



# Tax News Summary

P&C wants to inform our clients about the main tax modifications that have been approved in Spain in the last three months. This report briefly summarises the main tax reforms which have recently been introduced in Spain:

The last Laws or Royal Decrees approved have been the following:

- Law 14/2013, of 27 September 2013, providing support to entrepreneurs and their internationalisation.
- Law 16/2013, of 29 October 2013, which establishes some environmental tax measures and adopts other financial and tax measures.
- Royal Decree 828/2013, of 25 October 2013, which amends the regulations implemented under the Value Added Tax Act as well as the regulations on tax reviews, administration and inspection and the regulations on invoicing.

## **CORPORATE INCOME TAX REFORMS**

### **1. Elimination of the tax deductibility of portfolio provisions.**

The tax deductibility of impairment allowances of share capital or equity investments in companies has been eliminated for tax periods starting from 1 January 2013. The elimination of this tax deductibility will be temporary as potential impairment losses will be tax deductible under normal conditions if the shares are transferred or the subsidiary is dissolved. A complicated transitory system has been established in the Spanish Corporate Income Tax Act to regulate the effects of reversals of impairment allowances deducted in prior years. With this new regulation, the rules on the avoidance of double taxation for distributions of dividends generated internally or externally have also changed.

### **2. Permanent establishments and interests in joint ventures. Non-deductibility of foreign-source income.**

Taking effect for tax periods starting from 1 January 2013, the tax deductibility of losses obtained abroad by means of a permanent establishment has been eliminated. Losses generated from interests in joint ventures which carry on a business activity abroad are not tax deductible either. As an exception to this general rule, income generated by the permanent establishment or joint venture is tax deductible if the permanent establishment or joint venture are transferred or their business activity is terminated.

### **3. Patent box.**

The reduction of income generated from certain intangible assets, also known as “patent box”, has changed. The change will take effect for transfers of the right to use or trade on intangible assets made from 29 September 2013 onwards. With this change, the amount of income generated from these transfers to be included in taxable income is now 40% (as opposed to the 50% reduction applicable before this reform). The assets regarding which the reduction can be applied have not changed and continue to be patents, drawings, models, plans, formulae or secret procedures and rights to information regarding industrial, commercial or scientific experience.

To avail of this reduction, the transferor of the right to use or trade on the assets should have created at least 25% of the assets itself (previously 100% of the assets). The other requirements for the application of the reduction have not changed. These requirements are briefly as follows:

- a) The transferee of the right to use or trade on the assets uses such right to carry on a business activity.
- b) The transferee of the right to use or trade on the assets does not reside in a tax-free country or territory or a tax haven.
- c) If the agreement which establishes the right to use or trade on the assets includes ancillary services, the consideration for such services is established separately.
- d) The transferee of the right to use or trade on the assets keeps accounting records which itemise the income and expenses (direct and indirect) for these assets.

The tax relief applies not only to transfers of the right to use or trade on intangible assets but also to disposals of such assets except for those made to a group company. In addition, the previous limit where the reduction could not be applied from the year following that in which the total income generated from the transfer exceeds the cost of the created asset multiplied by six, is eliminated. For tax consolidation groups, these operations are subject to specific obligations regarding support documentation.

To improve legal certainty, changes have been made to regulations to enable companies to make advance agreements with the Spanish tax authorities regarding the evaluation of income and expenses generated from transfers of the right to use or trade on intangible assets as well as income generated from their disposals and to acknowledge that the assets come under the categories regarding which the taxpayer is entitled to the tax relief.

Finally, a transitory system has been established in accordance with which transfers of the right to use or trade on intangible assets made before 28 September 2013 will be regulated by the laws previously in force.

## **4. Tax relief for research and development and technological innovation.**

Tax relief for research and development and technological innovation can be excluded from the limits on tax relief applied on tax liabilities, which will have a cost of 20% of the tax relief applied. This therefore means that tax relief for research and development and technological innovation may reduce tax liability after double tax deductions and tax allowances to zero and, in some cases, tax may even be refundable by the tax authorities. This exclusion is only applicable for tax relief generated in tax periods commencing in 2013 and following years.

The requirements for the exclusion of the research and development and technological innovation tax reliefs from the tax relief limits are as follows:

- a) One tax period has passed since the tax relief was generated and the tax relief has not been applied.
- b) An amount equal to the tax relief applied or paid has been allocated to research and development and technological innovation expenses or to investments in tangible fixed assets or intangible assets used exclusively for research and development and technological innovation activities, excluding real property, within 24 months of the end of the tax period when the tax relief was applied or paid.
- c) The taxpayer's average number of staff (staff in general or staff assigned to research and development and technological innovation activities) has not reduced between the end of the tax period when the tax relief was generated and the end of the reinvestment period.
- d) The taxpayer has a report which certifies that the activities are research and development and technological innovation activities or it has made an advance agreement with the Spanish tax authorities regarding the valuation of the expenses and investments of the project.

The following should also be taken into consideration:

- a) The tax relief applied or paid for technological innovation in accordance with the foregoing comments may not exceed a total of Euros 1 million per year.
- b) The sum of the tax relief applied or paid for technological innovation and the tax relief applied or paid for research and development in accordance with the foregoing comments may not exceed a total of Euros 3 million per year.

## **5. Tax relief for invested profits.**

Tax relief is introduced for small companies for invested profits, which consists of a reduction of 10% of taxable profits for small companies and 5% for microcompanies. The tax relief can be applied for pre-tax profits of the year which are invested in new tangible fixed assets or real property investments used for business activities. The period for the investment is the tax period in which the profits are obtained and the two following tax periods. The assets in which the investment is made should be kept in the company's assets for five years or, if less, during their useful life. Companies which apply this tax relief should allocate an amount equal to the tax relief base to a reserve which will not be available for distribution during the period when the assets should be kept by the company.

The tax relief may be applied for profits generated in tax periods starting from 1 January 2013.

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## **6. New companies.**

New companies set up from 1 January 2013 onwards which carry on business activities will be taxed in the first tax year in which they generate positive taxable income and the following year at the rates stated below unless they are taxed at a lower rate to the general rate (currently 30%):

- a) For the part of the taxable income between Euros 0 and Euros 300,000, at 15%.
- b) For the remaining taxable income, at 20%.

## **7. Balance sheet reviews.**

For disposals of fixed assets and non-current assets held for sale which are real property, under the Spanish Corporate Income Tax Act, monetary depreciation can be deducted from the income obtained so that the real capital gain adjusted for inflation is taxed. Taking effect for tax periods starting from 1 January 2013, this adjustment will be reduced by the amount of the balance sheet review regulated in Law 16/2012, which will greatly diminish the positive effects intended with this measure.

## **8. Advance tax payments. Extension of period of application of exceptional measures.**

- a) Higher rates:

The levying of higher rates for advance tax payments of companies which apply the taxable base method established in Section 45.3 of the Spanish Corporate Income Tax Act, shown in the table below, is extended to 2014.

Turnover for tax purposes (as defined by VAT law)	Turnover for accounting purposes	Tax Rate
≤€6,010,121.04	Any amount	21%
<€6,010,121.04	<€10,000,000	21%
	≥€10,000,000 and < 20.000.000	23%
	≥€20,000,000 and <€60,000,000	26%
	≥€60,000,000	29%

The thresholds of turnover for tax and accounting purposes refer to turnover generated during the 12 months prior to the start of the tax period.

b) Increase of calculation base of advance tax payments:

For companies which should calculate advance tax using the tax base method, the obligation to include 25% of the amount of dividends and income regarding which the tax exemption for foreign-source dividends and capital gains is applied (Section 21 of the Spanish Corporate Income Tax Act) in the taxable income of the advance tax payment is extended to tax periods commencing in 2014 and 2015.

c) Minimum advance tax payment:

The application of the minimum advance tax payment for taxpayers whose turnover for accounting purposes of the prior year is under Euros 20 million is extended to tax periods commencing in 2014 and 2015. Generally, the advance tax payments of these taxpayers may not be under 12% of the profits recorded in the income statement of the period corresponding to the advance tax payment and only advance tax previously made may be deducted from this amount. For companies and entities where either the tax exemptions for foreign-source dividends and capital gain and for income generated by a permanent establishment or the deduction for internal double taxation are applicable for at least 85% of their income, the minimum advance tax payment may not be under 6% of their profits.

## **9. Temporary extension of period of application of exceptional measures.**

a) Maintaining of limits for application of pending amounts generated from unrestricted amortisation/depreciation:

The limits for application of pending amounts generated from unrestricted amortisation/depreciation are maintained for tax periods commencing in 2014 and 2015. This tax relief was eliminated with effect from 31 March 2012.

b) Maintaining of rules on the offsetting of tax-loss carryforwards.

The rules limiting the offsetting of tax-loss carryforwards will also be applicable in 2014 and 2015. For taxpayers whose turnover for tax purposes (as defined by Spanish VAT law) during the 12 months prior to the start of the tax period exceeds Euros 6,0101,121.04, the tax-loss carryforwards offset may not exceed:

- 50% of the taxpayer's taxable income before the tax losses are offset when, during the prior 12 months, the taxpayer's income for accounting purposes is at least 20 million euros but under Euros 60 million.
- 25% of the taxpayer's taxable income before the tax losses are off when, during the prior 12 months, the taxpayer's income for accounting purposes is at least 60 million euros.

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c) Maintaining of limit for tax deductibility of goodwill, merger goodwill and international goodwill.

The application of the 1% limit for tax deductibility of goodwill acquired from third parties, merger goodwill and international goodwill (as opposed to the general 5%) is extended to tax periods starting in 2014 and 2015.

d) Maintaining of limit for tax deductibility of intangible assets with an undefined useful life.

The application of the 2% limit for the annual maximum tax deductibility of intangible assets with an undefined useful life (as opposed to the general 10%) is extended to tax periods starting in 2014 and 2015.

e) Maintaining of limits of tax relief applied on tax liabilities.

For tax periods starting in 2014 and 2015, the limits of tax relief applied on tax liability is maintained at 25% of the tax liability after internal and international double tax deductions and tax allowances for income obtained in Ceuta and Melilla, for export activities, and for local public services (as opposed to the 35% limit which is generally applicable). This limit will be 50% (60% generally) when the tax relief for research and development and technological innovation corresponding to the expenses and investments made in the tax period exceeds 10% of the tax liability after internal and international double tax deductions and the aforementioned tax allowances. These limits will also apply to tax relief for reinvestments in extraordinary profits.

## PERSONAL INCOME TAX REFORMS

### **1. Tax relief for investments in shares in newly or recently-created companies. Tax exemption for reinvestment of these shares.**

a) Tax relief for investments.

A tax relief is introduced for amounts paid during the tax period to subscribe shares in newly or recently-created companies which comply with certain requirements. The tax relief, applicable on the part of the personal income tax liability corresponding to the State, is a deduction of 20%. The tax base for the tax relief is the acquisition value of the shares up to an annual limit of Euros 50,000.

The shares should be held in either of the two main forms of legal entities which exist in Spain, a Sociedad Anónima or a Sociedad de Responsabilidad Limitada, including SAs and SRLs which are owned by their workers. The company should not be listed on a regulated market and it should carry on a business activity and have its own human and material resources to do so. The company's equity (or, if the case, that of the group of companies) may not exceed Euros 400,000 at the start of the tax period when the taxpayer acquires the shares. The taxpayer should obtain a document from the company which certifies that the shares comply with all of these requirements.

The shares should be acquired at the moment when the company is set up or by means of a capital increase in the company made three years after its incorporation and should be maintained for more than three years and less than 12 years. The direct or indirect interest held in the company by the taxpayer or his spouse or relatives up to the second degree may not exceed 40%. Finally, the tax relief may only be applied for shares subscribed after 28 September 2013.



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b) Tax exemption for reinvestment of the shares.

Capital gains generated from disposals of shares with respect to which the taxpayer has availed of the tax relief referred to above will be exempt from personal income tax if the total amount obtained from the disposal is reinvested in the acquisition of shares in newly or recently-created companies in the terms established in the regulations implemented under the Spanish Personal Income Tax Act. If the reinvested amount is less than the total amount obtained from the disposal, the tax exemption will be applied proportionally. A transitory system has also been established for capital gains generated from disposals of shares acquired before 29 September 2013.

c) Tax relief if the shares are reinvested.

When taxpayers dispose of shares of newly or recently-created companies and opt to apply the tax exemption for reinvestment referred to above, only the part of the reinvestment which exceeds the total amount obtained from the disposal will be the tax relief base for the new shares.

## **2. Tax relief for investments of profits.**

Some specific regulations have been established for the application of tax relief for investments of profits introduced with reforms to the Spanish Corporate Income Tax Act. This tax relief may be availed of for net income obtained from business activities of the tax period which is invested in new tangible fixed assets or real property used for the taxpayer's business activities.

Net income obtained from business activities of the tax period is understood to be invested when an amount equal to the part of the positive general taxable base of the tax period which corresponds to such income is invested. The tax relief base is the net income obtained from business activities of the tax period which is reinvested in the assets referred to above.

The tax relief will generally be 10% (5% in certain cases). The tax relief may not exceed the sum of the State part and the regional government part of the tax liability for the tax period when the net income from business activities which is invested was obtained.

Finally, the tax relief is applicable for net income obtained from business activities generated from the start of 2013.



## VALUE ADDED TAX (VAT) REFORMS

### 1. Special cash criteria tax system:

To mitigate companies' cash and credit access problems, a special tax system for VAT cash criteria has been established which will come into effect on 1 January 2014. With this system, taxpayers whose turnover for tax purposes does not exceed Euros 2 million can opt to apply a system which delays the accrual and deposit of output VAT for most of their sales operations until payment is fully or partially collected from their customers although a time limit is established for this accrual/deposit which ends on 31 December of the year following that in which the operations were carried out. The right to deduct input VAT may also be delayed to such moment by taxpayers who apply this tax system.

The option to apply this special tax system will also take effect for the persons for whom the operations are carried out, irrespective of whether they opt to apply the tax system or not, as their entitlement to the deduction of input VAT will be delayed until its accrual (when payment is made or on 31 December of the following year).

Finally, a tax system which is almost identical to that of VAT has been introduced for the Canary Island Indirect Tax .

### 2. Period for filing of tax return for July.:

With effect from 27 October 2013, the special period established for filing the tax return for July has been eliminated. The tax return for July should now be filed, and any tax deposited, during the first 20 days of August and not the first 20 days of September, as was previously the case.

### 3. Obligation to provide information on operations recorded in VAT records:

With effect from 1 January 2014, the number of taxpayers who will be required to provide information on operations recorded in VAT records is reduced. This requirement is now only applicable to VAT or Canary Island taxpayers who are registered in the tax register of monthly tax refunds.

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# Acerca de la Firma y sus Socios



P&C is an independent tax and legal advisory firm established in 2006 by professionals who, until then, had developed their professional careers in major national and international firms. The team gathered and decided to start this firm as they were convinced that their personal experience and the advice they could give was extremely valuable.

P&C advises its clients both in high value-added operations and in day-to-day processes like national and international compliance and paper work, with total availability and commitment to their business and personal results using English as working language.

P&C founding members prove more than 10 year experience in managing national and international projects in collaboration with other professionals from any other sector or nationality, when the client's interest so requires. P&C structure and experience enables them to offer an **excellent price-service ratio**.

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From 2001 until 2003 he developed his career in Forum Abogados C.B, one of the most important lawfirms in Marbella, specialized in Real Estate and Mortgages law. From 2003 until 2004 he worked at Carretero Abogados, another specialized Real Estate lawfirm. At 2005 he founded Peralco Abogados, that has turned into the actual P&C Tax and Legal Advisors.

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Co-Founder at P&C Legal and Tax Advisors, she is in charge of developing all financial, outsourcing and traffic work. From 2002 until 2003 she worked at De la Riva, Burgos & Ortega Lawfirm in Marbella. From 2004 until 2005 she developed the Mortgages area at Barclays Bank, being responsible for all Mortgages formalized within this financial entity around Málaga.

**Jose Manuel Peral:** Has a Bachelor in Business Administration, a Master Degree of tax advisory by the IE, and a MBA degree by the Business School EOI. He has knowledge and experience in all tax areas, specially of International Tax, Corporate Income Tax, VAT and Personal Income.

Co-Founder at P&C Legal and Tax Advisors, he is head of the tax area. He has developed his career at PriceWaterHouseCoopers, the most important advisory company in the world, doing tax for audits and international tax advisory, Grant Thornton, fourth biggest audit company in the world, and from 2011 he has been responsible for the International tax and Compliance area at the international cost optimization company Lowendalmasai. In addition, he has been involved in other projects like G11Futbol in Uruguay or Jewwe (Jewish Social Network).

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