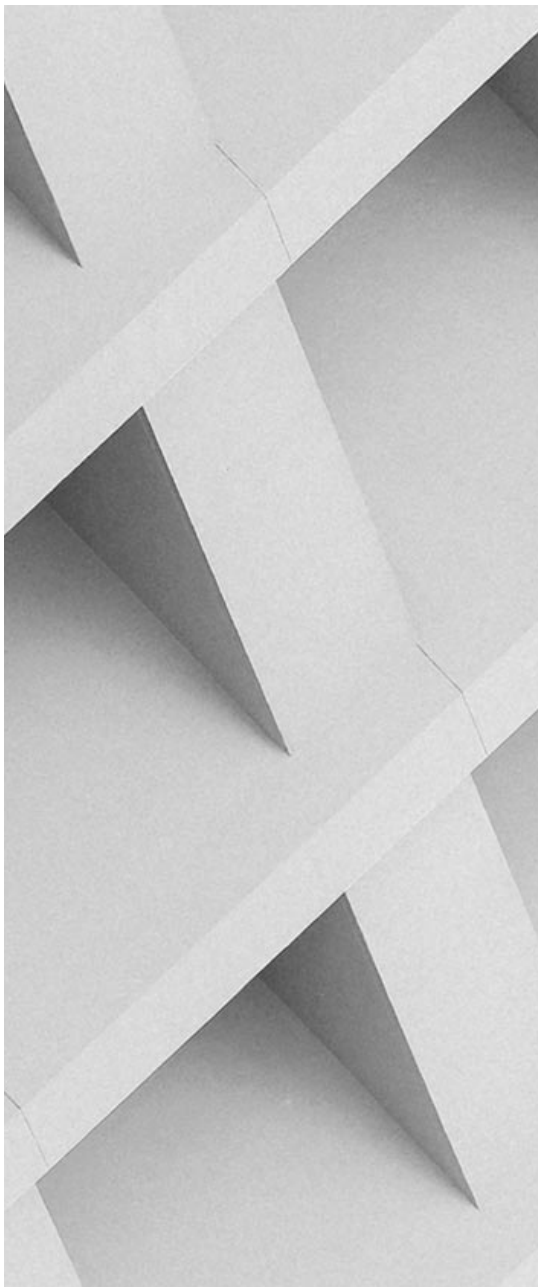

New tax measures approved in Spain for 2022 and 2023

The final weeks of 2022 have been used by the legislature to pass many tax measures that are relevant for both domestic and foreign investors

Spain - Legal Flash
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Key aspects

- Approval and effects of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”), which amends double tax treaties.
- New taxes for companies: energy sector, financial sector, and minimum global taxation.
- Wealth taxes: minimum top-up tax and indirect ownership.
- Special limits in the Spanish tax consolidation regime.
- New tax regime for carried interest.
- Extension of impatriate regime’s scope.
- Amendments to several value-added tax (“VAT”) rules.
- New special tax regime for the Balearic Islands.



Approval and effects of the MLI

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting or MLI is an international convention aimed at amending double tax treaties (“DTTs”) to introduce the main measures of the OECD’s BEPS Project. Although Spain signed the convention in 2017, it did not enter into force until 2022. A summary of the MLI’s content can be read in our Legal Flash [Spain’s approval to amend double tax treaties](#).

During 2022, Spain has also completed the internal procedures for ratifying the MLI. Therefore, the effects of the MLI on the DTTs signed by Spain will take place as of January 1, 2023. However, a case-by-case analysis should be carried out to ascertain whether those effects will materialize, as the situation of the other treaty partners for these purposes may differ.

New taxes for companies: energy sector, financial sector, and minimum global taxation

Aimed at reinforcing public policies for the benefit of the most disadvantaged in the current inflationary economic scenario, for tax periods 2023 and 2024, new taxes have been approved for companies in the energy and financial sectors. These taxes apply in addition to the current taxes—such as corporate income tax (“CIT”)—currently levied on these activities; in fact, these new levies do not qualify as deductible expenses for CIT purposes. Also, although controversial, passing on the levy amount to third parties (clients), either directly or indirectly, is expressly prohibited.

On the one hand, the new levy for the energy sector will be charged to (i) companies that qualify, for the Spanish National Markets and Competition Commission (“CNMC”), as main operators in the electricity, natural gas, hydrocarbons, and liquefied petroleum gas economic sectors and whose turnover in 2019 was at least €1 billion and the turnover corresponding to years 2017, 2018 or 2019 derived from the activity that resulted in the company’s qualifying as a main operator exceeds 50% of the total turnover of the respective year; and (ii) companies carrying out crude oil, natural gas production, coal mining, or oil refinery activities in Spain whose turnover from those activities in the previous year was at least 75% of the total turnover. The payable tax will result from multiplying a 1.2% rate to the turnover of the corresponding economic activity, as provided in the profit and loss account of the previous calendar year.

On the other hand, the new temporary levy on credit entities applies to those whose income from interest and commissions in 2019 was equal to or greater than €800 million. The payable levy will result from multiplying a 4.8% rate to the sum of the interest margin and the income and expenses for commissions derived from the activity carried out in Spain, as provided in the profit and loss account of the calendar year before the one to which the levy refers. For these purposes, income from providing certain services at a regulated price are excluded from the definition of “turnover.”



In both cases, the levy will accrue on January 1, part of which will be paid in advance during the first 20 calendar days of February, with the final payment being paid during the first 20 calendar days of September. As explained, the turnover of the previous year must be considered, meaning this payment calendar is feasible.

On a separate note, the European Union ("EU") agreement on the global minimum taxation directive represents a milestone for the taxation and compliance of big corporate groups. The OECD's Pillar Two, which EU Member States have now formally adopted as an EU Directive, aims to guarantee a 15% effective tax rate in each jurisdiction for corporate groups with a turnover exceeding €750 million. However, Spain is yet to publish any details or draft laws on this matter.

For more information, please see our post [EU reaches agreement on global minimum taxation](#).

Wealth taxes: minimum top-up tax and indirect ownership

Two amendments that are relevant for foreign investors have been made to taxes on capital. In fact, both amendments highlight the importance for taxpayers to review their situation, as some specific limits and exemptions may apply.

First, a specific amendment has been made to the wealth tax applicable to nonresident individuals, who are only taxed on their assets located in Spain.

Before this amendment, the Spanish courts and tax authorities upheld that a nonresident individual who owns shares in a non-Spanish entity is not subject to wealth tax, even if the value of those shares arises from Spanish assets. Now, on the contrary, shares in foreign entities whose value mainly arises from Spanish real estate will be considered assets located in Spain, where they will be subject to tax as a result. However, domestic and treaty-based exemptions may apply.

Second, to raise additional revenue and harmonize wealth taxation among Spain's autonomous communities, a new tax for high-net-worth individuals has been approved. Specifically, taxpayers whose net worth exceeds €3.7 million will be taxed on a worldwide basis, and nonresident taxpayers whose net worth exceeds €3 million will be taxed on their Spanish assets only.

Tax rates range from 1.7% to 3.5% (above €10.7 million); however, any wealth tax paid in Spain or abroad is creditable against this new tax. As this new tax works as a minimum top-up tax, this configuration is likely to only significantly affect resident taxpayers living in autonomous communities with attractive wealth tax regulations (e.g., Madrid and Andalusia) and nonresident taxpayers whose main assets are located there.

This new tax is foreseen as a two-year temporary measure, so in principle it will only be levied on a high-net-worth individual's wealth between December 31, 2022, and December 31, 2023. However, the possibility of this tax being extended beyond this two-year period cannot be ruled out.



Special limits in the Spanish tax consolidation regime

A significant limitation has been introduced in the special tax regime for groups (tax consolidation), but only for tax periods starting in 2023.

According to general rules, a group's tax base is determined by aggregating the individual tax bases of the group entities, so positive and negative results are offset. However, the new wording has amended this aggregation, as positive tax bases would be fully computed, but only half of the negative tax bases would be added.

The remaining amount of negative tax bases would be offset in the following tax periods.

New tax regime for carried interest

From January 1, 2023, the tax treatment of carried interest (i.e., the additional remuneration paid to managers of private equity and venture capital funds in compensation for their successful management) is regulated in line with the provisions in the legal systems of neighboring countries and of the chartered community of the Basque Country.

Specifically, carried interest qualifies as employment income (part of the general tax base of the personal income tax and subject to rates of up to approximately 50%) but can be entitled to a 50% rebate (i.e., only 50% of the income is included in the general tax base). This treatment will apply to income obtained directly or indirectly from shares and other rights—including success fees—that grant special economic rights to specific entities, provided certain requirements are met.

For more information, see our Legal Flash [Key aspects of Startup Act](#).

Extension of impatriate regime's scope

Several amendments have been made to the impatriate regime to make moving to Spain an attractive option for employees, professionals, entrepreneurs, and investors residing abroad. This regime allows individuals who become tax residents in Spain to pay only nonresident income tax for the year they move and for the following five years, with certain nuances. Consequently, rather than being taxed on a worldwide basis, such individuals are subject to tax on their Spanish-source income and capital gains only, except for income obtained from employment and entrepreneurial activities (which is taxed on a worldwide basis). The main new developments, which will take effect from January 1, 2023, are aimed at enabling a larger number of taxpayers to be eligible for the special regime.

For more information, see our Legal Flash [Key aspects of Startup Act](#).



VAT amendments

First, VAT regulations allow taxpayers to recover taxes corresponding to transactions, the payments of which are in default by amending their VAT base. New rules provide greater flexibility to some of the legal requirements, meaning accrued tax amounts associated with irrecoverable debt or insolvency claims can be recovered from the tax authorities. Specifically, they (i) extend the term to amend invoices and the means to demand payment from the debtor; (ii) reduce the minimum tax base (from €300 to €50) that may be modified on transactions with final customers (B2C); and (iii) allow amounts linked to insolvency claims to be recovered if they are undergoing insolvency proceedings to which Regulation (EU) 2015/848 applies.

Amendments also affect the final regulation on the place where services are provided when they are effectively used or exploited in Spain. The new wording will significantly reduce the extent to which this rule currently affects taxpayers entitled to a VAT deduction, as it will apply exclusively to transactions between entrepreneurs (B2B) when the transactions involve the provision of insurance, reinsurance and capitalization services, as well as financial services and hiring means of transport.

Finally, the following new cases of the application of the reverse charge mechanism (i.e., cases where the taxpayer charging and bearing VAT is the recipient of the transaction) in B2B scenarios have been included: (i) the delivery of waste, parings, and plastic scrap; and (ii) the delivery of waste and unusable rags, scrap twine, cordage, and rope. Also, the reverse charge rule is now excluded in cases involving (i) real estate rental services subject to and not exempt from VAT, and (ii) real estate rental services offered by intermediaries, if in either case the services are provided by entities or individuals established outside the territory where the tax applies.

New special tax regime for the Balearic Islands

A new, specific tax regime for the Balearic Islands aimed to recognize the specific and differential fact of insularity, inspired in the special regime for the Canary Islands, has been approved. It consists of two main measures that will be applicable from 2023 to 2028, unless extended.

First, a new rebate in the tax base of the corporate income tax and non-residents income tax (equivalent benefit for individuals who reside in Spain) is allowed for up to 90% of the profits derived in the Balearic Islands when those profits are reinvested within 3 years and booked separately in the financial statements of the company, under any of these circumstances:

- Acquisition of tangible or intangible assets, acquisition of assets that contribute to the protection of the environment, or expenses associated with research and development
- Creation of jobs directly related to the investments described in the previous bullet point



- Acquisition of shares in entities that make the investments described in the first bullet point

Second, taxpayers of the personal income tax, corporate income tax and the non-residents income tax resident in the Balearic Islands or with a permanent establishment there can apply a 10% tax credit corresponding to income from the sale of tangible assets typical of agricultural, livestock, industrial activities, and fish that they produce themselves in the Balearic Islands. This credit may be increased to 25% in tax periods in which there has been an increase in the average workforce, and it is maintained for a three-year period.

These tax benefits are limited according to European Union State Aid Regulations, in particular, the *de minimis* Regulations.

For additional information, please contact our [*Knowledge and Innovation Group*](#) lawyers or your regular contact person at Cuatrecasas.

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