

Corporate Tax

2023

11th Edition

Contributing Editor: **Sandy Bhogal**

CONTENTS

Preface	Sandy Bhogal, <i>Gibson, Dunn & Crutcher UK LLP</i>	
Andorra	Alberto Gil, Albert Hinojosa & Pablo Lloret, <i>Cases & Lacambra</i>	1
Australia	Andy Milidoni & Jess Tsai, <i>Johnson Winter Slattery</i>	7
Brazil	Luciana Rosanova Galhardo, Felipe Cerrutti Balsimelli & Cristiano Iam Sarhan Hussni Narchi, <i>Pinheiro Neto Advogados</i>	16
France	Olivier Dauchez & Alexandre Bochu, <i>Gide Loyrette Nouel A.A.R.P.I.</i>	23
Germany	Dr. Gunnar Knorr, <i>Oppenhoff & Partner</i>	30
India	Mukesh Butani & Shruti Lohia, <i>BMR Legal Advocates</i>	35
Ireland	William Fogarty, Andrew Quinn & Conall Brennan-McMahon, <i>Maples Group</i>	47
Israel	Yoad Frenkel, <i>Ziv Sharon & Co. Law Office</i>	55
Japan	Akira Tanaka & Erika Okada, <i>Anderson Mōri & Tomotsune</i>	65
Luxembourg	James O’Neal, Inès Annioui & Rui Duarte, <i>Maples and Calder (Luxembourg) SARL</i>	70
Netherlands	Michael Molenaars, Reinout de Boer, Maurits van Dijk & Edsart van Wulfften Palthe, <i>Stibbe</i>	80
Spain	Ernesto Lacambra, David Navarro & Cristina Villanova, <i>Cases & Lacambra</i>	89
Switzerland	Susanne Schreiber & Kerim Tbaishat, <i>Bär & Karrer Ltd.</i>	97
United Kingdom	Sandy Bhogal, Bridget English, Sophie Walshe & Isabella Fladée, <i>Gibson, Dunn & Crutcher UK LLP</i>	109
USA	Eric B. Sloan, Jennifer Sabin & Jennifer A. Fitzgerald, <i>Gibson, Dunn & Crutcher LLP</i>	132

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. In 2022, Real GDP stood at EUR 2,798.8 million, after an increasing annual rate of 8.8 per cent. This constitutes good evidence of a definitive 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 account for 75 per cent of gross value added for the entire economy.

Notwithstanding the foregoing, a process of economic diversification and the implementation of a number of structural reforms are taking place, which enhance the country's competitiveness and lead to an increase in sectors such as real estate and digital economy. For instance, on 1 December 2022, the Andorran Government passed the law on digital economy, entrepreneurship and innovation aimed at promoting new business models focused on the digital world and making the competitive advantages of the Andorran economy more attractive.

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, Andorra has undertaken an extensive process of adaptation and harmonisation with the international tax standards of the Organisation for Economic Co-operation and Development (OECD). 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, in line with BEPS Action 5, some preferential tax regimes were abolished or amended 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 that are considering setting up in Andorra.

In 2020, the international professional services of PricewaterhouseCoopers carried out a study prepared for Govern d'Andorra based on the Paying Taxes methodology, which ranked the Andorran tax system 20 out of 193 on the ease of paying taxes and highlighted that Andorra performs significantly better than average in many of the aspects analysed.

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 (Croatia, Cyprus, Czech Republic, Hungary, Liechtenstein, Luxembourg, Malta, Portugal, the Principality of Monaco, 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 (i) dividends and share in profits obtained from subsidiaries of Andorran companies (whether resident or not), and (ii) 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 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 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 if 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. These expenses do not necessarily have to be generated internally; 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 if 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 business activities 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, without 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. For instance, CIT taxpayers may apply a deduction from EUR 1,000 to EUR 3,500 for each increase in the average number of permanent employees.

From financial year 2024, CIT taxpayers will be entitled to apply new deductions introduced to promote digitisation, patronage, sponsorship, and participation in projects declared to be of national interest.

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

Law 5/2023 of 19 January, published in the Andorran Official State Gazette on 8 February, has introduced significant changes in the CIT Law. The entry into force of these measures

is complex, as some amendments came into effect as from 1 January 2023 and others not until 1 January 2024.

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, Law 5/2023 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, Law 5/2023 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 17 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, Law 5/2023 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, Law 5/2023 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 17 years for negative tax bases and six 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.

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 Croatia, Czech Republic and the Principality of Monaco.

Industry sector focus

Andorra's economic structure is mainly dominated by the services sector. The leading activities 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 not only in a strong position but also well capitalised, highly liquid and with a declining non-performing loans ratio.

The year 2021 was crucial for the banking consolidation process in Andorra, with MoraBanc acquiring BancSabadell d'Andorra and the acquisition of Vall Banc by Crèdit Andorrà.

In this sense, Andorran banks ended financial year 2022 with an aggregate result for the three banks of EUR 113 million, which represented a 16 per cent increase in their profits.

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

Among the remaining sectors, the construction sector must be highlighted, which stands out with a remarkable increase of 7.4 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, therefore, the VAT harmonised system will not be applied. 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 hopes to conclude negotiations with the EU by the end of 2023, though, in any case, the final text will be submitted to Andorran citizens in a referendum.

**Alberto Gil****Tel: +376 728 001 / Email: 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**

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**

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 HNWI's in tax aspects derived from national and cross-border operations.

He also has experience in wealth management, tax planning and advising HNWI's 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

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