

**GLI** GLOBAL  
LEGAL  
INSIGHTS

**Corporate Tax**

**2022**

**10<sup>th</sup> Edition**

Contributing Editor: **Sandy Bhogal**

**glg** global legal group

# CONTENTS

<b>Preface</b>	Sandy Bhogal, <i>Gibson, Dunn &amp; Crutcher UK LLP</i>	
<b>Andorra</b>	Alberto Gil, Albert Hinojosa & Pablo Lloret, <i>Cases &amp; Lacambra</i>	1
<b>Brazil</b>	Leandro Augusto Ramozzi Chiarottino, Erika Yumi Tukiama & Ana Júlia Fujinami Bueno da Silva, <i>Chiarottino e Nicoletti Advogados</i>	7
<b>Cyprus</b>	Elena Christodoulou, Fabian Cabeza & Alexis Christodoulou, <i>Elias Neocleous &amp; Co LLC</i>	16
<b>India</b>	Mukesh Butani & Nikky Jhamtani, <i>BMR Legal Advocates</i>	29
<b>Ireland</b>	Andrew Quinn, Lynn Cramer & Niamh Cross, <i>Maples Group</i>	41
<b>Israel</b>	Yoad Frenkel, <i>Ziv Sharon &amp; Co. Law Office</i>	55
<b>Japan</b>	Akira Tanaka & Hiroki Tsue, <i>Anderson Mōri &amp; Tomotsune</i>	65
<b>Luxembourg</b>	James O’Neal, Jean-Dominique Morelli & Rui Duarte, <i>Maples Group</i>	72
<b>Netherlands</b>	IJsbrand Uljée & Peter van Dijk, <i>BUREN</i>	83
<b>Norway</b>	Synne Bjotveit & Anine Karstensen, <i>RSM Advokatfirma AS</i> Oliver Smyth, <i>RSM Norge AS</i>	92
<b>Spain</b>	Ernesto Lacambra, David Navarro & Cristina Villanova, <i>Cases &amp; Lacambra</i>	101
<b>Switzerland</b>	Susanne Schreiber & Kerim Tbaishat, <i>Bär &amp; Karrer Ltd.</i>	112
<b>Turkey</b>	Orhan Yavuz Mavioglu, <i>ADMD Mavioglu &amp; Alkan Law Office</i>	123
<b>United Kingdom</b>	Sandy Bhogal, Bridget English & William Inchbald, <i>Gibson, Dunn &amp; Crutcher UK LLP</i>	130
<b>USA</b>	Douglas Stransky, <i>Sullivan &amp; Worcester LLP</i>	150

# Andorra

Alberto Gil, Albert Hinojosa & Pablo Lloret  
Cases & Lacambra

## Introduction

The Principality of Andorra has been consistently acknowledged as a country with a stable political, regulatory and tax environment, which makes it a highly reliable place to do business. The real GDP in 2021 stood at EUR 2,5879 million, an increase of 8.9 per cent compared to 2020, which constitutes a good indication of the recovery of Andorran growth and job creation following the COVID-19 crisis.

The Andorran economy is highly concentrated in financial services, tourism, and commerce. Indeed, these sectors represent approximately 75 per cent of gross value added for the entire economy.

Despite this, a process of diversification of the economy and the implementation of a number of structural reforms are taking place, which are both improving the competitiveness of the country and leading to the growth of sectors such as real estate and the digital economy.

## Tax climate in Andorra

The Principality of Andorra is a full member of the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), the Council of Europe (COE), the International Monetary Fund (IMF), and the World Trade Organization (WTO) (observer status), among others, and has agreements with the European Union (EU) in relation to several matters (e.g., customs and currency agreements).

The taxation system in Andorra has moved from being an almost exclusively indirect taxation system to an internationally recognised modern taxation system fully comparable to those of its neighbouring countries. This system is designed to tax all types of income obtained by individuals and companies at a generalised tax rate of 10 per cent.

Since 2009, an extensive process of adaptation and harmonisation with the Organisation for Economic Co-operation and Development (OECD) international tax standards has been undertaken in Andorra. In this regard, Andorra joined the Inclusive Framework on BEPS in 2016 and has already implemented the relevant BEPS Actions through its internal laws.

As a result, some preferential tax regimes were abolished or amended in line with BEPS Action 5 as pernicious in terms of base erosion and profit shifting. Thanks to these amendments, the Patent Box regime and the Holding regime (explained below) received favourable conclusions from the OECD in 2018 and can be applied to open up great market opportunities for companies considering setting up in Andorra.

Additionally, Andorra is committed to the creation of an extensive network of double tax treaties in order to enhance international trade and investment in its territory. The first double tax treaty was signed with France in 2013. Since then, the Principality of Andorra has

concluded agreements with other countries (Cyprus, Hungary, Liechtenstein, Luxembourg, Malta, Portugal, San Marino, Spain and the UAE) to avoid double taxation in income tax matters and to prevent tax evasion. Furthermore, Andorra has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), which now covers around 1,800 bilateral treaties.

## **Significant deals and themes**

### Participation exemption regime

Andorran law provides for a participation exemption regime that allows both dividends and share in profits obtained from subsidiaries of Andorran companies (whether Andorran resident or not) and capital gains deriving from the transfer of shares of its subsidiaries to be fully exempt from Andorran corporate income tax (CIT), subject to the fulfilment of specific requirements.

Firstly, the participation exemption regime requires that the entity receiving the dividend or obtaining the capital gain holds more than 5 per cent of the shares in the entity that is distributing the dividend or being transferred, and such shares to have been held for a period of over one year on the day of distribution or transfer.

Secondly, the Andorran CIT Law provides that whenever the transferred entity or the entity distributing the dividend is not Andorran tax resident, such company has to be subject to (and not exempt from) a tax equivalent to the Andorran CIT at a nominal rate of at least 40 per cent of the general tax rate established in the CIT Law (i.e., 4 per cent). This test is considered to be met for subsidiaries resident in a country that has signed a double tax agreement with Andorra.

### Holding regime

The Andorran CIT Law offers a very attractive tax regime for holding companies located in Andorra. Under this regime, holding companies will be entitled to apply for a participation exemption on dividends and capital gains from its subsidiaries without any minimum ownership or holding period requirement.

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 a nominal rate of at least 40 per cent of the general tax rate established in the CIT Law (i.e., 4 per cent) or are resident in a country with which Andorra has entered into a double tax agreement. The same criteria apply for capital gains derived from the sale of the shares.

### Patent Box

The special regime for the “management of certain intangible assets”, also known as Patent Box, allows a reduction of up to 80 per cent of the CIT taxable base derived from the licensing or transfer of qualifying intellectual property (IP), utility models and computer programs protected by copyright. In this regard, a reduction from 10 per cent to 2 per cent could be achieved as long as 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 be increased if these charges are located in Andorra instead of abroad. The expenses mentioned do not necessarily have to be generated internally by the company; thus, any subcontracted activity in Andorra should also be considered in this calculation.

In this regard, considering that the nominal CIT tax rate is 10 per cent, with the implementation of the Patent Box regime, the effective tax rate could be 2 per cent as long as the research

and development activity of the company is carried out predominantly in the Principality of Andorra. Furthermore, this regime can apply to all kinds of companies and all types of business activity and is also compatible with other tax benefits and deductions provided for by Andorran legislation.

In sum, this regime has been developed as a fiscal incentive that rewards innovation and encourages the creation and exploitation of patents, utility models and computer programs protected by copyright in Andorra and by Andorran residents.

#### Withholding taxes

Andorra is an attractive jurisdiction for holding companies because, among other reasons, it does not levy withholding tax on dividends paid by Andorran entities to resident or non-tax-resident shareholders.

#### Collective investment schemes

Under the Andorran Funds Law, undertakings of collective investment schemes may vest the form of funds (without legal personality) or companies (SICAVs – self-managed or with a management entity).

Broadly speaking, each of the abovementioned entities regulated by the Andorran Funds Law is subject to CIT at a rate of 0 per cent, but not including the management entities of the SICAVs. In addition, the allocation of profits to investors who are resident in Andorra benefits from an exemption under Andorran Personal Income Tax Law. Moreover, the allocation of profits to non-tax-resident investors is likewise covered by an exemption under Andorran Non-Resident Income Tax Law.

#### Tax credits

The CIT Law regulates a deduction to avoid international double taxation by which the taxpayer can deduct the lower of: (i) the amount paid abroad for taxes of an identical or similar nature to CIT or non-resident income tax; or (ii) the amount resulting from applying the Andorran CIT rate to the portion of the taxable base that has been taxed abroad.

Additionally, certain tax credits are granted to resident CIT taxpayers who make certain investments. Specifically, CIT taxpayers may apply a deduction of (i) 5 per cent on investments in fixed assets related to the activity of the company, and (ii) EUR 3,000 for each increase in the average number of permanent employees.

Finally, a tax credit is granted for the total amount of the tax payments made by the company for some Andorran taxes.

### **Key developments affecting corporate tax law and practice**

#### Domestic – cases and legislation

On 15 February 2022, the Andorran Budget Law for 2022 was approved and published in the country's Official Gazette. The Budget Law introduced a relevant measure affecting real estate developer companies established in Andorra.

Previously, in the event that a company intended to finance a real estate development by means of an off-plan sale, the payment of an amount higher than 20 per cent of the total price agreed for the real estate triggered payment of the Real Estate Capital Gains Tax on the total amount of the sale.

However, the Budget Law has modified the Real Estate Capital Gains Tax Law on this point, postponing the obligation to pay the tax until the definitive transfer of the property or, if earlier, until the real estate is placed at the disposal of the purchaser.

## International developments

Over the past year, Andorra has been focusing on negotiating new double tax treaties with several new states in order to strengthen economic relations between Andorra and its strategic partners on an international level. As a result, double tax treaties have recently been signed with Hungary and San Marino.

Furthermore, during 2021, Andorra deposited its instrument of ratification for the MLI, thus underlining its strong commitment to preventing the abuse of tax treaties and base erosion and profit shifting by multinational enterprises.

## **Industry sector focus**

Andorra's economic structure is mainly dominated by the services sector. The activities that lead such sector are the following: financial and insurance; real estate; wholesale and retail trade; and accommodation and food services.

Banks with assets worth 600 per cent of GDP and very large off-balance sheet assets under management are systemically important to the Andorran economy. They emerged from the COVID-19 crisis in a strong position, well capitalised, highly liquid and with a declining non-performing loans ratio.

The previous year was crucial for the banking consolidation process in Andorra, with Mora Banc acquiring Banc Sabadell d'Andorra and the acquisition of Vall Banc by Crèdit Andorrà.

It is expected that the banking industry will continue to evolve progressively towards international standards, with the aim of competing on equal terms with all of the other financial centres of the world.

Among the remaining sectors, the construction sector must be highlighted, which stands out with a remarkable increase of 23.5 per cent of value during the previous year.

## **The year ahead**

Andorra is very advanced in its negotiations for a potential agreement of association with the EU. The EU 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. Likewise, Andorra will benefit from the application of the most important principles of the EU, 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 on European Union.

The Andorran Government is about to develop new laws focusing on attracting and retaining talent from IT and emerging online sectors, such as the new Digital Economy Law.

Additionally, the Government has recently submitted a draft bill to the Andorran Parliament, which introduces significant changes to the tax system of the country. This draft bill is currently under parliamentary discussion and may therefore be subject to modifications before its eventual approval.

Below, we briefly mention the limitation of the deductibility of financial expenses, the introduction of controlled foreign company (CFC) rules in Andorra, and the introduction of certain limitations to ensure that Andorran companies pay a certain amount of taxes.

Firstly, the draft bill entails that financing expenses incurred by CIT taxpayers exceeding 30 per cent of their operating profit of a given tax year will not be deductible for CIT purposes;

however, net financing expenses not exceeding EUR 500,000 will be deductible for CIT purposes in any case.

Therefore, the limit of deductibility of net financing expenses will be the higher amount of either (i) 30 per cent of the operating profit of the tax year, or (ii) EUR 500,000.

Additionally, the draft bill sets out that the amount of net financing expenses that are not deductible in a given tax year because they exceed the maximum deductible limit for such tax year may be carried forward and deducted in the following 10 years (subject to the limit applicable in each of these years).

However, this limitation shall not apply to the following taxpayers: (i) credit and insurance entities; (ii) entities that are not part of an accounting group; or (iii) entities that are part of a group if the parent company is located in Andorra.

Secondly, the draft bill foresees the development of CFC rules to ensure the taxation of certain categories of income in Andorra in order to counter certain offshore structures that result in no or indefinite deferral of taxation.

The new Andorran CFC rules essentially provide that an Andorran individual or company must be taxed in Andorra on income obtained both in Andorra by a collective investment scheme and abroad by a foreign subsidiary.

With respect to Andorran collective investment schemes, the CFC rules apply when (i) such scheme is subject to CIT at a rate of 0 per cent, and (ii) the Andorran taxpayer, whether by itself or jointly with certain related persons or entities, holds 50 per cent or more of the share capital, equity, voting rights or results of the Andorran collective investment scheme.

Regarding foreign subsidiaries, the CFC rules only apply when (i) the Andorran individual or corporate taxpayer, by itself or jointly with certain related persons or entities, holds 50 per cent or more of the share capital, equity, voting rights or results of the non-resident entity, and (ii) the tax (CIT or similar) paid by the non-resident entity on the attributable net income is less than 50 per cent of that which would have been payable under Andorran CIT.

Notwithstanding the above, the CFC rules shall not apply if the non-resident entity develops a significant economic activity for which it has personnel, equipment, assets, and facilities and can prove the same.

Additionally, the CFC rules shall not apply when only one-third or less of the income obtained by the non-resident entity consists of certain categories of income (e.g., income from passive real estate investments, interest, dividends from non-qualifying subsidiaries, insurance income, passive IP income, and income from derivative instruments).

Finally, the draft bill includes a measure to prevent set-off of the negative tax bases and the application of tax credits from reducing the tax rate by more than 70 per cent. However, the possibility of offsetting amounts not deducted in the future is left open, with a limit of 10 years for negative tax bases and three years for deductions.

This new measure is aimed at ensuring that companies pay a certain minimum level of tax, currently 3 per cent of the positive tax base, without prejudice to the possibility of offsetting in the future any amounts they have not been able to deduct in their tax return.



### **Alberto Gil**

**Tel: +376 728 001 / Email: [alberto.gil@caseslacambra.com](mailto:alberto.gil@caseslacambra.com)**

Alberto Gil is a partner at Cases & Lacambra in Andorra. His practice is focused on tax advice and he has extensive experience in international tax advisory. He specialises in HNWI tax planning and tax proceedings and has wide expertise advising resident and non-resident entities on tax law and on the prevention of money laundering and the financing of terrorism. He has also been involved in numerous tax regularisation procedures.

Alberto holds a degree in Law and Political Science from the University of Valencia. He specialised in Financial and Tax Law in the joint postgraduate programme of the Institute for Fiscal Studies and the University of Valencia and holds a Ph.D. in European Tax Law from the University of Bologna in Italy. He has previously worked at the University of Valencia, has been a stagiaire at the IMF and at the European Anti-Fraud Office in Brussels, and currently lectures on Financial and Tax Law and European and International Tax Law at Pompeu Fabra University in Barcelona.



### **Albert Hinojosa**

**Tel: +376 728 001 / Email: [albert.hinojosa@caseslacambra.com](mailto:albert.hinojosa@caseslacambra.com)**

Albert Hinojosa is a partner at Cases & Lacambra in Andorra. His practice is focused on tax advice.

Albert has developed an extensive professional career of more than 20 years in the public sector. He joined the administration in 2001 as a lawyer assigned to Customs, where he served as head of its legal service between 2006 and 2009. Subsequently, at the Ministry of Economy, he was head of the company's registry and director of the Economy department. From 2013 to 2021, Albert was head of the Department of Taxation and Borders of the Government of Andorra, from which he promoted the process of transformation and tax convergence of the Principality in recent times, introducing the current direct and indirect tax system and promoting the international network of double taxation agreements. Likewise, before joining Cases & Lacambra, he was president, by reason of his position, of the State Agency for the Resolution of Banking Institutions (AREB).

Albert holds a degree in Law from the University of Barcelona and a postgraduate degree in Andorran Law from the University of Andorra.



### **Pablo Lloret**

**Tel: +376 728 001 / Email: [pablo.lloret@caseslacambra.com](mailto:pablo.lloret@caseslacambra.com)**

Pablo Lloret is an associate at Cases & Lacambra. He is a member of the Tax practice in the firm's Andorran office.

Pablo has experience in tax and corporate matters, advising multinational groups, small and medium-sized enterprises and HNWIs in tax aspects derived from national and cross-border operations.

He also has experience in wealth management, tax planning and advising HNWIs and family offices in the analysis and improvement of their tax situation.

## **Cases & Lacambra**

C/ Manuel Cerqueda i Escaler 3-5, AD 700 Escaldes-Engordany, Andorra

Tel: +376 728 001 / URL: [www.caseslacambra.com](http://www.caseslacambra.com)



[www.globallegalinsights.com](http://www.globallegalinsights.com)

Other titles in the **Global Legal Insights** series include:

**AI, Machine Learning & Big Data**

**Banking Regulation**

**Blockchain & Cryptocurrency**

**Bribery & Corruption**

**Cartels**

**Employment & Labour Law**

**Energy**

**Fintech**

**Fund Finance**

**Initial Public Offerings**

**International Arbitration**

**Litigation & Dispute Resolution**

**Merger Control**

**Mergers & Acquisitions**

**Pricing & Reimbursement**