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# Andorra

David Navarro, Marc Cantavella & Pablo Lloret  
Cases&Lacambra

## Key developments

As the Andorran direct corporate tax system has been recently implemented (before January 1, 2011, Andorra did not have any corporate tax laws), below we briefly summarise 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, although there is a special tax rate for collective investment vehicles, which is 0%. Furthermore, a reduction from 10% to 2% could be achieved under the provisions of the special regime for the “*management of certain intangible assets*” (so-called “Patent Box” regime).

Apart from the above-mentioned tax rates, Andorra used to have preferential tax regimes such as those for (i) international trading companies, and (ii) financial intragroup companies; however, these regimes were eliminated in 2020 in line with BEPS Action 5, as they were pernicious in terms of base erosion and profit shifting.

The only special tax regimes left in force after the amendment or elimination introduced by the Draft Bill of amendment of Act 95/2010 of December 29, regulating corporate income tax and approved as law on April 19, 2018 by the General Council of Andorra, are the above-mentioned Patent Box and the regime for holding companies.

Thus, the regime regulated for holding companies (the subsidiaries could be either resident or non-resident) is still very appealing for investors, since the tax rate for profits distributed by the subsidiaries in the form of dividends or the capital gains arising from the sale of the shares of subsidiaries is 0% (without requirements such as a minimum threshold test or certain holding period). Additionally, the 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 that 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 and companies to Andorra, especially companies related to certain 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 companies and other similar businesses. Likewise, we have seen movements of individuals and 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 (“rollover regime”) in the Andorran tax system was approved by Act 17/2017 of October 20 on corporate restructuring and partially amended 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 and 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.

Additionally, Andorra has not yet introduced any “controlled foreign company rules” for companies located abroad. Essentially, this means that profit not distributed from foreign companies (in general terms, companies with no substance directly or indirectly controlled by a resident taxpayer) to Andorran mother companies or to the individual shareholders is not considered taxable in Andorra (through international tax transparency rules). Despite this, Andorran non-binding tax rulings established that companies that have no physical presence (substance) in the jurisdiction in which they were incorporated, and whose effective management could be deemed as located in Andorra, may be considered as tax residents in Andorra, consequently liable to tax in Andorra.

Another important point to note is the internal treatment of 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%).

It is also important to highlight the definitive stance of Pyrenean countries in recent years towards tax transparency. This is a development of the decision taken by Andorra to join the Common Reporting Standard of the Organisation for Economic Co-operation and Development for the automatic exchange of tax information in April 2014, which was 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 1, 2017.

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

- Decree of June 5, 2019 approving the consolidated drafting of Act 95/2010, of December 29, on Corporate Income Tax (*Decret legislatiu del 5 de juny de 2019 de publicació del text refós de la Llei de l'impost sobre societats, 95/2010, de 29 de desembre*).
- Decree of May 14, 2019 developing the Corporate Income Tax (*Decret de 14 de maig de 2019 del Reglament de l'impost sobre societats*).
- Act of October 20, 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 implementing the automatic exchange of tax information by means of an amendment to the Tax Savings Agreement for payments in the form of interest executed between Andorra and the European Union dated February 26, 2016.
- Act on the Automatic Exchange of Tax Information of November 29, 2016 (*Llei d'intercanvi automàtic d'informació fiscal de 29 de novembre de 2016*).
- International Double Tax Treaty with Luxembourg, July 2, 2014.
- International Double Tax Treaty with Spain, January 5, 2015.

- International Double Tax Treaty with France, July 1, 2015.
- International Double Tax Treaty with United Arab Emirates, July 28, 2015.
- International Double Tax Treaty with Portugal, September 27, 2015.
- International Double Tax Treaty with Liechtenstein, September 30, 2015.
- International Double Tax Treaty with Malta, September 20, 2016.
- International Double Tax Treaty with Cyprus, May 18, 2018.

## BEPS

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

## Developments affecting attractiveness of Andorra for holding companies

### Holding companies (foreign securities holding companies)

The Andorran 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 and

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 that 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 its negotiations for 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 that 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 principle of 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.

Furthermore, the Andorran Government is about to develop new laws focusing on attracting and retaining talent from IT and emerging online sectors (e-sports and cryptocurrencies), such as the new Law for Digital Assets and the new Digital Economy Law.

In principle, we do not expect significant tax reforms apart from local taxes or specific exemptions for certain economic sectors.

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