

SPAIN: OUTLINE TAX INFORMATION FISCAL YEAR 2002¹

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Fiscal Residence in Spain

Individuals (physical persons)

The law holds fiscally resident an individual who spends more than 183 days in a calendar year (including sporadic absences) in Spanish territory, or whose business, professional or economic interests (whether directly or indirectly held) are based in Spain. Those whose spouse and/or dependent children are habitually resident in Spanish territory will be presumed resident (save proof to the contrary).³

¹ This publication is based on Windram Miller & Company SL's understanding of the law and practice as at January 2002. Whilst every care has been taken in the preparation and presentation of the information contained herein, it is purely orientative in nature, and inevitably contains omissions, paraphrases and summaries, given the abbreviated nature of the publication. Windram Miller & Company SL does not accept responsibility for action taken or omitted to be taken in reliance thereon. This publication is not a substitute for professional advice.

Please note: on 1st January 2002, the Euro (€) replaced the peseta as the official currency of Spain. Notwithstanding this fact, the tax rates and tables published by the Government remain largely expressed in peseta. In order to avoid possible confusion therefore, this document follows the same procedure. The fixed conversion rate of peseta to Euro is 166.386pts : 1.

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³ For more detailed information and commentary, we can provide a copy of Jonathan Miller's article entitled Fiscal Residence of Individuals in Spain, *OTPR* Volume 4, Issue 3, p.177.

Legal Entities (for example, companies and bodies of persons such as trusts)

An entity is held to be fiscally resident in Spain in any of the following cases:

- (a) it is organised under the laws of Spain, or
- (b) its registered office, or equivalent, is in Spanish territory, or
- (c) its place of effective management is in Spain.

General notes to the above:

- Spain and Spanish territory mean the same thing. Spanish territory includes mainland Spain, the islands (Balearics and Canaries) and the enclaves of Ceuta and Melilla.
- The Spanish fiscal year is concurrent with the calendar year (i.e. 1st January to 31st December).

Liability to Taxes - General**Income and Capital Gains**

Residents: Individuals are subject to IRPF (Tax on the Income of Physical Persons) and entities are subject to IS (Corporation Tax).

Non-residents: Both individuals and entities are subject to IRNR (Tax on the Income of Non-Residents).

Other Taxes

Individuals and entities, resident and non-resident alike, are subject to the relevant taxes as appropriate (see below).

Taxes on Income (Residents)**Individuals**

IRPF (*Impuesto sobre la Renta de las Personas Físicas*)

Residents are taxable on all sources of worldwide income, both earned and

unearned. (Realized gains are also subject to this tax - see below)

Married couples may opt to be taxed as single individuals or jointly as a family unit. A unit includes any minors.

Total taxable income is composed of income from various sources, which include:

- Rendimientos del trabajo (income and other benefits derived from a contract of employment)
- Rendimientos del Capital Inmobiliario (investment income from property)
- Rendimientos del Capital Mobiliario (investment income other than from property)
- Rendimientos de Actividades Económicas (trading income)
- Ganancias y pérdidas patrimoniales (capital gains and losses)
- Imputación de rentas inmobiliarias (deemed income from real property holdings for own use)
- Imputación de sociedades transparentes (income imputed from companies operating under the fiscal transparency regime)

Income Tax Rates (Income/Gains arising in 2002)

BandThreshold	Tax rate	Tax on Band	Cumulative tax
Ptas	%	Ptas	Ptas
0	18.0%	110,160	110,160
612,000	24.0%	367,200	477,360
2,142,000	28.3%	577,320	1,054,680
4,182,000	37.2%	948,600	2,003,280
6,732,000	45.0%	2,019,600	4,022,880
11,220,000	48.0%	-	-

Note: that, of the percentage tax rate shown in the table above, a certain (small) percentage is attributed to and levied by the government of the autonomous region in which the taxpayer is resident, and the balance by central government.

Personal and family reliefs (personal and family minimum) are given by way of deductions from total income, before applying the tax rates. The core relief is a personal minimum of ptas 550,000 per taxpayer (i.e. ptas 1,100,000 for a married couple). Additional amounts may be added to the personal minimum to reflect disability, age over 65, and single-parent status. An additional family minimum may be available to reflect, for example an aged parent, or an unmarried child, financially dependent upon and living as a member of the taxpaying family unit.

Entities

IS (Impuesto sobre Sociedades)

Resident companies and other resident bodies of persons are taxable on all sources of worldwide income, both earned and unearned. (Realized gains are also subject to this tax - see below).

Permanent establishments (PE) in Spain of non-residents are also subject to IS. There are some special rules applicable to PE, including tighter restrictions on what may be allowable as deductions.

Accounting year: Normally (though not necessarily) 1st January - 31st December.

Tax is payable: Within 25 days of the AGM which must be held within 6 months of the end of the company's accounting year.

Payments on account: Resident companies and non-resident companies with a permanent establishment in Spain must make payment on the first day of the months of April, October and December of 18% of the tax theoretically due in respect of the periods closing in months three, nine and eleven of the last closed accounting year, which payments are on account of the total payable for the year of assessment.

Tax Rates:

- (i) The standard rate is 35%
- (ii) For smaller companies (turnover less than 5m) a reduced rate of 30% is applied to the first ptas 15,000,000 of profits (and the standard rate thereafter).

Reliefs, allowances, and deductions: Available on certain capital investments, establishment of overseas branches and subsidiaries, certain new employment contracts, professional training of staff, and expenses deductible from income.

Note: some closely-held companies are obliged to operate within the regime of fiscal transparency in which the company's income is imputed to and taxable on the members by way of Personal Income Tax (IRPF).

Operations with or via tax havens: From 1st January 1995, payment of invoices for services to or via a person or entity resident in a tax-haven jurisdiction are not deductible from income save proof by the taxpayer of a genuine commercial reason for the payment. All transactions with tax-havens will be assessed at an arm's-length valuation, irrespective of the actual amounts received or paid.

Taxes on Income (Non-Residents)

Individuals

IRNR (Impuesto sobre la Renta de los No Residentes)

Non residents are in general taxable on all income (and realised gains - see further below) arising in Spain. In general no reliefs or deductions of any nature are allowed from gross income arising in Spain. The standard rate of Withholding Tax on income is 25%. Different rates apply to Government-funded pensions.

Property in Spain held for own use, other than main private residence (which evidently would not be the case for a non-resident), and not rented out (in which case the rents must be declared) gives rise to an annual deemed income of 2% (or in some cases a slightly lesser rate) of the catastral (quasi-rateable) value.

EU residents: Normally an EU resident, without permanent establishment in Spain nor operating via a tax haven, is not taxable in Spain on interest arising from Spanish debt instruments including government and commercial paper (other than of a company whose principal activity is in Spanish-sited real property).

Note: Permanent Establishments in Spain of non-resident individuals (i.e. sole traders or partners) are taxed fundamentally as resident companies (entities) and are therefore subject to IS.

Entities

IRNR (Impuesto sobre la Renta de los No Residentes)

Non resident entities are in general taxable on all income (and realised gains - see further below) arising in Spain.

In general no reliefs or deductions of any nature are allowed from gross income arising in Spain.

The standard rate of Withholding Tax on income is 25%. The standard rate applies also to management fees, technical charges and royalties. The special rate of 1.5% is applied to re-insurance operations

EU residents Normally a non-resident company which is EU resident but without permanent establishment in Spain, nor operating via a tax haven, is not taxable in Spain on interest arising from Spanish debt instruments including government and commercial paper (other than of a company whose principal activity is in Spanish-sited real property).

In applying the EU parent/subsidiary treatment, Spain requires to be satisfied that the shareholders of the parent are also resident in the EU (and if that is not the case either refuses or apportions the treatment).

3% Special Levy on Non-Resident Entities Owning Real Property Sited in Spain

An annual tax of 3% of the catastral value of real property sited in Spain owned by non-resident entities (not physical persons) which do not meet the terms of one of more of the exemptions below:

- (i) Foreign States and their public institutions and International Organisations.
- (ii) Entities resident in a treaty state (where the treaty incorporates an exchange of information clause) and where the direct or indirect shareholders (ultimate beneficiaries) are also resident in such a state (not necessarily the same state).
- (iii) Entities carrying on a bona fide trade in Spain distinct from the mere tenancy or letting of the property in question.
- (iv) Companies quoted on an official stock exchange.
- (v) Entities without an objective of profit and of cultural or charitable nature.

The tax accrues on 31st December each year and is payable during the following month of January, failing which the property may be officially auctioned at the instance of the Revenue authority without necessity for a court order.

Tax on Realised Gain (Residents)

Individuals (IRPF)

General regime (assets acquired after 31st December 1994)

1. Gain is calculated by deducting the base cost (acquisition price plus costs) from the disposal value.
2. In respect of real property (land and buildings) only, the base cost may be actualised by applying the relevant co-efficient extracted from the statutory table. The co-efficient allegedly adjusts the base cost for inflation, and differs according to the combination of the year of acquisition and the year of disposal. For example, the co-efficient for a disposal in 2002 of property acquired in 1995 is 1.1638.
3. Where the period of ownership was of two years or less, the gain is added to general income and taxed at normal rates.
4. Where the period of ownership was over two years, the gain is taxed at the flat rate of 18%.

Transitional regime (assets acquired 31st December 1994 or prior to that date)

1. Gain is calculated by deducting the base cost (acquisition price plus costs) from the disposal value. Any stuffing of value (e.g. post-acquisition improvements to real property) are treated for purposes of calculation of tax due as if it were a separate investment.
2. The gain thus calculated is then reduced by a factor depending on the type of asset and the number of years (or part thereof, however small) during which the asset was held.
3. The number of years is calculated from date of acquisition (which must be not after 31st Dec 1994) up to 31st December 1996 (note, NOT 1994). From the resulting figure, two complete years are then deducted (giving the multiplicand N).
4. The following reduction percentages, multiplied by N, are then applied to reduce the taxable gain:
 - 4.1 Real property 11.11% (from which it may be deducted that property held for ten years and a day prior to 31st Dec 1996 is effectively

exempt from tax on a disposal since $(11-2) \times 11.11\% = 100\%$)

- 4.2 Shares etc quoted on an official stock exchange 25% (note FIFO system applied for calculation of term and gain). Note that shares in investment companies do not benefit from this percentage.
- 4.3 Other assets 14.28%
5. The resulting gain is then either added to general income and taxed as such where the asset was held for 2 years or less or taxed at 18% if the period of ownership was over 2 years.

Exemptions (both general and transitional regimes) are available for:

1. Sale or lifetime gift (transfers *mortis causa* are in any event exempt from tax on capital gains) of their main private residence by taxpayers over 65 years of age.
2. Re-investment within Spain of the proceeds of sale of a main private residence into another main private residence within 2 years. This exemption may be apportioned if only part of the proceeds of sale are duly re-invested.

Entities (IS)

Realised gains are essentially taxable as part of general profit. In respect of real property only (i.e. not other types of asset), some actualisation of base cost - designed to correct for monetary inflation - is provided by the application of a coefficient, the calculation of which is wildly complex and depends in part on the taxpayer company's financial position as shown in the accounts.

Tax on Realised Gain (Non-Residents)

General (IRNR)

1. Where Spanish real property is transferred (by way of sale or otherwise) by a non-resident (individual or entity), the purchaser must withhold 5% of the price paid, on account of the vendor's potential liability to tax on realised gain (irrespective of whether a gain or a loss is to be realised). The 5% must be paid over to Hacienda (Spain's fiscal authority) and the receipt passed to the vendor for inclusion in his tax declaration (whether to pay the additional tax or recover some or all of the retention). If purchaser fails to retain, the

property itself (now property of the purchaser) is charged with the retention due and may be auctioned to enforce payment of the retention by the purchaser.

Note: If the vendor is an individual (i.e. not an entity) and the property transferred had been owned by him for ten years prior to 31st December 1996, no retention need be made.

2. Losses may not be offset against gains, whether in the same or a later year.
3. Both entities and individuals follow the rules (given further above) for resident individuals, except that:
 - the benefit of the transitional regime is not available to entities, and
 - gains are taxed at a flat rate of 35%, whether the taxpayer be individual or entity
 - the age and re-investment exemptions are not available.
4. **EU residents:** Normally an individual or company resident in the EU but without permanent establishment in Spain, nor operating through an offshore company, is not taxable in Spain on gains arising from the alienation of Spanish shares and financial instruments including state-issued bonds (other than those of a company whose principal activity is directly or indirectly in Spanish-sited real property). This exemption is not available where during the 12 months preceding the alienation, the taxpayer (and associated persons, such as family members) owned a participation amounting to 25% or more.

Wealth Tax (applicable to individuals only)

IP (*Impuesto sobre el Patrimonio*)

Tax liability:

- (i) On individuals resident in Spain whose assets exceed ptas 18 million.
- (ii) On non-residents with assets in Spain (the ptas 18m exemption is not available for non-residents).

Assessment date: 31st December annually.

Basis of assessment:

Residents are taxable on the net value of worldwide assets; **non-residents** on the net value of assets sited in Spain.

Special valuation rules apply, which generally result in a below-market valuation of assets.

Wealth Tax Rates

Band thresholds ptas	Tax rate on band %	Cumulative tax ptas
0	0.2	55,616
27,808,000	0.3	139,037
55,615,000	0.5	417,107
111,229,000	0.9	1,418,168
222,458,000	1.3	4,310,122
444,916,000	1.7	11,873,694
889,832,000	2.1	30,560,166
1,779,664,000	2.5	onwards

Wealth Tax Allowance

Ptas 18,000,000 for Spanish resident taxpayers only.

Simplified Declaration basis available for non-residents who own a single dwelling in Spain (includes both wealth tax and income tax in respect of the 2% deemed income from property held for own use – see above).

Inheritances and Gifts Tax (applicable to individuals only)

ISD (*Impuesto sobre Sucesiones y Donaciones*)

Tax liability: (*Note – taxable person is the recipient*)

- (i) Spanish resident individuals are liable on receipt of any asset wherever situated whether by death of donor or lifetime gift. Legal entities are liable to corporation tax (IS) or IRNR on receipt of such gift or legacy.
- (ii) Non-residents are liable on receipt of any asset situated in Spain.

Tax is payable: (by the **recipient**)

Within 6 months of death of the donor, or within 30 days following the transfer of lifetime gift. There are some provisions for deferred and schedular payment in certain circumstances.

Assessment of tax:

The tax is assessed on the value of the net amount received and accrues from the date of death, or the date of transfer of the gift.

Tax payable:

The calculation of the tax payable is dependent upon the net value of the transfer, the degree of kinship between transferor and transferee, and the pre-existing net worth of the transferee.

Three steps are involved in this process:

- (i) Ascertain into which kinship group the taxpayer falls, and what allowance (if any) is available. The following table gives the outline details

Kinship Group	Those Included	Allowance (DEATH ONLY)
I	direct descendants under 21 yrs	ptas 2,655,000 plus pts 664,000 for each year under 21 yrs of age maximum allowance of ptas 7,963,000
II	direct descendants over 21 yrs, spouse, ascendants	2,655,000
III	other relatives, out to collateral second degree (e.g.: brother, uncle, nephew)	1,330,000
IV	more remote family, unrelated persons (including common-law spouses)	nil

- (ii) The initial tax figure is calculated by applying the tax-rates below to the net value of receipt, less any allowances and/or reliefs due.

Band up to.... ptas	Tax Rate on Band %	Cumulative Tax ptas
1,330,000	7.65	101,745
2,659,000	8.50	214,710
3,988,000	9.35	338,972
5,317,000	10.20	474,530
6,646,000	11.05	621,384
7,975,000	11.90	779,535
9,304,000	12.75	948,983
10,633,000	13.60	1,129,727
11,962,000	14.45	1,321,767
13,291,000	15.30	1,525,104
19,926,000	16.15	2,596,657
26,561,000	18.70	3,837,402
39,831,000	21.25	6,657,277
66,351,000	25.50	13,419,877
132,702,000	29.75	33,159,299
excess	34.00	

- (iii) To this initial tax figure a coefficient is applied where degree of kinship and pre-existing wealth are taken into account (see table below). *Note: for non-residents, pre-existing net wealth is calculated with reference to Spanish sited wealth only.*

Pre-existing Net Wealth (ptas m)	Group		
	I and II	III	IV
0 - 67	1.0000	1.5882	2.0000
67 - 334	1.0500	1.6676	2.1000
334 - 669	1.1000	1.7471	2.2000
669 (+)	1.2000	1.9059	2.4000

Inheritance and Gifts Tax allowances

There are no allowances on lifetime gifts.

Allowances for transfers upon death:

- see first table above.

Reliefs for family home and business (introduced with effect from 9th September 1996)

95% of the net value may be deducted in respect of inheritances of a deceased's personal business, and of his habitual dwelling when the heir or legatee is his spouse or children (or in the absence thereof, parents or siblings, subject to certain conditions and rules). The heir/legatee must maintain ownership for a period of 10 years following acquisition, failing which tax on the relieved percentage is due, subject to a tapering relief.

Tax on Land Title (applicable to individuals and to legal entities)
popularly called Plusvalía (*Impuesto sobre el Incremento en el Valor de Terrenos de Naturaleza Urbana*)

Tax liability:

- (i) On any individual or legal entity, resident or non-resident, who owns land, whenever there is a change of title to the land.
- (ii) Legal entities may be charged every 10 years if there is no change of title to the land.

Tax is payable:

The town hall (*ayuntamiento*) determines the payment date on making an assessment.

Assessment of tax:

The tax is assessed on the catastral (quasi-rateable) value of the land, at rates in the range 2% to 3.7% depending upon the population size of the municipality in which the land is sited, and the number of years since the last assessment.

Indirect Taxation

Value Added Tax

IVA (Impuesto sobre el Valor Añadido)

Since 1st January 1995, the standard rate is 16%. The reduced and super-reduced rates are 7% and 4% respectively.

Compliance and Administration

Tax year: 1st January to 31st December.

Spain's is a self assessment regime. Taxpayers are required to report, and to calculate and pay, any tax due within the time limits established by law. Forms for this purpose must be purchased from inter alia local tax offices (although internet reporting has recently been introduced). Penalties and interest are charged for late or non-compliance.

The tax authority is prohibited from making assessments and seeking payments of tax where a period of 4 years has elapsed counting from the end of term provided for making declarations. There are many opportunities for the tax authority to interrupt this proscription period and effectively stop the clock (and penalise attempts to abuse the provision).

The tax authority may re-assess tax due, including making re-valuations, at any time within four years following the due reporting date. Penalties and interest may be applied to the unpaid portion of such reassessments. Reassessments may be appealed.

In general, all non-residents (individuals and legal entities) with any form of economic interest in Spain must appoint a **fiscal representative** and obtain a **fiscal identity number**. There are significant penalties for failing to appoint a fiscal representative where required to do so.