



Corporate Tax

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Andorra

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Key developments

As the Andorran direct corporate tax system has been recently implemented (before January 1st 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 it: (i) is incorporated under Andorran law; (ii) has its corporate address there; or (iii) 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 the companies as follows: (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 the Draft Bill of amendment of the Act 95/2010, December 29th, regulating the corporate income tax that was approved as law on April 19th 2018 by the General Council of Andorra. Actually, the international trading companies and financial intragroup companies regimes have been eliminated and they will be gradually reduced by the end of the financial year 2020.

The regime regulated for holding companies (the subsidiaries could be either resident or non-resident) is still very attractive, since the tax rate for profits distributed by the subsidiaries in the form of dividends or the capital gains arising out the sale of the shares of subsidiaries is 0%. Nevertheless, the new law establishes that the non-resident subsidiary 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 in force with Andorra.

As a consequence of this efficient corporate tax system, we have seen certain movements of businesses or companies to Andorra, especially companies related to some specific 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 or other similar businesses. Likewise, we have seen movements of individuals or executives with the aim of managing groups of operational companies located in several countries within the European Union through Andorran holding mother companies.

The introduction of the principle of tax neutrality (“*roll over regime*”) in the Andorra tax system was approved by the Act 17/2017, October 20th on corporate restructuring amending partially the Corporate Income Tax Act, the Personal Income Tax Act, and the Capital Gains

Act in relation to real estate transactions. The aforesaid law is creating opportunities for local companies or individuals to take decisions about corporate reorganisations, contributions in kind, mergers, scissions, and acquisitions.

Andorra regulates the possibility of applying a tax credit to losses with future tax profits within 10 years after the losses were originated.

At present, Andorra has not yet introduced any “controlled foreign company’s regime” for companies. That means that the profit not distributed to the Andorra mother company or to the individual shareholder by the subsidiaries is not taken into account when calculating the business profit and the taxable base.

Another important point to note is the internal treatment of the international double tax relief. The regime allows the application unilaterally of a total exemption over the tax withheld at the source up to the limit of the internal tax rate (10%).

Another important key feature of the Andorra corporate tax system is the Pyrenean country’s definitive stance towards tax transparency. This is a development of the decision taken by Andorra to join the *common reporting standard* of the OECD for the automatic exchange of tax information in April 2014, which has been realised through an agreement executed with the European Union in February 2016 for the automatic exchange of tax information and the corresponding internal law, which entered into force on January 1st 2017.

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

- **Corporate Income Tax Act, December 29th 2011** (*Llei de l'impost de societats, 10/95, de 29 de desembre*).
- **Decree developing the Corporate Income Tax, September 23rd 2015** (*Decret de 23 de setembre de 2015 del reglament de l'impost de societats*).
- **Act of October 20th 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 February 26th 2016.**
- **Act on automatic exchange of Tax Information, November 29th 2016** (*Llei d'intercanvi automàtic d'informació fiscal de 29 de novembre de 2016*).
- **International Double Tax Treaty with Luxembourg, July 2nd 2014.**
- **International Double Tax Treaty with Spain, January 5th 2015.**
- **International Double Tax Treaty with France, July 1st 2015.**
- **International Double Tax Treaty with United Arab Emirates, 28th July 2015.**
- **International Double Tax Treaty with Portugal, September 27th 2015.**
- **International Double Tax Treaty with Liechtenstein, September 30th 2015.**
- **International Double Tax Treaty with Malta, September 20th 2016.**
- **International Double Tax Treaty with Cyprus, May 18th 2018.**

BEPS

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

Holding companies (foreign securities 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 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

Andorra is very advanced in the negotiations for a potential agreement of association with the European Union. The European Union has already communicated that they will respect the low tax rates of Andorra due to its particularities, and the VAT harmonised system will not be applied to Andorra. That 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; principle of freedom of movement of capital; 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 internal tax system.

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He is a lecturer in tax Master's programmes in tax planning in Spain and Andorra, and is a regular speaker at conferences on tax matters.

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