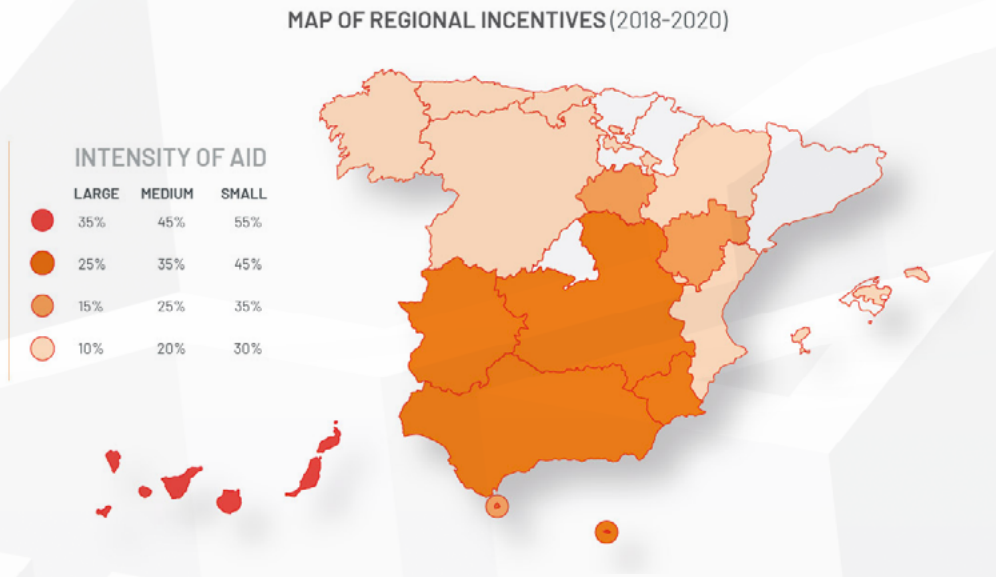
Nonetheless, it must be stressed that Order HFP/1479/2021 establishes that any aid that is granted on or after January 1, 2022 will be governed by the legislation that results from the adaptation to the new Community Guidelines.

In particular, according to the aid map amended in 2016, which remains transitionally in force, for the Kingdom of Spain, the Spanish region for which the greatest incentives are envisaged during this last stretch of the period of validity continues to be the Autonomous Community of the Canary Islands, with a maximum aid intensity percentage per investment project of up to 35% of the net eligible investment. In this respect, it is worth noting that Royal Decree-Law 20/2021, of October 5, 2021, adopting urgent support measures to repair damage caused by volcano eruptions and for economic and social reconstruction on the island of La Palma, has established additional relief that may be claimed by business projects that are carried out on the island of La Palma, at all times within the maximum limit set by the European Commission for this autonomous community.

The autonomous communities of Castilla-La Mancha, Extremadura, Andalucía, the Murcia Region, and the Autonomous City of Melilla are other Spanish regions eligible for regional incentives with a maximum aid percentage of up to 25%, since their GDPs were found, in the review conducted by the Commission in 2016, to have fallen to below 75% of the average for the European Union 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 throughout the entire.

Finally, the maximum aid intensity percentage for the Autonomous Community of Galicia was reduced to 15% of the eligible investment for 2017, and was set at 10% for the sub-period 2018-2020 (and, therefore, up to the present). The maximum intensity of the aid for the Autonomous City of Ceuta, on the other hand, has been reduced to 15%.



Source: https://www.dgfc.sepg.hacienda.gob.es/sitios/dgfc/es-es/ipr/ir/ia/paginas/incentivosregionalesca.aspx

In any case, during extended period the Autonomous Community of Madrid, the Basque Country, Navarra and Cataluña, as well as the municipality of the provincial capital of Valencia, the municipality of Zaragoza and certain municipalities of the Autonomous Community of La Rioja and of the Islands of Mallorca continue to be regarded as regions ineligible for subsidies, pursuant to the state legislation on regional incentives and the Royal Decrees demarcating economic development areas.

As stated, the aforementioned amendments to the regional aid map were incorporated into Spanish legislation through the appropriate amendments to the respective Royal Decrees of demarcation of each of the economic development areas, approved on December 30, 2016 (in force until the new Royal Decrees demarcating the areas are approved or the existing ones are amended).

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The Royal Decrees stipulate the maximum intensity of permitted aid (calculated as a percentage of the eligible investment), distinguishing among beneficiaries, according to whether they are large, medium-size and small enterprises, as shown on the following table:

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*	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% to 20%	10%	20%	30%

* Castilla-La Mancha, Andalucía, Murcia and Melilla from December 30th, 2016.

As already noted, these aid intensities must be reviewed in accordance with the new Guidelines on regional State aid for 2022-2027.

Having regard to the foregoing, the following is an explanation of the main current characteristics of the regional incentives analyzed:

4.1.1 ELIGIBLE ECONOMIC SECTORS

These are stipulated in each Royal Decree demarcating the respective geographical area. The main eligible sectors, however, are, in general, as follows:

- Processing industries and production support services, particularly those which apply advanced technology, pay attention to environmental enhancement and enhance the quality or innovation of 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 structures.
- Specific tourist establishments and ancillary leisure 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 material investments, on an exceptional basis.

In accordance with the regional financing Guidelines for the period (2007-2013), the Regulations implementing the Regional Incentives Law already eliminated, at the time, the possibility of including lands as an eligible fixed asset. This exclusion has been maintained under the subsequent Guidelines on regional aid.

4.1.3 ELIGIBLE PROJECTS

- 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). Projects must have a budget not less than that set as a minimum in the respective Royal Decrees of demarcation (generally, a minimum of €900,000).
- Project for the expansion of existing activities where they entail a significant increase in production capacity or the commencement of new activities in the same establishment, provided that they entail the creation of new jobs and the maintenance of existing jobs during the same period stipulated in the preceding paragraph.

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- Project for the modernization of the business which meet the following requirements:
  - 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 begun to be made (i) upon the commencement of the construction works entailed in the investment; (ii) upon the first firm commitment for the order of equipment or (iii) 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 this requirement has been met.
- The aid should serve as an "incentive"—i.e., evidence is given that the applicant undertaking the project would not have done so without the aid or would have done so in a limited or different way or in another place. Accordingly, an explanation must be given of the impact that would be produced on the decision to invest or on the decision to locate the investment in the region in question should the regional incentives not be received (for large companies the explanation also requires the submission of documentary evidence).
- The aid applicant must report accordingly, if it has discontinued the same activity or another similar activity in the European Economic Area within the two years preceding the application date, or if it plans to discontinue said activity within two years after completion of the investment for which the aid is requested. In such case, the potential grant of aid will require prior analysis, and prior notice must be served on the European Commission, so that it can decide whether to authorize or to reject its grant.

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.

However, the most common type of regional incentive takes the form of an outright 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 to date considered by the relevant bodies are as follows:

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- Total amount of the eligible investment considered eligible.
- Number of jobs created.
- Revitalizing nature or 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.
- Inclusion the project of advanced technology, quality systems, environmental measures, R&D&I expenses, etc.
- 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 which have been stipulated for each approved investment in the Royal Decrees of demarcation of eligible areas.

Therefore, the subsidy received is compatible with other regional aid originating from other public authorities, 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, although it must be submitted to the competent body of the corresponding Autonomous Community, which will be in charge of processing it. Submission of the application does not require the approval of a prior call, and interested parties will have an open-ended period to submit their applications on an ongoing basis.
  - Documentary evidence of the applicant's personal circumstances or, in the case of an incorporated company, 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 from the Directorate-General of European 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.
- Agency granting the aid:

  The Government Delegate Committee for Economic Affairs if the eligible investment exceeds €15,000,000.

  In all other cases the head of the Ministry of Finance (in particular, through the Sub-directorate General of Regional Incentives, under the Directorate-General of European 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 (although this deadline may be extended).

  If the initial term and, as the case may be, any extended term ends without an express decision have been issued, the regional 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 individual 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 by the Directorate-General of European Funds and the dossier will be shelved.
- Submission of decisions at the Mercantile Registry:

  After its acceptance, the beneficiary must file the Decision granting the aid with the Mercantile Registry within one month from the date of acceptance, so that the terms on which the aid was granted can be registered.

  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 (six months, in the case of a company being incorporated). If evidence is not submitted by the deadline, the Directorate-General of European Funds will render null and void the grant of the regional aid.

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 have suitably proven, as stipulated above, that such investments

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had not been initiated before the application was filed. This possibility does not, however, prejudge the decision finally adopted.

In general, subsequent incidents in the project (*i.e.*, alteration of the initial project, change in the locating of the project, etc.) will be resolved by the Directorate-General of European Funds. Nonetheless, if the alteration of the project entails changes in the activity or a variation in the amount of the incentives granted, the amount of the investment approved or the jobs to be created, in excess of the limits set in article 31.1 of the Regulations of the Incentives Law, they will have to be resolved by the same body that granted the aid.

Applications for alteration of the projects must be submitted to the relevant Autonomous Community agency and addressed to the Ministry of Finance, 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 European Funds. As a general rule, if the administration fails to respond, this can be construed as an affirmative decision. However, when the alteration entails a change in activity, variation in the incentives, in the amount of the incentive approved, or in the job positions to be created, and it exceeds the thresholds established in the aforementioned article 31.1 of the Regulations for the Incentives Law, the absence of a response within the stipulated time must be construed as a rejection of the alteration application.

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 performance of tax obligations and obligations to social security, etc.) with the relevant Autonomous Community agency from which it will be referred to the Directorate-General of European 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 of the part to which he is entitled if there has been any 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 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.

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 maximum 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 substantially 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 were also affected by the content of the Guidelines on regional State aid and by the limits and maximum aid intensity percentages established in the regional aid Map amended in 2016, for the 2014-2020 period (and its subsequent extension), and the regulation of these incentives should therefore have been adapted to the new framework established and must be adapted again to the regulations resulting from the new EU guidelines for 2022-2027.

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.

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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 on 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.

As a corollary of these efforts to address the uniqueness of island regions, the European Commission to authorized 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.

The period for using the benefits of the ZEC is through December 31, 2027, although this may be extended if authorized by the European Commission (please also see Chapter 3 and https://canariaszec.com). However, the authorization for registering companies in the Official Register of Entities of the Canary Islands Special Zone has been extended to December 31, 2023, by means of Royal Decree-Law 31/2021, of December 28, 2021.

It is important to note that incentives aimed at upgrading and modernizing the banana and tomato growing and fishing-related industries are also available under the Community Program to Support Agricultural Production on the Canary Islands.

Along these same lines, please note the **Integral Strategy for the Canary Islands Autonomous Community**, approved by decision of the Council of Ministers dated October 9, 2009. The main objectives of this Strategy were implemented in Additional Provision Fourteen of Sustainable Economy Law 2/2011, of March 4, 2011, as a guide for initiatives of the Government and of the General State Administration on the Canary Islands. In particular, under the former Strategy priority was to be given to initiatives connected with the policy to internationalize the Canary Island economy, energy planning, with special attention to 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 on the Canary Islands.

In particular, from the standpoint of internationalization, the *Sociedad Canaria de Fomento Económico,* S.A. (*PROEXCA*) was formed under the Department of Economy, Knowledge and Labor of the Canary Island Government, with a view to fostering the internationalization of the Canary Island enterprise 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.

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GUIDE TO BUSINESS IN SPAIN 2022

/ 5 Aid for innovative SMEs

Notwithstanding the special treatment usually given to SMEs in the context of the public financing programs or initiatives which have been examined in other sections of this chapter, the following is a list, to be taken as an example, of some lines specifically targeted at entities of this type when they engage, in particular, in innovative activities.

Among others, we refer to the financing which is offered by the National Innovation Enterprise (*Empresa Nacional de Innovación* or *ENISA)* to small and medium-sized companies through various lines targeted at fostering their formation, their growth or their consolidation.

As an example, we indicate below the main characteristics of some of these lines, in force in 2022:

- ***ENISA* Young entrepreneurs:** Aimed at stimulating the formation of enterprises backed by young entrepreneurs (not older than 40 years of age), which are provided with the necessary financial resources during the initial phases linked to the formation of SMEs and Startups, so that they are able to make the investments required for the business project at such time, no guarantees require.

  Potential beneficiaries are SMEs (i) which pursue their activity and have their registered office in Spain; (ii) which have their own legal personality and whose incorporation took place not more than 24 months prior to the submission of the application; (iii) which have an innovative business model or one with obvious competitive advantages; (iv) which evidence the technical/economic viability of the project; (v) whose financial statements for the last year ended have been filed with the Commercial Registry or any other appropriate public registry; (vi) the majority of whose capital is subscribed by young entrepreneurs (aged under 40); and (vii) which are active in any area of business activity (other than real estate and finance). Finally, minimum contributions are required from the shareholders (of at least 50%), in the form of capital, depending on the amount of the loan, as is the above-mentioned proof of the project's technical and economic viability.

  Eligible investments are those required for the start-up of the business project during its initial phase and, in particular, the acquisition of both the fixed and the current assets required for the pursuit of 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, variable interest of between 3.0% and 6.0%, depending on the financial return of the enterprise, in line with the transaction's rating. Interest and principal will be repaid monthly. An arrangement fee is established equal to 0.5% of the amount of the loan. A fee for early repayment and another fee for acceleration of the loan due to a change in the shareholder structure are also established.

  The loan matures after a maximum of 7 years and there is 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 and Startups, promoted by entrepreneurs (of any age), so that they are able to make the investments required for the business project during its initial phase, no guarantees required.

  Potential beneficiaries are SMEs (i) which pursue their activity and have their registered office in Spain; (ii) which have their own legal personality and are incorporated as a corporate enterprise no more than 24 months before the application is filed; (iii) whose business model is innova-

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tive or has clear competitive advantages; (iv) which have shareholders' equity equivalent, at least, to the amount of the loan; (v) who evidence the technical/economical viability of the project; (vi) whose financial statements for the last year ended have been filed with the Commercial Registry or any other appropriate public registry; (vii) which have a balanced financial structure and management of a professional nature; and (viii) which are active in any area of business activity (other than real estate and finance).

This aid will take the form of a participating loan of between **€25,000 and €300,000,** – based on several factors such as the amount of equity and the financial structure of the company – at an applicable fixed interest rate equal to Euribor plus 3.75% for the first tranche and, in the second tranche, variable interest of between 3.0% and 6.0%, depending on the financial return of the enterprise, in line with the transaction's rating. Interest and principal will be repaid quarterly. Provision is also made for the payment of an arrangement fee of 0.5% and of another two additional fees: (i) for early repayment and (ii) for the acceleration of the loan due to a change in the shareholder structure.

The loan matures after a maximum of 7 years and there is a grace period of 5 years for the repayment of principal.

- ***ENISA* Growth:** Aimed at financing, no guarantees required, projects promoted by SMEs which envisage making competitive improvements or executing consolidation, growth and internationalization projects, based on viable and profitable business models, aimed specifically at achieving any of the following objectives: (i) the competitive improvement of production systems and/or a change in production model; (ii) expansion through an increase in production capacity, technological advances, an increase in the range of products/services; (iii) diversification of markets; seeking out capitalization and/or debt on regulated markets.

  The requirements to be met by the beneficiary are basically those described for the preceding *ENISA* Entrepreneurs line, although, for loans approved for an amount exceeding €300,000, the financial statements for the most recent year ended must have been submitted to external audit.

  The amount of 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 7 years for the repayment of the principal. The applicable interest rate is Euribor + 3.75% in the first phase and variable interest, depending on the financial return of the enterprise, with a maximum limit of between 3% and 8%, in the second phase, according to the transaction's rating. Principal and interest will be repaid quarterly and provision is made for the payment of fees similar to the ones described in the preceding lines.

- ***ENISA AgroInnpulso (ENISA* Agro-Food Innovation Line)** which is aimed at fostering the digital transformation of enterprises in the agro-food sector and the rural environment, endowed for the purpose with funds from the Ministry of Agriculture, Fisheries and Food and linked to the implementation of the National Recovery, Transformation and Resilience Plan.

  Specifically, this financing is available to small and medium-sized agro-food enterprises throughout the value chain, which (i) pursue innovative and/or technology-based activities, with special attention to those with the ability to create jobs for young people and women, and (ii) undertake the necessary investments and carry out their business project basing their activity on generating new products, processes or services.

  Enterprises and projects must comply with the same requirements as those described in the Growth Line above.

  As regards the financing requirements, they are the same as the requirements for accessing the line described above.

  The amount of the **participating loan** granted may range **between €25,000 and €300,000** – depending on several factors, such as the amount of equity and the financial structure of the enterprise – at an interest rate, in the first tranche, equal to Euribor plus 3.75% and, in the second tranche, a variable rate between 3.0% and 6%, depending on the enterprise's financial profitability, according to the rating of the transaction. Interest and principal will be repaid quarterly and the same fees described above will be charged.

  The grant of the loan will not require guarantees additional to those required for the business project.

- Lastly, ***ENISA* Digital Entrepreneurs** is a new line aimed specifically at supporting and fostering digital projects undertaken by female entrepreneurs in order to reduce the gender gap in this area, thanks to funds from the Ministry of Economic Affairs and Digital Transformation, which will allocate €51 million to this area over the next three years as part of the National Recovery, Transformation and Resilience Plan.

  The potential beneficiaries include both newly created SMEs and those which are considering a consolidation, growth or internationalization project, in which one or more women hold a relevant position of leadership or power in the company, either as a shareholder or as a member of the managing body or the executive team.

  In addition, these SMEs must (i) pursue their activity and have their registered office in Spain, (ii) have separate legal personality, (iii) have a business model that is innovative or with clear competitive advantages, (iv) have equity that is at least equal to the amount of the loan, (v) have technical/economic viability in relation to the project, (vi) have filed the financial statements for the last closed fiscal year at the Commercial Registry or at another relevant public registry, (vii) externally audit the financial statements of the last closed fiscal year if they receive a loan in an amount exceeding €300,000, (vii) have a balanced financial and

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professional management structure, and (viii) engage in any area of economic activity (except for real estate and finance).

The amount of the **participating loan** that constitutes the aid may range **between €25,000 and €1,500,000** – depending on several factors, such as the amount of the equity and the financial structure of the enterprise – at an interest rate, in the first tranche, equal to Euribor plus 3.75% and, in a second tranche, a variable rate between 3.0 and 8%, depending on the enterprise's financial profitability, according to the rating of the transaction. Interest and principal will be repaid quarterly and an arrangement fee of 0.5% of the amount of the loan must be paid (in addition to other fees for early repayment and acceleration of the loan due to a change in the shareholder structure).

The loan will have a maximum maturity of 9 years and a grace period of 7 years for the repayment of principal.

Lastly, the grant of the loan will not require the provision of guarantees additional to those required for the business project.

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/ 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.

Apart from other lines intended for certain specific sectors, **the following** are the main ICO lines of financing for 2022: (i) ICO Enterprises and Entrepreneurs; (ii) ICO Mutual Guarantee Society/State-owned Agricultural Surety Corporation Guarantee; (iii) ICO Commercial Credit; (iv) ICO Red. es Accelerate; (v) ICO Exporters 2022; (vi) ICO International 2022; and (vii) ICO International Channel 2022, whose most notable characteristics are:

- ***Línea ICO Empresas y Emprendedores 2022*** (*ICO* Enterprises and Entrepreneurs Line):

Among others, independent professionals and public and private enterprises - both Spanish and foreign - who carry on their business activity in Spain may apply for these loans, irrespective of where their registered office for commercial or tax purposes is located and of whether the greater part of their capital is Spanish or foreign.

Transactions wil be processed directly via credit institutions with which the ICO has executed a cooperation agreement for the implementation of this line.

The financing (which can take the form of loan, leasing arrangement, renting arrangement of line of credit) may be used for:

1. Investment projects and/or general requirements of the activity (e.g., liquidity needs: current expenses, payrolls, payments to suppliers, purchases of goods, etc.).

2. Technological requirements, such as, in particular, the digitalization projects to promote teleworking set forth in the SME Acelera Program.

3. Acquisition of new or second-hand fixed assets.

4. Passenger cars and industrial vehicles.

5. The fitting-out and refurbishment of installations.

6. Acquisition of businesses.

7. Renovation or refurbishment of buildings, common elements and dwellings (in the case of owners' associations, groupings of owners' associations and private individuals).

The maximum amount per client and year will be 12.5 million euros, in one or more transactions, while the repayment and grace periods will range between one of the following options:

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i. Between 1 and 6 years, with a grace period of up to one year for the repayment of principle.

ii. Between 7 and 9 years, with a grace period of up to two years.

iii. Of 10, 12, 15 and up to 20 years, with a grace period of up to three years.

The foregoing periods will apply independent of the items that are to be financed.

Regarding the applicable interest rate, the client can choose between a fixed or variable rate. In the latter case, the interest rate will be reviewed weekly by the credit institution in accordance with the provisions of the related financing agreement.

The Annual Percentage Rate (APR) applicable to the transaction comprises the cost of the initial fee applied by the credit institution plus the interest rate, and cannot surpass the following limits:

- 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% margin.
- For forward transactions of 5 or more years: Fixed or variable interest rate plus a margin of up to 4.30%.

As regards fees, the credit institution may charge a fee at the start of the transaction which, together with the interest rate set by the credit institution, may not exceed the maximum APR that the credit institution can apply to the transaction according to its term.

In addition, where the transaction has been formalized at a fixed rate, a voluntary early repayment fee may be charged which will be 1% of the amount cancelled. On the other hand, where it has been formalized at a variable rate, a maximum fee of 0.50% will be charged, depending on the residual life of the transaction on the settlement date of the repayment.

In the case of mandatory early repayment, a fee will be charged in respect of a penalty equal to 2% of the amount improperly formalized.

Transactions can be executed with the credit institution throughout the whole of the year 2022 and the financing obtained will be compatible with any aid received from the autonomous communities and other institutions.

- ***Línea ICO Garantía SGR/SAECA (Sociedad de Garantía Recíproca/Sociedad Anónima Estatal de Caución Agraria) 2022*** (ICO Mutual Guarantee Society Guarantee/ State-owned Agricultural Surety Corporation Guarantee Line):

Independent professionals, public and private enterprises and entities that have a guarantee or surety from a Mutual Guarantee Society or the State-owned Agricultural Surety Corporation, regardless of their registered office or tax domicile or of the nationality of their capital, can apply for these loans to make productive investments inside or outside Spain and/or to cover their liquidity needs.

However, an entity applying for financing to make an investment outside Spain and/or to cover liquidity requirements must be domiciled in Spain or its capital must be at least 30% Spanish owned.

These transactions will be processed directly through credit institutions with which the ICO has executed a cooperation agreement for this product, vis-à-vis Mutual Guarantee Societies or vis-à-vis the State-owned Agricultural Surety Corporation. In fact, the Mutual Guarantee Society/ State-owned Agricultural Surety Corporation and the credit institution itself to which the application is submittedwill be responsible for studying, processing, approving and/or rejecting the transaction.

The financing may be used for:

1. Liquidity needs and in particular, working capital needs to attend to operating expenses, payroll, payments to suppliers, purchase of goods, etc.

2. Productive investments inside and outside Spain:

   - Acquisition of new or second-hand fixed assets.
   - Passenger cars and industrial vehicles.
   - Fitting out and refurbishment of installations.
   - Acquisition of businesses.
   - Formation of businesses.

The maximum amount that can be applied for is 2 million euros, in one or more transactions per client and year.

The financing may be formalized in the form of a loan, leasing arrangement or line of credit and, when its intended purpose is “Investment”, up 100% of the project can be financed. The Mutual Guarantee Society/State-owned Agricultural Surety Corporation may decide the amount of the transaction to be guaranteed, which may be up to 100%.

The client will be able to choose from among various repayment periods and grace periods, depending on the use to be given to the financing:

i. Between 1 and 6 years, with the possibility of a grace period of up to 1 year for the repayment of principal.

ii. Between 7 and 9 years, with the possibility of a grace period of up to 2 years.

iii. Of 10, 12 and 15 years, with a grace period of up to 3 years.

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The foregoing will apply independent of the items that are to be financed.

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 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 (without considering the application/opening fee applied to the client). This maximum annual cost may not exceed (i) the fixed or variable interest rate plus up to 2.3% for forward transactions equal to 1 year; (ii) the fixed or variable interest rate plus up to 4% for forward transactions of 2, 3 or 4 years; and (iii) the interest rate (whether fixed or variable) plus up to 4.30% for forward transactions equal to or over 5 years.

As regards fees, the Mutual Guarantee Society or State-owned Agricultural Surety Corporation may charge a study fee of up to 0.50% of the secured amount of the transaction. In addition, the credit institution may charge a fee at the start of the transaction.

In the case of voluntary early repayments, a fee will generally be charged equal to 1% of the amount cancelled where the transaction has been formalized at a fixed rate. A maximum fee of 0.5% will be charged where it has been formalized at a variable rate, depending on the residual life of the transaction on the settlement date of the repayment. In the case of mandatory early repayments, a fee will be charged in respect of a penalty equal to 2% of the amount improperly formalized.

The Mutual Guarantee Society may charge the client at the start of the transaction a fee of up to 4% of the secured amount of financing in respect of a mutual entity membership fee which will be returned to the client when the relationship ends. The Statute-owned Agricultural Surety Corporation does not charge a mutual entity membership fee.

The Mutual Guarantee Society, the State-owned Agricultural Surety Corporation ant the credit institution will evaluate the application for financing and, having regard to the applicant's solvency and the project's viability, may require the provision of guarantees.

Transactions can be executed throughout the whole of 2022 and the financing obtained will be compatible with any aid received from the autonomous communities and other institutions.

- ***Línea ICO Crédito Comercial 2022*** (*ICO* 2022 Commercial Credit Line)

  This credit line can be applied for by independent professionals and enterprises with registered office in Spain who (i) issue invoices arising from firm sales of goods and services to a debtor located within Spanish territory or (ii) have a supporting document agreed with another company with registered office in Spain whereby the purchasing company undertakes to acquire goods from the company applying for the financing.

  Specifically, such financing will be used to:

  - Obtain liquidity through the payment of advances on their billings in respect of their commercial activity within national territory.
  - Cover prior production or manufacturing costs of goods or services sold in Spain.

  The advance payment of invoices with a maturity of not more than 180 days after the date of the transaction 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 national 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 euros of outstanding balance per client per year, in one or more installments.

  The financial institution and the client may execute the financing agreement that the parties freely agree upon.

  As regards the applicable interest rate, a variable interest rate will be applied, the conditions, dates and settlement method being those agreed upon with the credit institution in the corresponding financing agreement.

  The credit institution may establish a fee at the start of the transaction which, together with the interest rate set by the credit institution, may not exceed the maximum APR applicable to the transaction. In the case of a mandatory early repayment, a fee of 1% of the amount improperly formalized will be charged as a penalty.

  The Annual Percentage Rate (APR) applicable to the transaction will comprise the cost of the initial fee established by the credit institution plus the interest rate. The APR may not exceed the interest rate plus up to 2.30%.

  Transactions can be executed with the credit institution throughout the whole of the year 2022 and this financing will be compatible with other aid received from the autonomous communities or other institutions.

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- ***Línea ICO Red.es Acelera (ICO Red.es Accelerate Line)***

  The beneficiaries of aid indicated in the calls for applications published by Red.es such as, for example, companies, foundations, associations, professional associations, universities, technological centers and technological innovation support centers, etc., can apply for this financing.

  The financing can used for projects for which the grant of aid by Red.es is approved, in accordance with the rules of the relevant call for applications for aid. By way of example, these include:

  1. Experimental development projects, such as the creation of prototypes, the preparation of pilot projects or the testing and validating of new or improved products, processes and services in technologies such as artificial intelligence, 5G, mass data and information processing, blockchain, robotics, micro/nanoelectronics, 3D printing, digital content (specifically, the making available of data on a mass scale and in reusable formats, video games, audiovisual contents, etc.).

  2. Projects that foster the development, promotion and adoption of digital technologies that can stimulate demand, as well as the development of projects that drive growth and entrepreneurship in the technological field.

  The transactions will be processed directly through credit institutions that partner with the ICO in this product and such credit institutions will decide whether or not to grant the financing. Beforehand, the client must have obtained approval for the project and the related aid at Red.es, on the dates and the terms set in the relevant call for applications.

  The financing will take the form of a loan and may cover up to 100% of the amount of the project (less the amount of any advance payment if requested) with the following repayment and grace periods:

  - From 1 to 6 years with the possibility of a grace period of up to one year for the repayment of principal.
  - From 7 years with the possibility of a grace period of up to 2 years.

  As regards the applicable interest rate, the client can choose between a fixed and variable interest rate. If the transaction was formalized 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 credit institution may charge a fee at the start of the transaction, the cost of which, together with the interest rate, may not exceed the maximum APR that the credit institution may apply to the transaction according to its term. In addition, a fee for voluntary early repayment may be applied equal to 1% of the amount cancelled if the transaction has been formalized at a fixed rate. Where it has been formalized at a variable rate, the credit institution may apply, depending on the residual life of the transaction, a maximum fee:

  - Of 0.05% to transactions with a residual life of up to 2 years.
  - Of up to 0.15% to transactions with a residual life greater than 2 years and less than 5 years.
  - Of 0.40% to transactions with a residual life greater than 5 years.

  In the case of mandatory early repayment, a fee will be charged in respect of a penalty equal to 2% of the amount improperly formalized.

  The Annual Percentage Rate (APR) applicable to the transaction comprises the cost of the initial fee applied by the credit institution plus the interest rate, and cannot surpass the following limits:

  - For 1-year forward transactions: Fixed or variable interest rate plus a margin of up to 2.30%.
  - For 2- and 3- or 4-year forward transactions: Fixed or variable interest rate, plus a margin of up to 4%.
  - For forward transactions of 5 or more years: Fixed or variable interest rate, plus a margin of up to 4.30%.

  Transactions can be formalized with the credit institution up to March 31, 2024 and the financing obtained will be compatible with the receipt of other subsidies or aid for the same eligible project originating from any government or public entity provided that the regulatory orders or legislation applicable in each case so permits.

  Mention should also be made of the Guarantee Lines also offered by the ICO, including most notably, for 2022, the following: (i) Guarantee Line for independent professionals and enterprises pursuant to Royal Decree-Law 8/2020, and (ii) Guarantee Line for Investment pursuant to Royal Decree-Law 25/2020.

- ***Guarantee Line for independent professionals and enterprises pursuant to Royal Decree-Law 8/2020***

  Pursuant to the provisions of article 29 of Royal Decree-Law 8/2020, of March 17, 2020, the Spanish government approved a special Guarantee Line of up to €100 billion from the Ministry of Economic Affairs and Digital Transformation to facilitate the maintenance of employment and alleviate the economic effects stemming from the recent health crisis caused by COVID-19.

  Specifically, this Guarantee line managed by the ICO seeks to make it easier for enterprises and independent professionals to access credit and liquidity to alleviate the economic effects of COVID-19, thereby guaranteeing liquidity and covering their working capital needs.

  Through the Resolutions of the Council of Ministers of March 24, April 10, May 5 and 19 and June 16, 2020,

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the Spanish government has been activating the different tranches of the line in the amount of €20 billion (the first four) and €7.5 billion (the last one), of which €2.5 billion are earmarked for enterprises in the tourism sector and connected activities for SMEs and independent professionals and €500 million are earmarked to cover the acquisition or financial or operating lease by enterprises and independent professionals of land transportation vehicles for professional use.

This Guarantee Line covers new loans and other forms of financing as well as the renewals of loans already granted by financial institutions to meet enterprises' financing needs aimed at covering (i) wage payments; (ii) unsettled invoices from suppliers; (iii) rent for premises, offices and facilities; (iv) utilities expenses; (v) need for working capital; and (vi) other liquidity needs including those arising from financial or tax obligations that have fallen due. However, this Line cannot be used for loan consolidation or restructuring or the cancellation or prepayment of pre-existing debts.

Enterprises and independent professionals from any business sector that have their registered office in Spain and that have been affected by the COVID-19 economic crisis can avail themselves of this Line, provided that:

- The loans and transactions have been formalized or renewed on or after March 18, 2020.
- The enterprises and independent professionals: (i) are not in default according to the files of the Bank of Spain's Risk Information Center (CIRBE) as of December 31, 2019; (ii) are not subject to insolvency proceedings as of March 17, 2020, either because they have filed an insolvency petition, or because the circumstances referred to in article 2.4 of Insolvency Law 22/2003, of July 9, 2003, exist for an insolvency order to be requested by their creditors; or, (iii) where the European Union's State Aid Temporary Framework applies, they do not qualify as a distressed enterprise as of December 31, 2019 in accordance with the criteria set out in article 2(18) of Commission Regulation (EU) No 651/2014 of June 17, 2014 declaring certain categories of aid compatible with the internal market.

Financial institutions can apply for the guarantee for loans and transactions signed with independent professionals and enterprises that are formalized or renewed on or after March 18, 2020. The maximum amount of the loans that can be guaranteed under this line will depend on the limits established in the applicable European legislation on state aid (and, therefore, on whether or not they meet the requirements of Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid or of the Temporary Framework for State aid approved by the European Commission).

The maximum term of the guarantees (not yet released) has been extended from a maximum term of 5 to 8 years following the approval of the Resolution of the Council of Ministers of November 24, 2021. In these cases, the term of the guarantee issued will coincide with the term of the transaction.

Lastly, the period for requesting any of the guarantees described here has been extended to June 1, 2022 by the Resolution of the Council of Ministers of November 30, 2021.

- **Guarantee Lines for Investment pursuant to Royal Decree-Law 25/2020**

Pursuant to article 1 of Royal Decree Law 25/2020, of July 3, 2020, the Spanish government approved a Guarantee Line of €40 billion from the Ministry of Economic Affairs and Digital Transformation in order to secure the financing granted to enterprises and independent professionals aimed mainly at meeting their financing needs stemming from new investments.

Through the Resolutions of the Council of Ministers of July 28, November 24 and December 22, 2020 and May 28, 2021, the Spanish government has activated six tranches of this financing line, of which some will be managed by the ICO.

Specifically:

1. First tranche, endowed with: €8 billion, split into two subtranches:
   - Up to €5 billion to secure the financing granted to independent professionals and SMEs to meet their liquidity needs and, in particular, those stemming from new investments.
   - Up to €3 billion to secure the financing granted to enterprises that do not have SME status to meet their liquidity needs.
2. Second tranche, for an additional €2.55 billion to secure financing transactions for enterprises and independent professionals that are in the execution phase of an arrangement with creditors within an insolvency proceeding, but that are up to date with their obligations in accordance with the arrangement and can prove it with a report from the court or the insolvency manager.

   A subtranche of €50 million is also included to secure issues of promissory note programs on the MARF.
3. Third tranche, endowed with an additional €250 million to secure promissory notes issued on the MARF by enterprises that could not avail themselves of the tranche made available in the first Line since their promissory note program was in the renewal phase.
4. Fourth tranche, endowed with €500 million, aimed at securing the financing granted to SMEs and independent professionals in the tourism and hospitality industry and connected activities to meet their needs stemming from new investments, as well as liquidity needs.

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5. Fifth tranche, endowed with €500 million to reinforce the guarantees from CERSA and to increase the capacity of the Mutual Guarantee Societies.

6. And a sixth tranche, in the amount of €15 billion, of which €10 billion will be targeted at SMEs and independent professionals, at non-SMEs and earmarked for guaranteeing financing granted to make investments that support the recovery of the Spanish economy, and for covering their liquidity needs.

Specifically, this Guarantee Line seeks to foster and support the grant of fresh financing to independent professionals and enterprises by financial institutions so that such independent professionals and enterprises can make new investments in Spain, aimed at (i) adapting, extending or renewing their production and service capacities, or (ii) restarting or reopening their business.

The financing obtained by independent professionals and enterprises must be used for one or more of the following purposes: (i) new investment within Spain, including current and capital expenses linked to the investment, provided that the latter are justified, where "new investment" means that made in first-use or second-hand assets, acquired (with first invoice date) on or after July 29, 2020, VAT or analogous tax included; (ii) investment and/or current and capital expenses aimed at extending, adapting or renewing production or service capacities; (iii) investment and/or current and capital expenses aimed at restarting or pursuing the business; (iv) current and capital expenses associated with or aimed at, among others, acquiring, renting, leasing – under a finance or "renting" arrangement – equipment, machinery, facilities, supplies of materials and goods and services related to the investment and/or activity of the enterprise; and (v) billing needs arising, among others, from wage payments, invoices or current maturities of financial or tax obligations. However, this Line cannot be used for loan consolidation or restructuring or the cancellation or prepayment of pre-existing debts.

Enterprises and independent professionals from any business sector that have their registered office in Spain and that have been affected by the COVID-19 economic crisis can avail themselves of this Line, provided that:

1. The loans and transactions have been formalized or renewed on or after July 29, 2020.

2. The enterprises and independent professionals: (i) are not in default according to the files of the Bank of Spain's Risk Information Center (CIRBE) as of December 31, 2019; (ii) are not subject to insolvency proceedings as of March 17, 2020, either because they have filed an insolvency petition, or because the circumstances referred to in article 2.4 of Insolvency Law 22/2003, of July 9, 2003, exist for an insolvency order to be requested by their creditors; or, (iii) where the European Union's State Aid Temporary Framework applies, they do not qualify as a distressed enterprise as of December 31, 2019 in accordance with the criteria set out in article 2(18) of Commission Regulation (EU) No 651/2014 of June 17, 2014 declaring certain categories of aid compatible with the internal market.

Financial institutions can apply for the guarantee for loans and transactions signed with independent professionals and enterprises that have been formalized or renewed since July 29, 2020.

The maximum percentage of coverage of the guarantee varies according to who applies for it:

- In the case of independent professionals and SMEs, the guarantee will amount to a maximum of 80% of the transaction.

- For other enterprises that do not have SME status, the guarantee will cover 70% of the principal of the transaction at the most.

New loans formalized under this guarantee program can be combined with other transactions that already have the State Guarantee in accordance with Royal Decree 8/2020, which should be taken into account by the institutions and clients with respect to eligibility, limits and verification.

Transactions up to €50 million which have been approved by the institution in accordance with its risk policies will be guaranteed, subject to subsequent verifications regarding their eligibility conditions.

Transactions exceeding €50 million will be guaranteed once the ICO has analyzed the fulfillment of the eligibility conditions supplementing the financial institution's analysis.

As for the period for requesting the guarantees, it has been extended to June 1, 2022 by the Resolution of the Council of Ministers of November 30, 2021.

It should also be noted that, in addition to the above guarantee lines granted as a result of COVID-19, the Council of Ministers approved, through Royal Decree-Law 5/2021 of March 12, 2021, a package of measures aimed at making loans that have the State guarantee more flexible, for the renegotiation of enterprises' and independent professionals' debt with financial institutions that comply with the Code of Good Practices regulated under the Resolution of the Council of Ministers of May 11 and the Resolution of the Council of Ministers of November 30.

Lastly, given its purpose, the **ICO 2022 International, Tranche I "Investment and Liquidity" Line, the lines relating to Exporters 2022 and International 2022 Tranche II "Medium- and Long-term Exporters", and the ICO International Channel 2022 line** will be examined in section 7 below, on "Internationalization Incentives".

For more information in this connection, please see the ICO website.

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GUIDE TO BUSINESS IN SPAIN 2022

/ 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, *inter alia*:

- *FIEM* (enterprise internationalization fund, managed by the Ministry of Industry, Trade and Tourism through the Office of the Secretary of State for Trade).
- *FIEX* (fund for investments abroad, managed by the Spanish Development Finance Company – Compañía Española de Financiación del Desarrollo or "*COFIDES*").
- *FONPYME* (operating fund for SME investments abroad, managed by *COFIDES*).
- *CRECE + INTERNACIONAL* (line of financing managed by *COFIDES* through *COFIDES*, *FONPYME* or *FIEX* funds).
- *Pyme* Invierte (managed by *COFIDES*).
- Programs for the Conversion of Debt into Investment managed by the Ministry of Economy and Enterprise.
- The *ICO* Internationalization, Support for Exports Lines, etc.

Of all the foregoing financial instruments, particular regard must be had to the *FIEM*, the *FIEX* and the *FONPYME*, as well as the lines promoted by *ICO* in connection with internationalization, such as Línea *ICO-Internacional 2022, Línea ICO-Exportadores 2022* and *Línea ICO-Canal Internacional*.

Certain lines for the financing of specific sectors of economic activity (such as, inter alia, the *FINTEC* or *FINCONCES* lines targeted at new technologies industries or infrastructure concession), which had been offered by COFIDES and to which we referred in previous versions of the Guide, are no longer operative. This is because *COFIDES* has considered it more suitable (in the interest of greater simplification) to offer financing to all enterprises, regardless of the sector in which they operate, through the same lines of financing:

A. *FIEM:*

The FIEM is a fund without separate legal personality, conceived with the sole aim of offering official financial support for the internationalization of Spanish companies and for the implementation of direct investments abroad. To this end, it offers financing for the conclusion of contracts for the export of Spanish goods and services, signed by companies resident in Spain with nonresident customers, as well as for foreign investment projects undertaken by Spanish companies to expand their production capacity or the provision of goods or services, on a concessional or commercial basis, respectively.

Specifically, the *FIEM* finances (i) transactions and projects of special interest to the strategy to internationalize the Spanish economy; (ii) the technical assistance required by such transactions and projects and (iii) technical assistance and consultancy services of special interest to

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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.

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, unless they have a major ripple effect on internationalization and have a high technology content. In addition, projects undertaken in the fossil fuel sector are not eligible for this financing in order to bring an end to financing for coal, oil and gas by the end of 2022.

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.[1]

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 internationalization of the Spanish economy, in the corresponding contribution. In this connection, please note the list of 28 countries which are to be given priority according to the 2022 Guidelines.[2]

The Office of the Secretary of State for Trade is responsible for selecting the projects to be financed, drawing up the profiles and viability studies required to analyze the projects, assess financing proposals and oversee the execution and assessment of the projects. For its part, the Official Credit Institute acts as finance agent, formalizing, in the name and behalf of the Spanish government and on behalf of the State, the relevant credit, loan or donation agreements as well as all the financial services relating to authorized transactions financed by the FIEM.

The three types of financing offered through the FIEM are: (i) loans, credits or credit facilities repayable on commercial terms; (ii) loans, credits or credit facilities repayable on concessional terms and (iii) non-repayable financing for investment projects, of which full details can be found in the information published by the Secretary of State for Trade on its website.

B. *FIEX:*

The purpose of the ***FIEX*** is to foster the internationalization and business activities of Spanish companies and, in general, the Spanish economy, through direct investments in minority and short-term 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.) in viable private projects abroad in which there is some type of Spanish interest.

The maximum amount of the **financing** is €30,000,000 subject to a minimum amount of €250,000.

C. *FONPYME:*

The *FONPYME* is intended to finance direct short-term and minority holdings in the capital stock or equity of small and medium-sized Spanish companies located in Spain, for their internationalization, or of Spanish companies located outside Spain, through participative financial instruments. Additionally, according to the provisions of 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, and in private investment funds, provided that they foster the internationalization of the Spanish enterprise or economy. The maximum amount of the financing is €5,000,000, with a minimum of €75,000 per transaction.

D. *CRECE + INTERNACIONAL:*

This program, through capital or quasi-capital instruments, finances the establishment in new markets of SMEs and small and mid-capitalization companies, and the growth of such companies in markets in which they already have a presence.

To be eligible, Spanish companies are required to have: (i) a strategic plan that includes the implementation of internationalization projects in one or more markets (the projects must be technically and economically viable and have a positive impact on the country receiving the investment); (ii) a controlling interest in the subsidiary; (iii) audited financial statements reflecting revenues of between 10 and 150 million euros and sufficient EBITDA; (iv) a workforce of between 10 and 500 employees; (v) a sustainable financial position, and (vi) sound and verifiable financial projections that reflect expected growth in revenues and/or employment in the period concerned.

The program can take various forms, depending on the objective to be fulfilled through the internationalization of the business, namely: (i) *CRECE + INTERNACIONAL* (linked to the company's growth plan); (ii) *CRECE + INTERNACIONAL + DIGITA* (involving the digitalization of the subsidiary or

1 In line with the other measures adopted by the Central Government to help enterprises confront the economic impact of the COVID-19 public health crisis, several changes were approved in June 2020 with respect to the FIEM SME Line (created in April 2019 to support the small and medium-sized exporter). The main changes consisted of extending (i) the allocation by an additional €100 million, (ii) the amount eligible for financing per transaction from €3 to €10 million and (iii) the repayment period from 8 to 10 years.

2 Priority countries according to the 2020 Guidelines:

- America: Brazil, Canada, Chile, Colombia, the US, Mexico and Peru.
- Asia: Philippines, Indonesia, Uzbekistan, Vietnam, Japan and India.
- Oceania: Australia.
- Africa, Mediterranean and Middle East: South Africa, Kenia, Morocco, Egypt, Turkey, Saudi Arabia, Qatar, the United Arab Emirates and Israel.
- HIPC countries: Ivory Coast, Senegal, Ruanda, Uganda and Tanzania.

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subsidiaries of industrial companies); (iii) *CRECE + INTERNACIONAL + EDUCA* (training of personnel in the target country); and (iv) *CRECE + INTERNACIONAL + SOSTIENE* (to promote good practices in the areas of Corporate Social Responsibility and sustainability).

The financing may be between €1,000,000 and €30,000,000, the maximum being up to 90% of the need for investment in assets.

E. *PYME INVIERTE* (SME INVEST):

This line offers financing to Spanish SMEs that wish to undertake either a productive investment project outside Spain with financing needs in the medium or long term (more than 3 years), or a start-up of commercial activities outside Spain. Maximum financing will vary according to the SME's objectives:

- In productive investments, the amounts will vary between €75,000 and €10,000,000 and comprise financing of up to 80% of the project's medium and long-term needs, through ordinary and co-investment loans to the Spanish company, subsidiary or branch abroad. The period of financing will be between 5 and 10 years.

  These investments must be aimed at creating or expanding a company or acquiring a pre-existing company, or at financing non-current assets.

- In start-ups of commercial activities, the investment will range from €75,000 though €1,000,000 and will comprise financing of up to 80% of the expenses associated with the enterprise's commercial implementation (expenses incurred on structure, salaries, wages and associated promotional expenses incurred by the subsidiary or branch), through ordinary or coinvestment loans to the Spanish company, subsidiary or branch abroad. The maximum repayment period is 3 years without a grace period.

  This financing is targeted at projects that have an income-generating portfolio of customers in the country in which the investment is to be made.

F. *LÍNEA ICO-INTERNACIONAL* 2022 *TRAMO I "INVERSIÓN Y LIQUIDEZ":* (2022 ICO INTERNATIONAL LINE TRANCHE I "INVESTMENT AND LIQUIDITY")

"***Línea ICO-Internacional* 2022**" is aimed at Spanish independent professionals and publicly-owned and private entities (i.e., enterprises, foundations, NGO's, public authorities), not only 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) which carry out investment projects abroad. It will remain in force for the whole of the year 2022.

The financing can be used for investment projects and/or the general needs of the activity, including: (i) new or second-hand productive fixed assets; (ii) vehicles and industrial vehicles; (ii) acquisition of companies; (iv) creation of enterprises abroad; (v) technological needs; (vi) upgrade and reform of installations; (vii) investments outside Spain; (viii) acquisition of companies or (ix) liquidity needs: operating expenses, payroll, payments to supplies, purchases of merchandise, etc.

The maximum financing is €12.5 million or its equivalent in US dollars (USD) per customer per year, in one or more transactions and may be executed in the form of a loan, leasing arrangement or line of credit.

The repayment period and grace periods are: (i) from 1 to 6 years, with the possibility of a grace period of up to one year for the repayment of principle; (ii) from 7 to 9 years, with the possibility of a grace period of up to 2 years, (iii) or of 10, 12, 15 or 20 years, with the possibility of a grace period of up to 3 years for the repayment of principal.

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.

The customer can choose between a fixed or variable interest rate in the currency in which the transaction was executed.

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 1% of the amount cancelled if the transaction was executed at a fixed rate. Where it was executed at a variable rate, a maximum fee of 0.5% will be applied, depending on the residual life of the transaction on the date on which the repayment is made. In the event of mandatory early repayment, a penalty equal to 2% of the amount cancelled accrues.

G. *LÍNEA ICO INTERNACIONAL* 2022*TRAMO II "EXPORTADORES MEDIO Y LARGO PLAZO"* (2022 *ICO* INTERNATIONAL TRANCHE II "MEDIUM- AND LONG-TERM EXPORTERS LINE")

This financing may be requested by: (i) enterprises with registered office in Spain or with registered office abroad but

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with "Spanish interest"[3] 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 which make purchases of goods or services, with deferred payment, from enterprises with registered office in Spain or with registered office abroad but with "Spanish interest".

In particular, the following items are eligible for financing:

a. Supplier Facility: Financing targeted not only at enterprises with registered office in Spain, but also at those with registered office abroad but with "Spanish interest", 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 or with registered office abroad but with "Spanish interest".

c. Supplementary Financing: Financing required by enterprises with registered office outside Spain which acquire goods or services exported by an enterprise 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 drawdowns, for a maximum amount of €25,000,000, 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 in the currency in which the transaction is executed (euros or USD). 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%.

The repayment deadline and grace period may take any of the following forms:

i. Between 2 and 6 years, with the possibility of a grace period of up to 1 year for the repayment of principal.

ii. Between 7 and 9 years, with the possibility of a grace period of up to 2 years.

iii. 10 and 12 years, with the possibility of a grace period of up to 3 years for the repayment of principal.

The receipt of this type of financing is compatible with any other aid that may be granted by the autonomous communities or other public institutions.

The client may choose between a fixed or variable interest rate in the currency in which the transaction was formalized. If variable, the rate will be reviewed every six months by the credit institution in accordance with what is established in the financing agreement.

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 (either 1% of the amount cancelled, if the transaction was formalized at a fixed rate, or a maximum of 0.5% if it was executed at a variable rate, having regard to the residual life of the transaction on the date on which the repayment is made) or mandatory (in which case it would incur a penalty of 2% of the amount cancelled).

Transactions may be formalized throughout the whole of 2022.

H. *LÍNEA ICO EXPORTADORES* 2022: (2022 *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 related 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 cancelled prior to the formalization of the transaction consisting of an advance on invoices relating to the goods which were pre-financed.

3 The ICO deems there to be "Spanish interest" for such purposes where the following exists:

- Pursuit of business activities or investments in Spain, regardless of the nationality of the shareholder or holder of the financing..
- Pursuit of business activities or investments outside Spain: (i) if the share of the Spanish enterprise in the capital is at least 30% of its capital or (ii) if the supplies, works or services provided by Spanish enterprises entail at least 30% of the total investment in the project.
- Business activities and acquisition of Spanish goods and services by nonresident enterprises.
- Direct or indirect holding of a Spanish company in the capital stock of the foreign company holding the financing.
- Other cases, to be assessed in each transaction having regard to the specific circumstances of the project or of the enterprise.

In any case, the ICO must authorize the existence of "Spanish interest" having regard to the circumstances of the transaction.

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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 can be financed, provided that the outstanding balance does not exceed a maximum of €12,500,000 per customer and year, in one or more drawdowns.

The APR on the operation will be composed of the cost of the initial fee established by the credit institution plus the interest rate. In no case can the APR exceed the maximum limit established by the *ICO.*

The interest rate applied to the customer will be variable and, as with the dates and method of payment, will be agreed between the credit institution and the customer within the framework of the agreement formalized.

Lastly, it should be mentioned that the credit institution can charge a fee at the start of the operation, although such fee added to 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% of the amount cancelled.

Transactions may be formalized throughout the whole of 2022, this instrument being compatible with other aid received from the autonomous communities or from other institutions.

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8.1 NEXT GENERATION EU

Against the backdrop of the global health crisis caused by the COVID-19 pandemic and in order to respond to the serious social and economic impacts stemming from such pandemic, the European Council held a special meeting from July 17 to 21, 2020, which resulted in an agreement to approve a raft of extraordinary measures aimed at supporting the recovery of the economy of the European Union and its Member States in this difficult environment.

Accordingly, and coupled with reinforcing the Union's multiannual budget for 2021-2027, endowed with €1,074 billion, the creation of the European Recovery Instrument "Next Generation EU" ("NextGen") was approved. The instrument seeks to mobilize up to €750 billion during the period from 2021 to 2023, of which €390 billion will be structured as non-repayable financial transfers to the Member States, that is, as outright grants, and €360 billion will be earmarked for loans. In short, a total of €1.8 trillion in aid for the recovery of the European economy, representing the largest ever stimulus package financed out of European funds.

Of the €750 billion available to the Member States, Spain is one of the main recipients, with projected aid of around **€140 billion (between non-repayable transfers and loans)**. The mobilization of such a significant volume of resources opens up a special opportunity for Spain, comparable to the economic transformation process that it underwent when it joined the Union.

To fund the recovery, the EU will go to the international debt market thanks to the new possibility provided for in Council Decision 2020/2053, of 14 December 2020, on the system of own resources of the European Union (**"Own Resources Decision"**), which was ratified by all the Member States at the end of May 2021.

The legal basis for the European Recovery Instrument lies in Council Regulation (EU) 2020/2094, of 14 December 2020, the objective of which is to drive the transformation and modernization of the Member States' economies, mainly from the standpoints of the green and digital transition, while also contributing to the recovery and enhanced resilience of the European Union as a whole against future crises.

The measures that the Recovery Instrument seeks to finance are essentially aimed at (i) restoring labor markets and creating jobs; (ii) reinvigorating potential for sustainable growth and strengthening cohesion among Member States; (iii) providing support to businesses affected by the impact of the COVID-19 crisis, in particular SMEs; (iv) strengthening research and innovation as mechanisms to respond to crises; (v) enhancing the Union's preparedness for serious emergencies; (vi) ensuring a just transition to a climate-neutral economy; and (vii) increasing the ability to respond in this context also from the standpoint of agriculture and rural development.

8.1.1 EUROPEAN RECOVERY AND RESILIENCE FACILITY

Structurally, NextGen is made up of 7 individual programs, among which the total budget of the Instrument will be allocated as follows:

- Recovery and Resilience Facility: €672.5 billion.
- REACT-EU: €47.5 billion.
- Horizon Europe: €5 billion.
- InvestEU: €5.6 billion.
- Rural Development: €7.5 billion.
- Just Transition Fund: €10 billion.
- RescEU: €1.9 billion.

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Given its quantitative scope, it is worth taking note of the "Recovery and Resilience Facility" (***RRF)*** which seeks to provide financial aid that enables the Member States to undertake the reforms and investments required to transform their economies in the medium and long terms, in accordance with their respective National Recovery and Resilience Plans. These Plans must be consistent with the national reform programs, with the priorities set for each country in the European Semester for coordinating economic policies ("**European Semester**") and must be aligned with the goals set in the Paris Agreement, the National Energy and Climate Plans, the Just Transition Plans, the Youth Guarantee implementation plans, the operational programs adopted under the Union funds, as well as with the UN Sustainable Development Goals, among others.

The RRF is governed by Regulation (EU) 2021/241, of 12 February 2021, of the European Parliament and of the Council, and its scope of application is structured around the following **6 pillars**:

1. Green transition.
2. Digital transformation.
3. Smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs.
4. Social and territorial cohesion.
5. Health, and economic, social and institutional resilience.
6. Policies for the next generation, children and the youth, such as education and skills.

The total amount of the resources allocated to the RRF is broken down into (i) €312.5 billion for non-repayable aid or grants and (ii) €360 million for loans.

One of the distinctive features of this facility is the swiftness with which the resources are intended to be effectively implemented by the Member States: 70% of its amount (roughly €48.7 billion in Spain's case) must be legally committed by December 31, 2022, and the remaining 30% (€20.8 billion in Spain's case) by December 31, 2023. According to the preamble to the Regulation, this is to ensure that the financial aid is effective and is frontloaded in the initial years after the COVID-19 crisis.

As already noted, although most of the resources made available to the Member States to implement their respective National Plans will be structured through non-repayable transfers, the Regulation also envisages the possibility of the aid taking the form of loans, subject, in such case, to the conclusion of a specific agreement with the Commission, on the basis of a duly substantiated request by the Member State concerned. This application should be justified by the higher financial needs linked to additional reforms, in particular for the green and digital transitions, and by a higher cost than the maximum financial contribution allocated to the State concerned via the non-repayable contribution. It will be formalized by means of a loan agreement between the Commission and the Member State concerned, essentially specifying its amount, average maturity, the pricing formula, maximum number of installments and repayment schedule.

In the case of Spain, according to Annex IV of the Regulation, the amount of the non-repayable financial aid (or the maximum financial contribution allocated) is €69,528 million.

In any event, as a general rule, the actual release of the funds to the Member States will take place in installments and will be conditional on the satisfactory fulfillment of the milestones and targets set out in the respective Recovery and Resilience Plans. For this purpose, the Regulation stipulates that States can submit requests for payment twice a year, although States may obtain an advance (pre-financing) of an amount of up to 13% of the financial contribution granted, if they so request when submitting their National Plan and which will be paid within two months after its approval by the Commission.

The above entails that, before the Commission decides to disburse the financial contribution (whether a non-repayable transfer or a loan), it should ask the Economic and Financial Committee for its opinion on the satisfactory fulfillment of the relevant milestones and targets by the Member States on the basis of a preliminary assessment by the Commission. If, exceptionally, one or more Member States consider that there are serious deviations from the satisfactory fulfillment of the relevant milestones and targets, they may request the President of the European Council to refer the matter to the next European Council for examination.

In addition, the Regulation introduces a number of measures linking the possibility of qualifying for the funds offered by the Facility to the implementation of sound economic governance. If a State fails to comply, the Council may, following a proposal by the Commission, suspend all or some of the commitments or payments subject to a maximum of 25% of the commitments or 0.25% of nominal GDP, depending on the specific case.

8.1.2 SPANISH ECONOMIC RECOVERY, TRANSFORMATION AND RESILIENCE PLAN

As noted, to be able to receive the funds from the RRF, Member States must submit a National Recovery and Resilience Plan including a description of the reforms and investments to be undertaken, as well as the measures required to implement them.

In the case of Spain, and after the Spanish government submitted it at the end of 2020, its respective national Recovery, Transformation and Resilience Plan (***"RTRP"***) was approved, following a favorable report from the Commission, by the EU Economic and Financial Affairs Council (ECOFIN) on July 15, 2021, based on the projected allocation of €70 billion through non-refundable grants, to be disbursed mostly in the 2021-2023 period, and a further €70 billion through "soft" loans, to be disbursed after 2023.

Based on these figures, the General State Budget for 2021 established a €27 billion allocation out of NextGen funds, of

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which Spain has so far received €19 billion (70%), following the Commission's positive assessment of the fulfillment of the first 52 milestones committed to by Spain under its Plan.

The RTRP is structured around **4 strategic or cross-cutting pillars**, which will form the backbone of the transformation of Spain's entire economy and guide the recovery process, spurring the structural reforms and investments that are implemented. In particular, these pillars are:

1. **Green transition**, as a key element in the reconstruction phase, based on the circular economy as a lever for **industrial modernization**, **the strategic framework of energy and climate** as a parameter for the **transition of the energy system, water management** and its infrastructure, the resilience of the coast or soil quality and sound territory management.

   The objective is to attain a climate-neutral economy, boosting, in keeping with the National Integrated Energy and Climate Plan, public and private investment that makes it possible to reorient the production model, driving **decarbonization, energy efficiency, the deployment of renewable energy sources, the electrification of the economy, the development of energy storage** and solutions based on nature and improved resilience in all economic sectors.

2. **Digital transformation,** ensuring that society as a whole has **access** to **digital environments** and fostering the **digitalization of enterprises** (particularly SMEs and startups) and industry, R&D&I and digital skills training for people.

   To this end, the Plan seeks to support, in keeping with the 2025 Digital Agenda for Spain, the urgent modernization of the business world, driving its internationalization, the renewal of its technological capital and its adaptation as well to the green transition, backing it with infrastructure and services that open up new opportunities for enterprises, reducing digital divides, with reliable technologies that promote a dynamic and sustainable economy, including vectors like cybersecurity, the data economy and artificial intelligence.

3. **Gender equality**, as a key factor for growth and social justice, **reducing structural** barriers that hinder women's access to the labor market on an equal footing and with equal rights, **raising the female employment rate** and strengthening, improving and reorganizing the long-term care system, as well as **increasing educational potential** and equality of opportunity.

4. **Social and territorial cohesion**, promoting **employment policies** in quantitative and qualitative terms, paying special attention to young people and continually assessing **strategies aimed at helping people to enter** and re-enter the labor market, **creating high-quality jobs and reducing inequality.**

   In this area, it is considered necessary to **strengthen the care economy,** based on the dependency system, long-term care and home care, as well as to shore up territorial cohesion ties, harnessing the promotion of digitalization and telework so that it translates into a higher degree of market integration that makes it possible to limit the centripetal dynamics of recent decades.

Based on the above pillars, the draft Plan proposes structuring them into **10 policy levers** that cover up to **30 projects or lines of action,** aligned with the **7 European flagship initiatives** approved by the 2021 Annual Sustainable Growth Strategy, as outlined below:

1. **Urban and rural agenda, fight against depopulation and development of agriculture** (to which 16% of the expected funds would be allocated).

   Based on the **key role of cities** in the economic and social transformation, thanks to their **ability to generate activity in the short term** throughout Spain with a **knock-on effect on industry** and other key sectors such as construction, as well as the need to craft **specific measures for depopulated areas** that facilitate the development of new professional projects and to have a sound agri-food system and the highest food safety standards, this policy lever would include projects such as the following:

   - **Action plan for sustainable mobility**, which is safe and connected to urban and metropolitan areas (low emission areas, mass rollout of charging infrastructure, modernization of clean vehicle fleet).
   - **Housing refurbishment and urban regeneration plan** (intelligent applications in buildings, deployment of solar roofs and distributed renewable energy sources).
   - **Transformation and digitalization of the logistics chain of the agri-food and fishery system** (green production, seasonal and proximity consumption, reduced food waste, value generation in the agri-food system from the primary sector to commercial distribution).

2. **Resilient infrastructure and ecosystems** (to which 12.2% of the assigned resources would be allocated).

   Given the ability of infrastructure to **mobilize large volumes of investment in the short term and to generate a structural impact** on society and the economy as a whole, including high-growth industries at the global level in which Spain can achieve a strategic position, this specific policy would include the following projects:

   - **Conservation and restoration of ecosystems** and their biodiversity (green infrastructure, reforestation, fight against desertification).
   - **Preservation of coastal areas and water resources** (restoration, integral water management, treatment, sewerage, reuse, recovery and optimization of water infrastructure).

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- **Sustainable, safe and connected mobility** (modernization, digitalization, safety and sustainability of key transportation and intermodal infrastructure and development of main European corridors).

3. **Just and inclusive energy transition** (to which 8.9% of the total of assigned funds would be allocated).

   Trying to take advantage of a decarbonized, competitive and efficient energy sector that makes it possible to maximize Spain's renewable potential and to improve the competitiveness of several sectors of crucial importance derived from the same, this policy would comprise projects such as the following:

   - **Mass deployment of renewable generation facilities** aimed at developing this generation technology (renewable generation facilities, own use, integration of renewables into construction and production sectors, biogas, wind, marine, energy communities).
   - **Electric infrastructure, promotion of intelligent networks and deployment of flexibility** and storage (technological update of transportation networks and distribution, demand management, storage).
   - **Renewable hydrogen road map** and its industry integration (pilot and commercial projects, support to the energy-demanding industries).
   - **Just transition strategy** (creation of activity in territories affected by the energy transition).

4. **A Government for the 21st Century** (to which 5% of the total resources assigned to the Plan would foreseeably be allocated).

   In order to foster the **updating and improved efficiency and services of the Government,** under this policy in particular, a project would be undertaken to modernize the Government from a broad perspective, which includes, specifically, the **digitalization of the Government** (both at the crosscutting level and in relation to the strategic areas of justice, health, public employment services, public health data, consulate management and territorial administration of the State), the plan to reinforce and deploy **cybersecurity, the energy transition** of the Central Government, **modernization in human resources management,** as well as the **comprehensive reform** and modernization of the **justice system.**

5. **Modernization and digitalization of the industrial fabric and the SME**, recovery of tourism and boost to entrepreneurial Spain (which would take in 17.1% of the resources).

   The aim is to s**upport and strengthen Spanish industry already positioned** in sectors like renewable energy, energy efficiency, electrification or the circular economy and, moreover, to **reorient and align the creation of enterprises** in new value chains, **new products and new markets** associated with the huge global challenges considered, driving both cross-border projects and participation in Projects of Common European Interest, in keeping with the plan to digitalize the entire value chain in sectors that drive growth, without ignoring the key role that tourism plays in the Spanish economy.

   Against this backdrop, the following projects would be included under this policy lever:

   - **Spanish Industrial Policy 2030** aimed at fostering the modernization and productivity of the Spanish industry-services ecosystem, including the following sub-plans: Plan for digitalization of the strategic health, automotive, tourism and trade sectors, for modernization and sustainability of industry, for boosting "green" innovation economies and circular economy strategy.
   - **Boost to the SME,** specifically through a specific digitalization plan, with the reform of financing instruments in support of internationalization, and with the launch of the Spain Entrepreneurial Nation Strategy with a view to promoting the creation and growth of enterprises, and to generate a startup ecosystem.
   - **Modernization and competitiveness** of the tourism sector in order to bolster the resilience, sustainability, diversification and value added of this key sector of the economy, paying special attention to the Balearic Islands, the Canary Islands and depopulated areas.
   - **Digital connectivity**, boost to cybersecurity and **rollout of 5G** to ensure territorial cohesion, driving the technological development and growth of the country based on the country's leading role in high speed networks.

6. **Pact for Science and Innovation and the strengthening of the National Health System** (to which 16.5% of the resources would be allocated).

   Assuming that it is not possible to undertake a transformation of the country without basing it on science and knowledge and in light of the shortcomings that the health crisis has revealed when it comes to the level of investment in science and innovation in general, and in some strategic sectors in particular, it is necessary to adopt forceful measures to rebuild and reinforce both the science and innovation system in addition to the capacities of the Spanish public health system in various areas, by means of the following projects:

   - **National Artificial Intelligence Strategy** (specifically, by promoting Artificial Intelligence in the production system, the economy and the data society).
   - **Institutional reform and strengthening of the capacities of the national science, technology and innovation system** (by reinforcing calls for applications for projects relating to R&D&I, human resources and technical-scientific equipment, reinforcing regular financing for CDTI business projects; creating new

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centers for excellence, promoting specific plans in key areas such as biomedicine, health and vaccine research, the aeronautical industry or advanced computing technologies).

- **Renewal and expansion of the capacities of the National Health System** (particularly by reinforcing the strategic capacities of analysis and prevention, the preservation and promotion of professional talent, technological modernization, equipment renewal, the strategic reserve of medical devices and medicines and the promotion of the industrial sector in line with health needs).

7. **Education and knowledge, ongoing training and skills development** (to which 17.6% of the resources would be allocated).

   Assuming the importance that the **strengthening of human capital** has on the transformative impact sought by the Plan, as well as the need to strategically **tackle the training of society as a whole**, reorienting and harnessing existing talent and skills, the Plan proposes to undertake a raft of linked projects, such as the following:

   - National digital skills plan, including upskilling and reskilling.
   - Strategic plan to boost vocational training.
   - Modernizing and digitalizing the education system.

8. **New care economy and employment policies** (to which 5.7% of the total resources would be allocated).

   Taking into account the need to reinforce the care economy in Spain and, in general, to adapt employment policies, this policy lever would include the following projects:

   - **Action plan for the care economy and the strengthening of equality and inclusion policies** (new telecare networks, modernization of dependent person care systems, new care infrastructure).
   - **New public policies for a dynamic, resilient and inclusive labor market**, aimed at (i) tackling the structural problems of the labor market in Spain (stabilization of temporary layoff procedures (ERTEs), reduction in temporary employment and job instability, simplification of the types of employment contracts, etc.; (ii) the deep reform of active employment policies (improved connection with business needs); and (iii) the promotion of employment integration policies around the deployment of the minimum living wage.

9. **Boosting the culture and sports industry** (to which 1.1% of the total would be allocated).

   Given the essential role that the culture industry plays in generating wealth and employment in Spain, this policy lever envisages providing support to the following projects:

   - **Revitalization of the culture industry,** by providing support to patronage and private support that complements public support, boosting tourism and economic activity deriving from emblematic cultural events, heritage protection, support for areas in demographic decline, etc.).
   - The creation of the **Spain Audiovisual Hub**, with a view to positioning Spain as a go-to center for audiovisual protection and the videogame industry, by simplifying requirements and bolstering the ecosystem of enterprises and professionals from the sector.
   - **Promoting the sports industry,** with the promotion of business meetings, the organization of large sporting events, the promotion of sports tourism, the modernization of sporting infrastructure, and the bolstering of networks of high performance and sports technique centers.

10. **Modernization of the tax system for inclusive and sustainable growth.**

    Given the need to adopt measures to modernize Spain's current tax system in order to guarantee the medium-term financial sustainability of its economy following the increase in public expenditure and debt assumed by the country to cope with the situation brought about by the pandemic, the Plan proposes undertaking a raft of initiatives such as (i) the law to prevent and combat tax fraud, with measures aimed at addressing the underground economy and strengthening the tax system's collection capacity; (ii) adapting the tax system to the reality of the 21st century (with the foreseeable introduction of a tax on certain digital services and on financial transactions); (iii) improving the effectiveness of public spending; and (iv) the sustainability of the public pension system under the Toledo Pact.

Given the challenge that the adequate absorption of these funds poses in the tight timeframe imposed by the European Union, the Spanish government approved – on December 30, 2020 – Royal Decree-Law 36/2020, approving urgent measures for the modernization of government and the implementation of the Recovery, Transformation and Resilience Plan. These measures seek **to facilitate the scheduling, budgeting, management and implementation of the eligible initiatives with a charge to the European Recovery and Resilience Instrument (and, in particular, to the RRF) with a view to (i)** crafting a suitable **governance model** for the selection, monitoring, assessment and coordination of the various investment projects and programs linked to the future National Recovery, Transformation and Resilience Plan; (ii) **adopting horizontal legislative reforms** that make it possible to simplify administrative procedures, particularly in the area of public procurement and subsidies; and (iii) ensuring the **utmost efficiency in spending**, while maintaining the safeguards and controls required by the EU legislation.

Notable among the main changes brought about the Royal Decree-Law are the introduction of a new form of public-private partnership through the mechanism of **Strategic Projects**

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for Economic Recovery and Transformation (known as "*PERTEs*" by the Spanish abbreviation), regarding as such those projects or group of structured projects that (i) represent a **significant contribution to economic growth and to the creation of jobs and to the competitiveness of Spanish industry, due to their positive **knock-on effects** in the domestic market and society; (ii) make it possible to **combine knowledge, experience, financial resources** and economic operators to **remedy significant market or systemic shortcomings** and social challenges; (iii) have a **significant innovative character or added value** in terms of R&D&I; (iv) stand out for **their quantitative or qualitative significance** or because they display a very high level of technological or financial risks; (v) **favor the integration and growth of SMEs** and the generation of collaborative environments; and (vi) c**ontribute in a specific, clear and identifiable manner to one or more objectives of the National Recovery, Transformation and Resilience Plan**, as well as to the goals set at the European level in the European Recovery Instrument.

It will fall to the **Council of Ministry to declare a project as a Strategic Economic Recovery and Transformation Project,** and its implementation will be structured, in each case, through as many mechanisms as may be envisaged in the law, respecting at all times the principles of equality and non-discrimination, competition, disclosure, transparency and proportionality.

To date, the Council of Ministers has approved the following PERTEs:

- **PERTE for the development of electric and connected vehicles ("PERTE VEC"),** for the purpose of creating the necessary ecosystem in Spain for developing and manufacturing electric and connected vehicles and making Spain into the European electromobility hub.
- **PERTE for avant garde health**, aimed at fostering fair implementation of personalized precision medicine, promoting the development of advanced therapies and other innovative or emerging drugs, developing an innovative data system and driving forward a digital transformation in healthcare.
- **PERTE for renewable energy, renewable hydrogen and storage ("ERHA")**, with the goal of developing technology, know-how, industrial capabilities and new business that will strengthen the country's leading position in the field of clean energy.
- **PERTE for the agro-food sector**, which aims to strengthen this industry through financing and tools to drive its modernization and digitalization, to contribute to sustainable, competitive and resilient agro-food production, as well as to job creation and to addressing the demographic challenge.
- **PERTE for Circular Economy**, which aims to boost the transition to a more efficient and sustainable production system in the use of raw materials to increase the competitiveness of industrial sectors and companies in general, as well as to ensure greater strategic autonomy for the country. Its ultimate goal is to support the achievement of a sustainable, decarbonized, resource-efficient and competitive economy.
- **PERTE on "New Language Economy"**, which seeks to mobilize public and private investments to maximize the value of the Spanish language and the co-official languages within the global digital transformation process, ensuring that artificial intelligence will "think" in Spanish as a priority and that Spanish-speaking countries and people will play a leading role in growth and creation of quality employment.
- **PERTE for the Naval Industry**, which is conceived as a project based on public-private collaboration and focused on the transformation of its value chain through its diversification towards marine renewable energies and low-emission ships, its digitalization, the improvement of its environmental sustainability and the training of its employees.
- **PERTE for the aerospace sector**, which is conceived as an instrument to boost science and innovation in the aerospace field with the aim of addressing the sector's new challenges, including climate change, global security and the digital transition, among others. In particular, the main objective of this PERTE is to position the Spanish aerospace sector as a key player in relation to the challenges and opportunities arising from the anticipated transformation in the sector, both nationally and internationally.
- **PERTE for the Digitalization of the water cycle**, which is designed as a tool to transform and modernize water management systems, both in the urban cycle as well as in irrigation and industry. With these goals in mind, it is understood that the promotion and application of these new technologies will make it possible to (i) improve the governance and transparency of the integral water cycle, (ii) increase its efficiency, (iii) reduce losses in supply networks and, (iv) advance in the fulfillment of environmental objectives.

As regards the participation of companies interested in joining the PERTEs, RDL 36/2020 set up the State register of entities in this respect ("REPERTE"), as a state instrument for registering and certifying those interested entities. The regulation and operation of the register has been approved by Order HFP/168/2022, of March 7, 2022, which establishes a single, publicly accessible register, the contents of which will be presumed to be accurate and valid and in which any entity (public or private and regardless of its legal nature, territorial area or form of incorporation) may be registered provided that it has been previously cleared by the competent Ministry as entities interested in joining a PERTE.

Broadly speaking, the registration procedure will be carried out in 2 phases: (i) an initial clearance phase, in which the Ministry responsible for a PERTE verifies the interested entities that materially fulfill the technical, economic and legal conditions required to participate in it; and (ii) a second phase of registration itself in which the Ministry in question will notify the Central Government Controller's Office of the clearance decisions actually adopted, so that it can proceed to register them.

Lastly, as regards the specific aid schemes and programs that are taking place as the RTRP is implemented, it may be noted

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that, since the second quarter of 2021 the pace of publication, of both regulatory framework orders and calls for subsidies, has increased significantly. New calls for applications for grants and aid linked directly or indirectly to the NextGen Funds can be found practically on a daily basis. Accordingly, to better follow and monitor the calls, it is recommended to take advantage of the continuously updated service that the Spanish government has provided for the purpose on the RTRP's Internet portal (accessible here).

8.2 OTHER AID INSTRUMENTS

Apart from the significant effect that the new European Recovery Instrument will undoubtedly have on the Spanish economy, it is important to remember that the European Union provides States with other resources and funds that can be used to finance the achievement of other objectives considered of interest to the Union. In general, most of this financing (whether in the form of loans or subsidies) supplements the aid programs financed by the Spanish State.

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 directly by the European Commission.

The broad range of aid instruments traditionally at the EU's disposal includes, most notably the following:

8.2.1. EUROPEAN INVESTMENT BANK (EIB)

The European Investment Bank (EIB) grants funding with a threefold objective: to boost Europe's potential for growth and employment, to support measures aimed at mitigating climate change, and to foster EU policies in other countries.

On these bases, the EIB funds projects that promote the development of less favored regions and those of common interest to several Member States or benefiting the EU as a whole. They are focused mainly on the following **4 areas**: (i) innovation (digital transformation and human capital); (ii) small businesses; (iii) infrastructures (sustainable cities and regions), and (iv) climate and the environment (sustainable energy and natural resources)[4].

The EIB is jointly owned by the EU countries and borrows money on the capital markets. For this reason, the loans it grants for projects that support EU objectives are not considered funded with money coming from the Union budget.

According to the information published by the EIB, the total amount of financing contributed by the EIB group (European Investment Bank and European Investment Fund) in 2021 was €94,890 million.[5]

Specifically, the €94,890 million were allocated to the following objectives:

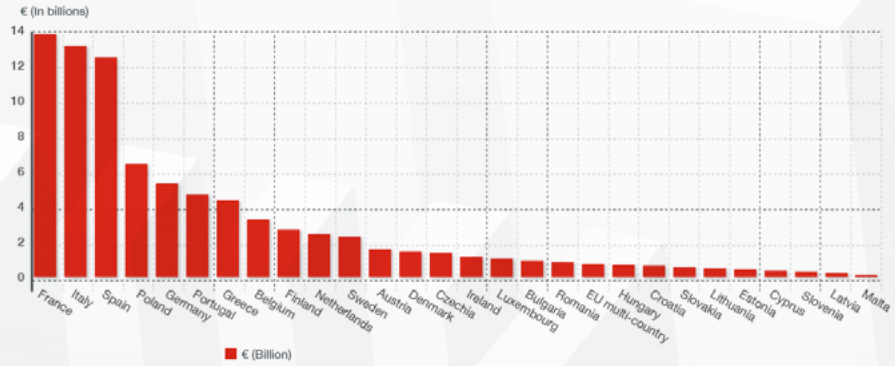
Innovation and skills	€20.7 billion
SMEs	€45 billion
Infrastructures	€13.8 billion
Environment	€15.38 billion

Roughly a third (35%) of all financing contributed by the EIB in 2021 (approximately €33,260 million) was earmarked for the **immediate response to the crisis** caused by the Coronavirus pandemic.

Of that amount, "*the major portion*" was targeted at SMEs, in order to "*avoid insolvency proceedings and job losses*", particularly in countries that "*did not have the budgetary means to adopt massive rescue packages*".

It is to be noted, in particular, that financing from the EIB in Spain during 2021 amounted to €12,271 million (14.72% of the total), making it the third largest recipient in the EU of funding from the EIB Group[6].

FINANCING RECEIVED BY EACH COUNTRY FROM THE EUROPEAN INVESTMENT BANK IN 2021



Source: Annual Press Conference 2022: 2021 Figures Summary (eib.org)

4 https://www.eib.org/en/about/priorities/index.htm

5 For more information, see the following link: https://www.eib.org/en/events/annual-press-conference-2022 and https://www.eib.org/en/publications/activity-report-2021

6 For more information, see the following link: https://www.eib.org/en/projects/regions/index.htm

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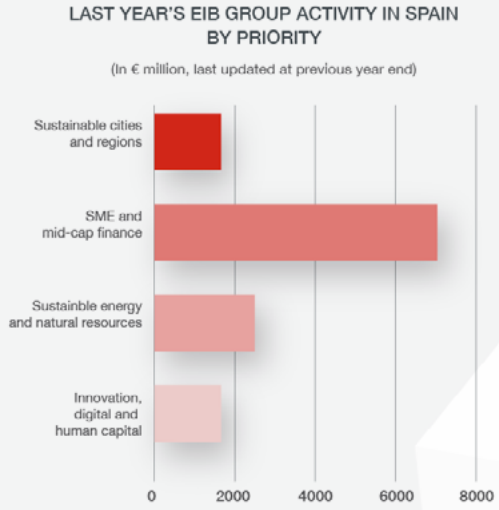

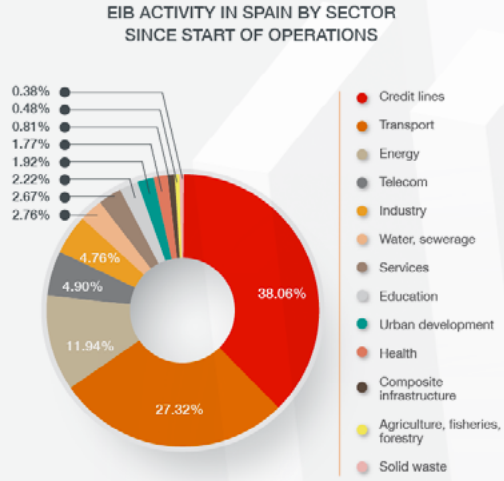

Source: https://www.eib.org/en/projects/regions/european-union/spain/index.htm

The EIB can lend to both the public and private sectors, supporting small companies (SMEs) through local banks and lending money to innovative start-ups. In addition, mid-cap companies can receive direct support for research and development investments[7].

These loans have the following features:

- Attractive pricing with advantageous funding conditions.
- Long terms, matching the economic life of each project, which can sometimes exceed 30 years.
- Coverage of up to 50% of a project's total cost, with loans starting at €25 million and even lower amounts in some cases.
- Funds to SMEs of up to €12.5 million through intermediated lending partners.
- Financial and technical support for preparation of the project.
- Financing blended with additional sources of investment, such as financial instruments and grants from the EU.
- EIB's financing acts as a quality stamp that helps the project attract additional investors.
- Loans can be secured or unsecured and provide different levels of subordination and can even be contingent on the company's growth.

In general, the EIB offers two types of loans:

8.2.1.1 Global loans ("Intermediated loans")

Global loans are similar to the credit lines granted to financial institutions, which subsequently lend the funds to the final beneficiaries, so that they can make small or medium-scale investments meeting the criteria set by the EIB itself.

This is the main instrument with which the EIB provides support for 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 (although this does not preclude large companies, local and national authorities and other public sector entities from also qualifying for loans this type).

The loans are granted by the EIB to banks or other financial 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, inter alia, Instituto de Crédito Oficial (ICO), Banco Bilbao-Vizcaya Argentaria (BBVA), Santander, Bankinter, Sabadell, Banca March, CAIXABANK, Unicaja, BNP Paribas Leasing Solutions, De Lage Landen International B.V. Sucursal en España, Ibercaja, Institut Català de Finances (ICF), Instituto para la Competitividad Empreserial de Castilla y Leon, Luzaro, Santander Consumer Finance S.A., Unión de Créditos Inmobiliarios, S.A. and Establecimiento Financiero de Crédito (Sole-Shareholder Company)[8].

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:

- 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.

7 https://www.eib.org/en/products/loans/index.htm
8 Source: https://www.eib.org/intermediarieslist/search/result?country=ES

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- 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.

8.2.1.2. Loans for individual projects ("Project loans")

The EIB also grants loans for individual projects with a total investment cost above €25,000,000.

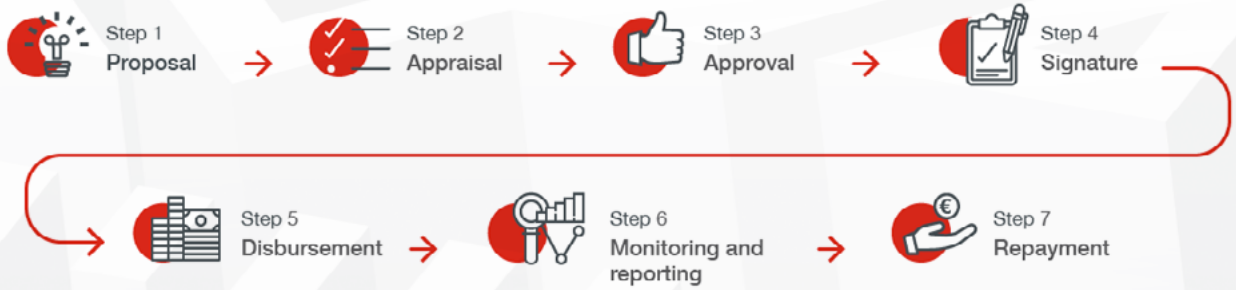
Although the loans can cover up to 50% of the total cost, on average, they tend to cover approximately only a third.

In general, the following are the main characteristics of these loans:

- Public or private investment projects made mainly in the infrastructure, energy efficiency/renewable energies, transport and urban renewal sectors are considered eligible. Nevertheless, research and innovation programs and, in certain cases, medium -capitalization companies with a maximum of 3,000 employees, can also benefit from this form of loan.
- The projects for which an application for financing is presented must fulfil the objectives set by the EIB and be viable from the economic, financial, technical and environmental perspectives. The terms of the financing depend on the type of investment and on the guarantees provided by third parties (banks or banking consortia, other financial institutions or the parent company).
- The interest rate may be fixed, variable, reviewable or convertible (meaning that the calculation formula may be changed during the term of the loan, on certain pre-established dates).
- In some cases, the EIB can apply project evaluation or legal analysis fees, and commitment or non-use fees.
- Most of the loans made by the Bank are denominated in euros (EUR), although they can also operate in other currencies, such as GBP, USD, JPY, SEK, DKK, CHF, PLN, CZK and HUF, etc.
- As a general rule, these loans are repaid in half-yearly or yearly instalments. Grace periods may be granted with respect to the repayment of principal throughout the construction period of the project.

A project financed by the EIB usually goes through 7 major stages: proposal, appraisal, approval, signature, disbursement, monitoring and repayment.

Operating scheme:



Source: https://www.eib.org/en/projects/cycle/index.htm

Lastly, an essential role has been played by the EIB in starting up the European Fund for Strategic Investments (EFSI). For these purposes, it is worth remembering that the EFSI was created by the European Commission to help meet the objective of mobilizing at least €315 billion in new investments during the 2015-2017 period, which was subsequently extended to 2020 (EFSI 2.0).[9]

9 https://www.eib.org/en/products/mandates-partnerships/efsi/index.htm

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Currently, and within the new Community budgetary framework (2021-2017) approved by Regulation 2020/2093, of 17 December 2020, the Commission is proposing to build on the success of the EFSI model and benefitting from economies of scale generated by it by merging all instruments currently available to foster investment in the EU, similarly to what it proposed previously, with the creation of the "InvestEU" program to bring EU budget financing in the form of loans and guarantees under one roof.[10]

Thus, although the last projects were approved by the EFSI's Investment Committee in December 2020, InvestEU gradually became the EU's new long-term funding program over the course of 2021.

This program consists of:

i. The **InvestEU Fund**, which combines the EFSI and 13 other – formerly independently managed – EU financial instruments and is expected to stimulate more than €372 billion of public and private investment.

   It is important to bear in mind that this Fund has a budget guarantee of €26.2 billion, which backs the investment of the European Investment Bank Group and other financial partners. Specifically, the EIB Group will have access to 75% of this guarantee and will act as the main implementing partner for the fund.

ii. The **InvestEU Advisory Hub**, which builds on the success of the European Investment Advisory Hub and acts as the central entry point for project promoters and intermediaries seeking advisory support and technical assistance for the identification, preparation and development of investment projects across the European Union.

   Although the Hub will be managed by the European Commission, the EIB will remain its strategic partner, providing advisory support in all four areas, as well as some cross-sectoral activities, including the continuation of the JASPERS program and support for the Just Transition Mechanism.

iii. The InvestEU Portal, as a database that brings together investors and project promoters, enabling project promoters to reach investors that they may not be able to reach otherwise.

The scope of the financing provided by the InvestEu Fund includes the following 4 main policy areas:

1. **Sustainable infrastructure**, to finance projects in, for example, renewable energy, digital connectivity, transportation, circular economy, water management, waste management and environmental protection infrastructure.

2. **Research, innovation and digitalization**, aimed at promoting, among others, projects in research and innovation, digitalization of industry, artificial intelligence, etc.

3. **Facilitating access to funding for small and medium-sized enterprises (SMEs)**, including capital support for enterprises that were adversely affected by the COVID-19 crisis.

4. **Social investment and skills**, to finance projects in such areas as education, training, housing, schools, universities, hospitals, health care, long-term care and accessibility, social entrepreneurship, migrant integration, refugees and vulnerable people.

To ensure a swift rollout and its local reach, InvestEU will be implemented in conjunction with the EIB and the European Investment Fund (EIF), as well as with other implementation partners such as international financial institutions and national development banks and institutions such as the European Bank for Reconstruction and Development (EBRD), the World Bank, the Council of Europe Bank and national banks.

8.2.2 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**. Its principal shareholder is the EIB itself, although the European Commission and a wide range of financial institutions across Europe also own holdings in its capital stock.

It uses, for its activities, equity capital or funds provided by the EIB or the European Union, the Member States, or other third parties.

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 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, and according to the needs of each regional market, the EIF designs innovative financial products aimed at its partners.

The work of the EIF can be classed according to the financial products (capital and debt) offered, which include most notably[11]:

- Equity products: The EIF invests in venture capital and growth funds, mezzanine funds that support 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.

10 Source: https://www.consilium.europa.eu/es/policies/investment-plan/strategic-investments-fund/ and https://europa.eu/investeu/about-investeu_en

11 https://www.eif.org/what_we_do/index.htm

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- Inclusive finance: The EIF provides funding (equity and loans), guarantees and technical assistance to micro-credit providers.

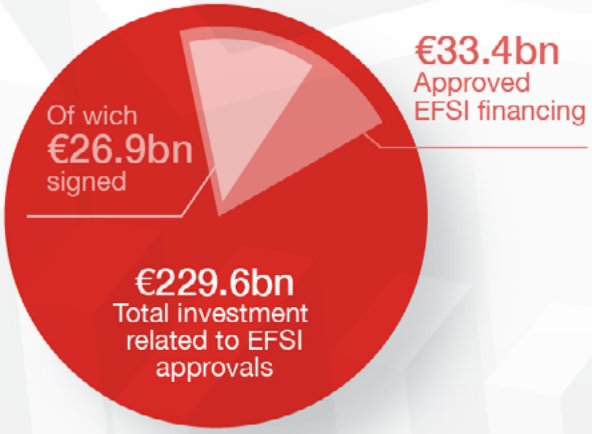
Indeed, although the EIF mainly uses venture capital instruments as a means of making capital more available to high-growth innovative SMEs, the Fund also offers debt instruments, having found that many SMEs seek financing through this more traditional route. From this standpoint, the EIF offers security and credit enhancements by means of the securitization of credit, in order to improve the lending capacity of financial intermediaries and, as a result, and ultimately, the availability and terms of the debt for the SME beneficiaries.

EFSI FIGURES

As of 30/09/2021

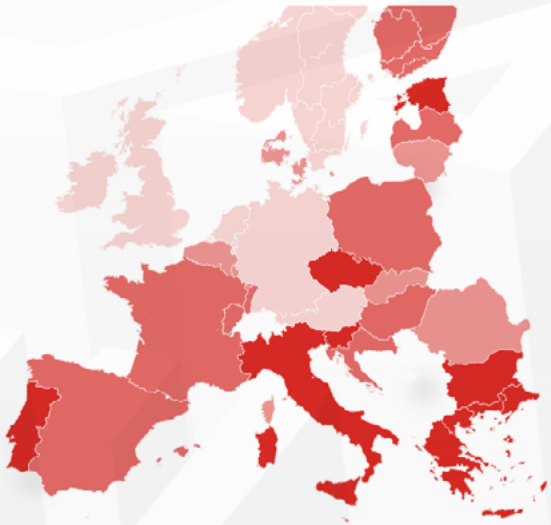
About **1460700** SMEs will benefit from EIF financing-support that will strengthen Europe's economy and create jobs

EFSI INVESTMENT BY SECTOR*



41%	38%	13%	8%
Smaller companies	RDI	Digital	Social Infrastructure

EFSI INVESTMENT RELATIVE TO GDP*



Darker color= higher investment

*based on aprroved operations

Source: EIF.

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Investment aid and incentives in Spain

The following table summarizes the main instruments and initiatives promoted by the EIF and the potential beneficiaries thereof:

SELECTED FINANCIAL INTERMEDIARY	WHAT IS AVAILABLE	WHO IS ELIGIBLE?	INITIATIVE
• BBVA	• Loans	• SMEs	• *EFSI*
• *Bankia* • *Bankinter* • *Banco Popular Español* • *Banco Sabadell* • *Banco Santander* • *CaixaBank* • *Cajas Rurales* • *Liberbank*	• Loans	• SMEs	• *SME Initiative Spain*
• *Inveready* • *CERSA* • *LABORAL Kutxa* • *CaixaBank*	• Loans	• Innovative SMEs and small Mid-Caps	• *EFSI* • *InnovFin SME Guarantee Facility*
• *CERSA*	• Loans	• SMEs	• *EFSI* • *COSME - Loan Guarantee Facility (LGF)*
• *Bankinter*	• Loans	• Innovative SMEs and small Mid-Cap	• *InnovFin SME Guarantee Facility*
• *CERSA*	• Loans	• MSMEs in the cultural & creative sectors	• *CCS GF*
• *Bankinter* • *Deutsche Bank Spain*	• Loans	• Innovative SMEs and small Mid-Caps	• *Risk Sharing Instrument (RSI)*
• *MicroBank*	• Loans	• Social-enterprises	• *EaSI* • *EFSI*
• *MicroBank*	• Loans	• Mobile Master Student	• *Erasmus+ Master Loan Guarantee Facility*
• *Caja Rurales Unidas* • *Cajamar Cooperative Group* • *Colonya Caixa Pollenca* • *Fundaciò Pinnae* • *ICREF* • *Laboral Kutxa/Caja Laboral Popular (ES)*	• Micro-loans	• Micro-enterprises including individuals	• *Progress Microfinance*
• *Laboral Kutxa/Caja Laboral Popular* • *Banco Popular Español* • *ColonyaCaixa d'Estalvis de Pollença* • *Soria Futuro, PLC*	• Micro-loans	• Micro-enterprises including individuals	• *EaSI*
• *Triodos Bank*	• Loans	• Social enterprises	• *EaSI*

Source: http://www.eif.org/what_we_do/where/es/index.htm

8.2.3 EUROPEAN STRUCTURAL AND INVESTMENT FUNDS

During the new 2021-2027 period, and notwithstanding what ultimately results from the final approval of the relevant legislative instruments, the Union's regional and cohesion policy will focus on **5 priorities:**

- A **smarter** Europe, through innovation, digitalization, economic transformation and achieving regional connectivity through information and communications technologies.

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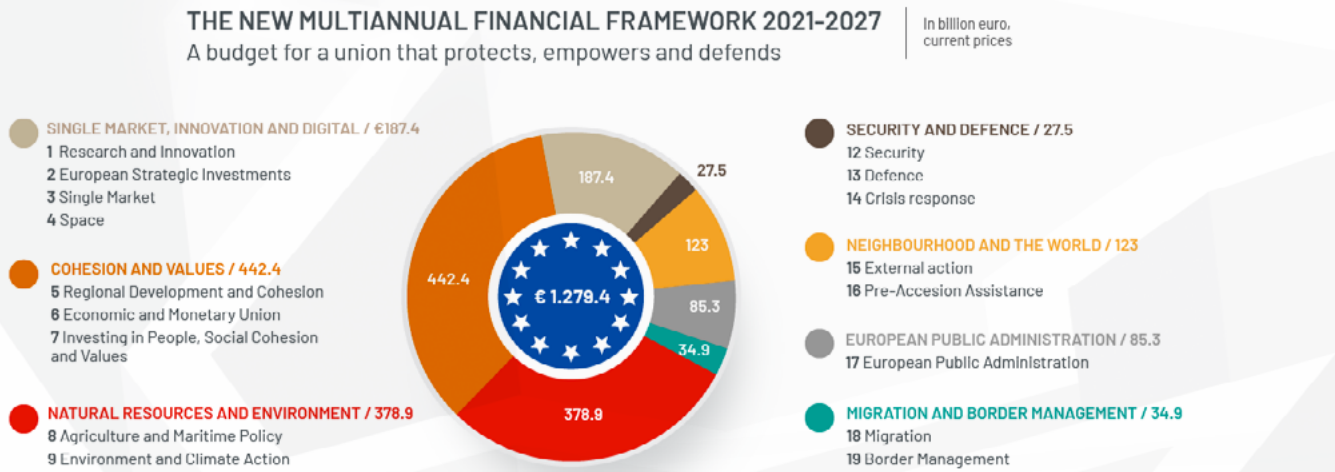
- A **greener**, carbon free Europe, implementing the Paris Agreement and investment in energy transition, renewables and the fight against climate change.
- A more **connected** Europe, enhancing mobility with strategic transport and digital networks.
- A more **social and inclusive** Europe, delivering on the European Pillar of Social Rights and supporting quality employment, education, skills, social inclusion and equal access to healthcare.
- A Europe **closer** to citizens, by fostering the sustainable and integrated development of all types of territories and local initiatives.

To achieve these aims, 65% to 85% of ERDF and Cohesion Fund resources will be allocated, depending on Member States' relative wealth.

The Cohesion Policy will keep on investing in all regions, still on the basis of the 3 categories applied during the 2014-2020 period (less-developed, transition, more-developed). Similarly, the allocation method for the funds is still largely based on GDP per capita, although new criteria are added, such as youth unemployment, low education level, climate change, and the reception and integration of migrants, to better reflect the reality on the ground. Outermost regions are also expected to continue benefitting from special EU support[12].

Likewise, the Cohesion Policy will continue to support locally-led development strategies, encouraging local authorities to play a more prominent role in the management of funds. the urban dimension of the Cohesion Policy is stepped up with 6% of the ERDF dedicated to sustainable urban development. Along the same lines, it includes a new networking and capacity-building program for urban authorities known as the "European Urban Initiative".



Source: https://www.robert-schuman.eu/en/european-issues/0551-multi-annual-financial-framework-2021-2027-democratic-illusion-do-we-stop-or-carry-on

8.2.3.1 Common provisions on the European Structural and Investment Funds (ESI Funds)

The basic rules governing the ESI Funds are contained in **Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021** laying down common provisions on the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund (CF), the Just Transition Fund (JTF) and the European Maritime, Fisheries and Aquaculture Fund (EMFAF) and financial rules for those and for the Asylum, Migration and Integration Fund (AMIF), the Internal Security Fund (ISF) and the Instrument for Financial Support for Border Management and Visa Policy (BMVI).

Each Fund also has its own regulation: ERDF (Regulation (UE) 2021/1058), ESF (Regulation (EU) 2021/1057), JTF (Regulation (EU) 2021/1056), and EMFAF (Regulation (EU) 2021/1139), which lay down the specific rules supplementing those laid down in the Common Provisions Regulation.

As in previous periods, the programming for the ESI Funds for the new 2021-2027 framework also requires the preparation and approval of the respective Partnership Agreement and the corresponding Operational Programs.

The **Partnership Agreement** is the national document prepared by each Member State, which explains the investment strategy and priorities of the respective Funds (ERDF, ESF,

12 Source: https://www.dgfc.sepg.hacienda.gob.es/sitios/dgfc/es-ES/ipr/fcp2020/Paginas/inicio.aspx and https://ec.europa.eu/regional_policy/en/2021_2027/

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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 (i) the disparities existing between those regions, (ii) the opportunities for growth and (iii) the weaknesses of all its regions and territories, focusing on the **thematic objectives,** which will entail the **identification of the actions** in the State in question **which are to be treated as priorities** by each of the ESI Funds.

In the case of Spain, **the Partnership Agreement for the period 2021-2027 period is still in the process of being prepared.**

The Partnership Agreement must be prepared under the principle of partnership and multi-level governance, and in accordance with Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds.

According to the information published by the Directorate-General of European Funds of the Ministry of Finance and Public Service, in preparing the Partnership Agreement between Spain and the Commission, all of the pertinent partners were consulted, namely:

- General partners: Which includes economic and social agents, representatives of civil society, such as environmental agents, NGOs, and partners responsible for promoting social inclusion, fundamental rights, the rights of disabled persons, gender equality and non-discrimination and research institutions and universities.
- Regional partners: Autonomous communities and cities.
- Sectoral partners: Ministries and entities of the Central Government that oversee the different policies and the Spanish Federation of Municipalities and Provinces ("FEMP").
- Thematic networks: Environmental Authorities Network ("RAA"), Low-Carbon Economy Network ("REBECA"), R&D&I Public Policies Network and Urban Initiatives Network ("RIU").
- Other Funds: European Social Fund Plus (ESF+), European Maritime, Fisheries and Aquaculture Fund (EMFAF), the Just Transition Fund (JTF) for the 2021-2027 period, Asylum, Migration and Integration Fund (AMIF), Internal Security Fund (ISF), Instrument for Border Management and Visa Policy (BMVI).

In fact, at the time of preparation of this guide, the Subdirectorate-General of Programming and Evaluation of European Funds of the Ministry is still in the process of gathering contributions from the interested parties.

However, it may be recalled that under the previous Agreement (2014-2020), the specific objective of the ESI Funds in Spain was 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[13]; as well as (iii) to those set forth in the **National Reform Program** approved in 2014.

That Partnership Agreement envisaged an investment of €28,580 million aimed at financing the entire Community cohesion policy in this country during the period 2014-2020[14], a figure which included an additional €8,290 million to be used for the performance of Rural Development Programs and €160 million intended for the fisheries and maritime sectors.

This financing to be used to execute the proposals for action described in the Partnership Agreement in connection with each of the thematic objectives listed above, had the following main priorities:

- **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**.

As already noted above, the material implementation of the Funds also requires the approval of the corresponding **Operational Programs** (i) prepared by each Member State in accordance with the terms of the Partnership Agreement and (ii) 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 Spain, however, the Operational Programs for the 2021-2027 period have not been prepared yet.

8.2.3.2 Funds under the Cohesion Policy: ERDF, ESF+, Cohesion Fund and Just Transition Fund (JTF)

The Funds under the Cohesion Policy include Structural Funds (ERDF and ESF+), the Cohesion Fund and the Just Transition, which contribute to enhancing economic, societal and territorial cohesion.

- European Regional Development Fund (ERDF)

  This Fund contributes to the funding of measures adopted in order to **enhance economic, societal and territorial cohesion** by correcting the Union's main regional imbalances, through (i) **sustainable development** and

13 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.

14 Including the financing of European territorial cooperation and the allocation for the youth employment initiative.

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the structural adjustment of regional economies, and (ii) by **restructuring industrial regions in decline and less developed regions**.

The new ERDF Regulation for the 2021-2017 period maintains its two fundamental goals: "Investment for jobs and growth" and "European territorial cooperation".

It also maintains its traditional priorities such as support for innovation, the digital economy and SMEs delivered through a smart specialization strategy, and a greener, low-carbon and circular economy[15].

However, the new cohesion policy also introduces a list of activities that are not to be supported by the ERDF, including the decommissioning or construction of nuclear power stations, airport infrastructure (except in the outermost regions) and some waste management operations (e.g. landfill).

For the 2021-2027 programming period, around €200.36 billion has been allocated to the ERDF (including €8 billion for European Territorial Cooperation and €1.93 billion of special allocations for the outermost regions). Less-developed regions will benefit from co-financing rates of up to 85% of the cost of the projects, whereas co-financing rates for transition regions and for more-developed regions will be up to 60% and 40% respectively.

Over the 2021-2027 period, Spain will receive **€23,539 million from the ERDF**, which will be distributed via **19 Regional Programs** (1 for each autonomous community and city) and **one Multi-regional Program**, which will serve as the main instrument for planning the Central Government initiatives to be financed via this Fund[16].

Accordingly, based on the provisions of article 108 of the Common Provisions Regulation, the following regions may be differentiated:

- Less developed regions: Regions whose GDP per capita is less than 75% of the average GDP per capita of the EU-27, which in Spain includes the autonomous communities of Andalucía, Castilla La Mancha, Ceuta, Extremadura and Melilla.

- Transition regions: Regions whose GDP per capita is between 75% and 100% of the average GDP per capita of the EU-27, and which, during this period, corresponds to the autonomous communities of Asturias, Balearic Islands, Canary Islands, Cantabria, Castilla León, Galicia, La Rioja, Murcia, Valencia).

- More developed regions: that is, regions whose GDP per capita is above 100% of the average GDP per capita of the EU-27, which in Spain corresponds to Aragón, Cataluña, Navarra, Madrid, Basque Country.

- European Social Fund (ESF+)

  The specific objectives of the ESF+ during the 2021-2027 period include:[17]

  - Supporting the policy areas of employment and labor mobility, education and social inclusion, namely by helping to eradicate poverty, and thereby contributing to the implementation of the European Pillar for Social Rights.

  - Supporting the digital and green transitions, job creation through Skills for Smart Specialization, and improvements to education and training systems.

  - Supporting temporary measures in exceptional or unusual circumstances (e.g., financing short-time work schemes without requiring them to be combined with active measures, or providing access to healthcare, including for people who are not immediately socio-economically vulnerable).

- Cohesion Fund

  The Cohesion Fund will continue to support projects under the 'Investment for growth and jobs' goal, mainly for environmental and transport infrastructure projects, including trans-European networks (TEN-T).

  In addition, the Cohesion Fund will support two specific objectives of the new cohesion policy: a greener, low-carbon and circular economy (PO2); and a more connected Europe (PO3).[18]

- Just Transition Fund

  The Just Transition Fund is a new financial instrument within the Cohesion Policy which aims to provide support to territories facing serious socio-economic challenges arising from the transition towards climate neutrality. It is conceived as a specific instrument to facilitate the implementation of the European Green Deal, which aims to make the EU climate-neutral by 2050.

  Specifically, the Just Transition Fund is a key tool for supporting the territories most affected by the transition towards climate neutrality and for preventing an increase in regional disparities. Its main objectives are to alleviate the impact of the transition by financing the diversification and modernization of the local economy and by mitigating the negative repercussions on employment. In order to achieve its objective, the Just Transition Fund supports investments in areas such as digital connectivity, clean energy technologies, the reduction of emissions, the regeneration of industrial sites, the reskilling of workers and technical assistance.

15 More information at https://www.europarl.europa.eu/factsheets/en/sheet/95/el-fondo-europeo-de-desarrollo-regional-feder-

16 https://www.fondoseuropeos.hacienda.gob.es/sitios/dgfc/es-ES/ipr/fcp2020/Paginas/inicio.aspx

17 More information at https://www.europarl.europa.eu/factsheets/en/sheet/53/el-fondo-social-europeo-plus

18 More information at https://www.europarl.europa.eu/factsheets/en/sheet/96/el-fondo-de-cohesion

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The Just Transition Fund is implemented under shared management rules, which means close cooperation with national, regional and local authorities. In order to access Just Transition Fund support, Member States have to submit territorial just transition plans. These plans outline the specific intervention areas, based on the economic and social impacts of the transition. In particular, these plans have to take account of expected job losses and the transformation of the production processes of the industrial facilities with the highest greenhouse gas intensities[19].

The Just Transition Fund has an overall budget of €17.5 billion for 2021-2027. Futhermore, €7.5 billion will be financed under the multiannual financial framework and an additional €10 billion will be financed under NextGenerationEU.

8.2.4. THE FUNDING POLICY OF THE COMMON AGRICULTURAL POLICY (CAP)

The Common Agricultural Policy (CAP) absorbed around 40% of the total budget of the EU for the 2014-2020 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 importance in economic terms has been reduced substantially over the last 30 years, dropping from 75% to the current 40%. The budget for direct payments assigned to Spain in that period 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 17 December 2013, of the European Parliament and of the Council,** on the financing, management and monitoring of the Common Agricultural Policy.

As a result of the health crisis brought about by COVID-19, the reform of the 2020 post CAP did not take place in the 2021 campaign, given that, for example, the approval of its new multiannual financial framework has been delayed. For this reason, Regulation 2020/2220, of 23 December 2020, has amended Regulation 1306/2013, in order to lay down certain transitional provisions governing its operation in 2021 and 2022. In this regard, a reserve of €400 million has been established at EU level and the CAP legislative framework is set to be reformed over the course of 2022 for implementation from January 2023 onward.[20]

Against this backdrop, in Spain the government has approved Royal Decree 41/2021, of January 26, 2021, which establishes specific provisions governing the application of the CAP in Spain for these two years. According to estimates by the Council of Ministers, this will ensure that Spanish farmers and cattle breeders can receive around €7.2 billion in aid in each of these two years[21].

Accordingly, if the new CAP does not enter into force, the legal framework will continue to be essentially the one that was applied during the previous period, instrumented essentially around two structural pillars:

1. The first pillar, **through** the European Agricultural Guarantee Fund **(EAGF),** providing direct support to farmers and funding market measures covered **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.**

2. The **second pillar,** through the European Agricultural Fund for Rural Development (EAFRD), improving the competitiveness of agricultural and forestry industries and **promoting the diversification of economic activity and quality of life in rural areas,** including regions with specific problems, based on measures co-funded with the Member States.

The following is a description of the main characteristics of these two Funds:

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.

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 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.

19 More information at https://www.europarl.europa.eu/factsheets/en/sheet/214/fondo-de-transicion-justa

20 In this connection, the European Commission has already submitted for consideration proposals for a Regulation establishing rules on CAP Strategic Plans (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0392&from=EN); a Regulation on the financing, management and monitoring of the CAP (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0393&from=EN); and a Regulation establishing a common organization of the markets in agricultural products (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0394&from=EN).

21 https://www.mapa.gob.es/es/prensa/ultimas-noticias/el-gobierno-aprueba-el-real-decreto-que-dar%C3%A1-continuidad-a-las-ayudas-de-la-pol%C3%ADtica-agraria-com%C3%BAn-(pac)-en-2021-y-2022/tcm:30-555565

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2. EAFRD

In the field of local development, consideration must be given to **Regulation 1305/2013, of 17 December 2013, of the European Parliament and of the Council,** on support for rural development throught EAFRD[22].

In particular, the EAFRD has **3 basic objectives:**

1. Fostering the competitiveness of agriculture.
2. Ensuring the sustainable management of natural resources, and climate action.
3. 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 **6 priorities:**

1. Fostering knowledge transfer and innovation in agriculture, forestry, and rural areas.
2. Enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests.
3. Enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests.
4. Restoring, preserving and enhancing ecosystems related to agriculture and forestry.
5. Promoting resource efficiency and supporting the shift towards a low carbon and climate resilient economy in agriculture, food and forestry sectors.
6. Promoting social inclusion, poverty reduction and economic development in rural areas.

In accordance with Regulation 1305/2013 mentioned above, the Union aid intended for rural development was €8,297,388,821 for the 2014-2020 period, with €1,320,014,366 earmarked for 2021 and €1,081,564,825 for 2022. This is notwithstanding the resources intended for the recovery of the agricultural sector and rural areas of the Union as a result of the effects of the COVID-19 crisis, which amount to €212,332,550 for 2021 and €505,351,469 for 2022.

According to available information, for the post 2020 budgetary framework, the Commission has proposed a reform of the Common Agricultural Policy for the 2023-2027 period, which maintains the essential elements of the current policy, but is no longer based on the mere description of the requirements that are to be met by the final beneficiaries of the aid. Rather it is now a policy aimed at obtaining specific results linked to **3 general objectives:**

1. Fostering an intelligent, resilient and diversified agricultural industry that guarantees food safety.
2. Intensifying environmental care and pro-climate action, contributing to reaching the EU's climate and environmental goals.
3. Strengthening the socio-economic fabric of rural areas.

These overall objectives are in turn broken down into nine specific objectives, based on the three sustainability pillars and complemented by the cross-cutting objective of modernizing the sector by fostering knowledge, innovation and digitalization in rural areas.

For more information on the progress of the new CAP as well as the Strategic Plan that Spain has proposed for the new CAP framework, please see the website of the Ministry of Agriculture, Fisheries and Food.[23]

8.2.5. EUROPEAN MARITIME AND FISHERIES FUND (EMFF)

During the 2014-2020 period, a new Fund was 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 15 May 2014, of the European Parliament and of the Council**[24]. Specifically, in Spain, there was an 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 and Food, with a total budget of €1,161,620,889.

22 Regulation (EU) 2020/872, of 24 June, and Regulation (EU) 2020/2220, of 23 December, have amended Regulation 1305/2013 in order to introduce certain transitional measures in response to the COVID-19 health crisis and to implement them in 2021 and 2022. In addition, Delegated Regulation (EU) 2021/399, of 19 January 2021 and Delegated Regulation (EU) 2021/2017 of 15 April 2021, have amended the annexes to said Regulation 1305/2013 as regards the amounts of Union support for rural development in the years 2021 and 2022.

23 https://www.mapa.gob.es/es/pac/post-2020/default.aspx

24 By means of Regulation (EU) 2020/560 of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No 508/2014 and (EU) 1379/2013 as regards specific measures to mitigate the impact of the COVID-19 outbreak in the fishery and the aquaculture sector, including most notably the following measures:

- It is possible to use 10% of the resources available from the EMFF under shared management for fisheries control and for the collection of scientific data, for measures related to the mitigation of the COVID-19 outbreak and for the compensation of additional costs in the outermost regions.
- It is possible to support the temporary cessation of fishing activities caused by the COVID-19 outbreak crisis with a maximum co-financing rate of 75% of eligible pubic expenditure, not subject to financial capping.
- The scope of the simplified procedure is extended to include amendments to Operational Programs related to the specific measures and the reallocation of financial resources thereto to address the consequences of the COVID-19 outbreak.
- The ceiling for support to the production and marketing plans of producer organizations is increased up to 12% of the average annual value of the production placed on the market.
- Member States are permitted to grant advances of between 50% and 100% of the financial support to producer organizations.
- Where necessary in order to respond to the COVID-19 outbreak, the EMFF will be able to grant aid to compensate the storage costs of fishery and aquaculture products, increasing the intensity of the up to 25% of the annual quantities of the products put up for sale by the producer organization concerned.
- It will be possible to compensate the economic losses resulting from the outbreak for operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions (in particular those resulting from the deterioration in the price of fish or increased storage costs).

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For the new 2021-2027 budgetary framework, the **European Maritime, Fisheries and Aquaculture Fund Regulation (EMFAF)** has been approved to replace the former EMFF, and is governed, in general, by Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 and, specifically, by Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021.

In particular, the EMFAF includes a budget of €6,108 million, which, in accordance with article 3 of Regulation (EU) No. 2021/1139, will be used to pursue the following **priorities**:

1. **Promote sustainable fishing and the conservation of aquatic marine biological resources,** by fostering:
   - Economically, socially and environmentally sustainable fishing activities.
   - Energy efficiency and reducing CO2 emissions through the replacement or modernization of engines of fishing vessels.
   - The adjustment of fishing capacity to fishing opportunities in cases of permanent cessation of fishing activities and contributing to a fair standard of living in cases of temporary cessation of fishing activities.
   - Control and enforcement, including fighting against IUU fishing, as well as reliable data for knowledge-based decision making.
   - A level-playing field for fishery and aquaculture products from the outermost regions.
   - The protection and restoration of aquatic biodiversity and ecosystems.
2. **Contribute to EU food safety through aquaculture and sustainable and competitive markets,** including the following support measures:
   - Sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term.
   - Initiatives aimed at marketing, quality and added value of fishery and aquaculture products, as well as processing of those products.
3. **Enable the growth of a sustainable blue economy and to develop prosperous coastal communities**, through both the sustainable development of local economies and communities through community-led development and through the collection, management and use of data to improve knowledge of the status of the marine environment.
4. **Strengthen the international governance of oceans and to guarantee protected, safe, clean and sustainably managed seas and oceans,** establishing maritime surveillance and cooperation mechanisms between coastguards.

8.2.6. EUROPEAN UNION RESEARCH AND INNOVATION PROGRAMS

8.2.6.1. Horizon Europe

The EU has been approving successive multi-year programs which set out the lines of action of the Community research and innovation policy, allocating considerable economic resources to their performance.

The EU Research and Innovation Programme for the 2014-2020 period was called **"Horizon 2020" and was regulated by Regulation (EU) No 1291/2013 of the European Parliament and of the Council, of 11 December 2013.**

The objective of the program was none other than 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 program had a total budget of 74,828.3 million euros to finance research, technological development and innovation initiatives and projects with obvious European added value.

Horizon 2020 was based on **three fundamental pillars of** (i) Excellent science, to increase the level of excellence in European basic science and ensure a steady flow of quality research to ensure Europe's long-term competitiveness; (ii) Industrial leadership, to speed up the development of technologies and innovations that underpin tomorrow's new technology and help innovate European SMEs to grow into world-leading companies; and (iii) Societal challenges, focused on researching big issues affecting European citizens.

With respect to funding, most of the activities were instrumented as **competitive tenders** in "Horizon 2020" managed by the European Commission with pre-established priorities in the respective working programs which were previously published.

In general, any European enterprise, university, research center or legal entity that wished to develop a R&D&I project, provided that its content was consistent with the lines and priorities stipulated in any of the pillars of "Horizon 2020" could participate in the calls.

To be able to participate in most of the actions included in this program, it was developed through **consortium projects,** which had to involve at least 3 independent legal entities, each one established in a different EU Member State or associated state.

At present, the Horizon 2020 Program has concluded and has been replaced by the European Union Investment and Innovation Framework Program, which is known as "Horizon Europe" and will cover the years 2021-2017. This Program is governed by Regulation (EU) of the European Parliament and

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of the Council of 28 April 2021, and its Specific Program whereby it is implemented is established by Council Decision (EU) 2021/764 of 10 May 2021.

Horizon Europe is endowed with a total budget of €94,076 million, which entails a budgetary increase of roughly 50% compared to Horizon 2020, making Horizon Europe the biggest research and innovation program ever proposed.

According to the Regulation (EU) 2021/1695, the **general objective** of Horizon Europe will be (i) to deliver scientific, economic and social impact by investing in research and innovation, in order to strengthen its scientific and technological bases and boost its competitiveness, including that of its industries; (ii) deliver on the Union's strategic priorities and (iii) address global challenges, including sustainable development objectives.

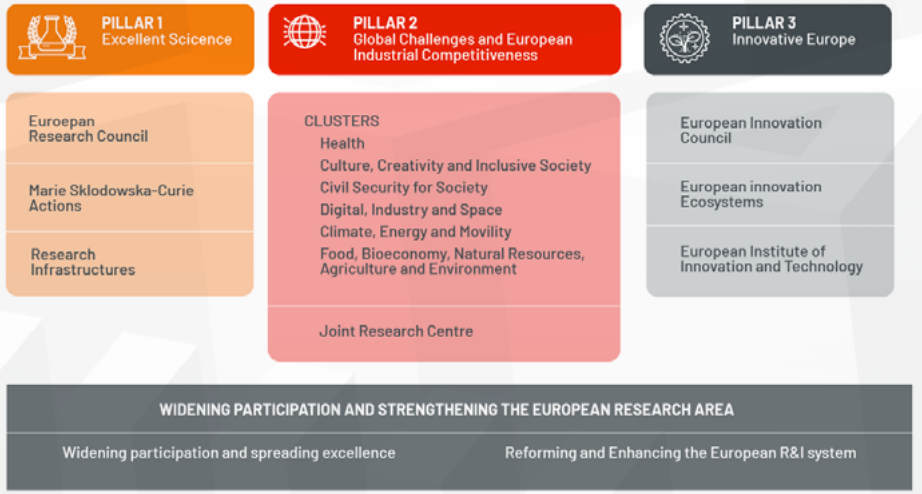
In particular, the program has the following **specific objectives:**

- To support the creation and diffusion of high-quality new knowledge, skills, technologies and solutions to global challenges.
- To strengthen the impact of research and innovation in developing, supporting and implementing Union policies, and support the uptake of innovative solutions in industry and society to address global challenges.
- To foster all forms of innovation, including breakthrough innovation, and strengthen market deployment of innovative solutions.
- To optimize the Program's delivery for increased impact within a strengthened European Research Area.

To this end, according to the Regulation (EU) 2021/1695, Horizon Europe will be structured into **four pillars and budgets:**

1. "***Excellent science"***, which has a budget of €23,546 million and comprises (i) the European Research Council, for pioneering research conducted by the best researchers and teams; (ii) the Marie Skłodowska-Curie Actions, to provide researchers with new knowledge and skills through mobility and training; and (iii) research infrastructure.
2. ***"Global Challenges and European Industrial Competitiveness***", which has a budget of €47,428 million and consists of the following clusters: "*Health*", "*Culture, creativity and inclusive society*", "*Civil security for society*", "*Digital, industry and space*", "*Climate, energy and mobility*", and "*Food, bioeconomy, natural resources, agriculture and environment*", as well as non-nuclear direct actions of the Joint Research Center (JRC).
3. ***"Innovative Europe"***, which has a budget of €11,937 million and will comprise (i) the European Innovation Council, to support innovations with breakthrough and market creating potential; (ii) European innovation ecosystems, aimed at connecting regional and innovation actors; and (iii) the European Institute of Innovation and Technology (EIT), aimed at bringing key actors (research, education and business) together around a common goal for nurturing innovation.
4. ***"Widening Participation and Strengthening the European Research Area"***, which has a budget of €3,212 million and includes (i) widening participation and spreading excellence; and (ii) reforming and enhancing the European R&I system.

In diagram form, the structure of Horizon Europe is as follows:



Source: https://ec.europa.eu/info/sites/info/files/research_and_innovation/ec_rtd_he-presentation_062019_en.pdf

The **main new features** introduced by Horizon Europe stem from some of the lessons learned from the interim evaluation of Horizon 2020, such as the following:

- The European Innovation Council, will take on a greater role to support innovations with breakthrough and disruptive nature and scale-up potential that are too risky for private investors. To this end, provision is made both for (i) grants from early technology phase to proof of concept;

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and (ii) grants from proof of concept to the pre-commercial phase; and (iii) grants and blended finance from pre-commercial phase to market and scale-up phase.

- Fostering the execution of research and innovation missions, to relate EU's research and innovation better to society and citizens' needs, with better visibility and impact. These specific missions will be programmed within the *"Global challenges and European industrial competitiveness"* pillar.

- The strengthening of international cooperation, opening the program to association with third countries and territories that have (i) good capacity in science, technology and innovation; and (ii) the commitment to an open market economy within a predetermined legislative framework, including fair and equitable dealing with intellectual property rights, backed by democratic institutions.

- A policy of "open science", so that, in in general, (i) open access to scientific publications resulting from research funded under the Program shall be ensured; (ii) **responsible management of research data** shall be ensured in line with the FAIR principles; and (iii) open science practices beyond open access to research outputs and responsible management of research data shall be promoted.

  To this end, (i) beneficiaries shall ensure that they or the authors retain sufficient intellectual property rights to comply with open access requirements; and (ii**) open access to research data** shall be the general rule, but exceptions shall apply if justified, taking into consideration the legitimate interests of the beneficiaries and any other constraints, such as data protection rules, security rules or intellectual property rights.

- A new approach to European partnerships, to rationalize the funding landscape. These partnerships can take the following forms: (i) Co-programmed European Partnerships (on the basis of memoranda of understanding or contractual arrangements between the Commission and the partners); (ii) Co-funded European Partnerships (based on the commitment of the partners for financial and in-kind contributions); or (iii) Institutionalized European Partnerships (with research and innovation programs undertaken by several Member States or by bodies, such as joint undertakings or by knowledge and innovation communities).

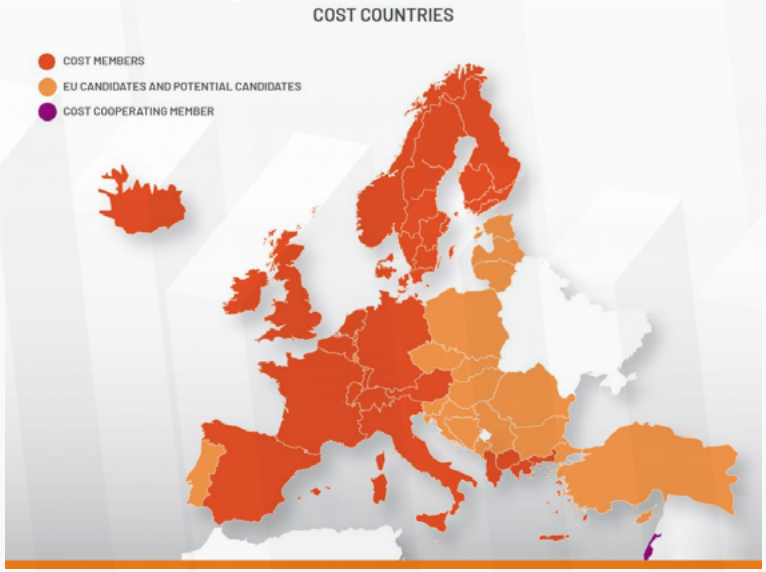
- The spreading of excellence, (i) establishing it as a possible criterion for awarding subsidies and as the sole criterion in the case of actions by the European Research Council with respect to "*knowledge frontiers*"; and (ii) creating a seal of excellence to which certain beneficiaries can aspire.

8.2.6.2. Other Research and Innovation Programs

Parallel to "*Horizon Europe*", the European Commission also extends R&D&I funding opportunities through other additional programs of significance in the context of the European Research and Innovation Strategy, such as the COST (European Cooperation in Science and Technology) program, initiated in 1971 and one of the oldest European framework programs supporting cooperation among scientists in all of Europe in different areas of research, and the ***EURATOM***, (European Atomic Energy Community) program, with the goal of coordinating the research programs of Member States in the peaceful use of nuclear energy.

- **COST Program**

  The COST (European Cooperation in Science and Technology) program is the first, and one of the largest, intergovernmental network for the coordination of scientific and technical research at European level, and currently involves 38 countries and Israel as a cooperating State and South Africa as a partner State. It also has a multitude of reciprocity agreements (including Australia, New Zealand, Argentina, Mexico, Brazil, the US, China, and Japan[25]).



Source: https://www.cost.eu/who-we-are/members/

25 https://www.cost.eu/about/cost-strategy/cost-global-networking

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This **program is targeted at researchers who work** (i) in **universities and research centers**, regardless of size, both public and private, in any of the **38 COST countries or Israel and South Africa**; (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** who organize themselves around a specific scientific objective.

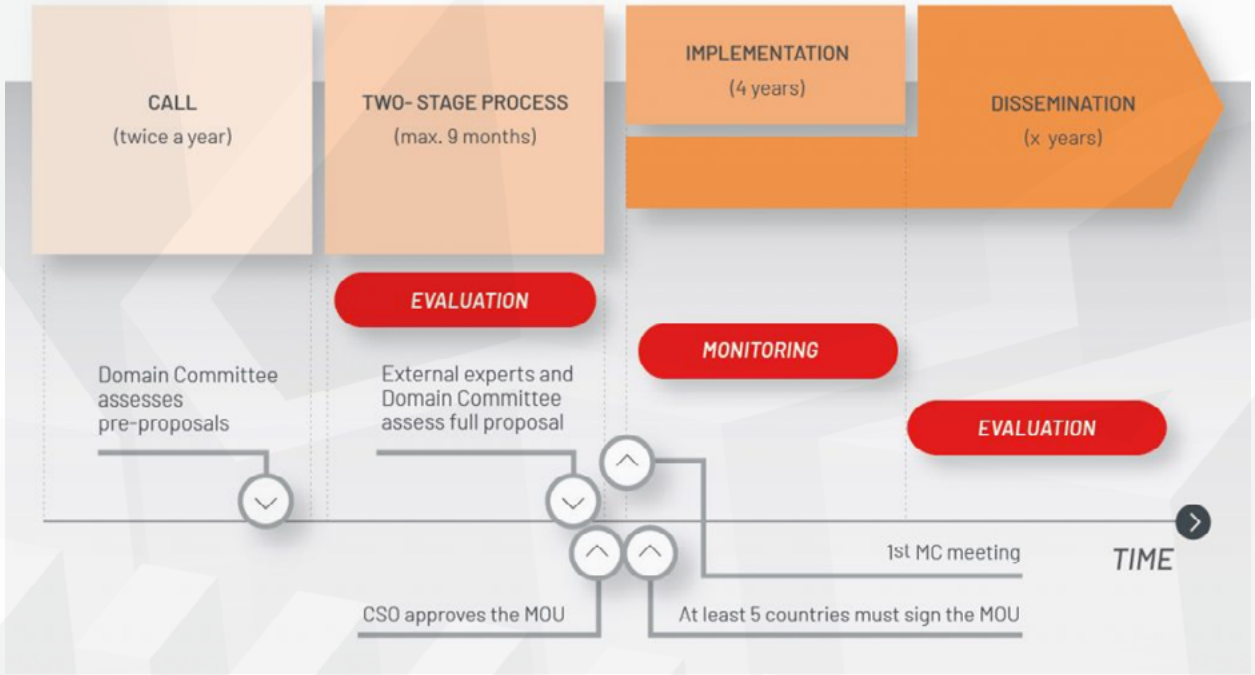
The program functions through networks known as **COST Actions**, which emerge at the initiative of researchers without pre-defined thematic priorities. **At least 7 participants** from different COST countries must join together in order to apply for an Action, at least four of which must be from COST Inclusiveness Target Countries (https://www.cost.eu/about/cost-strategy/excellence-and-inclusiveness/).

The projects selected will receive funding for activities previously established in the joint working program – with a four-year term – from among the following:

- 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.

PROCEDURE FOR SELECTION AND GRANT OF AID SCHEME



Source: http://eshorizonte2020.es/content/download/23551/278009/file/Presentación%20COST%20junio%202013.pdf

Currently, there is an open call for proposals for COST actions that will end in October, and 75 new actions are expected to be approved, depending on the receipt of sufficient EU budget[26].

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 number three in the ranking of countries with the highest number of participants.

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 Science and Innovation through the Subdirectorate-General of International Relations.

26 https://www.cost.eu/uploads/2021/12/COST_oc-2022-1_Announcement-HE.pdf

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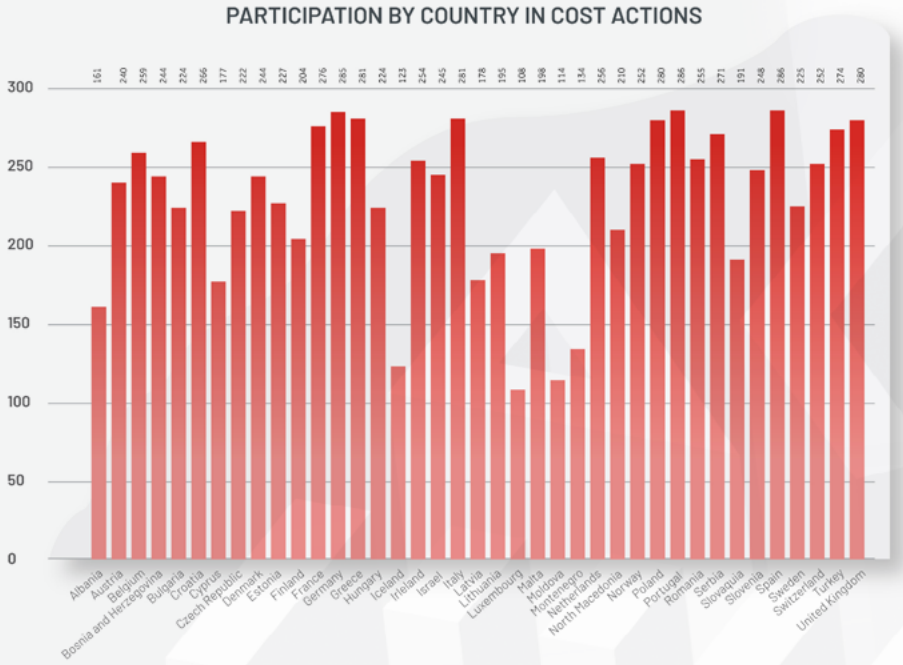
Each country's participation in COST actions:



Source: https://www.slideshare.net/seenet/european-cooperation-in-science-and-technology-cost-actions-maria-moragues-canovas

- **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. It is legally separated from the European Community and has its own **Framework Research and Training Program,** which is managed by the common Community institutions, and which for the 2019-2020 period has been regulated in **Council Regulation (Euratom) 2018/1563 of 15 October 2018.** Furthermore, **Regulation (Euratom) 2021/765, of 10 May 2021**, complementing Horizon Europe, has been approved for the 2021-2025 period.

The main new features of the new EURATOM program are essentially, (i) greater attention to the non-energy applications of medical, industrial and spatial radiation; (ii) the opening up of mobility opportunities for nuclear researchers through their inclusion in Marie Sklodowska-Crie actions; and (iii) the simplification of the program, reducing the specific objectives from 14 to 4[27].

Although Member States retain most competencies 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 program, initially endowed with budget of €1,382 million for the 2021-2025 period, is to **pursue nuclear research and training activities with an emphasis on continuous improvement of nuclear safety, security and radiation protection**. In this spirit, it seeks to complement the achievement of Horizon Europe's objectives, for example, in the context of the energy transition (with a view to contributing to the long-term decarbonization of the energy system in a safe, efficient and secure way).

The program has the following **specific aims**:

- Improving the safe and secure use of nuclear energy and non-power applications of ionizing radiation, including nuclear safety, security, safeguards, radiation protection, safe spent fuel and radioactive waste management and decommissioning.
- Maintaining and further developing expertise and excellence in the Union.
- Fostering the development of fusion energy and contributing to the implementation of the European fusion roadmap.
- Supporting the policy of the Union on nuclear safety, safeguards and security.

These objectives are implemented through (i) indirect actions in fusion research and development and in the field of nuclear fission, safety and radiation protection; and (ii) direct actions undertaken by the Joint Research Center.

27 https://ec.europa.eu/info/sites/info/files/research_and_innovation/strategy_on_research_and_innovation/presentations/horizon_europe_es_invertir_para_dar_forma_a_nuestro_futuro.pdf

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Given that EURATOM is configured as a Program supplementary to "Horizon Europe", it is subject to the same rules on participation and there is also a possibility of interested parties carrying out cross-cutting actions between them through co-funding and externalization.

8.2.7 COMMUNITY INITIATIVES IN FAVOR OF CORPORATE FINANCE

The Community initiatives aimed at favoring corporate finance include most notably the COSME program and the Gate-2Growth initiative:

- **COSME Program:**

  The **COSME** (*Competitiveness of Enterprises and Small and Medium-sized Enterprises*) program was an EU program aimed at improving the competitiveness of enterprises, with special emphasis on small and medium-sized enterprises, during the 2014-2020 period, which has already ended.

  COSME helped 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 was regulated **in Regulation (EU) nº 1287/2013 of the European Parliament and of the Council, of 11 December 2013.**

  COSME had a budget of approximately €2.3 billion and supplemented 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 program's objectives were (i) to improve SMEs' access to finance and to markets; (ii) to improve the general conditions for the competitiveness and sustainability of SMEs; and (iii) to promote entrepreneurship and entrepreneurial culture.

In addition to supporting internationalization, competitiveness and entrepreneurial culture, COSME was, above all, a financial instrument which will made it possible to improve a SME's access to financing, since at least 60% of the program's total budget (€1.4 billion) is earmarked for this purposes.

For the 2021-2027 period, the objectives and aims pursued by COSME will be implemented via the following two programs[28]:

1. **Single market program**, specially dedicated to empowering and protecting consumers and enabling Europe's many SMEs to take full advantage of a well-functioning single market. To this end, the governance of the EU's internal market will be strengthened, thereby supporting businesses' competitiveness, promoting human, animal and plant health and animal welfare, as well as establishing the framework for financing European statistics[29]. It is a **modern, simple and flexible program** which consolidates a large range of activities that were previously financed separately, into one coherent program.

   This program is governed by Regulation (EU) 2021/690, of 18 April 2021, of the European Parliament and of the Council, which endows it with a budget of €4,208,041,000.

   The **general aims** of the Single Market Program are to:

   - Improve the functioning of the internal market, notably to protect and empower the public, consumers and businesses, especially SMEs, by enforcing EU law, facilitating market access and setting standards, promoting human, animal and plant health and animal welfare. And all of the above, while respecting sustainable development and ensuring a high level of consumer protection, as well as enhancing cooperation between national authorities, the European Commission and decentralized EU agencies.
   - Develop, produce and disseminate high-quality, comparable, timely and reliable European statistics to underpin the design, monitoring and evaluation of EU policies assist the public, policymakers, authorities, businesses, academia and the media to make informed decisions help the above groups to participate actively in the democratic process.

2. **InvestEU Fund**, governed by Regulation (EU) 2021/523, of 24 March 2021, of the European Parliament and of the Council. It is a program endowed with a budgetary guarantee of approximately €26.2 billion, although it is expected to mobilize more than €372 billion in investments during the 2021-2027 period.

   It is structured around **four policy windows**: (i) sustainable infrastructure; (ii) research, innovation and digitalization; (iii) SMEs; and (iv) social investment and skills.

   Strategic investments focusing on building stronger European value chains as well as supporting activities in critical infrastructure and technologies will be possible under all four windows. With this, the aim is to cater for the future needs of the European economy and promote the EU's autonomy in key sectors.

- **InvestorNet - Gate2Growth initiative**

  The **InvestorNet - Gate2Growth** initiative (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.

28 https://plataformapyme.es/es-es/Internacional/PoliticaEuropeaPyme/Paginas/COSME.aspx

29 https://www.euramed.eu/euratom-research-and-training-programme-for-2021-2025/

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Investment aid and incentives in Spain

The initiative has incorporated 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 investments** from universities and research institutions.
- Conducting master class in "*How to Attract Investors*", "*SME Instrument*" and "*Train the Trainers in How to Attract Investors*".

Many projects have been executed within the framework of the InvestorNet - Gate2Growth initiative, including most notably the following:

- NICE: Innovative and enhanced nature-based solutions for a sustainable urban water cycle (2021-2025).
- SLIM: Sustainable low impact mining solution for the mining of small mineral deposits based on advance rock blasting and environmental technologies (2016-2020).
- RUBIZMO: Replicable business models for modern rural economies (2018-2021).
- LIBERATE: Lignin biorefinery approach using electrochemical flow (2018-2021).
- CIRCLES: The control of microbiomes-tailored circular actions to enhance food systems (2018-2023).
- DEEP PURPLE: Conversion of diluted mixed urban bio-wastes into sustainable materials and projects in flexible purple photobiorefineries.
- GO GRASS: Grass-based circular business models for rural agri-food value chains (2019-2023).
- SEALIVE: Circular economic strategies and advanced bio-based solutions to keep land and sea free from plastics contamination (2019-2023).
- NewTechAqua: New technologies, tools and strategies for a sustainable, resilient and innovative European Aquaculture (2020-2023).
- ROTATE: Critical and essential raw materials for circular ecology (2022-2026).
- TRIGGER: Solutions to mitigate climate-induced health threats (2022-2026).

Lastly, it should be noted that, along with the initiatives described above, other specific business financing initiatives, according to activity sector, are also available at Community level.

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In recent years, Spanish labor legislation has been evolving to become more flexible and modern. The main legislative changes have been designed to establish a labor law framework that contributes to the effective management of labor relations and facilitates job creation, as well as promoting job stability and entrepreneurial activity.

Also, a constant in recent years has been the approval of measures aimed at promoting the entry of foreign investment and talent into Spain and the modernization of legislation on cross-border posting of workers, bringing it into line with EU law.

On the other hand, the latest labor reform has modified the regime of fixed-term contracts (to simplify the variety contracts and reduce the temporality rate) and training contracts (to provide an ideal framework for the incorporation of the youth into the labor market) and has enhanced the use of the discontinuous permanent contracts.

Meanwhile, the Spanish labor and employment legislation has been including significant progress regarding social rights, equal treatment and opportunities in the labor market, and remote work.

GARRIGUES ICEX INVEST IN SPAIN

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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).

In the last years, Spanish Labor legislation has adapted and updating through legislatives modifications in order to be more flexible and to increase improve the labor market in terms of employability and investment. The latest labor reform has modified the regime of fixed-term contracts (to simplify the variety contracts and reduce the temporality rate) and training contracts (to provide an ideal framework for the incorporation of the youth into the labor market) and has enhanced the use of the discontinuous permanent contracts. Likewise, the legislation has included been including progress regarding social rights and equal treatment and opportunities in the labor market.

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/ 2 Contracts

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 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, fixed-term, training, distance work and part-time contracts.

In the website of the National Public Employment Service[1] 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. There are two types of contracts: contracts due to circumstances of production and contracts for the substitution of employees. After March 30, 2022 contracts for projects and/or services cannot be entered into.

The employment contract is presumed to be entered into for an indefinite term. All temporary contracts must be made in writing and must specify the reason for their temporary nature in sufficient detail, the specific circumstances justifying it and its connection with the foreseen term (additionally, as per contracts for the substitution of employees, the name of the person substituted must be specified). 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 15 days in advance.

1 https://www.sepe.es/HomeSepe/en/empresas/Contratos-de-trabajo/modelos-contrato.html

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TYPE	GROUND	TERM	OBSERVATIONS
Contract due to circumstances of production	To cover production circumstances due to occasional and unforeseeable increase of the activity.	May not exceed a maximum of 6 months (extendable to 12 months by collective bargaining agreement for the industry).	Its termination entitles the employee to receive a severance equal to 12 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. When workers have been hired for more than 18 months within a 24-month period, with or without interruption, for the same or different position at the same company or group of companies, under two or more contracts due to circumstances of production, 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. Likewise, the status of permanent employee shall be acquired by a person who occupies a position which has been occupied with or without solution of continuity for more than 18 months in a period of 24 months through contracts due to circumstances of production, including contracts made available through temporary employment agencies. The performance of work under contracts, subcontracts or administrative concessions that constitute the usual/ordinary activity of the company may not be identified as a cause of this contract.
	To cover oscillations that (even though within normal activity) generates a temporary mismatch between the permanent staff available and the one required (the oscillations include those derived from annual vacations).		
	To cover production circumstances due to occasional and predictable situation and for a reduced and limited term.	Maximum duration of 90 days per calendar year, regardless of the number of workers required on each of these days to meet the specific situations that justify the hiring, which must be duly identified in the contract.	
Fixed-term contracts for the substitution of employees	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 (or up to 15 days before the beginning of the period) until the return of the substituted worker or expiry of the term established for the substitution.	The contract must state the name of the substituted worker and the grounds for the substitution.
	To complete the reduced working day of another worker, when such reduction is covered by legally or conventionally established causes.	For the entire duration of the reduced working day of the worker whose working day is to be completed.	The contract must state the name of the person whose working day is to be completed and the cause of the substitution must be identified.
	Temporary coverage of a job position during a selection or promotion process to be covered by a permanent contract.	Maximum of 3 months.	

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2.2.2 Training contracts

CONTRACT	PURPOSE	TERM	OTHER INFORMATION OF INTEREST
Training contract for obtaining professional practice	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 artistic or sports education, or workers holding a vocational qualification certificate (*certificado de profesionalidad*) entitling them to work in their profession.	Minimum of 6 months and maximum of 1 year. Sick leave, birth leave, leave for adoption or custody for adoption or fostering, leave due to risk during pregnancy and during breastfeeding and gender violence all toll the duration of the contract.	As a general rule, no more than 3 years may have elapsed since completion of the relevant studies, or 5 years if the contract is made with a disabled worker. The job must allow for adequate professional practice according to the level of studies or training that is the subject of the contract. An individual training plan shall be drawn up and a mentor shall be assigned. No employee may be hired in the same or different companies for longer than the maximum period of time by virtue of the same professional qualification or certificate. The employee may not work overtime (except to prevent or repair extraordinary and urgent damage). The employee shall have the right to obtain certification of the content of the internship performed. The compensation shall be the one established in the collective bargaining agreement applicable to the company for these contracts or, if none, the one applicable to the professional group and compensation level corresponding to the functions performed, which can never be less than the established for training contract in alternation or the minimum wage.
Training contract in alternation	The purpose of this type of contract is making compatible paid work activity with the corresponding training processes (vocational training, university studies and the National Employment System's Catalog of Training Specialties). To be entered into by those 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 3 months and maximum of 2 years. Sick leave, birth leave, leave for adoption or custody for adoption or fostering, leave due to risk during pregnancy and during breastfeeding and gender violence all toll the duration of the contract.	The theoretical training provided by the training center or workplace or the company itself, when so established, as well as the corresponding practical training provided by the company and workplace, are a substantial element of this contract. There must be a tutor both in the training entity and in the company, as well as the elaboration of individual training plans. Generally, only one contract may be concluded for each training cycle. The effective working time (compatible with training) is subject to limits 65% on the first year and 85% on the second year. Workers cannot work overtime (except to prevent or repair extraordinary and urgent damage), at night or in shifts. This contract may not be entered into when the activity or position has been previously performed by that employee in the same company for a period of more than 6 months. A trial period cannot be established. Where it does not regulate this, the compensation may not be less than 60% (during first year) or 75% (during second year) of the fixed salary corresponding professional group or level, never being under the minimum wage.

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2.2.3 Part-time contracts

An employment contract will be 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, having to guarantee, in any case, that there is no direct nor indirect discrimination between women and men.

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).

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 Discontinuos permanent contract

This type of contract may be used for the performance of work of a seasonal nature or linked to seasonal activities and for the performance of work that is not of a seasonal nature but which, being of an intermittent nature, has certain, determined or undetermined periods of performance.

It may be used to carry out work in the context of commercial or administrative contracts which, being foreseeable, are part of the ordinary activity. In this case, periods of inactivity may only occur as waiting periods between reassignments between subcontracting. The maximum period of inactivity shall be three months, unless otherwise provided for in the collective bargaining agreement. Once this period has expired, the company must adopt the appropriate temporary or definitive measures.

The discontinuous permanent contract must be formalized in writing and reflect the essential elements of the work activity (among others, the duration of the period of activity, the working hours and its hourly distribution, although the latter may be stated on an estimated basis, to be specified at the time of the call).

Collective bargaining agreements (or company agreements) will establish the criteria to call the employee. Likewise, the legal representatives of the workers must be informed sufficiently in advance, at the beginning of the calendar year, of the forecasts of the calls.

2.2.5 Distance work (telework)

Law 10/2021 defines regular remote work where, within a reference period of 3 months, accounts for at least 30% of the working day, or the equivalent proportional percentage depending on the duration of the employment contract. The remote working agreement shall be in writing, voluntary and reversible for the employee and the company, and may be signed at the beginning of the employment relationship or later on.

Workers' statutory representative must receive a copy of each remote working agreement within 10 days since its signing, which must be subsequently sent to the corresponding Public Employment Service office.

Mandatory minimum required content of each remote working agreement is:

a. Inventory of means, equipment and tools provided.

b. Expenses that remote working may cause, as well as monetary compensation, timing and method in which the Company shall pay for them.

c. Working hours and availability periods.

d. Percentage and distribution between on site and remote working hours.

e. Corresponding workplace.

f. Designated remote working place.

g. Reversibility advance notice period.

h. Means of exercising corporate control.

i. Procedure to be followed in the event of technical difficulties preventing remote working.

j. Company instructions (participated by workers representatives) on data protection.

k. Company instructions (after informing workers representatives) on information security.

l. Length of the remote working agreement.

Any modification of the above must be subject of a new written agreement.

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.

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However, the termination by the employer will be null in where terminating the contract of a pregnant employee, from the start date of the pregnancy until the beginning of the suspension for birth, unless there are grounds not related to pregnancy or maternity.

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 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:

ITEM	REGULATION
Maximum working hours	The maximum working hours are those agreed in collective bargaining agreements or individual employment contracts (within the limits of the applicable collective bargaining agreements). 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. The company must guarantee the daily registration of the working day, without prejudice of the working time flexibility established, which must include the specific start and end time of each employee's working day, and these records must be kept for four years (they must be available to the workers, their legal representatives and the Inspection of Work and Social Security). In addition, employees have the right to digital disconnection to guarantee the respect of their rest time, permits and vacations, as well as their personal and family privacy outside of the legal or conventionally established work time.
Overtime	Overtime is time worked in excess of the maximum ordinary working hours. By collective bargaining agreement or, in the absence thereof, by individual contract, there shall be a choice between paying overtime at the amount established, which in no case may be less than the value of the ordinary hour, or compensating them with equivalent paid time off periods. Paid overtime may not exceed 80 hours per year. The compensation with time off must be given within four months of the date on which the overtime was worked, unless otherwise agreed. Overtime is generally voluntary.
Rest periods / public holidays / vacation / paid leave	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 calendar days, and cannot be paid in lieu of that period, save in case of termination of the contract with accrued and unused vacation. Workers are entitled to paid leave in certain circumstances, such as marriage, performance of union duties, performance of unavoidable public or personal duties, breastfeeding, relocation of main residence, serious illness or accident, hospitalization or death of relatives up to the second degree of kinship o affinity, prenatal exams and birth preparation, etc.
Reduction in working hours and right to adapt the duration and distribution of the working hours	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 by consanguinity or affinity up to the second degree, 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 individual reaches 23 years. In addition, employees have the right to request adaptations of the duration and distribution of the working day, in the organization of working time and in the way they render their services, including the possibility of remote working, to make effective their rights to conciliation of family and work life. In the case that they have children, the right will exist until they reach 12 years.

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2.5 WAGES AND SALARIES

The official minimum wage is established by the Government each year and in 2022 amounts to €33.33 per day or €1,000 per month, depending on if the salary is fixed on a daily or monthly basis.

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.

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/ 3 Material modifications to working conditions

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, and only if an agreement is reached or the legally established procedures are fulfilled (arbitration, or the National Commission of Consultation of Collective Bargaining Agreements), the conditions can be left with no application. 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.

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/ 4 Termination of employment contracts

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:

DISMISSAL	LEGAL GROUNDS	OBSERVATIONS
Collective layoff	**Grounds:** Economic, technical, organizational or production-related grounds, whenever these affect, in a 90-day period, at least • The entire payroll, if more than 5 workers are affected and the activity of the company ceases entirely. • 10 workers at companies with less than 100 employees. • 10% of the employees at companies with between 100 and 300 workers. • 30 workers, at companies with 300 or more employees. According to the interpretation made by the Supreme Court, following the doctrine of the Court of Justice of the Europe Union, the above thresholds refer to the company as a whole and to each work center with more than 20 employees, being the 90-day period a mobile/dynamic timeframe. **Definition of legal grounds:** • **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. • **Technical**: Where there are changes in the methods or instruments of production, among others. • **Organizational**: Where there are changes in the personnel working methods and systems or in the manner of organizing production, among others. • **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.	• 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. • 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). • 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. • 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. • The statutory severance consists of 20 days' salary per year worked, up to a maximum of 12 months' salary, or more if so agreed, the same notification requirements for individual objective dismissals must be complied with. • 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. • 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.

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DISMISSAL	LEGAL GROUNDS	OBSERVATIONS
Objective grounds	• Ineptitude of the worker coming to light or not foreseen until after being hired by the company. • 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. • In case of economic, technical, organizational or production-related reasons (see definition of the reasons under collective layoff). • In indefinite-term contracts arranged directly by not-for-profit entities to implement determined public plans and programs, without stable economic endowment and financed by the Public Administrations through annual budgetary or extra-budgetary appropriations as a result of external income of a final nature, for the insufficiency of the appropriate allocation of funds to enable the contracts to continue.	• The employer must serve at least 15 days' advance notice in writing on the worker (or pay the corresponding salary). • 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.
Disciplinary action	Serious and culpable breach by the worker: • Repeated and unjustified absenteeism. • Insubordination or disobedience. • Physical or verbal abuse towards the employer. • Breach of contractual good faith or abuse of trust. • Willful reduction in job performance. • Habitual drug or alcohol abuse which adversely affects job performance. • 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.	• The employer must serve written notice of disciplinary dismissal, stating the grounds and the effective date of dismissal. • If a workers' representative or labor union delegate is dismissed, a disciplinary procedure in which all parties are heard (*expediente contradictorio*) 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. • 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.

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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.

CLASSIFICATION	EVENTS	EFFECTS
Justified	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.
Unjustified	No legal ground exists for the dismissal or the procedure followed is incorrect.	The employer may choose between: • 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. • 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. 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.
Null	• The alleged ground is a form of discrimination. • It implies a violation of fundamental rights. • 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 birth, adoption or custody for adoption or fostering has ended, provided that no more than twelve months have elapsed since the date of birth, adoption, custody for adoption or fostering of the child. • Collective dismissals may also be considered null and void if the company has not carried out the consultation period or provided the legally required documentación.	• Immediate reinstatement of the worker. • Payment of salaries not received.

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/ 5 Senior management contracts

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 manager 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.

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/ 6 Contracts with temporary employment agencies

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 training contracts for obtaining professional practice and training contract in alternation.

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 12 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.

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/ 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.

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.

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/ 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 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 €579.02 per month).

A new Scholarship Statute is expected, regulating curricular and extracurricular internships foreseen in official study plans.

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/ 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 3 months following the occurrence of such changes and to receive severance equal to 7 days' pay in cash per year worked, up to a maximum of 6 months' pay, or such severance as may have been agreed on.

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/ 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.

FORMALITY	BASIC ASPECTS
Registration of the company with the Spanish social security authorities (obtainment of a social security contribution account code)	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[2] and documentation identifying the company (deed of formation, document issued by the Ministry of Finance 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).
Notification of hiring of employees	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.
Notification of opening of workplace	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.

2 http://www.seg-social.es/wps/portal/wss/internet/Empresarios/Inscripcion/10929/31193/48532

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/ 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, allows the parties to choose the applicable law, save for any mandatory matters under Spanish law.

The 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 essentially: (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) non-discrimination 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,(ix) accommodation terms and(x) allowances to cover travel, accommodation and meals expenses.

When the effective duration of the assignment exceeds 12 months, companies included in the scope of application of the referred Law 45/1999, in addition to the above conditions, must guarantee the rest of the working conditions provided by the Spanish employment law, with the exception of (i) the procedures, formalities and conditions of conclusion and termination of the employment contract, including the non-competition clauses and (ii) the complementary retirement regimes.Notwithstanding, more favorable conditions applied in their country of origin, will still apply to employees assigned in Spain.

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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), designating a representative in Spain. The notice must be served by the foreign company that posts the worker on the authorities of the Autonomous Community in which the posted worker is to work[3] (a central electronic register of notices is still to be created). The basic contents of this notice are: identification of the company that posts the worker, as well as the company that hosts him; identification of the worker; commencement date and projected duration; and identification of the specific case of posting.

There is also an obligation to make the following documentation available (translated into Spanish or the co-official language of the place where the workplace is located) at the workplace to which the worker has been posted : employment contracts or essential elements of the contract; pay statements and evidence that workers have been paid; any records of hours kept, indicating the beginning, end and duration of the working day; work permit of third-country nationals in compliance with the legislation of the State of establishment.

Lastly, employers are under the obligation to notify the Spanish Labor Authorities of any damage to the health of posted workers occasioned upon or as a result of work performed in Spain.

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 or failing to serve notice of minor occupational accidents and professional diseases of those workers constitute a minor infringement, while notification of the relocation after it has taken place,or without designating a representative or giving false or inaccurate reasons for extension of the assignment, not having the aforesaid documents available during the relocation or failing to serve notice on the Labor Authorities of serious, very serious or mortal accidents of the posted workers are classed as a serious infringement as well as not complying with the request of the Inspection of filing documentation or filing it with no translation. Failing to notify the relocation or any misrepresentation or concealment of the data contained in the notification are considered very serious infringements and the fraudulent transfer of workers that do not carry out substantive activities in their State of establishment, as well as the fraudulent transfer of workers who do not usually carry out their work in the Member State of origin.

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, 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[4] are currently in force:

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	Any nationality
Chile	Spaniards and Chileans
China	Any nationality
Colombia	Spaniards and Colombians
Dominican Republic	Spaniards and Dominicans
Ecuador	Any nationality
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

3 https://www.mites.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores/datoscontacto-autlaborales/index.htm

4 http://www.seg-social.es/wps/portal/wss/internet/InformacionUtil/32078/32253

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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, Uruguay, Dominican Republic, 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.

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/ 12 Visas and work and residence permits[5] [6]

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.

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 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 one year, for any person pursuing a entrepreneur 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.

5 https://prie.comercio.gob.es/en-us/Paginas/Emprendedores.aspx

6 (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).

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- 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 to 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 more than 250 workers in Spain; annual net revenues in Spain in excess of €50 million or annual net equity in Spain above €43 million; 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, or holding an authorization to stay, wish to perform 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.

  The residency authorization for research has the following two types:

  - Residence authorization for EU research: For foreigners included in the first of the aforementioned cases who hold a doctorate or an appropriate higher education qualification that allows them to access doctoral programs, and have been selected by the research entity to carry out a research activity.

  - Residence authorization for national investigation: For foreigners in any of the cases mentioned that are not contemplated in the previous section.

  The period of validity of this authorization will be two years or equal to the duration of the host agreement or contract, if it is less. Once this period has expired, its renewal may be requested for successive periods of two years, as long the conditions continue.

- 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.

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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 working days and will be deemed to have been approved by administrative silence.

The term of the residence permits established under Law 14/2013 will be, as a general rule, two years, and renewal may be requested for periods of two years as long as the conditions that generated 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:

ADMINISTRATIVE AUTHORIZATIONS

AUTHORIZATION TYPE	SCENARIO	DURATION/REQUIREMENTS
Initial residence and employed work permit	Non-EU nationals intending to work in Spain must obtain a special work visa and a work and residence permit beforehand.	Granted to a specific geographical area and occupation, except in cases where the requirement that the national employment situation does not permit the recruitment of the worker is not applicable, and shall be for a period of one year. 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.
Residence and self-employed work permit	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.
Frontier workers	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.
Fixed- term employed work permits	Permitted types of work: • Seasonal work: Maximum of 9 months within a period of 12 consecutive months. • Project work or services (assembly of industrial plants, infrastructure, etc.). • Senior management, professional sportsmen and women, artistes in public performances, and such other groups as may be determined by legislation. • Training and professional work experience.	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.
Residence and work of highly qualified professionals in possession of an EU blue card	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.

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/ 13 Social security system[7]

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 2022, the maximum contribution base will be €4,139.40 per month for all professional categories and groups. Therefore, the situation for 2021 under the general social security program (applicable to the great majority of workers) is as follows:

7 http://www.seg-social.es/

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CATEGORY	MINIMUM BASE (€/MONTH)	MAXIMUM BASE (€/MONTH)
Engineers and graduates	1,629.30	4,139.40
Technical engineers and assistants	1,351.20	4,139.40
Clerical and workshop supervisors	1,175.40	4,139.40
Unqualified assistants	1,166.70	4,139.40
Clerical officers	1,166.70	4,139.40
Messengers	1,166.70	4,139.40
Clerical assistants	1,166.70	4,139.40
CATEGORY	**MINIMUM BASE (€/DAY)**	**MAXIMUM BASE (€/DAY)**
Class 1 and class 2 skilled workers	38.89	137.98
Class 3 skilled workers and specialists	38.89	137.98
Laborers	38.89	137.98
Workers under 18 years of age	38.89	137.98

The contribution rates applicable to employers and employees under the general social security program in 2022 are as follows:

	EMPLOYER (%)	EMPLOYEE (%)	TOTAL (%)
General contingencies	23.6	4.7	28.30
UNEMPLOYMENT			
General rule	5.50	1.55	7.05
Fixed-term contracts (full-time and part-time)	6.7	1.6	8.3
Professional training	0.6	0.1	0.7
Wage Guarantee Fund	0.2	-	0.2
Total general rule	**29.9**	**6.35**	**36.25**
Total fixed-term contracts	**31.1**	**6.4**	**37.51**

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.

Included below are three practical examples for calculating the social security contribution for general contingencies payable by employers for workers subject to the general social security program.

Case 1: A person works as an administrative assistant for a company under a full-time indefinite-term contract and receives a salary of €13,900 per year.

- Data used to calculate the contribution for general contingencies:

  1. The contribution base to be used will be the minimum for administrative assistants, *i.e.*, €1,166.70 per month, given that the monthly salary received by the worker is lower than this amount.

  2. The contribution rate applicable to the aforesaid amount will be 29.9% for the employer and 6.35% for the worker, bearing in mind that the contract is indefinite-term.

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- Monthly contribution (general contingencies):

	BASE (€)	CONTRIBUTION RATE (%)	MONTHLY CONTRIBUTION (€)
Employer	1,166.70	29.9	348.84
Worker	1,166.70	6.35	74.08
			422.93

Case 2: A person works as a technical engineer for a company under a full-time fixed-term contract and receives a salary of €24,996.00 per year.

- Data used to calculate the contribution for general contingencies:

  1. The contribution base to be used will be the monthly salary received by the worker, *i.e.*, €2,083.00

  2. The contribution rate applicable to the aforesaid amount will be 31.1% for the employer and 6.4% for the worker, bearing in mind that the contract is fixed-term.

- Monthly contribution (general contingencies):

	BASE (€)	CONTRIBUTION RATE (%)	MONTHLY CONTRIBUTION (€)
Employer	2,083.00	31.1	647.81
Worker	2,083.00	6.4	133.312
			781.12

Case 3: A person with the job category "graduate" (*licenciado*) works for a company under a part-time indefinite-term contract and receives a salary of €56,981.40 per year.

- Data used to calculate the contribution for general contingencies:

  1. The contribution base to be used will be the maximum for graduates, *i.e.*, €4,139.40 per month, given that the monthly salary of the worker is higher than this amount.

  2. The contribution rate applicable to the aforesaid amount will be 29.9% for the employer and 6.3% for the employee, bearing mind that the contract is indefinite-term.

- Monthly contribution (general contingencies):

	BASE (€)	CONTRIBUTION RATE (%)	MONTHLY CONTRIBUTION (€)
Employer	4,139.40	29.9	1,216.95
Worker	4,139.40	6.35	258.45
			1,500.53

In all cases, the employer must also contribute for professional contingencies at the premium rates stipulated in additional provision four of Law 42/2006, of December 28, 2007. The resulting amounts are borne exclusively by the employer.

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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:

COLLECTIVE	CONDITIONS AND CHARACTERISTICS		CONTRIBUTION SCHEME	OBSERVATIONS
Administrators or members of the Board of Directors who receive compensation.	If the worker has the effective control of the company.		*RETA*	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: 1. 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. 2. Their participation in the company capital is equal to or greater than one third. 3. 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.
	If the worker has not the effective control of the company.	They are employees of the company and the administrator post does mean carrying out the functions of direction and management.	*RGSS*	
		The post as administrator means carrying out the functions of direction and management.	*RGSS* as assimilated to employees (excluding unemployment protection and that of the Salary Guarantee Fund.	
		The post as administrator does not mean carrying out the functions of direction and management.	Non-affiliation in the Social Security system.	

These rules apply as long as the administrator or member of the Board of Directors resides in Spain. In case the administrator resides abroad, the Spanish Social Security would not be applicable.

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Labor and social security regulations

/ 14 Equality in the workplace

Companies are obliged to respect equal treatment and opportunities in the workplace, for which they must adopt measures aimed at avoiding any type of labor discrimination between women and men.

Companies with 50 or more workers need to implement and apply an equality plan, with the scope and content established by law, which must be negotiated with the legal representation of the workers.

Equality plans must contain an ordered set of evaluable measures aimed at removing obstacles that impede or hinder the effective equality of women and men. Before establishing the plan, a negotiated diagnosis should be drawn up, where appropriate, with the legal representation of the workers, which will contain at least the following subjects:

a. Selection and contracting process.

b. Professional classification.

c. Training.

d. Professional promotion.

e. Working conditions, including the salary audit between women and men.

f. Co-responsible exercise of the rights of personal, family and work life.

g. Under-representation of women.

h. Remuneration.

i. Prevention of sexual harassment and because of sex.

In addition, companies must keep a record with the average values of salaries, salary supplements and extra-salary perceptions, disaggregated by sex, professional groups, professional categories or positions of equal value. Employees have the right to access, through the legal representation of workers in the company, the salary record of their company. Where there are no workers' representatives, the employees can only have access to the percentage differences that exist between the averaged remunerations of men and women.

When in a company with at least fifty workers, the average remuneration for workers of one sex is higher than the other by 25% or more, taking the whole of the payroll or the average of the salaries paid, the employer must include in the salary record a justification that said difference responds to reasons not related to the sex of the workers. The wage registry has certain specialties in companies that have an equality plan and, thus, carry out a pay audit (that requires the evaluation of positions and the establishment of a plan to correct the remuneration differences).

The validity period of equality plans may not exceed four years and they are subject to compulsory registration in the Public Register of Collective Agreements and Collective Bargaining Agreements.

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Labor and social security regulations

/ 15 Occupational risk prevention

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 10 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 administrative, labor, criminal and civil liability.

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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 to protect IP rights (trade marks, patents, utility models, plant varieties, industrial designs, topographies of semiconductor products, trade secrets, copyright and computer software) in Spain, also focusing on the legal remedies available against IP infringement.

GARRIGUES ICEX INVESTIN SPAIN

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Intellectual property law

/ 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.

	TRADE SECRETS	TRADEMARKS ®	COPYRIGHT ©	PATENTS- UTILITY MODELS	SPANISH DESIGNS	COMMUNITY DESIGNS
What is protected	Information	Identifiers	Creations	Inventions	Designs	Designs
Duration	It is a *de facto* right which lasts indefinitely, as long as the information remains secret.	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	(i) Secrecy and confidentiality (ii) it has commercial value because it is secret and (iii) reasonable steps must be adopted by its holder to keep it secret.	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 prerequisite to obtain protection of intellectual property (as we will see, this principle does not govern copyright or trade secrets).

Spain, unlike the United States for example, follows the "first-to-file" system, which means that the first person to apply for registration will obtain the relevant 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.[1]

1 Annex I to this chapter includes a list with links to the official fees corresponding to the different types of rights.

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1.3 WHAT IS THE TERRITORIALITY PRINCIPLE?

The principle of territoriality entails 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.

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 favored Spanish legislation to be in line with that of the rest of EU Member States.

1.5 WHAT ARE THE MOST IMPORTANT CONVENTIONS SIGNED BY SPAIN?

INTERNATIONAL CONVENTION	INTELLECTUAL PROPERTY RIGHTS REGULATED	ORGANIZATION
Agreement on Trade-related aspects of intellectual property rights (TRIPS)	Intellectual Property	World Trade Organization
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.

1.7 WHAT CHANGES ARE EXPECTED IN THE SPANISH INTELLECTUAL PROPERTY LEGISLATION?

A preliminary draft law amending the three main industrial property laws (Law 17/2001, of 7 December, on Trademarks, Law 20/2003, of 7 July, on the Legal Protection of Industrial Design and Law 24/2015, of 24 July, on Patents) was announced last October.

The objective of amending these laws by means of a single legal text is threefold: adapting these laws to the current market reality, making them more coherent and precise, and providing greater legal certainty for the users of the industrial property system.

These amendments are also aimed at adapting the content of the aforementioned laws to the regulatory and interpretative changes that have taken place at international level and, in particular, in neighboring countries.
If the preliminary draft goes ahead, it should be approved by the Council of Ministers by means of a final draft in the upcoming months.

In addition, as a result of the entry into force in toto of the First Additional Provision of the Trade Mark Law, the Spanish Patent and Trademark Office (SPTO) will be competent to declare the invalidity or revocation of a trademark as of 14 January 2023.

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/ 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 (SPTO).

The application process takes approximately between 6 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 SPTO CONDUCT WHEN IT RECEIVES THE APPLICATION?

The SPTO 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 SPTO 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.

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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 a single Office, enabling various national registrations to be obtained, but does not offer unitary worldwide protection.

2.8. HOW TO 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[2]?

A EU trademark confers 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 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 a relevant part of the EU 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. In Spain, the function of EU trademark court corresponds exclusively to the Commercial Courts of Alicante and, at the appeal stage, to the Eighth Section of the Court of Appeals of Alicante.

2.11. WHO CAN FILE AN EU TRADEMARK?

Any physical or legal person, regardless of its domicile or nationality.

2.12. HOW TO 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 5 months if there are no oppositions or ex officio objections.

2.13. WHAT CHECKS DOES THE EUIPO CONDUCT 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 Previously designated as Community Trademark.

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2.14. EU... AND INTERNATIONAL TRADEMARK?

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 physical or legal person 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. BREXIT

Following the United Kingdom's (UK) withdrawal from the European Union, European Union trademarks were "cloned" by the United Kingdom Intellectual Property Office (UKIPO) into comparable UK trademarks.

Such comparable UK trademarks were created automatically, in the case of EU trademarks registered as of January 1 2021, or at the request of their owners, in the case of EU trademark applications that were still pending on January 1 2021.

Comparable UK trademarks must be renewed independently of the relevant European Union Trademark. This implies paying separate renewal fees for the equivalent mark on the one hand and for the European Union trademark on the other hand, to be paid separately to the competent Office (UKIPO and EUIPO, respectively).

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/ 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 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 SPTO, 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 SPTO can take a minimum of 30 months.

The patent owner may exploit the invention and prevent third parties from exploiting, marketing, or launching it in 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:

a. Absolute novelty.
b. Inventive step.
c. 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.

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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.

Following the United Kingdom's withdrawal from the European Union, only applications for supplementary protection certificates for plant protection products and medicines (or applications for the extension of such certificates) which were submitted to a UK authority before January 1 2021 will continue to be governed by European Union law.

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 long-awaited unitary patent system 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.

In January 2022, Austria became the thirteenth EU Member State to ratify the Agreement on the Unified Patent Court ("UPC Agreement").

The entry into force of the UPC Agreement will determine the entry into force of Regulation (EU) 1257/2012, which will take place on the first day of the fourth month in which Germany ratifies the UPC Agreement.

If, as expected, Germany's ratification takes place in the forthcoming months, we could expect the unitary patent system to enter into force throughout 2022 or in early 2023.

Spain, together with Poland and Croatia, are not taking part in the system.

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. 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.

3 (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.

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/ 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.

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/ 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 SPTO. 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[4].

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.

4 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

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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 confers its owner the exclusive right to use and prevent use of said design by unauthorized third parties.

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 form 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. BREXIT

On January 1 2021, Community designs were replaced by equivalent rights in the United Kingdom, in a similar manner to that indicated for European Union Trademarks (see section 2.16).

Holders of unregistered Community designs will continue to enjoy the protection conferred on them by European Union law, becoming holders of an enforceable intellectual property right in the United Kingdom. The term of protection of such right would be equivalent to the term of protection remaining under EU law.

5.10. 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.

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/ 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 SPTO 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[5].

5 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.

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Intellectual property law

/ 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 original 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[6] 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.

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. For authors deceased before 7 December 1987, copyright protection shall last 80 years from their death. 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.

6 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.

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/ 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.

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Intellectual property law

GUIDE TO BUSINESS IN SPAIN 2022

/ 9 Trade secrets

9.1. WHAT IS A TRADE SECRET?

Although there are many similarities with intellectual property rights, a trade secret does not fall within this category. The intangible asset which is protected is information.

Information, relating to any part of the business (including technological, scientific, industrial, commercial, organizational or financial areas), may constitute a trade secret, provided it meets three requirements:

1. It must be secret, meaning that it is not generally known among or readily accessible to persons within the circles that normally deal with it.
2. It must have commercial value because it is secret.
3. Reasonable steps must be adopted by its holder to keep it secret.

The protection of trade secrets is regulated in the Trade Secrets Law 1/2019, of February 20, 2019 (TSL).

9.2. HOW LONG DOES A TRADE SECRET LAST?

Since it is a *de facto* right it lasts indefinitely, as long as the information remains secret.

9.3. HOW CAN SENSITIVE BUSINESS INFORMATION BE PROTECTED?

Among other measures, it is important that companies have an adequate level of cybersecurity protection, that they implement appropriate confidentiality obligations in their contracts with employees and third parties (manufacturers, suppliers, distributors, etc.) and that they establish restrictions on staff access to restricted areas where confidential documents are kept.

9.4. WHAT STEPS ARE CONSIDERED UNLAWFUL UNDER THE TRADE SECRETS LAW?

The acquisition of a trade secret without the consent of its holder is considered unlawful when it is carried out by unauthorized access to, appropriation of, or copying of any medium containing the trade secret or from which the trade secret can be deduced; or any other conduct which is considered contrary to honest commercial practices.

Additionally, the use or disclosure of a trade secret will be considered unlawful whenever carried out without the consent of the trade secret holder, if the trade secret had been acquired unlawfully or with a breach of a confidentiality or similar duty.

Moreover, the TSL prohibits the production, offering, placing on the market of products that significantly benefit from trade secrets unlawfully acquired.

9.5. IS A TRADE SECRET TRANSFERABLE?

Yes. Like intellectual property rights, trade secrets may be assigned and licensed on an exclusive or non-exclusive basis.

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Intellectual property law

/ 10 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:

10.1. 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.

10.2. 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).

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Intellectual property law

/ Appendix I Reference to official fees for 2021

A) Trademarks

1. National trademark.
2. International Trademark.
3. EU Trademark.

B) Patents and Uility models

1. National Patent and Utility Model.
2. European Patent.
3. PCT.

C) Industrial designs

1. National Design.
2. Community Design.
3. International Design.

D) Topographies of semiconductor products

E) Copyright

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Intellectual property law

GUIDE TO BUSINESS IN SPAIN 2022

/ Appendix II **Intellectual property conventions**

	IP		TRADEMARKS			PATENTS		DESIGNS	COPYRIGHT
COUNTRY	PARIS CONVENTION	WTO[1] (TRIP'S)[2]	MADRID AGREEMENT	MADRID PROTOCOL	EUTM[3]	PCT[4]	EPC[5]	HAGUE AGREEMENT	BERNE AGREEMENT
Afghanistan	X	X		X					X
African Intellectual Property Organisation (OAPI)				X				X	
Albania	X	X	X	X		X	X	X	X
Algeria	X	O	X	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	X
Belgium	X	X	X	X	X	X	X	X	X

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1 WTO: World Trade Organization
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Belize	X	X				X		X	X
Benin	X	X				X		X	X
Bhutan	X	O	X	X					X
Bolivia	X	X							X
Bosnia and Herzegovina	X	O	X	X		X	E	X	X
Botswana	X	X		X		X		X	X
Brazil	X	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	V	X	X
Cameroon	X	X				X			X
Canada	X	X		X		X		X	X
Cape Verde		X				X			X
Central African Republic	X	X				X			X
Chad	X	X				X			X
Chile	X	X		X[7]		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
Cook Islands									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
Curaçao		O							
Cyprus	X	X	X	X	X	X	X		X

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Czech Republic	X	X	X	X	X	X	X		X
Democratic People's Republic of Korea	X		X	X		X		X	X
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			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

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Guinea	X	X				X			X
Guinea-Bissau	X	X				X			X
Guyana	X	X							X
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	O							X
Iceland	X	X		X		X	X	X	X
India	X	X		X		X			X
Indonesia	X	X		X		X			X
Iran, (Islamic Republic of)	X	O	X	X		X			
Iraq	X	O				X			
Ireland	X	X		X	X	X	X		X
Israel	X	X		X		X		X	X
Italy	X	X	X	X	X	X	X	X	X
Jamaica	X	X		X		X		X	X
Japan	X	X		X		X		X	X
Jordan	X	X				X			X
Kazakhstan	X	X	X	X		X			X
Kenya	X	X	X	X		X			X
Kiribati	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	O							X
Lesotho	X	X	X	X		X			X
Liberia	X	X	X	X		X			X

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Libya	X	O				X			X
Liechtenstein	X	X	X	X		X	X	X	X
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			X
Malaysia	X	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	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	V	X	X
Mozambique	X	X	X	X		X			X
Myanmar		X							
Namibia	X	X	X	X		X		X	X
Nauru									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					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	V	X	X
Romania	X	X	X	X	X	X	X	X	X
Russian Federation	X	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			X

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Samoa	X	X				X		X	X
San Marino	X		X	X		X	X	X	X
Sao Tome and Prince	X	O		X		X		X	X
Saudi Arabia	X	X				X			X
Senegal	X	X				X		X	X
Serbia	X	O	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							X
Somalia		O							
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
South Sudan		O							
Spain	X	X	X	X	X	X	X	X	X
Sri Lanka	X	X				X			X
Sudan	X	O	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	O		X		X		X	X
Tajikistan	X	X	X	X		X		X	X
Thailand	X	X		X		X			X
The Netherlands	X	X	X	X	X	X	X	X	X
Timor-Leste		O							
Togo	X	X				X			X
Tonga	X	X							X

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Trinidad and Tobago	X	X	X	X		X			X
Tunisia	X	X		X		X	V	X	X
Turkey	X	X		X		X	X	X	X
Turkmenistan	X	O		X		X		X	X
Tuvalu									X
Uganda	X	X				X			X
Ukraine	X	X	X	X		X		X	X
United Arab Emirates	X	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	X
Uruguay	X	X							X
Uzbekistan	X	O		X		X			X
Vanuatu		X							X
Venezuela	X	X							X
Viet Nam	X	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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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, 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, when in case of e-commerce addressed to consumers (B2C), the specific regulation on consumers' protection should also be considered. Additionally, matters such as cybersecurity or electronic identification (electronic signature) have an increasing importance.

From the tax perspective, e-commerce raises issues, which would require a consensus to be reached on measures to be adopted at regional and even global level. Fair progress has been made in reaching a consensus on the VAT treatment of "on-line e-commerce". As regards the Tax on Certain Digital Services, although Spain has created this tax, we will have to wait for a coordinated, uniform interpretation of the various criteria determining the tax treatment of e-commerce at international level.

7
Legal framework and tax implications of e-commerce in Spain

/ 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 or data 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.

7
Legal framework and tax implications of e-commerce in Spain

/ 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

1. Equally applicable to electronic sales are the rules related to distance sales and other related relevant rules: Regarding commercial operations in which the buyer is an undertaking or a business man, the 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, 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.
- Remainder of the existence of a legal guarantee depending on the type of goods or services.
- Information of the cases in which the Seller shall take the costs of returning the goods.

7
Legal framework and tax implications of e-commerce in Spain

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, 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, 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 letters (c) and (d) above).

2. Due to their particular importance in electronic commerce, it is worth noting some legal provisions concerning payment services:

   a. Royal Decree-Law 19/2018, of November 23, on payment services and other urgent measures on financial matters is the law transposing in Spain the Directive (UE) 2015/2366, of November 25, on payment services in the internal market (known as PSD2 Directive). This Royal Decree-Law has repealed the Payment Services Law 16/2009, of November 13, 2009. The new payment services legislation 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 Royal Decree-Law 29/2018 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.

      As one of the main news of the Royal Decree-Law 19/2018, it regulates the payment initiation services and the account information services.

   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 requirethe 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 €20, the interchange fee may not exceed 0.1% of the value of the transaction.

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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 €20, 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. Also 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.

4. Finally, it is convenient to take into account the legislation deriving from the Directive (EU) 2016/1148, concerning measures for a high common level of security of network and information systems across the Union. In Spain, this Directive has been transposed by means of the Royal Decree-law 12/2018, of 7 September, concerning security of the networks and information systems, which has itself been developed by Royal Decree 43/2021, of 26th January. This legislation applies to essential services operators and digital services providers, as they are defined in the regulations (digital services being the cloud computing services, online search engines and online marketplaces).

In particular, these marketplaces are a more and more common way of developing e-commerce activities. We just mention this legislation because it only applies to a limited number of services, but it will be important to bear in mind that, when applicable, this regulations oblige to a previous notification and to other mandatory duties regarding security of the information.

2.2 ELECTRONIC INVOICING

Article 88.2 of Value Added Tax Law 37/1992 states that VAT shall be charged through the 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[1] issued by the former Ministry of Finance 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 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 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

On the 28th of August 2014, the Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC was published in the Official Journal of the European Union. This Regulation came into force on the 17th of September of the same year and it is obligatory since the 1st of July 2016 (known as e-IDAS Regulation). At a national level, Law 6/2020, of 11th of November, on several aspects of the electronic trust services, introduces specific regulations complementing the contents of e-IDAS Regulation in Spain.

1 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.

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Regulation 910/2014 defines the following concepts:

- Electronic signature, data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.
- Advanced electronic signature means an electronic signature which meets the requirements set out in article 26.
- Qualified electronic signature means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures.
- Certificate for electronic signature means an electronic attestation which links electronic signature validation data to a natural person and confirms at least the name or the pseudonym of that person.
- Qualified certificate for electronic signature means a certificate for electronic signatures, that is issued by a qualified trust service provider and meets the requirements laid down in Annex I of the e-IDAS Regulation.
- Electronic seal means data in electronic form, which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity.
- Advanced electronic seal means an electronic seal, which meets the requirements set out in article 36 of the e-IDAS Regulation.
- Certificate for electronic seal means an electronic attestation that links electronic seal validation data to a legal person and confirms the name of that person.
- Qualified certificate for electronic seal means a certificate for an electronic seal, that is issued by a qualified trust service provider and meets the requirements laid down in Annex III .of the e-IDAS Regulation.

In the structure of the e-IDAS Regulation, *"an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures",* and therefore any electronic signature, whatever the type, has legal effect and must be admitted as evidence, although, as the e-IDAS Regulation states, only "a qualified electronic signature shall have the equivalent legal effect of a handwritten signature".

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.

At present, the applicable legislation on these matters in Spain, as in the rest of the European Union, is the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), known as GDPR.

In the framework of the GDPR, which is directly applicable in Spain since 25th May 2018, the Constitutional Law on the Protection of Personal Data and guarantee of digital rights (*LOPD-gdd*) has been passed, repealing the previous Constitutional Law 15/1999, of 13 December, on Personal Data Protection. The *LOPD-gdd* regulates some aspects of the processing of an individual's personal data within the margins that the GDPR allows to the EU Member States.

The GDPR applies to "personal data," meaning any information concerning identified or unidentified individuals. Accordingly, it does not apply to data concerning legal entities; however, as opposed to the previous legislation in Spain, it applies to data concerning individual entrepreneurs or individuals being the contact person of a legal entity where the personal data is used.

Personal data protection legislation revolves around the following principles:

- The data controller has to rely on one of the legal basis established in the GDPR in order to be able to process personal data.
- The processing of specially protected data (i.e., data referring to ideology, labor union membership, religion, beliefs, ethnicity, health, and sex life) is subject to very strict limitations or, in some cases, prohibitions.
- 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 disclosed if a legal basis applies.
- 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 GDPR.
- Data subjects are granted the rights of access, rectification, cancellation, and opposition to the processing of their personal data, as well as other new rights such as portability or limitation of the processing.
- Sanctions for infringement of GDPR may consist of fines of up to €20,000,000 or 4% of the global annual turnover of the group during the previous fiscal year.

It should also be noted that international transfers of personal data are subject to limitations and the obligation to ensure an

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equivalent level of security as that inside the EU, and therefore it is necessary to use one of the methods listed in the GDPR including, in some cases, the prior authorization of the Director of the Spanish Data Protection Agency.

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.

The GDPR 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 Copyright

The legal protection of copyright is crucial when engaging in e-commerce in the "information society", since digital content protected by intellectual property (authorship, trademarks, image rights, etc.) constitute the real value added of the internet.

The Copyright Law[2] 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 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 making available 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. The Law 21/2014, of November 4, broadens the powers of the administrative body within the Ministry of Culture and Sport (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. The law 21/2014 consolidates the State-funded system.

2.5.2 Intellectual property

When engaging in e-commerce, regard should also be had to intellectual property matters. Article 4.4.c of the Patents Law 24/2015, in force since 1st of April 2017, 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.

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 serve" 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.

2 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.

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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 the 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 ".es" code is transferable provided that the acquiror 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.
- 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.
- The lawfulness of unsolicited commercial communications by e-mail.

The ECISSA establishes the basic legal regime for information society service providers and e-mail 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 agreement.
- 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 expenses 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, commer-

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cial 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 the authority to impose monetary penalties to 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.

2.7 PLATFORMS REGULATION

As an important European law it is also worh mentioning the Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 "on promoting fairness and transparency for business users of online intermediation services", known as P2B. This regulation applies to online intermediation services (commonly known as "Marketplace") and the search engine services.

The Regulation imposes certain obligations to the online intermediation services providers, such as the inclusion in the terms and conditions of information on the ranking parameters, clear and transparent description of the terms and conditions and of the ancillary goods and services, limitations regarding termination of the contracts or inclusion of internal complaint-handling systems.

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/ 3 Tax implications of e-commerce in Spain

3.1. INITIATIVES TAKEN IN RELATION TO TAXATION, PROBLEMS AND GENERAL PRINCIPLES

In relation to e-commerce, Law 4/2020 of October 15, 2020 on the Tax on Certain Digital Services ("TCDS") came into force on January 16, 2021, such tax being levied on the provision of certain digital services involving users located in Spanish territory. As shall be explained in greater detail in the section on direct taxation, this is a measure adopted by Spain unilaterally, on a transitional basis, through provisional legislation which shall remain in force until a solution adopted internationally can be implemented.

On the other hand, in relation to VAT, Spain has assumed commitments at European Union ("EU") level.

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. On the other hand, Directive 2017/2455 of 5 December 2017 also introduced certain amendments in relation to on-line trading in goods and services. Part of these amendments came into force on January 1, 2019 (those affecting trade in services) and the pertinent changes have therefore already been made to internal legislation. Other measures, however, will not come into force until January 1, 2021 (those relating primarily to distance sales of goods) and are pending transposition into Spanish legislation.

  Finally, other measures came into force on July 1, 2021 (those relating primarily to distance sales of goods) and have been transposed into Spanish legislation by means of Royal Decree-law 7/2021 of April 27, 2021.

  Additionally, Council Directive 2019/1995 of 21 November 2019 introduced amendments which came into force on July 1, 2021, related to distance sales of goods and certain domestic supplies of goods.

- 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. Similarly, Implementing Regulation 282/2011 was amended by means of Implementing Regulation 2017/2459 of 5 December 2017 for the purpose of introducing certain simplification rules in respect of on-line trading in services for small and medium-sized companies. These changes came into force on January 1, 2019.

  Additionally, Council Implementing Regulation 2019/2026 of 21 November 2019 has also introduced amendments to Implementing Regulation 282/2011 that came into force on July 1, 2021. Those amendments are related to supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.

- 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

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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. On the other hand, this Regulation has been amended by Regulation (EU) 2017/2454, in order to introduce certain changes concerning the transmission of information and transfer of money between Member States, as a result of the new provisions introduced in relation to on-line trading, with effect as from January 1, 2021.

- 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 content of these EU provisions and their transposition into Spanish law are examined in the section on the indirect taxation of e-commerce.

Work is currently being undertaken by the OECD and the European Union to adapt the international tax system to the digitalization of the economy through the re-allocation of taxing rights to market countries or territories when participating in the economic activity, without the need for a physical presence, and the establishment of certain minimum taxation thresholds, among other questions.

The EU has also been concerned about the growing digital economy of our day. In this sense, it has long promoted the European Strategy eEurope002 (now eEurope2020) which encourages e-commerce. The consultation period in respect of an initiative to implement a harmonized digital levy was recently initiated.

3.2. DIRECT TAXATION

The following chart shows the main potential issues of this nature.

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:

In the Commentary published in December 2017 on the OECD Model Tax Convention, the comments regarding article 5 (concerning the definition of permanent establishment) remain unchanged from those 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, as a general rule, a PE can be deemed to exist and those in which it cannot:

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).

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- 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 took 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 December 2017 maintains this position.

In light of this change in the Commentary on royalties in the Model Tax Convention, Spain introduced a qualification in the observations published in July 2008 (which was kept in the Commentary on the OECD Model Tax Convention published in December 2017), 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. This issue is also addressed, in relation to a "cloud base software distribution agreement", in ruling V2039-15 of July 1 2015, in which the DGT resolves, on the basis of agreements of this type, on the distinction between business profits and royalties. 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, reflecting a criterion which has continued to gain strength in judgements delivered by this High Court (the most recent of which include judgement STS 2189/2016 of October 11, 2016).

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.

Following the initial proposal in relation to Actions 8 to 10 of the BEPS Action Plan, which are ultimately aimed at ensuring that the results of transfer pricing are in line with the creation

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of value, the implementation of these measures was initially addressed in July 2017 by the OECD Guidelines on transfer pricing for multinational enterprises and tax administrations, which have recently (in January 2022) been updated.

The update reflected in this new version focuses on three main areas:

- Revised guidance in relation to the method for allocating results.
- Guidance for tax administrations regarding the application of the approach towards hard-to-value intangibles.
- Transfer pricing guidance on financial transactions.

In what concerns the second point, which reflects the work carried out by the OECD since the report published in June 2018 on this matter, it is now included in Appendix II of Chapter VI of the 2022 Guidelines. A particular aspect of this new publication regards the guidance reflected on the ex ante criterion, related to pricing, and the ex post criterion, which attends the reliability of evidence on financial results, related to transactions based on the arm's length principle. Some examples are provided to illustrate the adjustments that can be made, in practice, in respect of intangible property of this type.

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[3].

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 have so far mainly concerned "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).

However, the EU provisions regarding offline intra-Community trade in goods (distance sales), which are also referred to in this chapter, are to came into force with effect as from July 1, 2021.

There are other relevant VAT issues also to be considered in relation to e-commerce (especially in the area of online e-commerce). These are basically the following:

- 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 fixed 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.
  - Fixed 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 Services provided electronically

3.3.1.1 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:

3 From a general perspective, mention should be made of the State Tax Agency Directorate General's Ruling of January 26, 2022 approving the general guidelines of the 2022 Annual Tax and Customs Control Plan. Point A4 of this Ruling, on the "control of economic activities", in section two entitled "control of internal taxes", under heading III on "investigation and verification proceedings in respect of tax and customs fraud", expands upon the various provisions planned to be carried out in 2022. These relate to (i) e-commerce, (ii) the ban on dual-use software, (iii) virtual currencies, and (iv) other virtual work, on which further information will be further provided in the section on indirect taxation.

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- 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 shall refer subsequently because it regulated the changes which came into force on January 1, 2015, revised the list of electronically supplied services as set out in the following table:

ELECTRONICALLY SUPPLIED SERVICES	SERVICES NOT SUPPLIED ELECTRONICALLY
a. The supply of digitized products generally, including software and changes to or upgrades of software. b. Services providing or supporting a business or personal presence on an electronic network such as a website or a webpage. c. Services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient. 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. 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.). f. The services listed in Annex I.	a. Radio and television broadcasting services. b. Telecommunications services. c. Goods, where the order and processing are done electronically. d. CD-ROMs, floppy disks and similar tangible media. e. Printed matter, such as books, newsletters, newspapers or journals. 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.

3.3.1.2 Place of supply of services provided electronically

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 is established in Spain, the services will be deemed supplied in Spanish VAT territory. This general rule is applicable for both recipients classed as traders or professionals and those not classed as such.

The above notwithstanding, Directive 2017/2455, effective as from January 1, 2019, established a threshold for the determining the place of provision of these services, the rule being that when the total amount of services of this kind rendered by the services provider does not exceed, in the current year or the preceding year, €10,000, services provided to final consumers shall be considered subject to VAT in the place where the supplier is established. It should be borne in mind that, effective since July 1, 2021, intra-Community distance sales have also been taken into account for the purposes of calculating this €10,000 threshold.

Spanish legislation stipulates that businesses and professionals may opt voluntarily for taxation at destination even when the €10,000 threshold is not exceeded, this option being valid for a minimum of two calendar years. The option must be exercised through the pertinent census communication, using form 036. In addition, since the approval of Royal Decree 1512/2018 of December 28, 2018, which amends – inter alia - the VAT Regulations, the rule has been that taxable persons who take up this option must demonstrate to the tax administration that the services rendered have been declared in another Member State. Similarly, taxable persons wishing to extend the option exercised must reaffirm it once two calendar years have elapsed, with failure to do so resulting in automatic revocation.

In order to implement the above provisions, Implementing Regulation 1042/2013 introduced the relevant amendments. Accordingly, the Regulation contains provisions:

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- 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 address 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.

Since January 1, 2019, the rule has been that only one item of evidence is required when the amount of these services rendered by the services provider does not exceed €100,000, either for the current year or the preceding year.

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.

Finally, it should be noted that the use and enjoyment rule set out in article 70.2 of the VAT Law is applicable to electronic services provided both to private individuals and traders or professionals. This closing rule means that electronic services shall be subject to Spanish VAT when, under the general place-of-supply rules, they are not deemed made in the EU, the Canary Island, Ceuta or Melilla, but they are effectively used or utilized in such territory.

3.3.1.3 Special schemes applicable to electronic services

Directive 2002/38 created a special regime applicable to electronic services provided by traders or professionals not established in the EU to final consumers in the EU (the Non-Union

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Scheme). The scope of this special scheme was extended, as from January 1, 2015, to cover services provided to private individuals by operators established in the EU but not in the Member State of consumption (the Union Scheme).

The schemes in question, which are optional for the traders by whom such services are provided, are aimed at simplifying their obligations, so that traders only have to register (electronically) 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 Member States.

The "mini one stop shop" system was created for this purpose, to allow 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.

Similarly, Regulation 282/2011 establishes certain special VAT management rules in the case of exclusion from the scheme, rectification of VAT returns, impossibility of rounding off the VAT payable, etc.

Summarized below are the main characteristics of each of these schemes:

- The Non-Union scheme:

  This scheme may be applied by traders or professionals who are not established in the EU and provide electronic services to final consumers in the EU.

  The trader is required for these purposes to register in a Member State (the "MS of identification"), in which it must comply with the obligations deriving from the scheme. If the Member State of identification is Spain, the corresponding returns declaring the commencement, change or cessation of operations covered by the scheme — form 035 — must be presented, VAT returns must be filed electronically, the corresponding amount of VAT must be paid in, a register of operations included under the scheme must be kept, etc.

  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.

- Union Scheme:

  This scheme is available to traders who provide electronic services and are established in the EU but not in the Member State of consumption.

  In this case, the Member State of identification is the place where the trader's main place of business is located or, if this is outside the EU, the place where it has a fixed establishment. If the trader has more than one fixed establishment, it can chose the Member State of identification.

  If the Member State of identification is Spain, the corresponding returns declaring the commencement, change or cessation of operations covered by the special scheme — form 035 — must be presented, VAT returns must be filed in respect of these services, the VAT must be paid in, a register of operations included under the scheme must be kept, etc.

  It should be noted that traders established in a Member State cannot apply these special schemes in respect of technological services provided in the Member State in which they themselves are established.

  VAT charges borne for the provision of technological services can be deducted either through the general procedure or via the procedure envisaged for traders established in another EU Member State.

  For these purposes, where Spain is the Member State of identification, VAT borne in Spanish territory must be deducted in the returns filed under the general VAT regime.

  If Spain is the Member State of consumption, the deduction procedure is that envisaged for non-established persons in article 119 of the VAT Law.

3.3.2 The new treatment applicable to distance sales of goods and certain domestic supplies of goods and new one stop shop schemes

As mentioned above, a package of EU measures — established in Directives 2017/2455 and 2019/1995 — is set to come into force with effect as from July 1, 2021. These will be applicable primarily to distance sales of goods and certain imports and will make it possible to pay VAT in in the Member State of identification through the "one stop shop".

These EU measures have been transposed into Spanish legislation[4] during 2021. We describe below the main changes introduced within the offline e-commerce framework:

- As a general rule, distance sales made from one Member State to another, to recipients who are not acting as traders or professionals are deemed subject to VAT in the Member State of destination.

  Taxation will nevertheless take place in the Member State of origin where the following requirements are met:

  - The seller is established in a single Member State.

4 We refer, specifically, to Royal Decree-law 7/2021, of April 27, 2021 on the transposition of European Union directives on competition, anti-money laundering, credit institutions, telecommunications, tax measures, environmental damage prevention and remediation, posting of workers in the framework of the transnational provision of services and consumer protection; to Royal Decree 424/2021 of June 15, 2021 amending, inter alia, the VAT Regulations (Royal Decree 1624/1992), and the Billing Regulations (Royal Decree 1619/2012).

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- Total distance sales for the year do not exceed €10,000, with provisions of telecommunications services, broadcasting and television services and services provided electronically also being taken into account for these purposes.

In any event, the rule will envisage the possibility of opting voluntarily for taxation in the Member State of destination.

- A special one stop shop scheme – "Union Scheme" — has been introduced to simplify the self-assessment and paying-in of VAT, and this is similar to that already in place for digital services, as referred to above. The filing of a single quarterly return in the Member State of identification has been envisaged for these purposes, including all intra-EU distance sales of goods.

- A new special scheme has been introduced for distance sales of goods imported from third countries – the "Import scheme" — which are not subject to special taxes and whose intrinsic value does not exceed €150. Over and above this value, a full customs declaration is required at the time of importing the goods.

  The general rule under this scheme is that the place of supply will be the Member State of destination of the goods and that the import of the goods will be exempt in order to avoid double taxation. A one stop shop system with a monthly return in the Member State of Identification is also envisaged.

Finally, VAT relief (exemptions) on imports of goods of negligible value — which had been set at €22 — has been eliminated. As a result, since July 1, 2021, imports have been subject to and not exempt from VAT whatever their value.

- In certain cases, the operators of the electronic interface are responsible for payment of the VAT (on the understanding that they act as intermediaries in the sale in their own name).

In particular, it is established that a trader who facilitates certain sales through the use of electronic interfaces (online marketplace, platform, portal or similar) has itself received and supplied the goods in the following situations:

a. Distance sales of imported goods in consignments with an intrinsic value not exceeding €150.

b. Supply of goods made within the EU by traders not established in the EU to private individuals.

   In this way, when the interface is understood to have facilitated the sale, two supplies of goods take place: (i) that made by the supplier of the goods to the trader who facilitates the sale via the electronic interface and (ii) the supply made by such trader to the private individual.

3.3.3 New regimes applicable to services provided by taxable persons not established in the Member State of consumption

In addition to the one stop shop schemes referred to in previous sections, Directive 2017/2455, since July 1, 2021, has envisaged the possibility of including in the Union Scheme services provided by traders or professionals established in the EU but not in the Member State of consumption, to recipients who are not classed as traders or professionals acting in their capacity as such, following identification for this purpose in the Member State of their choice.

Similarly, services provided by taxable persons not established in the EU who provide services to recipients who are not classed as EU traders or professionals would come under the Non-Union Scheme.

3.3.4 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.

In the case of electronic books, newspapers and magazines, however, the legislation envisages, as from April 23, 2020, the application of the super reduced VAT rate (of 4%) when such publications are not made up solely or primarily of advertising and do not consist entirely or mainly of audible video or music contents, and supplementary items supplied along with them for a single price.

3.3.5 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.

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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.

In relation to the issue of invoices, Royal Decree 1512/2018 of December 28, 2018 which amends – inter alia - the VAT Regulations, stipulates that the legislation applicable to invoices issued by taxable persons who have elected to apply the special single one-stop shop regimes for telecommunications, radio and television broadcasting services and services provided electronically - which had previously been the legislation of the Member State of consumption - shall now be that of the Member State of identification. This avoids the taxable person being subject to different legislative regimes in relation to billing.

Accordingly, the aforementioned Royal Decree 1512/2018 of December 28, 2018 amends the Billing Regulations and clarifies that Spanish billing rules shall be applicable when Spain is the Member State of Identification of the provider of electronic services.

Moreover, the entry into force on July 1, 2021 of the provisions of Directive 2017/2455 will result in the elimination of the obligation to issue an invoice in distance sales for which this was previously required in accordance with the billing obligations applicable in the Member State of destination of the goods.

On the other hand, regarding to formal obligations, it must be noted that since 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) have also been required to 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.

The above notwithstanding, in the case of taxable persons who apply the special regime for telecommunications, radio and television broadcasting services and services provided electronically, it is not necessary to record the operations performed under this special regime in VAT registers. Instead, a specific register must be kept, containing a series of special fields:

a. *The Member State of consumption in which the service is provided;*
b. *the type of service provided;*
c. *the date of provision of the service;*
d. *the taxable amount, indicating the currency used;*
e. *any subsequent increase or reduction of the taxable amount;*
f. *the tax rate applied;*
g. *the amount of tax owed, indicating the currency used;*
h. *the date and amount of payments received;*
i. *any advance received prior to the provision of the service;*
j. *the information contained in the invoice, if this has been issued;*
k. *the name of the customer, where available;*
l. *the information used to determine the place where the customer is established, or its domicile or habitual place of residence."*

3.3.6 Tax on Certain Digital Services

The preamble to the Law approving the TCDS reminds us that the creation of this tax is temporary until the OECD completes its works to adapt the international tax system to the digitalization of the economic, through the "re-allocation of taxing rights to market countries or territories when

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participating in the economic activity, without the need for a physical presence, creating a new nexus for that purpose", in clear reference to pillars 1 and 2 of the OECD.

The TCDS charges taxes to companies whose global net revenues in the preceding calendar year are above 750 million euros and that obtain revenues in Spain (also in the preceding calendar year) of at least 3 million euros derived from the provision of online advertising services, online intermediation services or the sale of data generated on the basis of information provided by the user of digital interfaces.

The tax rate at 3%, and the scope of the tax excludes sales of goods or services between users in the context of an online intermediation service, and sales of goods or services contracted online on the website of the supplier of those goods or services in which the supplier does not act as intermediary. The tax will be assessed every three months.

It is stipulated in the sole transitional provision that for 2021, the revenue taken into account shall be the total amount deriving from digital services subject to the tax from January 16, 2021 through to the end of the settlement period, on an annualized basis.

The Directorate-General of Taxes (DGT), in its Ruling of June 25, 2021, has sought to provide clarification and greater legal certainty in the interpretation of the elements and criteria relating to this tax, focusing on the following concepts:

- Online advertising services.
- Online intermediation services.
- General instances of non-subjetion.
- Accrual and taxable amount.

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This Annex 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, it covers 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 main 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, spinoffs, 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.

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/ 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.*")[1], 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.

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 most common form of trading company is the limited liability company *(S.L.)*. 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 applicable 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.

1 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.*").

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/ 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:

CORPORATE FORM	LIABILITY
Corporation (*S.A.*) / Limited Liability Company (*S.L.*)	The liability of the shareholders is generally limited to the amount of the capital stock contributed by each of them. However, in exceptional circumstances, liability may be sought from shareholders in order to protect the interests of third parties. 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.
General partnership (*S.R.C.*)	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.
Limited partnership (*S. Com*)	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.
Professional services firm (*S.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.

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).

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/ 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:

	S.A.	*S.L.*
Minimum capital stock	€60,000.	€3,000[2] [3].
Payment upon formation	At least 25% and any share premium.	Payment in full.
Contributions	A report from an independent expert on any non-monetary contributions is required[4]. The value stated in the deed recording the contribution may in no case be higher than the valuation performed by the expert. In the case of monetary contributions, their actual existence must be evidenced to the authorizing notary by means of a certificate of deposit at the credit institution of the corresponding amounts in the name of the company or entity.	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.
Shares	They are marketable securities. Debentures and other securities can be issued.	They are not marketable securities. Debentures and other securities can be issued.

2 In December 2021, the Council of Ministers approved the Enterprise Creation and Growth Bill, which is currently passing through parliament. This bill forms part of the reforms introduced by the Recovery, Transformation and Resilience Plan and will make it possible to form an S.L. (limited liability company) with share capital of 1 euro, eliminating the current requirement of 3,000 euros. This measure, according to the Spanish government, will enable Spain to come into line with its neighboring countries in terms of business creation.

3 Except in the case of the entrepreneurial limited liability company, the rules for which are described in section 4.2 below.

4 The expert report is not required, but the substitute report from the directors is required in the following cases:
a) Contribution of transferable securities that are listed on an official secondary market or on another regulated market or in money market instruments, in which case they will be valued at the weighted average price on one or more regulated markets in the last quarter preceding the date on which the contribution was actually made, with the certificate issued by the relevant governing company.
b) Contribution of assets other than those indicated in letter a) above the fair value of which has been determined, within the 6 months preceding the date on which the contribution was actually made, by an independent expert not appointed by the parties.
c) Where in the formation of a new company by merger or spin-off a report has been prepared by an independent expert on the merger or spin-off plan.
d) Where the increase in share capital is carried out to deliver the new *S.A.* or *S.L.* shares to the shareholders of the absorbed or spun-off company and a report has been prepared by an independent expert on the merger or spin-off plan.
e) Where the increase in share capital is carried out to deliver the new *S.A.* shares to the shareholders of the company that is the target of a tender offer

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	S.A.	*S.L.*
Transfer of shares	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, and provisions that render the shares practically untransferable are null and void.	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.
Amendments to the bylaws	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
Venue for shareholders' meetings	As indicated in the bylaws (in any event, it must be in Spain). Otherwise, in the municipality where the company has its registered office.	
Attendance and majorities at shareholders' meetings	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 by laws.	Different majorities are established depending on the content of the resolutions. These can be increased by the by laws.
Right to attend shareholders' meetings	A minimum number of shares may be required to attend the shareholders' meeting, which may not be greater than one thousandth of the share capital.	This right cannot be restricted.
Number of members of the board of directors	Minimum: 3. No maximum limit.	Minimum: 3. A maximum of 12 members.
Term of the office of director	Maximum 6 years (4 years at listed companies). They may be reelected for periods of the same maximum duration.	May be indefinite.
Issue of bonds	Bonds and other securities may be issued. Bond issues may be used as a means to raise funds. Bonds convertible into shares can be issued and guaranteed.	Bonds and other securities may be issued. 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 guarantees provided by a credit institution. If the issue is secured by a joint and several guarantees 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.

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4.2 FORMATION AND CAPITAL STOCK

	S.A.	*S.L.*
Minimum capital stock	€60,000, fully subscribed and at least 25% of the par value of the shares paid in[5].	€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).
Debt ratios	There are currently no mandatory minimum debt-equity ratios under Spanish law for any type of business enterprise. **However, there is a limitation on the deductibility of finance costs for tax purposes** (see Chapter 3, section 2). Moreover, certain legal requirements may be applicable to companies operating in regulated sectors.	
Special rules on mandatory winding up or capital reduction	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).	
Number of shareholders	• 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. • Shareholders can be individuals or companies of any nationality and residence.	

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:

NUMBER	REQUIREMENTS
1	**Continued submission to the entrepreneurial limited liability company regime:** • In the bylaws. • The Commercial Registrar will automatically state this circumstance in the clearance notes for any registrable documents and any certificates that are issued.
2	**Legal reserve:** At least 20% of the income for the fiscal year must be allocated to the reserve without any limit on the amount.
3	**Distribution of dividends:** 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.
4	**Compensation to shareholders and directors:** 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.
5	**Liquidation:** 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.
6	**Substantiation of monetary contributions:** 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.

5 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.

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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[6].

4.2.2 Contracts made in the corporation's name prior to registration

The formation of an *S.A.* or an *S.L.* 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 that justifies the acquisition.
- 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:

MANDATORY REFERENCES	
Corporate name	The corporate name must be included.
Corporate purpose	This should be stated in a concrete and precise manner, since: • It serves to establish the general framework for the activities of the company. • The completion of the stated purpose automatically leads to the dissolution of the company. 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.
Registered office	Must be located in Spain.

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6 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.

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MANDATORY REFERENCES

Capital stock	Must indicate the capital stock, the shares into which it is divided, their par value and their sequential numbering. In the case of a limited liability company, the bylaws must state, if they are unequal, the rights that each share confers on the shareholders, and the amount or scope of such rights. In the case of a corporation, the bylaws must state the classes of shares and the series, if any; the portion of the par value not yet paid in and the method and deadline for paying it in; and if the shares are represented by certificates or book entries. If they are represented by certificates, it will be necessary to state if they are registered or bearer shares and if the issuance of certificates representing more than one share is envisaged. In the case of the entrepreneurial limited liability company, the bylaws must state this circumstance (see section 4.2 above).
Managing body	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. Listed companies must be managed by 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. The bylaws must also indicate the number of directors or, at least, the maximum and minimum number, the term of office and the compensation system, if any. In the case of collective management bodies, the procedures for debating matters and adopting resolution must be specified.

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 re-registration).
- 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.

The power to amend the bylaws lies with the shareholders' meeting. As an exception, Royal Decree-Law 15/2017, of October, 2017, on urgent measures for the mobility of economic operators within the national territory, introduced the option of the managing body having the power to relocate the registered office within the national territory, unless stated otherwise in the bylaws (art. 285 *LSC*).

4.4 TYPES OF SHARES

4.4.1 Types of shares at a corporation

A distinction can be made between the following share categories:

Registered vs. bearer shares	The shares of an *S.A.* can be registered shares (the holder is the person designated in the certificate) or bearer shares (the holder is the bearer of the certificate). However, the shares must be registered in the following cases: • If they are not fully paid in. • If their transferability is subject to restrictions. • If they are subject to ancillary obligations (see below). • When so required by special regulations (*e.g.* shares of banks and insurance companies).

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Common vs. preferred stock

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.

In any event, issues of shares will not be valid in the following cases:

- Shares remunerated in the form of interest.
- 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.

Specific regulations on the issuance of preferred stock differ according to whether or not a company is listed on a stock exchange.

In the case of *listed companies*, the following obligations are established:

- 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.
- 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.
- 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.

In the case of *non-listed companies*, 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.

Shares issued with a premium

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.

Non-voting stock

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:

- **Minimum annual dividend**.
  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.
- **Preferential rights in liquidation.**
  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.
- **Capital reduction**.
  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.
- **Shareholder rights**.
  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:

- Non-voting shareholders acquire the right to vote if the minimum annual dividend is not distributed.
- 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.

Redeemable shares

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.

Shares with ancillary obligations

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.

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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: Apart from in the cases established by the bylaws and in the cases of change of corporate form of the company or of relocation of the registered office, shareholders who have not voted for the relevant resolution, including shareholders without a vote, will be entitled to withdraw from the company in the following cases:
  - Replacement or material modification of the corporate purpose.
  - Extension or reactivation of the company.
  - Creation, modification or early termination of the requirement to perform ancillary obligations, unless provided otherwise in the bylaws.
  - Amendment of the rules on transferring shares in the case of limited liability companies.
  - In the event of a failure to distribute dividends, unless provided otherwise in the bylaws. Following the amendment introduced on December 30, 2018, article 348 bis of the Capital Companies Law establishes a right of withdrawal for shareholders of limited liability companies or corporations (except for (i) listed companies or companies whose shares are admitted to trading on a multilateral trading facility; (ii) companies in situations of insolvency or pre-insolvency, and (iii) sports corporations) in the event of a failure to distribute dividends once the fifth fiscal year since the company was registered at the Commercial Registry has elapsed[7].

  The requirements for shareholders to be able to exercise this right of withdrawal (within one month after the shareholders' meeting was held) are as follows:

  a. The shareholder's protest due to the insufficiency of dividends recognized must be recorded in the certificate of distribution of income.

  b. The shareholders' meeting must not approve the distribution as a dividend of a least twenty-five percent of the income obtained in the preceding year where such income is legally distributable, provided that the company has not obtained income in the past three fiscal years.

  c. The total amount of dividends distributed in the past five years must be less than twenty-five percent of the legally distributable income recorded in that period.

  Also, even if the above requirements are not met, this right of withdrawal is granted to the shareholder of the parent company of the group where the company in question is required to prepare consolidated financial statements, where: (i) the shareholders of the company do not approve the distribution as a dividend of at least twenty-five percent of the consolidated income attributed to the parent company in the prior year, provided that it is legally distributable; and (ii) consolidated income attributed to the parent company has been obtained in the past three fiscal years.

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.*

7 Following the entry into force of Royal Decree 7/2021, the shareholder's right to withdraw in the event of a failure to distribute dividends has been eliminated for credit institutions, credit financial establishments, investment services firms, payment institutions, electronic money institutions, financial holding companies and mixed financial holding companies.

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The following table sets out the main aspects and characteristics of shareholders' meetings:

SHAREHOLDERS' MEETING	
Types	**Ordinary**: 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.
	Special: Any meeting of the shareholders other than an ordinary meeting is a special shareholders' meeting. A special shareholders' meeting may be called: By the company's directors if and when they consider it in the company's interests to do so. 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. By a court if the directors disregard the notification referred to above.
Venue	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 companies must be domiciled in Spain).
Meeting call	The formal requirements for calling a meeting, which relate to publicity and advance notice, are the same for ordinary and special meetings. 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. 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.
Universal shareholders' meetings	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.

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SHAREHOLDERS' MEETING		
***Quorum* for meetings to be deemed to have been validly convened**		***S.L.***: One third of the votes corresponding to the shares into which the capital stock is divided.
	S.A.	**On 1st call:** **General rule**: Where the attendees represent at least 25% of the voting capital stock (the bylaws may provide for a higher percentage). **Special resolutions**: 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 re-registrations, 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. **On 2nd call (due to the absence of sufficient *quorum* on 1st call)**: **General rule**: The meeting will be deemed to have been validly convened regardless of the percentage of the capital stock present or represented. **Special resolutions**: 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 re-registrations, 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. 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.
Majorities for the adoption of resolutions	***S.L.***	**General rule**: 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). **Qualified majorities**: 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. 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; re-registrations, 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. 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, higher than the number established by the law, without reaching unanimity.
	S.A.	**General rule**: A simple majority (more votes in favor than against) of the votes of the shareholders present in person or by proxy. **Qualified majorities**: 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; re-registrations, 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. The company bylaws may increase the above majorities.

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SHAREHOLDERS' MEETING		
Proxies	***S.L.***	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. The bylaws may authorize representation by other persons. Representative authority must be conferred in writing. Where not recorded in a public document, it must be specially conferred for each shareholders' meeting. The representative authority will relate to all of the shares held by the represented shareholder.
	S.A.	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. 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.

4.6.2 Managing body

An *S.A.'s* executive managing body is its director or directors, who need not be Spanish citizens. However, the directors (individuals or legal entities) will need to obtain a taxpayer identification number (*N.I.F.*) or foreigner identity number (*N.I.E.*) (for more information, see section 3 of Chapter 2).

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.
- 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. Listed companies must necessarily be managed by a board of directors.

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 (four years in the case of listed companies), and directors may be reelected for one or more additional periods of not more than six years (or four years, in the case of listed companies). The term of office must be the same for the board members.

The shareholders' meeting can freely dismiss the directors at any time.

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The following paragraphs refer to some special features of a board of directors:

BOARD OF DIRECTORS	
Powers	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: 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. b. To determine the company's general policies and strategies. c. To authorize or discharge obligations deriving from the duty of loyalty incumbent upon directors. d. Its own organization and functioning. e. To prepare the financial statements and present them to the general meeting. 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. g. To appoint and remove the company's managing directors and establish the terms and conditions of their contracts. 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. 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. j. To call the general meeting and draw up the agenda and resolution proposals. k. To determine the policy with respect to treasury stock shares. l. Any powers delegated to the board of directors by the general meeting, unless the board has been expressly authorized to sub-delegate them.
Adoption of resolutions by the board	The *quorum* for a board meeting is the presence, either in person or by proxy, of one-half plus one of the board members.
Majorities for the adoption for resolutions	• Generally, by an absolute majority of the directors attending (in person or by proxy). • 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.

BOARD OF DIRECTORS	
Liability of directors	Directors must comply with the duty of diligent administration, faithful defense of the corporate interests, loyalty and secrecy. 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. 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.
Powers of attorney	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.
Meetings	The board must meet at least once a quarter; that is, four times a year.
Contract with managing director or director assigned executive functions	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. 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.

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BOARD OF DIRECTORS

Compensation

As a general rule, the office of director is not compensated, unless the bylaws establish otherwise, in which case the bylaws must stipulate the compensation system to be applied, determining 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.

Under the Decision of the Directorate-General of Registries and the Notarial Profession *("DGRN")* of June 4, 2020, the bylaws can contain a list of compensation systems so that the board of directors can choose a system in the contract, and the office of director can even be compensated for executive directors and not compensated for deliberative directors.

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 longterm profitability and sustainability, while incorporating such safeguards as may be necessary to avoid excessive risk-taking and poor results.

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:

CORPORATIONS		CAPITAL COMPANIES LAW	LIMITED LIABILITY COMPANIES	
Article of the Capital Companies Law	**Minimum stake required**	**Minority shareholders' rights at an *S.A.* or *S.L.***	**Minimum stake required**	**Article of the Capital Companies Law**
a) Common general aspects:				
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

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CORPORATIONS		CAPITAL COMPANIES LAW	LIMITED LIABILITY COMPANIES	
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. 197
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) The *quorums* of attendance and majorities required to adopt resolutions at shareholders' and board meetings of corporations are as follows:				
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.		
c) The *quorums* and voting majorities required for the adoption of resolutions at shareholders' and board meetings of limited liability companies are as follows:				
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 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.		

CORPORATIONS		CAPITAL COMPANIES LAW AND LIMITED LIABILITY COMPANIES
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.

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/ 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 type of European corporate entity. Law 19/2005, of November 14, 2005[8], 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 Estates, 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 *S.E.*, and their registered office and central management must also be located in the EU.

    - 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.

8 This Law 19/2005 was implicitly repealed by Legislative Royal Decree 1/2012, of July 2, 2012, which regulates this type of company under its Chapter XIII.

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- 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.

- *S.E.s* must be registered at the Commercial Registry of their registered office. Their registered office is situated in the place where their central management is established.

- The governing bodies are:

  - A shareholders' meeting.

  - A managing body (one-tier system) or a managing body and an over-sight 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.* 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.

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/ 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:

Registration	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.
Name	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.
Capital stock	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.
Shareholders	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.*
Members of the managing body	Must have shareholder status. This body may never take the form of a board of directors.
Corporate purpose	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.
Tax and legal obligations	An *S.L.N.E.* may fulfill its accounting and tax duties by means of a single record.
Deferral of tax payments	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.

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/ 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:

Corporate purpose	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.
Professional members	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).
Corporate forms	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.
Specific requirements	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. 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. 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. 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. Must be registered at the Commercial Registry and the Registry of Professional Services Firms of the relevant professional association. 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. 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.

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/ 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.

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/ 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 6.1 of Chapter 2.

From a foreign investment legislation viewpoint, it is not necessary to provide the branch with capital, although certain branches of entities with financial activities, due to the special nature of their activity, must be allocated capital.

The decision of the DGRN of May 24, 2007, establishes that foreign companies do not have to obtain a clear name search certificate from the Central Commercial Registry in order to set up a branch in Spain. Given they are not forming a new legal entity, they do not have to meet the requirements for setting up a company (*i.e.* a certificate from the Central Commercial Registry evidencing that the name of the company to be formed is not registered).

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.* O *S.L.*)

From a legal standpoint, the main differences between a branch and a subsidiary are as follows:

	S.A.	*S.L.*	BRANCH
Concept	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.
Capital stock	€60,000.	€3,000[9].	No capital is required for the establishment of a branch, although for practical reasons it is advisable.

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9 Except in the case of the entrepreneurial limited liability company, for which the rules are described in section 4.2 above.

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	S.A.	*S.L.*	BRANCH
Monetary and non-monetary contributions	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.		
Registration	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.
Shareholders' meeting calls	See section 4.6.1 above.		A branch does not have decision-making body in the form of a board or meeting, since its legal personality is that of the parent company.
Directors	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.
Share transfers	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.
Financial statements	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.
Dividend distribution	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.

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Company and Commercial Law

/ 10 Representative Office

In addition to commercial entities and branches, foreign investors may operate in Spain via a representative office. Noteworthy key features include:

Legal personality	It does not have its own legal personality independent from the parent company.
Formalities for opening	No commercial formalities are required to open a representative office, although for tax, a 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.
Managing body	There are no formal managing bodies, but rather the representative of the office acts under the powers granted to him/her.
Activities	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.

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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 highest degree of integration at the European Union had a great impact in the Spanish economy, especially in the banking and the securities market sectors.

The Spanish markets are endowed with great transparency, liquidity and efficacy.

Even though the economic and financial slowdown had a great impact on the stock markets worldwide, the Spanish financial system has undergone significant restructuring process that have implied a reorganization of the annual accounts and solvency of the main actors of the stock markets. By way of example, the major Spanish credit institutions are becoming global leaders of the banking technological transformation.

In what concerns the economic growth, the European Central Bank maintained that the Spanish economy is registering a solid economic growth which is consolidating the restructuring process of the financial markets. This rise in the Spanish economy continued in 2019, driven by positive figures for private consumption, foreign investment and tourism.

Notwithstanding the slowdown in the world economy caused by the COVID-19 pandemic, the Spanish economy grew by 4.9% in 2021 and is expected to grow by 5.8% in 2022, according to data from the International Monetary Fund.

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.

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/ 2 Financial institutions

The main operators in the Spanish financial system can be classified as follows:

FINANCIAL SYSTEM OPERATORS	
Central Bank	Bank of Spain
Credit institutions	Spanish and foreign banks.
	Official Credit Institute (*Instituto de Crédito Oficial, ICO*).
	Savings Banks. Spanish Confederation of Savings Banks (*Confederación Española de Cajas de Ahorro, CECA*).
	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: Financial. Non-financial.
	Investment Companies: Financial. Non-financial.
	Management Companies of Collective Investment Schemes.

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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.
	Insurance Agents.
	Insurance Brokers.
	Reinsurance Brokers.
Pension Plans and Funds	Pension Plans.
	Pension Funds.
	Management Companies of Pension Funds.
Securitization vehicles	Securitization Funds[1].
	Securitization Fund Management Companies.

The key features of the financial system operators are described below.

1 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).

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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:

FUNCTIONS OF THE BANK OF SPAIN	
Participation in the functions of the European System of Central Banks (ESCB)	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.
Functions established in the Law on the Autonomy of the Bank of Spain	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.

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As of December 31, 2021, there are officially registered at the Bank of Spain the Official Credit Institute, 48 banks, 2 savings banks, 61 credit cooperatives, 26 representative offices in Spain of foreign credit institutions, 78 branches of non-Spanish EU credit institutions, 4 branches of non-EU credit institutions, 585 non-Spanish EU credit institutions operating in Spain without an establishment, 154 financial institutions which are subsidiaries of a non-Spanish EU credit institution, operating in Spain without an establishment, and 3 non-EU credit institutions operating in Spain without an establishment[2].

Directive 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD2) was published in the Official Journal of the European Union on 23rd December 2015. This directive has been transposed into Spanish law through Royal Decree-Law 19/2018 of 23 November on payment services and other urgent measures in financial matters and Royal Decree 736/2019 of 20 December on the legal regime for payment services and payment institutions and amending Royal Decree 778/2012, of 4 May on the legal regime for electronic money institutions and Royal Decree 84/2015 of 13 February implementing Law 10/2014 of 26 June on the organisation, supervision and solvency of credit institutions.

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:

Basic regulations	• Law 10/2014, of June 26, 2014, on regulation, supervision and solvency of credit institutions. • 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. • 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.
Corporate purpose	• 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.
Minimum capital	• A sum of €18 million, which must be fully subscribed and paid in.
Managing body	• The Board of Directors must have no fewer than five members. • 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. • Registration of the managers, directors and similar executives on the Register of Senior Officers.
Shares	• Shares must be registered.
Formation of banks	• It is up to the Bank of Spain to submit to the European Central Bank an authorization proposal for the formation of a bank. • Must be registered on the Register of credit institutions of the Bank of Spain.

2 https://www.bde.es/bde/es/secciones/servicios/Particulares_y_e/Registros_de_Ent/

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2.2.2 OFFICIAL CREDIT INSTITUTE (*ICO*)

It is a State-owned credit institution, attached to the Ministry of Economic Affairs and Digital Transformation 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[3].

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).

Currently there are two savings banks that are *Caja de Ahorros y Monte de Piedad de Ontinyent* and *Caixa D' Estalvis de Pollença*.

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.

3 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.

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Their key features are described below:

Basic regulations	• 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. Legislative Royal Decree 11/2017 of June 23, 2017. • Autonomous communities: Corporate / cooperative regulations.
Corporate purpose	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 **priority to the financial needs of their members**.
Minimum capital	• Each member must have a holding of at least €60.01 in the capital. • 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. • No individual may hold more than 2.5% of the capital of a credit cooperative.
Governing bodies	• 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. • Governing Board comprising at least five members, two of whom may be non-members. • General Manager, without governing functions, subordinated to the Governing Board. • 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. • 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. • Registration of managers, directors or similar executives on the Register of Senior Officers.
Contributions	• They are for an indefinite term. • Their remuneration is conditional on the existence of net income or sufficient unrestricted reserves to cover the remuneration. • Their redemption is subject to compliance with the solvency ratio.
Formation of credit cooperatives	• 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. • Must be registered on the Special Register of the Bank of Spain.

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[4] 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.

4 "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.

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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.

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Their key features are summarized below:

Basic regulations	• Law 5/2015 of April 27, 2015 on the promotion of business financing. • 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. • Royal Decree 692/1996, of April 26, 1996, establishing the legal regime for credit financial establishments.
Corporate purpose	Their scope of operations is the pursuit of banking and para-banking activities: • Financial leasing with certain complementary activities. • Lending and the provision of credit facilities, including consumer credit, mortgage loans, and the financing of commercial transactions. • Factoring with or without recourse. • Issuing guarantees and similar commitments. • The granting of reverse mortgages. They may perform any **accessory activities** necessary for the better pursuit of their principal activity. Credit financial establishments may carry out, in addition to the aforementioned activities, the provision of payment services and the issuing of electronic money[5], 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. They are **prohibited** 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.
Minimum capital	• Minimum capital stock of €5 million. Must be fully subscribed and paid in.
Managing body	• The Board of Directors must have no fewer than three members. • 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. • 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. • Registration of managers, directors or similar executives on the Register of Senior Officers.
Shares	• Shares must be registered. • Divided into number and class. • Possible restrictions on their transferability.
Formation of credit financial establishments	• It is up to the Ministry of Economic Affairs and Digital Transformation to authorize the formation of credit financial establishments. • Must be registered on the Special Register of the Bank of Spain. • Must take the form of a corporation incorporated under the simultaneous foundation procedure for an indefinite term.

5 In the terms described in sections 2.3.2 and 2.3.3. of this Annex.

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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, 2021, 23 Credit Financial Institutions had registered on the Bank of Spain's Administrative Register.

2.3.2 PAYMENT INSTITUTIONS

Regulated by Royal Decree 19/2018, of 23 November, on payment services and other urgent financial measures, payment institutions[6] 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 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 736/2019 of 20 December on the legal regime for payment services and payment institutions and amending Royal Decree 778/2012 of 4 May on the legal regime for electronic money institutions and Royal Decree 84/2015 of 13 February implementing Law 10/2014 of 26 June on the organisation, supervision and solvency of credit institutions which supplement the above-mentioned Law 16/2009.

As of December 31, 2021, there are officially registered at the Bank of Spain 48 payment institutions, and 7 branches of non-Spanish 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, 2021, there are 9 electronic money institutions officially registered at the Bank of Spain and, 3 branches of non-Spanish 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, 2021, there were a total 18 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.

6 Payment institutions have their origin in currency-exchange bureau.

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- 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. At 31 December 2021, there was one counter-guarantee company registered with the Bank of Spain.

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, 2021, there are 32 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), the financial savings (financial assets) of Spanish households at the end of September 2021, according to data from the Bank of Spain, stood at 2.31 trillion euros. In the third quarter, Spanish households reduced their balance of financial assets by 0.9% their balance in financial assets by 0.9%, in cumulative terms in 2021 they experienced an increase up to September of almost 91,000 million euros (3.8% more than in December 2020).

By instrument, mutual funds were once again the focus of households' appetite for investment in 2021 up to September: more than €28 billion of a total of €36.8 billion of new flows corresponded to net subscriptions in mutual funds. Only inflows to deposits/accounts are close to this figure, and allow deposits to maintain their balance above one trillion euros. In any case, CIIs increased by 11.5% in 2021, and already represent more than 15.7% of Spanish households' total savings[7].

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[8] 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 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 collec-

7 https://www.inverco.es/archivosdb/2109-ahorro-financiero-de-las-familias-espanolas.pdf

8 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.

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tive 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 *SGIIC* 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 *SGIIC*, the company itself shall be subject to the regime for *SGIICs* established in Royal Decree 1082/2012. The *SGIIC* appointed, or the Investment Company if a *SGIIC* 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*[9], are in any 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

9 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.

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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[10] 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[11] 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.
- 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:
  a. *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.
  b. 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.

10 Subject to the requirements laid down in Directive 2011/61/EU.

11 *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.

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- Any individual or legal entity that, alone or acting in concert with others, intends to, directly or indirectly, acquire a significant holding[12] 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 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:

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.
	e) Placement of financial instruments, whether on or not on a firm commitment basis.
	f) Underwriting of an issue or a placement of financial instruments.
	g) Provision of investment advice.
	h) Management of multilateral trading systems.
Corporate purpose	a) Safekeeping and administration of financial instruments for the account of clients.
	b) 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.
	c) Advising companies on capital structure, industrial strategy and related matters, and providing advice and services relating to mergers and acquisitions.
	d) Services related to operations for the underwriting of issues or placing of financial instruments.
	e) Preparation of investment and financial analysis reports or other forms of general recommendations relating to transactions in financial instruments.
	f) Foreign exchange services where these are related to the provision of investment services.
	g) 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.

12 Where "significant holding" means a holding in a *SGIIC* that amounts, directly or indirectly, to at least 10% 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%.

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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[13].

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, 2021, there were 32 broker-dealers registered on the *CNMV's* Administrative Register[14].

- 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, 2021, there were 60 brokers registered on the *CNMV's* Administrative Register.

- 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, 2021, there were no 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, 2021, there were 140 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[15] 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.

13 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.

14 https://www.cnmv.es/Portal/Consultas/ListadoEntidad.aspx?id=1&tipoent=0

15 It should be noted that the modifications made to this Law by final provision 4 of Royal Decree 1464/2018 of 21 December. Ref. BOE-A-2018-17879, will have effect from 17 April 2019, as established in transitory provision 1 of the aforementioned regulation.

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- 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

a. 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.

b. 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.

c. 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:

a. "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*).

b. 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.

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Both types of entities must be managed by an authorized management company in accordance with the Law 22/2014[16]. 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 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, 2021, there were 37 *SICCs* and 47 *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*.

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 Economic Affairs and Digital Transformation, 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

16 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.

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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.

c. 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 Economic Affairs and Digital Transformation 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[17].

DIRECT INSURANCE ENTITIES	2009	2010	2011	2012	2013	2014	2015	2016	2018	2019	2020	2021
-Corporations	202	195	188	183	178	168	156	147	136	126	126	125
-Mutual insurance societies	34	35	34	32	32	31	31	31	30	30	28	30
-Welfare mutual insurance societies	56	55	55	53	52	53	50	50	48	47	45	42
TOTAL DIRECT INSURANCE ENTITIES	**292**	**285**	**277**	**268**	**262**	**252**	**237**	**228**	**214**	**203**	**199**	**197**
Specialized reinsurers	2	2	2	2	2	3	3	3	3	4	4	4
TOTAL INSURANCE AND REINSURANCE ENTITIES	**294**	**287**	**279**	**270**	**264**	**255**	**240**	**231**	**217**	**207**	**203**	**201**

17 http://rrpp.dgsfp.mineco.es/

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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%.

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, in Royal Decree 304/2004 approving the Pension Plan and Fund Regulations and in Royal Decree 62/2018.

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. With the entry into force of the Royal Decree 62/2018, holders of any form of pension may be able to draw out the savings related to contributions made at least 10 years ago.

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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 Economic Affairs and Digital Transformation 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 2021, the number of pension plans appearing in the *DGS* Register totaled 2,362, compared with 1,012 the year before[18].

The assets managed by Pension Funds increased 2.37% thanks to the improvement in the situation of financial markets and of the economy in general. At December 31, 2021, assets managed by Pension Funds amounted to 127,998 million euros.

The table below shows the changes in pension funds in Spain by number of registered 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	1,365	79,584
2009	1,411	85,848
2010	1,504	85,851
2011	1,570	84,107
2012	1,684	87,122
2013	1,744	93,002
2014	1,716	100,579
2015	1,631	104,000
2016	1,595	106,466
2017	1,518	110,735
2018	1,496	106,578
2019	1,357	116,419
2020	1,315	118,523
2021	2,362	127,998

The number of management companies entered at December 31, 2021 in the *DGS* Administrative Register totaled 67.

18 The differences between the information given in previous and the present year are because of the constant revisions and actualizations of the data found in the registries of the *DGS*.

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2.9 SECURIZATION 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 is 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.

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/ 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"). This regulation has been amended in part by Legislative Royal Decree 11/2017 of June 23, 2017, the Legislative Royal Decree 9/2017 of May 26, 2017 and Legislative Royal Decree 21/2017 of December 29, 2017.

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*),[18] 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.

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.

18 www.cnmv.es.

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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[19]. 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 MARKET

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 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*).[20] 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.[21]
- *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.[22]
- 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.[23]
- *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).[24]
- *SENAF*, the Electronic System for the Trading of Financial Assets, which is an electronic platform where Spanish public debt securities are traded.[25]
- *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (IBERCLEAR)*[26], 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.

19 An exception is made to this obligation where the requirements of article 35.2 of the Securities Market Law are met.
20 www.bolsasymercados.es
21 www.bolsamadrid.es; www.borsabcn.es; www.bolsavalencia.es; www.bolsabilbao.es
22 www.bmerv.es
23 www.aiaf.es
24 www.meff.es
25 www.bmerf.es/esp/aspx/Portadas/HomeSENAF.aspx
26 www.iberclear.es

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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: (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:

TYPE OF MARKET		PURPOSE	SUPERVISION, CLEARING AND SETTLEMENT	COMMENTS
Fixed Income	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.*	• Interest rates and bond markets subject to great pressure due to worsening of worldwide financial crisis. • Significant increase in public debt held by nonresidents.
	AIAF	Trading of all kinds of private fixed-income securities, except for instruments convertible into shares.	*CNMV; Iberclear.*	• Expansion in recent years due to growth of Spanish fixed income market. • Members include Spain's main banks, broker-dealers and brokers.
Equity	Stock exchanges	Exclusively for trading of shares and securities which are convertible or which carry rights of acquisition or subscription.	*CNMV; Iberclear.*	• Trading system: trading floor and *SIBE* electronic trading platform. • Decrease in volume in recent years due to crisis. • Foreign investment has made a significant contribution to the growth of the Spanish securities market. • 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*.
	Latibex	Trading of Latin American marketable securities with a price formation reference in European business hours.	*CNMV; Iberclear.*	• Uses the *SIBE* as its trading platform. • Not considered an official secondary market, although it operates in a very similar manner.
Futures and options market	Spanish financial futures market (*MEFF*)	Trading of financial futures and options.	*CNMV* and Ministry of Finance; *MEFF* is in charge of clearing and settlement.	• Internationally recognized. • Positive results in recent years due to growth in member numbers, new technological facilities and improvements and greater standardization in procedures.

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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 foments the liquidity of assets admitted to trading.

The *AIAF* Fixed-Income Market currently has 50 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

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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 667,000 million in 2019, up 12,5% on the total at the close of 2018.

CONTINUOUS MARKET	TOTAL STOCK EXCHANGES	TOTAL	DOMESTIC	FOREIGN	TRADING FLOOR	SECOND MARKET
Listed on 12/31/20	134	127	120	7	11	0
Listed on 12/31/19	141	129	122	7	9	3
Listings in 2020	**4**	**1**	**1**	**0**	**3**	**0**
New listings	1	1	1	0	0	0
Listings due to mergers	0	0	0	0	0	0
Change of market	3	0	0	0	3	0
Delistings in 2020	**7**	**3**	**3**	**0**	**1**	**3**
Delistings	2	1	1	0	1	0
Delistings due to mergers	3	0	0	0	0	3
Change of market	3	0	0	0	0	0
Net variation in 2019	**-3**	**-2**	**-2**	**0**	**2**	**-3**

Source: Annual report on securities markets and their activities for 2020. CNMV.

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.

Source: *Bolsa de Madrid* (www.bolsamadrid.es)

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(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 18 entities which have issued securities included in *Latibex*, all of which are listed on a Latin American stock exchange.

MAIN CHARACTERISTICS

Market authorized by the Spanish government.

- **Platform for trading** and settlement in Europe of securities of the main Latin American companies.
- **Currency**: Euros.
- **Trading**: Through the SIBE electronic trading platform.
- **Connected to the home market by agreements between *Iberclear* and the Latin American central depositories or through a liaison institution**.
- **Intermediaries**: All of the members of the Spanish stock market currently operate. Latin American market operators have also joined recently.
- **Specialists**: Intermediaries who undertake to offer bid / ask prices at all times.
- **Indexes:**
  i) FTSE *Latibex* All Share, which includes all the companies listed on *Latibex*.
  ii) FTSE *Latibex* Top, which brings together the 15 most liquid securities in the region listed on *Latibex*.
  iii) FTSE *Latibex* Brazil, which brings together the most liquid Brazilian securities listed on *Latibex*.
  * The three indexes are produced in conjunction with FTSE, the Financial Times Group firm that designs and prepares indexes.
- **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.

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 Digital Transformation), 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. On 21 December 2018, Royal Decree 1464/2018 was approved, implementing the amended text of the Securities Market Act, approved by Royal Legislative Decree 4/2015 of 23 October and Royal Decree-Law 21/2017 of 29 December, on urgent measures for the adaptation of Spanish law to European Union regulations on the securities market, which had as its objective to advance the incorporation into Spanish law of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (known as the "MiFID II regulatory package"), and which has as its objectives, the incorporation into Spanish law of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (known as the "MiFID II regulatory package"): a) to ensure high levels of protection for investors in financial products, especially retail investors; b) to improve the organisational structure and corporate governance of investment services companies; c) to increase the safety, efficiency, smooth operation and stability of securities markets; d) to guarantee regulatory convergence that allows competition within the framework of the European Union; and e) to promote access by small and medium-sized enterprises to capital markets.

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 2015 to 2018, in contracts traded on *MEFF* Exchange.

Figures in thousand contracts.

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	2017	2018	2019	2020	%VAR. 20/19
Debt contracts	**0**	**0**	**0**	**0**	**-**
10-year bond futures	0	0	0	0	-
Contracts on *Ibex 35*	**6,911,671**	**6,983,287**	**7,935,425**	**6,395,357**	**13.6**
Futures on *Ibex 35*	6,481,301	6,564,971	7,565,663	6,151,704	15.2
Plus	6,268,290	6,342,478	5,965,905	5,905,782	-5.9
Mini2	161,886	149,023	1,454,885	154,351	876.3
Dividend impact	43,372	70,725	144,831	91,571	104.8
Options on *Ibex 35*	430,370	418,315	369,762	243,653	-11.6
Contracts on stocks	**32,335,004**	**31,412,879**	**32,841,027**	**30,313,892**	**4.5**
Futures on stocks	11,671,215	10,703,1912	15,298,027	10,968,411	42.9
Futures on dividends	346,555	471,614	758,700	130,055	60.9
Options on stocks	20,316,354	20,237,873	16,784,300	19,207,674	-17.1
Total	**39,246,675**	**38,396,166**	**40,776,452**	**36,709,249**	**-7.0**

Source: Annual report on securities markets and their activities in 2020. *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 INTERNALIZES

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[27].

27 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.

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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 *BME* Growth and the Alternative Fixed-Income Market (*MARF*).

***BME* Growth** 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. *BME* Growth 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[28].

Spanish or foreign corporations with fully paid-up capital stock represented by book entries and no share transfer restrictions may apply for listing on *BME* Growth.

At January 31, 2022, there are 127 entities listed on BME Growth in the growth companies segment, 77 listed corporations for investment in the real estate market (*SOCIMIs*), 2,403 *SICAVs*, 1 private equity firm and 20 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 **BME** Growth.

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 be 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[29].

At June 30, 2021, 24 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, 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.

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

28 Source: www.bolsasymercados.es
29 Source: www.bmerf.es

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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[30], 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 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.

30 Implemented by Royal Decree 304/2014, of May 5, approving the regulations to Law 10/2010 on prevention of money laundering and terrorist financing.

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/ 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[31] 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 enters into insolvency proceedings or is declared insolvent by the *CNMV*.

31 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.

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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 *SGIICs* 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

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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[32], 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.

32 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

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AIII
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.

GARRIGUES ICEX INVEST IN SPAIN

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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 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[1], 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.

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.

1 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.

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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*).

Similarly, 2010 saw the approval of Royal Decree 1159/2010, of September 17, approving the Standards for the Preparation of Consolidated Financial Statements (*NOFCAC*).

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 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.
- Resolution of 21 December 2018, of the Presidency of the Court of Auditors, by means of which, the Plenum Agreement dated 20 December 2018, approving the Accounting Plan adapted to the Political Formations and the Organic Law 3/2015, is published[2].

In 2016, important changes were made to Spanish accounting legislation by means of Royal Decree 602/2016 of December 17, 2016. The purpose of these changes was 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).

Royal Decree 583/2017 of June 12, 2017, amending the Spanish National Chart of Accounts for insurance companies, was published in 2017, also for the purpose of bringing Spanish legislation into line with EU law.

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, 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 Spanish National Chart of Accounts.

The last major reform was introduced by Royal Decree 1/2021 of January 12, 2021 amending the Spanish National Chart of Accounts, the Spanish National Chart of Accounts for Small and Medium Enterprises, the *NOFCACs*, and the rules on adaptation of the Spanish National Chart of Accounts for not-for-profit entities. In this case, the changes made to Spanish accounting legislation are aimed at bringing it into line with the most recent international accounting criteria in respect, primarily, of financial instruments and the recognition of financial revenues, as set out in IFRS-EU 9 and IFRS-EU 15. This Royal Decree came into force with effect for years commencing as from January 1, 2021.

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. In this regard, Royal Decree 2/2021 of January 12, 2021 approved the implementing Regulations for the Spanish Audit Law (Law 22/2015 of July 2, 2015).

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, the directors must use their professional judgment while respecting the framework of the 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. However, IFRSs will apply directly to the consolidated financial statements of listed entities.

2 Amended by the Resolution of 8 March 2019, of the Presidency of the Court of Auditors, by means of which, the Plenum Agreement dated 7 March 2019, amending the Accounting Plan adapted to the Political Formations approved on 20 December 2018, is published.

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/ 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; the declaration identifying the beneficial owner of the company must be added to this information.

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.

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/ 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 and the statement of changes in equity are not obligatory where so established by a legal provision (*e.g.* for companies that are permitted to prepare a balance sheet in the abridged format, as explained below).

Royal Decree-Law 18/2017 of November 24, 2017 which transposed Directive 2014/95/EU into domestic law introduced the obligation, incumbent upon public-interest entities of a certain size, to include in their directors' report, or in a separate report, a Non-financial Information Statement containing, as a minimum, an account of the company's position in relation to environmental and social issues, personnel, respect for human rights and measures to combat bribery and corruption.

In this respect, Law 11/2018 of December 28, 2018 amending the Commercial Code, the revised Capital Companies Law and the Spanish Audit Law increased significantly the number of companies which are under the obligation to disclose the non-financial information statement. Companies meeting the following requirements must file this statement, whether individually or on a consolidated basis:

a. That the average number of workers employed by the company or the group, as applicable, during the year is above 250.

b. That they are either deemed to be public-interest entities in accordance with the audit legislation, or they meet, for two consecutive years, at each of the year-end dates – on an individual or consolidated basis, as appropriate - at least two of the following tests: (i) total asset items amounting to more than €20,000,000; (ii) annual net revenues exceeding €40,000,000.

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, which was amended by Royal Decree 1/2021 of January 12, 2021.

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/ 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:

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.
Main objective: True and fair view	The annual financial statements must be clearly drafted, ensuring that the information they contain can be understood by and is of use to readers for economic decision-making purposes; and they must give a true and fair view of the business's equity, financial position and results of operations. The systematic and consistent application of the requirements and accounting principles and standards set out in the following sections should result in the annual financial statements giving a true and fair view of the business's equity, financial position and results of operations. In this respect, the way in which operations are recorded should take into account not only their legal form but, also, the economic reality behind them.
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.

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AREA	SPANISH NATIONAL CHART OF ACCOUNTS (SNCA)
Items included in the financial statements	The following items are defined: Assets, liabilities, equity, income and expenses, which are to be recognized when probability criteria regarding the inflow or outflow of resources embodying economic benefits or returns are met and their value can be determined with an adequate degree of reliability.
Accounting recognition criteria applicable to items in the financial statements	Assets should be recognized in the balance sheet when it is probable that they will generate future economic benefits or revenues for the company in the future, and provided that they can be measured reliably. Liabilities should be recognized in the balance sheet when it is probable that, upon maturity and in order to settle the obligation, it will be necessary to deliver or surrender resources embodying future economic benefits or revenues, provided that they can be measured reliably. Income is recognized as the result of an increase in the company's resources, provided that its amount can be measured reliably. Expenses are recognized as the result of a decrease in the company's resources, provided that their amount can be measured or estimated reliably.
Measurement bases	The measurement standards adopted by the Spanish National Chart of Accounts are as follows: Historical cost or cost, fair value (this base having been developed extensively following the reform implemented by Royal Decree 1/2021), net realizable value, value in use and present value, costs to sell, amortized cost, transaction costs attributable to a financial asset or liability, carrying amount or book value and residual value.

RECOGNITION AND MEASUREMENT BASES PROPERTY, PLANT AND EQUIPMENT, INTANGIBLE ASSETS, AND INVESTMENT PROPERTY	
Property, plant and equipment **Investment property**	Tangible assets held for use on a lasting basis in the company's activities, in the production or supply of goods or services, or for administrative purposes. Non-current assets consisting of real estate property held to earn rentals or for capital appreciation or both. As a general rule, all these assets are initially stated at cost, whether this is the acquisition price or production cost. Subsequent to their initial recognition, they are stated at their acquisition price or production cost less the corresponding accumulated depreciation and, where appropriate, any accumulated impairment losses.
Intangible assets	Identifiable non-monetary assets without physical substance whose economic value can be measured. For their initial recognition, the identifiability standard must also be met. This means that either of the following two requirements must be fulfilled: (a) the asset must be separable, or (b) it must derive from legal or contractual rights. In no circumstances can establishment costs, brands, customer lists or similar items generated internally be recognized as intangible assets. Intangible assets are assets with a defined useful life and they must therefore be amortized systematically over the period for which the economic benefits inherent in them can reasonably be expected to generate revenues for the company. When the useful life of these assets cannot be reliability estimated, they must be amortized over ten years, without prejudice to the periods stipulated in specific rules applicable to intangible assets. At least once a year, the possible existence of impairment indicators must be analyzed, to determine whether impairment losses have been incurred.
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.

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RECOGNITION AND MEASUREMENT BASES PROPERTY, PLANT AND EQUIPMENT, INTANGIBLE ASSETS, AND INVESTMENT PROPERTY	
Asset swaps	Swaps with a commercial substance: 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. In swaps without commercial (substance 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.
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 consists 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	Research expenditure: Period expense, although it may be capitalized in certain circumstances. Development expenditure: Capitalized when the conditions established for the capitalization of research expenditure are met.
Start-up costs	Period expense.

RECOGNITION AND MEASUREMENT BASES PROPERTY, PLANT AND EQUIPMENT, INTANGIBLE ASSETS, AND INVESTMENT PROPERTY	
Goodwill	Goodwill can only be recognized as an asset when its value is realized in an acquisition for consideration, in the context of a business combination. Its amount must be determined in accordance with the rules on business combinations (the purchase method) and it must be allocated as from the acquisition date to each of the cash-generating units of the acquiror that are expected to benefit from the synergies of the business combination. Subsequent to initial recognition, goodwill must be stated at its acquisition cost less accumulated amortization and, where appropriate, any accumulated impairment losses recognized. Goodwill is amortized over its useful life. Useful life is determined separately for each cash-generating unit to which it has been allocated. Goodwill is presumed - in the absence of evidence to the contrary - to have a useful life of ten years and to be recoverable on a straight-line basis. Impairment losses recognized on goodwill are not reversed in subsequent years.
LEASES	
Measurement of leases	The Spanish National Chart of Accounts has not yet been adapted to IFRS-EU 16 on Leases. The Spanish Accounting and Audit Institute (*ICAC*) is analyzing its general implementation, with a variety of different circumstances and possible exceptions being envisaged.
Finance leases	When the economic conditions of a lease agreement imply that all the risks and rewards incidental to ownership of the asset forming the object of the lease are substantially transferred. This condition is presumed met in a variety of circumstances. The lessee records an asset and a financial liability of the same amount, which will be the fair value of the leased asset or, if lower, the present value at the inception of the lease of the minimum lease payments agreed to, including the payment for the purchase option where there exists no reasonable doubt that it will be exercised and any amount which has been guaranteed, directly or indirectly; contingent rents, the cost of services and taxes chargeable by the lessor are excluded. The total finance charge is distributed over the term of the lease and taken to income on an accrual basis, using the effective interest method. Contingent rents are expensed as incurred. The lessee must apply to the assets it is required to recognize in the balance sheet as a result of the lease the depreciation, impairment and derecognition criteria corresponding to them based on their nature.
Operating leases	Income and expenses deriving from operating lease agreements, corresponding to the lessor and the lessee, are to be treated, respectively, as income and expenses for the year of their accrual and taken to income accordingly.

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INVENTORIES AND NON-CURRENT ASSETS CLASSIFIED AS HELD FOR SALE

INVENTORIES

Measurement rules	As a general rule, they are stated at cost, whether this is the acquisition cost or production cost. All expenses incurred up to the point at which they reach the location from which they will be sold are included. Exception: For commodity broker-traders, the standard applied is fair value less costs to sell, provided that this eliminates or reduces the "accounting asymmetry" which would arise were these assets not stated at fair value. Refers expressly to inventories in the rendering of services.
Trade and financial discounts	Any directly attributable discount, price reduction or similar is deducted from the amount invoiced by the seller of the inventories. Discounts, returns and similar operations taking place subsequent to the invoice date are recorded under specific headings in the income statement.
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.

NON-CURRENT ASSETS (DISPOSAL GROUPS) CLASSIFIED AS HELD FOR SALE

Non-current assets classified as held for sale	A non-current asset is classified as held for sale if its carrying amount will be recovered largely through a sale transaction rather than through continuing use. There are certain requirements to be met. These are stated at the lower of book value or fair value less costs to sell. For as long as they are classified in this category, there is no amortization; the corresponding valuation adjustments are required to be recorded where appropriate.

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. The accounting treatment given to the tax effect is based on the balance sheet method.

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.

FINANCIAL INSTRUMENTS

Financial assets measured at fair value through profit and loss	This heading is used when classification under none of the others would be appropriate. Financial assets held for trading are to be included in this category obligatorily. For equity instruments which are not held for trading, and are not to be stated at cost, the company can choose irrevocably, at the time of initial recognition, to reflect subsequent changes in fair value in equity directly. Initial valuation: Fair value, without including directly attributable transaction costs, which are recognized in the income statement for the year. Subsequent measurement: Fair value without deducting any costs incurred in disposal. Changes in fair value are recognized in profit or loss. Impairment is not applicable.
Assets stated at amortized cost	A financial asset is included in this category, even when it is listed for trading on an organized market, if the entity maintains the investment with a view to receiving the cash flows deriving from performance of the contract, and the contractual terms of the financial asset give rise, on specified dates, to cash flows consisting solely of collections of principal and interest on the principal outstanding. Initial measurement: Fair value plus directly attributable transaction costs. Subsequent measurement: Interest accrued is recorded in profit and loss in accordance with the effective interest method. Imputation of adjustments/impairment: The necessary valuation adjustments are made at the year end, wherever there is objective evidence of impairment in value as the result or one or more events occurring subsequent to initial recognition and which generate a reduction or delay in estimated future cash flows, which may result from debtor insolvency (an "incurred loss" criterion, as opposed to IFRS-EU 9, which applies an "expected loss" criterion). The impairment loss is the difference between the book value and present value of future cash flows, including those deriving from the execution of in rem and in personal guarantees. The impairment loss, and its reversal, are recognized as an expense or income, respectively, in the income statement.

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FINANCIAL INSTRUMENTS

Financial assets at fair value with changes reported in equity	A financial asset is to be included in this category when its contractual terms give rise, on specified dates, to cash flows consisting solely of collections of principal and interest on the amount of principal outstanding, and it is not held for trading and it is not appropriate for it to be carried at amortized cost. Also to be included in this category are investments in equity instruments for which the irrevocable option has been exercised. Initial measurement: Fair value plus directly attributable transaction costs. Subsequent measurement: Fair value without deducting any transaction costs incurred in disposal. Changes occurring in fair value are recorded under equity, on a temporary basis, until the time of their impairment or derecognition, at which point they are taken to income. Imputation of adjustments/Impairment: • Debt instruments: An impairment loss is recorded in the income statement when there is a delay in estimated future cash flows, which may be due to debtor insolvency. In the event of a recovery in value, the amount reversed is taken to income. • Equity instruments: An impairment loss is recorded in the income statement when there is a decrease in the recoverability of the book value of the asset, evidenced, for example, by a prolonged or significant decline in its fair value. In the event of a recovery in value, the amount of the increase is recorded directly against equity (it is not reversed by crediting it to the income statement).
Financial assets at cost	The assets to be included in this category include, among others, investments in the equity of group companies, jointly controlled entities and associates, and other investments in equity instruments whose fair value cannot be determined by reference to a price quoted on an active market or cannot be estimated reliably. Initial measurement: At cost, i.e. at the fair value of the consideration plus directly attributable transaction costs. In the case of a group company, the initial measurement will be the cost value of the business combination, unless there existed an investment prior to its being classed as a group company (in that case, the cost will be its book value prior to classification as such). Subsequent measurement: Cost less accumulated impairment losses. Imputation of adjustments/Impairment: Valuation adjustments are made for the difference between the carrying amount and the recoverable amount, which is understood to be the higher of fair value less costs to sell and the present value of future cash flows). In the case of equity instruments, unless there is more reliable evidence of the recoverable amount of investments in equity instruments, the estimate of the impairment loss is to be calculated based on the equity of the investee and underlying capital gains existing as at the measurement date, net of the tax effect.

FINANCIAL INSTRUMENTS

Financial liabilities at amortized cost	This includes all financial liabilities except when they are required to be stated at fair value with changes reported through profit and loss. Initial measurement: Fair value, which will be the price of the transaction (fair value of the consideration received less directly attributable transaction costs). Subsequent measurement: At amortized cost. This is except for payables maturing in no more than one year which were stated at their nominal value upon initial recognition and will continue to be stated for that amount. Imputation of income: Interest accrued is recognized in the income statement using the effective interest method.
Financial liabilities measured at fair value through profit and loss	This category includes, among others, liabilities held for trading and any designated as such by the company at the time of initial recognition on certain grounds. Initial measurement: Fair value (i.e. price of the transaction: Fair value of the consideration received). Directly attributable transaction costs are recognized in profit and loss for the year. Subsequent measurement: Fair value. 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.
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	Initial recognition: Fair value. Subsequent measurement: 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	The ICAC Ruling of March 5, 2019 — in which it expands upon the standards applicable in the recognition of financial instruments and other accounting matters related to the regulation, from the mercantile perspective, of capital companies — analyses, among many other issues, the accounting standards applicable to preference shares.

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FINANCIAL INSTRUMENTS

Participating loans	Participating loans on which the interest is contingent are to be included on the assets side as Financial assets at cost. On the liabilities side, the standard applicable is similar to that applicable to silent participation agreements (*cuentas en participación*), when the interest on them is contingent. Where the participation loans have the characteristics of an ordinary or regular loan, they are classed as financial liabilities stated at amortized cost.

BUSINESS COMBINATIONS

General consideration of business combinations	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. 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.
Business combinations between Group companies	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. In spin-offs involving companies in the same group, criteria equivalent to those applied to mergers must be followed.
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	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. 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.
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.

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.

SALES OF GOODS AND RENDERING OF SERVICES

Recognition of income	Income is recognized upon the transfer of control of the goods or services promised to the customer.
Process for determining income	• Step 1: Identify control with customer. • Step 2: Identify the separate obligations under the contract. • Step 3: Determine the price of the transaction • Step 4: Apportion the price of the transaction among the contract obligations. • Step 5: Recognize income upon (or in line with) settlement of the obligations by the company.
Measurement	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	No revenue is recognized in swaps of homogeneous elements, such as exchanges of finished products or interchangeable goods, taking place between two companies with the aim of being more efficient in their commercial task of delivering the product to their respective customers.

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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	*Property, plant and equipment, intangible assets and investment property* 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. *Inventories and financial assets*. 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.

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.
Recognition of transactions with the option of settlement in cash or in equity instruments	A liability is recognized to the extent that the entity has incurred a present obligation to settle in cash or in other assets, and where this is not the case, an equity item is recognized. If the option corresponds to the supplier, it is recognized as a composite financial instrument.
Settlement in equity instruments	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. 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.
Settlement in cash	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, any changes in its value are recognized in profit or loss.

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.

INTRAGROUP TRANSACTIONS

General rule	The items in an intragroup transaction must be recognized at their fair value.
Special rules	These special rules are only applicable when the items in the transaction are a business and there is no monetary consideration. 1. Contributions in kind: Measurement in consolidated financial statements (or individual statements if no consolidation statements are formulated). 2. Mergers and spin-off: Measurement: • If there is a parent/subsidiary relationship between them the value that should be considered in the consolidated financial statements is used. • 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). 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. 3. Capital reduction, distribution of dividends and dissolution of companies.

An important development in 2019 was the publication of the Resolution of March 5, 2019 of the Spanish Accounting and Audit Institute (*ICAC*), which developed upon the criteria for the presentation of financial instruments and other accounting aspects related to the commercial regulation of corporations. This Resolution establishes the recognition and valuation criteria applicable to transactions such as (i) the acquisition and disposal of own shares; (ii) interest and dividend income; (iii) capital increases or reductions; (iv) other types of shareholder contributions; (v) accounting aspects of special shares (privileged, non-voting, redeemable); (vi) non-monetary contributions; (vii) outstanding paid-in capital; (viii) joint accounts; (ix) restatement of annual accounts; (x) profit distributions; (xi) dissolution and liquidation; (xii) transformation of the corporate form; and (xiii) mergers and spinoffs, among other things.

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In general, this Resolution summarizes the doctrine issued by the *ICAC* in its previous rulings. The main modification is that the *ICAC* changes its interpretation with respect to the accounting treatment of script dividends for shareholders of a company. Thus, when the company agrees to assign free assignment rights under a shareholder remuneration program that allows shareholders to (i) acquire free shares; (ii) sell such rights in the market; or (iii) sell them to the issuing company itself, the shareholder will recognize the corresponding financial income and the securities received at their fair value. Such accounting treatment was applicable to the financial statements for years beginning on or after January 1, 2020 (without prejudice to the possibility to opt for a retroactive application).

The most recent major reform of accounting legislation was approved by Royal Decree 1/2021 and came into force effective for years commencing as from January 1, 2021. This reform has introduced changes of different types into accounting legislation in order to bring it into line with the latest international accounting standards, and primarily with IFRS-EU 9 on financial instruments and IFRS-EU 15 on the recognition of revenue. The description of measurement standards set out in the above table is based on the Spanish National Chart of Accounts as worded following this reform. Its transitional provisions also regulate the criteria applicable as regards first time application. The *ICAC* has also published its ruling of February 10, 2021 establishing rules on recognition and measurement and the preparation of financial statements in relation to the recognition of revenue from the supply of goods and services, for the implementation of the above mentioned IFRS-EU 15.

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/ 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 (this relates to adjustments for positive changes in value and subsidies, donations and bequests recognized directly in equity).

- 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.

The ICAC ruling of March 5, 2019 expands upon the concept of "distributable profits". This is defined as the aggregate result for the year, as reflected in the approved balance sheet, with the following adjustments being made:

a. Positive: (1) unrestricted reserves and (2) retained earnings.

b. Negative: (1) prior-year losses. However, the amount by which this result exceeds the positive adjustments will only be included as a negative adjustment insofar as it is not offset, materially, by the balance of the legal reserve and other pre-existing restricted reserves; and (2) the part of the result for the year which is required to be allocated to the legal reserve and other obligatory provisions established by the law or bylaws.

The share premium and premium upon subscription of S.L. shares constitute contributed equity that can be recovered by the shareholders on the same terms as unrestricted reserves and shareholders' contributions.

Article 28 of the ruling relates to the allocation of results. In this respect, dividends can only be distributed against distributable profits if the equity value is not — or does not become as a result of the distribution — lower than the capital stock for mercantile purposes.

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/ 6 Consolidation

As part of 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 (NOFCAC).

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.

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.[3]
- 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.

3 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 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.

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/ 7 Requirements concerning disclosures in the notes to the financial statement

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 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 Revised Corporate Enterprises Law and the related implementing legislation, the following information:

- 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.

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- 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 her 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.

- Regarding revenues, the entity must identify the contracts with customers which give rise to their recognition; significant judgments and changes in such judgments made regarding such contracts and the assets recognized based on the costs in order to obtain or fulfill a contract.

- 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.

- 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.

- The notes to the financial statements must contain information on deferred payments to suppliers in commercial transactions and indicate the average payment period for payments to suppliers.

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/ 8 Auditing Requirements

Additional Provision no. One of Accounting Audit Law 22/2015 of July 20, 2015 stipulates that all companies and entities, irrespective of their legal form, are under the obligation to have their financial statements audited when they are in any of the following situations:

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 are identified in article 263 of Legislative Royal Decree 1/2010 of July 2, 2010 approving the revised Capital Companies Law, according to which the financial statements must in all cases be reviewed by an auditor, unless at least two of the requirements described below are met in the two consecutive years leading up to the balance sheet date:

- Total assets of €2,850,000 or less.
- Annual turnover of €5,700,000 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.

The objective of the audit is to verify whether the financial statements give a true and fair view of the equity, the financial position and the results of the company and, if applicable, whether the directors' report is consistent with the financial statements for the fiscal year.

The auditor is under the obligation to issue a detailed report on the outcome of the audit work in accordance with the legislation regulating audits. The main points regarding the content of the audit report are as follows:

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- Absence of material misstatements: it must be explained that the audit has been planned and executed in such a way as to obtain reasonable assurance that the financial statements are free of material misstatements, including those deriving from acts of fraud.

- Provision of services other than audit services: the report must include a statement declaring that no services other than the audit of the financial statements have been provided and that there have been no situations or circumstances affecting 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 meet the requirements of the applicable legislation, with any material misstatements which may have been detected in this respect being indicated. In cases in which the company audited is under the obligation to issue the Non-financial Information Statement, the auditor's opinion in this respect should be limited to indicating whether or not such Statement has indeed been included.

- A declaration of the responsibility of the company's managing body for the issue of the financial statements to be audited and of the audited entity's internal control system.

- Description of the objective of the audit and the manner in which it has been performed.

- A mention of the name, address and Official Auditors' Register registration number of the auditor or auditors by which the report is signed.

- Clear language and without certain references.

- Due cause for failure to issue the audit report or withdrawal: it is stipulated that due cause shall be deemed to exist in any of the following circumstances:

  - 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.

  Where there are circumstances which prevent the report from being issued or result in withdrawal from the contract, the auditor is required to set out such circumstances in detail and send this statement to the audited entity within no more than fifteen calendar days as from the date on which the auditor became aware of the situation in question. This statement is to be sent not only to the ICAC and to the Commercial Registry, but also to the Court in cases in which the auditor was appointed by court order.

- Date of delivery of the report: there must be a documentary record of the date of delivery of the report by the auditor and the date on which it was received by the entity audited, where there exists a difference between one date and the other.

The provisions of the Audit Law are expanded upon in Royal Decree 2/2021 of January 12, 2021 approving the implementing Regulations in respect of Law 22/2015 of July 20, 2015, which was published in the Official State Gazette on January 30, 2021.

Generally speaking, these Regulations set out the provisions which elaborate upon the content of the articles of Law 22/2015 of July 20, 2015. They refer, for example, to matters such as the drafting of audit contracts, the possibility of an audit being carried out jointly and the requirements to be met, how engagement and deferrals of the payment of audit fees should be formalized, how custodianship and the duty of secrecy are to be exercised; measures are introduced for the purpose of avoiding conflicts of interest or commercial relations or relations of any other type which might compromise the independence of the auditor (independence rules), certain forms of control of the audit activity are established, and provisions are laid down which elaborate upon, among other aspects, the rules on infringements and penalties.

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/ 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, non-financial information statement where applicable 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). They are also required to indicate the beneficial owner of the company and contain all other requisite information.

In relation to the filing of the annual financial statements, on 24 May 2019, the Resolution of 22 May 2019, of the General Directorate of Registers and Notaries, amending Annexes I, II and III of Order *JUS*/319/2018, of 21 March, approving the new templates for the filing with the Mercantile Registry of the annual financial statements, was published, as well as the Resolution of 22 May 2019 of the General Directorate of Registers and Notaries, approving the new template for the filing with the Mercantile Registry of the consolidated annual financial statements of the parties obliged to publish them.

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.

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/ Appendix I **Balance sheets as at the 202X year end**

ACCOUNT NO.	ASSETS	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
A. NON-CURRENT ASSETS				
	I. Intangible assets			
201, (2801), (2901)	1. Development			
202, (2802), (2902)	2. Concessions			
203, (2803), (2903)	3. Patents, licenses, trademarks and similar assets			
204, (2804)	4. Goodwill			
206, (2806), (2906)	5. Computer software			
205, 209, (2805), (2905)	6. Other intangible assets			
	II. Property, plant and equipment			
210, 211, (2811), (2910), (2911)	1. Land and buildings			
212, 213, 214, 215, 216, 217, 218 219, (2812), (2813), (2814), (2815), (2816)	2. Plant and other tangible xed assets			
23	3. Fixed assets under construction and advances			
	III. Investments in fixed assets			
220, (2920)	1. Land			

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ACCOUNT NO.	ASSETS	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
221, (282) (2921)	2. Buildings			
	IV. Long-term investments in group companies and associates			
2403, 2404, (2493), (2494), 293,	1. Equity instruments			
2423, 2424, (2953), (2954)	2. Loans to companies			
2413, 2414, (2943), (2944)	3. Debt securities			
	4. Derivatives			
	5. Other financial assets			
	V. Long-term Investments			
2405, (2495), 250, (259)	1. Equity instruments			
2425, 252, 253, 254, (2955), (298)	2. Loans to third parties			
2415, 251, (2945), (297)	3. Debt securities			
255	4. Derivatives			
258, 26	5. Other financial assets			
474	**VI. Deferred tax assets**			
B. CURRENT ASSESTS				
580, 581, 582, 583, 584, (599)	**I. Non-current assets held for sale**			
	II. Inventories			
30, (390)	1. Merchandise			
31, 32, (391), (392)	2. Raw materials and other supplies			
33, 34, (393), (394)	3. Work in process			
35, (395)	4. Finished products			
36, (396)	5. By-products, waste and recovered materials			
407	6. Advances to suppliers			
	III. Trade and other accounts receivables			
430, 431, 432, 435, 436, (437), (490), (4935)	1. Clients for sales and provisions of services			
433, 434, (4933), (4934), 44, 5531, 5533	2. Trade receivables, group and associated companies			
44	3. Sundry accounts receivable			
460, 544	4. Staff costs			
4709	5. Current tax assets			
4700, 4708, 471, 472, 5580	6. Other receivables from public administrations			
5580	7. Due from shareholders (members) for capital calls			
	IV. Short-term investments in group and associated companies			
5303, 5304, (5393), (5394), (593)	1. Equity instruments			
5323, 5324, 5343, 5344, (5953), (5954)	2. Loans to companies			

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ACCOUNT NO.	ASSETS	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
5313, 5314, 5333, 5334, (5943), (5944)	3. Debt securities			
	4. Derivatives			
5353, 5354, 5523, 5524	5. Other financial assets			
	V. Short-term investments			
5305, 540, (5395), (549)	1. Equity instruments			
5325, 5345, 542, 543, 547, (5955), (598)	2. Loans to companies			
5315, 5335, 541, 546, (5945),(597)	3. Debt securities			
5590, 5593	4. Derivatives			
5355, 545, 548, 551, 5525, 565, 566	5. Other financial assets			
480, 567	**VI. Short-term accruals**			
	VII.Cash and cash equivalents			
570, 571, 572, 573, 574, 575,	1. Cash and cash equivalents			
576	2. Cash equivalents			
TOTAL ASSETS (A+B)				

ACCOUNT NO.	EQUITY AND LIABILITIES	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
A. EQUITY				
	A.1 Equity and liabilities			
	I. Capital			
100, 101, 102	1. Subscribed capital			
(1030), (1040)	2. (Uncalled capital)			
110	**II. Share premium**			
	III. Reserves			
112, 1141	1. Legal and statutory reserves			
113, 1140, 1142, 1143, 1144, 115, 119	2. Other reserves			
	IV. (Treasury shares and equity instruments).			
(108), (109)	**V. Prior-year income/losses.**			
120	1. Retained earnings			
(121)	2. (Prior-year losses)			
118	**VI. Other shareholders' contributions.**			
129	**VII. Income/loss for the year.**			
(557)	**VIII. (Interim dividend)**			
111	**IX. Other equity instruments**			
	A.2 Adjustments for changes in value			
133	**I. Financial assets at fair value through changes in equity**			
1340	**II. Hedging transactions**			

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ACCOUNT NO.	EQUITY AND LIABILITIES	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
137	**III. Other**			
130, 131, 132	**A.3 Subsidies, donations and legacies received**			
B. NON CURRENT LIABILITIES				
	I. Long-term provisions			
140	1. Long-term post-employment obligations			
145	2. Environmental measures			
146	3. Provisions for restructuring			
	II. Long-term debts			
177, 178, 179	1. Bonds and other negotiable securities.			
1605, 17	2. Payable to credit institutions.			
1625, 174	3. Finance lease payables.			
1615, 1635, 171, 172, 173, 175, 180, 185, 189	5. Other financial liabilities.			
1603, 1604, 1613, 1614, 1623, 1624, 1633, 1634	**III. Long-term payables to group companies and associates**			
479	**IV. Deferred tax liabilities**			
181	**V. Long-term accruals**			
C. CURRENT LIABILITIES				
585, 586, 587, 588, 589	**I. Liabilities associated with non-current assets held for sale**			
499, 529	**II. Short-term provisions**			
	III. Current payables			
500, 501, 505, 506	1. Bonds and other negotiable securities			
5105, 520, 527	2. Payable to credit institutions.			
5125, 524	3. Finance lease payables.			
5595, 5598	4. Derivatives.			
(1034),(1044), (190), (192),194, 509, 5115, 5135, 5145, 521, 522, 523, 525, 526, 528, 551, 5525, 555, 5565, 5566, 560, 561, 569	5. Other financial liabilities.			
5103, 5104, 5113, 5114, 5123, 5124, 5133, 5134, 5143, 5144, 5523, 5524, 5563, 5564	**IV. Short-term payables to group companies and associates**			
	V. Trade and other payables			
400, 401, 405, (406)	1. Trade payables			
403, 404	2. Trade payables, group companies and associates			
41	3. Sundry accounts payable			
465, 466	4. Staff (salaries payable)			
4752	5. Current tax liabilities			
4750, 4751, 4758, 476, 477	6. Other payables to public administrations			
438	7. Customer advances			
485, 568	**VI. Short-term accruals**			
TOTAL EQUITY AND LIABILITIES (A+B+C)				

* Chart of accounts approved by Royal Decree 1514/2007 of November 16, 2007 approving the Spanish National Chart of Accounts, version in force as from January 31, 2021.

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/ Appendix II **Income statements for the year ended __202X**

ACCOUNT NOS.	NOTE	(DEBIT) CREDIT 202X	202X-1
A. CONTINUING OPERATIONS			
	1. Net turnover		
700, 701, 702, 703, 704, (706), (708), (709)	a. Sales		
705	b. Provisions services		
(6930), 71, 7930	**2. Change in inventories of finished products and work in progress**		
73	**3. In-house work performed on property, plant and equipment.**		
	4. Procurement:		
(600), 6060, 6080, 6090, 610	a. Goods purchased for resale sold		
(601), (602), 6061, 6062, 6081, 6082, 6091, 6092, 611, 612	b. Cost of raw materials and other consumables used.		
(607)	c. Work performed by other companies.		
(6931), (6932), (6933), 7931, 7932, 7933	d. Impairment of goods held for resale, raw materials and other supplies.		
	5. Other operating revenues		
75	a. Non-core and other current operating revenues		
740, 747	b. Operating subsidies taken to income for the year		
	6. Staff costs		

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(640), (641), (6450)	a. Wages, salaries and similar expenses
(642), (643), (649)	b. Social security and other costs
(644), (6457), 7950, 7957	c. Provisions
	7. Other operating expenses
(62)	a. Other general and administrative expenses
(631), (634), 636, 639	b. Taxes
(650), (694), (695), 794, 7954	c. Losses, impairment and increase (decrease) in operating provisions
(651), (659)	d. Other general and administrative expenses
(68)	**8. Depreciation/amortization of fixed assets**
746	**9. Imputation of subsidies related to non-financial fixed assets and others**
7951, 7952, 7955, 7956	**10. Over-provisions**
	11. Impairment and gains (losses) on disposal of fixed assets
(690), (691), (692), 790, 791, 792	a. Impairment and losses.
(670), (671), (672), 770, 771, 772	b. Gains/(losses) on disposals and other.
A.1) PROFIT/LOSS FROM OPERATIONS (1+2+3+4+5+6+7+8+9+10+11)	
	12. Finance income
	a. From shares in equity instruments
7600,7601	a1. In group companies and associates
7602, 7603	a2. In third parties
	b. From negotiable securities and other financial instruments
7610, 7611, 76200, 76201, 76210, 76211	b1. From group companies and associates
7612, 7613, 76202, 76203, 76212, 76213, 767, 769	b2. From third parties
	13. Financial expenses
(6610), (6611), (6615), (6620),(6621), (6640), (6641), (6650),(6651) (6654), (6655)	a. On payables to group companies and associates
(6612), (6613), (6617),(6618), (6622), (6623),	b. On payables to third parties
(6624), (6642), (6643),(6652), (6653), (6656), (6657), (669)	
(660)	c. On restatement of provisions
	14. Changes in fair value of financial instruments
(6630), (6631), (6633), 7630, 7631, 7633	a. Fair value through profit and loss
(6632), 7632	b. Transfer of fair value adjustments through changes in equity.
(668), 768	**15. Exchange differences**
	16. Impairment and gains/(losses) on disposals of financial instruments
(696), (697), (698), (699), 796, 797, 798, 799	a. Impairment and losses
(666), (667), (673), (675), 766, 773, 775	b. Gains/(losses) on disposals and other
A.2. FINANCIAL INCOME/EXPENSE (12+13+14+15+16)	
A.3.INCOME/EXPENSE BEFORE TAXES (A.1+A.2)	
(6300), 6301, (633), (638)	**17. Income tax**
A.4.INCOME/LOSS FOR THE YEAR FROM CONTINUING OPERATIONS (A.3+17)	
B. DISCONTINUED OPERATIONS	
	18. Income/loss for the year on discontinued operations net of taxes.
A.5. INCOME/LOSS FOR THE YEAR (A.4+18)	

(*) May be positive or negative

* Chart of accounts approved by Royal Decree 1514/2007 of November 16, 2007 approving the Spanish National Chart of Accounts, version in force as from January 31, 2021.

AIII
Accounting and audit issues

/ Appendix III Statement of changes in equity for the year ended __ 202X

A. STATEMENT OF RECOGNIZED INCOME AND EXPENSE FOR THE YEAR ENDED ___202X

ACCOUNT NO.	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
A. RESULT FROM INCOME STATEMENT			
	Income and expenses imputed directly to equity		
	I. For valuation of financial instruments		
(800), (89), 900, 991, 992	1. Financial assets at fair value through changes in equity		
	2. Other income/ expenses		
(810), 910	**II. For cash-flow hedges**		
94	**III. Subsidies, donations and legacies received**		
(85), 95	**IV. For actuarial gains or losses and other adjustments**		
(8300)*, 8301*,(833), 834, 835, 838	**V. Tax effect**		
B. TOTAL REVENUES AND EXPENSES IMPUTED DIRECTLY TO EQUITY (1+11+111)			
	Transfers to the income statement		
	VI. For valuation of financial instruments		
(802), 902, 993, 994	1. Financial assets at fair value through changes in equity.		
	2. Other income/expenses.		
(812), 912	**VII. For cash-flow hedges**		

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Accounting and audit issues

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ACCOUNT NO.	NOTE TO THE FINANCIAL STATEMENTS NO.	202X	202X-1
(84)	VIII. Subsidies, gifts and bequests		
8301, (836), (837)	IX. Tax efect		
C. TOTAL TRANSFERS TO THE INCOME STATEMENT (VI+VII+VIII+IX)			
TOTAL INCOME AND EXPENSES RECOGNIZED (A + B + C)			

B. STATEMENT OF TOTAL CHANGES IN EQUITY FOR THE YEAR ENDED ___202X

A. BALANCE 202X-2			
I. Adjustments for changes of accounting policy 202X-2 and previous years			
II. Adjustments for errors 202X-2 and previous years			
B. ADJUSTED BALANCE, START OF YEAR 202X-1			
I. Total income and expense recognised			
II. Operations with shareholders or owners			
1. Capital increases			
2. (-) Capital reductions			
3. Conversion of financial liabilities to equity (conversion of debentures, waiver of debts)			
4. (-) Dividend distribution			
5. Operations with treasury shares or instruments (net)			
6. Increase (reduction) in equity resulting from business a combination			
7. Other operations with shareholders or owners			
III. Other changes in equity			
C. BALANCE, END OF YEAR 202X — 1			
A. BALANCE 202X-2			
I. Adjustments for changes in criteria 202X-1			
II. Adjustments for errors 202X-1			
D. ADJUSTED BALANCE, START OF YEAR 202X			
I. Total income and expense recognized			
II. Operations with shareholders or owners			
1. Capital increases			
2. (-) Capital reductions			
3. Conversion of financial liabilities into equity (conversion of debentures, waiver of debts)			
4. (-) Dividend destribution			
5. Operations with treasury shares or instruments (net)			
6. Increase (reduction) in equity resulting from a business combination			
7. Other operations with shareholders or owners			
III. Other changes in equity			
E. BALANCE, END OF YEAR 202X			

(*) May be positive or negative

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Accounting and audit issues

/ Appendix IV **Cash flow statements for the year ended __202X**

	NOTES	202X	202X-1
A. CASH FLOWS FROM OPERATING ACTIVITIES			
1. Income/loss for the year before tax			
2. Adjustment to income/losses			
a. Deprecitation/amortization of fixed assets (+)			
b. Valuation allowances for impairment (+/-)			
c. Change in provisions (+/-)			
d. Imputation of subsidies (-)			
e. Gains/losses on write-offs and disposals of fixed assets (+/-)			
f. Gains/losses on write-offs and disposals of financial instruments (+/-)			
g. Financial income (-)			
h. Financial expenses (+)			
i. Exchange diferences (+/-)			
j. Change in fair value of financial instruments (+/-)			
k. Other income and expenses (+/-)			
3. Changes in working capital			
a. Inventories (+/-)			
b. Debtors and other receivables (+/-)			
c. Other current assets (+/-)			

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Accounting and audit issues

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	NOTES	202X	202X-1
d. Creditors and other payables (+/-)			
e. Other current liabilities (+/-)			
f. Other non-current assets and liabilities (+/-)			
4. A. Cash flows from operating activities			
a) Payments of interest (-)			
b) Dividends collected (+)			
c) Interest collected (+)			
d) Income tax collections (payments) (+/-)			
e) Other payments (collections) (-/+)			
5. A. Cash flows from operating activities (+14+1-2+1-3+1-4)			
B. CASH FLOWS FROM INVESTING ACTIVITIES			
6. Payments on investments (-)			
a. Group companies and associates			
b. Intangible assets			
c. Property, plant and equipment			
d. Investment property			
e. Other nancial assets			
f. Non-current assets classified as held for sale			
g. Other assets			
7. Collections from divestments (+)			
a. Group companies and associates			
b. Intangible assets			

	NOTES	202X	202X-1
c. Property, plant and equipment			
d. Investment property			
e. Other financial assets			
f. Non-current assets classified as held for sale			
g. Other assets			
8. B. CASH FLOWS FROM INVESTING ACTIVITIES (7-6)			
C. CASH FLOWS FROM FINANCING ACTIVITIES			
9. Collections and payments on equity instruments			
a. Issuance of equity instruments (+)			
b. Redemption of equity instruments (-)			
c. Acquisition of own equity instruments (-)			
d. Disposal of own equity instruments (+)			
e. Subsidies, gifts and bequests (+)			
10. Collections and payments on financial liability instruments			
a. Issuance			
1. Bonds and other negotiable securities (+)			
2. Payables to credit institutions (+)			
3. Payable to group companies and associates (+)			
4. Other payables (+)			
b) Return and redemption of			
1. Bonds and other negotiable securities (-)			
2. Payable to credit institutions (-)			

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Accounting and audit issues

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	NOTES	202X	202X-1
3. Payable to group companies and associates (-)			
4. Other payables (-)			
11. Payments for dividends and remuneration on other equity instruments			
a. Dividends (-)			
b. Remuneration of other equity instruments (-)			
12. Cash-flows from financing activities (+/-9+/-10-11)			
D. EFFECT OF EXCHANGE RATE FLUCTUATIONS			
E. NET INCOME/DECREASE IN CASH AND CASH EQUIVALENTS (+/-5+/-8+/-12+/-D)			
Cash or cash equivalents at start of year			
Cash or cash equivalents at end of year			

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