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PREFACE

This is the eighth edition of *Global Legal Insights – Corporate Tax*. It represents the views of a group of leading tax practitioners from around the world.

One consistent trend across each jurisdiction is the evolving nature of tax rules which impact cross-border arrangements, and the ongoing uncertainty that this creates. BEPS implementation is now well into the domestic implementation phase and transfer pricing is now a mainstream aspect of tax planning.

We also see renewed effort to reach an international consensus on taxation of the digital economy, with increasing concern that further delay will prompt unilateral domestic action across the OECD. This has prompted reaction from the US government in particular, and it was recently announced that the US would not be taking part in negotiations relating to 'Pillar One' – which broadly proposes changes to traditional nexus rules for allocating taxing rights, enabling a portion of the revenue generated from digital services to be taxed in the jurisdiction in which they are used. The US stated that they were stepping away from talks as the OECD was not making headway on a multilateral deal on digital services taxation. In addition, tax compliance and information reporting are entering a new phase, as DAC 6 will be implemented across the EU.

The impact of COVID-19 will inevitably add to the complex international tax landscape. The long-term impact of the lockdown restrictions and the fiscal measures taken by governments worldwide remains to be seen; however, it is likely that tax policy will play an important role in revitalising the economy.

Authors were invited to offer their own perspective on the tax topics of interest in their own jurisdictions, explaining technical developments as well as any trends in tax policy. The aim is to provide tax directors, advisers and revenue authorities with analysis and comment on the chosen jurisdictions. I would like to thank each of the authors for their excellent contributions.

Sandy Bhogal
Gibson, Dunn & Crutcher UK LLP

Spain

Ernesto Lacambra & David Navarro
Cases & Lacambra

Overview of corporate tax work over last year

Types of corporate tax work

Due to the improvement of the Spanish economy, the Spanish market has experienced a growth of M&A transactions involving private equity (PE) funds. Also, in the past few years there has been a boost in real estate transactions. Favourable special regimes envisaged for real estate entities such as Spanish real estate investment trusts (SOCIMIs) and companies engaged in the rental of properties have contributed to the growth of companies within this sector.

Furthermore, relevant tax credits available for companies associated with research and development (R&D) and intellectual property (IP) activities are contributing to the allocation of innovation hubs in Spain, and also to investment in R&D activities by Spanish companies.

On the other hand, the Spanish tax authorities are increasing their scrutiny of the following matters:

(i) Effectiveness of substance requirements required by the anti-abuse Spanish regulations on non-resident entities recipient of payments derived from interest, royalties and dividends from Spanish entities, i.e. business purpose test of non-resident entities benefitting from tax incentives derived from EU Directives or Double Taxation Treaties.

(ii) In the field of transfer pricing within the scope of multinational corporate groups, the tax authorities are focusing on: (i) the review of the correct allocation of profits by Spanish entities according to the risks and functions assumed and performed, respectively by the Spanish entity; (ii) recharacterisation of business models adopted by Spanish entities according to the real functions and risks; and (iii) determination of PEs in Spain derived from the functions carried out by dependent commercial agents (e.g. substantial functions *vs.* ancillary or auxiliary functions).

(iii) Taxation derived from operating via a company without their own means and resources by individual professionals due to the different rates for corporate tax and personal tax purposes.

(iv) Review of the requirements to consolidate tax according to the horizontal fiscal unity regime.

Incorporation of Spanish holding entities due to the tax measures introduced recently, such as the participation exemption regime, have also contributed to the increase of restructuring transactions, such as exchange of shares.

Key developments affecting corporate tax law and practice

Domestic – cases and legislation

During the most difficult years of the Spanish economic crisis, there was a significant decrease in the income collected through corporate income tax, since the majority of Spanish-based companies were experiencing a significant reduction in profit, and some of them serious losses, which generated tax credits against the Spanish Treasury.

In addition, the former tax system encouraged Spanish companies to borrow money to benefit from a flexible tax regime on the deductibility of interest payments with no limitation.

Consequently, to revert the situation, Spanish corporate income tax was profoundly amended, following these principles: (i) simplifying the provisions set out in the law in order to reduce tax litigation by including recent judicial and administrative resolutions; (ii) providing the tax system with legal certainty; (iii) reducing tax rates and abolishing tax allowances; and (iv) introducing legal measures oriented toward cash repatriation (participation exemption) and measures to strengthen the equity of companies.

The most relevant developments of corporate income tax in Spain are the following:
(i) New participation exemption regime on dividends and capital gains.
(ii) New tax horizontal consolidation regime.
(iii) Success of the Spanish SOCIMI.
(iv) Amendments to the rollover regime on company restructurings.
(v) Special measures focused on reducing the public deficit.
(vi) Introduction of the capitalisation reserve and other tax credits.

Participation exemption regime on dividends and capital gains

The participation exemption regime was introduced in Spain following a resolution from the European Commission which focused on two main issues: (i) to give an equivalent treatment to dividends and capital gains arising from qualified resident and non-resident companies; and (ii) to set an exemption method to avoid double taxation in order to increase competitiveness and internationalisation of European companies.

Following the European Commission's resolution, Spain passed a participation exemption method for dividends and capital gains arising from qualified resident and non-resident companies. This participation exemption regime has eliminated the former imputation method to internal source dividends and capital gains, which will now only apply to internationally sourced dividends and capital gains.

Accordingly, Spanish companies are entitled to benefit from the participation exemption regime on qualifying resident and non-resident companies on the distribution of dividends and capital gains. In addition, Spanish companies with non-resident subsidiaries may choose to apply for the participation exemption regime or the imputation method, deducting withholding tax in accordance with the applicable tax treaty provisions.

In order to qualify for the participation exemption regime, the following requirements should be met: (i) the shareholding in the subsidiary must be of at least 5% or, alternatively, it must have a minimum value of at least €20 million (participation requirement); and (ii) it must be held uninterruptedly for at least one year (holding requirement). In this sense, the holding requirement might be met at the company group level.

In addition, if more than 70% of the subsidiary's income consists of dividends or capital gains deriving from other subsidiaries, it would be required that the holding meets the above-mentioned participation and holding requirements in the indirectly controlled subsidiary. Nevertheless, the precedent rule would not be applicable if dividends have been included in the tax base of the directly or indirectly owned entity in entities not allowed to apply for an exemption scheme or a double taxation tax credit scheme.

This exemption also applies to foreign-source dividends and capital gains if the above-mentioned participation and holding requirements are met and the subsidiary has been subject to (and not exempt from) a tax equivalent to Spanish corporate income tax at a nominal rate of at least 10%. In this regard, the "*equivalent tax*" requirement will be met when the subsidiary is resident in a jurisdiction that has concluded a tax treaty with Spain which includes an exchange of information provision. Besides, the indirect shareholding requirement would also apply to foreign-source dividends and capital gains.

The exemption does not apply to dividends or capital gains deriving from the transfer of shares in entities with tax residence in a tax haven jurisdiction in accordance with Spanish legislation.

Conversely, in order to apply symmetric treatment, tax losses derived from the transfer of qualified participations as defined above are not deductible. Capital losses derived from the sale of non-qualified participations may be deductible, but reduced by, if any, the amount of tax-exempt dividends received by the subsidiary since 2009 and by the amount of exempt gains recognised by a related party seller in a previous transfer of the Spanish subsidiary.

Lastly, in case of foreign PEs (e.g. branches, etc.), the Spanish Head Office is not allowed to apply the participation exemption on profits generated by the PE until such profits do not exceed the amount of tax losses computed and deducted before 2013.

Horizontal tax consolidation regime

In line with several EU Court cases, effective from 1 January 2015, Spanish legislation extended the scope of the tax group in order to allow the application of the tax consolidation regime to the following cases:

- Spanish subsidiaries held indirectly through a foreign intermediary company can form part of the tax group.
- Horizontal tax consolidation is permitted in the sense that Spanish direct or indirect subsidiaries of a common foreign parent company are able to form a Spanish tax group.

Until that date, only Spanish entities directly participating in another Spanish entity were allowed to form part of a tax unity in Spain.

This amendment has required multinational groups or PE funds to revisit the corporate tax treatment of their portfolio of Spanish subsidiaries given that, according to the previous law, when Spanish subsidiaries were commonly participating in a non-Spanish entity, they could not belong to the same tax group of companies. On the contrary, with the new regulations, Spanish entities with a common parent company can form part of a group of companies, irrespective of the country of residence of the parent company.

Special rules were envisaged for specific situations such as two or more already existing tax groups which, according to this new rule, must be integrated within a sole tax group.

Due to the vast variety of situations, this new rule generated considerable uncertainty in relation to the effects derived from (i) the creation of new tax unities, (ii) the extinction of previous tax groups, or (iii) the integration of several tax unities into a sole one. As a result, a relevant number of rulings of a binding nature were issued by the Spanish tax authorities during 2017.

New groups of companies may opt to be taxed on a consolidated basis if their election to operate under this regime is carried out before the beginning of the tax year in which the regime is going to be applied.

For applying the tax consolidated regime, several requirements must be met, including, amongst others: the dominant entity must hold directly or indirectly at least 75% of the dependent entity; such ownership must be maintained for the entire year of consolidation; the Spanish companies must not be subject to special regimes such as Temporary Business Alliances or be tax-exempt companies; and the companies must not be taxed at a different rate to that of the parent company, etc.

Amendment to the rollover regime on company restructurings

The Spanish tax system foresees a special tax regime which allows the deference of both direct and indirect taxation arising from a restructuring transaction which has valid economic reasons. In line with the recommendations of the European Union, the aim of this regime is to eliminate tax barriers arising from mergers, spin-offs, contributions of assets, swap of securities and other restructuring transactions.

This regime is expressly configured as the general regime to be applied to restructuring transactions. Previously, the Spanish rollover regime was applied only if the taxpayer decided on such. Although the rollover regime is currently applied by default, there is a general obligation to notify the Spanish tax authorities of the existence of a restructuring transaction which must respond to valid economic reasons to defer direct and indirect taxation derived from the disposal of assets.

The applicability of the rollover regime requires valid economic reasons for its application. If the taxpayer fails to prove valid economic reasons when applying this regime, the restructuring transaction would not qualify to apply for such regime. In this regard, one of the main amendments was the reformulation of the legal consequences enforceable when the valid economic reason requirement was not met. The former regime foresaw that if the restructuring transaction did not qualify for the regime due to a lack of valid economic reasons, it triggered taxation for all capital gains arising from the transaction. Under the current regime, if the valid economic reason is not met, the legal consequence would be only to lose any tax advantage gained with the restructuring.

Special measures focused on reducing the public deficit

To date, the government has maintained tax measures passed in 2016 directed at reducing the public deficit and adjusting imbalances in the Spanish economy, designed to increase revenues by (i) eliminating the deduction of losses on investments in other companies and bringing forward the reversal of provisions recorded at an earlier date, and (ii) by placing limits on, and deferring, the use of net operating losses and double taxation credits.

The main tax measures are summarised below:

- Limits on the use of tax loss carry forwards apply depending on the net revenue of the taxpayer. In that sense, for large companies with net revenues equal to or above €20 million in the first 12 months before the beginning of the taxable period, the following limits are laid down: (i) up to 50%, wherein the 12 months before the starting date of the taxable period, the company's net revenues are equal to or above €20 million but below €60 million; and (ii) up to 25%, wherein the same 12-month period the company's net revenues are equal to or above €60 million.
- For other companies, no amendments have been made. Consequently, the 70% limit remains for them.
- Limit on the use of domestic and international double taxation credits. For companies having net revenues equal to or above €20 million in the 12 months before the beginning date of the taxable period, a limit has been placed on their use of domestic and international double taxation credits, whereby the aggregate amount of both types of credits that they use cannot exceed 50% of the gross payable for the year.

- Change in control rules for entities with net operating losses. The use of net operating losses of an acquired entity will be disallowed under certain circumstances, including (amongst others) where the acquired entity has been dormant in the past three months (currently, six months) or where, within the two years after the acquisition, the acquired entity carries out different (or additional) activities from the activities it carried out before the acquisition that generate turnover that exceeds more than 50% of its average turnover for the two years prior to the acquisition.
- Write-down of participations deducted before 2013 must be recaptured in a maximum period of five years commencing from the fiscal year 2016, or in a shorter period if the value of the portfolio is recovered in a shorter period of time, or if the participation is sold before the end of the five-year period.

<u>Capitalisation reserve reduction and other tax credits</u>

The capitalisation reserve aims to strengthen Spanish entities' net equity by keeping retained earnings undistributed in line with the principles inspiring the amendments to the corporate income tax, and allows a tax deduction for 10% of the increase in net equity in a particular tax year, provided the company maintains the net equity increase during the following five years (except in the case of accounting losses). A non-distributable reserve for the same amount must be booked. The deduction may not exceed 10% of the taxable base before the deduction, adjustments for deferred tax assets and the use of net operating losses. The excess may be carried forward for the following two years, subject to the applicable limit for each year.

Spain has never permitted the carry back of tax losses and this principle remains unchanged. However, since 1 January 2015, an allowance consisting of a tax levelling reserve has been applicable.

Thus, small- and medium-sized companies (companies with a turnover in the previous tax year of below €10 million) are allowed to deduct 10% of their taxable profits and allocate them to that special reserve. This reserve must be used to offset the losses incurred by the company within the five-year period following its creation. When this reserve is released, the tax deduction must be recaptured, diminishing or even cancelling the tax losses of that year. If during the five-year period the company does not incur any tax losses, the reserve must be released – and the tax deduction recaptured – at the end of the period. The deduction is limited to an annual limit of €1 million.

<u>BEPS</u>

Spain signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) on 7 June 2017 together with 67 other jurisdictions.

On 13 July 2018, the Spanish Council of Ministers approved the MLI as a starting point of the internal ratification process following which it will be deposited to bring the MLI into force for its covered tax treaties.

Spain has played an active role in the discussions on the BEPS Action Plan. In particular, the Spanish tax authorities have participated in several negotiations in international forums regarding the content and implementation of the BEPS programme, resulting in a package of 15 measures to be implemented in both European and domestic legislation.

As a result, and despite the fact that the BEPS Actions can be considered soft law – the OECD final reports on each action are legal recommendations to States – Spain has intended to transmute most of the BEPS Actions into domestic legislation.

In general terms, the majority of actions taken by Spain were reflected in the last reform of corporate income tax in 2015. In this sense, the most important amendments to Spanish domestic legislation are the following:

- Tax planning disclosure (DAC6). Spain has published draft legislation and will pass before 31 December 2019 the implementation of the measures included within Council Directive (EU) 2018/822 of 25 May 2018, as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.
- List of tax havens. The Spanish tax system foresees an important number of anti-avoidance rules in relation to the use of "*tax havens*". The concept of "*tax haven*" is solely Spanish and it does not necessarily compare with other EU jurisdictions.
- Tax treaty abuse. Spain's current tax treaty policy is to negotiate the inclusion of limitation on benefits clauses.
- Controlled foreign corporation (CFC) rules. Before the implementation of the BEPS Actions, Spain already had important provisions in this regard. However, following the OECD recommendations, Spain has strengthened its CFC rules by making them more restrictive.
- Interest deductibility. Spain has already introduced a limitation on interest deductibility linked to the earnings before interest, tax, depreciation and amortisation (EBITDA) with the company.
- PEs. Spain has not passed or amended any current law in this regard. However, the Spanish tax authorities have been applying in practice a more economic approach to the PE definition, very close to the broader PE rule established within BEPS.

Within this environment, the Spanish government introduced for Spanish corporations the obligation to file a Country-by-Country Report for fiscal years commencing as of 1 January 2016.

Country-by-country reporting is required from:

- Entities resident in the Spanish territory that are the parent in a group, defined in the terms established in corporate tax law and which are not dependent on another resident or non-resident company, when the net business turnover of the group of persons or entities forming part of the group, in the 12 months prior to the start of the tax period, is at least €750 million.
- Entities resident in the Spanish territory, which are direct or indirect subsidiaries of a non-resident company in the Spanish territory that is not, at the same time, a subsidiary of another, or PEs of non-resident companies when, likewise, the net business turnover of the group of persons or entities that form part of the group, in the 12 months prior to the start of the tax period, is at least €750 million, provided that one of the following circumstances exists:
  - Entities designated by their non-resident parent entity to prepare this information.
  - There is no obligation for country-by-country reporting or similar as set forth in this section regarding the aforementioned non-resident entity in its country or the territory of its tax residence.
  - There is no agreement for automatic exchange of information, with regard to this information, with the country or territory in which this non-resident entity has its tax residence.
  - That, with the existence of an agreement for automatic exchange of information with regard to this information with the country or territory in which this entity has its tax residence, there has been a systematic non-compliance of the same that has been notified by the Spanish tax agency to the subsidiary entities or to the permanent resident companies in Spanish territory.

However, country-by-country reporting will not be required by entities in the event that the country-by-country reporting has taken place through a subrogated parent country, complying with the conditions set forth in Council Directive 2016/881 of 25 May 2016.

Any entity resident in Spanish territory that forms part of a group obliged to carry out country-by-country reporting must notify the Tax Administration of the identification and the tax country or residence of the entity obliged to prepare this information. This notification must be made every year before the end of the tax period to which the information refers and must include the identification of the entity obliged to report it and whether this is carried out depending on the parent entity, obliged affiliate entity or subrogating entity.

VAT Immediate Supply of Information system

2018 was the first complete fiscal year of application of the Immediate Supply of Information system, according to which VAT taxpayers are required to file electronically and in real time the information related to invoices issued or received from their activity. Due to this system, the tax authorities have all the information related to the operations carried out by Spanish entities, meaning a strengthening of the existing electronic control systems in the hands of the tax authorities.

This special regime is mandatory for VAT taxpayers with a revenue exceeding €6 million, for VAT groups, and for taxpayers voluntarily applying the VAT monthly refund.

Tax climate in Spain

The corporate income tax regulations underwent a sound reform in 2015 with the approval of a new corporate income tax law, which implied (i) a broadening of the taxable base derived from the elimination of certain tax allowances such as the portfolio impairment, (ii) a reduction of the tax rate from 30% to 25%, and (iii) the removal of most of the available tax credits. Since then, the government has been reluctant to approve further corporate income tax incentives other than the capitalisation reserves and other minor incentives analysed above. No changes to the corporate tax rate are expected.

According to the last State Budget Bill, and as further explained below, the potential implementation of certain measures aimed at increasing tax revenues cannot be discarded, amongst others: (i) limitation to the participation exemption regime for dividends and capital gains to 95%; (ii) introduction of a minimum tax for corporate income tax purposes for taxpayers with a turnover exceeding €20 million, or tax groups; (iii) the reduction of the tax rate for very small entities; (iv) the increase of the interim payments on account of the final corporate tax due; or (v) amendments to the SOCIMI regime.

In 2019 and at the beginning of 2020, Spain has remained active at an international level, signing, negotiating or renegotiating Double Tax Agreements with Azerbaijan, Cape Verde, China, Romania and the United States of America.

In regard to the United States of America, the new protocol which entered into force in November 2019 provides significant improvements in terms of tax efficiency for companies and investors between Spain and the United States. Most notably, the new agreement reduces, and even eliminates, taxes at source on dividends, interest and profits and allows for the tax-free transfer of pension plans.

During 2019, the tax authorities toughened their campaign to increase control over fraud and the submerged economy. Amongst others, the tax audit campaign was focused on the review of high-net-worth individuals, fraud in the digital economy, entities without real substance, fintech companies, cryptocurrencies, tax effects on Brexit, etc.

The Control Tax Plan from the tax authorities for the fiscal year 2020 also foresees special control on companies with net operative losses which have been generated repeatedly, more control over the shadow economy, special focus on related party transactions, the possible existence of permanent establishments and/or the attribution of profits, etc., as well as the implementation of a new technology system that will allow taxpayers' representatives and advisors to interact with the tax inspection online.

Within the scope of the climate of control, on 29 December 2018, Spain passed legislation by way of transposition of EU Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, whose objective is to identify risk in order to improve sustainability and the confidence of investors, consumers and society in general.

According to the above, Spanish companies exceeding certain thresholds (e.g. 500 employees, value of assets exceeding €20 million, etc.) and public interest entities as defined by the law shall report and disclose the following tax information in their annual accounts and management reports: profits obtained in each country; tax paid on profits; and public subsidies received.

Developments affecting attractiveness of Spain for holding companies

Holding companies

Spain offers a very attractive tax regime for holding companies with non-resident subsidiaries. In particular, this structure has been commonly set up to benefit from the important network of tax treaties between Spain and Latin American jurisdictions and its participation exemption regime.

Any Spanish entity may opt to apply for the ETVE regime ("*Entidad de Tenencia de Valores Extranjeros*" or "Foreign Securities Holding Company") as long as certain requirements are met.

Under this regime, ETVE companies will be entitled to apply for a full exemption on dividends and capital gains from foreign subsidiaries and no withholding tax would apply on the distribution from the ETVE company to its shareholders. In particular, the main benefits of this regime are:

(a) Full exemption applicable to dividends and capital gains obtained by the ETVE from its shareholding in non-resident subsidiaries.
(b) The non-Spanish taxation applicable to ETVE non-resident shareholders.

The main requirements to apply for this regime are as follows:

- The company's corporate purpose shall include the management and administration of foreign shareholdings through the appropriate human and material resources. However, the corporate purpose may also include other activities in Spain or overseas.
- The Spanish entity must hold a minimum participation of at least 5% either directly or indirectly in the foreign subsidiaries. This requirement may be replaced by an acquisition cost of the subsidiary's shares equal to or greater than €20 million. In case of holding shares in a subsidiary acting as a holding company, its income should derive from more than 70% of dividends and capital gains, and the mentioned 5% participation must be indirectly met by the Spanish entity in the lower-tier subsidiaries or, otherwise, certain other requirements must be met.
- The shareholding in which the minimum participation requirement has been met must have been held for at least one year prior to the date on which dividends and capital gains eligible for the participation exemption regime are received.

- In the case of dividends, this minimum holding period may be completed after the dividend distribution takes place. The period of time during which other members of the group have held the subsidiaries is also taken into account to calculate the holding period.
- Subject to tax test. Foreign subsidiaries held by a Spanish holding company must have been subject to tax equal or similar to the Spanish corporate income tax at a statutory rate of at least 10% (it is allowed for the effective tax rate to be lower due to the application of any reductions or allowances in the subsidiary). This test is considered to be met for subsidiaries resident in a country that has signed a Double Tax Treaty with Spain with an agreement on exchange of tax information. For capital gains purposes, this test must be met during the entire holding period.
- The participation exemption will not apply in case the dividend distribution constitutes a tax-deductible expense in the subsidiary.
- The subsidiary cannot be resident in a Spanish listed tax haven unless the jurisdiction is within the EU and the taxpayer proves that it has been incorporated for sound business reasons and it performs an active business.

Any capital gains derived from the transfer of shares of the ETVE by non-resident shareholders, other than those that are tax haven-based or with a permanent establishment in Spain, will not be taxable in Spain provided the gain is derived from non-Spanish qualifying source income.

Industry sector focus

Real estate. One of the symptoms of the Spanish economic recovery is the significant increase of real estate transfers and rentals. A large number of real estate transactions took place in 2019, following the trend of the last few years.

Success of the Spanish SOCIMI

SOCIMIs were introduced in Spain on 26 October 2009. However, the earlier regime was not attractive for foreign investments and it was not until the latest amendments, which took place in 2012, that SOCIMIs started to be attractive for foreign investors.

SOCIMIs, also known as Spanish real estate investment trusts (REITs), are Spanish listed companies whose main purpose is the acquisition and development of real estate of an urban nature for the purpose of renting or holding of shares in other SOCIMIs or foreign REITs.

In 2012, the Spanish government introduced several amendments to the legal and tax regime of SOCIMIs in order to attract foreign investment in Spain through this vehicle. The main feature of this regime is the SOCIMI 0% corporate income tax rate if certain requirements are met, competing with other REITs in different jurisdictions.

This preferential tax regime for SOCIMIs partly relies on the shift of taxation from the SOCIMI to the investors, whose final taxation will depend on its legal form and its tax residence. Nevertheless, SOCIMIs will be taxed at 0% provided the shareholders owning at least 5% of its capital are taxed on the dividends received at a minimum nominal tax rate of 10% ("*minimum taxation test*"). If the shareholders are entitled to apply for an exemption, or subject to a nominal tax rate of less than 10%, SOCIMIs will be taxed at a 19% tax rate on the dividends distributed to those qualified shareholders. It is important to clarify that this 19% tax rate will be paid by the SOCIMI and it will not be considered a withholding tax on the dividends distributed.

As per the corporate requirements to apply for the special tax regime, Spanish legislation requires SOCIMIs to have a minimum share capital of €5 million, which must be fully paid-up and meet important investment requirements.

At least 80% of the value of the SOCIMI's assets must be invested in qualifying assets or shares, and at least 80% of its income must derive from the rental income or dividends distributed by companies devoted to the rental of real estate.

However, there is no requirement with regard to the number of properties or shareholdings in companies which, in practice, means a SOCIMI could apply for the special tax regime holding on property as long as it is held for a minimum period of three years. Nevertheless, the Spanish National Securities Market Commission establishes certain control over the launching of SOCIMIs with minor shareholders.

SOCIMIs are required to distribute at least 80% of their profits arising from real rental income and complementary activities, 50% of profits from the disposal of assets or shares, and 100% of profits arising from qualifying shares.

Automotive, pharmaceuticals, chemical, life sciences, engineering, R&D

The automotive industry is one of the key drivers of the Spanish economy, being one of the main employment-generating sectors. Its contribution to Spanish GDP in 2016–2017 was around 12%, and its production is growing every year in a very consistent manner, reaching maximum historic values of production in 2017.

Due to the strong bet by the Spanish government on R&D incentives in connection with corporate taxes (i.e. R&D credit and the Patent Box regime), including generation of tax credits of between 25% and 42% of R&D expenses and the possibility to monetise such tax credits up to an amount of €5 million, several multinational groups have decided to allocate their R&D activities in Spain. The pharmaceuticals, life sciences, chemical and engineering industries are also amongst the sectors to benefit most from R&D incentives.

2019 proved to be a highly active year for mergers and acquisitions as well as other corporate reorganisations derived from the Brexit effect. The clarity on the UK's future relationship with the EU has resulted in strategic transactions in order to carefully plan how to face the new UK market position.

The year ahead

It is expected that there will be continuous efforts by the government to increase the revenue from corporate income tax, as discussed above in this chapter, by way of amendments of the corporate income tax law, or by way of tax review works primarily focused, for instance, on the field of transfer pricing for multinational entities.

These measures were included in the Bill for the General State Budget for 2019, which eventually was not approved due to the political situation experienced during the year and due to the current, ongoing impact of COVID-19.

The expected measures that would affect corporate tax are:

- Taxation of dividends and income derived from the transfer of shares:
  Currently, income derived from both dividends and transfer of qualifying shares (amongst others, involving a minimum holding of 5%, or acquisition value of more than €20 million) is exempt, provided that the holding period is more than one year and, if the subsidiaries are non-resident, that they have been subject to a tax equivalent to corporation tax at a nominal rate of at least 10%.
  The latter requirement is deemed to be met if the subsidiary is resident in a country that has entered into a double taxation agreement with Spain containing an effective exchange of information clause.

The proposed measure would consider the exemption on dividends and income derived from the transfer of affiliates, but no longer as a full exemption (of 100%) but limited to a 95% exemption.

This reduction of the exemption is justified based on the Parent-Subsidiary Directive, which enables Member States to consider expenses relating to the management of shares as non-deductible up to a limit of 5% of the distributed profit.

Therefore, if the rule is approved, this would mean that dividends distributed by subsidiaries would be subject to taxation at an effective rate of 1.25%.

- Implementation of a minimum taxation of 15% of the taxable base for companies with a turnover equal to or greater than €20 million.
- Implementation of a tax rate of 23% for companies with a turnover of less than €1 million.
- Application of a 24% tax rate on instalment payments to all companies (not only those with a turnover of €10 million or more), and an increase of the tax rate from 23% to 24% on instalment payments.
- Enabling a deduction for the promotion of gender equality (relating to the increase in the number of female directors), of 10% of the remuneration paid to them.
- Implementation of a special tax at the headquarters of the SOCIMI of 15% of the profits of the year that are not distributed to the shareholders.

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Ernesto Lacambra is a co-managing partner of Cases & Lacambra. He leads the Tax practice. Ernesto is specialised in advising multinational groups, private equity firms and foreign and national investment funds and in the international tax planning of cross-border investments. He has extensive experience in mergers and acquisitions and reorganisations of multinational groups. In particular, he has focused on the reorganisation of Spanish holding companies for Latin American groups, as well as in investments in Spain by European, American and Asian investors.
Ernesto also has extensive experience advising high-net-worth individuals, family business groups and large national and multinational business groups. He is an expert in tax audit procedures. He also advises on transfer pricing regulations (reorganisation of the value chain, litigation and master file documentation).
Ernesto is a regular speaker at international business schools on international taxation matters and bilateral investments between the Middle East and Spain.

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David Navarro is a partner in the Tax practice of Cases & Lacambra. He has extensive experience in advising family business groups, large national and multinational business groups, private equity firms and investment funds in both domestic and international environments, in relation to group restructuring and corporate reorganisation (mergers, acquisitions, divestments, etc.), international tax planning of cross-border investments and ongoing tax advice. He has advised multinational groups and companies in their operations in Spain and abroad in a wide range of fields. He has extensive experience in internationalisation processes of Spanish companies in foreign jurisdictions.

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