



Corporate Tax

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CONTENTS

Preface	Sandy Bhogal, <i>Gibson, Dunn & Crutcher LLP</i>	
Albania	Xheni Kakariqi & Erlind Kodhelaj, <i>Deloitte Albania sh.p.k.</i>	1
Andorra	Jose María Alfin Martín-Gamero, <i>Cases & Lacambra</i>	14
Australia	Adrian O'Shannessy & Tony Frost, <i>Greenwoods & Herbert Smith Freehills</i>	19
Belgium	Henk Verstraete & Lizelotte De Maeyer, <i>Liedekerke Wolters Waelbroeck Kirkpatrick</i>	28
Bolivia	Mauricio Dalman, <i>Guevara & Gutiérrez S.C.</i>	41
China	Duan Tao (Daisy), Cao Linlin & Wang Yan, <i>King & Wood Mallesons</i>	48
Cyprus	Elena Christodoulou & Marissa Christodoulidou, <i>Elias Neocleous & Co LLC</i>	58
Czech Republic	Tomáš Hlaváček, <i>TH TAX s.r.o.</i>	67
France	David Sorel & Anne Christine Bossler, <i>Lacourte Raquin Tatar</i>	71
Germany	Dr. Gunnar Knorr & Marc Krischer, LL.M., <i>Oppenhoff & Partner mbB</i>	79
Ghana	Eric Mensah & Melisa Amarteifio, <i>Sam Okudzeto & Associates</i>	86
India	Lokesh Shah & Arzoo Batta, <i>Luthra & Luthra Law Offices</i>	90
Indonesia	Mulyono, <i>Mul & Co</i>	100
Ireland	John Gulliver, Maura Dineen & Niamh Keogh, <i>Mason Hayes & Curran</i>	113
Italy	Massimo Di Terlizzi & Mara Palacino, <i>Pirola Pennuto Zei & Associati</i>	118
Japan	Akira Tanaka & Kei Takada, <i>Anderson Mōri & Tomotsune</i>	128
Kosovo	Afrose Rudi & Ruzhdi Zenelaj, <i>Deloitte Kosova sh.p.k.</i>	134
Luxembourg	David Maria & Jérémie Ferrian, <i>Wildgen S.A.</i>	140
Macau	Francisco Gaivão, <i>FG Law Firm</i>	149
Mexico	Ricardo Leon & Guillermo Villaseñor, <i>Sanchez Devanny</i>	153
Netherlands	René van Eldonk, Pim Duteweert & Tim de Raad, <i>Simmons & Simmons LLP</i>	163
Nigeria	Kayode Sofola SAN, Adam Omotosho Wahab & Kiojare Raro-Edo, <i>Kayode Sofola & Associates KS Legal </i>	170
Poland	Marek Kozaczuk & Maciej Kacymirow, <i>Greenberg Traurig Grzesiak sp.k.</i>	177
Russia	Natalia Kordyukova, <i>Cliff Legal Services</i>	185
Singapore	Tan Kay Kheng & Tan Shao Tong, <i>WongPartnership LLP</i>	193
Spain	Ernesto Lacambra & David Navarro, <i>Cases & Lacambra</i>	198
Switzerland	Susanne Schreiber & Angelica M. Schwarz, <i>Bär & Karrer Ltd.</i>	208
United Kingdom	Sandy Bhogal & Barbara Onuonga, <i>Gibson, Dunn & Crutcher LLP</i>	222
USA	John P. Napoli, Michael Rosenthal & Michael P. Lobie, <i>Seyfarth Shaw LLP</i>	236

Andorra

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Key developments

As the Andorran direct corporate tax system has only been recently implemented (before 1 January 2011, Andorra did not have any corporate tax laws), we are going to summarise briefly the most important rulings that regulate the corporate tax system which entered into force in 2011.

The Andorran tax system depends on the definition of residence. Residence is based on the following criteria that must be considered globally: a corporation is resident in the Principality of Andorra if (i) it is incorporated there, (ii) it has its corporate address there, or (iii) it is effectively managed from there.

The effective general tax rate in Andorra is 10% over the tax profit, but there is a special tax rate for collective investment vehicles, which is 0%. Likewise, there is a special effective tax rate of 2% (this is the result of a deduction over the tax basis) for companies that are: (i) international trading companies; (ii) financial intragroup companies; and (iii) intellectual and industrial property management companies. Nevertheless, these special regimes have been amended or eliminated according to Act 6/2018, amending Act 95/2010 of 29 December, regulating Corporate Income Tax, approved as law on 19 April 2018 by the General Council of Andorra. Notwithstanding, in the case of elimination of the special regimes, they will be gradually reduced until the end of the financial year 2020.

The regime for holding companies (subsidiaries of which may be either resident or non-resident) is still very attractive, since the tax rate for profits distributed by subsidiaries in the form of dividends, or capital gains arising from the sale of shares of foreign subsidiaries, is 0%. Nevertheless, the new law establishes that non-resident subsidiaries must be subject to a tax rate of at least 40% of the Andorran corporate tax rate or must be resident in a country which has a Double Tax Treaty with Andorra.

As a consequence of this efficient corporate tax system, we have seen movement of certain businesses and companies to Andorra, especially those related to sectors that do not need a significant physical presence or a factory for manufacturing activities, such as computer software companies, internet-related companies, intellectual property-related companies and other similar businesses. Likewise, we have seen movement of individuals or executives into Andorra with the aim to manage groups of operational companies located in several countries within the European Union through Andorran holding companies.

The introduction of the principle of tax neutrality (“*roll over regime*”) in the Andorran tax regime was approved by Act 17/2017 of 20 October on corporate restructuring, partially amending the Corporate Income Tax Act, the Personal Income Tax Act and the Capital Gains Act in relation to real estate transactions. Act 17/2017 has created opportunities for local

companies or individuals to make decisions about corporate reorganisation, contributions in kind, mergers, spin-offs and acquisitions.

Andorra regulates the possibility of applying a tax credit to losses with future tax profits within 10 years of the origination of the loss.

At present, Andorra has not yet introduced any “controlled foreign company regime”. This means that profits not distributed to an Andorra holding company or to an individual shareholder by subsidiaries is not taken into account when calculating the business profit and the taxable base.

Another important matter is Andorra’s treatment of international double tax relief. The Andorran tax regime allows the unilateral application of a tax exemption withheld at the source up to the limit of the domestic tax rate (10%).

Another key feature of the Andorra corporate tax system is the Pyrenean country’s definitive stance in relation to tax transparency. This is a development of the decision taken by Andorra to join the Common Reporting Standard (CRS) of the OECD for the automatic exchange of tax information on April 2014, which was made a reality through an agreement executed with the European Union on February 2016, and the corresponding transposition into domestic law, which entered into force on 1 January 2017.

The main domestic laws regulating the tax regime for Andorran resident companies are as follows:

- Corporate Income Tax Act, 29 December 2011 (*Llei de l’impost de societats, 10/95, de 29 de desembre*).
- Decree developing the Corporate Income Tax, 23 September 2015 (*Decret de 23 de setembre de 2015 del reglament de l’impost de societats*).
- Act of 20 October 2017 approving the principle of tax neutrality on corporate restructurings (*Llei 17/2017, de 20 d’octubre, de règim fiscal d’operacions de reorganització empresarial I de modificació de les lleis de l’impost de societats; llei del impost sobre la renda de les persones físiques; llei de societats anònimes i limitades i llei de l’impost sobre les plusvàlues en les transmissions immobiliàries*).
- International treaty with the European Union, implementing the automatic exchange of tax information by means of an amendment to the Tax Savings Agreement for payments in the form of interests executed between Andorra and the European Union dated 26 February 2016.
- Act on automatic exchange of tax information, 29 November 2016 (*Llei d’intercanvi automàtic d’informació fiscal de 29 de novembre de 2016*).
- International Double Tax Treaty with Spain, 5 January 2015 (already in force).
- International Double Tax Treaty with France, 1 July 2015 (already in force).
- International Double Tax Treaty with Portugal, 27 September 2015 (entered into force on 1 January 2018).
- International Double Tax Treaty with Luxembourg, 2 July 2014 (already in force).
- International Double Tax Treaty with Malta, 20 September 2016 (already in force).

BEPS

Andorra assumed the BEPS commitment on 15 October 2016 and has already implemented the relevant actions through Act 6/2018, amending Corporate Income Tax, approved by the General Council (Andorran Parliament) on 19 April 2018.

The commitment to these minimum standards determines that Andorra has given its consent to the following points:

- Meeting the minimum standards on tax treaty shopping.
- Implementing a country-by-country reporting system on transfer pricing.
- Imposing limits on the benefits of preferential tax regimes.
- Implementing the mutual agreement procedure in its tax treaties.
- The inclusion of Andorra in the BEPS Project will be subject to a peer-to-peer review process in order to commit to the implementation of BEPS minimum package in Andorra.

This minimum package encompasses the following BEPS Actions:

- Action 1: address the tax challenges of the digital economy.
- Action 2: neutralise the effects of hybrid mismatch arrangements.
- Action 3: strengthen controlled foreign company rules.
- Action 4: limit base erosion via interest deductions and other financial payments.
- Action 5: counter harmful tax practices more effectively, taking into account transparency and substance.
- Action 6: prevent treaty abuse.
- Action 7: prevent the artificial avoidance of permanent establishment status.
- Actions 8–10: assure that transfer pricing outcomes related to intangibles are in line with value creation.
- Action 11: establish methodologies to collect and analyse data on BEPS and the actions to address it.
- Action 12: require taxpayers to disclose their aggressive tax planning arrangements.
- Action 13: re-examine transfer pricing documentation.
- Action 14: make dispute resolution mechanisms more effective.
- Action 15: develop a multilateral instrument.

In essence, Andorra will have to: (i) develop standards in relation to the remaining BEPS issues; (ii) review and be reviewed during the implementation of these standards; and (iii) support developing countries with their implementation of the same.

Holding companies

The Andorra tax regime for holding companies is quite attractive for several reasons, which can be summarised as follows:

- The domestic tax rate for holding companies whose corporate purpose is participation in the capital of foreign subsidiaries is 0% both for income coming from dividends or capital gains arising from the sale of shares of subsidiaries. Nevertheless, the non-resident subsidiary must be subject to a minimum tax rate of at least 40% of the Andorran ordinary tax rate or must be resident in a country with a Double Tax Treaty in force with Andorra.
- There is neither a minimum threshold of participation nor a minimum period of holding, which is a major difference compared to neighbouring countries.
- Andorra is currently signing double tax treaties with many relevant jurisdictions. This means that Andorra will not be discriminated against in the future with high withholding rates applicable to countries which do not have double tax treaties in force.

Industry sector focus

The tax industry has been focused on the following:

- Banking, investment entities, portfolio management companies and financial advisors.
- Tobacco manufacturing and distribution.

- Property and real estate.
- Asset financing.
- Familiar groups of companies.
- Intellectual and industrial management companies.
- Software, computer and internet companies.

The year ahead

The fact that Andorra has implemented BEPS and the CRS and has committed to the International Standards is quite positive, as it has led to many countries removing Andorra from their black lists, consequently eliminating the high penalties that these countries apply to jurisdictions that have not yet decided to move towards transparency and adoption of the international tax standards.

Currently, Andorra is discussing a potential agreement of association with the European Union. The European Union has already communicated that it will respect the low tax rates of Andorra due to its particularities and the VAT harmonised system will not be applied to Andorra. This means that Andorra will continue to be an attractive jurisdiction with very low tax rates. Likewise, Andorra will benefit from the application of the most important principles of the European Union, such as: the freedom of movement of companies and individuals; the freedom of movement of capital; the freedom of movement of individuals and workers; and the other freedoms regulated in the Treaty of the European Union.

In principle, we do not expect significant tax reforms in the year ahead after the implementation of the “*rollover tax regime*” and the implementation of BEPS into the domestic tax system.

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