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Private Wealth 2022

Andorra: Law & Practice
and
Andorra: Trends & Developments

Alberto Gil, Albert Hinojosa and Marc Cantavella
Cases & Lacambra

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Law and Practice

Contributed by:

*Alberto Gil, Albert Hinojosa and Marc Cantavella
Cases & Lacambra see p.14*



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1. TAX

1.1 Tax Regimes

Individuals in Andorra are taxed according to whether or not they are tax residents in the country. Essentially, tax resident individuals are taxed on their worldwide income under the personal income tax law (the “PIT Law”), whereas non-resident individuals are only taxed on income obtained in Andorra.

Double taxation relief is available for income obtained abroad by applying the provisions contained in a double tax treaty or in the Andorran domestic legislation. The fiscal year coincides with the calendar year and the PIT return must be submitted from 1 April to 30 September of each year.

The Andorran PIT is levied on the worldwide income obtained by resident individuals during a calendar year. Income is divided into five groups:

- employment income;
- business income;
- income from real estate assets;
- income from capital gains and losses; and
- passive income.

Once the net income is calculated, the taxable base is divided into two categories, to which different tax rates are applied:

- general taxable base, which encompasses employment income, business income, income from real estate assets (when not characterised as business income); and
- savings taxable base, which encompasses dividends, interests, capital gains and losses and other income from movable property.

The tax liability is calculated by applying a 10% tax rate to the net income. There is an exempt threshold of EUR24,000 (and EUR3,000 for sav-

ings income) and reduction of 50% in tax rate on any income ranging from EUR24,000 to EUR40,000.

Capital gains resulting from the transfer of units of collective investment undertakings and shares of Andorran or non-Andorran companies will be exempt in cases where:

- the individual has not held more than 25% of the company during the past 12 previous months before the sale; or
- the individual has held more than 25% of the company and the holding period exceeds ten years.

Dividends obtained from an Andorran entity are exempt from taxation whereas dividends received from non-resident entities are subject to tax.

The Andorran PIT Law provides a deduction to avoid international double taxation. The taxpayer is permitted to deduct the lower of:

- the amount paid abroad in taxes that are identical or of a similar nature to the PIT or the non-resident income tax; or
- the amount resulting from applying the Andorran PIT rate to the portion of the taxable base that was taxed abroad.

The taxpayer must present proof that the taxes were paid abroad.

Other Personal Taxes in Andorra

There is no wealth tax, inheritance tax or gift tax in Andorra.

Corporate Income Tax

Corporate income tax (CIT) is levied on the worldwide income obtained by companies that are resident in Andorra for tax purposes, regardless of where the income is generated. A com-

pany can be deemed as resident in Andorra if it meets one of the following criteria:

- it is incorporated under Andorran law;
- its corporate address is located in Andorra;
- its place of effective management – understood as the place where its business activities are managed and supervised – is located in Andorra.

Taxable base

Taxable income is calculated on the basis of the taxpayer's profit and loss for accounting purposes and is subject to adjustments required by the CIT Law.

Some expenses are considered non-deductible and must be adjusted to the CIT taxable base. Such expenses include:

- the remuneration on equity (dividends);
- tax payments made for certain taxes;
- criminal or administrative fines and sanctions;
- gambling losses;
- donations and liberalities; and
- expenses for operations performed, directly or indirectly, with related persons or entities.

Tax rates

A company considered tax resident in Andorra is taxed on its worldwide income at a general CIT rate of 10% over its profits.

Besides that, collective investment funds are subject to CIT at a rate of 0%, but this does not include the management entities of Société d'Investissement à Capital Variable (SICAV) funds.

Tax credits

The CIT Law allows for a deduction to avoid international double taxation. The taxpayer may deduct the lower of:

- the amount paid abroad in taxes that are identical or similar in nature to the CIT or the non-resident income tax; or
- the amount resulting from applying the Andorran CIT rate to the portion of the taxable base that was taxed abroad.

Additionally, certain tax credits are granted to resident CIT taxpayers who make certain investments. Specifically, CIT taxpayers may apply a deduction of:

- 5% on investments in fixed assets related to the activity of the company; and
- EUR3,000 for each increase in the average number of permanent employees.

Finally, a tax credit is granted based on the total amount paid by the company for some Andorran taxes.

Special CIT regimes

Patent box

The special regime for the “management of certain intangible assets” – also known as patent box – allows a reduction in up to 80% of the CIT taxable base derived from the licensing or transfer of qualifying IP, utility models and computer programs protected by copyright. In this regard, a reduction from 10% to 2% could be achieved, provided a reduction coefficient is applied.

This reduction coefficient will depend on the amount of expenses directly related to the creation of the intangible asset – and will increase if these charges are located in Andorra rather than abroad. The expenses in question do not necessarily have to be generated internally by the company; thus, any subcontracted activity in Andorra should be also considered in this calculation.

Holding regime

The Andorran CIT Law provides a special regime for holding companies, in which no minimum ownership period or holding period are necessary for the participation exemption to apply.

Under this regime, dividends distributed from subsidiaries to an Andorran company are tax exempt in Andorra if the subsidiaries are subject to a tax equivalent to Andorran CIT at nominal rate of at least 4%. The same criteria apply for capital gains derived from the sale of the shares.

Formal obligations

Entities subject to CIT must make an annual prepayment in advance, which is due during the ninth month of the current tax year. In addition, they must file a CIT tax return in July of the following year (if the fiscal period is the calendar year – otherwise, within 30 days of the seventh month following the end of the fiscal period).

Real Estate Capital Gains Tax

The real estate capital gains tax (RECGT or “Impost sobre les plusvàlues en les transmissions patrimonials immobiliàries”) is levied on the increase in property value triggered during an inter vivos transfer of real estate located in Andorra.

The transferor of the immovable property or rights associated with it is deemed to be the taxpayer of the RECGT.

Taxable base

Taxable income is calculated as the difference between the market value of the assets transferred and their acquisition value.

Tax rates

The RECGT Law establishes regressive tax rates, from 15% to 0%, depending on the number of years the real estate has been owned by the taxpayer.

Non-resident Income Tax (NRIT)

Non-residents shall be subject to NRIT on Andorran-source income/capital gains at a general 10% flat rate.

Certain types of income are not taxed in Andorra – for example, capital gains derived from the sale of shares, when an individual has not held more than 25% of the company for 12 months prior to the sale.

Moreover, dividends distributed from an Andorran tax-resident company are not taxed at source either.

1.2 Exemptions

There is no gift tax in Andorra. However, the donor is taxed under the PIT rules if the gift would generate a capital gain. Notwithstanding the foregoing, both the PIT Law and the RECGT Law provide exemptions in case of family gifts up to the third level of kinship.

Moreover, there are full exemptions for the transfer of foreign real estate and shares of a company, or where there has been participation in a collective investment fund owned for at least ten years before the transfer.

1.3 Income Tax Planning

In general terms, income tax planning is not applicable in Andorra. A case-by-case approach should be taken to tax planning, considering the exemptions and tax reliefs foreseen in Andorran law.

1.4 Taxation of Real Estate Owned by Non-residents

The acquisition of real estate in Andorra by an individual is taxed pursuant to the General Indirect Tax (IGI) Act 11/2012, of 21 June, at a standard rate of 4.5% if the seller is a company or a professional regularly carrying out real estate transactions. Otherwise the purchaser is taxed

at a rate of 4%, in accordance with the Transfer Tax Act of 15 December 2000, if the seller is an individual.

The ownership of real property in Andorra is taxed by the relevant parish where the real property is located. As each parish has its own regulation system, the real property can be taxed between EUR0 and EUR0.75 per square metre of surface area per year, depending on where it is located.

Net income perceived by a non-resident from the rental of a real estate property located in Andorra is taxed pursuant to the NRIT Act 94/2010, of 29 December, at a rate of 10%.

1.5 Stability of the Estate and Transfer Tax Laws

Andorran estate and transfer tax laws have not changed significantly in the past year.

However, the draft law to amend Andorran direct taxation and other tax and custom duties rules will repeal the RECGT, thereby integrating it into CIT, PIT and NRIT. It will enter into force as of 1 January 2023.

1.6 Transparency and Increased Global Reporting

Exchange of Information

Law 19/2016, of 30 November, on the automatic exchange of fiscal information, entered into force on 1 January 2017 and implements OECD standards for rules of reporting and due diligence when it comes to information on financial accounts.

The purpose was to improve compliance with international taxation through the automatic and reciprocal exchange of information, subject to confidentiality and other protections. This includes provisions that restrict the use of the exchanged information, and the application of

laws and practices related to data protection and the treatment of exchanged personal data.

This law regulates the automatic exchange of information on financial accounts between the Principality of Andorra and other countries, in accordance with the provisions of their respective domestic legislation or international treaties that may be applicable. The first exchanges of information took place in 2018, pertaining to information from 2017.

For the time being, the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) are in force under the general regime in Andorra.

Base Erosion and Profit Sharing

On 19 October 2016, Andorra announced its admission as a member of the OECD Inclusive Framework on Base Erosion and Profit Sharing (BEPS).

Andorra's commitment to comply with the minimum standards confirms its consent to the following:

- meeting the minimum standards on tax treaty shopping;
- implementing a country-by-country reporting system on transfer pricing (currently in force);
- imposing limits to the benefits of preferential tax regimes (repealed in 2018); and
- implementing the mutual agreement procedure in its tax treaties.

The inclusion of Andorra in the OECD project depends on a peer-to-peer review to ensure the BEPS minimum package is implemented in Andorra.

The Multilateral Convention

Moreover, on 29 September 2021, Andorra became the 67th country to deposit its instru-

ment of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the “Multilateral Convention” or MLI). The convention will enter into force in Andorra on 1 January 2023.

2. SUCCESSION

2.1 Cultural Considerations in Succession Planning

There are no remarkable cultural considerations regarding succession planning in Andorra.

2.2 International Planning

Andorra has notably increased its network of double taxation avoidance agreements (DTAAs). While working to expand this network, Andorra has signed current DTAAs with France, Luxembourg, Spain, United Arab Emirates, Portugal, Liechtenstein, Malta, Cyprus, San Marino and Hungary.

However, the few DTAAs signed by Andorra implies that international tax planning may be limited in this respect.

The incorporation of international structures may have an evident impact on the tax implications of succession, especially if they involve legal structures (namely, trusts) from other jurisdictions that are not recognised by Andorran law.

Moreover, although Andorra does not have Controlled Foreign Company rules in force, this does not imply that offshore or international structures cannot be challenged through the criterion of effective direction (and, therefore, residency) of the company when lacking human and material resources.

2.3 Forced Heirship Laws

In the Andorran succession law, the will of the deceased prevails. However, the will is limited in

the sense of protecting certain individuals with family ties from disinheritance.

Andorran succession regimes rule forced heirship obligations in favour of descendants, who are entitled to inherit one quarter of the net value of the estate.

For those who die without progeny, the regime considers surviving parents and even any other surviving ascendant as forced heirs with respect to at least a quarter of the inherited estate’s net value, depending on whether or not they concur with the surviving spouse.

Finally, the surviving spouse has the right to the usufruct of all or part of the estate.

2.4 Marital Property

In Andorra the default marital property regime in common civil legislation is a separate property regime, where there is no joint property (although there are limitations regarding the use of the marital home, regardless of who is the owner). This separate regime does not exclude the right to a compensatory payment or pension in the event of divorce if one of the spouses is clearly at an economic disadvantage as a result of the divorce.

By (prenuptial or postnuptial) agreement of the spouses, they can opt for a community of property regime, in which:

- spouses will jointly own all income earned and property purchased during the marriage; and
- each one will separately own all his or her prenuptial assets and all those inherited or acquired by a donation, or in any way, without consideration.

2.5 Transfer of Property

Real Estate

Capital gains derived from the transfer of Andorran real estate located are considered as real obligation both in the case of tax residents and non-tax residents in Andorra.

These capital gains are subject by the RECGT Act to a regressive tax rate from 15% to 0% depending on how long the real estate has been owned (ranging from zero to nine years), whereas the transfer of real estate owned for at least ten years is subject to a 0% tax rate.

The acquisition of real estate in Andorra by an individual is taxed pursuant to the IGI Act 11/2012, of 21 June, at a rate of 4.5 % if the seller is a company or a professional regularly carrying out real estate transactions. Otherwise the purchaser is taxed at a rate of 4%, in accordance with the Transfer Tax Act of 15 December 2000, if the seller is an individual.

The ownership of real property in Andorra is taxed by the relevant parish where the real property is located. As each parish has its own regulation system, the real property can be taxed between EUR0 and EUR0.75 per square metre of surface area per year, depending on where it is located.

Other Assets Transferred

All non-real estate capital gains are subject to PIT at a tax rate of 10%.

Capital gains obtained by Andorran tax residents from the transfer of local or foreign companies or collective investment undertakings are exempt if the conditions outlined in **1.1 Tax Regimes** are met.

Non-real estate capital gains (plus savings income) benefit from a reduction of EUR3,000.

Inheritance Tax

There is no inheritance tax in Andorra. Nor is the deceased taxed for capital gains derived from transfer on death.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

Transfer of wealth, either inter vivos or mortis causa, is the easiest way to transfer assets to the next generation without bearing tax costs in Andorra (for both the donor/deceased and the beneficiary/heir).

2.7 Transfer of Assets: Digital Assets

A few recent tax rulings issued by the Andorran tax authorities (*Departament de Tributs I de Fronteres* (DTF) or the “Tax Authority”) addressed cryptocurrency taxation. For PIT purposes, cryptocurrencies do qualify as an asset, which impacts taxation of capital gains/losses upon transfer of the cryptocurrency. Unlike in other jurisdictions, LIFO and FIFO can be considered valid calculation methods.

3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

3.1 Types of Trusts, Foundations or Similar Entities

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention on Recognition of Trusts.

Nevertheless, there is usually an international or cross-border element that must be carefully analysed for inheritors resident in Andorra.

3.2 Recognition of Trusts

As mentioned in **3.1 Types of Trusts, Foundations or Similar Entities**, Andorran law does not recognise trusts. Thus, trusts are deemed as transparent entities without legal personality.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

The tax treatment of foreign trust income has been specifically clarified by the Andorran tax authorities. The most important consideration is whether the assets have changed their possession.

If the beneficiary does not have possession and control of the assets, Andorran law considers the settlor to still be the owner and the receiver of the income and capital gains. Conversely, if the beneficiary has the possession and control of the assets and it is an irrevocable trust, Andorran law considers that the beneficiary is the owner of the assets and the receiver of the income and capital gains.

At the time of distribution of the assets, the beneficiary will receive the trust assets as a gift or inheritance and, owing to the lack of gift and inheritance tax in Andorra, the beneficiary will not be taxed on this capital gain.

3.4 Exercising Control Over Irrevocable Planning Vehicles

Due to the lack of recognition of trusts, Andorra has not taken steps towards the improvement of trusts control.

4. FAMILY BUSINESS PLANNING

4.1 Asset Protection

Although Andorran law has established measures to protect the assets of minors or disabled individuals, it does not recognise legal institutions that are familiar to common-law practitioners nor asset protection such as trusts, which extract assets from the economic sphere of an individual in favour of third parties (typically, descendants) to protect them from potential liabilities incurred by that individual.

In order for Andorra to achieve goals such as asset protection, international structures should be implemented. Structures with transnational elements may benefit from multi-layer protections (eg, national law, EU law and bilateral investment treaties) through unit-linked insurance policies.

Additionally, it is common in Andorra to choose the separate property marital regime to avoid communication of debts.

4.2 Succession Planning

Family business succession planning may benefit from the following advantages foreseen in Andorran tax legislation.

- There is no inheritance or gift tax, thus the donor and the successors will not pay taxes on the net wealth perceived during the family business succession.
- A family business carried out through an Andorran company may benefit from the above-mentioned exemption for those who maintain their stake in the share capital of a company for at least ten years.

Moreover, the following actions may reduce the potential for family conflicts:

- incorporation of family holding companies in accordance with the different branches of the family;
- elaboration of wills of the different family members; and
- elaboration of a family business agreement.

4.3 Transfer of Partial Interest

When a partial interest in an entity is transferred, during lifetime or upon death, the fair market value of the interest is not adjusted for Andorran transfer tax purposes to reflect a discount for lack of marketability and control. All the transactions between related parties carried out in

Andorra should be undertaken at a market price value.

5. WEALTH DISPUTES

5.1 Trends Driving Disputes

Disputes regarding estates often result from lack of succession planning or from successions involving international parties.

Arbitration and mediation are alternative ways to solve wealth disputes, requiring less time and money than the judicial proceedings of ordinary jurisdictional bodies.

The Arbitral Tribunal of the Principality of Andorra (ATPA) is an institution created by the 13/2018 Act, of 31 May, for the purpose of resolving disputes.

5.2 Mechanism for Compensation

The calculation of damages follows general Andorran civil law rules, essentially aimed at repairing all damages suffered by the parties.

Penalty clauses included in succession planning instruments are very important.

6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES

6.1 Prevalence of Corporate Fiduciaries

The use of corporate fiduciaries is not prevalent in Andorra. However, it is mandatory for individuals or agents to register themselves in the Andorran Register of Trust and Similar Legal Instruments Service Providers if they are managing or participating in:

- trusts;
- foreign public or private foundations; or

- any similar vehicle.

6.2 Fiduciary Liabilities

This is not applicable in Andorra.

6.3 Fiduciary Regulation

This is not applicable in Andorra.

6.4 Fiduciary Investment

This is not applicable in Andorra.

7. CITIZENSHIP AND RESIDENCY

7.1 Requirements for Domicile, Residency and Citizenship

Andorran legislation requires foreign individuals to obtain an immigration authorisation to legally reside in Andorra. The most common immigration authorisations are the so-called active and passive residence permits.

Active Residence

“Active” residence permits are designed for individuals willing to work in Andorra as self-employees. To qualify for active residence, an individual must:

- own more than 20% of an Andorran company;
- hold a position in the Board of Directors of that company;
- prove the effective activity with the “commerce authorisation” (an administrative authorisation granted by the local authorities);
- maintain effective residence for at least 183 days per calendar year;
- deposit EUR15,000 in a restricted account of the Andorran Financial Authority; or
- alternatively, be recognised as a “selected business project” by the Andorran government.

Passive Residence

“Passive” residence permits are appropriate for individuals willing to reside in Andorra without carrying out any economic activity. The Qualified Law on Immigration foresees the following passive immigration permits:

- residence permit without lucrative activity;
- residence for professionals with international dealings;
- residence for scientific or cultural reasons and for sportsmen; and
- residence for the access to geriatric, medical or therapeutic centres in Andorra.

The residence permit without lucrative activity is the most common immigration authorisation. To qualify, an individual must:

- have sufficient financial means for the applicant and their dependent family members in Andorra (three times the Andorran minimum wage, set in EUR1,157.87 for 2022);
- take out insurance in Andorra that covers illness, disability and retirement for the applicant and their dependent family member residing in Andorra;
- maintain effective residence in Andorra for at least 90 days per calendar year; and
- invest at least EUR400,000 (EUR47,500 for the applicant and EUR9,500 for each dependent family member will consist of a non-refundable deposit) in:
 - (a) real estate located in Andorra;
 - (b) Andorran companies;
 - (c) debt or financial instruments issued by the Andorran government; or
 - (d) a non-remunerated deposit within the Andorran Financial Authority.

7.2 Expedient Citizenship

In general terms, an individual may be eligible for Andorran citizenship on the following grounds.

- By descent – children born to recognised parents who were Andorran citizens at the time of birth (regardless of the place of birth).
- By birth – unlike many other countries that grant children nationality just by being born in their territory, Andorra requires at least one of the parents to be a citizen or legally residing in the country for ten years for the child to be eligible. However, if a child is born before the individual resided in Andorra for ten years, provisional citizenship is awarded.
- By naturalisation – a foreign individual will be considered eligible for Andorran citizenship if they:
 - (a) renounce their previous citizenship (double citizenship is not allowed);
 - (b) pass a written test in Catalan about the country and complete an oral interview in Catalan, if they have not studied in the Andorran educational system;
 - (c) have resided in Andorra for at least 20 years, either through active or passive residence; or
 - (d) completed their studies in Andorra's school system and have resided in the country for ten years.
- By marriage – Andorran citizenship can be acquired by foreigners who:
 - (a) marry an Andorran citizen;
 - (b) reside for at least three years in Andorra before or after the celebration of the marriage; and
 - (c) can prove that they have renounced their original nationality.

8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERS

8.1 Special Planning Mechanisms

Andorran law does not foresee special planning mechanisms for minors or for adults with disabilities.

8.2 Appointment of a Guardian

When an individual loses capacity to manage their affairs, they can become incapacitated through a specific judicial procedure. This procedure must be brought by relatives of the individual or, in their absence, by the public prosecutor. The purpose of the procedure is to limit the individual's capacity to act and to provide them with the due protection measures.

The judge will use this procedure to declare the individual incapable and appoint a legal guardian who will act as legal representative and manage the affairs of the incapacitated individual on their behalf.

8.3 Elder Law

For the time being no specific legislation has been developed in Andorra to help families and individuals prepare financially for longer life.

9. PLANNING FOR NON-TRADITIONAL FAMILIES

9.1 Children

According to Andorran law, biological children have the same rights regardless of whether they were born in or out of wedlock.

Moreover, adopted children are treated as equal to biological children. In accordance with Andorran regulations, the adoption causes kinship between the adopting family and the adoptee. According to the inheritance law, adoptees have the same rights as biological children in the adoptive family, both in the intestate succession and in relation to the offspring.

However, a comparison between adoptive and biological filiation cannot be applied in the case of testamentary succession, because discrimination between adopted and biological children

is possible if it derives from the private will manifested in a disposition of the last will.

Andorran legislation does not foresee any regulation regarding surrogate pregnancy arrangement. Thus, adoption is the only mechanism recognised for legal parentage.

9.2 Same-Sex Marriage

Same-sex civil partnerships are permitted and recognised in Andorra as a stable union by the Couple on Stable Union Qualified Act 4/2005 of 21 February. These relationships have the same tax and succession treatment as marriage.

10. CHARITABLE PLANNING

10.1 Charitable Giving

Charitable activities carried out by charity institutions are subject to but exempt from CIT.

For the time being, there are no deductions on charitable contributions of money or property made to qualified organisations.

However, the draft law to amend Andorran direct taxation (and other tax and custom duties rules) will introduce new tax credits for:

- donations to non-profit organisations;
- donations to sports and cultural associations (2% of the donation); and
- the patronage of events of special interest (4% of the donation).

If the Andorran parliament approves the law during 2022, it will enter into force by 1 January 2023.

10.2 Common Charitable Structures

The Foundations Act 11/2008, of 12 June, recognises private foundations and public founda-

tions. These legal entities must be focused on legal objectives of general interest and activities that benefit society.

Private interest foundations, as a wealth-planning vehicle, are not regulated in Andorra. However, Andorran residents can create or be beneficiaries of foreign private foundations.

Moreover, associations of public use and other non-profit-making organisations are recognised by the Andorran government as such (under the Act of 29 June on Associations).

In both cases, foundations and associations of public use/and non-profitable organisations are exempt from CIT.

Cases & Lacambra is a client-focused international law firm, with a deep commitment to offering the most comprehensive advice in business law. The firm has a presence in Europe and America and a highly tested track record in complex cases involving the financial sector, special situations, financial market regulations, cross-border disputes and transactions with a

special tax sensibility. The firm's advice focuses on providing bespoke solutions to clients that include financial institutions, investment services companies, investment funds, family offices, business conglomerates and high net worth individuals. The Cases & Lacambra team is high profile, committed to excellence and cross-border-oriented.

AUTHORS



Alberto Gil is a partner at Cases & Lacambra. His practice is focused on tax advice, with extensive experience in international tax advisory, and specialises in high net worth

individual tax planning and tax proceedings. He has been involved in numerous tax regularisation procedures and his wide expertise includes advising resident and non-resident entities on tax law and how to prevent money laundering and the financing of terrorism.



Albert Hinojosa is a partner at Cases & Lacambra, where his practice is focused on tax advice. Albert spent more than 20 years developing an extensive professional career in

the public sector. He joined the government's administration in 2001 as a lawyer assigned to the Department of Customs, where he served as head of its legal service between 2006 and 2009. Subsequently, at the Ministry of Economy and Industry, he was head of the companies' registry and director of the Department of Economy. From 2013 to 2021 he was head of the Andorran government's Department of Taxation and Borders, where he promoted the process of transformation and tax convergence in the principality, introducing the current direct and indirect tax system and promoting the international network of double taxation agreements. Prior to joining Cases & Lacambra, he was President – by virtue of his position – of the State Agency for the Resolution of Banking Institutions (AREB).



Marc Cantavella is an associate at Cases & Lacambra, where his practice is focused on tax advice. Marc has six years' experience advising Spanish, Andorran and international companies on recurring tax matters and corporate restructuring operations. He has additional experience in technology companies and Spanish income tax, corporate tax and taxation for non-residents. Prior to joining Cases & Lacambra, Marc furthered his career at Andorran consulting firms and Deloitte Legal.

Cases & Lacambra

C/ Manuel Cerqueda i Escaler 3-5
AD700
Escaldes-Engordany
Andorra

Tel: +376 728 001
Email: andorra@caseslacambra.com
Web: www.caseslacambra.com

CASES & LACAMBRA

Trends and Developments

Contributed by:

*Alberto Gil, Albert Hinojosa and Marc Cantavella
Cases & Lacambra see p.19*

Introduction

There is a strong interest in Andorra as a jurisdiction for relocation – whether for freelancers, wealthy individuals, business owners or family offices seeking a stable jurisdiction from which wealth can be managed – thanks to its stable finances, moderate taxes and legal certainty.

The taxation system has been developed in accordance with Andorra's economic structure and activity, improving through several amendments to reach internationally recognised standards.

These amendments were mainly motivated by BEPS Action 5, as Andorran special tax regimes (holding, trading, patent box and intragroup) were harmful or partly harmful in terms of base erosion and profit shifting (BEPS). With these amendments, Andorra adapted its tax framework to the new international tax standards – becoming first BEPS-compliant, then OECD-compliant. Andorra is deepening its process of standardisation and transparency to international bodies, such as the OECD, in this regard.

Currently, the principality is taking steps towards a rapprochement with the EU through an association agreement and towards the digitalisation of the economy through a series of draft laws in this direction.

Association Agreement with the European Union

Andorra is in the process of approaching the EU with a view to gaining progressive access to its internal market. The EC, under successive presidencies, has published several reports on

Andorra's approach to the internal market since 2010.

These reports acknowledge the need for the gradual integration of Andorra into the internal market, while further exploring a possible institutional framework for relations.

Once a consensus regarding the free circulation of goods has been achieved, Andorra still has to negotiate general dispositions concerning the free circulation of capital and persons, as well as its adoption of EU financial services regulations in relation to the monetary agreement Andorra signed with the EU on 30 June 2011.

Draft Bill on Digital Economy, Entrepreneurship and Innovation

The draft bill on digital economy, entrepreneurship and innovation, which was admitted to parliamentary debate on 21 July 2021, provides for new immigration authorisations targeting digital nomads and start-up workers.

The draft bill establishes tax exemptions for the remuneration received by directors, observers and employees of start-ups, which are to be granted as shares, options or economic rights.

Likewise, tax exemptions on income in kind (as equity) received by suppliers of goods and services to start-ups will be granted for an amount exceeding the market value price of the goods or services provided.

Moreover, this draft bill regulates the planning and development of special economic zones in Andorra for IGI (value added tax) purposes. Companies established in those special eco-

conomic zones would be allowed to receive goods and services at a reduced indirect tax rate or a super-reduced indirect tax rate.

The draft bill was submitted to the Andorran Parliament in 2021, but remains under parliament discussion.

Cryptocurrencies Taxation and Upcoming Laws

Andorran law does not provide specific rules regarding the taxation of digital assets capital gains and yields.

According to the Andorran tax authorities, income from cryptocurrency may be taxed as a capital gain derived from the sale of an intangible asset for Andorran personal income tax purposes. Thus, the sale of cryptocurrencies is taxed at 10%.

The law on digital assets approved by the Andorran Parliament on 30 June 2022 contains some rules concerning the taxation of cryptoassets, even though further development is needed.

Budget Law 2022

Andorra amended the real estate capital gains tax in its Budget Law for 2022.

The main measures, modifying the Real Estate Capital Gains Act (Law 21/2006, of 14 December 2006), are summarised here.

- Yearly modification of the coefficients to update the acquisition value of a property depending on the year of acquisition.
- Modification of the taxable event and the taxable base in the case of promises of sale and purchase where the amount paid is greater than 20% of the total price agreed. In this regard, the tax is triggered at the moment the real estate is definitely transferred (and not when the acquirer makes an advance

payment exceeding 20% of the total price agreed).

- The taxable base takes into consideration all the investments or improvements made in the transferred real estate property up to the date on which the transfer is realised or the real estate property is made available for the buyer.

The law entered into force on 15 February 2022 but the amendments to the Real Estate Capital Gains Act are applicable, with retroactive effect, as of 1 January 2019.

Upcoming Tax Measures – Direct Tax Modification

The government has approved the draft law to amend Andorran direct taxation and other tax and custom duties rules and submitted it to the Andorran Parliament for further consideration.

The following are the main amendments proposed by the government.

- A minimum effective tax rate of 3% after applying net operating losses (NOLS) and tax credits will be imposed. In other words, the tax liability resulting from applying the general corporate income tax (CIT) rate to the taxable base and certain tax credits may not be below this minimum tax liability. Unused NOLS and tax credits resulting from this new rule may be carried forward.
- An interest limitation rule will be introduced. The rule will limit the amount of net deductible financial expenses up to 30% of the taxpayer's EBITDA in the tax period in which they are incurred. Financial expenses of less than EUR500,000 will be deductible despite the 30% limit.
- Exchanging tax rulings with other jurisdictions (as per BEPS Action 5) will be fostered. Additionally, Andorra will exchange information with seven more jurisdictions from 2023:

Hong Kong, Macao, Maldives, Morocco, Ecuador, Peru and Samoa.

- The real estate capital gains tax will be repealed and integrated into the CIT, personal income tax and non-resident income tax.
- An IGI special refund regime at the end of each period will be introduced.
- The following amendments to applicable tax credits will be introduced:
 - (a) the former tax credit for new investments will be replaced by a tax credit for expenses incurred in projects aimed to improve the digitalisation of the economy (2% tax credit on the project's budget); and
 - (b) the tax credit for increasing number of employees is to be reduced, but new credits are to be introduced for taxpayers hiring employees who are disabled or members of vulnerable groups.
- New tax credits will be introduced for donations to non-profit organisations, as well as sports and cultural associations (2% of the taxpayer's net taxable income), and for the patronage of events of special interest (4% of the taxpayer's net taxable income).

- A new tax credit will be introduced for certain residential rental income. The taxable base of the lessor will be reduced by 2% if the leased dwelling is used for habitual residence and the monthly rental income is less than EUR900.

The draft law was submitted to Parliament on 13 April 2022 but has not yet been made publicly available. In the event that Parliament approves the law during 2022, it will enter into force by 1 January 2023.

Conclusion

In summary, the Andorran regulatory, legal and tax framework seeks international recognition and alignment with the principles of the OECD and other international organisations. This combination of an internationally recognised competitive tax framework and laws taking steps toward digitalisation makes the principality of Andorra an ideal place for relocation.

ANDORRA TRENDS AND DEVELOPMENTS

Contributed by: Alberto Gil, Albert Hinojosa and Marc Cantavella, Cases & Lacambra

Cases & Lacambra is a client-focused international law firm, with a deep commitment to offering the most comprehensive advice in business law. The firm has a presence in Europe and America and a highly tested track record in complex cases involving the financial sector, special situations, financial market regulations, cross-border disputes and transactions with a

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AUTHORS



Alberto Gil is a partner at Cases & Lacambra. His practice is focused on tax advice, with extensive experience in international tax advisory, and specialises in high net worth

individual tax planning and tax proceedings. He has been involved in numerous tax regularisation procedures and his wide expertise includes advising resident and non-resident entities on tax law and how to prevent money laundering and the financing of terrorism.



Albert Hinojosa is a partner at Cases & Lacambra, where his practice is focused on tax advice. Albert spent more than 20 years developing an extensive professional career in

the public sector. He joined the government's administration in 2001 as a lawyer assigned to the Department of Customs, where he served as head of its legal service between 2006 and 2009. Subsequently, at the Ministry of Economy and Industry, he was head of the companies' registry and director of the Department of Economy. From 2013 to 2021 he was head of the Andorran government's Department of Taxation and Borders, where he promoted the process of transformation and tax convergence in the principality, introducing the current direct and indirect tax system and promoting the international network of double taxation agreements. Prior to joining Cases & Lacambra, he was President – by virtue of his position – of the State Agency for the Resolution of Banking Institutions (AREB).



Marc Cantavella is an associate at Cases & Lacambra, where his practice is focused on tax advice. Marc has six years' experience advising Spanish, Andorran and international

companies on recurring tax matters and corporate restructuring operations. He has additional experience in technology companies and Spanish income tax, corporate tax and taxation for non-residents. Prior to joining Cases & Lacambra, Marc furthered his career at Andorran consulting firms and Deloitte Legal.

Cases & Lacambra

C/ Manuel Cerqueda i Escaler 3-5
AD700
Escaldes-Engordany
Andorra

Tel: +376 728 001
Email: andorra@caseslacambra.com
Web: www.caseslacambra.com

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