a guide to business in Spain

ICEX
Instituto Español de Comercio Exterior
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This guide is correct to the best of our knowledge and belief at the time of going to press. It is, however, written as a general guide so it is recommended that specific professional advice be sought before any action is taken, and therefore no responsibility whatsoever is assumed for the contents, including opinions, contained in this guide or for any actions based on such contents.

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### Spain: a profile

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</table>
Spain is, at the beginning of the twenty-first century, one of the world’s most developed countries, with a very important role in the international political and economic arenas. The country has well proved its capacity to effectively translate consistent economic growth into significant investments, including communication networks comprising thousands of kilometers of highways, high-speed train services and satellite facilities. This capacity and the constant effort made to ensure the competitiveness of its economic structure have enabled Spain to be placed among the world’s main economic players.

Spain’s leading role within the EU was particularly patent in 2002 during which year Spain held for the third time the Presidency of the European Union. The process of development and enlargement of the EU has led to the recent decision of including ten new countries in the Union, the biggest enlargement ever in terms of scope and diversity. This enlargement will boost economic growth in Spain, therefore enhancing the opportunities of the Spanish market.

The single currency introduced in 2002 in twelve countries of the EU, the Euro Zone, has proved to be a success. The Euro Zone is a monetary zone comparable to the United States and a consolidated, tariff-free market of more than 379 million consumers. With the euro, the opportunities of growth and development for Spain have been further increased.

The effective economic performance of Spain is the result of the legislative reforms undertaken and of the heavy investments made by Spanish enterprises to ensure competitiveness, develop foreign networks and join multinational projects.
II. The country, its people and its institutions

I. Geography, climate and living conditions

The Kingdom of Spain occupies an area of 506,013 square kilometers in the southwest of Europe, and is the second largest country in the EU. The territory of Spain covers most of the Iberian Peninsula, which it shares with Portugal, and also includes the Balearic Islands in the Mediterranean, the Canary Islands in the Atlantic Ocean, the North African cities of Ceuta and Melilla and some surrounding rocky islands.

Despite the differences among the various regions of Spain, the country can be said to have mainly a typical Mediterranean climate. The weather in the northern coastal region (looking onto the Atlantic and the Bay of Biscay) is mild and generally rainy throughout the year, with temperatures neither very low in the winter nor very high in the summer. The climate on the Mediterranean coastline, including the Balearic Islands, Ceuta and Melilla, is mild in the winter and hot and dry in the summer. The most extreme differences occur in the interior of the Peninsula, with a continental climate, with cold winters and hot summers. The Canary Islands have a climate of their own, with temperatures constantly around 20 Celsius degrees and only minor variations in temperature between seasons or between day and night.

Spain has an excellent quality of life and is very open to foreigners. Over four thousand kilometers of beaches, abundant sporting facilities and events and social opportunities are crowned by the diversity of the country’s cultural heritage as a crossroads of civilizations (Celts, Romans, Visigoths, Arabs, Jews, etc.).

2. Population and human resources

The estimated population of Spain in 2001 was 40.847 million people, with a population density of nearly 81 inhabitants per square kilometer. Spain is a markedly urban society (see Table 1), as evidenced by the fact that more than 34% of the population lives in the capitals of the provinces of Spain.

<table>
<thead>
<tr>
<th>The biggest cities in Spain*</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madrid</td>
<td>2,938,723</td>
</tr>
<tr>
<td>Barcelona</td>
<td>1,503,884</td>
</tr>
<tr>
<td>Valencia</td>
<td>738,441</td>
</tr>
<tr>
<td>Seville</td>
<td>684,633</td>
</tr>
<tr>
<td>Zaragoza</td>
<td>614,905</td>
</tr>
<tr>
<td>Malaga</td>
<td>524,414</td>
</tr>
<tr>
<td>Murcia</td>
<td>370,745</td>
</tr>
<tr>
<td>Las Palmas de Gran Canaria</td>
<td>354,863</td>
</tr>
<tr>
<td>Bilbao</td>
<td>349,972</td>
</tr>
</tbody>
</table>

* Figures refer only to the municipal district of each city. Source: Revised Census of registered population in Spanish cities as of November 1, 2001. Instituto Nacional de Estadística (National Statistics Institute).

The official national language is Spanish, which is used jointly with other official regional languages (Catalan, Basque, Galician and Valencian) in specific Autonomous Communities. Education is compulsory until the age of 16 and English is the main foreign language studied at school.

Compared with other OECD countries, Spain’s population is relatively young: approximately 21% are under 19 years old, 62% are between 19 and 65 years old, and only 17% are over 65 according to year 2001 figures.

Spain has a labor force of around 18.5 million people, representing 54% of the country’s population over 16 years old. There are
fewer women in the labor force in Spain in comparison with the rest of the European countries (33.27% of the Spanish working population are women), although these figures are increasing at a fast rate.

The working population is generally middle-aged. Additionally, as seen in Table 2 below, Spain is also experiencing in recent years a relevant inflow of immigrants which is expected to lower the work population’s age in coming years.

The structure of the labor force by economic sector has also changed significantly in recent years, with a notable increase in the number of those employed in the services sector and a decrease in the number of farmworkers (see Table 3 and Chart 1).

### Table 2
**Foreigners resident in Spain by continent of origin**

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europe</td>
<td>330,528</td>
<td>353,556</td>
<td>361,437</td>
<td>414,555</td>
</tr>
<tr>
<td>North and Center America</td>
<td>62,522</td>
<td>69,524</td>
<td>69,434</td>
<td>75,592</td>
</tr>
<tr>
<td>South America</td>
<td>84,678</td>
<td>97,185</td>
<td>130,530</td>
<td>223,206</td>
</tr>
<tr>
<td>Asia</td>
<td>60,714</td>
<td>66,340</td>
<td>71,015</td>
<td>89,519</td>
</tr>
<tr>
<td>Africa</td>
<td>179,487</td>
<td>213,012</td>
<td>261,385</td>
<td>304,149</td>
</tr>
<tr>
<td>Oceania</td>
<td>1,023</td>
<td>1,013</td>
<td>902</td>
<td>944</td>
</tr>
<tr>
<td>Unknown nationality</td>
<td>695</td>
<td>699</td>
<td>1,017</td>
<td>1,095</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>719,647</strong></td>
<td><strong>801,329</strong></td>
<td><strong>895,720</strong></td>
<td><strong>1,109,060</strong></td>
</tr>
</tbody>
</table>

Source: Instituto Nacional de Estadística (National Statistic Institute)

### Chart 1
**Labor force structure by economic sector in 2002**

- Agriculture: 12%
- Industry: 62%
- Construction: 6%
- Services: 20%

Source: Instituto Nacional de Estadística (National Statistic Institute)
The labor force is very qualified, productive and capable of adapting to technological changes, productivity growth being as a consequence, among the highest in Europe.

Lastly, in line with the existing commitment within the EU to foster employment, since the mid-nineties the Government has implemented wide-ranging reforms of the labor market regulations, introducing a high degree of flexibility in the use of the labor force by companies. The success of the reforms undertaken is attested by the fact that on 2001 the percentage of job creation in Spain in relation to the previous year was seven times higher that the percentage of the Euro Zone.

### 3. Political institutions

Spain is a parliamentary monarchy. The King is the Head of State; his primary mission is to arbitrate and moderate the regular functioning of the country’s institutions in accordance with the Constitution. He also formally ratifies the appointment or designation of the highest holders of public office in the legislative, executive and judicial branches.

The Constitution of 1978 enshrined the fundamental civil rights and public freedoms and assigned legislative power to the “Cortes Generales” (Parliament), executive power to the Government of the nation, and judicial powers to independent judges and magistrates.

The responsibility for enacting laws is entrusted to the “Cortes Generales”, comprising the “Congreso de los Diputados” (Lower House of Parliament) and the “Senado” (Senate), the members of which are elected by universal suffrage every four years.

The “Cortes Generales” exercise the legislative power of the nation, approve the annual State budgets, control the actions of the Government and ratify international treaties.

The Government is headed by the “Presidente del Gobierno” (President of the Government) who is elected by the “Cortes Generales” and is, in turn, in charge of electing the members of the “Consejo de Ministros” (Council of Ministers).

The members of the Council of Ministers are appointed and removed by the President of the Government at his or her discretion.

For administrative purposes, Spain is organised into 17 Autonomous Communities each containing generally one or more provinces, plus the Autonomous Cities of Ceuta and Melilla in Northern Africa; the total number of provinces is 50.
Each Autonomous Community exercises the powers assigned to it by the Constitution as specified in its "Statute of Autonomy". These Statutes also stipulate the institutional organization of the Community concerned, consisting generally of: a legislative assembly elected by universal suffrage, which enacts legislation applicable in the Community; a Government with executive and administrative functions, headed by a President elected by the Assembly, who is the Community’s supreme representative; and a Superior Court of Justice, in which judicial power in the Community’s territory is vested. A Delegate appointed by the Central Government directs the Administration of the State in the Autonomous Community, and co-ordinates it with the Community’s administration.

The Autonomous Communities are financially autonomous and can share in the revenues collected under central taxes or can levy their own taxes. The Autonomous Communities also receive allocations from the general State budgets.

As a result of the structure above described Spain has become one of the most decentralized countries in Europe.
Spain became a full member of the then European Economic Community seventeen years ago. Therefore, EU legislation is fully applicable in Spain. In this connection and according to the nineteenth annual report of the European Commission, Spain and Denmark are the only countries in the EU that comply with the objectives established by the European Council regarding the number of Directives implemented in national law.

A major impact of European Union membership for Spain, and for the other Member States, came in the mid-nineties with the advent of the European Single Market and the European Economic Area, which created a genuine barrier-free trading space. Since then, the EU has advanced significantly in the process of unification by strengthening the political and social ties among its citizens, and Spain, throughout all this process, has always stood out as one of the leaders in the implementation of liberalization measures.

Spain has a strong responsibility in the EU, evidenced by the fact that it has become the fifth country in terms of voting power in the Council of Ministers with 27 votes, immediately following Germany, France, Italy and the United Kingdom, each with 29 votes.

During 2002, it held its third Presidency of the Council of the European Union with the overall intention of culminating the integration process and the historical changes which began over a decade ago.

The introduction of the euro (January 1st, 2002) initially in twelve countries marked the beginning of the Spanish Presidency, representing the culmination of a lengthy process and a whole deal of growth opportunities for the Spanish and European markets.

With the euro in the European Union, a monetary zone has been established to form the world’s number one trading power, triggering the integration of the financial markets and economic policies of the Member States adopting it. Such changes have also fostered the coordination and integration of the tax systems of the Euro Zone Member States, thus further increasing the stability of the EU.

The euro has yielded clear results at the international level, promoting the visibility of the Euro Zone both in international and financial fora (the G-7 group meetings) and in multilateral organizations. The economic and commercial stability provided by the euro has further bolstered Spain’s current economic growth along with additional international political presence.

The EU approved the joining of 10 new countries for May 1, 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia). Such enlargement of the UE poses a unique challenge since it is without precedent in terms of scope and diversity: an extension of land area of 23% and a population increase of 75 million people.

Spain is the EU Member State that in the last years has received the most EU structural and cohesion funds —used to finance infrastructure and development projects. In fact, Spain is expected to receive in total around US$ 46 billion in EU structural funds in the 1999-2007 period. This implies a 13% growth from the previous term. With these funds, the Government plans to encourage actions undertaken in this area as well as the cooperation of private initiatives financing the infrastructures mentioned.
Over the last decade Spain has undergone a process of modernization that has included an extensive renewal of its infrastructure.

The Government plans to continue investing heavily in the future. This is reflected in the Overall Infrastructure Plan for 1993-2007, which provided for investment totalling US$133 billion. Intercity transport is the main item in the Infrastructure Plan, followed by urban transport. There will also be accompanying measures in hydraulic works and environmental infrastructure.

The motorway network, totalling nearly 10,500 km, has more than tripled in length since 1982 and has undergone continuous renovation to enhance efficiency and convenience. The Government investment plan will result in over 13,000 km of motorway network for year 2010, with total investment expected to surpass 25 billion euros between 2000 and 2006, thus becoming one of the most modern networks in the world.

As far as rail transport is concerned, Spain has a network of over 15,000 km of track, and in 1992 introduced a 471-km high-speed train line from Madrid to Seville. High-speed train lines have become a priority for the Government infrastructure plans (the foreseen network of high-speed trains will total 7,200 km), and as a consequence of them, by December 2004, Madrid will be connected by high-speed train to the French border via Zaragoza (Aragón) and Barcelona (Catalonia) and additionally via Vitoria and Irún (Basque Country). In fact, the section Madrid-Zaragoza-Lérida will be opened during 2003, and these two cities will be only 35 minutes and 1 hour and 55 away from Madrid, respectively. Furthermore, by the year 2005 Madrid will be connected to the Mediterranean coast via Valencia (the Government has announced that this section will be opened by 2006). In connection with the Northern route (Madrid-Valladolid-La Coruña), completion of works for the Madrid-Segovia-Valladolid section is foreseen for 2007. The high-speed train lines have recently been further extended by 122 kilometers, which will soon connect the cities of Córdoba and Málaga, providing the South with an extensive high-speed network. Additionally, high-speed lines are being designed in order to connect Portugal and the remaining major Spanish cities. The investment forecast for railroads totals 40.9 billion euros between 2000 and 2007.

There are air transport services between the main cities and the approximately 250 airlines with scheduled flights operating out of the country’s 33 international airports ensure complete service abroad. Spain is an important intermediate stop in the lines between Latin America and Europe and lies in a crucial position in the network to America and Africa from Europe. Spain also has excellent sea communications, with 44 international ports on the Atlantic and Mediterranean coasts.

Spain is also well equipped with industrial land and technological and industrial infrastructure. In the last few years, technology parks have proliferated in the main industrial areas and near universities and R&D centers. There are currently 20 technology parks (12 fully operational, 8 in a development stage). In these technology parks there are 874 companies, 88 R&D centers and 12 incubators operating. R&D expenditure has risen significantly in recent years. The fourth national R&D Plan (2000-2003) forecasts that R&D expenditure in the following term will amount to 1.3% of GDP.
Lastly, Spain has a good telecommunications network. In addition to the extensive fiber optic network which covers almost all the territory, Spain manages one of the largest international undersea cable networks and has satellite connections with the five continents. In this respect, it is worthwhile mentioning the strong liberalization process undertaken in most industries, including the telecommunications sector, well within the European schedule. Among other benefits, this implies a more competitive and cost effective offering of this type of services, essential for an appropriate economic development.
Spain’s GDP was increased by 2.7% in 2001 totalling around US$ 560 billion that year, making it the eighth largest in the OECD. Growth of the GDP for 2002 reached 2%.

The structure of the Spanish economy is that of an industrialized country, with the services sector being the main contributor to GDP, followed by industry. These two sectors represent almost 90% of Spain’s GDP with agriculture’s share today representing less than 5% of GDP, and declining sharply as a result of the country’s intense economic growth (see Table 4).

Spain is a fairly dynamic country, and has consistently achieved high economic growth rates, clearly above the average for other industrialized countries. The growth in Spain in 2001 and 2002 was much greater than the aggregate growth of the Euro Zone (see Chart 2).

### Table 4
Structure of GDP
(% of total, in 1995 constant pesetas)

<table>
<thead>
<tr>
<th>Sector</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture and fishery</td>
<td>4.8</td>
<td>4.7</td>
<td>4.3</td>
<td>4.5</td>
<td>4.3</td>
<td>4.1</td>
</tr>
<tr>
<td>Industry</td>
<td>29.7</td>
<td>30.2</td>
<td>29.6</td>
<td>24.1</td>
<td>23.1</td>
<td>23.4</td>
</tr>
<tr>
<td>Construction</td>
<td>6.9</td>
<td>7.0</td>
<td>7.1</td>
<td>8.1</td>
<td>8.5</td>
<td>8.3</td>
</tr>
<tr>
<td>Services</td>
<td>58.6</td>
<td>58.1</td>
<td>59.0</td>
<td>63.3</td>
<td>64.1</td>
<td>64.2</td>
</tr>
</tbody>
</table>

* January-June.
Source: Instituto Nacional de Estadística (National Statistics Institute).

### Chart 2
GDP growth
(% growth rate, in constant 1995 prices)

Source: European Central Bank and Banco de España (Bank of Spain).
The prospects for the coming year, taking into account the international situation, which has lowered all of the perspectives, are that Spain will have growth rates of nearly 3% in 2003, once again exceeding the average for the EU (see Table 5). As a matter of fact, projections released by the OECD indicate that it shall start to recover by 2003, to achieve real GDP growth rates over 3% in 2004.

Inflation in Spain has fallen steadily since the late 1980’s. The average inflation rate for 1987 through 1992 was 5.8%. The rate of inflation was kept under 5% for the first time in 1993, and has been further reduced in subsequent years. Year 2002 ended with an inflation of 4%. Among others, the reasons for this small increase are the result of the crude price escalation initiated at the start of the year, adverse weather conditions affecting fresh products like fruits and vegetables, an increase in certain taxes at the year’s outset, the entry into circulation of euro coins and notes and the fact that Spain is the only country in the EU which still maintains important real growth rates.

Table 5
Growth and inflation forecasts for OECD countries
(Percentages)

<table>
<thead>
<tr>
<th></th>
<th>Real GDP Growth</th>
<th>Inflation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002</td>
<td>2003</td>
</tr>
<tr>
<td><strong>EU countries</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>1.2</td>
<td>2.8</td>
</tr>
<tr>
<td>Belgium</td>
<td>1.1</td>
<td>2.7</td>
</tr>
<tr>
<td>Denmark</td>
<td>1.9</td>
<td>2.2</td>
</tr>
<tr>
<td>Finland</td>
<td>1.5</td>
<td>3.4</td>
</tr>
<tr>
<td>France</td>
<td>1.4</td>
<td>3.0</td>
</tr>
<tr>
<td>Germany</td>
<td>0.7</td>
<td>2.5</td>
</tr>
<tr>
<td>Greece</td>
<td>3.5</td>
<td>4.2</td>
</tr>
<tr>
<td>Italy</td>
<td>1.5</td>
<td>2.8</td>
</tr>
<tr>
<td>Ireland</td>
<td>3.5</td>
<td>6.3</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2.7</td>
<td>6.8</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1.4</td>
<td>2.6</td>
</tr>
<tr>
<td>Portugal</td>
<td>1.7</td>
<td>2.7</td>
</tr>
<tr>
<td>Spain</td>
<td>2.1</td>
<td>3.3</td>
</tr>
<tr>
<td>Sweden</td>
<td>2.1</td>
<td>3.2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1.9</td>
<td>2.8</td>
</tr>
<tr>
<td><strong>Other countries</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td>2.5</td>
<td>3.5</td>
</tr>
<tr>
<td>Japan</td>
<td>-0.7</td>
<td>0.3</td>
</tr>
<tr>
<td><strong>Total EU</strong></td>
<td>1.5</td>
<td>2.8</td>
</tr>
<tr>
<td><strong>Total Euro Zone</strong></td>
<td>1.3</td>
<td>2.9</td>
</tr>
<tr>
<td><strong>Total OECD</strong></td>
<td>1.8</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Also, in 1999 Spain engaged in an earnest effort to reduce the budget deficit, including a successful program of major privatizations and of contention of public expenditure. The actions taken by the Government have once again proved the flexibility of the Spanish economy as it has been recently confirmed that on year 2001 the Spanish public deficit was eradicated. According to Government forecasts, public deficit for 2002 will only be 0.1%.

Very noteworthy is the impressive reduction in the official interest rates in Spain from 10% in 1993 to the current 2.75%.
The growth of the Spanish economy in recent years has been driven by a strong demand and a substantial expansion of production in the context of an increasingly open economy.

Today Spain has a domestic market of over 40 million people with a per capita income for 2001 of roughly 15,000 US$, and an additional injection of demand coming from the 75.7 million international visitors every year. The close links (economic, cultural, political) with Latin America and North Africa and the obvious advantages of using Spain as a gateway to those countries are worthy of mention.

Table 6 reflects the evolution of basic production and demand components since 1997. Recent indicators show a sustained recovery of industrial production. As regards demand, the slight slowdown corresponds to a renewed uptrend in personal savings, as observed in 2001 after several years of constant decline. In general, the potential for growth is still very high in many industrial sectors due to the relatively lower level of per capita consumption as compared to other European countries. This is the case, for instance, in the telecommunications and, among others, environmental equipment industries.

### Table 6

**Growth of production and demand components**

(Percentages)

<table>
<thead>
<tr>
<th></th>
<th>1997</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Production components</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture and fishery</td>
<td>2.3</td>
<td>-3.1</td>
<td>1.5</td>
<td>-3.1</td>
<td>-3.1</td>
</tr>
<tr>
<td>Industry</td>
<td>5.2</td>
<td>3.0</td>
<td>4.0</td>
<td>1.2</td>
<td>-2.2</td>
</tr>
<tr>
<td>Energy **</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td>**</td>
</tr>
<tr>
<td>Construction</td>
<td>2.8</td>
<td>8.7</td>
<td>6.3</td>
<td>5.4</td>
<td>4.7</td>
</tr>
<tr>
<td>Services</td>
<td>3.4</td>
<td>4.0</td>
<td>3.9</td>
<td>3.2</td>
<td>2.7</td>
</tr>
<tr>
<td><strong>Demand components</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private consumption</td>
<td>3.1</td>
<td>4.7</td>
<td>4.0</td>
<td>2.5</td>
<td>2.0</td>
</tr>
<tr>
<td>Public consumption</td>
<td>2.9</td>
<td>2.9</td>
<td>4.0</td>
<td>3.1</td>
<td>1.7</td>
</tr>
<tr>
<td>Gross fixed capital formation</td>
<td>5.0</td>
<td>8.9</td>
<td>5.7</td>
<td>3.2</td>
<td>1.2</td>
</tr>
<tr>
<td>Domestic demand</td>
<td>3.4</td>
<td>5.5</td>
<td>4.3</td>
<td>2.8</td>
<td>1.9</td>
</tr>
<tr>
<td>Exports of goods and services</td>
<td>15.3</td>
<td>6.6</td>
<td>9.6</td>
<td>3.4</td>
<td>-2.0</td>
</tr>
<tr>
<td>Imports of goods and services</td>
<td>13.3</td>
<td>11.9</td>
<td>9.8</td>
<td>3.5</td>
<td>-2.1</td>
</tr>
</tbody>
</table>

* January-June.
** For these years, Industry and Energy were added under the Industry heading.
Source: Instituto Nacional de Estadística (National Statistics Institute).
VII. Foreign trade and investment

In recent years, Spain’s exports and imports have grown rapidly. As can be seen in Table 7, the basic features of the country’s balance of payments today include a trade deficit which is being completely financed by the surplus in the services account (driven by tourism) and in the capital and financial accounts. However, it should be noted that despite the strong volume of foreign direct investment that Spain receives, Spanish direct investment abroad is since 1997 larger than foreign direct investment in Spain.

### Table 7
Spain’s balance of payments
(Millions of euros)

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Current account</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade Balance</td>
<td>-18,959</td>
<td>-16,947</td>
<td>-7,161</td>
</tr>
<tr>
<td>Services Balance</td>
<td>-35,643</td>
<td>-35,265</td>
<td>-14,346</td>
</tr>
<tr>
<td>Income</td>
<td>24,216</td>
<td>27,138</td>
<td>11,218</td>
</tr>
<tr>
<td>Net Current Transfers</td>
<td>1,523</td>
<td>1,836</td>
<td>1,660</td>
</tr>
<tr>
<td><strong>II. Capital Account</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>5,217</td>
<td>5,556</td>
<td>3,982</td>
</tr>
<tr>
<td><strong>III. Financial Account</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total (excluding Bank of Spain)</td>
<td>21,509</td>
<td>18,827</td>
<td>9,207</td>
</tr>
<tr>
<td>Direct investment</td>
<td>27,652</td>
<td>1,352</td>
<td>6,376</td>
</tr>
<tr>
<td>Portfolio investment</td>
<td>-18,561</td>
<td>-6,732</td>
<td>2,612</td>
</tr>
<tr>
<td>Other investment</td>
<td>-2,919</td>
<td>-17,758</td>
<td>-6,575</td>
</tr>
<tr>
<td>Financial derivatives</td>
<td>46,961</td>
<td>26,431</td>
<td>12,623</td>
</tr>
<tr>
<td>Bank of Spain</td>
<td>2,172</td>
<td>-589</td>
<td>-2,285</td>
</tr>
<tr>
<td>Reserves</td>
<td>3,302</td>
<td>1,581</td>
<td>-414</td>
</tr>
<tr>
<td>Claims with the Eurosystem</td>
<td>-9,250</td>
<td>16,122</td>
<td>3,151</td>
</tr>
<tr>
<td>Other net assets</td>
<td>-195</td>
<td>-228</td>
<td>95</td>
</tr>
<tr>
<td><strong>IV. Net errors &amp; omissions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-7,768</td>
<td>-7,436</td>
<td>-6,028</td>
</tr>
</tbody>
</table>

*January-June.

N.B.: A positive sign in the current and capital accounts means a surplus (receipts greater than payments) and represents a net loan from Spain to the rest of the world (increase in assets or decrease in liabilities), whereas in the financial account a positive sign means a net inflow of capital and represents a net loan from the rest of the world to Spain. A negative sign in reserves means an increase.

Source: Banco de España (Bank of Spain).

The main products traded by Spain in 2002 are shown in Table 8. The sophistication of the main products exported clearly shows the degree of technology and capability of Spanish economy.
In 2001, Spain’s main trading partners were EU countries, with 70.9% of total exports and 63.2% of total imports. Latin American countries represented 6% of Spanish exports and 4.1% of imports, the U.S. accounted for 4.84% of exports and 5.20% of imports and Japan accounted for 0.9% of exports and 2.93% of imports.

Perhaps the most striking feature of the Spanish balance of payments is the net inflow of foreign investment, consistently received by Spain since 1996, with the exception of 2001 and 2002, due to the international crisis (see Chart 3).

### Table 8
**Distribution of exports and imports 2002***
(Percentages)

<table>
<thead>
<tr>
<th>Exports</th>
<th>Imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport vehicles</td>
<td>Transport vehicles</td>
</tr>
<tr>
<td>23.0</td>
<td>16.2</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>Machinery and equipment</td>
</tr>
<tr>
<td>8.2</td>
<td>12.0</td>
</tr>
<tr>
<td>Electronic machinery</td>
<td>Fuels and mineral oils</td>
</tr>
<tr>
<td>6.8</td>
<td>11.0</td>
</tr>
<tr>
<td>Plastics and plastic products</td>
<td>Electronic machinery</td>
</tr>
<tr>
<td>3.5</td>
<td>8.4</td>
</tr>
<tr>
<td>Fresh fruits</td>
<td>Plastics and plastic products</td>
</tr>
<tr>
<td>3.0</td>
<td>3.3</td>
</tr>
<tr>
<td>Fresh vegetables</td>
<td>Pharmaceutical products</td>
</tr>
<tr>
<td>2.5</td>
<td>3.1</td>
</tr>
<tr>
<td>Pharmaceutical products</td>
<td>Organic chemical products</td>
</tr>
<tr>
<td>2.4</td>
<td>3.0</td>
</tr>
<tr>
<td>Cast iron and steel</td>
<td>Cast iron and steel</td>
</tr>
<tr>
<td>2.3</td>
<td>3.0</td>
</tr>
<tr>
<td>Fuels and mineral oils</td>
<td>Optical machinery</td>
</tr>
<tr>
<td>2.3</td>
<td>2.4</td>
</tr>
<tr>
<td>Organic chemical products</td>
<td>Fishery products</td>
</tr>
<tr>
<td>2.0</td>
<td>2.2</td>
</tr>
<tr>
<td>Cast iron and steel products</td>
<td>Wood and cardboard products</td>
</tr>
<tr>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Ceramic products</td>
<td>Clothing products</td>
</tr>
<tr>
<td>2.0</td>
<td>1.6</td>
</tr>
</tbody>
</table>

* January-September.
Source: Ministry of Economy.

### Chart 3
**Foreign investment in Spain (1999-2002)**
(Millions of euros)

* January-August.
Source: Banco de España (Bank of Spain).
According to the *Annual World Investment Report* released by the United Nations Conference on Trade and Development, global foreign direct investment declined sharply in 2001 (59% in developed countries). Spain did not escape this international trend, but it is one of the EU countries with lowest decreases.

Foreign direct investment is mainly routed to services (77.5% between 1997 and 2000) and industry (22.5%). The industrial sectors that received most investment were, among others, the automobile, chemicals, iron and steel, food and beverages and electric equipment industries. Among services, the financial and insurance sectors are predominant.

Electronics, aeronautics, environment, healthcare and leisure also offer investment opportunities for foreign investors.

Lastly, Table 9 shows Spain’s integration in the world’s global economy and the openness of its structures, reflecting the relevancy of the direct investment abroad performed in the last years by Spanish companies and entrepreneurs. Particularly noteworthy is the substantial investment in Latin America performed by Spain in the 1996–2000 period which led Spain to be ranked as the world’s second largest investor in the region, and the first in countries such as Peru, Brazil, Venezuela, Dominican Republic, Cuba and Chile.

### Table 9

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002*</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>11,340</td>
<td>20,111</td>
<td>25,688</td>
<td>3,444</td>
</tr>
<tr>
<td>US</td>
<td>-127</td>
<td>7,156</td>
<td>1,346</td>
<td>617</td>
</tr>
<tr>
<td>Latin America</td>
<td>27,629</td>
<td>20,490</td>
<td>3,395</td>
<td>1,618</td>
</tr>
</tbody>
</table>

* January - June.

Source: Dirección General de Comercio e Inversiones (General Directorate of Trade and Investments).
I. Introduction 27
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I. Introduction

From the institutional standpoint, a financial system can be defined as the group of entities which generates, gathers, administers and manages saving and investment in a politico-economic system.

Spain has a diversified modern financial system, which is fully integrated with international financial markets.

The system comprises credit, stock and money markets, and specific markets for derivatives (options and futures based on different assets, e.g. a share index called Ibex 35).
II. Financial institutions

The operators in the Spanish financial system can be classified as follows:

• **The central bank:** Bank of Spain

• **Credit institutions:**
  – Spanish and foreign banks
  – Savings banks
  – Credit cooperatives - Rural savings banks

• **Other credit entities:**
  – Credit Financial Establishments (introduced by Law 3/94, implementing the Second EC Directive on banking coordination). These are credit entities specialized in certain asset products – e.g., leasing, financing, mortgage loans, etc.– which cannot take public deposits.
  – Instituto de Crédito Official, ICO (acts as the State’s finance agency and investment bank).

• **Investment institutions:**
  – Collective investment entities:
    - Investment companies dealing in:
      Marketable securities
      Property assets
    - Investment funds:
      Marketable securities
      Property assets
    - Money market assets:
      Mortgage securities
      Pension plans and funds
      Other
    – Venture capital funds and companies
    – Other investment entities

• **Brokers:**
  – Stock market:
    - Stockbroker companies and agencies
  – General:
    - Banks
    - Security management and deposit companies

• **Insurance and reinsurance companies and insurance brokers**

I. Credit institutions

Banks and savings banks are of particular importance in the financial sector in Spain, because of the volume of their business and because they are active in all segments of the economy.

In Spain, since the European System of Central Banks (ESCB) and the European Central Bank were set up, the functions of the Bank of Spain have been redefined. They now consist of participating in the following basic functions attributed to the ESCB:

– Defining and implementing the Euro Zone’s monetary policy, with the aim of maintaining price stability within it.

– Conducting currency exchange operations and holding and managing the Spanish State’s official foreign exchange reserves.

– Promoting the sound working of payment systems in the Euro Zone.

– Issuing legal tender banknotes.

Also, pursuant to its Law of Autonomy, the Bank of Spain will have the following functions:

– Supervising the solvency and behavior of credit institutions and financial markets.
– Promoting the sound working and stability of the financial system and of Spain’s payment systems.
– Preparing and publishing statistics relating to its functions.
– Providing treasury services and acting as a financial agent for government debt.
– Advising the Government and preparing the appropriate reports and studies.

The banks operating in Spain are financial institutions authorized as such which engage in intermediation transactions using funds obtained from customers and provide other services of a financial nature.

At November 10, 2002, there were 84 officially registered Spanish banks, many subsidiaries, branches, representative offices and correspondents abroad. Some 59 foreign banks also have offices in Spain. Of these foreign banks, 46 have their headquarters in another EU Member State.

Savings banks are credit institutions with the same freedom as and full operational equality with the other members of the Spanish financial system. They have the legal form of private foundations and a community-welfare purpose and operate in the open market, although they reinvest a considerable portion of the earnings obtained by them in community welfare work.

These long-standing institutions with deep roots in Spain attract a substantial portion of private savings and their lending business characteristically focuses on the private sector (through mortgage loans, etc.). They are also very active in financing major public works and private-sector projects by subscribing and purchasing fixed-income securities.

The Spanish savings banks are members of the Spanish Confederation of Savings Banks (Confederación Española de Cajas de Ahorro-CECA), a credit institution formed in 1928 to act as the national association and financial institution of the Spanish savings banks and which today groups together 47 confederated savings banks.

In recent years, savings banks and certain other banks have been involved in a major process aimed at optimizing their position vis-à-vis the EU single market for banking services. As part of this, a process of integration took place involving the largest Spanish banks and the creation of two banking groups (SCH and BBVA) on a European scale and with a major presence in Latin America.

In the last two years, the branch networks have evolved differently in each of the banking industries. The banks have reduced the number of branches—to 14,084 branches in the third quarter of 2002, 672 less than in December 2001—whereas savings bank networks have grown by 1.18% through the opening of 350 new branches in the same period.

1 Bank of Spain.
2. Collective investment entities

Prospective investors planning investments at any term on the Spanish money or stock markets can call on the expert services of numerous investment and brokerage entities that ensure ease and flexibility in making their investments, offering risk profiles suitable for each investor’s requirements.

The regulations governing investment entities lay down complete and stringent requirements for financial reporting in this field, and also introduce a favorable tax regime permitting the elimination of additional tax costs that may occur on investing through these institutions.

In general, Spanish collective investment institutions are of two types:

– Financial: Their main activity is the investment in or management of marketable securities.

They include securities investment companies and securities mutual funds, money market mutual funds and other institutions whose purpose is to invest in or manage financial assets.

– Nonfinancial: Their main activity is the exploitation of real estate assets.

They include real estate investment companies and trusts.

The aforementioned tax relief measures have led to a notable increase in the number of these institutions and in the volume of their investments (see Table 1). The soundness of the markets in Spain and of the participating entities –Spain being the seventh European country with money placed in investment funds– is evidenced by the 7,808,095 shareholders and investment institution participants in Spain at October 31, 2002.

However, in the last year the assets of mutual funds have fallen, according to the international tendency, although it is expected that they will experience a gradual recovery based on the favorable performance of equity securities in Spain.

<table>
<thead>
<tr>
<th>Year</th>
<th>Investment Volume (million euros)</th>
<th>Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>6,355</td>
<td>403</td>
</tr>
<tr>
<td>1989</td>
<td>7,062</td>
<td>470</td>
</tr>
<tr>
<td>1990</td>
<td>9,030</td>
<td>550</td>
</tr>
<tr>
<td>1991</td>
<td>25,510</td>
<td>662</td>
</tr>
<tr>
<td>1992</td>
<td>39,831</td>
<td>732</td>
</tr>
<tr>
<td>1993</td>
<td>64,365</td>
<td>822</td>
</tr>
<tr>
<td>1994</td>
<td>69,996</td>
<td>929</td>
</tr>
<tr>
<td>1995</td>
<td>75,791</td>
<td>1,024</td>
</tr>
<tr>
<td>1996</td>
<td>115,642</td>
<td>1,258</td>
</tr>
<tr>
<td>1997</td>
<td>167,267</td>
<td>1,840</td>
</tr>
<tr>
<td>1998</td>
<td>211,903</td>
<td>2,477</td>
</tr>
<tr>
<td>1999</td>
<td>219,453</td>
<td>3,261</td>
</tr>
<tr>
<td>2000</td>
<td>201,507</td>
<td>4,137</td>
</tr>
<tr>
<td>2001</td>
<td>204,458</td>
<td>4,873</td>
</tr>
<tr>
<td>2002*</td>
<td>199,272</td>
<td>5,105</td>
</tr>
</tbody>
</table>

* October.

Source: Inverco and CNMV.

Charts 1 and 2 below show the variations in the aforementioned figures.

---

1 Spanish National Securities Commission (CNMV).

2 October.
3. Credit market

As noted earlier, the Spanish credit market is structured around banks, which attract most savings and use their funds to provide financing for the private sector.

The banks also operate as investors and underwriters in the stock market, and adjust their liquidity by interbank and money market transactions.

The parallel growth in deposits from and lending to the private sector indicates the lack of any serious problems in obtaining business financing.

The liberalization of capital movements in the EU has also made it easier for Spanish companies to obtain financing from abroad.

The regulation of non-mortgage securitization procedures should also be mentioned. These will contribute to furthering the generation of additional resources by credit institutions, enabling them to grant new credit facilities.
4. Stock market

The Spanish stock market consists of the fixed-income and equity markets and the regulated options and futures market (see below).

The issuers are mainly Spanish private companies and banks. However, the shares of some foreign companies are also listed on the Spanish stock exchanges. Certain non-resident entities may also issue bonds denominated in euros (“matador” bonds) in the Spanish market, subject to certain conditions.

Market regulation has established a market based on the British/US model, aimed at protecting small investors and the market itself. A single computerized and centralized continuous stock market (“mercado continuo”) exists, on which “insider trading” is penalized. The obligatory involvement of public authenticating officers in stock market transactions was abolished, and a public agency (the “Comisión Nacional del Mercado de Valores” –CNMV– National Stock Exchange Commission) regulates the system and supervises its satisfactory operation.

The CNMV is the agency entrusted with supervising and inspecting the Spanish stock markets and the activities of all entities operating in them.

The CNMV’s objectives include:

– Overseeing the transparency of the Spanish stock markets and proper price formation.

– Overseeing investor protection.

The CNMV’s action impinges on the companies which issue securities for public offerings, the secondary securities markets and the companies which provide investment services.

Crossed trading on the market is cleared in three days, trading on credit is permitted and new hedging instruments (i.e. index and warrant options) are available. The modern regulations for takeover bids and public offerings should be noted.

In this respect, the Spanish Parliament is currently considering amendments to the legislation on tender offers. These amendments are intended to broaden the protection of small investors by introducing the following changes:

– Companies which have a holding of less than 25%, but which continue to purchase new shares in the market until they have a controlling interest, will be obliged to launch a tender offer.

– It is proposed to eliminate the advantage currently enjoyed by the company launching the first offer, which under current law is the only bidder that can respond to possible competing offers with a higher bid.

Also, 2002 saw the formation of Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A., which groups together the following companies:

– FC & M, Sociedad Rectora del Mercado de Futuros y Opciones sobre Citricos, S.A.

– MEFF-AIAF-SENAF Holding de Mercados Financieros, S.A.

– Servicio de Compensación y Liquidación de Valores, S.A.

The purpose of this holding company is to act as the integrating force behind the various Spanish stock markets and as the key instrument of their international projection.

All these advances have made the securities market in Spain more transparent and safer.

a) Equity market

The activity of the Spanish stock market can be gauged by the trading volume of the Madrid Stock Exchange, which was €106,000 million in 2001, with the number of transactions amounting to 1.89 million.

The equity market capitalization was €525,839 million, which represented a fall of 2.09% with respect to the level in 2000. This means that, despite the situation of the equity markets in recent times, the Madrid market has been that in which the market value of listed companies has fallen the least.

As a result, the Madrid Stock Exchange has retained its position as the fourth European market in terms of trading volume.

Foreign investment also made a significant contribution to growth in the Spanish stock market. As of May 2002, foreign investment amounted to €103,871 million of listed shares, representing an increase of 3.01% with respect to the corresponding period of 2001.

Chart 3 shows the high volume of foreign investment in the Spanish stock market.

As mentioned above, the equity market trend was bearish in 2001 and a leading role was played by the interest rate cuts in the U.S. From February 2001 world stock exchanges began to reflect the unfavorable expectations for U.S. GDP growth and business earnings. Moreover, the uncertainty arising from the September 11 attacks in the U.S. and the deterioration in the major world economies led to considerable declines in all the September stock market indicators, although the share indexes regained some of their accumulated losses in the fourth quarter.

The importance of foreign investment in listed shares, market capitalization and share index variations in the major European stock exchanges is shown in Tables 2 and 3, and Chart 4 below.
Table 2
Foreign investment in shares of listed companies (transactions on the secondary market)
(Millions of euros)

<table>
<thead>
<tr>
<th>Year</th>
<th>Purchases</th>
<th>Sales</th>
<th>Net Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>8,941.42</td>
<td>6,415.29</td>
<td>2,526.13</td>
</tr>
<tr>
<td>1988</td>
<td>6,546.35</td>
<td>5,219.17</td>
<td>1,327.18</td>
</tr>
<tr>
<td>1989</td>
<td>10,194.97</td>
<td>6,011.55</td>
<td>4,183.43</td>
</tr>
<tr>
<td>1990</td>
<td>10,023.94</td>
<td>6,640.99</td>
<td>3,382.95</td>
</tr>
<tr>
<td>1991</td>
<td>9,922.43</td>
<td>8,059.56</td>
<td>1,862.87</td>
</tr>
<tr>
<td>1992</td>
<td>11,026.16</td>
<td>8,877.07</td>
<td>2,149.09</td>
</tr>
<tr>
<td>1993</td>
<td>18,211.90</td>
<td>12,647.96</td>
<td>5,563.95</td>
</tr>
<tr>
<td>1994</td>
<td>20,784.85</td>
<td>20,051.53</td>
<td>733.32</td>
</tr>
<tr>
<td>1995</td>
<td>20,766.93</td>
<td>18,037.82</td>
<td>2,729.11</td>
</tr>
<tr>
<td>1996</td>
<td>30,789.29</td>
<td>31,059.69</td>
<td>-270.40</td>
</tr>
<tr>
<td>1997</td>
<td>61,571.63</td>
<td>62,027.41</td>
<td>-455.78</td>
</tr>
<tr>
<td>1998</td>
<td>115,765.75</td>
<td>110,594.74</td>
<td>5,171.01</td>
</tr>
<tr>
<td>1999</td>
<td>136,165.00</td>
<td>131,825.00</td>
<td>4,340.00</td>
</tr>
<tr>
<td>2000</td>
<td>260,721.60</td>
<td>275,505.66</td>
<td>-14,784.05</td>
</tr>
<tr>
<td>2001</td>
<td>227,730.00</td>
<td>251,070.00</td>
<td>-23,340.00</td>
</tr>
<tr>
<td>2002*</td>
<td>162,750.00</td>
<td>177,810.00</td>
<td>-15,060.00</td>
</tr>
</tbody>
</table>

* Data at August, 2002.
Source: Spanish Stock Market.

Chart 4
Capitalization of shares in the Madrid Stock Exchange (annual evolution)
(Billions of actual euros)

Source: Madrid Stock Market.
Stock market activity is measured by the so-called performance indexes based on share prices as the best indicator of the market price level. Thus, the index represents changes and price fluctuations and the market trend at different points in time.

The IBEX-35 is the Spanish continuous market index. It is prepared in real time and shows the capitalization of the 35 best companies on the electronic stock market. It is an extremely efficient instrument providing information to brokers, as it is an indicator of the shares with greatest liquidity and is not subject to manipulations of any kind. The securities that it should include are reviewed twice a year.

To be included in the index, certain guidelines must be observed such as:

- Trading on the continuous market for at least six months.

- Companies with stock exchange capitalization of less than 0.3% of the average capitalization of the Ibex-35 may not be included.

- Rules on the weighing of companies according to their free float must be observed.

Chart 5 below shows the performance of this index in the last two years.

### Table 3
**Comparative stock exchange index variation**

<table>
<thead>
<tr>
<th>Market</th>
<th>Index Variation (percentages)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>-26.20</td>
</tr>
<tr>
<td>Germany</td>
<td>-19.80</td>
</tr>
<tr>
<td>Spain</td>
<td>-7.80</td>
</tr>
<tr>
<td>France</td>
<td>-22.00</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>-16.20</td>
</tr>
<tr>
<td>USA</td>
<td>-7.10</td>
</tr>
<tr>
<td>Japan</td>
<td>-23.50</td>
</tr>
</tbody>
</table>


Chart 5
**Average value of Ibex-35**

Source: Spanish Stock Market.
b) Options and futures market

The regulated Spanish options and futures market is the MEFF (“Mercado Español de Futuros Financieros”).

MEFF is an official market and therefore entirely regulated, controlled and supervised by the financial authorities (CNMV and the Ministry of Economy) performing the functions for trading and those of clearance and settlement, fully integrated in the electronic market developed for the purpose.

c) Fixed-income market

The fixed-income markets in Spain are characterized by:

– The establishment of a predetermined security redemption plan at the maturity date.
– The yield provided to investors in the form of interest or the difference between the redemption price and the subscription price.

The Spanish market for the trading of fixed-income securities and assets of private companies and private institutions is the AIAF, “Asociación de Intermediarios de Activos Financieros”, which forms a part of the official organized financial market in this country.

The AIAF market has developed swiftly in recent years because of the expansion of fixed-income securities in Spain. It was created in 1987 through an initiative of the Bank of Spain, which wished to put new mechanisms in place to encourage business innovations with funds procured through fixed-income assets.

Subsequently, taking the AIAF as a base, the regulatory and supervisory authorities provided it with the attributes necessary to compete in its surroundings until equating it in legal terms with the financial markets.

Therefore AIAF “Mercado de Renta Fija” can be described as an organized market with ninety-four members, including the leading banks, savings banks and stockbroker companies and agencies in the Spanish financial system.

At October 2001, AIAF held a 60.1% interest in SENAF (“Sistema Electrónico de Negociación de Activos Financieros”), an electronic financial assets trading system created in 1999 by Infomedas (a stockbroker agency acting as a trading platform for the blind market). SENAF was organized as the electronic platform for trading Spanish government notes and bonds, and it acts neutrally towards the bond market, since its legal statute prevents it from taking positions. It is subject to supervision by the CNMV and by the Bank of Spain.

The SENAF develops and operates a blind electronic system for bond trading, in which the traders do not know the counter party in their transactions. This promotes the efficiency of the market and generates great liquidity.

On February 23, 2001, the Cabinet authorized the creation of SENAF as an organized trading system. This means that all the members of any official fixed-income second market may join the system, including the members of fixed-income markets in other countries, provided that they meet certain conditions.

The aim of this interest held by AIAF in SENAF was to begin to support the integration of fixed-income trading systems in Spain. This has materialized with the

With the creation of this holding company, the first group of financial markets by total trading volume has been set up. It is also the first initiative for the interconnection of all Spanish financial markets, with a joint projection of domestic and international scope. It also means the provision of an integrated service and the offer of new products and services, under unbeatable conditions of quality and cost.

Also, the incorporation of this company aims to strengthen the three entities’ competitive position, signifies the provision of an integrated service, enables new products and services to be offered and offers the possibility of sharing technical solutions and harnessing economies of scale, which will result in lower operating costs for market members.

d) New Market

As a noteworthy new feature of the securities market, the “New Market” was created in 2000 by CNMV Circular 1/2000, implementing the Ministerial Order of December 22, 1999, as a special trading segment in the Spanish stock exchanges. The New Market is used to trade securities of companies in state-of-the-art sectors as regards their final products, their production processes or their performance of business with high growth potential.

The New Market (“Nuevo Mercado”) was created essentially because of the presence on the Spanish stock market of companies associated with the new communications technologies and particularly with the Internet, and it was thus based on experiences of a similar kind in the markets of other countries.

Among the special features of the New Market, note the exception made, at the regulatory level, with regard to the period for obtaining profits and the provision of reports on business prospects and potential future development. This is considered of great importance for new-economy companies, since many of them, organized recently on the base on future expectations, do not have a positive profit and loss account at the present time.

To protect investors, the Sociedad de Bolsas has laid down specific rules for trading, considering the higher volatility and risk of the securities. Thus, for the specific case of New Market securities, the maximum percentage of price variations for each session has been increased to 25% (it is 15% for traditional securities), and this percentage may be further increased if the circumstances of the market or of the security make this advisable.

However, the investor’s safety in connection with these securities is based on reporting obligations in additional to the traditional ones (relevant events, quarterly, six-monthly and yearly information), since at least once a year these companies must publish explanatory information on the evolution and prospects of their businesses at the short term or in the next financial year.

The New Market began operating with ten listed companies on April 10, 2000. Now it has 13 listed companies, after Natraceutical was included on November 29. To help monitor the New Market, the IBEX NM index was created. Its value of 1,785.20 on November 30, 2002, was down 46% on the levels in late 2001.
The aforementioned decline was basically due to the decision by certain companies interested in joining this market not to do so. Further, the New Market consists of scantily homogenous companies and since it was created the new technologies sector has not been at its best, owing to the fading of interest in technology in the U.S. and the appearance of the first signs of the world economic crisis.

The market capitalization of the companies listed in the New Market on November 30, 2002 is shown in Table 4:

### Table 4
**Capitalization of New Market companies at Nov. 29, 2001**

<table>
<thead>
<tr>
<th>New Market IBEX Securities</th>
<th>Euro capitalization (million euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abengoa</td>
<td>467.73</td>
</tr>
<tr>
<td>Amadeus</td>
<td>3,050.30</td>
</tr>
<tr>
<td>Amper</td>
<td>61.40</td>
</tr>
<tr>
<td>Avanzit</td>
<td>44.81</td>
</tr>
<tr>
<td>Indra</td>
<td>1,152.16</td>
</tr>
<tr>
<td>Jazztel</td>
<td>71.82</td>
</tr>
<tr>
<td>Natraceutical</td>
<td>Not available</td>
</tr>
<tr>
<td>Puleva Biotech</td>
<td>169.76</td>
</tr>
<tr>
<td>Serv. Point Solutions</td>
<td>98.23</td>
</tr>
<tr>
<td>Tecnocom</td>
<td>51.03</td>
</tr>
<tr>
<td>Terra-Lycos</td>
<td>3,218.16</td>
</tr>
<tr>
<td>TPI</td>
<td>1,355.10</td>
</tr>
<tr>
<td>Zeltia</td>
<td>1,358.06</td>
</tr>
</tbody>
</table>

Source: Invertia.

### 5. Money market

The money market in Spain is based fundamentally on the issuance of short-term securities by the Bank of Spain, which are taken up by banks, finance companies and money market operators that subsequently place a portion of them with individuals and businesses.

In a broader sense, the money market is deemed to encompass also interbank deposits (the interest rates for which are used as benchmarks for other transactions) and trading in short-term corporate securities.

The money market has become increasingly important as a result of the liberalization and greater flexibility of the Spanish financial system as a whole in past years. This is evident from the fact that interest rates are ordinarily higher than the rate of inflation and from the substantial volume of trading in money market securities.

The government debt market is of special importance in Spain and is very often used by both resident and foreign investors. The favorable tax arrangements for investments by nonresidents in these securities is making this market particularly attractive.

Noteworthy developments were the structuring of money market operations through a book-entry system and the creation of the options and futures markets, both linked to the book-entry system of trading in government debt securities. The “Central de Anotaciones” (central book-entry office) of the Bank of Spain is the governing body of this market.

Five central securities depositories coexist in Spain: SCLV, the “Central de Anotaciones” of the Bank of Spain (CADE), SCLBarcelona,
SCLBilbao and SCLValencia. This is in contrast to the majority of European countries, where there are at most two depositories per country, which are in most cases in the process of unification. The globalization of the securities markets is also being demonstrated by mergers and alliances among depositories of the Euro Zone, as from 1999, such as the trans-border mergers of Euroclear with the Central Depositories of France, Belgium and Holland, or that of Cedel with the Deutsche Börse Clearing (DBC). In the Spanish context, the integration of the SCLV and the CADE was therefore desirable. The first step for the merger of the SCLV and the CADE into a single entity has been the creation of the “Sociedad Promotora” in the presence of a notary public on June 7, 2000, with the approval of the Spanish Treasury and the CNMV. This company will act as a single central depository, particularly in the strategic and representative sphere. Until the merger is complete, the SCLV and CADE retain their present responsibilities with regard to the day-to-day management of securities registration and settlement, entrusted to them by law.

The combination of these factors has had an important effect on the fixed-income markets, demonstrated by:

- Increased interaction between the efficiency of the channels for issues and trading and the appraisal of fixed-income assets.

- Increased interchangeability between products issued by the public treasures in the Euro Zone. The enhanced transparency of markets facilitates comparison of the various assets and therefore increases competition among issuers.

- Liquidity and spread in lending, together with the expectations of agents concerning the future evaluation of variables, have become decisive factors for the price of the assets and their relative value compared with other fixed-income issues.

Trading in the Spanish government debt market accelerated in 2001, in line with the upward trend initiated in 1989, and average daily trading was nearly 80% higher than in 2000. As a result, the total volume traded in the Spanish government debt securities market in 2001, including Treasury bills and both single and double transactions, amounted to €18.5 trillion.

Thus the level of bond and debenture market trading was higher in 2001 than in 2000. This rise was due to the increase in operations between accountholders (up 83% year-on-year) and in double transactions, whereas trading with third parties and single-transaction trades fell.

Total bond and debenture trading in 2001 rose to €15.4 trillion from €11.3 trillion in 2000, representing a 37% increase. This total also exceeded the Treasury bill trading volume (four times higher in 2001).

The performance of the Spanish government bond and debenture market in terms of simultaneous transactions and repos is shown in Chart 6 below.

Also noteworthy was the sharp increase in the debt securities held by nonresidents. Their debt portfolio consisted mainly of government bonds and debentures and included scanty significant Treasury bill holdings (representing scarcely 1% of the Treasury bills outstanding at the end of 2001).
Analysis of this market showed most notably that until 1999 the unstripped bonds and debentures held by nonresidents represented 24% of the outstanding total, although in 2001 there was a surge in this segment, which now accounts for 46.3% of the total amount of these products.

The reasons for this sharp rise in the growth of government debt securities held by nonresidents are as follows:

- Spain's accession to the Economic and Monetary Union (EMU) eliminated exchange risk, which made Spanish government debt more attractive.
- The strong performance of the Spanish economy in 2001 and its healthy growth rate led to a higher rating of Spanish debt.
- The significant contribution by nonresident market makers who entered the Spanish government debt market in 1999 and have moved significant volumes of debt, thereby making for an active market.

6. Credit finance establishments

These institutions are regulated by Royal Decree 692/1996, which characterizes them as subject to the legal regime of credit institutions, although with certain changes regarding their financing possibilities and operating capacity.

They may engage in the following activities:

– Lending and credit, including consumer credit, mortgage loans and the financing of commercial transactions.
– Factoring, with and without recourse, and other supplementary transactions.
– Financial leasing.
– Provision of guarantees.

These institutions include most notably financial lease and factoring companies.

Financial lease companies engage in leasing and renting.

Leasing is a transaction of a financial nature governed by commercial law whereby a customer acquires an asset previously chosen by him and its use is assigned to him in exchange for certain periodic (normally monthly) payments; on completion of the contract term, the customer can opt to exercise a purchase option on the asset and pay its residual value.

Renting is a manner of medium- and long-term leasing of assets. Under this contract the customer undertakes to pay a fixed amount, generally monthly, for a certain time and the credit institution undertakes to furnish the use of the asset for the contractual period, assure that the asset is maintained in good condition and arrange comprehensive insurance on the asset.

On expiration of the contract the customer can opt to replace the assets with others or renew the contract for a certain period.

Factoring is a transaction whereby a company assigns the trade accounts receivable from its customers to a specialized financial institution in exchange for a consideration. This enables companies to transfer their cash management tasks to another party.

There are two types of factoring:

– With recourse: The factor does not assume liability for any factored receivables which cannot be collected. Accordingly, if the debtor fails to pay, the factor can claim payment from its customer, which assumes liability for nonpayment.
– Without recourse: the factor accepts the credit risk arising from the receivables factored by the customer.

7. Venture capital institutions

Venture capital is defined as a financial activity which consists of routing investments to unlisted nonfinancial companies and assuming the risk arising from their activity through the acquisition of a temporary holding in their capital stock.

Venture capital institutions can take the legal form of a corporation or a fund and, in addition to their main corporate purpose, can grant participating loans and provide counseling services to the investees.
8. Asset securitization

Securitization consists basically of the transformation of securities acquired from credit institutions into standardized fixed-income securities for subsequent trading in organized markets, where they can be purchased by investors.

Two types of securitization can be distinguished:

– Mortgage-backed securitization: This is performed through mortgage securitization funds, which are separate asset pools lacking legal personality whose assets are the mortgage loans pooled by them and whose liabilities are the securities issued, such that their net asset value is zero.

– Asset-backed securitization: Asset securitization funds are separate asset pools lacking legal personality whose assets are their financial assets and other collection rights, including assignments of present and future receivables, and whose liabilities are the fixed-income securities issued, loans from credit institutions and any contributions from institutional investors.

9. Mutual guarantee societies

These companies were first introduced in 1978 and since then have operated in the area of medium- and long-term financing of small and medium-sized enterprises, to which they provide guarantees.

Accordingly, their corporate purpose is as follows:

– To provide their members with access to credit and to credit-related services.

– To provide personal guarantees in any lawful form.

– To provide assistance and financial advice to their members.

– To take holdings in companies and associations whose sole purpose is to engage in activities for small and medium-sized companies. To this end, they must have the required reserves and obligatory provisions.

The following members of mutual guarantee societies should be distinguished:

– Participating members: Also known as mutual members. They are the individuals or legal entities eligible to obtain guarantees from the society. Therefore, they are required to belong to the industry specified in their bylaws.

– Protector members: These cannot request guarantees from the society and therefore are not subject to limitations on the industry to which they belong. The protector members are usually public authorities, public-law entities and the companies majority-owned by them.

Working together with these societies are “sociedades de reafianzamiento” (supporting-guarantee companies), whose purpose is to provide sufficient coverage and assurance for the risk assumed by the mutual guarantee societies and, in addition, furnish the cost of the guarantee for the members.
In 1987 the Pension Plans and Funds Law introduced a form of saving in Spain that has created a sound instrument for long-term financing. This legislation envisages the existence of pension plans promoted by employers, certain associations and financial entities.

Pension plans are collective investment products which invest a principal sum with a view to obtaining periodic income or capital gains in the future in order to provide for retirement, death or disability.

Pension funds are asset pools set up for the sole purpose of implementing pension plans. A pension fund may include one or more pension plans.

Inherent features of pension plans are their favorable tax treatment and restrictions on use of the accumulated savings until the occurrence of the event for which they were intended.

Also, the Law provides for the possibility of withdrawing the savings accumulated in pension plans in the event of long-term unemployment or serious illness.

The Private Insurance Law (Law 30/1995) requires all Spanish companies (except financial institutions) to instrument before November 15, 2002, their pension commitments to employees through an external arrangement (pension plan or insurance policy), which will significantly raise the funds managed by these entities.

Pension fund assets grew in 2001 and the increase was accompanied by a rise of 8.5% in the number of participants in the first nine months of 2001.

This was due particularly to the process of pension externalization which has taken

### Table 5
**Pension plans and funds. Basic indicators 1990-2002**
(Variation in assets and participants in pension funds)

<table>
<thead>
<tr>
<th>Date</th>
<th>Personal System</th>
<th>Association System</th>
<th>Occupational System</th>
<th>Total System</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Assets (€ mil.)</td>
<td>Participants (units)</td>
<td>Assets (€ mil.)</td>
<td>Participants (units)</td>
</tr>
<tr>
<td>31/12/1990</td>
<td>1,022</td>
<td>530,551</td>
<td>96</td>
<td>15,987</td>
</tr>
<tr>
<td>31/12/1991</td>
<td>1,729</td>
<td>710,677</td>
<td>137</td>
<td>21,309</td>
</tr>
<tr>
<td>31/12/1992</td>
<td>2,561</td>
<td>875,041</td>
<td>180</td>
<td>26,358</td>
</tr>
<tr>
<td>31/12/1993</td>
<td>3,786</td>
<td>1,066,872</td>
<td>253</td>
<td>62,791</td>
</tr>
<tr>
<td>31/12/1994</td>
<td>4,741</td>
<td>1,301,712</td>
<td>304</td>
<td>67,759</td>
</tr>
<tr>
<td>31/12/1995</td>
<td>6,306</td>
<td>1,490,255</td>
<td>380</td>
<td>71,155</td>
</tr>
<tr>
<td>31/12/1996</td>
<td>9,091</td>
<td>1,839,916</td>
<td>507</td>
<td>72,669</td>
</tr>
<tr>
<td>31/12/1997</td>
<td>12,292</td>
<td>2,352,239</td>
<td>635</td>
<td>76,459</td>
</tr>
<tr>
<td>31/12/1998</td>
<td>16,310</td>
<td>2,953,750</td>
<td>767</td>
<td>76,497</td>
</tr>
<tr>
<td>31/12/1999</td>
<td>18,925</td>
<td>3,623,507</td>
<td>840</td>
<td>76,448</td>
</tr>
<tr>
<td>31/12/2000</td>
<td>21,494</td>
<td>4,402,708</td>
<td>812</td>
<td>72,601</td>
</tr>
<tr>
<td>31/12/2001</td>
<td>24,214</td>
<td>5,168,114</td>
<td>781</td>
<td>92,941</td>
</tr>
<tr>
<td>30/09/2002</td>
<td>23,389</td>
<td>5,349,752</td>
<td>689</td>
<td>89,016</td>
</tr>
</tbody>
</table>

Source: Inverco.
place in occupational pensions and is being implemented by various companies.

In the last twelve months, the volume managed by occupational pension funds rose by 31.8% to €18,487 million at the end of September and the participants in this pension system numbered 586,968, up 33.5% year-on-year.

The personal pension system, with assets of €23,389 million, grew more moderately (by 6.4%) and its participants numbered 5,349,752, up 20.3% on the previous year.

In contrast, the performance of the association system has not been so strong, with more than €689 million of assets and 89,016 participants.

The Spanish life insurance market has grown substantially in recent years, mainly because of the similarity between survivorship life insurance policies and traditional savings instruments and because of the more favorable tax treatment than in the past, although the economic crisis due to the September 11 attacks slowed insurance industry growth to around 3% in 2001.

In this connection, it is noteworthy that, effective 2002, the tax treatment of savings placed in pension funds has again been improved.

The Spanish insurance industry will face major challenges in the next few years, which may be beneficial for it insofar as the theoretically foreseeable growth in the size of companies will bring its ratios closer to those in countries with similar economies.

In this connection, note the trend towards concentration in the Spanish insurance market. This trend, already relevant in previous business years, was consolidated in 2001 as seen by the fact that at December 31 that year, 342 insurance companies were operative in comparison with the 354 companies operative in 2000.

Spanish insurance industry growth in 2001, in terms of volume of premiums, is estimated at 2.7%, with the largest variation occurring in life insurance, where the savings under management grew by 15.5%.

The revenue collected by the insurance industry in 2001 is estimated at €42,000 million, of which 54.3% were in life and 45.7% in nonlife.

Also, the automobile segment accounted for €9,025 million and posted 13% growth with respect to the previous year, whereas health insurance represented €2,940 million with growth of 8.2% and total multi peril insurance grew by 14.6% with respect to 2000.

These far-reaching changes in the structure and outlook of the insurance industry in Spain explain its positive performance, as evidenced by the volume of directly subscribed insurance premiums, the growth of which is shown in Chart 7:
Charts 8 and 9 present a breakdown of insurance policies by type in 2000 and 2001.

### Chart 7
**Life and nonlife insurance premiums in Spain**
*(Thousand euros)*

Source: Milenari.

### Chart 8
**Insurance 2000**

**Risk** 23%
**Mixed and savings** 32%
**Life annuity** 39%
**Unit-linked** 6%

Source: Milenari.

### Chart 9
**Insurance 2001**

**Risk** 42%
**Mixed and savings** 41%
**Life annuity** 11%
**Unit-linked** 6%

Source: Milenari.
III. Law 44/2002 on financial system reform measures


It seeks to set up a securities Registration, Clearing and Settlement System Management Company ("Systems Company") through the merger of the Securities Settlement and Clearing Service (SCLV) and the Spanish Government Debt Book-Entry Trading Central Office (CADE).

This company may include other systems already existing in Spain, such as those for financial derivatives or those managed by the Valencia, Bilbao or Barcelona stock exchanges, and will enable the management of interconnections and alliances with other countries' stock markets.

One or more Central Counterparty Entities will foreseeably be set up and interposed between the purchaser and the seller to eliminate counterparty risk in transactions and ensure that they are duly completed.

The Settlement and Clearing Systems will be demutualized and a portion of their capital will be placed in the hands of shareholders that do not trade in the market.

Also, changes have been made to the system set up to control the cross-holdings between the companies administering secondary markets and their counterparts outside Spain. This will permit a more flexible system conducive to the integration of crossborder markets while simultaneously ensuring a certain control over the appropriateness of shareholders in the Spanish markets.

As regards insurance, securities and collective investment institutions, the exchange of information has been made more fluid by facilitating these procedures between the EU supervisors and those in other countries, while ensuring due confidentiality.

Extensive regulation of the organized trading systems has been introduced in matters such as the authorization system, the obligation to form governing companies with the legal form of corporations (Spanish "S.A." companies) and the supervision and penalty system.

In the credit market, a more flexible investment regime for credit cooperatives has been introduced to make it more similar to that of banks and savings banks. The purpose of this change is to:

– Enable these entities to achieve a larger size, thereby paving the way for increases in their industrial portfolios.

– Facilitate management of their liabilities and equity by means of recourse to subordinated debt financing.

Law 44/2002 permits the Spanish State Treasury to be managed through fixed-income security purchases under resale agreement, so that the Treasury can obtain a higher yield on its balance at the Bank of Spain.

A notable event in the insurance industry is that the Insurance Entity Settlement Commission (CLEA) was terminated and its functions taken over by the Clearing Consortium.

The Risk Information Center will be given a more important role, which will be fundamental in the risk control of credit institutions and in the supervision exercised by the Bank of Spain.

The following reforms have been introduced to boost the competitiveness of the Spanish financial services industry:
– “Territorial” bonds have been introduced: These are fixed-income securities issued by credit institutions to local or Autonomous Community governments.

– The scope of operations of collective investment institutions has been broadened: They can perform transactions involving the lending of securities from their own portfolios, organized-market transactions and Over the Counter (OTC) transactions.

To improve the terms of SME financing, the use of factoring has been regulated so as to permit large-scale factoring of their accounts receivable from governments.

The following measures have been established to protect the customers of financial institutions:

– Introduction of bodies entrusted with defending the customers of financial services: agencies reporting to the Bank of Spain, the Spanish National Securities Market Commission (CNMV) and the Directorate-General of Insurance and Pension Funds for the express purpose of protecting the rights of users of financial services.

– Obligation of credit institutions, investment services companies and insurance companies to attend to and resolve complaints and claims from customers relating to their interests and rights.

For this purpose, credit institutions must have a customer service department formed by an independent entity or expert whose decisions are binding.
This section addresses the taxation of the main financial products in the Spanish market, with special reference to those discussed in this Chapter.

To these effects, the income taxation derived from these products, and the gains or losses generated on their transfer or reimbursement is here considered (this section reflects the taxation applicable up to January 1, 2003).

### IV. Taxation of financial products

<table>
<thead>
<tr>
<th>Nonresidents without Permanent Establishment</th>
<th>Resident individuals</th>
<th>Corporate entities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bank deposits</strong></td>
<td><strong>Interest:</strong></td>
<td><strong>Interest:</strong></td>
</tr>
<tr>
<td></td>
<td>- Income from movable capital</td>
<td>- Income from movable capital</td>
</tr>
<tr>
<td></td>
<td>- General component of taxable income</td>
<td>- 40% reduction if generated over more than 2 years</td>
</tr>
<tr>
<td></td>
<td>- Tax rate: EU: Exempt</td>
<td>- Withholding: 15%</td>
</tr>
<tr>
<td></td>
<td>• Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td>- General component or taxable income</td>
</tr>
<tr>
<td></td>
<td>• Other countries: 15%</td>
<td>- Tax rate: As per tax rate table (maximum 45%)</td>
</tr>
<tr>
<td></td>
<td>• Nonresident Bank accounts: exempt</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Explicit-yield financial assets</th>
<th>Interest:</th>
<th><strong>Income obtained from transfer or redemption:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Income from movable capital</td>
<td>- Income from movable capital</td>
</tr>
<tr>
<td></td>
<td>- Rates: EU: Exempt</td>
<td>- 40% reduction if generated over more than 2 years</td>
</tr>
<tr>
<td></td>
<td>• Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td>- Withholding: 15%</td>
</tr>
<tr>
<td></td>
<td>• Other countries: 15%</td>
<td>- General component or taxable income</td>
</tr>
<tr>
<td></td>
<td>• Public Debt is exempt except for tax havens</td>
<td>- Tax rate: As per tax rate table (maximum 45%)</td>
</tr>
<tr>
<td>Income obtained from transfer:</td>
<td>- Income from movable capital</td>
<td>Income obtained from transfer:</td>
</tr>
<tr>
<td></td>
<td>- Rates: EU: exempt</td>
<td>- Income from movable capital</td>
</tr>
<tr>
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</tr>
<tr>
<td></td>
<td>• Other countries: 15%</td>
<td>- Withholding:</td>
</tr>
<tr>
<td></td>
<td>• Public debt: exempt except for tax havens</td>
<td>• Privileged issues: not subject to withholding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Other issues: 15%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Implicit-yield financial assets (except Treasury bills)</th>
<th>Interest:</th>
<th><strong>Income obtained from transfer or redemption:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Income obtained from transfer or redemption:</em></td>
<td>- Income from movable capital</td>
<td>- Income from movable capital</td>
</tr>
<tr>
<td>- Income from movable capital</td>
<td>- EU: Exempt</td>
<td>- 40% reduction if generated over more than 2 years</td>
</tr>
<tr>
<td>- Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td>- Withholding: 15%</td>
<td>- General component or taxable income</td>
</tr>
<tr>
<td>- Other countries: 15%</td>
<td>- Public Debt is exempt except for tax havens</td>
<td>- Tax rate: As per tax rate table (maximum 45%)</td>
</tr>
<tr>
<td><em>Income obtained from transfer:</em></td>
<td>- Income from movable capital</td>
<td><em>Income obtained from transfer or redemption:</em></td>
</tr>
<tr>
<td>- Not subject to taxation except for tax haven</td>
<td>- EU: Exempt</td>
<td>- Yield</td>
</tr>
<tr>
<td></td>
<td>- Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td>- Withholding:</td>
</tr>
<tr>
<td></td>
<td>- Other countries: 15%</td>
<td>• Privileged issues: not subject to withholding</td>
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<tr>
<td></td>
<td>- Public Debt is exempt except for tax havens</td>
<td>• Other issues: 15%</td>
</tr>
<tr>
<td><em>Income obtained from transfer or redemption:</em></td>
<td>- Income from movable capital</td>
<td>- Tax rate: 35% (standard)</td>
</tr>
<tr>
<td>- Not subject to withholding</td>
<td>- EU: Exempt</td>
<td></td>
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<tr>
<td>- General component of taxable income</td>
<td>- Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td></td>
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<tr>
<td>- Tax rate: as per tax rate table (maximum 45%)</td>
<td>- Other countries: 15%</td>
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<tr>
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<th>Interest:</th>
<th><strong>Income obtained from transfer or redemption:</strong></th>
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<tr>
<td><em>Income obtained from transfer:</em></td>
<td>- Income from movable capital</td>
<td>- Income from movable capital</td>
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<tr>
<td>- Not subject to taxation except for tax haven</td>
<td>- EU: Exempt</td>
<td>- 40% reduction if generated over more than 2 years</td>
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<td>- Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td>- Withholding: 15%</td>
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<td>- Other countries: 15%</td>
<td>- General component or taxable income</td>
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<td>- Tax rate: As per tax rate table (maximum 45%)</td>
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<tr>
<td><em>Income obtained from transfer or redemption:</em></td>
<td>- Income from movable capital</td>
<td>- Yield</td>
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<td>- Not subject to withholding</td>
<td>- EU: Exempt</td>
<td>- Withholding:</td>
</tr>
<tr>
<td>- General component of taxable income</td>
<td>- Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
<td>• Privileged issues subsequent to 1/1/99*: not subject to withholding</td>
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<tr>
<td>- Tax rate: as per tax rate table (maximum 45%)</td>
<td>- Other countries: 15%</td>
<td>• Other issues: 15%</td>
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<tr>
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<tr>
<td>• EU: 15% save application of parent-subsidiary Directive</td>
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<td>• Tax treaty: Reduced rate or exempt (per tax treaty in question)</td>
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<td>• Other countries: 15%</td>
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<td>Capital gain/loss on transfer:</td>
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<td>- Capital gain or loss</td>
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<td>• Listed companies</td>
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<td>• EU: Exempt except for significant and real estate participations</td>
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<td>• Tax treaty: Generally exempt</td>
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<td>• Tax havens: 35%</td>
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<td>• Other countries: 35%</td>
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<tr>
<td>• Unlisted companies</td>
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<td>• EU: Exempt except for significant and real estate participations</td>
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<td>- Income from movable capital</td>
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<td>• Included in taxable income: Total yield (140%, 125% or 100%)</td>
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<td>• Tax credit: Toal yield (40%, 25% or 0%) withholding: 15%</td>
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<tr>
<td>• Acquisitions prior to 12/31/94</td>
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<tr>
<td>• Application of reduction coefficients: (25% for listed shares, 14.28% for non-listed shares)</td>
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<tr>
<td>• Non-application of coefficients</td>
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<tr>
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</table>

**Shares and units of collective investment institutions**

Dividends:
- Income from movable capital
- Included in taxable income:
  - Total yield (100%)
  - No tax credit
  - Withholding: 15%
  - General component of taxable income
  - Tax rate: As per tax rate table (maximum 45%)

Capital gain/loss on transfer:
- Capital gain or loss
  - Acquisitions prior to 12/31/94
    - Application of reduction coefficients: (14.28%)
    - Acquisitions subsequent to 12/31/94
    - Non-application of coefficients
    - General component of taxable income
    - Tax rate: As per tax rate table (maximum 45%)
  - Withholding: 15%
  - Tax rate:
    - As per tax rate table (maximum 45%): if generated over less than 1 year
    - 15% if generated over more than 1 year
  - Special component of taxable income
  - Tax rate:
    - As per tax rate table (maximum 45%): if generated over less than 1 year
    - 15% if generated over more than 1 year
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Company law

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Spanish corporate law was substantially modified by Law 19/1989. One of the stated purposes of this law was to adapt Spanish corporate law to the relevant EC Directives following Spain’s accession to the European Community. However, Law 19/1989 is more than a mere adaptation, since it includes many new provisions which are not required by EC law.

Due to the very substantial modifications introduced by Law 19/1989, an amended version of the Corporations Law including such modifications was approved by Legislative Royal Decree 1564/1989 on December 22, 1989. This legislation is referred to henceforth as the “Corporations Law”.

Following the promulgation of Law 19/1989, which dealt essentially with corporations, a new law regulating limited liability companies was enacted in 1995 (Law 2/1995), and Royal Decree 1784/1996 was also enacted, establishing new Mercantile Register Regulations.

The Commercial Code, the Corporations Law, the Limited Liability Companies Law and the Mercantile Register Regulations are the basic sources of law in this field.


Said regulation will come into force on October 8, 2004, this being the time limit granted to Member States to adopt the legal, regulatory and administrative measures necessary to comply with the provisions of this Directive.
Spanish law envisages various different kinds of mercantile entities, all of which can be used by foreign investors.

The most significant are:

– Corporation (“Sociedad Anónima”, abbreviated as “S.A.”)

– Limited Liability Company (“Sociedad de Responsabilidad Limitada”, abbreviated as “S.L.” or “S.R.L.”)

– General Partnership (“Sociedad Regular Colectiva”, abbreviated as “S.R.C.” or “S.C.”)


The above forms of business enterprise are listed in order from the most common to the least frequently used. Traditionally, the corporation (“S.A.”) has been by far the most commonly used form, whereas the limited partnership has been rarely used.

However, the limited liability company (“S.L.”) has gained popularity as a result, among other reasons, of its comprehensive regulation under Law 2/1995 and a lower minimum capital requirement than that for S.A.’s.

Some of the salient features of each of the above corporate forms are summarized below. It should be noted that in many instances the Law provides only minimum standards or general rules. The founders of a company have a great deal of flexibility in tailoring the structure of the company to their specific needs through inclusion of certain clauses in the bylaws, for which purpose they should seek proper legal advice.
III. Liability of shareholders and partners

Both the S.A. and the S.L. are companies with capital in which the liability of the shareholders is generally limited to the amount of capital contributed by each.

Technically, the capital of an S.A. is divided into shares, whereas the capital of an S.L. is divided into participation units.

The general rule is clearly one of limited liability; however, under very exceptional circumstances, the corporate veil can be pierced to protect the interest of third parties.

In these exceptional cases, the courts have followed the criteria of the “piercing of the corporate veil” as a reaction against the abusive taking advantage of the company’s legal status by the shareholders or partners for fraudulent purposes; the courts may obviate it and differentiate the equity of each of the partners to establish liabilities.

Liability is not limited in a general partnership (S.R.C.). General partners are personally jointly and severally liable with the whole of their net worth for the debts of the partnership.

A limited partnership (S. Com.) is a partnership in which there is at least one general partner and one or more limited partners. General partners are personally jointly and severally liable with the whole of their net worth for the debts of the partnership. Limited partners are only liable for the amount of capital they contribute or promise to contribute to the partnership. The capital of limited partnerships will be divided into shares.
This section and the two following ones summarize some of the most significant substantive aspects that commonly interest foreign investors with respect to the most widely used form of business entity in Spain, the S.A.

For the most part, the issues discussed below are applicable to the S.L. as well, although some of the most significant rules and exceptions applicable to the S.L. are dealt with in Section VII below.

1. Minimum capital

The minimum amount of capital stock required for an S.A. pursuant to the Corporations Law is €60,101. The capital must be fully subscribed and at least 25% of the par value of the shares must be paid in. When the capital stock is not fully paid up, the bylaws must state the manner and time period for the payment of the remaining portion of subscribed capital. No maximum time period for payment of calls on capital by contributions in cash is stated in the Law but five years is the maximum term for full payment of contributions in kind.

2. Shareholders

No minimum number of shareholders is required by Spanish law to incorporate an S.A., although sole shareholder companies are subject to a special system of publicity discussed in further detail in section VIII below. Shareholders can be individuals or companies of any nationality and residence.

3. Formalities of incorporation

The shareholders or their representatives must appear before a notary public in order to execute the public deed of incorporation. Subsequently, the public deed of incorporation has to be registered in the Mercantile Register. Upon registration, the company acquires legal status and capacity. There is an alternative procedure for incorporation called “successive formation”. Essentially, this procedure involves an offering to the public at large by the promoters to subscribe shares before the execution of the public deed of incorporation. To this end, means may be used such as publicity or financial brokers. This system is rarely used in practice and much less so in the case of foreign investors.
4. Contracts made in the corporation’s name prior to registration

The formation of a S.A. is a two-step process involving, as noted, execution of the public deed before a notary public and registration in the Mercantile Register. It is only upon registration of the public deed of incorporation that the corporation acquires legal capacity and becomes a legal entity.

Persons who enter into contracts on behalf of the corporation prior to its registration are jointly and severally liable for their performance, unless such performance was made conditional on the corporation’s registration and, if applicable, its later assumption of liability.

Contracts made in the corporation’s name and on its behalf prior to its registration in the Mercantile Register may generally be accepted by the corporation within three months from registration.

However, a corporation in the process of formation and its shareholders, up to the limit of the amount they have undertaken to contribute (but not directors or representatives), are liable for the following types of contract prior to registration:

- Contracts that are indispensable for registration.
- Contracts entered into by the directors within the scope of the powers granted to them for the pre-registration stage.
- Contracts entered into by virtue of a specific mandate granted by all the shareholders.

Upon registration, the corporation becomes bound by the foregoing acts and contracts.

In these cases, and if the corporation accepts acts performed prior to its registration within three months from the date of registration, the joint and several liability of shareholders, directors or representatives lapses.

5. Acquisitions performed after registration

During the two years following incorporation, the corporation’s shareholders’ meeting must grant its prior approval for acquisitions of assets for a consideration involving amounts in excess of 10% of the capital stock, unless such acquisitions are within the ordinary scope of business of the corporation or the purchase is made on a stock exchange or by public auction. In the cases in which prior shareholders’ meeting approval is required, the requirements are basically as follows:

- Issuance of a report prepared by the directors.
- An independent valuation by an expert appointed by the Mercantile Register.
V. Basic characteristics of an S.A.

1. Bylaws

An S.A. is basically governed by the Corporations Law and by its bylaws. The bylaws of an S.A. should therefore be drafted in accordance with Corporations Law requirements and must at least include reference to:

- Name of the company.
- Business purpose. This should be stated in a concrete and precise manner, since:
  - It serves to establish the general framework for the activities of the company.
  - The completion of the stated business purpose automatically leads to dissolution of the company, unless the bylaws provide for an indefinite duration.
  - If the business purpose is modified in such a way as to be replaced, the dissenting shareholders and non-voting shareholders, if any, can withdraw from the company and are entitled to be reimbursed for their shares.
- Duration of the company. The bylaws will ordinarily stipulate that the duration is indefinite in order to avoid triggering automatic dissolution.
- The date on which activities commence, which normally cannot be earlier than the date of execution of the public deed of incorporation.
- The location of the company’s registered office, which must be in Spain, and the body competent to establish, transfer or close branches.
- Capital stock and shares.
- Managing body. The bylaws must determine whether the administration is entrusted to a Board of Directors or to some other body or person. In the case of collective management bodies, the manner of debate and of adopting resolutions must be specified, as also the system for director’s remuneration.
- Restrictions, if any, on the free transferability of shares.
- Ancillary obligations, if any. If ancillary obligations are created, the bylaws must state the content of such obligations, whether or not they are remunerated, and the penalties, if any, for breach thereof. Ancillary obligations are explained in further detail below.
- The accounting year-end. If not stated expressly, the company will be deemed to end its accounting year on December 31. The business year cannot exceed twelve months.
- Special rights reserved to founders or promoters, if any.

Additionally, the public deed of incorporation, which includes the bylaws, may contain whatever agreements and covenants the founders deem fit, provided that they do not contravene any law or the fundamental principles that govern S.A.’s.
2. Capital stock requirements

The minimum subscribed capital for an S.A. is € 60,101; at least 25% of the par value of all the shares must be paid in upon incorporation.

For comparison purposes, the minimum capital requirements for other types of business enterprises are as follows:

– Limited Liability Company: € 3,005, which must be fully paid in.
– General Partnership: no minimum capital requirement.

In addition, specific regulations may provide that the capital stock of corporations engaged in certain fields of business (e.g. banking, insurance, etc.) must, at the time of incorporation, exceed the minimum amount required by the Corporations Law.

There are currently no mandatory minimum debt-equity ratios under Spanish mercantile law for any type of business enterprise (however, there is a debt-equity ratio for tax purposes: see Chapter 4).

Lastly, it should be noted that there are special rules which could require an increase and/or reduction in capital. These rules provide that there must be a certain balance between the capital stock and the net worth of a corporation, whereby if losses are incurred reducing such net worth to less than one-half of capital stock, the corporation will be under a mandatory cause for dissolution, unless capital stock is sufficiently increased (or reduced). It will be obligatory to reduce the capital when the losses have reduced the net worth of the company to less than two thirds of its capital stock and one fiscal year has elapsed without its net worth having recovered.

3. Shares

The following categories may be differentiated:

a) Registered vs. bearer shares

The shares of an S.A. can be registered or bearer shares. However, the shares must be registered in the following cases:

– If they are not fully paid in.
– If their transferability is subject to restrictions.
– If they are subject to ancillary obligations (see f) below).
– When so required by special regulations (e.g. shares of banks and insurance companies).

b) Common vs. preferred stock

Preferred stock may be created as a separate class or classes pursuant to the same procedural formalities applicable to amendment of the bylaws (i.e. quorum and voting requirements and method of calling the shareholders’ meeting), and may include shares entitled to a preferential dividend.

In any case, issues of shares will not be valid in the following cases:

– Shares remunerated in the form of interest.
– Shares which directly or indirectly alter the proportionality between their par value and voting rights or the existing shareholders’ preferential right to subscribe new shares in capital increases.

With regard to the particular regulations on the issuance of preferred stock, there exist differences resulting from whether the company is listed or non-listed on the stock exchange.
In the case of listed companies, the following obligations are established:

– It is provided that where the privilege consists of the right to obtain a preferential dividend, when distributable profits exist the company is obliged to distribute such preferential dividend.

– The corporate bylaws should establish the consequences of failure to pay part or all of the preferential dividend, whether this is or is not accumulative as regards the unpaid dividend, and the possible rights of holders of privileged shares in connection with dividend to which the ordinary shares may be entitled.

– Higher ranking is provided for the shareholder owning privileged shares, since collection of dividend by ordinary shares against the profits of one fiscal year is imperatively prohibited until the preferential dividend for the same fiscal year has been paid.

In the case of non-listed companies, a more flexible system is maintained, since there are no rules of imperative law making specific regulations in the bylaws obligatory. Nevertheless, the company is obliged to declare a dividend wherever distributable profits exist, unless otherwise provided in its corporate bylaws.

c) Shares issued with a premium

Shares may be issued with a premium payable to the company above their par value. In such cases the premium must be fully paid in upon subscription of the shares.

d) Non-voting stock

Non-voting stock may be issued for a total par value that does not exceed one-half of the total paid-in capital.

The special rights attached to non-voting stock are as follows:

– Minimum annual dividend

The minimum annual dividend shall be set by the bylaws in any percentage in relation to the amount of paid-in capital corresponding to each non-voting share. The minimum annual dividend and ordinary dividends are cumulative for a period of five years in the case of non-listed companies. In the case of listed companies this period will be indefinite. In other words, non-voting shares also participate proportionately with common shares if a dividend is distributed on the common shares.

– Preferential rights in liquidation

In the event of liquidation of the company, non-voting shareholders rank above common shareholders with respect to their right to obtain reimbursement of the paid-in portion of their shares.

– Capital reduction

If capital is reduced to offset losses, the reduction must first be applied against all other classes of stock before it can affect non-voting stock.

– Shareholder rights

Non-voting stock has the same basic rights as common stock except for the right to vote at shareholders’ meetings (see g) Basic shareholder rights).
However, under certain exceptional circumstances, holders of non-voting shares may acquire a transitory right to vote at shareholders’ meetings. Two examples follow:

- Non-voting shareholders acquire the right to vote if the minimum annual dividend is not distributed.
- If, due to a capital reduction, all common shares are amortized, then non-voting stock becomes voting stock until such time as equilibrium is restored between voting and non-voting stock (i.e. new common shares are issued in sufficient number so that the total par value of non-voting stock does not exceed one-half of total paid-in capital). If equilibrium is not restored within two years, the company is subject to mandatory dissolution.

e) Redeemable shares

Redeemable shares as a form of privileged shares have been very recently introduced in Spanish corporate legislation. However the possibility of issuing this type of shares is only open to listed companies, subject to certain conditions.

Redeemable shares are those whose redemption or full or partial purchase by the issuer or by third parties is fixed in time or released at the choice of the shareholder, according to the conditions of the issue; or those whose redemption or full or partial purchase by the issuer or by third parties is undertaken in any other manner, excluding that contemplated above.

f) Shares with ancillary obligations

An ancillary obligation is an obligation to perform certain acts or to refrain from performing certain acts. Ancillary obligations do not form part of the capital stock of the company.

The shares of an S.A. can only be paid for with money or property, not with labor or services. The ancillary obligation is a device whereby the labor or services or other obligations of particular shareholders can be tied to the corporation.

g) Basic shareholder rights

The basic rights of shareholders are as follows:

– Right to share in corporate earnings and in the assets upon liquidation.
– Preferential right to subscribe new shares or convertible bond issues.
– Right to attend and vote at shareholders’ meetings (except non-voting stock) and to challenge corporate resolutions.
– Right to obtain information about the company’s affairs.

h) Share certificates

In general, shares may be either issued physically as certificates or recorded by a book-entry system. The conditions for recording shares under a book-entry system and the regulations of this system are contained in the Securities Market Law (Law 24/1988), as amended by Law 37/1998.
VI. Governing bodies of an S.A.

The governing bodies of an S.A. are the shareholders’ meeting and the directors (who may or may not be organized as a Board of Directors, as explained below).

I. Shareholders’ meeting

The shareholders’ meeting is the S.A.’s supreme governing body. The law distinguishes two types of meeting: ordinary and extraordinary. Additionally, both ordinary and extraordinary meetings may be held as universal meetings, as discussed below.

a) Ordinary shareholders’ meeting

An ordinary shareholders’ meeting may be held as and when stipulated by the bylaws, but an ordinary meeting must be held within the first six months of the financial year to review management’s conduct of the business and to approve, if appropriate, the financial statements of the prior year and the proposed distribution of the prior year’s earnings. If the ordinary shareholders’ meeting is not held within the legal term, it may be called by a court, upon petition by the shareholders and subject to prior hearing of the directors.

b) Extraordinary shareholders’ meeting

Any meeting of the shareholders other than as described above is an extraordinary shareholders’ meeting. An extraordinary shareholders’ meeting can be called:

– By the company’s directors if and when they consider it in the company’s interests to do so.

– By the company’s directors when requested to do so by shareholders representing at least 5% of capital stock. In this case, the directors must call the meeting so requested to be held within thirty days following the date of the notarial notification to them to call it.

– By a court if the directors disregard the notification referred to above.

c) Venue and method of calling a meeting

Both ordinary and extraordinary shareholders’ meetings must be held in the municipality where the company has its registered offices. A Spanish S.A. must be domiciled in Spain. Nevertheless, a universal shareholders’ meeting (see d) below) may be held anywhere.

The formal requirements for calling a meeting, which relate to publicity and advance notice, are the same for ordinary and extraordinary meetings. Meetings must generally be called by a notice published in the Official Gazette of the Mercantile Register at least 15 days in advance of the meeting and in a high-circulation newspaper of the province in which the company has its registered offices.

d) Universal shareholders’ meetings

Regardless of the type of shareholders’ meeting (ordinary or extraordinary), the formal call requirements need not be followed if shareholders representing one hundred percent of the capital stock are present and agree unanimously to hold a shareholders’ meeting. Such meetings are called “universal” shareholders’ meetings.

e) Quorum and voting rules

Shareholders’ meetings may generally adopt resolutions by simple majority provided the quorum requirements described below are met.

In general, the quorum for a shareholders’ meeting, at the first call, exists when the shareholders present or represented at the
meeting own at least twenty-five percent (25%) of the voting capital stock. If a second call has to be made (because there was no quorum at the first call), the meeting is deemed to be legally convened regardless of the percentage of capital stock present or represented at the meeting. A company’s bylaws may set special call and quorum requirements for shareholders’ meetings; however, the special quorum requirements cannot be lower than the legal requirements outlined above.

Special quorums are required by law for the adoption of resolutions on certain matters, e.g. debenture issuance, capital increase or reduction, any transformation, merger or spin-off of the company and, in general, for the adoption of resolutions amending the bylaws. In such cases, the quorum required at the first call exists when the shareholders present or represented at the meeting own at least fifty percent (50%) of the subscribed voting capital stock. At the second call, a quorum will exist if at least twenty-five percent (25%) of the voting capital stock is present or represented at the meeting.

However, if a meeting subject to a special quorum requirement is held on second call with less than fifty percent (50%) of the voting capital stock present or represented, then a special voting rule stipulates that resolutions may only be validly adopted by the ‘aye’ votes of shareholders owning at least two-thirds of the capital stock present or represented at the meeting.

**f) Proxies**

A shareholder may be represented at a shareholders’ meeting by any person, who need not be a shareholder unless the bylaws provide otherwise. The proxy must be in writing and be specific for each meeting.

Special rules regulate the public solicitation of proxies. Proxies are deemed to have been solicited publicly if one person represents more than three shareholders.

**2. Directors**

An S.A.’s executive governing body is its director or directors, who need not be Spanish citizens. The actual form of administration, i.e. Board of Directors, sole director, joint and severally directors or joint directors, must be stipulated in the bylaws, but can be changed at any time by the shareholders’ meeting.

If a Board of Directors is created, it must have a minimum of three members. Furthermore, no maximum legal limit exists.

A director is normally not required to be a shareholder unless the bylaws provide otherwise.

The Board of Directors may validly adopt resolutions in writing without holding a meeting, provided certain requirements are met.

An S.A.’s directors are appointed by the shareholders’ meeting. Minority shareholders that meet certain thresholds of ownership are entitled to proportional representation on the Board.

Appointment as a director becomes legally effective when accepted by the appointee, and must be registered in the Mercantile Register within a stipulated period of time.

The term of office of directors is set by the bylaws and cannot exceed five years. Directors may be reelected for one or several further five-year periods.
The shareholders’ meeting can freely dismiss the directors at any time.

The following paragraphs refer to some special features of a Board of Directors:

**a) Powers of the Board of Directors**

– The Board of Directors is the management body of the corporation.

– With respect to third parties, the Board of Directors represents the company in all acts within the scope of its corporate purpose. The company is bound even with respect to acts outside the scope of its corporate purpose as registered in the Mercantile Register if a third party acted in good faith and without gross negligence.

Any limitation on the representative powers of the Board, even if registered in the Mercantile Register, is not binding on third parties.

– An S.A.’s Board may delegate its functions to one or more managing directors or to an executive committee of Board members (however, the Board cannot delegate its accountability, or its obligation to submit annual financial statements to the shareholders’ meeting, or the powers delegated to it by the shareholders’ meeting without specific authorization from the latter to do so).

**b) Adoption of resolutions by the Board**

The quorum for a Board meeting is the presence, either personally or by proxy, of one-half plus one of the Board members.

**c) Majority for adoption of resolutions**

Board resolutions are adopted:

– Generally, by an absolute majority of the directors attending (in person or by proxy).

– Exceptionally, for permanent delegation of Board powers, by the affirmative vote of two-thirds of the Board’s members; such delegation is not legally valid until it has been registered in the Mercantile Register.

**d) Liability of directors**

Directors are liable to the company, its shareholders and its creditors for damages caused by acts that are illegal, contrary to the bylaws or done without the due diligence required of directors.

In such cases all the directors are jointly and severally liable. A director can only be exonerated from liability if he proves that he did not participate in the adoption or execution of the resolution and that he was unaware of the existence of the harmful act or, if he was aware of it, did everything reasonably possible to mitigate it or at least expressly opposed the resolution giving rise to the harm.

**e) Powers of attorney**

In addition to the powers vested in the Board of Directors, general powers of attorney may be conferred upon any person, whether or not a director, in which case they must be documented in a public deed of power of attorney registered in the Mercantile Register.
VII. Incorporation of limited liability companies

Law 2/1995 on “Sociedades de Responsabilidad Limitada” (Limited Liability Companies) which came into force on June 1, 1995, made certain important changes to the legal framework governing the limited liability company (S.L.) which can sometimes be used as an alternative form of business entity instead of the S.A.

Flexibility is one of the main objectives of Law 2/1995, which allows the participation unit holders (members) a wide margin in setting up, in the bylaws, the rules concerning the internal governance of an S.L. An S.L. is intended to be a more closely held entity as evidenced by the fact that:

– Participation units are generally not freely transferable (unless acquired by other participation unit holders, ascendants, descendants or companies within the same group).
– Debenture issues cannot be used as a means of raising funds because an S.L. is unable to issue debentures since Law 2/1995 came into force.
– The scope for representation at the General Meeting is limited.

Some salient features of the above-mentioned Law are described below.

– An S.L. cannot have a capital stock of less than € 3,005, which must be fully paid up at its organization. Capital Stock must be divided into participation units, but these need not all be the same (and, consequently, they may carry different voting weight).
– The genuineness of monetary contributions made at the time of incorporation or in connection with any capital increases must be attested to before a notary public.
– No independent appraiser’s report on non-monetary contributions is required, although the founders and shareholders are jointly and severally liable for the genuineness of the non-monetary contributions made. Similarly, in capital increases the directors of the company are liable for the difference between the value of the non-monetary contributions stated in their report and the real value of the contributions.
VIII. Sole shareholder companies

Under the Law, which applies in this respect to both S.A.’s and S.L.’s, either form of business entity can be set up as, or can subsequently become, a company having a sole shareholder (S.A.) or sole participation unit holder (S.L.), i.e. a wholly-owned subsidiary.

Such companies are subject to a specific regime involving special reporting requirements and registration requirements. For example, the fact that a company has a single owner has to be acknowledged on all company correspondence and commercial documentation. Likewise, contracts between the company and its sole owner need to be recorded in a special company register.

On the whole, such requirements can be deemed mere administrative and reporting requirements, but adherence to the specific rules is of paramount importance, because otherwise, under certain circumstances, the company can lose its limited liability status.
IX. Branches

In addition to the forms of business enterprise created under Spanish law, that constitute separate legal entities, a foreign investor may operate in Spain through a branch.

The formation of a branch requires the execution of a public deed that must be registered at the Mercantile Register. From the foreign investment legislation viewpoint, the branch must have an assigned capital, which is not subject to any minimum amount requirement.

The branch must have a legal representative who is empowered by the home office to administer the affairs of the branch. Apart from this requirement, there are no formal administration or management bodies.

Except for the obvious differences in terms of internal structure and organization, a branch operates much like a corporation in its dealings with third parties.

The choice between forming a branch or a legal entity in Spain may be affected by commercial reasons; for example, a company may be deemed to provide a more “solid” presence than a branch. There are also other differences which are addressed in different chapters of this publication.
Intellectual property is one of a company’s main assets. It is therefore vital to ensure that it is properly protected before investing in a new market.

In Spain, with rare exceptions, the registration principle prevails, which means that there can be no right to an invention or a distinctive sign unless it has been previously registered. Spain, unlike the United States for example, follows the “first-to-file” system. The first person to apply for registration will have priority rights, i.e. use will give no rights against third parties except in the case of well-known marks.

The principle of territoriality also prevails in the registration system, which means that protection is only available in countries where the mark or patent is registered. In other countries, the mark or patent could theoretically be used freely by third parties. Consequently, the registration of a mark or a patent in its country of origin does not grant automatic protection in other countries, for which reason protection must be assured by registration in each country.

Intellectual property rights are assets, and, like tangible goods, can be assigned, encumbered or transferred by any means provided by the law. Third parties can be licensed by holders of registered rights to use the rights in exchange for payment.

Spain has ratified the main International Conventions in this area which, with rare exceptions, allow non-Spanish nationals to protect their rights in Spain.

Spain’s membership of the European Union has also forced the Spanish legislature to implement the guidelines laid down by the Community Directives on Intellectual Property, and Spain is therefore in line with Europe.
II. Marks

A mark is a distinctive sign whose main function is to distinguish and differentiate in the marketplace the goods and services of a trader from the goods or services offered by that trader’s competitors. It also plays an important role in advertising and goodwill consolidation.

Rules on distinctive signs, and on marks in particular, are effective and necessary instruments in the fields of business policy and consumer protection.

When introducing a good or service on the Spanish market, steps must be taken to ensure that:

1. the mark can be freely used;
2. the mark can be freely registered; and
3. the mark has no negative connotations, i.e. it is commercially suitable.

Before marketing the good or service, a search should be conducted to determine whether an identical or similar mark has been registered previously for an identical or similar good or service, thereby possibly preventing the sign from being used in the territory.

After confirming that no prior third-party rights are being infringed, consideration can be given to the various procedures for obtaining registration in order to secure exclusive rights and prevent the mark from being used by other companies. Obtaining registration also involves checking that the mark is not generic, deceptive, descriptive or contrary to public policy or accepted principles of morality.

Since April 1996, the procedures through which a registration having effect in Spain can be obtained are as follows:

- National system
- International system: Madrid Agreement - Madrid Protocol
- Community Trade Mark

I. National marks

National marks are registered by the Spanish Patent and Trade Mark Office. These marks can comprise a large number of signs that it is possible to represent graphically, using words, combinations of names and surnames, signatures, numbers and number combinations, slogans, drawings, colors and three-dimensional shapes including packaging and wrapping.

Since Law 17/2001, of December 17, the Trade Mark Act, came into force on July 31, 2002, the Spanish Office only examines ex officio whether the mark is included in any absolute prohibition for its registration (mainly, that the sign is not general, misleading, descriptive or contrary to public policy) and no longer performs relative examinations (the existence of identical or similar marks registered for identical or similar products, with the risk of confusion). Relative prohibitions are only considered when the holders of priority signs oppose the application filed for a certain mark.

The Spanish Patent and Trade Mark Office will not ex officio reject marks included in such prohibitions and will instead perform a computer search to notify the holders of previous identical or similar signs, for informative purposes only, of their application, in case they are interested in opposing it.

Among the new features of Law 17/2001, we should mention the higher level of protection given to notorious and renowned
marks, the disappearance of establishment signs, the implementation of the multi-class mark and the reinforcement of the obligation to use the mark, all of which are intended for the Spanish system to become faster, more effective, more transparent and more in line with the predominant systems in other European countries.

Although the registration of a mark is valid for ten years and can be renewed indefinitely for further ten-year periods, the registration may lapse if the mark is not actually and effectively used during an uninterrupted five-year period, or if it becomes generic or deceptive.

2. International system


It is important to point out that although known as the “International System”, it is not strictly speaking an international registration but rather a system in which various national registrations may be obtained through a unified administrative procedure.

The applicant must designate the countries where he wishes to obtain protection. The WIPO notifies the national offices of the countries designated and if no opposition to registration is lodged pursuant to the national laws of each of the countries concerned within one year (in the case of the Agreement) and 18 months (in the case of the Protocol), the mark will be registered.

This is not an open system because it can only be used by natural or legal persons who are domiciled or who have a real or effective establishment in a country signatory to one or both of the above conventions and may obtain an international registration effective in all or some of the countries of the Union on the basis of a registration or application at the Trade Marks Office of that State.

One of the last inclusions in the Madrid System is the United States of America, which, on November 2, 2002 undertook to implement the Protocol and formalize its adhesion to the WIPO within one year.

3. Community trade mark

The main feature of the Community trade mark (CTM) is its unitary character. One procedure and one registration suffice to provide the owner of a trade mark with registered protection in all 15 Member States of the European Union. The Community trade mark covers a market of 380 million consumers.

An important point to note is that the Community trade mark does not replace trade mark rights in each Member State. The national, international and Community trade mark systems coexist and in some cases supplement each other.

The Community trade mark system enables a single registration granting direct protection in the fifteen countries of the European Union to be obtained by making a single application and following a single set of procedures. Thus, rather than filing applications in each of the Member States where they wish to sell goods or provide services, traders in Europe can obtain a Community registration conferring exclusive rights over the trade mark throughout the European Union.

This system is open to virtually all companies the world over since any company domiciled
or with an establishment in the European Union or in a country which is a party to the Paris Convention, or domiciled in a member state of the World Trade Organization, can obtain a CTM registration.

The Community trade mark is administered by the Office for the Harmonization of the Internal Market (OHIM) which is based in Alicante, Spain.

The application may be submitted in any of the 11 official languages of the European Union, although the applicant is required to designate a second language (English, French, Spanish, Italian or German) which could become the language of proceedings in the event of opposition, revocation or invalidity actions.

The OHIM only examines marks on absolute grounds (i.e. it will check to ensure that the mark is not descriptive, generic, deceptive or contrary to public policy or accepted principles of morality in any of the European Union countries). It does not examine applications on relative grounds (i.e. it will not refuse registration ex-officio simply because marks have been registered earlier in the European Union). It is up to the owners of these registrations to oppose the application, and disputes will be clarified at the CTM Registry. There are more than 3 million trade marks in the European Union, and finding one which can be freely used and registered as a Community trade mark is therefore not always easy.

Another important advantage of the Community trade mark is that no evidence of use is required to obtain registration and use of a mark in any one Member State is sufficient to maintain its validity. Once registered, a Community trade mark is valid for 10 years. This period can be renewed for further 10-year terms subject to the payment of the relevant fee.

The Community trade mark grants its owner the right to prevent third parties throughout the entire area of the European Union from using without his consent signs identical or similar to his mark for identical or similar goods if there is a risk of confusion. Importantly, under actions for infringement, acts carried out in violation of trade mark rights in any Member State of the European Union can be punished. Community trade mark infringement actions are brought in Community trade mark courts, which are national courts designated by each of the Member States.
Inventions are fully protected under Spanish law through a number of instruments such as patents, utility models, industrial designs and designs which guarantee the possibility of their exclusive use by their inventors or by such persons as may be authorized by the latter.

I. Invention patents

Patents seek to boost investments in R+D and to develop a country's technology. The State grants exclusive rights to the invention for a specific term (generally 20 years) on the understanding that once this period has expired, the invention will pass into the public domain and society as a whole can benefit from it.

The patent owner may exploit the invention and prevent third parties from exploiting it, marketing it or trading with it without his consent. During the term of the patent, third parties may only exploit the invention after being licensed to do so by the patent owner.

New inventions which involve an inventive step and are susceptible of industrial application are patentable. Consequently, the three main requirements to obtain a patent are as follows:

a. Novelty
b. Inventive step
c. Industrial application

Discoveries, scientific theories, mathematical methods, literary, scientific, artistic and any other aesthetic creations, schemes for performing mental acts, playing games or doing business are not considered patentable. Inventions contrary to public law and order, plant varieties (which are protected by special rules), animal varieties, and essentially biological processes for the production of animals or plants cannot be protected by patent either.

A significant step forward is the amendment of the Patents Act, to implement in Spanish law the European Directive for the legal protection of bio-technological inventions. It should be noted that although it is expressly admitted that inventions of this kind are patentable, clear restrictions are established, particularly emphasizing the defense of ethics and public policy by excluding patents when their exploitation is contrary to these principles.

Spain allows patents of goods and procedures. Pharmaceutical products have been patentable since 1992.

Patents are granted for a term of 20 years from the date of filing. A patent is maintained by paying annual fees which increase gradually each year. Once the 20-year period has elapsed, the subject-matter of the patent passes into the public domain and can be exploited by any third party. The Complementary Protection Certificate for pharmaceutical and phytosanitary products, which has been in force since 1998, extends the patent term by up to a maximum of 5 years for the time it took to obtain the relevant administrative authorization required to market the products.

In addition to the national system for the granting of patents, regional systems may also be used, in which an applicant requests protection for the invention in one or more countries and each country decides whether or not to protect the patent within its frontiers.
a) European Patent

Spain has ratified the 1973 Munich European Patent Convention and Spain can therefore be designated in a European patent application. European patents are administered by the European Patent Office, which is based in Munich. Various national registrations enforceable in the countries designated can be obtained by following a single procedure and by applying a single system of law (the European Patent Convention).

b) PCT-Patent Cooperation Treaty

Spain has ratified the PCT, whose main feature is that it unifies initial application procedures and search reports, which are necessary to determine the novelty of the invention and the inventive step. The main difference with respect to the European patent is that registration is granted by each of the various national offices.

2. Utility models

This form of protection is intended for new inventions involving an inventive step whereby an object is given a configuration, structure, or constitution that results in an advantage, appreciable in practice, for its use or manufacture.

A lesser degree of invention is required for utility models than for patents and, unlike patents, utility models require only national and not world novelty. They are granted for 10 years and therefore have a shorter term than patents.

This system of protection is particularly suitable for protecting tools, objects and devices of practical use.
IV. Industrial designs and models

Unlike patents and utility models, industrial designs and models protect the aesthetic appearance of a good rather than its functional novelty.

They offer protection for 10 years, renewable for a further 10-year period.

Industrial models are objects that can serve as prototypes for the manufacture of a product and that can be described in terms of their structure, configuration, ornamentation or representation.

Industrial designs are two-dimensional aesthetic creations consisting of an arrangement or a set of lines and colors whose purpose is to ornament a good, using any manual, mechanical, chemical or compound means (e.g. textiles manufacturing).

The Draft Law to improve and extend the protection of industrial designs (including designs and models) is at present in progress, and has already been conveyed to the Congress for enactment. In addition to making the registration access procedures faster and more flexible, the Draft Law responds to the need to transpose Community legislation and conforms to the future “Community design” that will protect industrial designs in the fifteen Member States and will be managed by the Office for the Harmonization of the Internal Market (OHIM) after 2003.

The creation of a legal framework to afford uniform protection to industrial creations within the EU will undoubtedly provide greater legal certainty and promote investment in industries as significant as the automobile, textile, and shoe industries.
V. Topographies of semiconductor products

Spanish legislation grants a period of protection of 10 years for topographies of semiconductor products, which are integrated semiconductor circuits known as “chips”. The subject-matter of protection is not the integrated circuit itself but the way in which it is physically mounted and the physical arrangement of all its elements.

For a semiconductor product to qualify for protection from the Spanish Patents and Trade Marks Office, the topography must be the result of the creator’s own intellectual efforts and must not be commonplace among manufacturers of semiconductor products. The law requires originality and creativity.

The governing provisions are to be found in Law 11/1988, the result of the transposition to Spanish law of Community Directive 87/54/EEC of December 16, 1986.
VI. Computer programs

Unlike the situation in other countries, computer programs in Spain cannot be registered as patents since the Spanish Patent Law expressly excludes them from the list of patentable inventions.

A special chapter is devoted to computer programs in the 1996 Spanish Intellectual Property Law. Computer programs and their accompanying documentation are protected as copyright and, with certain exceptions, are treated in the same way as literary works.

In Spain, copyright exists from the moment the related work is created, without any registration being required and with automatic protection therefore being granted. However, the option of filing the work with the Intellectual Property Register, as evidence to be used against third parties in the event of copyright infringement, exists.

Computer programs are protected for 70 years from the death of their author if the author is a natural person. If the author is a legal person, the period of protection is 70 years from January 1 of the year following the year in which the program was lawfully published or of the year of its creation if it was not published.

Like any literary or artistic work, computer programs create various economic and “moral” rights. Moral rights cannot be waived or assigned. They entitle the author to decide, amongst other things, whether his work is to be published and how, to demand that he be recognized as the author of the work and that the integrity of the work is observed, to alter the work and to withdraw it from the marketplace.

In Spain the author of the work is assumed to be the owner of the rights unless the work was created in the course of his employment. Unlike the position in other jurisdictions, when the work is created under, for example, a commission, the owner of the copyright will be the author and not the principal or commissioning party.

However, it should be noted that the Proposal of Community Directive on the Patentability of Inventions Implemented by Computer is currently being prepared. These inventions are defined as those that may only be implemented using a computer, computer network or other programmable apparatus.

After this Directive has been approved, the 15 EU countries should adopt the provisions necessary for its compliance, within the term established for the purpose.
VII. Unfair competition

Intellectual property rights may be protected by unfair competition legislation. Spain introduced unfair competition legislation in 1991, which is proving to be highly effective in practice.

The concept of unfair competition is very wide since any conduct objectively contrary to good faith is deemed to be unfair. The law includes amongst such forms of conduct acts of confusion and deception, gifts which lock consumers into contractual obligations or which create confusion as to price, and acts of denigration, comparison, imitation, exploitation of another’s reputation, breaches of confidentiality, incitement to breach of contract, infringement of laws on discrimination and dumping.

The main forms of unfair competition in relation to trade marks are imitation and the exploitation of the reputation of another.

Unfair competition rules also deal with know-how by defining as unfair competition the disclosure or exploitation of industrial or other business secrets obtained lawfully on the understanding that they would be kept confidential, without the consent of their owner.
VIII. Action against infringements of intellectual property rights

The owner of intellectual property rights can bring civil and criminal actions against any person who infringes his rights in Spain.

1. Civil actions

The procedure to bring actions before the Civil Courts is ruled by the Civil Procedure Law, which establishes the ordinary trial as the procedure path for the trademark’s owner to defend his rights against third parties’ infringements.

The trademark owner whose right has been infringed can claim:

– An order for the cessation of the acts infringing the intellectual property rights;
– Damages;
– Seizure of the goods produced or imported;
– To be awarded the title to the seized objects or means of production;
– All necessary steps to prevent the continuation of the infringement; and/or:
– Publication of the judgment against the infringer.

The owner of the rights may also seek injunctive relief to ensure the effectiveness of the actions.

2. Criminal action

Spanish criminal law defines certain types of infringements of intellectual property rights as criminal offences, punishable under the Spanish Criminal Code by terms of imprisonment that range from six months to two years and fines from six to twenty-four months.

It should be explained that the days-fine system consists of imposing an economic punishment in a daily amount of from a minimum of two hundred pesetas (€ 1.20) to a maximum of fifty thousand pesetas (£ 300.51), established according to the nature of the infringement and the economic situation of the convict.

The Spanish Criminal Code establishes a prison sentence (of two to four years), a fine (from eight to twenty-four months), and a special disqualification from practicing in the profession related to the crime committed (for two to five years).

Worth of mention are Law 28/2002, of October 24, for partial reform of the Criminal Procedure Law, namely the “Fast Lawsuits Law”, and the Organic Law supplementary thereto. This Law enables criminal offence against these rights to be pursued more effectively and faster. Failure to bring charges does not impede the preliminary investigation for prevention and insurance of criminal offence against industrial property.
## Exhibit

### Intellectual property conventions

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<th>Madrid Protocol</th>
<th>CTM¹</th>
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1. WTO: World Trade Organization.
2. TRIPS: Trade Related Intellectual Property Rights.
3. CTM: Community Trade Mark.
E: Non EU Member States that have completed agreements for extension with the European Patent Organization.
O: Governments with the status of observers that should commence negotiations for adhesion in the term of 5 years after the acquisition of said status.
## I. Introduction to the Spanish tax system

### 1. Corporate income tax
   - **a)** Taxable income
   - **b)** Reduction in base for investments to establish companies abroad
   - **c)** Tax rates
   - **d)** Tax credits, withholdings and prepayments
   - **e)** Asset-holding companies
   - **f)** Consolidated taxation status
   - **g)** Other special taxation regimes
   - **h)** Foreign-securities holding entities
   - **i)** Neutral tax regime for restructuring operations
   - **j)** Tax incentives for small and medium-sized companies
   - **k)** Formal requirements
   - **l)** Canary Islands Tax Regime

### 2. Personal income tax

### 3. Nonresidents’ income tax

### 4. Net worth tax

### 5. Inheritance and gift tax

### 6. Value added tax (VAT)
   - **a)** Taxable events
   - **b)** VAT rates and exemptions
   - **c)** Place of supply of taxable transactions
   - **d)** Permanent establishment
   - **e)** Taxpayer
   - **f)** Deduction of input VAT
   - **g)** Refunds

### 7. Transfer tax and stamp duty

### 8. Excise taxes

### 9. Customs duties on imports

### 10. Tax on insurance premiums

## II. Central Government taxes

### 1. Corporate income tax

### 2. Personal income tax

### 3. Nonresidents’ income tax

### 4. Net worth tax

### 5. Inheritance and gift tax

### 6. Value added tax (VAT)

### 7. Transfer tax and stamp duty

### 8. Excise taxes

### 9. Customs duties on imports

### 10. Tax on insurance premiums

## III. Local taxes

### 1. Periodic taxes
   - **a)** Tax on real estate
   - **b)** Tax on business activity
   - **c)** Tax on motor vehicles

### 2. Other taxes
   - **a)** Tax on erection and installation projects and construction work
   - **b)** Tax on increase in urban land value

## IV. Infringements and penalties

### Exhibit I. Calculation of corporate income tax

### Exhibit II. Nonresident case: income obtained without a permanent establishment

### Exhibit III. VAT example
The Spanish tax system comprises three kinds of taxes: “impuestos” (true taxes), “tasas” (dues and fees) and “contribuciones especiales” (special levies). The “tasas” and “contribuciones especiales” are quantitatively much lower than the true taxes and are collected in return for a public service provided by the authorities or for any type of benefit as a result of public works or services.

There are three levels of taxation in Spain:

– By the Central Government
– By the Autonomous Community (regional) governments
– By local authorities

The necessary brevity of this chapter make it necessary to offer only a short comment on the taxes levied by Autonomous Communities and local authorities and to concentrate on the taxes levied by the Central Government, including those administered and collected by local authorities.

The special regimes applicable in the Basque Country and Navarra may affect certain of the matters explained in this chapter.

Lastly, during the first months of 2003 the Government has approved a reform of the personal income tax, corporate income tax, and nonresidents’ income tax regulations in order to adapt them to the amendments made to the laws governing these taxes.
National taxes in Spain can be classified as follows:

– Direct taxes:
  - On income:
    Corporate income tax
    Personal income tax
    Nonresidents’ income tax
  - On assets (affecting only individuals):
    Net worth tax
    Inheritance and gift tax

– Indirect taxes:
  - Value added tax (VAT)
  - Transfer tax and stamp duty
  - Excise taxes
  - Customs duties on imports
  - Tax on insurance premiums

I. Corporate income tax

Corporate Income Tax Law 43/1995, implemented by Regulation 537/1997, represented a major reform of corporate taxation in Spain, the main objectives being the harmonization of the rules for determining the tax base and the accounting rules, and the systematization of existing legislation.

The key factor in determining the application of corporate income tax is “residence”. A company is deemed to be resident in Spain for tax purposes if it meets any of the following conditions:

– That it was incorporated under Spanish law.
– That its registered office is located in Spain.

II. Central Government taxes

– That its effective management headquarters are in Spain.

In the event of a conflict of residence, the provisions of Spain’s tax treaties with other countries will, where applicable, prevail.

Resident companies are taxed on their worldwide income. Taxable income includes all the profits from business activities, income from investments not relating to the regular business purpose, and income derived from asset transfers.

In this connection, regard should also be had to the provisions of Spain’s tax treaties with other countries, which, where applicable, may influence the determination of the tax base for taxation in Spain.

Taxation of nonresident entities is regulated separately under the Nonresidents’ Income Tax Law.

a) Taxable income

The Corporate Income Tax Law establishes three methods for determining taxable income: the direct assessment method, the indirect assessment method and the objective assessment method.

Under the direct assessment method (which is generally applicable), taxable income is defined as the difference between period revenues and period expenses. Taxable income is based on the income disclosed in the financial statements adjusted in accordance with tax principles. Business expenses are deductible if they are properly recorded and supported.

– Revenue and expense allocation criteria

The tax principles for allocating revenues and expenses to determine taxable income generally coincide with accounting principles. Tax law identifies
the accrual method as generally applicable for revenue and expense recognition purposes. Additionally, all expenses must be recorded in order to be deductible (except in certain cases, such as accelerated depreciation). For tax purposes, in the event of conflict between an accounting standard and a tax principle, the latter will prevail. However, expenses recorded in a fiscal year subsequent to their accrual, or revenues recorded in a fiscal year prior to their accrual, are allocated for tax purposes in the year in which they are recorded, provided that such practice does not give rise to lower taxation than that which would apply in the event of the proper recognition of the expenses and revenues in the taxpayer’s books.

For certain transactions, companies are permitted to use special allocation methods other than the accrual method (e.g. deferred price transactions).

If allocation criteria other than those expressly envisaged in the tax regulations are applied, the rationale for their use must be duly supported and they must be approved by the Government.

- International “fiscal transparency” regime (“Controlled Foreign Corporations” provisions)

This regime becomes applicable when:

- The tax (corporate income tax or similar) paid by the nonresident on the attributable net income must be less than 75% of that which would have been payable under Spanish regulations.

- The net income derives from:
  a) Ownership of real estate or rights *rem*, unless such real estate is used for an entrepreneurial activity or licensed to another nonresident group company (as defined in Article 42 of the Commercial Code).
  b) Share in equity and transfer to third parties of capital (with certain exceptions, such as financial assets held in order to meet statutory requirements, etc.).
  c) Lending, financing, insurance and service activities (except services directly related to export activities) with related resident companies which incur deductible expenses. The attribution does not take place if more than 50% of this type of income derives from transactions carried out with nonrelated entities.
  d) Income from transfers of assets or rights included in a) or b) above.

The attribution of net income does not take place (except for the third case above) when the nonresident company obtains such income from an entity in which its direct or indirect holding amounts to at least 5% of its capital stock if:

* The former engages in directing and managing its investment.
* At least 85% of the revenues of the latter entity derive from entrepreneurial activities.
Additionally, a general exception to the applicability of the regime for the income addressed in letters a), b) and d) above is established when the attributable income is below:

* 15% of the total net income obtained by the nonresident entity or,
* 4% of the total revenues of the nonresident entity.

The above limits may also be computed on a group basis, as legally defined.

In any case, the attributed net income cannot be higher than the total net income of the nonresident entity.

The attribution will take place in proportion to the direct or indirect holding in the nonresident entity, and the amount of net income to be attributed will be determined in accordance with the principles and criteria established in the corporate income tax legislation.

The Spanish entity will not include in its tax base the portion of distributed dividends received which derives from income previously attributed.

Specific income can only be included in the tax base once, regardless of the manner or the entity at which it is disclosed.

This legislation entitles the Spanish company to a tax credit on the amount of corporate income tax (or similar) actually paid by the nonresident entity and its subsidiaries as defined by law (in proportion to the net income attributed) and the tax actually paid as a result of the distribution of dividends. The limit for this tax credit is the Spanish tax.

No tax credit is permitted for taxes paid in tax havens.

Where the investee is resident in a country or territory classed as a tax haven it will be presumed that:

i) The amount paid by the entity not resident in Spain attributable to any of the classes of income previously referred to in letters a) to d), in relation to a tax identical or similar to corporate income tax, is lower than the 75% that would have been applicable in accordance with the corporate income tax rules.

ii) The income obtained by the investee arises from the mentioned classes of income.

iii) The income obtained by the investee is 15% of the acquisition cost of the holding.

These assumptions are rebuttable and do not apply if the investee consolidates its financial statements, pursuant to Article 42 of the Commercial Code, with one or more of the entities which are obliged to include in their taxable income the income obtained from nonresident entities.

– Market price valuation

As a general rule, assets must be valued at their acquisition or production cost.

However, in certain cases, market valuation (i.e. valuation on an arm’s-length basis) must be applied for tax purposes. This method is applicable to:

- donated assets;
- assets contributed to entities and the securities received in exchange;
- assets transferred to shareholders in
  the event of dissolution, the withdrawal
  of shareholders, capital reductions with
  refund of contributions, paid-in surplus
  and the distribution of income;
- assets transferred as a result of
  mergers, absorptions and full or partial
  spin-offs;
- assets acquired through swap
  transactions;
- assets acquired as a result of exchanges
  or conversions.

It should be noted that current
legislation provides for a special tax
neutrality regime when certain of the
transactions described above are carried
out as part of a corporate reorganization
(i.e. mergers, spin-offs, nonmonetary
contributions of lines of business and
share exchanges as well as nonmonetary
contributions of assets if certain
requirements are met).

Under this regime, provided that certain
requirements are met, the gains disclosed
on the valuation at market prices of the
assets and rights transferred may be
excluded from the transferor's tax base,
thereby not entailing an acquisition cost
for tax purposes for the acquirer.

Additionally, transactions between
related entities may be valued by the tax
authorities at market prices for
corporate income tax purposes when
the agreed valuation would have led
either to lower taxation or to a tax
deferral; however, such valuation cannot
lead to taxation of a higher income for
the parties involved. Two entities are
deemed to be related for tax purposes if
one owns indirectly at least 25% of the
capital of the other or exercises
functions at the other signifying the
power to influence decisions, or if the
same shareholders own at least 25% of
the capital stock of both (or if such
shareholders exercise functions with
decision-making power at both
companies). In addition, companies which
are members of a group as defined in
mercantile law, companies and their
shareholders (those owning at least 5% of
the capital stock –1% in the case of listed
companies), and companies and their
directors are also deemed to be related
for corporate income tax purposes.

OECD methods are applicable for
determining market prices between
related parties as follows:

First,
- Comparable uncontrolled price
  method (market price of the goods or
  of comparable items)

Secondarily,
- Cost plus method
- Resale price method

If none of the methods listed above are
applicable, the profit split method would
apply, taking into account the risks
assumed, the assets employed and the
role of each of the related parties.

Additionally, the possibility of “advance
pricing arrangements” with the tax
authorities has been introduced in
corporate income tax legislation. Thus, a
taxpayer may submit to the tax
authorities a proposal for valuing its
transactions with related entities based
on market conditions. If the proposal is
approved by the tax authorities, such
valuation is valid for tax purposes for a
period of three tax years.
Advance pricing arrangements may also be reached in connection with contributions for research, development and technological innovation or management expenses and in connection with the part of management expenses that may be allocated to a permanent establishment in Spain of a nonresident entity.

– *Thin capitalization rule*

If net direct or indirect remunerated financing from one or more nonresidents to a related Spanish company exceeds a debt/equity ratio of 3:1 based on the latter’s average net worth, the interest on the excess financing will be treated as a dividend and thus will be nondeductible for the Spanish company.

The taxpayer may submit a (duly supported) proposal for applying a higher ratio. If the proposal is approved, a different ratio may be applied. This possibility is not applicable to transactions made with or by persons or entities resident in countries or territories legally defined as tax havens.

Lastly, the tax base must include the difference between the value per books and the normal market value of the assets which:

- are owned by a resident entity that transfers its place of residence abroad;
- are allocated to a permanent establishment located in Spanish tax territory that ceases operations; or
- having been previously allocated to a permanent establishment located in Spain, are transferred abroad.

Also, the tax authorities can value at market price any transactions with persons or entities resident in territories defined in the relevant regulations as tax havens if the valuation agreed upon has led to lower or deferred taxation in Spain.

– *Inventory valuation*

There are no special tax rules in this connection. Accordingly, all inventory valuation methods (LIFO, FIFO, acquisition cost or weighted average cost) applicable for accounting purposes are also acceptable for tax purposes. The same rules apply to inventory depreciation.

– *Value adjustments*

- **Depreciation**

Depreciation qualifies as a deductible expense only if it is effective and is recorded in the accounts (with the exception of the accelerated depreciation applicable to certain activities, such as research and development; see below).

* Official depreciation rates

There are official rate tables (updated by Royal Decree 537/1997) which, if complied with, relieve the company of the need to prove effectiveness. Examples of the current official rates are:

<table>
<thead>
<tr>
<th>Annual depreciation rate (%)</th>
<th>Maximum</th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial buildings</td>
<td>3</td>
<td>1.47</td>
</tr>
<tr>
<td>Commercial buildings</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Office furniture</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Computers</td>
<td>25</td>
<td>12.5</td>
</tr>
<tr>
<td>Software</td>
<td>33</td>
<td>16.7</td>
</tr>
<tr>
<td>Vehicles</td>
<td>16</td>
<td>7.14</td>
</tr>
<tr>
<td>Machinery</td>
<td>12</td>
<td>5.55</td>
</tr>
</tbody>
</table>
There are special rules for assets used on a daily basis in more than one ordinary shift of work and for assets acquired second-hand.

* Declining-balance depreciation

Under this method, which is permitted for all assets except buildings and furniture, depreciation can be shifted to the early years of the asset's useful life, when the effective depreciation may be greater by applying a coefficient to the declining balance of the asset's book value.

* Sum-of-the-years'-digits method

This system is also permitted for all assets except buildings and furniture, and the sum of the digits is determined on the basis of the depreciation period established in the official tables.

* Other depreciation methods

Companies which, for technical reasons, wish to depreciate their assets at different rates than those fixed by the official tables, and also wish to obviate the uncertainties involved in proving the “effective” depreciation, can seek prior approval from the tax authorities for special depreciation plans with such annual rates of depreciation.

Finally, companies of certain kinds and in certain industries (e.g. mining companies, industries in the process of reorganization, etc.) may be authorized to depreciate their assets at their discretion in accordance with the special laws regulating each industry.

* Amortization of intangible assets

Intangible assets are amortized by the same methods as those applicable to tangible fixed assets throughout their economic life.

Among other intangible assets which do not have a specified finite life, goodwill can be amortized over twenty years if certain requirements are met (mainly that they derive from a transaction for a consideration between companies not belonging to the same group –as defined for accounting purposes). Otherwise, amortization will only be deductible if it is proved by the taxpayer that such amortization is irreversible.

The minimum period over which trademarks, leasehold assignment rights and other intangible assets that do not have a certain expiry date may be amortized is ten years.

- Financial lease contracts

Under Spanish law, financial lease contracts (provided by finance entities, as legally defined) for movable assets must have a minimum term of two years, and those for real estate must have a minimum term of ten years, and the annual charge corresponding to the depreciation of the cost of the asset must remain the same or increase over the term of the lease.

Lease payments (interest plus the portion of principal relating to the cost of the asset) are deductible, except those for land (although in this case the interest portion will be deductible) and for other non-depreciable assets. However, the ceiling on the deductibility of the
depreciation cost of the asset is twice the maximum depreciation rate per the official tables.

- Assets leased with purchase option
In this case, when there is no reasonable doubt that the purchase option will be exercised (i.e. when the price to be paid for the purchase of the asset is lower than the amount resulting from reducing the acquisition cost of the asset by the maximum depreciation corresponding to the lease term), the amount relating to the depreciation rates applicable to the asset is deemed to be a deductible expense for the lessee in line with the rules applicable to tangible fixed assets.

The difference between the lease payments payable to the lessor and the acquisition cost of the asset (i.e. the financial cost of the contract) is a tax deductible expense for the lessee over the tax periods spanned by the lease contract.

If the asset is transferred by the lessee to the lessor prior to the lease contract, the latter must continue to depreciate it by the same method and under the same terms as those applied prior to the transfer.

- Diminution in value of assets
  * Provision for bad debts
The provision for bad debts covers the foreseeable losses in the realizable value of accounts receivable. The deductibility of this provision is subject to certain requirements. Under these requirements, the only method applicable is the individual balance method, whereby the status of each receivable is individually analyzed (balances receivable from debtors that are bankrupt or in temporary receivership or similar situations, or balances past due by more than six months can be provided for at the full amount, as can balances in the process of legally enforced collection).

Provisions cannot be recorded for tax purposes for receivables from related parties unless the related parties concerned are insolvent.

Similarly, provisions cannot be recorded for tax purposes for other receivables (from public entities or receivables for which sufficient guarantees have been provided).

Financial institutions, as defined by law, are subject to specific rules.

  * Provision for depreciation of marketable securities
For marketable unlisted securities, a provision is admissible for the difference arising in the reporting year between the book value at the end of the fiscal year and the previously recorded book value (equity method) on the basis of either the accounts prepared by the directors or the accounts approved by the shareholders. For listed securities, the provision is admissible for the difference between the year-end stock market price and the price at the beginning of the tax year.

Provisions for depreciation of listed fixed-income securities are deductible up to the limit of the
overall depreciation arising in the year on such securities held by the taxpayer.

Provisions for unlisted fixed-income securities with a fixed redemption value are not deductible.

Provisions for holdings in the equity of entities resident in tax havens are in general not deductible.

- Financial goodwill
Where securities representing a holding in the equity of entities not resident in Spain are acquired and the income or gains obtained by such entities qualify for exemption under Article 20. bis of the Corporate Income Tax Law, the amount of the difference between the acquisition cost and underlying book value of the holding on the acquisition date will be allocated to the assets and rights of the entity not resident in Spain, and any portion of the difference that has not been allocated will be deductible from taxable income, subject to an annual limit of one twentieth of its amount.

This deduction is not consistent with the tax credit for export activities, but is consistent with the provision for depreciation of marketable securities.

This legislative provision applies to acquisitions of holdings made in fiscal years commencing after January 1, 2002.

- Provisions for contingencies and expenses
As a general rule, provisions for foreseeable contingencies, possible losses, expenses or probable debts are not deductible for tax purposes.

However, the following provisions, among others, are tax-deductible:

* Provisions intended to cover definite economic liabilities contracted or incurred by the company, the amount of which has not been definitively established. Examples include penalties for nonperformance of contracts, execution of guarantees, etc.

* Provisions intended to cover repair and inspection warranties (and ancillary expenses for sales returns), up to the limit resulting from applying to the sales with outstanding warranties at the end of the tax period the average warranty expenses as a percentage of total sales under warranty in the current and the two preceding tax periods.

- Nondeductible expenses

- Amounts directly or indirectly remunerating equity.

- Corporate income tax.

- Criminal and administrative fines and penalties, and surcharges for the late payment of taxes.

- Free gifts. Except gifts to certain entities (foundations, etc.) of assets registered in the Register of Assets of Cultural Interest, assets aimed at contributing to the conservation of assets of cultural interest or to the performance of activities of general interest, up to a limit of 10% of the tax base or, in the first case, 30% of the tax base.

- Expenses for services relating to transactions performed directly or indirectly with individuals or entities resident in designated tax havens or
paid through individuals or entities resident in tax havens (unless the payor can prove that the expense arose from a transaction effectively performed).

- Provisions to internal pension allowances.
- Additionally, some expenses charged by related entities (such as management fees and R&D contributions) must meet certain formal requirements in order to be tax deductible.

- Income derived from asset transfers

By contrast with other countries, Spanish corporate income tax treats income derived from the transfer of assets in the same way as other income items. Accordingly, such income is generally added to (deducted from) regular business income to determine the taxable income.

Special rules are envisaged for determining income derived from real estate transfers to take into account the declining value of money. Under these rules, the acquisition cost and the annual depreciation are corrected by applying certain coefficients.

- Loss carryforwards

As a general rule, a resident entity can carry forward its tax losses for offset against the taxable income of the following fifteen years. For newly-incorporated entities, this fifteen-year period commences in the first fiscal year in which the entity reports taxable income.

The taxpayer must prove, by producing the related tax returns or self-assessments, accounting records and the appropriate documentary support, the origin and amount of the tax losses to be offset, whenever the tax losses were incurred.

Loss carrybacks are not permitted.

b) Reduction in base for investments to establish companies abroad

This reduction is a tax incentive to support investments made in acquiring holdings in companies not resident in Spain that enable a majority of the voting rights in such companies to be obtained, provided that:

- The investee company carries on business activities abroad (excluding real estate, financial or insurance activities or the provision of services to related entities resident in Spain).
- The business activities pursued by the investee company have not been carried on previously under other ownership.
- The investee company is not resident in the European Union or in territories classified as tax havens in the regulations.

This incentive involves deducting from the tax base for corporate income tax purposes the amount of the investments effectively made in the year, up to a maximum annual limit of €30,050,605.22, without exceeding 25% of the tax base for the tax period before calculating the deduction. The amounts deducted will be included in the tax base in equal parts in the tax periods concluding in the following four years.

The size of the deduction is reduced by the amount of any decline in the value of the holding in nonresident companies that had been tax-deductible. Furthermore, this incentive is incompatible with the tax credit to promote exports.
c) **Tax rates**

Spain’s current standard corporate income tax rate is 35%. Special rates are applicable to certain entities such as listed collective investment institutions including real estate investment funds (1%), certain cooperatives (20%) or entities engaging in oil and gas research and exploitation activities (40%), as well as the so called asset-holding companies (40%), which regime has substituted the former fiscal transparency one.

d) **Tax credits, withholdings and prepayments**

The tax credit regulations are normally revised annually in the Budget Law. The credits referred to below are those applicable for 2003.

– **Tax credit for reinvestment of extraordinary income**

Provision is made for a tax credit in the form of a 20% deduction from the tax payable on gains obtained from transfers of assets (the types of asset are mentioned below), on condition that the transfer proceeds are reinvested. The tax credit will be 10%, 5% or 25% where the tax rates are 25%, 20% or 40%, respectively.

However, a partial tax credit can be taken if the proceeds are partially reinvested, by applying the 20% tax credit to the portion of the gain proportional to the amount reinvested.

The amount of the gain qualifying for the tax credit will not include deductible provisions for the assets transferred, or amounts charged in respect of accelerated depreciation and to be included in the tax base as a result of the transfer of the assets on which it was claimed. The portion of the gain that has given the right to claim a double taxation tax credit will not be included in the tax credit base either.

The tax credit will be taken in the period in which the reinvestment is made and will be taken without any limit on the tax payable. However, where the reinvestment takes place before the transfer, the tax credit must be taken in the period in which the transfer is made.

- **Types of asset transferred**

The following are the assets the transfer of which qualifies for the above-mentioned tax credit:

* Tangible fixed assets or intangible assets previously held for at least one year.

* Securities which represent at least 5% of the capital of the investee in question and have been previously held for at least one year, excluding securities that do not confer an interest in its capital stock.

For the purposes of calculating the length of ownership, the FIFO rule will be applied (those acquired first will be deemed to have been transferred first).

The calculation of the interest transferred will refer to the tax period.

- **Reinvestment requirements**

The following are the assets in which the transfer proceeds must be reinvested:

* Tangible fixed assets or intangible assets used for business activities.

* Securities which represent at least 5% of the capital of the investee, excluding those which do not confer
an interest in its capital stock and those which confer an interest in the capital or equity of entities resident in tax havens.

The assets in which the reinvestment is made must continue to be held by the taxpayer for five years, except for justified loss, or for three years in the case of movable assets, unless their useful life is shorter. If the assets are transferred before the end of that period, the tax credit will be forfeited (unless the net book value or proceeds, if less, is reinvested as described above). If the tax credit is forfeited in a year subsequent to that in which it is used, the relevant tax payable and late-payment interest must be paid over to the tax authorities.

The reinvestment must be made within a period commencing one year before and ending three years after the date on which the asset transferred is made available. However, a special reinvestment plan may be submitted where the reinvestment cannot be made in the above-mentioned periods due to the technical characteristics of the reinvestment.

If more than one transfer of securities is made in the same period, time in the above-mentioned period will start running from the end of the tax period.

The reinvestment will be deemed to have been made when the assets in which it is made are made available to the taxpayer, except in the case of assets under financial lease agreements, where the reinvestment will be deemed to have been made on the date of execution of the related agreement (for the cash value of the asset). In the latter case, if the purchase option is not exercised, the reinvestment will be deemed not to have been made (the reinvestment being a condition subsequent).

Investment and professional training tax credits

- A 10% tax credit for investments made in tangible fixed assets used for the following:
  * To protect the environment, consisting of installations to avoid air pollution from industrial facilities.
  * To prevent the pollution of surface, underground and sea water by reducing, recovering or treating industrial waste.
  * Purchases of land-based means of transportation that help reduce air pollution.

In order for investments in these assets to qualify for this tax credit, they must be included in programs, agreements or contracts with the relevant environmental authorities. In such cases, the authorities will issue the related certificate accrediting the investment.

- A 10% tax credit for investments made in certain assets of cultural interest, provided that they are held for at least three years.

Capitalizable expenses incurred in the acquisition, maintenance, upkeep or repair of such assets also qualify for this tax credit.

- Investments in satellite vehicle navigation and location systems incorporated into industrial or commercial road transport vehicles will give the right to a tax credit of
10% of the amount of such investments.

- Investments in access platforms for handicapped people and wheelchair securing facilities incorporated into passenger road public transport vehicles will give the right to a tax credit of 10% of the amount of such investments.

- A 20% tax credit for investments made in Spanish motion picture or audiovisual productions. The production cost is reduced, in order to apply the tax credit, by the portion financed by the financial co-producer.

A 5% tax credit is envisaged for investment in a motion picture financed by the financial co-producer (subject to a ceiling of 5% of the income for the year derived from such investment).

- A 5% tax credit for investments made in the publication of books.

The portion of these investments financed with subsidies does not qualify for a tax credit.

- A tax credit for 30% of the expenses incurred in the tax period on scientific R&D. If the investment made exceeds average expenses incurred in the previous two years, 50% is applied to the excess.

In addition, a tax credit will be available for 10% of the expenses incurred on personnel assigned exclusively to such activities, and expenses relating to certain types of project.

A tax credit for 10% of the expenses incurred in the tax period on technological innovation, and 15% in the case of expenses relating to projects, the execution of which is entrusted to universities and other agencies or centers.

R&D and technological innovation expenses incurred abroad may qualify for this tax credit provided that the main R&D activity takes place in Spain and the expenses incurred abroad do not exceed 25% of the total.

The amount of the base for this tax credit is reduced by 65% of any subsidies received to encourage such activities.

Apart from the tax credit for R&D expenses a tax credit is established for investments in tangible fixed assets and intangible assets (excluding investment in buildings or land) to be used exclusively for R&D activities, which will qualify for a tax credit for R&D activities (n.b., not technological innovation) on the following conditions:

* The base of the tax credit will be the amount of the investments in the above-mentioned assets, net of 65% of the subsidies received.

* The investments are deemed to be made when the assets are put into operation.

* The tax credit rate in these cases will be 10%.

* The assets acquired must remain at the company until their specific purpose in the R&D activities is accomplished, unless their useful life is shorter.

* This tax credit will be inconsistent with the other tax credits provided for the same investments in the Chapter on Tax Credits to encourage the
pursuit of certain activities, but will be consistent with the tax credit for reinvestment of extraordinary income.

- A tax credit may be taken for 25% of the investment in:
  * The formation of a branch or permanent establishment abroad, the acquisition of a holding in a foreign company or the incorporation of a subsidiary directly connected with the export of goods or services or the contracting of tourism services in Spain, provided that the holding is of at least 25% of the capital stock of the subsidiary (except for investments in tax havens).
  * Advertising and publicity expenses covering more than one year for the launch of products, the opening-up of markets, and attendance at trade fairs (including international trade fairs in Spain) also qualify for this tax credit (except when carried out in tax havens).

The amount of the base for these tax credits is reduced by 65% of any subsidies received.

- A tax credit can be taken for 5% of the amount of the employee training expenses.

If the expenses exceed the average amount spent in the two preceding years, this tax credit is increased to 10% on the excess amount. The employee training expenses are reduced by 65% of any subsidies received treated as period revenues.

The tax credit also applies to expenses incurred by the entity in training employees in the use of new technologies. Such expenses include the cost of Internet access and the related hardware, even if used by employees outside the workplace and outside normal working hours. The expenses referred to in this section will be treated for tax purposes as training costs and will not give rise to salary income for the employee.

- Tax credit for employer contributions to employment pension plans

In general, this tax credit encourages contributions to employment pension plans or mutual entities which operate as employee welfare vehicles sponsored by the taxpayer for the benefit of workers whose annual gross compensation is less than €27,000 provided that such contributions are imputed. If the compensation exceeds that amount, the tax credit will be taken on the proportion of the contributions which relate to €27,000.

The tax credit is equal to 10% of the contributions made.

- Tax credit for hiring handicapped workers

The requirements for qualifying for this tax credit are as follows:

- The contract must be an indefinite-term, full-time contract.
- The amount of the tax credit will be €6,000 per handicapped person/year by which the average labor force increases, with respect to the immediately preceding year.

Tax credits are limited to 35% of the gross tax payable, net of domestic and international double taxation tax credits and of tax allowances.
However, any excess can be carried forward for use in the following ten years (in the case of the tax credit for scientific research and technological innovation activities, the period will be up to fifteen years).

The period will be counted from the first subsequent year in which an entity reports taxable income in the case of newly-incorporated entities or entities offsetting prior year’s losses by effective contributions of new resources.

- **Tax credit for domestic double taxation of dividends and on transfers of shares**

  This credit completely eliminates double taxation when the resident company collecting the dividend owns at least 5% of the resident company paying the dividend and had its holding during the 12-month period prior to the date on which the dividend is distributed. If these requirements are not met, double taxation is not avoided altogether, since 50% of the dividend received is taxed (or 100% should certain antiabuse provisions be applicable).

  The credit can also be taken on transfers of shares in respect of the amount of undistributed earnings generated in the period of ownership of the holding, provided that the requirements described above are met.

  Additionally, the credit applies (in respect of the amount of undistributed earnings) in the following cases: liquidation of a company; acquisition by a company of its own shares for retirement purposes; withdrawal of shareholders; dissolution of a company without liquidation (mergers, total spin-offs or global transfers of assets and liabilities).

  The above-mentioned tax credits are subject to certain limits (with some exceptions) including most notably:

  - When the distribution of the dividend or of the share in profits does not result in the inclusion of income in the tax base.

  - When the distribution of the dividend or of the share in profits causes a decline in the value of the ownership interest for tax purposes.

  - When the undistributed income relates to income not included in the tax base of the investee company because it was offset by tax losses.

  Any excess tax credit can be carried forward for use in the following seven years.

- **Tax credit to avoid international double taxation**

  Traditionally, Spanish legislation has adopted the credit method and the three-tier-underlying tax credit (for dividends) to avoid international double taxation.

  An amendment to the legislation dated June 2000, introduced a pure exemption system subject to compliance with certain requirements.

  The exemption co-exists with the tax credit system (the tax payer may opt for one or the other, although the application of both is incompatible).

  - **Tax credit system**

    Under this method, all the income or capital gains obtained abroad by companies resident in Spain are included in the tax base in calculating the tax due. The amount of tax
effectively paid abroad will be deducted from the tax due, up to the limit of the tax that would have been payable on the income had it been obtained in Spain. In making the calculation, all the income obtained in the same country will be included, except in the case of permanent establishments, where the income obtained by each of them will be grouped (“country per country mechanism”).

When the tax base includes dividends or shares in profits paid by an entity not resident in Spain, the tax effectively paid by the nonresident entity in respect of the income from which the dividends or shares in profits were paid will be deducted. This deduction, together with that mentioned in the previous paragraph, may not exceed the gross tax that would have been payable in Spain on such income.

The underlying tax is deductible up to the third level (i.e. subsidiaries of subsidiaries). To qualify for the tax credit, a direct or indirect holding of at least 5% in the capital of the nonresident entity must be owned uninterruptedly for the one-year period immediately prior to the distribution of the dividend (or the one-year period must be completed after the distribution), and the resident entity must include in its tax base not only the income distributed but also the taxes borne by said foreign entities.

Any amounts not deducted due to insufficiency of the gross tax payable may be carried forward for use in the following ten years.

- Exemption system applicable to income from business activities carried on abroad through subsidiaries or permanent establishments

Under the exemption system, dividends or profit participations derived from holding securities representing the equity of entities which are not resident in Spanish territory and the income (gains) obtained from the transfer of these securities are tax exempt in Spain provided the following requirements are met:

a) The direct or indirect interest in the capital or equity of the nonresident entity must be at least 5% and this interest must have been held by the Spanish entity uninterruptedly during the year prior to the date on which the profit distributed becomes claimable (or will be maintained for the time necessary to complete a year).

b) That the nonresident entity has been subject to a tax of an identical or analogous nature to the Spanish corporate income tax in the tax year in which the profit which is distributed has been obtained. It is presumed, unless otherwise proved, that the nonresident entity is subject to a tax of identical or analogous nature to the Spanish corporate income tax if the nonresident entity is resident in a country with which Spain has a treaty to avoid international double taxation and such treaty contains an exchange of information clause. The exemption does not apply when the nonresident entity resides in a tax haven as legally defined.
c) The income from which the dividends or profit participations arise must be derived from the carrying on of business activities abroad as defined by the Law. This requirement will be deemed to be met when at least 85% of the revenues for the year of the subsidiary relate to operating (i.e. not subject to Spain’s control of foreign corporations –CFC– rules) income obtained abroad, as well as to dividends from subholdings arising from qualifying operating subsidiaries.

The exemption applies in the case of capital gains when the requirements provided for in b) and c) above are met in every year of the holding, and the requirement set in a) on the date on which the transfer takes place.

Regarding the computing of the one-year period, account may be taken of the period during which the holding was owned by companies that meet the conditions to be considered as forming part of the same group of companies according to Spanish mercantile legislation.

In any case, if the exemption has been applied to foreign-source dividends, the decline in the value of the holding may not be included in the tax base, regardless of the manner or the tax period in which it occurs, up to the amount of those dividends.

The Law also states that, if the nonresident entity whose holdings are being transferred has, in turn, a direct or indirect holding in entities resident in Spain or possesses assets in Spanish territory (and the market value of the holdings in the Spanish-resident entities or of the assets located in Spain exceeds 15% of the market value of its total assets), the exemption would be limited to the part of the income that relates to the net increase in undistributed profits generated by the investee entity during the time the holding was owned. Furthermore, the Law establishes provisions that limit the application of the exemption, as in cases in which the entity transferring the holdings has made a tax-deductible adjustment to the value of the holding transferred. In this case, the exemption is limited to the excess of the income obtained on the transfer over the amount of the adjustment deducted. Similarly, if the holding in the nonresident entity had been acquired from another entity that meets the conditions referred to in Article 42 of the Commercial Code for forming part of a group of companies, any loss disclosed on the transfer of the holding will be reduced (in order to determine the amount of tax exempted) by the amount of the income obtained on the transfer of the same holding to which the exemption had been applied. Furthermore, any income obtained on the transfer will be taxed up to the amount of the loss on previous transfers included in the tax base for corporate income tax purposes.

Apart from the above provisions, the Law also stipulates certain cases in which the exemption is not applied, such as, for example, when the entity resident in Spain is transparent, the acquiror resides in a tax haven, or the business activity abroad is carried on for the main purpose of qualifying for this tax regime unless, in this latter
case, evidence is provided of other valid economic grounds. It will be assumed that the business activity abroad is carried on mainly to qualify for the tax regime if it is simply relocated, i.e. when the same activity carried on by the subsidiary abroad had previously been carried on in Spain by another entity, which has ceased to carry on business and has a relationship of the type referred to in Article 42 of the Commercial Code.

Lastly, in relation to the income obtained abroad through a permanent establishment, it should be noted that the losses incurred by the establishment will be deductible, although tax must be paid subsequently on future income up to an amount equivalent to the losses previously deducted.

- **Withholdings and prepayments**

Nonoperating income, such as interest, rent and dividends, is subject to withholding tax at source, as a prepayment against the final tax liability. In addition, with certain exceptions, lessees of certain types of real estate must make withholdings of 15% of the rent paid to the related lessors.

Spanish companies are also required to make three tax prepayments (in April, October and December of each year) based on the taxable income for the first three, nine or eleven months of the calendar year, applying a rate equal to 5/7 of the applicable tax rate (for taxpayers taxable at the standard rate, the prepayment would be 25%). Certain reductions, withholdings, prepayments on account and installment payments made for the tax period shall be deducted from the resulting tax payable.

This method is obligatory for taxpayers whose volume of business exceeds €6,010,121 in the 12 months prior to the date on which their tax period commences, and optional for any taxpayer that expressly decides to follow the method.

Taxpayers whose volume of business does not exceed said amount, make the prepayments by applying the rate of 18% to the gross tax payable (net of the related tax credits) of the last tax year whose deadline for filing a return has elapsed.

The withholdings and prepayments can be taken as tax credits in the annual return for the corresponding year. If the sum of such credits exceeds the final tax payable, the company is entitled to a refund for the excess prepaid.

**e) Asset-holding companies**

One of the main new features introduced for 2003 is the suppression of fiscal transparency, which is to be replaced by the new “asset-holding companies” regime.

Companies which fulfill the following requirements for more than 90 days in the fiscal year are deemed to be asset-holding companies:

- over half their assets consist of securities or are not used in economic activities, and
- over 50% of their capital stock is directly or indirectly owned by no more than ten shareholders or by a family group.

For these purposes, in the case of companies over half of whose assets consist of securities, *inter alia*, those owned for the
purpose of complying with legal and statutory obligations or of directing and managing the ownership interest (provided they carry at least 5% of voting rights) are not deemed to be securities.

This regime does not apply to companies at which all the shareholders are legal entities which are not asset-holding companies or if over 50% of the capital is owned by a legal entity governed by public law. In addition, it does not apply in the tax periods in which the securities representing the ownership interest in the company are traded on an official secondary market.

Shareholdings and other ownership interests in the company must be registered.

Asset-holding companies will be taxed according to the following special rules:

– Taxable income will be divided into two components: the general component, which will be taxed at 40%, and the special component which will be taxed at 15%. The taxable income will be quantified pursuant to the rules of the Personal Income Tax Law, excluding the following: personal and family exemptions, and the exemption provided for capital gains disclosed as a result of the transfer of units or shares in collective investment institutions in cases in which the amount obtained is invested again in units or shares in another collective investment institution.

– The direct assessment method will be used to determine net income from economic activities.

– In calculating capital gains, the method of abatement coefficients, whereby the gain is reduced by a certain percentage depending on the type of asset (14.28%, 25% or 11.11%) for each year following the second year the asset forms part of the taxpayer’s net worth at December 31, 1996, will not be used.

– The 40% reduction provided for in the Personal Income Tax Law for income generated over a period exceeding two years or obtained at particularly irregular time intervals will not apply.

– Prior years’ tax losses are offset pursuant to the Personal Income Tax Law.

– The gross tax payable can only be reduced by the following: the tax credit for economic activities, gifts, income obtained in Ceuta and Melilla, and investments in assets of cultural interest. In addition, companies can claim the dividend and the international double taxation credits (applicable to individuals), and can deduct the prepayments made in the fiscal year.

The rules for distribution of income are as follows:

– Where the recipient is an individual resident for tax purposes in Spain, dividends and shares in income generated in tax periods in which the distributing entity was taxed under the regime for asset-holding companies will not be included in the recipient’s personal income tax return for that tax period.

– Where the recipient is a resident company or a nonresident income taxpayer with a permanent establishment in Spain, the income received will be included in the taxable income but the 50% tax credit for double taxation of dividends will be applied.

– Where the recipient is a nonresident income taxpayer without a permanent
establishment, the income received will be afforded the treatment provided in the Nonresident Income Tax Law.

Income obtained from transfers of ownership interests in companies which own reserves recorded out of income to which this regime applied will be treated as follows:

– If the transferor is an individual resident for tax purposes in Spain, the rules of the Personal Income Tax Law will apply.

– If the transferor is a resident company or a nonresident with a permanent establishment, it cannot take the tax credit for double taxation of capital gains, and the transfer value cannot be lower than the underlying value resulting from the latest balance sheet.

– If the transferor is nonresident and does not have a permanent establishment, the income will be treated as provided for in the Nonresident Income Tax Law.

f) Consolidated taxation status

Spanish tax law envisages the possibility of certain corporate groups being taxed on a consolidated basis.

The filing of a consolidated return has significant advantages, most notably the fact that the losses of some group companies can be offset against the profits of others. Also, since intercompany profits are eliminated in calculating consolidated income, the arm’s-length test being applied in the valuation of intercompany transactions is normally irrelevant (see p. 91 for earlier comments on this point).

For tax purposes, a consolidated group consists of the resident controlling company, which must be subject to (and not exempt from) corporate income tax, or a permanent establishment of a nonresident company, and those of its Spanish subsidiaries in which they have effective direct or indirect ownership interests of at least 75%. In order to request the application of the consolidated tax regime, the controlling company or permanent establishment must have had this 75% holding at any time during the fiscal year prior to its application.

Resolutions for group companies to be taxed on a consolidated basis must be adopted by the shareholders’ meeting (or equivalent body if they are not formed under the Commercial Code), and the tax authorities must be notified at any time during the tax period immediately prior to that in which the consolidated tax regime is applied. The regime will be applicable indefinitely so long as its application is not waived.

g) Other special taxation regimes

Corporate income tax legislation contains provisions governing special taxation regimes, established mainly as a result of the nature of the taxpayer or of the activities carried on by entities in a specific economic sector:

– Spanish and European Economic Interest Groupings (EIGs). These entities and their shareholders are subject to the general corporate income tax rules, with some exceptions, among others: they do not pay corporate income tax on the portion of their taxable income attributable to shareholders resident in Spain.

The nonresident shareholders of Spanish EIGs are taxable pursuant to the Nonresident Income Tax Law and to the rules contained in the tax treaties.
The nonresident shareholders of a European EIG are only taxable in Spain for the EIGs’ income allocated to them, if they are considered to have a permanent establishment in Spain.

– Temporary Business Associations (“Uniones Temporales de Empresas” or UTEs). These entities are taxed in the same way as EIGs; however, the foreign-source income (derived from activities carried out abroad) of UTEs is tax-exempt (subject to application to the tax authorities).

The losses obtained by a UTE abroad are imputed to the tax bases of its members. If, in future years, the UTE obtains income it must be included in the tax base of its members up to the limit of the losses previously included.

– Other special tax systems apply to venture capital companies and funds, industrial and regional development companies and collective investment institutions.

Special regimes for economic sectors apply to both mining companies (with special provisions relating mainly to accelerated depreciation of certain assets and reductions in the tax base due to the applicability, subject to certain requirements, of the depletion factor), companies engaging in oil and gas research and exploitation activities (which, although subject to tax at a higher rate ~40%–, may reduce, with certain limitations, their tax base by applying the depletion factor and are subject to special depreciation and loss carryforward provisions, etc.) and to shipping entities on the basis of tonnage.

h) Foreign-securities holding entities

Current legislation of the regime governing foreign-securities holding entities (in Spanish, ETVE) underlines the same as one of the most competitive in the European Union.

The main features of this special regime are summarized below:

– Corporate purpose and application of the regime

Regarding the corporate purpose of the ETVE, it is sufficient for the corporate purpose to include the management and administration of securities representing the equity of entities not resident in Spanish territory, by means of the appropriate organization of material and personal resources. Moreover, an ETVE may file a consolidated tax return, if it meets the relevant requirements, although the ETVE regime is not applicable to Spanish and European Economic Interest Groupings, Temporary Business Associations and Asset-Holding companies.

It is sufficient to notify the decision to apply the regime to Ministry of Finance (no permission has to be granted by the authorities).

– Treatment of the income obtained by the ETVE from holdings in nonresident entities

Firstly, the dividends or shares in the profits of entities not resident in Spain, and income deriving from the transfer of the holding, are exempt subject to the requirements and conditions provided for under the exemption method to avoid international double taxation (described above, see p.101).
Secondly, a minimum holding of at least 5% must be owned in the nonresident entity to apply the aforementioned method. For the purpose of applying the exemption provided for in the ETVE regime, the minimum holding requirement is deemed to be met (i.e. the holding may be less than 5%) if the acquisition value of the holding is over €6 million. Holdings of less than 5% may be held in second- and subsequent level subsidiaries (when the €6 million requisite is maintained), if these subsidiaries meet the conditions referred to in Article 42 of the Commercial Code for forming part of the same group of companies as the first-level foreign entity and file consolidated financial statements.

The above notwithstanding, when the holding in the nonresident entity had been valued in accordance with the rules pertaining to the neutral tax regime, and the application of these rules, even in a previous transfer, had resulted in the non-inclusion of income in the tax base for corporate income tax, personal income tax or nonresident income tax, deriving from the transfer of the holding in an entity resident in Spain, the exemption will apply only to the income relating to the positive difference between the transfer value and the normal market value of the holding in the nonresident entity at the time of acquisition by the transferring entity. The rest of the income obtained on the transfer will be included in the tax base for the period.

- Treatment of income distributed by the ETVE

If the recipient of the income is an entity subject to Spanish corporate income tax, the income received will entitle the recipient to the tax credit for domestic double taxation.

In case the recipient is an individual subject to Spanish personal income tax, he may apply the tax credit for taxes paid abroad on the terms provided for in the personal income tax legislation.

Finally, when the recipient is an individual or entity not resident in Spain, the profits distributed will not be deemed to have been obtained in Spain and, in this respect, the first distribution of profits will be deemed to derive from exempt income. In this sense, the distribution of additional paid-in capital is to be treated in the same way as the distribution of income.

- Treatment of the capital gains obtained on the transfer of the holdings in the ETVE

When the shareholder is an entity subject to Spanish corporate income tax, it may apply the new exemption to avoid double international taxation described above in respect of the part of the income relating to holdings in nonresident entities that meet the relevant requirements, and the tax credit for domestic double taxation of capital gains in respect of the rest of the income obtained, on the terms provided for in the legislation governing the tax credit for domestic double taxation.

When the shareholder is a person or entity not resident in Spain, the income relating to the reserves allocated with a charge to the exempt income or to the value differences imputable to the holdings in nonresident entities will not be deemed to have been obtained in Spain.
No special rules have been introduced for individual resident shareholders, who will continue to be subject to the personal income tax legislation.

i) Neutral tax regime for restructuring operations

In order to facilitate corporate reorganizations (mergers, spin-offs, contributions of assets, and exchanges of securities), the Spanish tax system provides for a well-established special regime based on the principles of non-intervention by the tax authorities and tax neutrality, which guarantees —when certain requirements are met— the deferral of or exemption from taxation, as appropriate, in respect of both direct and indirect taxation, for taxpayers carrying out such operations, along the same lines as the rest of the EU Member States.

j) Tax incentives for small and medium-sized companies

Companies whose net sales (calculated for the group, if applicable) in the immediately preceding tax period (or in the current period in the case of newly-incorporated companies) amount to less than five million euros qualify for certain tax incentives. If the entity belongs to a group of companies within the scope of Article 42 of the Commercial Code, the net sales figure will be calculated for the group as a whole. The incentives can summarized as follows:

- Accelerated depreciation of their tangible fixed assets up to certain limits, provided that certain job creation requirements are met.

- Accelerated depreciation of new fixed assets whose unit value does not exceed € 601.01 (up to an aggregate limit of € 12,020.24), without having recorded it for accounting purposes.

This possibility is inconsistent with the tax credit for reinvestment of extraordinary income.

- Entitlement to increase by a coefficient of 1.5 the maximum depreciation rates permitted per the official depreciation tables (without having recorded it for accounting purposes) for tangible fixed assets and intangible assets (including goodwill, trademarks, leasehold assignment rights, etc.).

- Ability to record provisions for bad debts based on 1% of the balance of their accounts receivable at the end of the tax period.

- The tax rate for these companies is 30%, applicable to the first € 90,151.82 of taxable income. Any taxable income above that amount is taxed at 35%. In the case of tax periods of less than one year, the taxable income subject to the 30% rate is determined in proportion to the length of the period with respect to the calendar year.

- Deduction of 10% of the volume of period investments and expenses aimed at improving access through the Internet and at improving internal processes through the use of information and communications technologies has been introduced.

- 10% tax credit for environment-related investments, subject to the fulfillment of certain requirements.

k) Formal requirements

The tax period is the company’s business year, and its financial statements and accounting records are the basic
documentation to support its annual tax return.

The returns must be filed and the tax paid within 25 days following the six months after the end of the business year.

I) Canary Islands Tax Regime

The Canary Archipelago enjoys a number of tax benefits intended to compensate for the disadvantages brought about by insularity and distance from the Spanish mainland and, principally, attract investment to the Canary Islands.

The main features of the regime are:

– Direct taxation
  - Reduction in the portion of gross tax payable that relates to income from the sale of tangible goods specific to agricultural, livestock farming, industrial or fishing activities, provided that they have been produced by the taxpayer itself in the archipelago. From January 1 through December 31, 2003, the reduction will be 30%.
  - Reduction in the tax base (up to 90% of undistributed income per books for the year) by such amounts as are allocated by companies, in relation to their permanent establishments on the Canary Islands, from their income to a Canary Islands Investment Reserve (“Reserva para Inversiones en Canarias” or RIC). According to the stance adopted by the tax authorities, taxpayers have a maximum of five years in which to invest the RIC: the year in which the income is obtained, the year in which the reserve is recorded for accounting purposes and the following three years. The amounts must be invested acquiring new or used fixed assets located or received in the archipelago, by subscribing securities or book-entry debt securities issued by the Canary Islands Autonomous Community government, local corporations, State-owned enterprises or Autonomous Community government agencies, and/or by subscribing shares or ownership interests in the capital of companies that carry on their business in the archipelago and make the above-mentioned investments. A company that has acquired fixed assets to invest its RIC must continue to own, and actually use, those assets for at least five years or for their useful life, if shorter, and cannot transfer, lease, or license them to third parties, unless they are used, through an economic activity, for lease or assignment to third parties for use by them, provided there is no direct or indirect link with the lessees or assignees of such assets and provided the transactions in question are not financial lease transactions.
  - Increased tax credits for investments made on the Canary Islands, with respect to those applicable to investments in the Spanish mainland.

– Indirect taxation
  - Application of the Canary Islands Indirect General Tax, which is similar to VAT, at the standard rate of 5%.
  - Application of the Tax on Imports and Deliveries of Goods in the Canary Islands (AIEM) on the production and import in the Canary Islands of certain tangible property.
  - Companies (whether newly-formed companies or existing companies
increasing their capital) that expand, modernize or relocate their facilities can claim an exemption from transfer tax when they incorporate, increase their capital or acquire capital goods located on the Canary Islands for three years from the execution of the public deed of incorporation or capital increase. The exemption from transfer tax, which applies under the “corporate transactions” heading and relates to such portion of the capital resulting from incorporation or the increase as is not allocated to the planned investments, can be claimed for the 50% amount of the resulting tax charge in 2003.

Supplies of goods to the companies referred to in the preceding section that are classed as capital goods for such companies are also exempt from Canary Islands Indirect General Tax.

- Vessels and shipping companies registered in a Special Register can claim any exemption from stamp tax on acts and contracts subject to that tax.

Furthermore, in the case of the crews of such vessels, a 90% reduction in employer social security contributions is established, and 50% of the salary income earned by resident or nonresident taxpayers when sailing on those vessels is treated as exempt income for personal income tax purposes. A 90% reduction can also be claimed on the portion of the corporate income tax charge (net of any tax credits for double taxation), which relates to the portion of the tax base resulting from the operation of the vessels.

Canary Islands legislation also establishes the special tax regime of the Canary Islands Special Zone (“Zona Especial Canaria” or “ZEC”), which was authorized by the European Commission in January 2000, since the Commission took the view that its application was consistent with the legislation governing the Single Market.

The ZEC will remain in force until 2008, and any extension in time will be conditional on prior authorization from the EU authorities.

The regime applies to newly-formed entities domiciled in the Canary Islands and registered in the ZEC Official Register of Entities. Registered entities must meet the following requirements:

- Their registered office and effective place of management must be located in the Canary Islands.
- At least one of their directors must reside on the Canary Islands.
- Their corporate purpose must be to engage in the activities expressly provided in the Law. Financial activities are excluded in all cases.
- They must create at least five jobs within the first six months after authorization, and maintain an annual average labor force headcount of at least the same number while under the regime.
- In the first two years after authorization, they must make investments of at least € 100,000 in the acquisition of tangible fixed assets or intangible assets located or received within the geographical area of the ZEC, and such assets must be used and required for the pursuit of the activities carried on within the ZEC.
They must file with the authorities a registration application and a report describing the activities to be carried on. The purpose of the report, the contents of which will be binding on the entity, is to provide assurance of its solvency, viability, international competitiveness, and contribution to the economic and social development of the archipelago.

As for the tax regime, operating income obtained by ZEC entities is subject to corporate income tax at a special rate (between 1% and 5%), to be determined by reference to the following criteria: year claimed, year authorized, and net job creation.

Shareholders (whether individuals or legal entities) of a ZEC entity who are resident in Spain cannot claim a tax credit for double taxation of dividends from ZEC entities to the extent that those ZEC entities have been taxed at reduced rates.

Interest, capital gains, and dividends obtained by nonresidents from ZEC entities are exempt in Spain on the same terms as those applicable to EU residents where such income or gains are paid by a ZEC entity and originate from transactions performed physically and effectively in the geographical area of the ZEC. The only case in which these exemptions do not apply is if the income or gains are obtained through countries or territories classed by regulations as tax havens, or if the parent company has its tax residence in such territories.

ZEC entities are exempt from transfer and stamp tax on acquisitions of assets and rights used by the taxpayer in the course of its business, provided that such assets and rights are located, may be exercised, or must be complied with in the geographical area of the ZEC. Similarly, corporate transactions by ZEC entities are exempt, except for the dissolution of, and legal instruments related to transactions by, those entities in the geographical area of the ZEC (subject to certain exceptions).

Additionally, supplies of goods and services between ZEC entities and imports of goods by ZEC entities are exempt from Canary Islands Indirect General Tax.

2. Personal income tax

This tax, which is one of the pillars of Spain's tax system, was radically reformed in 1998 under the Personal Income Tax Law (Law 40/1998) and, indirectly, by the Nonresidents' Income Tax Law (Law 41/1998). Royal Decree 214/1999 approved the Personal Income Tax Regulations.

Lastly, the Government has undertaken a further major reform of the personal income tax. These relevant modifications entered into force on January 1, 2003.

As discussed below, the taxation of nonresident individuals is regulated separately under a new piece of legislation (see p.120 and ff).

– Persons subject to the tax

The following persons are subject to personal income tax:

- Individuals habitually resident in Spanish territory.
- Individuals of Spanish nationality who are habitually resident abroad and fulfill any of the conditions laid down in the Law (e.g. diplomatic and consular services, etc.). Moreover, any Spanish national who establishes his residence for tax purposes in a tax haven will remain
subject to personal income tax (this rule will apply in the year in which residence is changed and for the following four years).

A taxpayer is deemed to be habitually resident in Spanish territory if any one of the following conditions is met:

- The taxpayer is physically present in Spanish territory for more than 183 days in the calendar year.

Sporadic absences are included in determining the length of time a taxpayer is present in Spanish territory, unless tax residence in another country is proved. In the case of territories designated in the regulations as tax havens, the authorities may require the taxpayer to prove that he was present in the territory in question for 183 days in the calendar year (excluding absences due to cultural or humanitarian cooperation with the Spanish authorities).

- The main center or base of the taxpayer’s business or professional activities or economic interests is in Spain, either directly or indirectly.

In the absence of proof to the contrary, an individual is presumed to be resident in Spain if his/her spouse/husband (from whom he/she is not legally separated) and dependent under-age children are habitually resident in Spain.

Individuals who are payers of nonresidents’ income tax and are resident in a Member State of the European Union may elect to be taxed under Spanish personal income tax if they demonstrate that their habitual domicile or residence is in another EU Member State and that at least 75% of their total income during the year was obtained as salary income or business income in Spain.

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**Taxable event**

Taxpayers subject to personal income tax are taxed on their entire worldwide income, including the income of foreign entities in certain circumstances (international fiscal transparency system) in a manner similar to that described above for corporate income tax, and capital gains (and losses) in the calendar year, net of the necessary expenses (as defined in the Law) incurred to obtain such income.

**Taxation system - taxpayer**

The possibility of being taxed individually or jointly (as a family unit) is regulated, although there are no separate tariffs (there is only one tariff but divided in two parts: the general one and the Autonomous Community one).

**General structure of the tax**

The Law distinguishes a general component and a special component in the tax base.

The general component comprises the positive balance from adding:

- Salary income (discussed briefly below).
- Income from real estate.
- Income from movable capital.
- Income from business activities.
- Imputation of income from real estate.
- Imputation of income from entities under the international fiscal transparency system.
- Imputation of income from assignment of rights of publicity.
- Changes in the value of units in collective investment undertakings established in tax havens.
- The positive balance resulting from offsetting capital gains and losses obtained over a period of less than one year.

The special component of the tax base comprises the positive balance of offsetting capital gains and losses obtained over a period exceeding one year (the taxation of capital gains is discussed briefly in pp.115-116).

- Exempt income

Noteworthy among the exemptions is that relating to salary income for work performed abroad. In this connection, salary income will be exempt up to €60,101.21 per year if certain requirements are met:

- Salary income has to be paid in respect of work effectively performed abroad. Namely, the taxpayer must be rendering services physically abroad.

- The recipient of the services must be either a non Spanish resident entity or a permanent establishment situated abroad of a Spanish resident company.

- A tax identical or similar to the Spanish personal income tax must exist in the other country.

This exemption is inconsistent with the regime on “excess income” excluded from taxation envisaged for taxpayers working abroad.

- Salary income

The main permitted deductions from salary income are social security contributions.

- The main features relating to compensation-in-kind are as follows:

  * The use of vehicles is valued at 20% of the annual cost of acquisition for the payer (if it is not owned by the payer, the 20% is applied to the market value that would correspond in the case the vehicle were new). In the case of provision of the vehicle to the employee by the payer, the compensation in kind is valued as the acquisition cost for the payer.

* Compensation-in-kind relating to the use of housing owned or leased by the employer is limited to 10% of the cadastral value (5% if the cadastral value has been updated), subject to a ceiling of 10% of the other salary income. Where there is no cadastral value or the value has not been notified, the value of the compensation will be 5% of 50% of the value for net worth tax (wealth tax) purposes.

* The portion of shares or other ownership interests not exceeding €12,000 awarded annually to all employees free of charge or at lower-than-market value will not be considered to be compensation in kind, provided that certain requirements are met.

Certain reporting requirements are established (notification to the CNMV where the shares are traded on a stock exchange) in the case of shares or stock options awarded to executives and directors. In addition, in cases where a company acquires treasury stock for this purpose, the resolution of the shareholders’ meeting must include authorization for the acquisition as well as other particulars.

- Regarding salary income paid by nonresident related entities, entities resident in Spanish territory must
withhold tax from salary income paid to their employees, regardless of whether the payer of the income is the entity itself or another related resident or nonresident entity.

In cases where the right to receive such compensation arises over a period of longer than two years, the provisions on “irregular” income will apply.

- **Imputation of salary income**

  When the salary income has been generated over a period exceeding two years and, at the same time, the requirement that it has not been obtained on a periodic or recurring basis is met, or when the income is classified by regulations as irregular, only 60% of this income will be imputed. The reduction is extended in certain circumstances for certain types of income.

  If the income arises from the exercise by employees of stock options, the amount of the income to which the 40% reduction applies cannot exceed the result of multiplying the annual average salary of the aggregate of personal income taxpayers (€ 17,900 for 2002) by the number of years during which the income is generated. For these purposes, in the case of income obtained at particularly irregular time intervals, the applicable time period will be five years.

  The limit mentioned in the previous paragraph will be multiplied by two in certain circumstances.

- **Rental income**

  In cases of leases of residential properties, a 50% reduction will apply to the net income (i.e. gross income less depreciation and amortization, non-State taxes and surcharges, etc.).

  In addition, if the income was generated over a period exceeding two years, or if it was obtained at irregular time intervals, a 40% reduction will apply.

- **Capital gains and losses**

  - **Valuation**

    A capital gain or loss on a transfer, whether for valuable consideration or for no consideration, is valued as the difference between the acquisition and transfer values (as legally defined) of the items transferred.

  - **Adjustment coefficients and tax rate**

    The Law does not envisage the use of adjustment coefficients except for real estate.

    The adjustment coefficients are aimed at correcting for inflation and were applied to the acquisition cost of the transferred real estate and to the related depreciation.

    Acquired rights are preserved as regards the application of the reduction coefficients to assets acquired before December 31, 1994. In such cases, the capital gain is reduced by a given percentage depending on the type of asset (14.28%, 25% or 11.11% for each year over two during which the asset was held by the taxpayer prior to December 31, 1996). The reduction coefficients do not apply to capital losses.

    The tax rate is 15% for capital gains obtained over a period exceeding one year.

    Capital gains on the transfer for no consideration of a family business are tax
exempt provided that the assets used by the taxpayer in the business activity after its acquisition had been so deployed for at least five years prior to the transfer date.

Lastly, capital gains obtained on the transfer of units or shares in collective investment institutions (investment funds) will not be included provided that the amount obtained is reinvested in assets of a similar nature. In case of capital gains obtained on the transfer of units or shares in collective investment institutions (SICAVs), said capital gains will not be included if, in the year prior to the transfer, the transferor's ownership interest in the collective investment institution has at no time exceeded 5%, and if the number of the entity's shareholders exceeds 500. In both cases, the new shares or units subscribed will maintain the value and the acquisition date of the shares or units transferred.

– Reductions in the tax base

There are certain reductions which will be used first to reduce the general component of the taxable income without making it negative, while any remainder will be used to reduce the special component. The main applicable reductions are:

- Personal reductions: a general reduction of € 3,400.
- Family reductions: for each unmarried descendant aged under 25, or disabled descendant regardless of age, or person under a guardianship or foster care arrangement living with the taxpayer and not obtaining annual income above € 8,000, the taxpayer will be entitled to a reduction of € 1,400 for the first, € 1,500 for the second, € 2,200 for the third and € 2,300 for the fourth and subsequent of these.

The family reductions will not apply if the taxpayers generating entitlement to these amounts file personal income tax returns or an application for a refund.

– Determination of net taxable income

The general component of the taxable income is reduced by certain amounts, including most notably contributions to pension plans. These reductions are subject to certain limits:

- Firstly, certain reductions, ranging from € 2,400 to € 3,500, are established for net salary income. In addition, employees who continue working over the age of 65 and those who accept an employment post requiring them to change their usual residence to a new municipality in accordance with certain requirements are entitled to twice the reduction corresponding to them in this connection.
- Taxable income can be reduced by € 1,200 annually under the “care of offspring” heading for each descendant aged under three, or for adopted or foster children regardless of age for whom the taxpayer can claim the minimum family exemption for descendants.
- Taxpayers aged over 65 are entitled to reduce their taxable income by € 800 annually. In addition, taxpayers living with ascendant relatives aged over 65 or with disabled persons regardless of their age whose annual income does not exceed € 8,000 can reduce their taxable income by € 800 annually.
- In addition, total maximum contributions to mutual funds and pension plans by the participants which are used to reduce taxable income must not exceed € 8,000.
This amount will be increased by € 1,250 euros annually for each year of age of the participant that exceeds 52, up to a maximum of € 24,250 euros for participants aged 65 and over.

Additionally, regardless of the contributions made by mutual entity members and pension plan participants, employer contributions can be made on behalf of the taxpayer by sponsors of occupational pension plans, up to the annual limits indicated above.

On top, the annual reduction ceiling for contributions to pension plans or mutual funds in which the taxpayer’s spouse is a participant is € 2,000.

– Determination of the gross tax payable: tax rates

A general tax scale and an Autonomous Community tax scale are established. The marginal rate is 45%.

Law 21/2001, on the tax and administrative measures under the new financing system of common regime Autonomous Communities and cities with a statute of autonomy, includes, among the taxes transferred, the personal income tax, and grants the Autonomous Communities regulatory powers over the taxes transferred.

The taxpayer’s place of habitual residence determines the Autonomous Community in which income is deemed to be obtained for personal income tax purposes. The Law also lays down specific rules to prevent tax-motivated changes of residence. Where an Autonomous Community has not approved tax tables or where tax powers have not been devolved to it, the Autonomous Community tax table below will apply (the general tax table will also apply in all cases).

As stated above, the tax scales do not vary on the basis of the type of return (joint or separate) chosen by the taxpayer. Consequently, the only tax scales are those below (for year 2003):

<table>
<thead>
<tr>
<th>Tax base up to (Euros)</th>
<th>Gross tax payable (Euros)</th>
<th>Remainder of tax base up to (Euros)</th>
<th>Applicable rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>4,000</td>
<td>9.06</td>
</tr>
<tr>
<td>4,000</td>
<td>362.40</td>
<td>9,800</td>
<td>15.84</td>
</tr>
<tr>
<td>13,800</td>
<td>1,914.72</td>
<td>12,000</td>
<td>18.68</td>
</tr>
<tr>
<td>25,800</td>
<td>4,156.32</td>
<td>19,200</td>
<td>24.71</td>
</tr>
<tr>
<td>45,000</td>
<td>8,900.64</td>
<td>and above</td>
<td>29.16</td>
</tr>
</tbody>
</table>

The rate applicable to the special component of the tax base (positive balance of capital gains and losses generated over one year, less the tax-free allowances) is 15%.

<table>
<thead>
<tr>
<th>Tax rate applicable to the special component of the tax base</th>
</tr>
</thead>
<tbody>
<tr>
<td>State rate (%)</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>9.06</td>
</tr>
</tbody>
</table>
– **Allowances and tax credits**

We set forth below a detail of the main tax credits and tax relief (in general, 67% of the amount thereof is applied to the general tax liability and 33% to the Autonomous Community tax liability unless the Autonomous Community establishes its own tax credits):

- **Housing tax credits**

  A credit of 15% of the amount invested in acquiring or refurbishing the taxpayer’s habitual abode is granted; the percentage is applied to the investment made, the purchase expenses and the interest and expenses paid on debt, and the amounts deposited in home-purchase saving accounts and used for the acquisition of the habitual abode.

  In the case of borrowing, a 25% credit is allowed on the first €4,507.59 and 15% on the remainder in the first two years. In subsequent years, these percentages are 20% and 15%, respectively. Some requirements are envisaged in the regulations to be able to benefit from these increased percentages.

  The maximum base for the tax credit under this heading is €9,015.18.

  Amounts deposited in home-purchase saving accounts only qualify for the tax credit if they are used to purchase the first home.

  A specific system for disabled taxpayers is established.

  Additionally, a transitional regime is established for taxpayers who acquired their habitual dwelling before May 4, 1998, and who were entitled to the tax credit.

- **Tax credit for income obtained in Ceuta and Melilla.**

- **Tax credits for economic activities.**

- **Tax credit for donations to certain entities:** the amount may not exceed 10% of the taxpayer’s taxable income.

- **Tax credit for investment in and expenditure on assets of cultural interest** (the limit is 15% in this case).

– **Withholding**

Payments of income from movable capital, gains on shares or units in collective investment undertakings, salary income, etc. are subject to withholding at source which is treated as a prepayment on account of the final tax.

Moreover, employers are obliged to make personal income tax prepayments in respect of compensation-in-kind paid to their employees.

The base and rate of withholding and prepayment for the main types of income are the following:
To calculate the withholding tax applicable to salary income, the deductible expenses and reductions and the personal and family allowances are deducted from the total amount of such income to obtain the taxable income. The tax scale (aggregate of State and Autonomous Community rates) is applied to this amount to obtain the amount of withholding. The applicable withholding tax rate is obtained by dividing the amount withheld by total income.

### Self-assessment

Taxpayers who are required to file a personal income tax return must, when filing their returns, calculate the related tax payable and pay it over in the place and manner and by the deadlines determined by the Ministry of Finance. The deadline is usually June 20 for filing personal income tax returns under which tax is payable (for taxpayers filing returns under which a refund is due, the deadline is usually June 30).

Taxpayers who are married and not legally separated, and who are obliged to file a personal income tax return under which tax is payable, may request the suspension of their tax debt in an amount equal to or less than the refund to which their spouse is entitled for the same tax and in the same tax period.
3. Nonresidents’ income tax

Law 41/1998, on Nonresidents’ Income Tax, established the tax regime applicable to nonresident individuals or entities that obtain Spanish-source income.

This Law consolidated the various rules on taxation of nonresidents which were to be found in personal income tax and corporate income tax legislation. Thus, taxation of nonresidents is dealt with separately from taxation of resident individuals and entities.

As was mentioned before, this Law envisages that nonresident individuals who prove that they are habitually resident in another EU country and that they have obtained in Spain salary income and income from business activities which amounts to at least 75% of their worldwide income, may opt to be taxed as resident individuals.

The key factor in determining the tax regime for nonresidents is whether or not they have a permanent establishment in Spain. This factor determines the following two ways in which nonresidents may be subject to taxation:

- Income obtained through a permanent establishment

Nonresident individuals or entities that obtain income through a permanent establishment located in Spain will be taxed on the total income attributable to said establishment, regardless of the place where it was obtained or produced.

The concept of permanent establishment in Spanish law is in line with the OECD Model Tax Convention. In the case of a foreign entity or individual resident in a country with which Spain has a tax treaty, the treaty provisions and, specifically, the exceptions to the definition of permanent establishment, will govern the existence of a permanent establishment in Spain.

In general terms, permanent establishments in Spain are taxed on their net income at the same rate (in general, 35%) as Spanish companies. Nonresident entities or individuals operating through a permanent establishment in Spain are required to withhold taxes or make tax prepayments on the same terms as resident individuals or entities (i.e. on salary income paid, income from movable capital satisfied, etc.).

There is a 15% tax (branch profit tax) on the remitted profits of nonresidents doing business through a permanent establishment in Spain, although most tax treaties offer relief in this respect. In addition, it also provides protection to the other EU Member States. This tax would therefore be additional to that already borne by the permanent establishment on its income (35% on revenues net of expenses).

Nonresidents who operate in Spain through a permanent establishment are generally required to keep accounting records here, in accordance with the rules and procedures established for Spanish companies.

The taxation of the income of permanent establishments envisages three different situations, as follows:

- As a general rule, taxable income is determined in accordance with the same regulations as are applicable to Spanish-resident companies and, accordingly, the tax rate of 35% (40% in
the case of oil and gas research and exploitation activities) would be applicable to net income. Allocated parent company general and administrative overhead expenses are deductible under certain conditions. The permanent establishment’s tax year will be the calendar year unless stated otherwise.

The tax period is also deemed to have ended in the event of the discontinuation of a permanent establishment's business activities, withdrawal of the investment initially made in the permanent establishment, or the change of residence of the head office.

The permanent establishment may also take the tax credits and relief that might be applicable, in general, for Spanish resident companies.

- For permanent establishments engaging in installation or erection projects with a duration of over 6 months, for those with seasonal or sporadic activity, or for those engaged in the exploration of natural resources, the tax base is determined in accordance with the rules applicable to nonresidents obtaining income in Spain not through a permanent establishment. Such rules also apply in determining the tax return filing and tax accrual obligations of the permanent establishment, which is not obliged to keep books of account (but only documentary support of its transactions).

However, those nonresidents who operate through a permanent establishment in Spain may also choose to be taxed under the general rules, but such option may only be taken if separate accounts are kept in Spain. This choice must be made at the date of registration in the entities’ index.

- If the permanent establishment does not complete a business cycle in Spain which leads to income in Spain, and the business cycle is completed by the parent company (or the nonresident individual who operates in Spain through a permanent establishment) or by other permanent establishments, the tax liability is determined by applying the general taxation rules, whereby revenues and expenses are valued at market prices.

However, the tax base will secondarily be determined by applying the percentage established by the Ministry of Finance for this purpose to the total expenses incurred, and by adding any “passive” (unearned) income not obtained in the normal course of business (interest, royalties, etc.) and any other capital gains arising from the assets assigned to the permanent establishment. This percentage has been set at 15%.

The gross tax payable in this case is determined by applying the standard tax rate, but the tax credits and tax relief provided by the standard corporate income tax system may not be taken.

The tax period and tax return filing deadlines are those envisaged in the standard tax rules.
Income obtained not through a permanent establishment

Nonresident entities or individuals that obtain income in Spain not through a permanent establishment will be taxed separately on each total or partial accrual of Spanish-source income.

Spanish-source income obtained not through a permanent establishment, as defined by the Nonresidents’ Law, consists mainly of the following items:

- Earnings derived from economic activities pursued in Spain.
- Earnings derived from the rendering of services where such services (i.e. studies, projects, technical assistance or management support services) are used in Spanish territory.
- Salary income, which is directly or indirectly derived from work performed in Spain.
- Interest, royalties and other income from movable capital which remunerate capital used in Spanish territory.
- Income from marketable securities issued by companies resident in Spain.
- Income from real estate located in Spain or from certain rights arising therefrom. Law 41/1998 treats as income obtained in Spain income attributed to nonresident individuals derived from urban real estate located in Spain and not connected to business activities.
- Capital gains on the sale of assets located in Spain and on the sale of securities issued by residents.

However, certain types of income originating in Spain are not taxable in Spain, most notably the following:

- Income paid for international sales of goods.
- Income paid to nonresident persons or entities relating to permanent establishments located abroad, with a charge to these establishments, if the consideration paid is related to the activity of the permanent establishment abroad.

Interest and earnings derived from the transfer of equity to a third party, as well as capital gains on movable assets owned by residents of other EU Member States (except tax havens) obtained not through a permanent establishment are deemed to be tax-exempt in Spain. However, capital gains on holdings in entities whose assets consist principally of real estate in Spain, or in which the seller has had, directly or indirectly, at least a 25% interest at some time during the twelve months preceding the sale, are taxable.

In addition, gains on transfers of securities or redemptions of participation units in mutual funds on official secondary securities markets in Spain obtained by nonresident individuals or entities without a permanent establishment in Spain that are resident in a State with which Spain has signed a tax treaty and such treaty contains an exchange of information clause are also tax-exempt. The exemption does not apply when the nonresident entity resides in a country or territory classed as a tax haven.

Similarly, yields derived from Spanish Government debt securities accruing to nonresident entities obtained not through a permanent establishment are not taxable in Spain, unless they are routed through tax havens.
Income derived from “nonresident accounts” paid by banks or other financial institutions to nonresident entities or individuals (unless payment is made to a permanent establishment in Spain of such entities) as well as that obtained not through a permanent establishment located in Spain and derived from the rental or assignment of containers or ship and aircraft bare-boat charters are also tax exempt.

Finally, dividends from a Spanish subsidiary to its EU parent company are tax-exempt in Spain, provided that certain requisites are met (among others, 25% of participation held during one year). This rule is not applicable if the parent company is located in a tax haven, or when a majority of the voting rights of the parent company is held directly or indirectly by an individual or legal entity not resident in the EU, unless the parent company effectively engages in a business activity directly connected with the activity of the subsidiary, or has as its business purpose the administration and management of the subsidiary, or evidences that the parent company was formed for valid economic reasons and not merely to take advantage of the tax exemption.

In 1991 the Spanish tax authorities identified 48 territories classified as tax havens. These include such “traditional” havens as the Bahamas, Liechtenstein, Monaco, Gibraltar, certain holding companies resident in Luxembourg, etc.

Spanish law generally sets tax rates lower than the standard rate for residents for income accruing to nonresidents that do not have a permanent establishment in Spain. The tax is normally levied on the gross income, except for income for services rendered, technical assistance and installation and erection projects, in which case the tax is levied on the difference between the gross income and the payroll, material procurement and supplies expenses as defined in the relevant regulations. In this connection, nonresidents operating in Spain not through a permanent establishment are obliged to withhold and make payments on account from salaries paid as well as other payments subject to withholding or payment on account which can be considered deductible expenses in order to determine the nonresident income obtained in Spain.

Capital gains are generally calculated on the basis of the difference between acquisition cost and sale price, to which the same rules as those established for resident individuals are generally applicable.

Purchasers of property located in Spain from nonresidents that do not have a permanent establishment in Spain must deduct withholding tax at 5% from the purchase price on account of the vendor’s capital gains tax liability.

This withholding is not applicable if the transferred property was acquired by the transferor more than ten years prior to December 31, 1996.

There are certain exceptions to this obligation to make a withholding, such as cases in which the property is transferred as a nonmonetary contribution for the formation of, or capital increase at, a company resident in Spain.
The tax rates are as follows:

<table>
<thead>
<tr>
<th>Type of Income</th>
<th>Tax Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>25 (*)</td>
</tr>
<tr>
<td>Dividends</td>
<td>15</td>
</tr>
<tr>
<td>Interest</td>
<td>15</td>
</tr>
<tr>
<td>Transfers or reimbursements of shares and participations in collective investment schemes</td>
<td>15</td>
</tr>
<tr>
<td>Special cases:</td>
<td></td>
</tr>
<tr>
<td>• Income from reinsurance activities</td>
<td>1.5</td>
</tr>
<tr>
<td>• Income obtained by entities engaging in international shipping or aviation</td>
<td>4</td>
</tr>
<tr>
<td>• Seasonal foreign workers</td>
<td>2</td>
</tr>
<tr>
<td>Capital gains</td>
<td>35</td>
</tr>
</tbody>
</table>

(*) See exemptions above.

In most cases the above-mentioned tax returns can be filed monthly or quarterly declaring different types of income obtained during the preceding period.

Finally, the law establishes a general obligation of making withholdings and prepayments on account of the income paid to nonresidents by entities, professionals and entrepreneurs who are resident in Spain. Some exceptions to this general rule are envisaged in the Law and the Regulations.

- Tax treaties

  Tax treaties may reduce, or even completely eliminate, the taxation in Spain on the income earned by entities which do not have a permanent establishment here.

  Companies without a permanent establishment in Spain which are resident in countries with which Spain has a tax treaty are generally not taxed in Spain on their business income earned here, nor for capital gains (other than on real estate).

  However, capital gains on the sale of shares of companies can be taxed in Spain under the special clauses of certain treaties (including most notably shares of real estate companies, transfers of shares when a substantial interest is held, etc.).

  Certain other types of income (royalties, interest or dividends) are taxed at reduced treaty rates, as detailed in the following table:
## Treaty tax rates

<table>
<thead>
<tr>
<th>Recipient Company's Country of Residence</th>
<th>Dividends (%)</th>
<th>Interest (%)</th>
<th>Royalties (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>15 or 10 (1)</td>
<td>12.5</td>
<td>3, 5, 10 or 15 (19)</td>
</tr>
<tr>
<td>Australia</td>
<td>15</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Austria</td>
<td>15 or 10 (2)</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Belgium (4)</td>
<td>15 or 0 (1)</td>
<td>10 or 0 (22)</td>
<td>5</td>
</tr>
<tr>
<td>Bolivia</td>
<td>15 or 10 (1)</td>
<td>15 or 0 (13)</td>
<td>15 or 0 (6)</td>
</tr>
<tr>
<td>Brazil</td>
<td>15</td>
<td>15 or 10 (4)</td>
<td>15 or 10 (5)</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>15 or 5 (1)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Canada</td>
<td>15</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>15 or 5 (1)</td>
<td>- (14)</td>
<td>5 or 0 (20)</td>
</tr>
<tr>
<td>China</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Cuba</td>
<td>15 or 0 (1)</td>
<td>10 or 0 (36)</td>
<td>5 or 0 (20)</td>
</tr>
<tr>
<td>Denmark</td>
<td>15 or 0 (21)</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Ecuador</td>
<td>15</td>
<td>0 or 5 or 10 (17)</td>
<td>10 or 5 (18)</td>
</tr>
<tr>
<td>Finland</td>
<td>15 or 10 (1)</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>France</td>
<td>15 or 0 (28)</td>
<td>10 or 0 (27)</td>
<td>5 or 0 (20)</td>
</tr>
<tr>
<td>Germany</td>
<td>15 or 10 (1)</td>
<td>10 or 0 (10)</td>
<td>5</td>
</tr>
<tr>
<td>Greece</td>
<td>10 or 5 (41)</td>
<td>8 or 0 (60)</td>
<td>6</td>
</tr>
<tr>
<td>Hungary</td>
<td>15 or 5 (1)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Iceland</td>
<td>15 or 5 (41)</td>
<td>5 (42)</td>
<td>5</td>
</tr>
<tr>
<td>India</td>
<td>15</td>
<td>15 or 0 (24)</td>
<td>10 or 20 (27)</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15 or 10 (1)</td>
<td>10 or 0 (24)</td>
<td>10</td>
</tr>
<tr>
<td>Ireland</td>
<td>15 or 0 (21)</td>
<td>-</td>
<td>5, 8 or 10 (14)</td>
</tr>
<tr>
<td>Israel</td>
<td>10</td>
<td>0 or 15 or 10 (9)</td>
<td>7 or 5 (36)</td>
</tr>
<tr>
<td>Italy</td>
<td>15</td>
<td>12 or 0 (10)</td>
<td>8 or 4 (9)</td>
</tr>
<tr>
<td>Japan</td>
<td>15 or 10 (4)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Korea</td>
<td>10 or 15 (1)</td>
<td>10 or 0 (24)</td>
<td>10</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>15 or 10 (10)</td>
<td>10 or 0 (10)</td>
<td>10</td>
</tr>
<tr>
<td>Mexico</td>
<td>15 or 5 (1)</td>
<td>15 or 10 (20)</td>
<td>10 or 0 (19)</td>
</tr>
<tr>
<td>Morocco</td>
<td>15 or 10 (1)</td>
<td>10</td>
<td>10 or 5 (5)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>15, 10, 5 (7)</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Norway</td>
<td>15 or 10 (1)</td>
<td>10 or 0 (13)</td>
<td>5 or 0 (15)</td>
</tr>
<tr>
<td>Philippines</td>
<td>15 or 10 (6)</td>
<td>0 or 15 or 10 (22)</td>
<td>10, 20, 15 (22)</td>
</tr>
<tr>
<td>Poland</td>
<td>15 or 5 (1)</td>
<td>- (14)</td>
<td>10 or 0 (2)</td>
</tr>
<tr>
<td>Portugal</td>
<td>15 or 10 (1)</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Romania</td>
<td>15 or 10 (1)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Russia (49)</td>
<td>15 or 10 or 5 (28)</td>
<td>5 or 0 (37)</td>
<td>5</td>
</tr>
<tr>
<td>Slovakia</td>
<td>15 or 5 (1)</td>
<td>- (14)</td>
<td>5 or 0 (20)</td>
</tr>
<tr>
<td>Slovenia</td>
<td>15 or 5 (1)</td>
<td>5 (35)</td>
<td>5</td>
</tr>
<tr>
<td>Sweden</td>
<td>15 or 10 (1)</td>
<td>15 or 0 (10)</td>
<td>10</td>
</tr>
<tr>
<td>Switzerland</td>
<td>15 or 10 (1)</td>
<td>10 or 0 (11)</td>
<td>5</td>
</tr>
<tr>
<td>Thailand</td>
<td>10 (1)</td>
<td>0 or 15 or 10 (31)</td>
<td>5, 8 or 15 (12)</td>
</tr>
<tr>
<td>Tunisia</td>
<td>15 or 5 (2)</td>
<td>10 or 5 (12)</td>
<td>10</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>15 or 10 (8)</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>United States</td>
<td>15 or 10 (1)</td>
<td>10 or 0 (15)</td>
<td>5 or 8 or 10 (14)</td>
</tr>
</tbody>
</table>

* (*) Tax rates according to new tax treaty, still pending ratification.

* (**) The Double Tax Treaty signed between Spain and the former URSS is, from a Spanish tax perspective, currently applicable to the following republics: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Uzbekistan, Tajikistan, Turkmenistan, and Ukraine. Notwithstanding the above, said Double Tax Treaty is not being applied by certain former URSS republics.
Notes:

1) The lower rate applies if the recipient company owns 25% or more of the capital of the payor company.
2) Royalties for the use of, or the right to use, literary, dramatic, musical, artistic or scientific works if these are produced by a resident of a contracting State.
3) The lower rate applies if the recipient company owns 50% or more of the capital of the payor company.
4) No tax liability arises if the interest is paid in connection with loans for the transfer of industrial, commercial or scientific equipment or the transfer of goods.
5) Reduced rate of 5% in relation to the sale on credit of industrial, commercial or scientific equipment.
6) By another Contracting State, a political subdivision or a local entity.
7) By reason of long-term loans (over five years) granted by a credit or financial institution to encourage exports.
8) Reduced rate of 5% in relation to the sale on credit of industrial, commercial or scientific equipment.
9) The interest is paid in connection with loans granted, guaranteed or ensured by the Central Bank or certain financial institutions.
10) No tax liability arises if the recipient company owns 25% or more of the capital of the payor company.
11) No tax liability arises if the interest is paid in connection with loans granted, guaranteed or ensured by a public institution to encourage exports.
12) The interest is paid in connection with accounts or nominative advances between financial institutions.
13) No tax liability arises if the collector and beneficiary is the State, one of its political subdivisions, a local entity or the Central Bank.
14) No tax liability arises if the use or license to use the copyright on literary or artistic works is licensed to an enterprise of a Contracting State.
15) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
16) Exempt when paid to the State or one of its political subdivisions, a local entity or an organization of any of the above.
17) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
18) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
19) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
20) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
21) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
22) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
23) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
24) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
25) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
26) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
27) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
28) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
29) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
30) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
31) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
32) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
33) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
34) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
35) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
36) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
37) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
38) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
39) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
40) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
41) Reduced rate of 8% for commercial, industrial or scientific equipment under financial leasing.
- Tax sparing arrangements

Due to the existence under Spanish regulations of relief from the tax on certain types of income (mainly interest income), the tax sparing arrangements contained in many of Spain’s tax treaties are relevant. Under these arrangements the nonresident lender benefits from tax sparing, and therefore can deduct in its country not only the effective tax withheld in Spain from the interest but also the tax that would have been payable had relief not been provided by Spain.

- Various treaties are in an advanced phase of negotiation (among them, the treaties with South Africa, Egypt, Venezuela, Latvia and Estonia).

The Spanish treaties with Greece, Slovenia and Iceland have been published during the year 2002, and have entered into force on January 1, 2003.

The new treaties with Belgium and Turkey have been signed but are yet to be published.

– Tax on property in Spain of nonresident companies

Nonresident companies owning real estate in Spain are subject to an annual tax of 3% on the cadastral value of the property at December 31 each year.

This tax does not apply to:

- International bodies and foreign States and public institutions.
- Companies resident in countries with which Spain has a tax treaty with an exchange of information clause.

For this exemption to be applicable, nonresident entities must report certain information to the tax authorities on an annual basis (e.g. real estate owned in Spain and the names of the direct or indirect individual owners of the company) to which the related residence certificates must be attached.

- Companies which have a business activity in Spain, as defined in the regulations, other than merely managing property.

- Listed companies.
- Nonprofit charitable or cultural entities which are recognized as such by the State with which Spain has a tax treaty with an exchange of information clause, provided that real estate owned in Spain is used in their ordinary activities.

This tax is a deductible expense of the nonresident entity for corporate income tax purposes.

– Tax representative

Nonresidents (i) obtaining income in Spain through a permanent establishment, or (ii) obtaining income in Spain from economic activities which do not constitute a permanent establishment and provide entitlement to the deduction of certain expenses, or (iii) which are entities subject to the pass-through regime and carry on business activities in Spain, all or a portion of which is carried on by them, continuously or habitually, through installations or workplaces of any kind, or which act in Spain through an agent authorized to conclude contracts in the name and for the account of the entity, or (iv) when they are specifically required to
do so by the tax authorities because of the nature or the amount of income obtained, are required to appoint a Spanish resident as their tax representative before the end of the period for reporting income obtained in Spain. The appointment must be notified to the authorities within two months. Failure to appoint a representative or to notify the authorities can lead to a fine of between € 600 and € 6,000.

The tax representatives (if residents) of permanent establishments are deemed to be the persons registered as their representatives in the Mercantile Register, or the persons empowered to contract on their behalf.

Persons who, pursuant to the Nonresident Income Tax Law, are:

a) representatives of permanent establishments of nonresident taxpayers, or

b) of the entities described in (iii) above, are jointly and severally liable for paying over the tax debts relating to them.

The payor of income accrued without the intermediation of a permanent establishment by nonresident taxpayers, or the bailee or manager of the assets or rights of nonresident taxpayers not used by a permanent establishment, shall be jointly and severally liable for the payment of tax debts relating to income paid by him or to income and/or gains from assets or rights whose bailment or management has been entrusted to him.

This liability shall not exist where the payor or manager is subject to the obligation to withhold and prepay tax.

4. Net worth tax

Resident individuals pay net worth tax on their worldwide assets at December 31 of each year, valued in accordance with tax rules. Nonresidents are taxable on property situated, or rights exercisable, in Spain. However, tax treaties may affect the application of this rule.

Certain assets are exempt from this tax, such as those forming part of Spain’s historical heritage, household effects, objets d’art and antiques, provided that their value does not exceed certain limits established by the regulations; the vested rights of participants in pension plans and funds; copyrights for so long as they remain part of the author’s net worth; assets or rights required for a business or professional activity performed habitually, personally and directly by the taxpayer and constituting his main source of income; and equity interests in entities in certain circumstances (mainly family businesses).

The regulations establish different valuation methods for each type of asset.

Law 21/2001 on the tax and administrative measures under the new financing system of common regime Autonomous Communities and cities with a statute of autonomy establishes the tax scales. However, they will only apply if the Autonomous Community in which the taxpayer resides has not approved a different scale or has not assumed the regulatory powers conferred on it.

Thus, in the absence of the related Autonomous Community regulations, from January 1, 2002, the following rates are applicable:
These rates are applicable to residents taxable on their worldwide assets and to nonresidents taxed on property situated, or rights exercisable, in Spain. Also, unless the related Autonomous Communities regulate otherwise, the minimum exempt amount and the amount from which a return must be filed is €108,182.18. The taxpayer’s habitual place of residence is exempt up to a maximum amount of €150,253.03.

5. Inheritance and gift tax

Inheritance and gift tax applies to Spanish resident heirs, beneficiaries and donees and is charged on all assets received (located in Spain or abroad). Nonresident beneficiaries are also subject to this tax as nonresident taxpayers, and must pay the tax in Spain only on the acquisition of assets and rights (whatever their nature), that are located, exercisable or to be fulfilled in Spain.

The inheritance and gift tax base can be reduced by 95% if it results from a transmission mortis causa to spouses, children or adopted children or, in their absence, ascendants, foster parents or collateral relatives up to the third degree of a professional business, an individual enterprise, or interests in entities or usufructs on them of the donor or deceased which were exempt from net worth tax. The requirements are as follows:

– The beneficiary of a transmission mortis causa must keep the assets received for at least 10 years.

– The beneficiary cannot carry out transactions that result in a substantial diminution in the value of the assets.

The 95% reduction in the tax base also applies to inter vivos transfers of interests in an individual enterprise, professional business or in entities belonging to the donor which are exempt from net worth tax to spouses, descendants or adopted children provided that the following requirements are met (in addition to the two requirements imposed for transmissions mortis causa):

– The donor must be at least 65 years old or be permanently disabled.

– If the donor had been discharging management duties, he/she must discontinue them and stop receiving remuneration in that connection.

The tax is calculated by adjusting a tax scale of progressive rates (depending on the value of the estate or gift) with a coefficient that takes into account the previous net worth and the age of the beneficiary, and the degree of kinship with the donor.

As with other taxes transferred to the Autonomous Community governments, inheritance and gift tax legislation has been adapted to recognize the legislative power of those governments to approve reductions in the tax base and rates and in the coefficients for adjusting the tax payable, based on the taxpayer’s previous net worth.

Inheritance and gift tax legislation also provides that in the case of transmissions mortis causa, the tax must always be paid in

<table>
<thead>
<tr>
<th>Tax Base (up to Euros)</th>
<th>Tax Payable (Euros)</th>
<th>Remaining Tax Base (up to Euros)</th>
<th>Applicable Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
<td>0.00</td>
<td>167,129.45</td>
<td>0.2</td>
</tr>
<tr>
<td>167,129.45</td>
<td>334.26</td>
<td>167,123.43</td>
<td>0.3</td>
</tr>
<tr>
<td>334,252.88</td>
<td>835.63</td>
<td>334,246.87</td>
<td>0.5</td>
</tr>
<tr>
<td>668,499.75</td>
<td>2,506.86</td>
<td>668,499.76</td>
<td>0.9</td>
</tr>
<tr>
<td>1,336,999.01</td>
<td>8,523.36</td>
<td>1,336,999.50</td>
<td>1.3</td>
</tr>
<tr>
<td>2,673,999.01</td>
<td>25,904.35</td>
<td>2,673,999.02</td>
<td>1.7</td>
</tr>
<tr>
<td>5,347,998.03</td>
<td>71,362.33</td>
<td>5,347,998.03</td>
<td>2.1</td>
</tr>
<tr>
<td>10,695,996.06</td>
<td>183,670.29</td>
<td>upwards</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Remaining Tax Base Tax Payable Tax Base Applicable Tax Rate (%)

0.00 0.00 167,129.45 0.2
167,129.45 334.26 167,123.43 0.3
334,252.88 835.63 334,246.87 0.5
668,499.75 2,506.86 668,499.76 0.9
1,336,999.51 8,523.36 1,336,999.50 1.3
2,673,999.01 25,904.35 2,673,999.02 1.7
5,347,998.03 71,362.33 5,347,998.03 2.1
10,695,996.06 183,670.29 upwards 2.5
the Autonomous Community in which the deceased was habitually resident (except in the case of nonresident testators, jurisdiction for whom rests with the State tax authorities). As for acquisitions of assets or rights by way of gift, or any other *inter vivos* legal transaction for no consideration, the tax must be paid in the Autonomous Community in which the acquiror is habitually resident (except in the case of transfers of real estate, in which case the Autonomous Community with jurisdiction will be that in which the property is located).

Law 21/2001 also establishes the reductions, rates and coefficients to be applied if the Autonomous Community in question has not assumed the powers transferred, or where it has not yet made any regulations, in that connection.

The tax rates and adjustment coefficients for 2003 are as follows:

### Tax rates

<table>
<thead>
<tr>
<th>Tax Base (up to Euros)</th>
<th>Tax Payable (Euros)</th>
<th>Remaining Tax Base (up to Euros)</th>
<th>Applicable Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
<td>7,993.46</td>
<td>7,993.46</td>
<td>7.65%</td>
</tr>
<tr>
<td>7,993.46</td>
<td>611.50</td>
<td>7,987.45</td>
<td>8.50%</td>
</tr>
<tr>
<td>15,980.91</td>
<td>1,290.43</td>
<td>7,987.45</td>
<td>9.35%</td>
</tr>
<tr>
<td>23,968.36</td>
<td>2,037.26</td>
<td>7,987.45</td>
<td>10.20%</td>
</tr>
<tr>
<td>31,955.81</td>
<td>2,851.98</td>
<td>7,987.45</td>
<td>11.05%</td>
</tr>
<tr>
<td>39,943.26</td>
<td>3,734.59</td>
<td>7,987.45</td>
<td>11.90%</td>
</tr>
<tr>
<td>47,930.72</td>
<td>4,685.10</td>
<td>7,987.45</td>
<td>12.75%</td>
</tr>
<tr>
<td>55,918.17</td>
<td>5,703.50</td>
<td>7,987.45</td>
<td>13.60%</td>
</tr>
<tr>
<td>63,905.62</td>
<td>6,789.79</td>
<td>7,987.45</td>
<td>14.45%</td>
</tr>
<tr>
<td>71,893.07</td>
<td>7,943.98</td>
<td>7,987.45</td>
<td>15.30%</td>
</tr>
<tr>
<td>79,880.52</td>
<td>9,166.06</td>
<td>39,877.15</td>
<td>16.15%</td>
</tr>
<tr>
<td>119,757.67</td>
<td>15,606.22</td>
<td>39,877.15</td>
<td>18.70%</td>
</tr>
<tr>
<td>159,634.83</td>
<td>23,063.25</td>
<td>79,754.30</td>
<td>21.25%</td>
</tr>
<tr>
<td>239,389.13</td>
<td>40,011.04</td>
<td>159,388.41</td>
<td>25.50%</td>
</tr>
<tr>
<td>398,777.54</td>
<td>80,655.08</td>
<td>398,777.54</td>
<td>29.75%</td>
</tr>
<tr>
<td>797,555.08</td>
<td>199,291.40</td>
<td>Upwards</td>
<td>34.00%</td>
</tr>
</tbody>
</table>

### Coefficients based on degree of kinship and previous net worth

<table>
<thead>
<tr>
<th>Previous net worth in Euros</th>
<th>Groups under article 20</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>I and II</td>
</tr>
<tr>
<td>0 – 402,678.11</td>
<td>1.0000</td>
</tr>
<tr>
<td>&gt; 402,678.11 – 2,007,380.43</td>
<td>1.0500</td>
</tr>
<tr>
<td>&gt; 2,007,380.43 – 4,020,770.98</td>
<td>1.1000</td>
</tr>
<tr>
<td>&gt; 4,020,770.98</td>
<td>1.2000</td>
</tr>
</tbody>
</table>

(1) This coefficient is applicable if the successors are not known, without prejudice to the refund of the respective amount when they are known.
6. Value added tax (VAT)

The Spanish VAT legislation (Law 37/1992, which came into force on January 1, 1993) implements the EU Directives on the tax, whose main rules are harmonized in the different Member States.

This tax is of an indirect nature, its main feature being that it does not normally imply any cost to traders or professionals, but only to end-consumers as traders are generally entitled to deduct VAT borne against VAT charged.

Within the Spanish territory, VAT is not applicable in the Canary Islands, Ceuta and Melilla.

The Canary Islands Indirect General Tax (CIIGT), which came into force on January 1, 1993, is based on VAT and is an indirect general tax levied on goods and services supplied in the Canary Islands by traders and professionals and on imports of goods. The standard CIIGT rate is 5%. Another indirect tax (Tax on Production, Services and Imports) is applicable in Ceuta and Melilla.

a) Taxable events

The following transactions are subject to the tax when carried out by traders or professionals in the course of their business activities:

– Supplies of goods, generally defined as transfers of the right to dispose of...
tangible property, although certain transactions which do not imply such transfer may also be treated as supplies of goods for the purposes of the tax.

- Intra-EU acquisition of goods (in general, acquisitions of goods dispatched or transported to the Spanish VAT territory from another Member State).

- Imports of goods. These transactions are subject to the tax regardless of whether or not the importer is a trader.

- Supplies of services.

b) VAT rates and exemptions

VAT rates are as follows:

The standard rate is 16%, applicable to most sales of goods and services.

A reduced rate of 7% is applicable, amongst others, to sales and imports of:

- Human and animal foodstuffs, except alcoholic beverages
- Water
- Pharmaceutical products
- Private homes

and, among others, to the following services:

- Domestic transportation of passengers and their luggage
- Hotels
- Restaurants
- Theatres and cinemas

There is a super-reduced rate of 4% applicable to:

- Bread, flour, milk, cheese, eggs, fruits and vegetables
- Books, newspapers and magazines not mainly containing advertising

- Pharmaceutical specialties
- Cars of handicapped persons
- Prostheses of handicapped persons
- Certain officially sponsored housing

Following the EU model, certain transactions are VAT-exempt (e.g. supplies of goods and services relating to insurance and financial activities, health, education, rental of residential property, etc.). As these transactions imply that no VAT is charged by the trader, their performance does not qualify for the right to deduct the VAT borne as described below.

However, other exempt transactions (mainly those related to international trade, such as exports) give the right to deduct the VAT borne.

c) Place of supply of taxable transactions

Spanish VAT is levied on transactions which are considered to be performed within the territory in which it applies.

For the above purposes, the Law establishes rules to determine the place in which a certain transaction is carried out.

Thus, in the case of supplies of goods, the general rules establish that the supply takes place in the Spanish VAT territory when the goods are made available to the acquiror in such territory. However, if the goods are dispatched or transported, the place of supply is generally that from which such transport is initiated.

Other specific rules apply to, for instance, supplies of goods to be installed or assembled prior to supply, etc.

With respect to services, the following cases may be distinguished:
As a general rule, services are deemed to be supplied in the Spanish VAT territory when the supplier has a place of business in such territory (for these purposes, see below the concept of permanent establishment).

However, there are some exceptions to this general rule, namely:

– Services related to immovable property situated in the Spanish VAT territory are always considered to be supplied in such territory.

– Transport services are deemed to be supplied in the Spanish VAT territory with regard to the part of the journey taking place within the territory of application of the tax, including its air space and territorial waters. However, specific rules apply with regard to intra-EU transport services.

– Certain services are considered to be supplied in Spain when physically carried out within the Spanish VAT territory. This is the case, amongst others, of cultural, artistic, sporting, scientific, educational, entertainment or similar activities, etc.

– Other services are deemed to be supplied in the Spanish VAT territory when the recipient of the service has its place of business or permanent establishment within such territory. This is the case, for instance, of services such as transfers and concessions of copyright, patents, licenses, manufacturer’s or commercial trademarks and other intellectual or industrial property rights; advertising services; counseling, audit, engineering, research, legal, consultancy, accounting, tax or other analogous professional services; financial and insurance transactions; etc.

– Telecommunication services and radio and television broadcasting services are also deemed to take place in the territory in which the recipient has its place of business if it is a trader or professional. If, on the other hand, the recipient is a nontrader, Spanish VAT will be due if the “effective use and enjoyment” of the services takes place within its territory of application.

– Finally, other specific rules apply to services such as certain intermediation services or works on movable tangible property, as well as for certain electronically supplied services (see Chapter 8).

d) Permanent establishment

As mentioned above, the concepts of “place of business” and permanent establishment are relevant for the purposes of determining the place of supply of certain transactions. Additionally, they will also be relevant in defining the VATpayer, i.e. the person obliged to charge the corresponding tax.

“Place of business” is defined in the Law as the place where the VATpayer centralizes the management of, and habitually exercises, his business or professional activity.

“Permanent establishment” means any fixed place of business from which traders or professionals carry on economic activities. Additionally, the Law specifically considers as permanent establishments for VAT purposes:

– The management headquarters, branches, offices, factories, workshops, installations, stores and, in general,
agencies or representatives authorized to contract in the name and for the account of the VATpayer.

- Mines, quarries or tips, oil or gas wells or other places of extraction of natural products.
- Works of construction, installation or assembly lasting over twelve months.
- Farming, forestry or livestock exploitations.
- Installations used on a permanent basis by a trader or professional for the storage and subsequent supply of his merchandise.
- Centers for purchasing goods or acquiring services.
- Immovable property exploited under lease or any other arrangement.

It should be noted that, although the concept and cases in which a permanent establishment is considered to exist are similar for both direct taxes and VAT, they are not fully coincident.

e) Taxpayer

The taxpayer is the person obliged to charge VAT. This obligation falls normally on the traders or professionals who make the corresponding supplies of goods or services subject to the tax.

Notwithstanding the above rule, some exceptions are established under which it is the recipient of the supply who has to account for the VAT due. It is generally the case in which the supplier has no business presence in Spain (place of business or permanent establishment) as well as in the case of intra-EU acquisitions.

It must be noted that if the supplier has a permanent establishment in the Spanish VAT territory, it will be considered as the VATpayer of the corresponding supplies, regardless of whether or not it carries out the taxable transactions from such establishment.

The status of VATpayer gives rise to other obligations, namely:

- Submit declarations relating to the commencement, modification and cessation of the activities that result in their being subject to the tax.
- Apply to the tax authorities for a tax identification number, and notify and substantiate same in such situations as are required.
- Issue and deliver invoices or equivalent documents for their transactions, and keep copies thereof.
- Keep such accounts and records as are required (specific VAT books).
- Submit regularly or at the request of the tax authorities information on its economic operations with third parties.
- Submit the appropriate returns (and an annual summary return) and pay in the resulting amount of the tax. These returns are filed quarterly or monthly, depending on the turnover of the VATpayer.
- Appoint a representative to comply with its obligations when the VATpayers are not established (i.e. do not have their place of business or a permanent establishment) in the Spanish VAT territory. This obligation is only incumbent on traders not established in the EU, unless they are established in a country with which instruments of mutual assistance exist.
f) Deduction of input VAT

VATpayers are generally entitled to deduct from the amounts of VAT charged on taxable transactions carried out by them the amounts of tax borne, insofar as the goods and services acquired are used by them to perform, amongst others, the following transactions:

- Supplies of goods and services subject to and not exempt from VAT.
- Transactions that, although exempted, relate to international trade (exports or intra-EU supplies).
- Transactions performed outside the Spanish VAT territory which would have given rise to the right to deduct had they been performed within said territory.

Tax borne on goods or services which are not used directly and exclusively for business or professional purposes is not generally deductible, although some exceptions apply to capital goods (partial deduction).

The right to deduct is also conditional upon formal requirements and it may be exercised in a period of four years.

There are several deduction regimes, the main features of each of them being the following:

- General pro-rata (deductible proportion) rule

  This rule applies when the VATpayer makes both supplies of goods or services giving rise to the right to deduct and other transactions which do not give rise to such right (e.g. exempt financial transactions). It also applies in case it receives subsidies not directly linked to the price of taxable transactions (although specific rules exist for the different types of subsidies).

In such case, the VAT paid in each tax period is deductible in the proportion which the value of the transactions giving the right to deduct bears to the total value of all the transactions carried out by the VATpayer in the course of his business or professional activity.

Thus, a percentage of deductible VAT has to be calculated by application of the following formula:

\[
\text{Percentage} = \left( \frac{\text{Transactions entitling the right to deduct}}{\text{Total transactions + subsidies}} \right) \times 100
\]

This percentage is rounded up.

- The special pro-rata (deductible proportion) rule

  The right to deduct under the special deductible proportion procedure may be exercised when the VATpayer opts to do so (this option has to be normally exercised within the month of December prior to the tax year in which it will apply). In such case, the following rules apply:

  - VAT paid on acquisitions or imports of goods and services used exclusively for transactions giving the right to deduct may be deducted in full.
  - VAT paid on acquisitions or imports of goods and services used exclusively for transactions not giving the right to deduct cannot be deducted.
  - VAT paid on acquisitions or imports of goods and services used only partly for transactions giving the right to deduct, may be deducted in the proportion resulting from the application of the general pro-rata rule.
– **Deduction system for different sectors of business or professional activity**

When the VATpayer carries on different business activities, it has to apply the corresponding deduction rules separately to each activity.

Business activities are considered to be “different” when they are classed in different groups in the National Classification of Economic Activities and they have different applicable rules for deduction, that is, that their deductible proportions, calculated in accordance with the general pro-rata rule differ by more than 50 percentage points.

Thus, the VATpayer has to apply either the general pro-rata rule or the special pro-rata rule, as described above, in each of its sectors of activity. VAT paid on acquisitions or imports of goods and services used in both activities may be deducted in the proportion resulting from the application of the general pro-rata rule.

**g) Refunds**

Where the VAT charged exceeds the deductible VAT borne, the VATpayer has to pay the difference through its periodic monthly or quarterly returns.

If on the contrary, at the end of the year the amount of deductible VAT borne exceeds the amount of VAT charged, the VATpayer is entitled to a refund which, in general, can only be requested through the last return of the year.

Such refund has to be obtained, in general, within the six months following the deadline for filing the last return of the year (January 30).

Special rules apply to VAT borne in Spain by non-established traders. In these cases, the following requirements have to be met:

– Persons asking for a refund must be established in the European Union or, failing this, must evidence reciprocity for traders or professionals established in Spain in their home country (that is, that their country would refund an analogous tax borne by a Spanish trader). Total or partial reciprocity is considered to exist with Canada, Monaco, Hungary, Switzerland and Japan.

– The non-established trader must not have carried out any transaction in the Spanish VAT territory for which it may be considered the VATpayer.

– Persons not established in the European Union must appoint a representative resident in the Spanish VAT territory who will be charged with complying with the relevant formal or procedural requirements and who will be jointly and severally liable together with the interested party for any incorrect refunds. The tax authorities may demand sufficient guarantees from said representative in this connection.

– VAT borne in Spain is refundable provided that it was borne on acquisitions or importations of goods or on services, insofar as said goods or services are used to carry out the transactions that qualify for the right to deduct (both in Spain and the country in which the trader is established).

Refund claims may only be related to the immediately preceding year or quarter and the deadline for applying for a refund is June 30 of the following year.
7. Transfer tax and stamp duty

Transfer tax is levied on a limited number of transactions, including most notably:

<table>
<thead>
<tr>
<th>Tax Rate(*) (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate transactions such as incorporation, capital increase/reduction at companies, etc. 1</td>
</tr>
<tr>
<td>Transfers of real estate 6</td>
</tr>
<tr>
<td>Transfers of movable assets and administrative concessions 4</td>
</tr>
<tr>
<td>Certain rights on real estate 1</td>
</tr>
<tr>
<td>Certain mercantile law public deeds 0.5</td>
</tr>
</tbody>
</table>

(*) The Autonomous Communities are entitled to opt to apply a different rate in certain cases.

However, if the vendor is a company or an individual real estate developer, the transfer of buildable land or the first supply of buildings is taxed under VAT. Second and subsequent supplies of real estate by companies, traders or professionals in the course of their activity may opt to pay either transfer tax or VAT. This option is applicable if the acquirer is a trader or professional who can deduct all his VAT borne and the vendor elects to pay VAT rather than transfer tax.

Transfers of shares of Spanish companies are generally exempt from any indirect taxation, except when more than 50% of the capital stock of a company is transferred and at least 50% of the assets of such company consist of real estate located in Spain: in this case the transaction will be considered for indirect taxation purposes to be a transfer of real estate subject to transfer tax at 6%.

Several Autonomous Communities have opted to apply different rates (e.g. 7% on transfers of real estate).

Transfer tax is a cost to the acquirer/beneficiary.

In real estate transfers, taxpayers not resident in Spain will have their tax domicile, for the purposes of compliance with their transfer tax and stamp tax obligations, in the domicile of their representative, whom they must appoint pursuant to the Nonresident Income Tax Law.

In the event of failure to appoint a representative or to notify the authorities, the tax domicile of the nonresident taxpayer will be deemed to be the real estate transferred.

8. Excise taxes

In Spain there are several excise taxes in line with the EU Directives on this matter.

These specific consumption taxes are levied on the related products (alcohol and alcoholic beverages, beer, oil and gas and manufactured tobacco) in the manufacturing, processing or import phases.

In general, these excise taxes are not applicable in the Canary Islands, Ceuta and Melilla (taxes on alcohol and beer are also applicable in the Canary Islands).

The special tax on certain vehicles was introduced as a consequence of the elimination of the higher VAT rate. This special tax is also applicable in the Canary Islands, Ceuta and Melilla. This tax is levied at a 12% rate in mainland Spain, 11% in the Canary Islands and 0% in Ceuta and Melilla (for “jeep” vehicles under 1,600 c.c. or 2,000 c.c. if diesel: 7% in mainland Spain and 6% in the Canary Islands). A 50% reduction in the tax base is envisaged for vehicles with five to nine seats and for families with three or more children.
Also, there is a special tax on electricity (applicable to all Spanish territory). This tax is levied on the intra-EU production, importation and acquisition of electric power. The tax base is determined by taking that used for VAT purposes and multiplying it by a coefficient of 1.05113. The applicable tax rate is 4.864%.

9. Customs duties on imports

Most customs duties levied in Spain are standard-rate duties which are generally payable on imports when the goods clear customs. With very few exceptions the duties are ad valorem, i.e. on CIF or similar invoice value. The rest are minor customs duties relating to storage and deposit rights and the sale of abandoned goods.

Following Spain’s accession to the EU in 1986, the gradual decrease in customs duties between Spain and the EU culminated in their complete elimination on January 1, 1993. Customs duties on imports from countries which do not belong to the EU are those included in the EU’s Common Exterior Tariffs.

The “Harmonized Goods Classification System” and the EU Tariff (TARIC) have been in force in Spain since 1987. Also, since Spain’s accession to the EU, only the exemptions established by the EU have been applicable.

10. Tax on insurance premiums

Spanish legislation has recently incorporated the concept, already existing in most EU countries, of tax on insurance premiums. This is an indirect tax which is levied in a single payment on insurance and capitalization transactions based on actuarial techniques and arranged by insurance entities operating in Spain, including those operating under the principle of freedom to provide services, its regulation being as follows:

- Transactions arranged by insurance entities under agreements with State social security agencies or with public companies entrusted with the management of specific social security regimes are not subject to this tax. There are also numerous exempt activities, such as compulsory social welfare insurance, group insurance providing alternative systems to pension plans, life insurance, capitalization transactions, reinsurance transactions, surety insurance, export credit insurance, agricultural insurance, health insurance and certain insurance transactions relating to international transportation and the vessels and aircraft used for such transportation.

- The tax is levied at a single rate of 6% on paid premiums.

- The taxpayers under this new tax are insurance entities carrying out taxable transactions, which must charge this tax in full to the persons taking out insurance subject to the tax. The rules set forth in the VAT regulations shall be applicable for the purposes of charging this tax.

- The tax becomes due at the time of payment of the premium by the policyholder.

- Taxpayers (insurance companies) are obliged to file a tax return and pay the tax on a monthly basis.
III. Local taxes

A Law enacted in December, 1988, introduced a new scheme aimed at rationalizing the local taxation system and facilitating the activity of local entities. Under this legislation, local authorities are empowered to modify some aspects of this type of taxes. This Law, which has been partially amended with effect from January 1, 2003, establishes two different types of municipal taxes, which can be classified as follows:

– Periodic taxes:
  - Tax on real estate (“Impuesto sobre Bienes Inmuebles”).
  - Tax on business activity (“Impuesto sobre Actividades Económicas”).
  - Tax on motor vehicles (“Impuesto sobre Vehículos de Tracción Mecánica”).

– Other taxes:
  - Tax on erection and installation projects and construction works (“Impuesto sobre Construcciones, Instalaciones y Obras”).
  - Tax on increase in urban land value (“Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana”).

1. Periodic taxes

a) Tax on real estate

This tax is levied annually on owners of real estate or on holders of rights in rem thereon based on the cadastral value determined pursuant to the Property Cadastre regulations, at different rates up to a maximum of 1.30% for urban property and 1.22% for rural property.

b) Tax on business activity

This tax is levied annually on any business activity conducted within the territory of the municipality.

However, the following taxpayers are exempted from this tax:

– Individuals.

– Taxpayers subject to corporate income tax and entities without legal personality whose net sales in the previous year were under € 1 million.

– In the case of taxpayers subject to nonresident income tax, the exemption will only apply to those operating in Spain through a permanent establishment, provided that they obtained net sales of under € 1 million in the previous year.

The tax payable is calculated on the basis of various factors (type of activity, area of premises, etc.). The minimum tax rates published by the Government can be adapted by the municipality.

c) Tax on motor vehicles

This tax is levied annually on the basis of the horsepower of the vehicle. Municipalities may double the minimum tax rate.

2. Other taxes

a) Tax on erection and installation projects and construction work

This tax is levied on the actual cost of any work or construction activity that requires prior municipal permission, excluding VAT and any similar taxes.

The tax rate will be set by each municipality up to a top rate of 4%.
b) Tax on increase in urban land value

This tax is levied on the increase disclosed in the value of urban land whenever land is transferred.

The tax rate is set by the municipality up to a top rate of 30%. The tax base is the increase in land value (defined as the difference between the transfer price and the cadastral value). This tax is deductible for personal income tax purposes from the transfer value of real estate.
Spanish tax regulations establish severe penalties for infringements.

The failure to pay taxes to the tax authorities can be penalized with fines ranging from 50% to 150% of the amount not paid and, in certain cases, with forfeiture of the right to tax relief, to receive subsidies from the State and to contract with the State or other public agencies for a period of up to five years.

Any delay in payment of tax debts gives rise to an additional surcharge of 5% if payment is made within three months after the obligation became due, of 10% if payment is made after this three-month period but within six months after the obligation became due, of 15% if payment is made after the six-month period but within twelve months after the obligation became due and of 20% (in this case, plus late payment interest) if the payment is made after twelve months since the obligation became due.

Current legislation also establishes significant requirements for furnishing information to the tax authorities, with heavy fines for noncompliance.

In the case of infringements by legal entities, the directors of the entity may be jointly and severally liable for payment of the fine if they had consented to or participated in the commission of the infringement.

The fraudulent nonpayment of more than €90,151.82 of tax constitutes a tax offense. The €90,151.82 threshold is per year and per tax.

It is also a tax offense to fraudulently obtain a state subsidy of more than €60,101.21.

Tax offenses are punishable by fines of up to six times the amount defrauded and imprisonment for between one and four years.

In the case of legal entities, the tax offense is deemed to have been committed by the legal entity’s directors or its legal representative.

Finally, a new General Taxation Law is going to be approved in the forthcoming months which could modify certain contents of this section.
A Limited Liability Company tax resident in Spain (Teleco, S.L.) has as business activity the supply of telecommunication services. According to the financial statements of the year, the company obtained a profit per books of € 500,000. The company has registered in its accounting records the following transactions that may give rise to the need of making the corresponding tax adjustments to the profit per books:

– Teleco, S.L. has its business domicile in a rented building, paying to the owner of said building an annual amount for this concept of € 36,000.

– The company has recorded a corporate income tax expense amounting to € 185,000.

– It has recorded an allowance for bad debts amounting to € 10,000. As of the date on which the tax accrued, the related account receivable was less than six months past-due.

– Teleco, S.L. purchased certain software on July 1 of the preceding year, for an amount of € 60,000. This tax period has registered a depreciation of said software amounting to € 30,000.

– In the previous tax period the company registered an allowance for bad debts amounting to € 35,000. At the date on which the corporate income tax corresponding to that year accrued, the related account receivable was less than six months past-due.

– The company has recorded a provision for other expenses (provision for incentives) in the amount of € 20,000 to cover the expense to be incurred in relation to the bonus payable to employees. However, there is no contract or similar document that records the company’s commitment to pay the aforementioned bonus.

– The company purchased some computers on October 1 of the previous year, amounting to € 12,000. This tax period has registered a depreciation of said computers amounting to € 5,000.

– The company has incurred in expenses on scientific R&D in the amount of € 62,000 during the year. The average expenses incurred in the previous two years amounted to € 12,000.

– Some employees of the company have attended international telecommunication fairs abroad in order to launch the products of the company, incurring in expenses amounting to € 14,000.

– Teleco, S.L. has incurred training expenses for its employees in the amount of € 9,000.

– The company holds financial investments in certain companies. In this connection, the company obtained dividends in a gross amount of € 30,000, bearing withholding taxes in the amount of € 4,500.

– According to the information furnished by the company, tax installment payments were made during the tax period in the amount of € 95,000.
## Corporate income tax calculation

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit of the year</td>
<td>500,000</td>
</tr>
<tr>
<td><strong>Positive adjustments</strong></td>
<td></td>
</tr>
<tr>
<td>Corporate income tax expense</td>
<td>185,000</td>
</tr>
<tr>
<td>Allowance for bad debts</td>
<td>10,000</td>
</tr>
<tr>
<td>Excess depreciation of software</td>
<td>10,000</td>
</tr>
<tr>
<td>Excess depreciation of computers</td>
<td>2,000</td>
</tr>
<tr>
<td>Provision for incentives</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Negative adjustments</strong></td>
<td></td>
</tr>
<tr>
<td>Allowance for bad debts recorded in the previous tax year</td>
<td>&lt;35,000&gt;</td>
</tr>
<tr>
<td><strong>Tax base</strong></td>
<td>692,000</td>
</tr>
<tr>
<td><strong>Tax rate</strong></td>
<td>35%</td>
</tr>
<tr>
<td><strong>Gross tax payable</strong></td>
<td></td>
</tr>
<tr>
<td>Tax credits</td>
<td>242,200</td>
</tr>
<tr>
<td>Expenses in scientific R&amp;D</td>
<td>&lt;28,600&gt;</td>
</tr>
<tr>
<td>International fairs</td>
<td>&lt;3,500&gt;</td>
</tr>
<tr>
<td>Employees training expenses</td>
<td>&lt;450&gt;</td>
</tr>
<tr>
<td><strong>Net tax payable</strong></td>
<td>209,650</td>
</tr>
<tr>
<td><strong>Withholdings and prepayments</strong></td>
<td></td>
</tr>
<tr>
<td>Withholding on dividends</td>
<td>&lt;4,500&gt;</td>
</tr>
<tr>
<td>Withholding on rental income</td>
<td>&lt;5,400&gt;</td>
</tr>
<tr>
<td>Tax installments payments</td>
<td>&lt;95,000&gt;</td>
</tr>
<tr>
<td><strong>Net amount payable</strong></td>
<td>104,750</td>
</tr>
</tbody>
</table>
Exhibit II
Nonresident case: Income obtained without a permanent establishment

The Dutch company TPC, B.V. seconded one of its employees to Spain in September 2002. This employee worked in the Netherlands until August 2002. The salary of the employee corresponding to the period September-December amounts to €12,000, and is paid by the Spanish branch. The employee continues making contributions to the Dutch Social Security System, amounting to €800 for those four months.

In addition, the employee opens a bank account in Spain and he received interest amounting to €6 and has borne a withholding tax of €1 on said interest.

In year 2002, he buys and sells shares of a Spanish company and obtains a capital gain of €100. Repeating the same operations with another Spanish company’s shares, he obtains, on the contrary, a capital loss of €20. He also transfers shares of a Dutch company and obtains a capital gain of €50.

The employee will be considered as a nonresident in Spain for tax purposes during the 2002 tax year, as he was not physically present in Spain for more than 183 days and his centre of economic interest was not located in Spain this year.

The employee will be taxed separately for each income obtained and the tax will be accrued when the deemed incomes become receivable or in the date of actual payment if it is prior.

1. Salary income: the Spanish branch pays the salary and, therefore, it must pay each month (or every three months if its operational sales volume of the prior year was less than €6,010,121) the withholdings on the gross salary, without deducting any expenses. In consequence, in this case, the branch would have to pay to the tax authorities 25% of the gross salary paid to the employee, amounting to €3,000.

2. Interests derived from the bank account: as a nonresident, the employee could claim the reimbursement of €1 withheld by the Bank, as the interest obtained from nonresidents bank accounts are exempt from taxation.

3. Shares: Only the sale of Spanish shares is subject to taxation. Additionally, gains and losses cannot be compensated.

Therefore, the capital gain obtained from the sale of the first shares would be subject to taxation.

However, according to the Double Tax Treaty signed between Spain and the Netherlands, said capital gain can only be subject to taxation in the Netherlands, being the country of residence of the employee, and as a consequence, it will be exempt in Spain.
A Spanish company, leader in the sale of specialized machinery, delivers measuring machines for the automotive industry to various countries, among others Spain. The recipients of these machines are taxable persons for VAT purposes, duly registered in their respective countries of residence.

In the course of its business activities, the company incurs every month the following expenses:

- € 900,000 plus VAT for the purchase of raw materials necessary for its production, being all the purchases made within the Spanish market.
- € 30,000 plus VAT for the rental of its factory.
- € 7,500 plus VAT for other business expenses.

The goods and services acquired are subject to Spanish VAT at the general rate of 16%. Consequently, the input VAT for the Spanish company every month amounts to € 150,000 (i.e. 937,500 x 16%).

On the other hand, the Spanish company sells every month its products in the Spanish, EU and other international markets according to the following.

- Spanish sales: € 1,000,000 plus VAT
- EU Sales: € 200,000
- International Sales: € 100,000

The Spanish company must charge VAT for the supplies performed within the Spanish market at the general rate of 16% (i.e. 1,000,000 x 16% = 160,000). However, the supply of goods to an EU Member State, or the supply of goods to other third territories (export of goods), would be exempt from VAT provided that all the regulatory requirements are met; among others, the demonstration of the transport of products outside the Spanish VAT territory and that the recipient of the goods is a VAT entrepreneur when the goods are supplied to other EU Member State.

As the Spanish company’s turnover of the previous year exceeded the amount of € 6,010,121.04, the company is considered to be a large company and therefore it is obliged to submit the returns on a monthly basis. Otherwise, the returns must be submitted quarterly.

The output VAT must be recorded in such return (i.e. € 160,000). However, this amount may be offset with the input VAT borne in the prior acquisitions of goods and services derived from its business activity (i.e. € 150,000).

The difference between the output VAT and input VAT will amount to € 10,000 that will be the final quota to be paid to the Tax Authorities when submitting the return.
# Investment aid and incentives in Spain

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## II. State incentives for training and employment

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   - b) European Social Fund

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   - European Regional Development Fund (ERDF)
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   - I-TEC

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   - Employment

2. State incentives for specific industries

3. Incentives for investments in certain regions
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   - Granted by the Autonomous Community and Municipal governments and Local Councils

4. EU aid and incentives
In order to respond to investment expectations and the need to promote growth, the Central Government, the governments of the Autonomous Communities and certain provincial and municipal authorities have implemented a system of aid and incentives to encourage the training and hiring of workers with certain characteristics, the creation of new companies, and research and development and innovation (R&D&I) investment projects.

Furthermore, since Spain is an EU Member State, potential investors are able to access European aid programs, which provide further incentives for investing in Spain.

These investment aid measures can be classified as follows:

– State and regional incentives for training and employment
– State incentives for specific industries
– Incentives for investments in certain regions
– State incentives for SMEs
– Incentives for internationalization
– EU aid

Most of the aid that can be obtained from the various agencies depends largely on the specific characteristics of each investment project (i.e. the better the prospects of the project, the more possibilities there are of obtaining financing and aid).

Apart from the tax incentives discussed in other chapters (the basic tax incentives analyzed in Chapter 4 are investment tax credits), the main general State incentives for investors are described in the following paragraphs.
II. State incentives for training and employment

These incentives, which form part of the Government’s employment promotion policy and can signify important savings in labor costs, can be divided into two types:

1. Training incentives

   a) Ongoing Training Programs
   
   In replacement of the Second National Ongoing Training Agreement (“Acuerdo Nacional de Formación Continua”, ANFC) covering the period from 1998 to 2002, on December 13, 2000, the employers’ organizations and labor unions signed the Third National Ongoing Training Agreement which, together with the Third Tripartite Ongoing Training Agreement entered into with the Spanish Ministry of Employment on December 19, 2000, constitutes the current legal framework for ongoing training.

   The two agreements provide for the financing, through December 31, 2004, of the implementation of corporate and individual initiatives for the preparation of ongoing training programs aimed at improving the skills and qualifications of workers and the competitiveness of companies.

   In this connection, anyone wishing to finance training initiatives under the Third National Ongoing Training Agreement (ANFC) and the Third Tripartite Agreement must submit an application to the Tripartite Foundation for Ongoing Training in the terms and conditions established in the respective calls for applications.

   The major new development introduced by the Third National Ongoing Training Agreement is the creation of the Tripartite Foundation for Ongoing Training (formed by the Central Government and the social partners), which eliminates the overlapping of the functions in this area performed by the Foundation for Ongoing Training (FORCEM), with which this foundation is merging, and the National Employment Institute (INEM).

   In any case it should be borne in mind that the aid provided under these Agreements consists largely of subsidies that cover part of the cost of training plans (mainly the cost of instructors, leases on facilities, materials, utilities, including water, gas and electricity, etc.).

   b) European Social Fund
   
   Other subsidies are granted by the State and by the EU for projects fostering the training of workers (see “EU Aid and Incentives” in Section VII below).

2. Employment incentives

   a) Fostering of indefinite-term employment and of the transformation of temporary contracts into indefinite-term contracts
   
   The Spanish Central Government offers a wide range of employment incentives, consisting mainly of reductions in employer social security contributions aimed at promoting the stable hiring of workers (especially of unemployed persons included in groups such as unemployed women aged 16-45, unemployed women who are hired in industries or professions where women are under-represented, the long-term unemployed, the unemployed over the age of 45, individuals receiving the unemployment benefit granted under the Special Social Security System for Agriculture, and the handicapped) and at encouraging the conversion of temporary contracts into indefinite-term contracts.

   The catalogue of incentives to employment in the Employment Fostering Plan for 2003 is summarized in the following table:
### Table 1

**2003 program to foster employment**

<table>
<thead>
<tr>
<th>Group of unemployed persons</th>
<th>Discount in the employer social security contribution for ordinary contracts</th>
<th>Duration of the discounts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial full-time or part-time indefinite-term contracts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Persons unemployed for 6 or more months</td>
<td>20% 30%¹</td>
<td>24 months</td>
</tr>
<tr>
<td>Persons over 45 and up to 55</td>
<td>50% 60%¹</td>
<td>12 first months</td>
</tr>
<tr>
<td></td>
<td>45% 55%¹</td>
<td>Rest of term</td>
</tr>
<tr>
<td>Persons over 55 and up to 65</td>
<td>55% 65%¹</td>
<td>12 first months</td>
</tr>
<tr>
<td></td>
<td>50% 60%¹</td>
<td>Rest of term</td>
</tr>
<tr>
<td>Recipients of benefits/aids for unemployment for whom one year or more of said benefits remain¹</td>
<td>50% 60%¹</td>
<td>12 first months</td>
</tr>
<tr>
<td></td>
<td>45% 55%¹</td>
<td>From 13th to 24th month</td>
</tr>
<tr>
<td>Unemployed participating in the program that contemplates the active insertion income¹</td>
<td>65% 75%¹</td>
<td>24 months</td>
</tr>
<tr>
<td></td>
<td>45%</td>
<td>Rest of term for workers over 45 and up to 55</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>Rest of term for workers over 55 up to 65</td>
</tr>
<tr>
<td>Women from 16 to 45 years old¹</td>
<td>25%</td>
<td>24 months</td>
</tr>
<tr>
<td>Women in professions of low rate of feminine employment¹</td>
<td>Persons over 45 years old or unemployed for more than 6 months</td>
<td>70%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>60%</td>
</tr>
<tr>
<td>Persons under 45 years old unemployed for less than 6 months¹</td>
<td>35%</td>
<td>24 months</td>
</tr>
<tr>
<td>Persons unemployed for 12 or more months, hired in the 24 months after having a child</td>
<td>100%</td>
<td>12 months</td>
</tr>
<tr>
<td>Recipients of unemployment aid for workers included in the Special Agricultural System of Social Security¹</td>
<td>90%</td>
<td>12 first months</td>
</tr>
<tr>
<td></td>
<td>85%</td>
<td>From 13th to 24th month</td>
</tr>
<tr>
<td><strong>Full-time or part-time indefinite-term or temporary contracts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers in a situation of social exclusion hired by non-profit seeking companies and entities</td>
<td>65%</td>
<td>24 months</td>
</tr>
<tr>
<td><strong>Transformation of temporary contracts into indefinite-term contracts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specific-term and temporary contracts made before 1.1.2003 and transformed before 31.12.03; and training contracts, relief and substitution contracts regardless of their date</td>
<td>25%</td>
<td>24 months</td>
</tr>
<tr>
<td><strong>Transformation of temporary contracts into part-time indefinite-term contracts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Practical experience or relief contracts made initially on a part-time basis, maintaining at least the duration of the working hours³</td>
<td>25%</td>
<td>24 months</td>
</tr>
</tbody>
</table>

### Contracts with handicapped workers

<table>
<thead>
<tr>
<th>Type of contract</th>
<th>Discount in the employer social security contribution</th>
<th>Duration of the discounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary contracts</td>
<td>75% for a maximum of three years.</td>
<td></td>
</tr>
<tr>
<td>Indefinite-term contracts</td>
<td>Aid of € 3,906 per contract. Discount: - 70% per handicapped worker under 45 years. - 90% per handicapped worker over 45 years old.</td>
<td></td>
</tr>
</tbody>
</table>

¹ Discounts are incompatible with each other and the beneficiary should opt for those of a single one of the categories in which he is included.

(1) If it is the first person hired by a self-employed worker registered as such before 2.1.2002, who has not had, for the performance of his activity, salaried personnel in the twelve preceding months, the discount in the contributions will be increased by 5%.

(2) Amount of the discount in contributions if the contracts are made on a full-time basis with a woman. The increase of note 1 may be added to this amount.

(3) These groups may also use the contract to promote permanent employment, which establishes an indemnity of 33 days of salary per year worked (maximum of 24 months of salary) in the event of unfair disciplinary dismissal. The groups that may use the contract to promote permanent employment are: young people from 16 to 30 years old, women engaged in professions with a low rate of female employment, persons over the age of 45, unemployed workers registered for 6 months or more and workers who, on the date of the new contract to promote indefinite-term employment, are employed in the same company under a specific-term or temporary contract (including trainee contracts), made before December 31, 2003.
b) Local employment initiatives

In addition to the general employment incentives detailed in the previous section, additional aid and subsidies may be granted for investment projects aimed at generating economic activity and new jobs in local and regional areas of Spain. Such projects must be sponsored by the corresponding Autonomous Community (regional) Government and/or Municipal Government.

Applications for these incentives must be filed with the National Employment Institute (INEM). This is the government body in charge of selecting the eligible projects and granting the aid and subsidies therefor.

In addition to the necessary sponsorship and support given by the local or regional government, the eligible projects must meet the following requirements:

– Projects must provide for the hiring of workers on an indefinite-term basis or the recruitment of new partners in the case of projects involving cooperatives or labor companies.
– Projects must provide for the incorporation of a new company with a maximum number of 25 employees at the time of incorporation.
– Projects must provide for the production of products and/or services which relate to emerging economic activities or which cover unsatisfied needs of the area in the case of traditional activities.
– Projects must be technically, economically and financially viable.

Incentives available for selected projects are as follows:

– A financial subsidy aimed at the reduction by up to three percentage points of interest rates on loans granted to the company related to its incorporation and establishment. The maximum amount of this subsidy will be € 5,108 per indefinite-term job created.
– A subsidy for the support of management activities (e.g. subsidies for the external contracting of market or technical studies, reports, and/or training programs). This subsidy will only be available during the first year after the incorporation of the company and will cover 75% of the cost of the qualifying services up to a maximum of € 12,020.
– A subsidy for technical assistance for the hiring of highly-qualified technical experts, covering 50% of total labor costs (including employer social security contributions for a maximum period of one year). This is a one-time subsidy with a ceiling of € 18,030.
– A one-time subsidy for each indefinite-term employment contract amounting to € 4,808 for each worker hired on a full-time basis (or the related proportion of such overall amount in the case of indefinite-term part-time contracts). This subsidy is not compatible with that described in the preceding point.
– A subsidy for cooperatives and labor companies amounting to € 4,808 per unemployed working partner recruited on an indefinite-term basis. This subsidy is not compatible with those described in the two preceding points.

All the aforementioned incentives may be increased by 10% when the project is related to certain activities, among which are those connected with the protection
and maintenance of natural areas, waste management, collective transport, the development of local culture and the care of children, the handicapped and the aged.

These incentives and subsidies are compatible with others granted by other government agencies or public or private entities, although the total amount of the subsidy may not exceed 80% of the subsidized activity.

Lastly, Autonomous Community governments which, as a result of the increasing administrative decentralization process currently underway in Spain, have been transferred management powers in relation to these and other employment programs, may adapt these incentive measures to their own organization.

c) **Fostering of rural employment**

Aid is provided for companies promoting employment initiatives in rural communities (see “State incentives for specific industries”, Section III below).
The Central Government has provided, and continues to provide, financial aid and tax benefits for activities carried out in certain industries which are considered to be priority sectors in view of their growth potential and their impact on the nation's overall economy (e.g. activities in the agrofood industry, energy, mining, technological development, research and development, etc.). In addition, the Autonomous Community governments provide similar incentives for most of these industries.

Financial aid includes both nonrefundable subsidies and interest relief on the loans obtained by the beneficiaries, or combinations of the two.

Besides the official restructuring programs which were initiated some years ago for certain industries (shipbuilding, steel and textiles, among others) and which are now substantially completed, the major industrial development programs currently in force are:

III. State incentives for specific industries

1. Agrofood and other related industries

a) Aid for investment in industrial infrastructures

With a view to contributing to the improvement and modernization of agricultural structures and operations, a system of incentives has been established which is aimed at financing the implementation of plans to upgrade farms and at supporting initiatives to improve professional agricultural qualifications. In short, the objective is to assist young farmers who are setting up for the first time.

Assistance may take the form of capital subsidies, interest relief, and subsidies covering part of the annual repayments of the principal, or assistance in defraying the cost of guarantees, or a combination thereof.

Capital subsidies of up to 15% of the projected investment, reaching up to 20% in specially disadvantaged areas, are available. A further 5% may be added to the applicable percentage according to the foregoing for improvement plans aiming to obtain ecological products, if these conform to the legislation for ecological farm production and their indication in farm and food products.

The interest relief may be up to 8.5 percentage points annually, in such a way that the interest rate for the borrower must not be less than 1.5%, depending on the circumstances. The loans may cover up to 90% of the difference between the cost of the approved investment and the subsidy.

In any event, the maximum amount of the grant may not exceed 50% of the investment in the disadvantaged areas included in the lists approved at Community level, and may not exceed 40% in other areas.

The subsidies are granted on a 50-50 basis by the Ministry of Agriculture, Fisheries and Food and the relevant Autonomous Community governments, and may be channeled through public and private banks. Applications must be filed with the competent body of the Autonomous Community where the investment is to be located. More information on these grants can be obtained from, among other agencies, the General Secretariat of Agriculture and Food, which reports to the above-mentioned Ministry.
b) Fostering of activities of rural interest

The initiatives to foster the diversification of rural life consist of incentives for investments, employment and other related activities:

– The investment aid consists of interest relief on loans obtained to finance investments of up to €72,121 for each full-time job created and maintained during the year, and not exceeding 90% of the value of the investments. These benefits are granted by the Ministry of Agriculture, Fisheries and Food.

– The employment aid takes the form of direct subsidies of up to 50% of the labor cost of the job created during the first year of activity (subject to a ceiling of €3,606). These subsidies are approved and paid by the relevant Autonomous Community governments.

– Lastly, other types of aid are envisaged for related activities (business studies, business training and retraining, technical assistance for company management, etc.) up to a maximum of between 50% and 90% of the costs incurred in carrying out the activity (with maximum limits that vary depending on the type of activity subsidized). This aid is paid by the Autonomous Community governments.

The incentives described above are incompatible with any other aid provided by the Central Government or the Tripartite Foundation for Ongoing Training, in which the beneficiaries, objectives or investments coincide.

Additionally, the incentives granted to foster economic activity and job creation in rural communities will be subject to the ceilings envisaged for incentives granted for regional investment projects.

Finally, entities, companies and professionals related to production and marketing in the agricultural industry that provide statistical, accounting and pricing data to the Ministry of Agriculture, Fisheries and Food may obtain an annual subsidy of at most €2,205.71 per recipient and year for statistical and pricing data and €125,61 for accounting data. The above figures are the amount of the aid granted in 2002 since to date no data are available on the amount of the aid forecast for 2003.

c) Measures for promoting and fostering new technologies

With a view to fostering the use of new technologies in the agricultural area, an incentive is provided for the acquisition of new machines and equipment that involve technological innovation.

The incentive consists of a subsidy (the amount of which varies) which is granted provided that the investment in the new machinery is made within a year and the machines or equipment acquired are not sold within five years.

2. Energy

In compliance with the 1997 Electricity Industry Law, on December 30, 1999, the Council of Ministers approved the Plan for the Promotion of Renewable Energies (2000-2010) which defined the strategy to be followed in the energy area to foster the growth of renewable energies. The ultimate aim of the Plan is to ensure that the various sources of renewable energy will be able to cover 12% of primary energy consumption in 2010.
In order to encourage compliance with the aforementioned Law, the Plan for the Promotion of Renewable Energies envisages a series of measures and incentives (of a tax or structural nature, etc.) that are aimed, _inter alia_, at eliminating the barriers which impede the introduction of renewable energies in a market dominated by fossil fuels.

In this connection, the Plan envisages the granting of incentives for investments in technological innovation made by companies in the area of renewable energies, the creation of lines of public aid (a subsidy for the promotion of technological innovation and investment incentives for the extension or start-up of the manufacturing of capital goods) and the granting to SMEs of a percentage of relief from the cost of the guarantees provided by mutual guarantee companies to cover risks.

Within the framework of this Plan for the Promotion of Renewable Energies, the Institute for Energy Diversification and Saving (IDAE) has set up certain specific aid programs for the solar thermal power and solar photovoltaic power industries.

More specifically, under the Aid Program for low-temperature solar thermal power facilities, in 2002 the IDAE earmarked €10,818,218 for the selection of companies with a permanent establishment in Spain and engaging in the manufacturing, installation and supply of goods or services in the solar thermal power area, which cooperate with the IDAE in the dissemination, processing, distribution and use of the aid for investment projects at solar thermal power facilities, guaranteeing the technical quality of the facilities, availing themselves of the program and channeling the aid to the beneficiary through a reduction in the price the latter must pay in order to build the related facility.

End users also benefited from the Aid Program for low-temperature solar thermal power facilities in 2002 and were able to obtain subsidies to cover part of the cost of the investment made in low-temperature solar thermal power facilities, such as sanitary hot water and swimming pool heating systems, hot water for industrial processes and heating and air-conditioning systems.

The maximum amount of the aid available ranges from €210 to €300 per square meter of installed collection area, depending on the type of facility concerned.

The 2002 IDAE Aid Program provides the same incentives as those listed above for the accreditation of cooperating companies in the electricity-producing solar photovoltaic power facilities industry.

Although the incentives described above relate to the 2002 Aid Program, in all likelihood IDAE will announce similar Aid Programs in the course of 2003.

To facilitate investment in renewable energy sources, the IDAE has reached an agreement with the Instituto de Crédito Oficial (ICO) to set up a financing line of €42 million for Renewable Energy and Energy Efficiency Projects, of which €30 million are financed by ICO and the balance by IDAE.

The financing is earmarked mainly for projects aimed at investing in new fixed assets intended to use renewable energy sources or improve energy efficiency, and for the installations, equipment and expenses necessary for their start-up. If civil works are required, these may not represent more than 20% of the total qualifying investment.
The funding will finance up to 70% of projects and it will be possible to apply for loans of up to a maximum of €6,310,627 (per beneficiary and year) with repayment periods of 5, 7 or 10 years at the beneficiary’s choice and with a 2-year grace period. The relief provided by IDAE consists of a reduction of interest rates (2 to 4 percentage points depending on the project in question) based on the 6-month EURIBOR plus one percentage point.

The funding provided by ICO is compatible with any complementary aid or subsidy received from the EU or other institutions, subject in all cases to compliance with the conditions established by the European Union.

Although the term of the ICO-IDAE fund for renewable energy and energy efficiency projects expired on December 31, 2002, it is very likely that it will be renewed in 2003.

Furthermore, in order for the objectives of the Plan for the Development of Renewable Energies to be fully achieved, certain R&D actions will have to be taken, which has led to the involvement of the energy industry in the various R&D&I programs currently being implemented at EU and national level.

Under the Program for the Development of Technological Research (PROFIT), the Ministry of Science and Technology provides aid (nonrefundable subsidies, refundable advances or a combination of the two) for projects submitted by companies and other beneficiaries which are in line with one or other of the strategic actions envisaged by the National Programs included in PROFIT (see Section III, item 4. “Research, Development and Innovation”, on pp. 158-160).

The strategic actions envisaged by the National Energy Plan include most notably those relating to the development of less polluting energy systems (such as wind power, solar thermal power, photovoltaic solar power, the use of biomass in energy production, and new fuel cells), those relating to the more efficient and more economical transmission, storage, distribution and use of energy and those relating to the development of alternative propulsion systems and new fuels for the transport industry.

3. Mining

The Secretary of State for Economy, Energy and the SME, of the Ministry of Economy and Finance grants incentives for prospecting, geological-mining research and non-energy mining activities, valid until December 31, 2006.

These incentives, consisting mainly of subsidies of a variable amount, according to whether or not the regions in which the projects are performed may avail themselves of the exceptions expressly contemplated in article 87.3 of the EC Treaty, are usually earmarked for geological and mining research and prospecting projects and for environmental projects.

Aid is also available to finance projects aimed at reducing the industry’s production capacity and initiatives aimed at promoting the alternative development of mining areas.

The incentives to promote alternative development in mining areas consist mainly of nonrefundable subsidies, although the Institute for the Restructuring of Coal Mining and the Alternative Development of Mining Regions may propose other alternatives—in the scopes of regional reactivation and of mining reorganization—consisting of aids to the operation and activity reduction of
activities of coal mining companies, aids to reduce supplies, aids for labor costs, aids for the storage of autochthonous coal at thermal power stations and aids for the transport of coal for the development of infrastructures in coal mining regions, etc.

The 2003 call to submit applications for subsidies for projects aimed at promoting the alternative development of mining regions is expected to be published in the first quarter of the year.

Table 2 shows in detail the application of the various programs managed by the Institute for the Restructuring of Coal Mining and the Alternative Development of Mining Regions according to the Autonomous Communities where it is intended to perform the qualifying action:

<table>
<thead>
<tr>
<th>Autonomous Community</th>
<th>Operation and reduction of activity</th>
<th>Storage</th>
<th>Transport</th>
<th>Restructuring technical costs</th>
<th>Restructuring labor costs</th>
<th>Alternative development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andalusia</td>
<td>Yes</td>
<td>Yes</td>
<td>No (1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Aragón</td>
<td>Yes</td>
<td>Yes</td>
<td>Some areas</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Castilla-León</td>
<td>Yes</td>
<td>Yes</td>
<td>Some areas</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Castilla-la Mancha</td>
<td>Yes</td>
<td>Yes</td>
<td>No (1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cataluña</td>
<td>Yes</td>
<td>Yes</td>
<td>Some areas</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Galicia</td>
<td>No (2)</td>
<td>No (2)</td>
<td>No (2)</td>
<td>No (2)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Asturias</td>
<td>Yes</td>
<td>Yes</td>
<td>No (1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

(1) Thermal power stations consume coal from their own basin.
(2) Does not produce CECA coal.

4. Research, Development and Innovation (R&D&I)

Encouraging technological improvement and innovation and research and development projects has in recent years become one of the priorities of public authorities in Spain. In this connection, the Government has recently approved a new version of the “National Plan for Scientific Research, Development and Technological Innovation” which is in line with the Fifth EU RTD Framework Programme (valid until the end of December 2002 and to be replaced by the Sixth Framework Programme) and is partly financed by the EU Structural Funds. The National Plan will be in force in the 2000-2003 period.

Within this framework, the Ministry of Science and Technology is responsible for the management of certain scientific research and technological development policies under the Program for the Development of Technological Research (PROFIT), which in turn forms part of the National Plan for Scientific Research, Development and Technological Innovation (2000-2003).
Under the aforementioned Program and for the duration thereof, the Ministry has defined the terms and conditions for the granting of aid.

The incentives thus envisaged may consist of refundable advances, subsidies or a combination of the two and are granted for industrial research projects, feasibility studies, pre-competition development projects and technological demonstration projects presented by companies in line with any of the strategic actions of the respective National Programs included in PROFIT.

Table 3 shows the main features of PROFIT:

<table>
<thead>
<tr>
<th>TYPE OF AID</th>
<th>ELIGIBLE APPLICANTS</th>
<th>THEMATIC FIELDS</th>
<th>MANNERS OF ACTIONS</th>
<th>CALLS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBSIDIES:</td>
<td>Enterprises (Validly organized corporations)</td>
<td>SCIENTIFIC-TECHNOLOGICAL FIELDS</td>
<td>INDIVIDUAL TECHNOLOGICAL PROJECT OR ACTION</td>
<td>GENERAL TERM</td>
</tr>
<tr>
<td>REFUNDABLE ADVANCES:</td>
<td>SMEs Groupings or association of enterprises</td>
<td>• National Program for Biotechnology</td>
<td>Technological project or action performed by a single company, public research agency, private scientific research and technological development non-profit-making company, technological center or entity of public law.</td>
<td>Until December 19, 2002</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Industrial Design and Production</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Materials</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Chemical Products and Processes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Natural Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Agrofood Resources and Technologies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Information Technologies and Communications</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Socioeconomic Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Biomedicine (includes PROFARMA II)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMBINED MODE</td>
<td>Private non-profit-making R&amp;D centers</td>
<td>INDUSTRIAL FIELDS</td>
<td>TECHNOLOGICAL PROJECTS OR ACTION IN COOPERATION</td>
<td>APPLICATION FOR ACTIONS FAVORING THE PARTICIPATION IN INTERNATIONAL R+D COOPERATION PROGRAMS</td>
</tr>
<tr>
<td>(SUBSIDY + ADVANCE):</td>
<td>Technological centers</td>
<td>• National Program for Aeronautics</td>
<td>For a technological project or action in cooperation to exist, a minimum of two participants set out in the individual project should exist, which may or not be the same kind of subjects. In technological projects or actions in cooperation, one of the members will act as the coordinator and the others as participants. The coordinator shall be the applicant for the aid and the person responsible for all purposes of the performance of the project.</td>
<td>Will commence on the day after expiry of the preceding term and will expire on September 2, 2003.</td>
</tr>
<tr>
<td></td>
<td>Public research agencies</td>
<td>• National Automobile Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public law entities</td>
<td>• National Program for Energy</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Space</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for the Environment</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for the Information Society</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Program for Transports and Zoning</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In any event the granting of this aid will require guarantees to be furnished to the General Administration of the State.
In addition, to date ICO has provided funding of €210 million for innovation and technological development projects.

Eligible investments are those aimed at the acquisition by companies of new assets to modernize their technology, provided that the proportion of the investment relating to real estate does not exceed 30% and the proportion relating to intangible assets (research, cooperation, indirect costs, etc.) does not exceed 50%. In any case, the maximum limit for the loan is 70% of the investment, with a limit per year and beneficiary of €1,500,000 at a fixed or floating interest rate.

Also, the Center for Industrial Technological Development (CDTI) provides financial assistance of €530 per €10,000 of investment to be used for the early repayment of loans.

Lastly, the CDTI continues to accept applications in relation to specific R&D&I projects carried out in conjunction with organizations from countries that participate in the Eureka Program, as part of the following European strategic projects: EURIMUS (2002-2003), SCARE (1998-2004); PIDEA (1998-2003), ITEA (1998-2005) and MEDEA (2001-2004).

5. Audiovisual industry

The promotion and fostering of the production by Spanish companies and EU Member State companies and companies from the European Economic Area established in Spain, of films and audiovisual material, as well as the establishment of conditions which would favor their creation and dissemination, and the adoption of measures for the conservation of film-making and audiovisual heritage constitute the objectives of the Law dated July 9, 2001, which regulates the fostering and the promotion of film-making and the audiovisual industry.

– Film production will be fostered by the annual granting of aid to film producers to reduce the cost of film production, taking into account objective criteria such as viewer acceptance during the period of projection in movie theatres, and the box office receipts obtained by movie theaters over a given period of time.

Specifically, the producers of full-length motion pictures can generally receive aid from the “Instituto de la Cinematografía y de las Artes Audiovisuales” (ICAA – Spanish Institute for Film-Making and Audiovisual Arts) for an amount equal to 15% of the gross box office receipts which they obtain during the first two years of screening in Spain, up to a maximum of €901,518.

In any case, the amount of the aid will be less than 50% of the cost of the films produced, with possible exceptions in the case of experimental films, documentaries, pilot animation series programs and low-budget films.

The ICAA also grants aid to producers for projects to make full-length motion pictures which incorporate new directors and experimental productions with a clear artistic and cultural content, within the related budgetary constraints and following a public call to submit applications. This aid is nontransferable and may not exceed the producer’s investment or €300,506 per film.

In the same way, producers of short films can receive aid from the ICAA for production up to a maximum limit which is determined annually, and they can also
receive aid for films already made, which cannot exceed 75% of the producer’s investment and it may never exceed € 60,101 per film.

– Scriptwriting is also eligible for aid from ICAA, which grants incentives to authors and production company joint ventures which write scripts for full-length motion pictures for cinema or television in any of Spain’s official languages.

– In order to foster the distribution in Spanish movie theaters of quality films of outstanding artistic value, the ICAA can subsidize up to 50% of the cost of contact printing of copies, of subtitles and the advertising expenses required to make distribution plans in Spain which cover a minimum of 15 provinces and 5 Autonomous Communities. The maximum amount of this aid is € 60,101 per film.

Similarly, the owners of the movie theatres which have obtained the aforementioned incentives can also receive aid of up to 5% of the gross box-office receipts which they obtain in their movie theaters for the projection of these films, during the first year of screening.

Without prejudice to the aforementioned aid granted by the ICAA, it should be added that there is a Film Production Financing Line for Projects promoted by ICO and the “Instituto de Cinematografía y Artes Escénicas” (the Spanish Institute for Film-making and the Dramatic Arts), through which loans are granted on subsidies and direct loans for the production of full-length motion pictures and the acquisition of production equipment.

In the case of the loans on subsidies, the principal cannot exceed 90% of the aid for the full-length motion pictures production project granted to the ultimate beneficiary by ICAA, and the direct loans for the production of full-length motion pictures and the acquisition of production equipment cannot exceed 50% of the budget for the film up to a limit which fluctuates between € 450,759 and € 601,012 depending on the case in question.

These loans are repayable over a period of between one and three years, and bear interest at EURIBOR + 0.75 percentage points. The aid from ICAA with regard to the loans for the production of full-length motion pictures and the improvement and acquisition of production equipment consists of a 2.40% reduction in the interest rate on the loans, equal to € 239.38 for every € 6,010.12 of the loan, applicable as an early repayment of the loan.

Although the initial term of this line of financing expired on December 31, 2002, it will foreseeably be automatically extended annually unless any of the parties expressly gives notice of termination, something which had not occurred as of the date of this Guide.

6. Tourism industry

Against the backdrop of monetary union and economic and social convergence, and in a competitive environment characterized by the globalization of supply and demand and the internationalization of tourism companies, the Spanish tourism industry has to base its position of leadership on quality.

It is with this in mind that the Integral Plan for Spanish Tourism Quality (PICTE) was created. This Plan, which replaces the Spanish Tourism Competitiveness Framework Plans (1996-1999), seeks to define, from the standpoint of cooperation between the business community and the public authorities, the main plans of action
for creating supply and bringing it to the market, as well as establishing the sustainability and profitability targets to be achieved.

The PICTE, which covers the period from 2000 to 2006, is being implemented through specific programs which, taking quality as their main underlying objective, encompass the main action plans for the tourism industry: Quality in Tourist Destinations, Quality in Tourist Products, Quality in Business Sectors, Quality in Training, Technological Development and Innovation, Internationalization of Tourism Companies, International Cooperation, Statistical Information and Economic Analysis, and Promotion of and Support for Foreign Trade.

Particularly noteworthy from the business standpoint are the Technological Innovation and Development Programs applied to Tourism and that relating to the Internationalization of Spanish Tourism Companies.

In the area of technological innovation and development, Information Technology (IT) systems are being applied in the tourism industry through projects that coordinate management and e-mail (EDITRAVEL and EDITHOTEL) and projects that link information systems with reservations (TURCENTRAL, SIT).

Interested entities can apply for the product at the Directorate-General of Tourism, which will grant the license for use, at no cost to the applicant, of each of the products. The agency also provides, within its budgetary constraints, technical assistance (a help desk) and training courses on the use of the products so that their potential is better utilized.

The EDITURISMO Program (EDITRAVEL-EDIHOTEL) consists of the electronic exchange of documents among the various players in the industry, mainly travel agencies and hotels, and their suppliers and finance entities, in order to replace hard copies with e-mail messages, thereby eliminating administrative costs.

The TURCENTRAL Program is a computer system, aimed at autonomous and local government entities and business associations, which captures tourism information on reservations by organizing it into a database or mainframe, thereby making it possible to market and exploit such information.

The TURISCAL Program is a pilot project promoted by the Directorate-General of Tourism to give IT support to the management of the Spanish Tourism Quality System, its main recipients being hotel establishments and associations.
**IV. Incentives for investment in certain regions**

1. **Granted by the State**

Regional incentives are granted by the State in accordance with EU requirements and limits. Their granting is centralized basically in the Subdirección-General of Regional Incentives.

These incentives are aimed at promoting development in certain areas, and they consist of financial assistance for investment projects in specific regions.

The main objective of this regional policy is to achieve economic equilibrium among the different Spanish regions (measured in terms of per capita GNP). In practice, this policy involves the promotion of start-ups, expansions or modernization of enterprises located in the less developed geographical regions and in areas experiencing particular economic difficulties.

This aid scheme is based on nonrefundable subsidies (although the relevant legislation also envisages the possibility of privileged financing, such alternative is not used in practice) for a percentage of the cost of the investment. They are granted for investment projects that will be located in one of Spain’s eligible areas.

The geographical coverage of regional incentives is very broad, covering more than 80% of Spain and encompassing around 79% of the Spanish population.

The maximum subsidies vary from one area to another, but in most parts of the country the subsidies can currently be for up to 50% of the investment. Specifically, as shown in the map of regional aid for Spain authorized by the Commission for 2000-2006, the cumulative maximum limit of the subsidies and/or regional aid granted by the various public authorities is 50% for investments in the Autonomous Communities of Andalucía, Extremadura and the Canary Islands, with lower limits for the rest of the eligible Autonomous Communities.

The granting of regional State incentives is aimed at financing investment projects carried out in the so-called Areas of Economic Promotion, defined under the framework determined by the EU map of State regional aid. In this connection, for 2000-2006, the entire territory of the Autonomous Communities included in Objective number 1 of the Structural Funds (Galicia, Asturias, Castilla-León, Castilla-La Mancha, Extremadura, Valencia, Andalucía, Murcia, Ceuta, Melilla and the Canary Islands) is classified as eligible. Similarly, projects carried out in certain parts of the Autonomous Community of Aragón (specifically the provinces of Teruel and Huesca and certain areas of Zaragoza) and, on a transitional basis, in the Autonomous Community of Cantabria, may also benefit from regional incentives.

Two types of “eligible” areas are also defined according to their specific circumstances:

- **Economic Promotion Areas** (“Zonas de Promoción Económica” or “ZPEs”).

  ZPEs are less developed geographical areas of Spain. ZPEs can only be established in class I, II and III, only during the period 2000-2006.

- **Industrialized Areas in Decline** (“Zonas Industrializadas en Declive” or “ZIDs”).

  These areas are defined when special circumstances (as determined by the Central Government) so require. They are usually areas strongly affected by industrial restructuring processes, with serious repercussions on the level of business activity and employment in those areas. At present the figure of the ZIDs is out of use.
ZPEs and ZIDs are established by Royal Decree, and each Royal Decree identifies the area covered and the ceiling on the level of aid that can be granted once all the subsidies for a given project have been aggregated, regardless of the type or source of the subsidies.

The above-mentioned decrees also define what are known as “priority areas” (the only areas in the ZPE where the subsidy may reach the maximum limit), the “eligible” sectors, the type of investment projects qualifying for aid, the requirements for obtaining the incentives, etc.

In exceptional circumstances, the Ministry of Economy and the Government’s Standing Committee for Economic Affairs may (at the proposal of the Board of Governance) raise the above-mentioned limits for certain areas, but always within the limits established by the EU. Such a situation has only arisen on very few occasions, in certain areas (particularly in ZIDs), and only for short periods of time.

These ZPEs and ZIDs have certain basic common characteristics, which can be summarized as follows:

a) Eligible sectors

These are stipulated in each Royal Decree. Other sectors not expressly included in the Royal Decree are deemed in principle not to be eligible, although in exceptional cases they may receive aid if the Ministry of Economy (following a report from the Governing Council) considers that such sectors can contribute to the objectives established in the Royal Decree for the eligible area.

The main eligible sectors, notwithstanding what is established by each Royal Decree, are:

- Extractive and processing industries, particularly those which apply advanced technology or use alternative energies.
- Agrofood and aquaculture industries, and the processing and preservation of fish products.
- Industrial support services and those which significantly enhance trade networks.
- Specific tourist facilities with an impact on development in the area.

b) Eligible investments

In each project, the subsidies must be used to defray some of the following expenses (as defined in each Royal Decree):

- Acquisition of the land necessary to implement the project.
- Utility (gas, electricity, etc.) extension and connection.
- Development and outside work adapted to the needs of the project.
- Civil engineering work for offices, laboratories, warehouses, etc.
- Capital equipment and other fixed assets.
- Planning work, project engineering, and technical management of work.
- Other investments in tangible fixed assets.

c) Eligible projects

- Definition
  - Creation of new establishments that generate new jobs.
  - Expansion of existing activities or startup of new activities in the same establishment.
  - Modernization of the business.
- **Requirements**
  - The project must relate to an eligible sector and activity and be located in one of the designated areas.
  - It must be technically, economically, and financially viable.
  - Generally, at least 30% of the investment must be equity-financed. However, depending on the features of the project, a higher rate might be required.
  - It must not be started before submission of the application.
  - Investments in fixed assets must be made in new fixed assets.
  - Start-up projects must lead to job creation and the investment must be of at least €600,000 (since it is considered that large projects contribute more to regional development).
  - Expansion projects (of former or new activities) must create new jobs and significantly increase production capacity. The investment must be significant with respect to the company's net fixed assets and must in all cases exceed €600,000.
  - Modernization projects must meet the following requirements:
    * Productivity must be notably improved and the employment level at least maintained.
    * The investment project (which in any event must have a cost of at least €600,000 million) must entail the acquisition of technologically advanced machinery.

- **Types of incentives**
  These incentives consist of nonrefundable subsidies. The regulations implementing the law governing these incentives provide other types of aid, such as subsidies for the interest on loans obtained by applicants from finance entities, relief of up to 50% from employer social security contributions for common contingencies, or any combination thereof. However, the regulations governing each eligible area do not envisage these other types of incentive, but only provide for incentives consisting of nonrefundable subsidies.

- **Project assessment**
  The project must be evaluated using the methods established by each Royal Decree, which will thus determine the percentage of subsidy to be granted for each project. The main criteria can be summarized as follows:
  - Total amount of the eligible investment.
  - Number of jobs created.
  - Contribution to the area’s economic development and the use of its factors of production.
  - Value added of the project (if a start-up) or increase in productivity in other cases.
  - Use of advanced technology.
  - Location.

- **Compatibility of different incentives**
  No other public financial aid can be received if the limits established by each Royal Decree for each type of area are exceeded.
  The subsidy received is compatible with other aid, provided that the sum of all the aid obtained does not exceed the limit established by the relevant Royal Decree and EU rules do not preclude it (incompatibilities between Structural Funds).
g) Applications

- Documentation
  - Standardized application form.
  - Documentary evidence of the applicant’s personal information or, in the case of an incorporated company, its registration data. If the company is in the process of being incorporated, the draft bylaws and information about the promoter.
  - Investment project memorandum.
  - Evidence, as of the date in question, of formal compliance by the company with its tax and social security obligations.
  - Formal declaration of other public aid applied for or obtained by the applicant.

- Where to submit
  The competent body of the Autonomous Community were the project is intended to be carried out.

- Granting agency
  The “Dirección General de Desarrollo Industrial e Incentivos Regionales” (Directorate-General for Industrial Development and Regional Incentives) or the “Comisión Delegada del Gobierno para Asuntos Económicos” (Government Standing Committee for Economic Affairs) if the projected investment exceeds €6,010,121.

- Time period for decision
  The granting agency must issue its decision on the application within eight months from the date of filing (although this period can be extended).
  Acceptance of the aid must be expressly notified by the applicant to the granting agency within fifteen business days from receipt of the notification. Otherwise, the aid is rendered null and void.

h) Project implementation and subsequent modifications

The investment can be started before the subsidy is granted, but not before submitting the application for it.

In addition, the Subdirectorate-General of Regional Economic Incentives may require, in the related notification, that parts of the investment be executed in accordance with a schedule.

Subsequent changes in the project which do not affect relevant aspects of the same must be submitted to the Subdirectorate-General of Regional Economic Incentives, which will decide on them.

However, justified modifications of the initial project that give rise to a variation in the incentives, the amount of the approved investment or the jobs created will be subject to the formal procedures established for the assessment of a new project.

i) Payment procedure

Successful applicants must request payment of the subsidy at the competent body of the relevant Autonomous Community.

j) Methods of payment

Payment of the subsidy can be made in any of the following ways:

- In installments, as the investments are progressively completed. In this case, guarantees must be provided to the Subdirectorate-General of Regional Economic Incentives, under the conditions established by this agency.
- In a lump sum, if the total investment has been made and all of the conditions have been met (at this time any guarantees provided are released).
Map of regional incentives

Subvention limits

<table>
<thead>
<tr>
<th>%</th>
<th>Region</th>
<th>Subvention Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>Andalucia</td>
<td>50%</td>
</tr>
<tr>
<td>50%</td>
<td>Castilla-La Mancha</td>
<td>40%</td>
</tr>
<tr>
<td>40%</td>
<td>C. Valenciana</td>
<td>35%</td>
</tr>
<tr>
<td>37%</td>
<td>Castilla y León</td>
<td>40%</td>
</tr>
<tr>
<td>35%</td>
<td>Cantabria</td>
<td>Extremadura</td>
</tr>
<tr>
<td>30%</td>
<td>Galicia</td>
<td>50%</td>
</tr>
<tr>
<td>30%</td>
<td>Burgos y Valladolid</td>
<td>35%</td>
</tr>
<tr>
<td>20%</td>
<td>Melilla</td>
<td>40%</td>
</tr>
<tr>
<td>20%</td>
<td>Huesca</td>
<td>35%</td>
</tr>
<tr>
<td>20%</td>
<td>Palencia y Segovia</td>
<td>37%</td>
</tr>
<tr>
<td>20%</td>
<td>Murcia</td>
<td>40%</td>
</tr>
<tr>
<td>20%</td>
<td>Castillas</td>
<td>40%</td>
</tr>
<tr>
<td>20%</td>
<td>Ceuta</td>
<td></td>
</tr>
</tbody>
</table>

* Only for the following regions: PrePyrenees, Moncayo, Campo de Borja, Jalón Medio, La Almunia, Calatayud, Carrihena, Daroca-Romanos-Used, Belchite, Bajo Aragón-Caspe and Bárdenas-Cinco Villas.


Source: General-Directorate for Sectorial Policies.
2. Aid granted by Autonomous Community and Municipal governments and Local Councils

All the Spanish Autonomous Community governments provide similar incentives, on a smaller scale, for investments made in their regions. Only some of them are compatible with the EU and State regional incentives. Specifically, if State regional incentives have been applied for a given project, the limits established in each Royal Decree must be taken into account.

Additionally, some Autonomous Community governments (Aragón and Madrid) grant investment incentives in areas not covered by State legislation but which are included in EU regional aid maps.

Most Autonomous Community incentives are granted on an annual basis, and the general conditions of the incentives usually do not change from year to year.

In view of the impossibility of including here a detailed description of the aid available in each Autonomous Community, we summarize below their main features (which are generally very similar to those of the regional State incentives).

a) Types of projects
   Opening of new establishments, expansion of activities, modernization and technological innovation. The creation of new jobs is normally required.

b) Main sectors
   Agriculture and forestry, craftwork, fishing, industrial support services, processing industries, tourism, culture, industrial design, electronics and computing.

c) Project requirements
   Mainly the same as those which apply at the State level.

d) Types of incentive
   The main incentives are:
   – Nonrefundable subsidies.
   – Special loan and credit terms and conditions.
   – Technical counseling and training courses.
   – Tax incentives.
   – Guarantees.

e) Eligible investments
   – R&D&I and training expenses, promotion of apprenticeship and trainee contracts.
   – Capital equipment and other fixed assets.
   – Planning, modernization, management enhancement, and design projects.
   – Acquisition of the real estate necessary to implement the projects.

f) Procedure
   The documentation required is very similar to that described for regional State incentives and normally has to be filed with the competent body of the “Consejerías” (Departments) of the Autonomous Communities. Most of the Autonomous Communities have agencies that provide information and advice on requesting aid. Many of them also provide access to websites with updated databases of the subsidies available.

g) Cooperation agreements with the Spanish Central Government
   In addition to the aid offered by each Autonomous Community government, in recent years there has been an increase in cooperation agreements between the
Autonomous Community governments and the Central Government. The main objective of these programs is the joint implementation of projects in the following areas:

– Technological modernization and the promotion of innovation.
– Aid for independent trade and development of business cooperation.
– Development of SMEs in general.
– Singular actions: agreements with local councils.

3. Special reference to investments in the Canary Islands

The Canary Islands Autonomous Community has traditionally enjoyed a regime of commercial freedom involving the tax exemption of retail activities, less indirect tax pressure and exclusion from the sphere of certain State monopolies.

These conditions have given rise to an economic and tax system which is different from that which exists in the rest of Spain (see Chapter 4). An attempt has been made to reconcile as far as possible these special circumstances with the requirements of Spanish membership of the European Union.

In this regard, the Central Government is very flexible in its application of the regulations in granting regional incentives and locating investments in the Canary Islands, and imposes only those limitations stipulated in EU legislation. Investments in the peripheral islands are given preferential treatment by means of requiring a minimum level of investment lower than that established for the rest of Spain.

These efforts have led to the creation of the Canary Islands Special Zone (“Zona Especial Canaria” or “ZEC”) which is aimed at attracting international capital and companies to the Canary Islands, thereby contributing to economic and social progress in the Islands (see also Chapter 4).

Lastly, incentives aimed at upgrading and modernizing the banana and tomato growing and fishing-related industries are also available. Furthermore, under an EU initiative it is planned to make subsidies available to facilitate the restructuring of the fishing industry.
V. SME incentives

I. Plan for the Consolidation and Competitiveness of SMEs

In recent years the Spanish Government and the Autonomous Community governments have shown special interest in promoting and developing SMEs, in view of their proven ability to create jobs. In this connection, the Office of the Secretary of State for Economy, Energy, and Small and Medium-Sized Enterprises promotes the granting of certain incentives and aid schemes designed especially for SMEs, which are grouped together under the “Plan for the Consolidation and Competitiveness of the Small and Medium-Sized Enterprise (SME)” for 2000-2006.

The action plans established in the Plan for the Consolidation and Competitiveness of the SME are grouped into two types of measure:

a) The full integration of the SME into the Information Society.

b) The incorporation of innovative business techniques.

For this purpose, it is intended to:

– Take specific actions with the more direct participation of businessmen in the preparation and performance of the projects.

– Allocate aid to increase the competitiveness of companies and, consequently, create employment and wealth.

– Analyze projects that give rise to goods or services for SMEs.

The SME Plan establishes that the direct beneficiaries of the subsidies, in each of the measures, are intermediary agencies so that such agencies can promote projects with SMEs in various different areas.

Additionally, SMEs may be the direct beneficiaries of certain lines relating to innovation in business techniques: design, intercompany cooperation networks and quality systems.

– Design: The Plan provides subsidies to promote projects aimed at the incorporation, assimilation, or application of design techniques at SMEs with a view to enhancing new or pre-existing products and/or services or to enhancing the marketing and promotion of products and services.

– The subsidies provided are aimed at promoting and strengthening projects aimed at providing SMEs with mechanisms for adapting to the competition brought about by the global market. For this purpose, financing is provided for joint actions performed by companies with a view to reaching cooperation agreements that improve their competitive position.

– Quality systems: Subsidies are provided to promote projects that facilitate for SMEs the implementation of standardization systems and the initiation of certification processes (ISO 9.000; ISO 14.000), by an officially accredited certifying entity.

Eligible expenses are:

– Investments in tangible and/or intangible assets, excluding the acquisition and refurbishment of real estate, furniture, office equipment (except computer equipment), and means of transport. The maximum subsidy in this connection is € 10,000.

– External professional services (external expenses in respect of consulting and other services relating to the project).
In no case are the company's normal operating expenses eligible.

In all cases the aid applies exclusively to expenses allocable to the project and in no case may financing exceed the total cost of the project.

If the direct beneficiary is an SME, the ceilings on the subsidy will be in line with the regional limits established by the European Commission and set forth in Table 4, based on the map of regional aid approved for Spain:

<table>
<thead>
<tr>
<th>Type of action or project</th>
<th>Unassisted regions</th>
<th>Art. 87.3 a) of the Treaty establishing the EC</th>
<th>Art. 87.3 c) of the Treaty establishing the EC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investments in tangible fixed and intangible assets, with the exceptions provided for in Article 1.5 a) 1.</td>
<td></td>
<td>Ceiling on regional aid +15%</td>
<td>Ceiling on regional aid +10%</td>
</tr>
<tr>
<td>Small enterprises</td>
<td>15.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medium-sized enterprises</td>
<td>7.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soft aid (study and assessment)</td>
<td>Up to 50%</td>
<td>Up to 50% (*)</td>
<td>Up to 50% (*)</td>
</tr>
</tbody>
</table>

(*) For amounts under €13,000, in terms of the subsidy, the intensity may exceed 50%. In this case the beneficiary enterprise is subject to the De Minimis Rule (Commission Regulation (EC) No. 69/2001 of January 12, 2001).

2. SME incentives granted by Autonomous Community governments

It is the responsibility of the Autonomous Community governments to establish the rules governing these subsidies and to open the period for accepting applications in the first quarter of each year.

It is also their responsibility to process and decide on the applications for subsidies submitted to them and to pay the subsidies pursuant to the terms of the Royal Decree of June 1, 2001, establishing the system of managing the “Plan for the Competitiveness of the Small and Medium-Sized Enterprise”.

Lastly, they are also responsible for controlling and monitoring the projects approved, without prejudice to the control to be exercised by the European Union and the relevant bodies of the Central Government with respect to the projects financed with EU funds.
3. ICO’s “Línea PYME”

In addition to the program outlined above, SMEs have access to another series of aid instruments sponsored by the public sector. Noteworthy in this connection are the “Línea PYME” offered by ICO and the “FONPYME” (Fund for SME foreign investment operations) offered by COFIDES (“Compañía Española de Financiación del Desarrollo”), the official Spanish agency for development finance, which is explained in detail in Section VI below, “Internationalization incentives.”

“Línea PYME” provides preferential access to the official credit which has financed a large number of investments since its creation in 1993.

In order to facilitate financing for SMEs, since 2000 ICO has been developing a specific line of financing with preferential terms to promote the investment projects of SMEs in Spain.

A total of €3,000 million is made available to SMEs by ICO’s “Línea PYME” to finance up to 70% of their net investment projects, subject to a ceiling of €1.5 million per beneficiary and year, and repayable in a period of 3, 5 or 7 years, with different grace periods.
VI. Internationalization incentives

Although it is not the aim of this publication to address incentives for Spanish investment abroad, this Section is included in view of the obvious interest that Spanish investment abroad has sparked in foreign investors as a platform for international expansion.

In this connection, in December 1997 the Spanish Government approved the creation of three funds for the purpose of fostering Spanish investment abroad: the Fund for Guarantees relating to Financing of investments Abroad (GIEX), the Fund for Investments Abroad (FIEX) and the Fund for Investments Abroad by SMEs (FONPYME). The latter two funds are managed by the “Compañía Española de Financiación del Desarrollo” (COFIDES).

The GIEX was created to issue partial and conditional guarantees to secure the commercial risks inherent in long-term financing transactions granted by financial institutions for foreign investment projects of Spanish companies. Nevertheless, this instrument is not operative at present.

The purpose of FIEX is to foster the internationalization and foreign business activities of Spanish companies through short-term, minority interests in the equity of companies located outside Spain. This Fund complements the investments made by the corresponding Spanish company. COFIDES, as the Fund manager, may not take part in the operational management of the investee company.

Only in exceptional circumstances may the Ministry resolve to acquire a majority holding or authorize the Fund manager to take over the operational management of the foreign company.

For 2003, the FIEX Executive Committee is entitled to approve transactions of up to € 90,151.82 thousand.

FONPYME is intended to foster, through short-term minority interests in the capital of companies located abroad or through other investment vehicles, the internationalization and foreign investments of Spanish SMEs. The Fund therefore makes the investment in the foreign company on a joint basis with the SME concerned. COFIDES cannot, except in exceptional cases, take part in the operational management of the foreign company in which the Fund has an ownership interest, or acquire a majority holding in it.

For 2003, the Executive Committee of FONPYME may approve transactions of up to € 9,015.18.
EU aid focuses on depressed regions, normally in underdeveloped rural areas with low levels of income and high unemployment rates, and on regions with industries in crisis (steel, shipbuilding, etc.).

Most of the EU incentives (specifically loans and subsidies) supplement development plans financed by the Spanish Government. Such aid is routed through Spanish official institutions and finance entities, which act as intermediaries. Accordingly, the related applications for subsidies must be addressed to such entities.

The broad range of instruments at the EU’s disposal includes, most notably, the following:

I. European Investment Bank (EIB)

Projects eligible for EIB support are basically those which promote the development of less favored regions and those of common interest to several Member States or benefiting the EU as a whole, such as environmental protection, improved use of energy resources, improved industrial competitiveness in the EU, the development of SMEs and improved European transport and telecommunications infrastructure. Additionally, projects aiming at extending and modernizing infrastructure in the health and education sectors may also qualify for EIB support.

Recently, as a result of the EU program “Innovation 2000 Initiative”, the role of the European Investment Bank in financing SMEs has been reinforced. As part of this initiative, the EIB has approved a number of measures to facilitate the financing of projects in the following five areas:

– Human capital formation.
– Research and development.
– Information and communication technology networks.
– Diffusion of innovation.
– Development of SMEs and entrepreneurship.

There are two types of loan:

a) Global loans

Global loans are similar to credit lines granted to financial institutions, which onlend the proceeds for small or medium-scale investment projects meeting the EIB’s criteria.

This is the main type of support offered to SMEs by the EIB. It is provided by granting loans to intermediary banks, which in turn, provide funding for small and medium-scale business initiatives.

The loans are granted by the EIB to banks in all the Member States, which act as intermediaries. These financial intermediaries conduct an analysis of the investment, and of the economic, technical and financial viability of each of the projects. They are responsible for granting the loans for small and medium-scale investments and for the administration of such loans.

Specifically in Spain, global loans are routed mainly through Instituto de Crédito Oficial (ICO), Banco Bilbao-Vizcaya Argentaria, (BBVA), Banco Español de Crédito, Santander Central Hispano (SCH) and Banco Popular.

There are many different types of loans and credits, with varying maturities, amounts and interest rates, but their general terms can be summarized as follows:

– Coverage of up to 50% of the overall investment costs.
– Grace period: up to three years.
– Repayment period: between 4 and 12 years for industrial projects, and up to 20 years for infrastructure and energy projects.

– Eligible companies: those with fewer than 500 employees and net fixed assets not exceeding €60,101,210 before the project. Over one third of the capital of eligible companies must not be held by a large company.

– The amount awarded under a global loan ranges from €20,000 to €12.5 million.

– Free of fees and other charges, except for minor administrative expenses. They must be applied for through an intermediary financial institution.

b) Individual loans
The European Investment Bank grants individual loans directly to investors or through financial intermediaries for projects of over €25 million.

The main characteristics of these loans are as follows:

– Coverage of up to 50% of the total investment costs.

– Public- or private-sector projects carried out mainly in infrastructure and the industrial sector for a minimum amount of €25 million.

– Long-term loans, with repayment periods of between 5 and 12 years for industrial projects, and between 15 and 20 years for infrastructure projects, although the repayment period may be extended in special cases.

– Grace period: depends on the nature of the project, usually up to five years.

– In granting these loans, the EIB requires first-class security.

Applications must be filed directly with the EIB.

Once finance has been provided for the project, its progress is monitored regularly in order to ensure compliance with the aims of the EIB’s financing decision.

The EIB does not directly grant interest relief, although this may be financed by third-party institutions.

EIB loans are compatible with aid from other EU agencies, up to a limit of 90% of the investment.

2. European Investment Fund (EIF)
The EIF was created for the dual purpose of fostering the development of trans-European networks in the transport, telecommunications and energy industries and of promoting the development of SMEs.

The Fund operates in two ways:

– By providing guarantees for loans of all kinds.

– By temporarily acquiring and managing minority holdings in companies involved in deploying trans-European networks.

The EIF finances, among others, the following mechanisms:

– The SME Guarantee Mechanism, aiming at creating jobs through the granting of loans and financial support to innovative SMEs.

– The European Technology Mechanism aiming at fostering employment for the establishment and growth of innovative SMEs through short-term investments in venture capital funds operating in the EU.
On December 20, 2000, the Council of the European Union approved the new multiannual Programme for Enterprises, covering the period 2001-2005. This Programme devoted to SMEs foresees the development of the existing European Commission instruments managed by the EIF. In this sense, the SMEs guarantee activity of the EIF will be extended during the whole period of the Programme.

3. Structural funds

Structural funds, which are the biggest item of EU expenditure, are used to finance initiatives (either public or private) to achieve structural improvements in the Member States and thus narrow the gap between the most prosperous and the poorest regions in the EU.

Seven new Regulations governing the structural funds from 2000 to 2006 were issued in June and July 1999. The structural funds for this period will continue to support programs in the 15 Member States but most of the programs will focus on the regions which need the most aid.

As proposed by the Commission, the European Council decided to reduce to three the number of priority objectives of the structural funds, in accordance with the simplification and concentration of structural actions:

– The new Objective 1 will promote the development and structural adjustment of regions whose development is lagging behind, i.e. those whose per capita GDP is less than 75% of the Community average.

– The new Objective 2 will support the economic and social conversion of areas facing structural difficulties. A maximum of 18% of the population of the EU will be covered by this Objective.

– The new Objective 3 will support the adaptation and modernization of policies and systems of education, training and employment.

€ 195 million will be allocated to the funds for the period 2000 to 2006, the breakdown by objective being as follows:

– Objective 1: 69.7%.

– Objective 2: 11.5%.

– Objective 3: 12.3%.

The remaining 6% will be used to finance innovation and technical assistance projects, as well as other Community initiatives.

The Community initiatives selected for promotion during the period 2000-2006 are as follows:

– **INTERREG III**: program of cross-border, transnational and inter-regional cooperation to promote the harmonious and balanced development and organization of European territory.

– **LEADER +**: the objective of the program is to promote rural development by means of integrated development programs and cooperation with local action groups.

– **EQUAL**: program that promotes transnational cooperation to foster new practices to eliminate all forms of discrimination and inequality as regards access to the labor market.

– **URBAN**: the objective of this initiative is to promote the economic and social rehabilitation of cities and neighborhoods in crisis, in order to foster sustainable urban development.
Investment aid and incentives in Spain

The contribution of the funds to projects in Spain will be subject to the following limits:

- With respect to Objective I, the percentage financed by the structural funds may not exceed 75% of the total cost. However, since Spain will be a beneficiary of the Cohesion Fund during the 2000-2006 period, the ceiling may be raised to 80%. If the investments are made by companies, the limit is reduced to 35% of the total cost.
- An upper limit of 50% of the cost is established for other projects. In the case of investments in companies, and with respect to the Objective 2 area, the ceiling is set at 15% of the total cost.

However, the aforementioned limits may be increased by a maximum of 10% in cases in which sources of financing other than direct aid are used.

The EU’s structural funds, for which practically all of Spain qualifies, are the following:

a) European Social Fund (ESF)

The ESF aims to support measures to prevent and combat unemployment and to develop human resources and social integration in the labor market in order to promote a high level of employment, equality between men and women, sustainable development and social and economic cohesion.

The financial support of the ESF mainly takes the form of assistance to persons and is devoted to the following activities to develop human resources:
- Education and vocational training.
- Employment aids and aids for self-employment.

- In the fields of research, scientific and technological development, post-graduate training and the training of managers and technicians at research establishments and in enterprises.
- Development of new sources of employment, including the social economy.

Furthermore, ESF will contribute to the Community’s initiative to combat all forms of discriminations and inequalities in connection with the labor market (EQUAL). The proposed strategies supported by the fund are in line with the European Strategy Programme for Employment and with the Spanish National Employment Plan.

The ESF does not provide credit directly to companies, but rather funds official agencies and not-for-profit entities that draw up plans in accordance with their objectives.

The aid provided by the ESF takes the form of project cofinancing and, therefore, the involvement of an official agency is required. ESF subsidies (mostly nonrefundable) normally amount to 50% of the project cost.

However, they cannot exceed the financial aid granted by the related public bodies of the Member State for the same project at State, regional or local level.

The application must be made to the relevant agencies of the Autonomous Communities or to the Ministry of Labor (specifically to the European Social Fund Administrative Unit).

b) European Agricultural Guidance and Guarantee Fund (EAGGF)

The objective of this program is to establish a Community framework of support for sustainable rural development.
In this connection, a number of measures have been introduced which focus on the reconversion of agricultural activities and could involve, for example, the improvement of farm structures, the processing and marketing of produce, the introduction of new technologies, the promotion of non-food production, the creation and maintenance of jobs in agriculture.

The total value of the subsidies, expressed as a percentage of the volume of eligible investments, is limited to a maximum of 40% and, in disadvantaged regions, to 50%. In the case of investments made by young farmers, the percentages may increase to 45% and 55%, respectively.

Eligible investments are those which contribute to the improvement of the situation in the basic agricultural production industry, the viability of which can be demonstrated and which meet the minimum requirements relating to the environment, hygiene and animal husbandry.

Apart from the program described above, through this Fund, aid is provided for other rural development measures such as investments in agricultural holdings, aid for young farmers, training, fostering of agro-environment, forestry investments and promoting the adaptation and development of rural areas.

Different requirements are established for each specific program for the granting of this kind of assistance.

Applications must be filed with the Autonomous Community in which the investment is going to be made.

c) European Regional Development Fund (ERDF)

The ERDF is intended to help redress the main regional imbalances in the EU by contributing to the reduction of the gap between the levels of development of the various regions, including rural areas.

The ERDF promotes regional actions that contribute to:

– Investments in infrastructure which
  - in the less prosperous regions, help to increase the economic potential, development, structural adjustment and creation and maintenance of sustainable jobs in those regions,
  - support the diversification of economic sites and industrial areas in crisis or the renewal of depressed urban areas and the revitalization of rural areas and areas depending on fishing.

– Productive investments to create and safeguard sustainable jobs.

– The development of the indigenous potential of the regions by measures which encourage and support local development and employment initiatives and the activities of SMEs.

This aid must always be requested from the Spanish Central Government or the competent regional development agencies in each Member State.

The inclusion of ERDF incentives in Member State programs means that the types of projects, requirements and priorities, procedural formalities and methods of quantifying financial aid are those established by the national governments through their regional policy agencies.
d) **Cohesion Fund**

The European Union is dedicated to fostering economic and social cohesion: it has set itself the objective of promoting economic and social progress and of gradually removing differences in standards of living.

In this regard, the advent of the euro has strengthened the need for a higher degree of convergence between the economies and economic policies of the participating Member States.

The Cohesion Fund finances projects relating to the environment and trans-European transport networks in Member States whose GDP is less than 90% of the Community average.

For the period 2000-2006, the European Council has allocated € 18,000 million to the Cohesion Fund.

In this regard, Spain, Greece, Portugal and Ireland will continue to be beneficiaries of the Cohesion Fund in the period 2000-2006 because their GNP continues to be below the aforementioned margin. The funds allocated to Spain in this period were 63.5% of the total, based on population, per capita GNP, improved prosperity in the previous period and surface area.

The granting of the amounts allocated to each eligible Member State (including Spain) and the financing of new projects with such amounts, are subject to the fulfillment by said Member State of certain requisites regarding the containment of public spending.

The new EU Regulation governing the Cohesion Fund for the period 2000-2006 establishes a new mechanism which enables the Commission to inform the Council if a Member State does not meet the obligations relating to budget deficit arising from the program for stability and convergence.

**e) Financial Instrument for Fisheries Guidance (FIFG)**

This instrument is aimed at structural actions carried out in the fisheries and aquaculture sector, and the processing and marketing of their products. The areas which may receive assistance under this financial instrument are, among others:

- Fleet renewal and modernization of fishing vessels.
- Small-scale coastal fishing.
- Aquaculture.
- Processing and marketing of fishery and aquaculture products.
- Promotion and search of new commercial channels.
- Innovative actions and technical assistance.
4. Research and Development programs

The EU has established multi-year programs defining the lines of action in research and development, and has assigned resources for executing these programs. The program that has been in force until December 2002 is the Fifth Framework Programme of the European Community for Research, Technological Development and Demonstration activities, which covered the period from 1998 to 2002.

The European Commission is laying the groundwork for the Sixth Framework Programme of the European Community for Research, Technological Development and Demonstration Activities, which will be fully in force after January 1, 2003.

The general lines of the project will be:

– Areas of action:

This program consists of three main areas of action:

- Community research concentration and integration.

- Structuring of the European Research Area (ERA).

- Strengthening of the bases of ERA.

– Participants:

The following may participate in the Sixth RTD Framework Programme:

- Any legal entity established in a Member State.

- Any legal entity established in a third country, even when in this case its participation will be limited to certain activities included in the action “Community Research Concentration and Integration”, or to the terms of the prior agreement for scientific and technical cooperation between the third country and the Community.

Set forth in Table 5 are the possibilities of participating in the RTD Framework Programme and the financial contribution of the EU, according to the country where the participant is established.
**Initial budget:**

The proposed budget is €17,500 million, which means a nominal increase of 17% in respect of the preceding Programme.

Most of this budget will go to the priority thematic fields described below.

### Table 5  
**Sixth RTD Framework Programme**

<table>
<thead>
<tr>
<th>Country in which the participant is established</th>
<th>Participation</th>
<th>Financial contribution by the Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU Member States, “Centro Común de Investigación” (CCI Common Center for Research)</td>
<td>No restriction</td>
<td>No restriction</td>
</tr>
<tr>
<td>Associated Candidate States</td>
<td>No restriction</td>
<td>No restriction</td>
</tr>
<tr>
<td>Other Associated States</td>
<td>No restriction</td>
<td>No restriction</td>
</tr>
<tr>
<td>International Organizations of European Interest</td>
<td>No restriction</td>
<td>No restriction</td>
</tr>
<tr>
<td>Russia, New Independent States, Mediterranean Countries, Southwest of the Balkans, Developing Countries (with or without a cooperation agreement)</td>
<td>No restriction but the rules of minimum composition of consortia should be observed</td>
<td>Within the limits of the available budget for international cooperation activities within the context of thematic priorities</td>
</tr>
<tr>
<td>Third countries with a cooperation agreement</td>
<td>No restriction but the rules of minimum composition of consortia should be observed</td>
<td>If the contribution of the Community is necessary and it is contemplated in the Work Program</td>
</tr>
<tr>
<td>Other third countries</td>
<td>If the participation is forecast or if it is necessary to perform the project</td>
<td>If the contribution of the Community is contemplated or if it is essential to perform the project</td>
</tr>
<tr>
<td>Other international organizations</td>
<td>No restriction but the rules of minimum composition of consortia should be observed</td>
<td>If the contribution of the Community is necessary and it is contemplated in the Work Program</td>
</tr>
</tbody>
</table>

(1) Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.
(2) Foreseen (the association to the VI RTD FP is not yet in force with any country; therefore, the final list may change): Bulgaria, Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, Turkey.
(3) Foreseen (the association to the VI RTD FP is not yet in force with any country; therefore, the final list may change): Iceland, Israel, Liechtenstein, Norway, Switzerland.
(4) Argentina, Australia, Brazil, Canada, China, Chile, India, Japan, Kazakhstan, Russia, South Africa, Ukraine, USA; nevertheless this list is not closed and is updated regularly.

**Priority thematic fields:**

<table>
<thead>
<tr>
<th>Priority thematic fields</th>
<th>Budget in million €</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life, genomic and biotechnology sciences applied to health</td>
<td>2,255</td>
</tr>
<tr>
<td>Information society technologies</td>
<td>3,625</td>
</tr>
<tr>
<td>Nanotechnologies, multi-functional and new production procedures</td>
<td>1,300</td>
</tr>
<tr>
<td>Aeronautics and space</td>
<td>1,075</td>
</tr>
<tr>
<td>Food quality and safety</td>
<td>685</td>
</tr>
<tr>
<td>Sustainable development, planetary change and ecosystems</td>
<td>2,120</td>
</tr>
<tr>
<td>Citizens and governance in a knowledge-based society</td>
<td>225</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11,285</strong></td>
</tr>
</tbody>
</table>
– Calls:
The first call in the scope of the Sixth RTD Framework Programme was forecast for December 2002.

Applications will be filed in the scope of the calls for applications, published in the EU official journal (DOCE), which may be preceded by declarations of interest.

<table>
<thead>
<tr>
<th>Type of instrument</th>
<th>RTD actions</th>
<th>Contribution of the Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellence networks</td>
<td>Priority thematic fields. Support to policies and forecast of scientific and technological needs.</td>
<td>Aid to integration: maximum 25% of the value of the capacity and the resources proposed by the participants for the integration, as a fixed amount to support the common activities programme.</td>
</tr>
<tr>
<td>Integrated projects</td>
<td>Priority thematic fields. Support to policies and forecast of scientific and technological needs.</td>
<td>Aid to the budget of a maximum of:  • 50% for research.  • 35% for demonstration.  • 100% for certain other activities such as researcher training and consortium management.</td>
</tr>
<tr>
<td>Specific focused research or innovation projects</td>
<td>Priority thematic fields. Support to policies and forecast of scientific and technological needs. Specific international cooperation actions. Fostering of interaction of research and innovation. Development of harmonious relations between science and society.</td>
<td>Aid to the budget of a maximum of 50% of the budget.</td>
</tr>
<tr>
<td>Participation in programs undertaken by various Member States (Art. 169)</td>
<td>All the activities of the Framework Programme.</td>
<td>It will be defined in subsequent decisions adopted under Art. 169.</td>
</tr>
<tr>
<td>Specific research projects for SMEs</td>
<td>Specific research activities for SMEs.</td>
<td>Aid to the budget of a maximum of 50% of the budget.</td>
</tr>
<tr>
<td>Human resources and mobility fostering and development actions</td>
<td>Promotion of human resources and mobility.</td>
<td>Aid to the budget of a maximum of 100% of the budget, as the case may be as a lump sum.</td>
</tr>
<tr>
<td>Coordination actions</td>
<td>In all the activities of the framework programme.</td>
<td>Aid to the budget of a maximum of 100% of budget.</td>
</tr>
<tr>
<td>Specific support actions</td>
<td>In all the activities of the framework programme.</td>
<td>Aid to the budget of a maximum of 100% of the budget.</td>
</tr>
<tr>
<td>Integrated infrastructure initiatives</td>
<td>Aid to research infrastructures.</td>
<td>Aid to the budget: depending on the type of activity, as a maximum of 50% to 100% of the budget.</td>
</tr>
<tr>
<td>Direct actions</td>
<td>Non-nuclear activities of the “Centro Común de Investigación” (CCI – Common Research Center).</td>
<td>100%.</td>
</tr>
</tbody>
</table>

(1) Budget means financial plan in which all the resources and expenses necessary for the action are calculated.
(2) As a general principle, the financial contribution of the Community may not cover 100% of the expenses of indirect actions, except for those proposals that include purchase prices regulated by the provisions applicable to public procurement procedures or that adopt the form of a predefined lump sum previously established by the Commission.
(3) This percentage is variable according to the scopes.
(4) Without prejudice to certain specific conditions, some specific entities, particularly public agencies, will receive a maximum financing of 100% of their additional or marginal costs.
(5) The percentages of aid may differ according to the provisions of the Community scope for State aids to research and development, depending on whether the actions are related to research (35% as a maximum) or demonstration (35% as a maximum) or other actions performed, such as researcher training (100% as a maximum) or consortium management (100% as a maximum).
(6) For actions of support to the research infrastructures related to preparatory technical work (including feasibility reports) and the creation of new infrastructures, the participation of the VI RTD FP is limited to a maximum of 50% and 10% of the budget, respectively.
(7) The activities of the integrated initiatives related to the infrastructure should include a network activity (coordination action: as a maximum 100% of the budget) and at least one of the following activities: research activities (50% as a maximum) or specific service activities (specific support action, for example, transnational access to research infrastructures: as a maximum 100% of the budget).
(8) Also the CCI may participate in indirect actions in the same conditions as the entities established in the Member States.
5. EU initiatives to favor business financing

The Enterprise Directorate-General of the European Commission has adopted certain initiatives aimed at facilitating access to financing for European SMEs.

The main EU initiatives in this regard are:

a) Seed capital (CREA)

Under the CREA Program, the Commission has been promoting the investment of capital in business projects, covering part of their expenses during the start-up phase. The assistance provided by the Commission in this respect amounted to 50% of the operating costs up to a maximum of €500,000 for a period of three years. Although, in theory, the program remains in force, applications are not being accepted at present.

b) Mutual guarantee companies

Mutual guarantee companies consist of groups of companies, frequently linked to specific-interest sectors or groups, which offer guarantees to banks to encourage the financing of SMEs. They also provide specialized counseling and issue reports on the feasibility of projects.

The Commission finances 50% of the cost of feasibility studies over a maximum period of one year and 50% of the cost of creating a mutual guarantee company over a maximum period of three years.

c) I-TEC

I-TEC is part of the European Commission’s Innovation Program and was launched on July 1, 1997, in collaboration with the European Investment Fund, to encourage investments in technologically innovative SMEs.

The Commission offers participation in venture capital programs to recently formed SMEs through investments in specialized venture capital funds. The funds supported by the Commission undertake to invest in SMEs which are not more than three years old and which are technologically innovative with high growth potential. I-TEC has a budget of €7.5 million, and since 1997 has had the collaboration of 28 investment funds.

The funds must invest at least 25% of the new capital raised in newly formed technologically innovative SMEs. Investments must be made in at least five different companies.

The Commission finances up to 50% of the operating costs of the funds, up to a maximum of 5% of the investments effectively made, with a maximum of €500,000.

The funds will operate in the EU or its associate countries (i.e., Iceland, Israel, Liechtenstein and Norway).

Although the I-TEC programme is maintained in force in 2003, since 1998 it has not included any new investment funds.
6. Joint European Ventures (JEV)

This program was created in order to foster the establishment of transnational joint ventures for SMEs in the Community. Under this program, aid is provided to finance the analysis and establishment expenses of new companies, including:

– Market research, legal, technical and environmental studies and the preparation of business plan.

– External expenses, such as fees of external advisers, auditors, lawyers, etc., with a maximum of € 650 per day.

– Travel and accommodation expenses, with a maximum of € 200 per day.

The maximum contribution per project is € 100,000, covering up to 50% of the eligible expenses, with a maximum of € 50,000, and up to 10% of the total amount of the investment made.

The program was extended in 2000 to December 31, 2005 with a funding fixed at € 51,000,000.
VIII. Compatibility

As a general rule, the compatibility of these different incentives depends on the specific regulations governing each of them, some of which identify certain incompatibilities (either absolute or up to certain limits), whereas others make no reference to this point and, therefore, it is assumed that theoretically there is no incompatibility.

As a very general, non-exhaustive guideline, the situation in relation to compatibility is as follows:

1. General State incentives
   a) Training
      In principle, there are no incompatibilities with other types of aid.
   b) Employment
      In principle, there are no incompatibilities with other types of aid. However, taken in conjunction with other incentives, they cannot exceed 60% of the social security cost of each contract created under these programs.

2. State incentives for specific industries
   These incentives are compatible with the other types of aid, but they cannot exceed (in terms of net subsidy) the limits set by the EU for incentives in certain areas.

3. Incentives for investments in certain regions
   a) Granted by the State (ZPE-ZID)
      In principle, no project will receive additional financial or industry subsidies (of any nature or from any granting agency) if the maximum percentages stated in each Decree are exceeded, since both types of aid are combined with the regional aid when computing the related ceilings. If these internal limits are exceeded under an EU provision (see above) they must respect the related EU ceilings.
   b) Granted by the Autonomous Community and Municipal governments and Local Councils
      The general limit applicable to regional, and industry financial aid also covers these incentives.

4. EU aid and incentives
   These are, in principle, compatible with other types of aid, with the specific limitations described above.
   In fact, EU funds habitually finance many of the incentives (industrial and regional) described in previous Sections.
<table>
<thead>
<tr>
<th>Level of grant</th>
<th>Where to apply</th>
<th>When to apply</th>
<th>How to apply</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EU</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EIB</td>
<td>EIB</td>
<td>No specific rules.</td>
<td>Ask intermediaries.</td>
</tr>
<tr>
<td></td>
<td>Spanish intermediary entities (banks, etc.).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EIF</td>
<td>EIB, Spanish intermediary entities.</td>
<td>No specific rules.</td>
<td>Ask intermediaries.</td>
</tr>
<tr>
<td>ESF</td>
<td>Provincial Offices of the Ministry of Labor. Government of the Autonomous Community in which investment will be located.</td>
<td>Depends on specific program to which funds have been assigned.</td>
<td>See Regulation 1784/1999.</td>
</tr>
<tr>
<td>EAGGF</td>
<td>Government of the Autonomous Community in which investment will be located.</td>
<td>Depends on specific program to which funds have been assigned.</td>
<td>See Regulation 1257/1999.</td>
</tr>
<tr>
<td>R&amp;D&amp;I PROGRAMS</td>
<td>European Commission, Directorate-General for Science, Research and Development.</td>
<td>See regulations for each program.</td>
<td>See regulations for each program.</td>
</tr>
<tr>
<td><strong>STATE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGIONAL (ZPE-ZID)</td>
<td>Autonomous Communities governments (Managing Office).</td>
<td>No specific rules.</td>
<td>Application + memorandum + supporting documentation.</td>
</tr>
<tr>
<td>AGRICULTURE AND FISHING</td>
<td>Autonomous Communities governments.</td>
<td>No specific rules.</td>
<td>Depends on specific rules.</td>
</tr>
<tr>
<td>MINING</td>
<td>Ministry of Science and Technology.</td>
<td>No specific rules.</td>
<td>Depends on specific rules.</td>
</tr>
<tr>
<td>ENERGY</td>
<td>IADE.</td>
<td>Depends on calls.</td>
<td>Depends on calls.</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>Ministry of Science and Technology.</td>
<td>Depends on calls.</td>
<td>Depends on calls.</td>
</tr>
<tr>
<td>AUDIOVISUAL INDUSTRY OTHER</td>
<td>ICAA/ICO.</td>
<td>Depends on calls.</td>
<td>Depends on calls.</td>
</tr>
<tr>
<td>REGIONAL, INDUSTRY AND LABOR</td>
<td>“Consejerías” (Departments) of the Autonomous Community governments; “Concejalías” (Departments) of Local Councils.</td>
<td>Depends on specific rules.</td>
<td>Depends on specific rules; however, very similar to State incentives: application + memorandum + supporting documentation.</td>
</tr>
<tr>
<td>Main types of aid</td>
<td>Maximum limits for subsidies and loans</td>
<td>Effective amounts granted</td>
<td>More information from</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------</td>
<td>---------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Loans with low interest and long maturities and grace periods.</td>
<td>Up to 50% of the project cost (75% for trans-European networks). Available as cofinancing with national funds.</td>
<td>Varies greatly depending on project.</td>
<td>Banco de Crédito Local. EIB.</td>
</tr>
<tr>
<td>Guarantees, venture capital.</td>
<td>See comments in the corresponding paragraphs.</td>
<td>See comments in the corresponding paragraphs.</td>
<td>EIB.</td>
</tr>
<tr>
<td>Subsidies, preferential access to official credit, tax benefits.</td>
<td>Up to 80% of the project cost. Available as cofinancing with national funds.</td>
<td>Between 15% and 30% of project cost.</td>
<td>Ministry of Economy EU Commission, DG XVI.</td>
</tr>
<tr>
<td>Subsidies.</td>
<td>Up to 80% of the project cost. Available as cofinancing with national funds.</td>
<td>50% of project cost.</td>
<td>Ministry of Labor.</td>
</tr>
<tr>
<td>Subsidies.</td>
<td>Up to 50% of the project cost. Available as cofinancing with national funds.</td>
<td>Between 25% and 50% of project cost.</td>
<td>Ministry of Agriculture Directorate-General of Agriculture of EU Commission.</td>
</tr>
<tr>
<td>Subsidies.</td>
<td>Up to 100% of the project cost. Available as cofinancing with national funds.</td>
<td>50% of project cost.</td>
<td>Directorate-General of Science, Research and Development of the EU Commission. Center for the Development of Industrial Technology (CDTI).</td>
</tr>
<tr>
<td>Subsidies.</td>
<td>Up to 60% of the cost of the project.</td>
<td>Normally between 30% and 40% of the maximum limit.</td>
<td>Autonomous Communities governments. Ministry of Economy. Subdirectorato-General of Regional Economic Incentives.</td>
</tr>
<tr>
<td>Reduction of social security costs, assistance to and training of employees.</td>
<td>Depends on type of subsidy.</td>
<td>The maximum amount.</td>
<td>INEM/“Consejerías” (Departments) of the Autonomous Community governments. Directorate-General of Labor.</td>
</tr>
<tr>
<td>Subsidies and low-interest loans.</td>
<td>Depends on type.</td>
<td>Depends on type.</td>
<td>Directorate-General of the Policy on SME.</td>
</tr>
<tr>
<td>Subsidies.</td>
<td>Up to 60% of the cost of the project.</td>
<td>Up to 20% of the project cost.</td>
<td>The State Department of Economy, Energy and SMEs. IADE.</td>
</tr>
<tr>
<td>Subsidies.</td>
<td>€ 210 and € 300 per m² of installed collection area.</td>
<td>Depends on type of facility.</td>
<td>Ministry of Science and Technology.</td>
</tr>
<tr>
<td>Refundable loans, subsidies or a combination of the two.</td>
<td>In the case of refundable advances, it may not exceed 75% of the project cost.</td>
<td>Depends on type.</td>
<td>ICAA.</td>
</tr>
<tr>
<td>Subsidies and loans.</td>
<td>Depends on type.</td>
<td>Depends on type.</td>
<td>Directorate-General of the different Ministries.</td>
</tr>
<tr>
<td>Subsidies and low-interest loans.</td>
<td>Depends on type.</td>
<td>Depends on type.</td>
<td>Directorate-General of the different Ministries.</td>
</tr>
<tr>
<td>Subsidies, special conditions for loans and credits and technical counseling and training courses.</td>
<td>Depends on specific rules.</td>
<td>Depends on specific rules.</td>
<td>Autonomous Community and Municipal governments and Local Councils.</td>
</tr>
</tbody>
</table>
Accounting and auditing requirements

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Exhibit I. Balance sheet as of December 31, 20XX and 20YY 206

Exhibit II. Statements of income for the years ended December 31, 20XX and 20YY 207
As mentioned in previous chapters, Spanish corporate law was substantially modified by Law 19/1989 to bring it into line with EU Directives.

Law 19/1989 effectively wrote into Spanish law all the EU Directives on corporate affairs, except for the Eighth Directive on audits which had already been adopted through Audit Law 19/1988; however, Law 19/1989 did include several aspects relating to audits (see Section IX, “Audit Requirements”).

I. Legal framework
II. Accounting records

The regulations governing the accounting records to be kept by businesses in Spain are contained in the Commercial Code, which requires all enterprises to keep orderly accounts, appropriate to their activity, mandatorily including an inventories and financial statements book and a journal, without prejudice to the requirements of special laws or regulations.

Mercantile companies must also keep a minutes book to which all the resolutions adopted by the shareholders’ meeting and other governing bodies of the company must be posted.

With regard to the formal requirements for accounting records, the Commercial Code states that enterprises must submit the books they are required to keep to the Mercantile Register of the place where they have their registered offices, in order for them to be stamped before they begin to use them.

Alternatively, entries and annotations can be validly made by any suitable procedure on sheets which are subsequently sequentially bound to form the mandatory books, which must be legalized within four months after the year-end.

The foregoing formal and procedural requirements are also applicable to the registered share registers of corporations and limited partnerships with shares and to the registers of members of limited liability companies; both of these registers can be computerized.
III. Financial statements

Both the Spanish Commercial Code and the Corporations Law define annual financial statements as consisting of the balance sheet, the statement of income and the footnotes, which jointly form a reporting package for these purposes (a management report, which is not considered part of the financial statements, is also required). The Corporations Law requirements regarding annual financial statements are also applicable to limited liability companies and limited partnerships with shares.

The Code and the Law also establish accounting principles and valuation rules. The Law includes balance sheet and income statement formats which follow the models in Articles 9 and 24, respectively, of the EU Fourth Directive, and stipulates the information to be furnished in the footnotes.

The procedures for full implementation of the relevant precepts of the Commercial Code and the Corporations Law are set forth in the Spanish National Chart of Accounts, enacted by Royal Decree 1643/1990, which made the National Chart of Accounts mandatory for all enterprises, of whatever legal form, for fiscal years beginning after December 31, 1990.

The National Chart of Accounts has been adapted for various industries. Among others, adaptations for the following industries have been published:

– Construction companies
– Real estate companies
– Sports federations
– Healthcare companies
– Sports corporations
– Not-for-profit entities
– Toll road licensees
– Water supply and treatment companies
– Electric utilities
– Assurance entities
– Wine sector companies

The National Chart of Accounts has the following contents:

Part I Accounting Principles
Part II Chart of Accounts
Part III Accounting Definitions and Relationships
Part IV Annual Financial Statements
Part V Valuation Rules

Accounting and auditing requirements
Per Spanish corporate law and current accounting regulations, generally accepted accounting principles and standards can be defined as those stipulated in:


b) The Spanish National Chart of Accounts and the industry-specific adaptations thereof.

c) Any accounting standards established by the “Instituto de Contabilidad y Auditoría de Cuentas” (the Spanish Accounting and Audit Institute); and

d) Any other specifically applicable legislation.

In the case of transactions or economic events not contemplated by the aforementioned legislation, the professional accounting standards issued by competent national or international organizations will be taken into account, provided that these standards:

a) Do not contravene mandatory accounting principles and standards;

b) Have been generally accepted by professional practitioners in the form of specific declarations issued by the organizations to which they belong; and

c) Allow a true and fair view to be obtained of the net worth, financial position and operating results of the entity being audited.

Part I of the National Chart of Accounts sets forth the accounting standards which aim to ensure that a company’s annual financial statements are clear and present a true and fair view of its net worth, financial position and operating results. These standards are as follows:

- Prudence
- Going-concern
- Recording
- Cost basis
- Accrual basis
- Matching of revenues and expenses
- No offsetting
- Consistency
- Materiality

The National Chart of Accounts expressly states that if the application of the foregoing principles does not suffice to ensure the presentation of a “true and fair view”, the footnotes must include the necessary explanations about the accounting principles applied, and further states that if due to an exceptional occurrence the application of a given accounting principle or standard militates against the presentation of a “true and fair view”, then such principle or standard should not be applied.

The National Chart of Accounts also states that in the event of a conflict between two mandatory accounting principles, the principle more conducive to the presentation of a true and fair view, and the principle of prudence shall prevail over all the other principles.

Upon its creation pursuant to Law 19/1988, the Spanish Accounting and Audit Institute (ICAC) assumed the functions of the former “Instituto de Planificación Contable” (Institute of Accounting Planning). Consequently, it has been legally assigned the functions of accounting development, which are as follows:
a) The performance of technical work, the drafting of proposals for the National Chart of Accounts and the approval of the adaptations of the Chart of Accounts to the various areas of economic activity.

b) The establishment of methods for implementation of those points of the National Chart of Accounts and of the industry-specific adaptations thereof which are deemed necessary in order to ensure the proper application of the standards.

c) The ongoing fine-tuning and updating of accounting planning.

The Spanish Accounting and Audit Institute has also been legally assigned functions relating to auditing (control, supervision and development of the auditing activity).

Additionally, the Spanish Accounting and Business Administration Association (AECA), a private entity formed in February, 1979 has been actively involved in the research and development of accounting principles and standards.

The AECA’s Accounting Principles and Standards Committee is made up of representatives of Government, universities, professional organizations, companies and audit firms.

Most of the documents published by the AECA through 1990 were included in the current version of the National Chart of Accounts.
V. Valuation rules

Part V of the current National Chart of Accounts lays down valuation rules for the different concepts included in the balance sheet and in the income statement.

Additionally, the ICAC has issued resolutions containing more detailed versions of certain of these valuation rules.

The main differences between the accounting principles and standards applicable in Spain and those issued by the IASC (International Accounting Standards Committee) and US GAAP are set forth very briefly below:

| Differences in accounting regulations: Main differences between Spanish accounting principles, IASC and US GAAP |
|--------------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| **Spain** |
| **IASC** |
| **US GAAP** |
| Fixed asset revaluations | As a general rule, fixed assets are recorded at acquisition cost and may not be revalued voluntarily. Only those revaluations authorized by law are permitted. The most recent legal revaluation took place in 1996. | As an alternative treatment, a tangible fixed asset item can be recorded for a revalued amount subsequent to its initial recording as an asset. The revalued amount must be equal to the fair value of the asset as of the date of valuation, net of the related accumulated depreciation and of any losses due to wear and tear. These revaluations may not be performed on a selective or occasional basis and must be recorded considering the related tax effect. The balancing entry for such revaluations will be a reserve account. As a benchmark treatment all assets are registered by their cost. | Revaluations are not allowed. |
| Treatment of exchange differences | As a general rule, positive or negative exchange differences arising from the valuation at the year-end exchange rate of securities, accounts receivable and accounts payable are classified by maturity date and currency. Unrealized positive exchange differences arising in each homogeneous currency group are not credited to income, but rather are recorded under the “Deferred Revenues” caption on the liability side of the balance sheet. However, negative differences arising in each group are generally charged to income. In some circumstances, unrealized positive differences can be credited to income for the year. | As a general rule, exchange differences must be recorded as revenues or expenses in the period in which they arise, with the following exceptions: a) the differences arising from monetary assets which form part of the net investment in a foreign company must be classified as equity until the investment is sold, whereupon the accumulated difference will be taken to income. b) the differences arising from foreign currency liabilities relating to a formal designated net investment hedge in a foreign company will be classified as equity until the investment is sold. c) Exchange rate differences may be recorded as part of a qualifying asset. | As a general rule, exchange differences must be recorded as revenues or expenses in the period in which they arise, with the following exceptions: a) the differences arising from monetary assets which form part of the net investment in a foreign company must be classified as equity until the investment is sold, whereupon the accumulated difference will be taken to income. b) the differences arising from foreign currency liabilities relating to a formal designated net investment hedge in a foreign company will be classified as equity until the investment is sold. | Capitalization of exchange differences is prohibited. |
| Recording of leased assets | The rights under financial lease contracts are recorded as intangible assets at the cost of the related assets, and the total debt for lease payments plus the amount of the purchase option are recorded as a liability. The difference between these two amounts, which represents the interest expense of the transaction, is recorded under the “Deferred Charges” caption. Rights recorded as intangible assets are amortized over the useful life of the leased asset. Deferred charges are taken to income by the interest method. When the purchase option is exercised, the value of the recorded rights and the related accumulated amortization is retired from the accounts and is included in the value of the acquired asset. | Leases contracts may be either Operating Lease or Finance Lease. The classification of lease contracts is done based upon an analysis of the related risks and rewards. Once a lease is classified as a finance lease, the contract should be recognized in the balance sheet of the lessee through the recording of an asset and a liability for an amount equal at the commencement of the lease to the lower of the fair value of the asset (generally its cash value) and the value of the minimum lease payments discounted at the implicit interest rate in the lease contract or, if this interest rate were not identifiable, at the incremental rate of indebtedness of the lessee. The leased asset will be classified on the basis of its nature. | Similar to the IASC, however, US GAAP have some very specific rules regarding the initial classification of an Operating Lease or Finance Lease as well as any type of sale-leaseback transactions. |

Accounting and auditing requirements

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### Differences in accounting regulations: Main differences between Spanish accounting principles, IASC and US GAAP

<table>
<thead>
<tr>
<th>Spain</th>
<th>IASC</th>
<th>US GAAP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recognition of research and development expenses</strong></td>
<td>Research costs must be recognized as an expense in the period in which they are incurred and should not be capitalized in a subsequent period. The development costs of a project may be capitalized if, and only if, the company is able to demonstrate each of the following points: a) the technical possibility of completing the production of the intangible asset so that it can be used or sold; b) its intention to complete the intangible asset in question in order that it may be used or sold; c) its ability to use or sell the intangible asset; d) the manner in which the intangible asset will generate probable income in the future; e) the availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; f) its ability to reliably evaluate the expense assignable to the intangible asset during its development.</td>
<td>All research and development costs must be expensed currently.</td>
</tr>
<tr>
<td><strong>Recognition of pension commitments</strong></td>
<td>The current service cost in respect of a defined benefit plan must be expensed currently. Adjustments due to experience and to changes in the actuarial assumptions and the cost of past services are recognized as income or as a loss over the expected remaining working lives of the employees, provided that they represent a variation of over 10% with respect to the previous calculation. However, methods providing for a faster recognition of these adjustments and costs are permitted.</td>
<td>Extensive, thorough and complex regulation.</td>
</tr>
<tr>
<td><strong>Recognition of revenues in long-term contracts</strong></td>
<td>When the outcome of a transaction relating to the provision of services can be reliably estimated, the revenues associated with the transaction must be recognized by reference to the percentage of completion of the transaction at the balance-sheet date. When the outcome of a construction contract can be reasonably estimated, the revenues and costs associated with the contract must be recognized as such by reference to the percentage of completion of the activity forming the subject matter of the contract at the balance-sheet date. An expected loss on the construction contract should be recognized as an expense immediately. When the outcome of a construction contract cannot be estimated reliably, revenue should be recognized only to the extent of contract costs incurred that it is probable will be recoverable, and contract costs should be recognized as an expense in the period in which they are incurred.</td>
<td>For long-term construction contracts the use of the percentage-of-completion method is preferable, if the completion costs and the degree of progress or completion of the work can be reliably estimated. The completed contract method is preferred in circumstances where there are no reliable estimates or where the inherent risks make the estimate doubtful.</td>
</tr>
</tbody>
</table>
 Deferred tax assets and liabilities

Deferred tax assets and deferred tax liabilities are recorded using the income statement method. Accordingly, the existence of a timing difference and, therefore, of a deferred tax asset or liability is determined by differences in the allocation of expenses and revenues for tax and accounting purposes.

Deferred tax liabilities must be recognized for accounting purposes in all cases. Deferred tax assets are only recorded when there is reasonable evidence to suggest that they will be materialized in a period of not more than 10 years, unless there are deferred tax liabilities for equal or higher amounts with a similar materialization schedule.

Deferred tax liabilities must be valued and recorded at the tax rate prevailing in the year in which the related timing difference arises. They may not be revalued for accounting purposes if they materialize in the long term.

Tax assets arising from tax losses are only recorded for accounting purposes when there is no reasonable doubt as to their future recovery. Tax credits and tax relief are treated as permanent differences and are recorded as a reduction of the corporate income tax expense for the year in which they are taken for tax purposes.

Valuation of investments

Investments are recorded at acquisition cost. At least once a year and always coinciding with the accounting close, the valuation of investments will be reviewed and any necessary value adjustments recorded if the market value of the item in question is lower than its acquisition cost.

The necessary valuation adjustments, if any, must be reflected by recording the related provision to the allowance for diminution in value, if they are not permanent in nature, or by directly reducing the asset in question, if they are permanent in nature.

In individual financial statements, investments in subsidiaries and associated companies, regardless of whether these companies are excluded from the scope of consolidation, can be carried by the following methods:

a) Cost.

b) Equity method.

c) Recognition as a financial asset available for sale.

Other financial assets are initially recorded at cost. However, in subsequent valuations financial assets held for trading and available for sale financial assets must be recorded at their fair values. Investments that will be held to maturity and loans and receivables originated by the enterprise will subsequently be valued at amortised cost.

Real estate held for investment purposes is initially recorded at cost. However, in subsequent valuations it may be recorded either at cost or at fair value (in which case it would not be depreciated and variations in the fair value would be recorded in the income statement).

For investments in group and associated companies, all other financial investments are recorded at their fair market value, including gains and losses not recorded in the income statement.

A distinction must be drawn between available-for-sale investments (which are recorded at market value and allocated to income) and held-to-maturity investments (which are investments in debt securities that are recorded at amortized cost). Temporary provisions for investments may not be recorded, but rather nonreversible write-downs in the case of impairments other than temporary impairments.

Similar to IASC, deferred tax liabilities and assets are recorded using the balance-sheet method, which requires the recognition of the temporary differences that arise due to the application of accounting and tax legislation on balance sheet captions.

There are no time limits for the recovery of prepaid taxes.

Deferred tax assets in connection with tax loss carryforwards are recognized under the “more likely than not” criteria.
### Differences in accounting regulations: Main differences between Spanish accounting principles, IASC and US GAAP

<table>
<thead>
<tr>
<th>Spain</th>
<th>IASC</th>
<th>US GAAP</th>
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</thead>
<tbody>
<tr>
<td><strong>Valuation of investments in group and associated companies</strong></td>
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<tr>
<td>Investments in group and associated companies are valued in the financial statements of the Controlling Company at the lower of cost or market, using the general method indicated under the preceding heading. However, for the purpose of valuing investments in Group and associated companies, market value is defined as the underlying book value of the ownership interest adjusted by the amount of the unrealized gains disclosed at the time of the acquisition and still existing at the date of subsequent valuation.</td>
<td>A parent company may record in its individual financial statements investments in its consolidated or nonconsolidated Group and associated companies by the equity method, at acquisition cost or by the method of recording assets available for sale.</td>
<td>These investments should be carried by the equity method.</td>
</tr>
<tr>
<td><strong>Capital subsidies</strong></td>
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</tr>
<tr>
<td>Nonrefundable capital subsidies of all types are recorded at the amount granted. They should be recorded on the liability side of the balance sheet under the “Deferred Revenues” caption. They should be allocated to extraordinary income in proportion to the period depreciation on the subsidized assets. The subsidies for nondepreciable assets should be allocated to income in the year in which the related assets are sold or relieved from the accounts.</td>
<td>In order for subsidies to be recorded there must be reasonable certainty that the company will meet the conditions entitling it to receive the subsidy and that the subsidy will be received. Subsidies will be systematically allocated to income as the related costs are incurred. Asset-related subsidies, including nonmonetary subsidies (recorded at fair value) will be recorded as deferred revenues or as a reduction of the net book value of the asset in question.</td>
<td>Recorded as lower value of the related asset in the period in which they are received. They should be allocated to income as less depreciation of the subsidized asset.</td>
</tr>
<tr>
<td><strong>Treasury stock</strong></td>
<td></td>
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<tr>
<td>Treasury stock acquired without an initial intention to retire them. Shares of this type are recorded on the asset side of the balance sheet at cost, a restricted reserve should be recorded for the amount of the treasury stock, and it is necessary to record a value adjustment if cost is higher than the lowest of the following: underlying book value, average market price in the last quarter of the year or year-end market price. treasure stock acquired for redemption. Treasury stock acquired for redemption should be recorded on the liability side of the balance sheet as a reduction in equity.</td>
<td>Shares of treasury stock are never recorded as assets. They must be recorded as a reduction of the equity of the issuing company, regardless of whether they are intended to be sold or retired. Gains or losses on transactions involving treasury stock constitute variations in equity, regardless of their nature and purpose, and cannot be recorded in the income statement. This method is applicable to shares of the issuing company acquired by the company itself or by its subsidiaries. This standard does not affect treasury stock acquired in connection with employee stock option schemes (a specific IASC standard is being prepared).</td>
<td>The cost of the shares acquired should generally be recorded as a reduction in equity. Gains or losses on transactions involving treasury stock constitute variations in equity, regardless of their nature and purpose, and cannot be recorded in the income statement.</td>
</tr>
<tr>
<td><strong>Prior years’ adjustments</strong></td>
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</tr>
<tr>
<td>Material prior years’ expenses and losses and revenues and income should be recorded in the income statement as extraordinary expenses or revenues, as appropriate. Nonmaterial expenses and losses and revenues and income should be classified in the income statement under the appropriate caption. Errors may not be corrected with a charge to the beginning reserves balance.</td>
<td>Fundamental errors relating to prior years may be corrected with a charge to the beginning balance of reserves, and the comparative information may be reconstructed (under the allowed alternative treatment, the correction of a fundamental error should be included in net income of the period).</td>
<td>An item should be recorded in the income statement disclosing the correction of an error in the financial statements of a prior period. The correction should be disclosed as an adjustment from a prior period and should be excluded from the calculation of the net income for the current period. Items presented as prior years’ adjustments should be recorded in the financial statements for a single period as adjustments to the opening balance of retained earnings.</td>
</tr>
</tbody>
</table>
Differences in accounting regulations:
Main differences between Spanish accounting principles, IASC and US GAAP

|                     | Spain                                                                 | IASC                                                                 | US GAAP                                                              |
|---------------------|-----------------------------------------------------------------------|----------------------------------------------------------------------|                                                                     |
| **Exchange of assets** | The following evaluation methods will be used in fixed-asset swap transactions: |                                                                      |                                                                     |
|                     | a) The fixed asset received will be valued at the net book value of the asset assigned, up to the limit of the market value of the asset received if this is less. |                                                                      |                                                                     |
|                     | b) The assigned asset will be retired at its net book value.          |                                                                      |                                                                     |
|                     | If the market value of the asset received is less than the net book value of the asset delivered, the related loss will be recorded in the income statement. |                                                                      |                                                                     |
| **Major repairs**    | For tangible fixed assets which, as a result of their use over several years, require extraordinary repairs upon completion of a usage cycle exceeding one year, the revenue and expense matching principle requires a provision to be recorded for each annual portion of the estimated amount of the repair to be made. Accordingly, each year the expense is charged to income based on the amount estimated for the year of the cost of this repair. For this purpose an “Provision for Major Repairs” will be recorded to meet the expense of the repair in the year in which it should be made. | No provisions may be recorded for major repairs. However, if a major repair involves the replacement of the main components of certain items of property, plant and equipment, and if these components are recorded separately because their useful lives differ from that of the main item, the replacement cost is recorded as a separate asset and the asset replaced is recorded as an expense. The expense of the repair itself is expensed. | Currently several methods can be used to record major repair expenses: (1) the “Expense as Incurred Method”, in which repair expenses are charged to income as they are incurred; (2) the “Component Depreciation Method”, in which a distinction is drawn between the costs of tangible fixed assets that must be depreciated over their useful lives and those of assets which will be periodically replaced; (3) the “Defer and Amortize Method”, in which the expenses incurred are capitalized and depreciated through the date of the next major repair; and (4) the “Accrue in Advance Method”, in which the estimated cost of the next repair is capitalized and the related provision is recorded. At the date of the repair, the difference between the cost provisioned and the actual cost is taken to income. The AICPA will shortly issue a new Statement of Position (SOP) which will limit the recording of major repairs to the “Component Depreciation” method. |
| **Biological assets** | There is no specific guide for the treatment of the biological assets, but rather general accounting standards and principles are applied to them. | The company must only record a biological asset when: a) the company controls the asset as a result of past events; b) the company will probably obtain future income associated with the asset; c) the fair value or cost of the asset can be reliably calculated. | In a very limited number of cases inventories can be recorded at their net realizable value (sale price net of estimated selling expenses) if: a) the inventories are interchangeable; b) there is a market and a market price for them; c) they can be sold without the need for any additional processing or significant disposal costs; d) it is difficult to obtain the cost of the inventories. These requirements are normally only met in the case of energy traders and companies in the agricultural industry. |

Note: The aim of this study is to make a preliminary comparison of the differences between accounting regulations in Spain, IASC and the US, but it is not a complete or exhaustive analysis of all the existing differences.

Accounting and auditing requirements
VI. Consolidation

Law 19/1989 also introduced, for the first time in Spanish mercantile legislation, the hitherto unrecognized concept of a corporate group.

Although the Commercial Code does not define a corporate group, the 1989 legislation states that a mercantile company must prepare consolidated annual financial statements and a consolidated management report if it owns shares of another company and it is in any of the following situations:

- that it has a majority of the voting rights attached to the other company’s shares;
- that it is empowered to appoint or dismiss a majority of the members of the other company’s Board of Directors;
- that it effectively has, by virtue of agreements with other shareholders, a majority of the voting rights attached to the other company’s shares; or
- that it has appointed, by use of its voting rights, a majority of the members of the other company’s Board of Directors in office when the consolidated financial statements have to be prepared and during the two immediately preceding years.

In the cases envisaged above, the global integration method of consolidation must be used in preparing the consolidated financial statements.

Law 19/1989 also states that if a company included in a consolidated group manages another company jointly with one or more companies outside the group, the managed company can be included in the consolidated financial statements by the proportional integration method of consolidation.

This Law also stipulates that if a consolidated company exercises notable influence on the management of another company outside the group with which it is associated by virtue of a shareholding, such shareholding must be carried by the equity method in the consolidated balance sheet under an appropriately captioned separate heading.

For the purposes of the preceding paragraph, notable influence on management is legally deemed to exist if the first company owns at least 20% of the other company’s unlisted capital stock or, if the other company is listed on the Stock Exchange, at least 3% thereof.
VII. Restatement legislation

Legally authorized restatements of carrying values are an exception to the general cost basis principle established by the Commercial Code and the National Chart of Accounts, and should be interpreted as adjustments authorized by the Government to partially offset the effect of inflation in past years in Spain.

The latest restatement was authorized by Royal Decree-Law 7/1996, on urgent tax measures and measures to foster and deregulate economic activity.
VIII. Footnote disclosure requirements

The Commercial Code states that the footnotes must complete, amplify and comment on the information in the balance sheet and in the income statement, and adds that a statement of changes in financial position must be presented if legally required. The Corporations Law specifies the minimum contents of the footnotes, and both this Law and the National Chart of Accounts state that the footnotes are an integral part of the annual financial statements.

The footnotes must contain, inter alia, the following information:

- Methods of valuation of the various items in the financial statements and methods used to compute valuation provisions.
- Name, address and legal form of companies in which the company is a shareholder or in which it directly or indirectly owns at least 3% of the investee company’s capital stock, if listed, or 20%, if unlisted, disclosing the capital, reserves and income/loss of the investee (if any serious harm is caused to such companies by disclosure of this information, it may be omitted, provided that the omission is disclosed).
- Statement of changes in financial position.
- Variations in fixed assets and start-up expenses accounts during the year.
- Classes of shares, if more than one, stating the number and par value of the shares of each class.
- Redeemed stock, convertible debentures and bonds or similar rights.
- Secured corporate debts or corporate debts with a residual term of more than five years.
- Guarantees provided to third parties, without prejudice to their recognition on the liability side of the balance sheet, if applicable.
- Commitments for pensions and to group companies.
- Breakdown of net sales by area of activity and geographically defined market (if this information is likely to cause serious harm to the company, it can be omitted, provided that the omission is disclosed).
- Average number of employees, by category, together with the year’s personnel expenses.
- Difference between book income or loss and the tax base as a result of valuations in accordance with tax rules. Prepaid and deferred taxes.
- Salaries, per diems and other remuneration earned during the year by the directors, and liabilities for retirement pensions or payments of insurance premiums for former or current members of the Board of Directors. These must be disclosed on an overall basis, by type of payment.
- Advances and loans to directors, disclosing interest rates and main characteristics, and guarantee obligations assumed on their behalf, all on an overall basis for each category.

Additionally, the Spanish National Chart of Accounts establishes in the rules for the preparation of financial statements that the footnotes must include any additional information required to facilitate comprehension of the financial statements, so that they give a true and fair view of the Company’s net worth, financial position and results of operations. Lastly, various resolutions of the Spanish Accounting and Audit Institute, industry-specific adaptations of the National Chart of Accounts and tax legislation establish additional disclosure requirements.
IX. Audit requirements

1. Audit Law

The First Additional Provision of Law 19/1988 made the audit of financial statements for financial years beginning after July 16, 1988, obligatory for all companies and entities, regardless of their legal form, which are in any one of the following situations:

1. Companies whose shares are listed on a Spanish stock exchange.
2. Companies that issue debentures for sale to the public.
3. Companies engaging habitually in financial intermediation, including companies acting as commission agents and stockbrokers (even if operating as individuals), and all finance companies and entities required to be registered in the relevant registers of the Ministry of Economy and of the Bank of Spain.
4. Companies whose corporate purpose includes any of the activities regulated by the Private Insurance Law (Law 33/1984), within the regulatorily defined limits.
5. Companies receiving subsidies or financial aid from, or performing work for, or providing services or supplying goods to, the State or Government agencies, within the regulatorily defined limits (not yet defined).
6. Enterprises, including cooperatives and other entities, that exceed certain limits to be defined by the Government.

At present, the limits referred to in the previous paragraph are those established for the purposes of preparing the abridged balance sheet (see following Section).

Royal Decree 1636/1990, enacting the Audit Law Regulations, established the same limits for insurance companies and cooperatives as those set in the Corporations Law; however, all life and third-party liability insurance companies must have their annual financial statements audited.

2. Corporations Law

The Corporations Law made audits of annual financial statements obligatory for all corporations (“sociedades anónimas”) except those authorized to file abridged balance sheets.

The corporations which can prepare abridged balance sheets are those which have met at least two of the following three conditions in two consecutive years at the balance sheet date:

1. That total assets do not exceed € 2,373,997.81.
2. That net sales for the year do not exceed € 4,747,995.63.
3. That the average number of employees during the year does not exceed 50.
X. Financial statement publication requirements

Under the Corporations Law, companies are required to file their annual financial statements with their local Mercantile Register within one month from approval thereof, together with a certificate of the resolutions adopted by the shareholders’ meeting approving the financial statements and the proposed distribution of income, and copies of each financial statement, of the management report and of the auditors’ report (if the company is required to be audited or was audited at the request of minority shareholders).

The Mercantile Register, a public agency, “publishes” the corporate documentation filed with it by certifying the entries made by the Registrars, or by a certified extract, or by issuing copies of the entries made and documents deposited with it, all in accordance with the provisions of the Commercial Code.

Listed companies are further required (under Securities Market Law 24/1988) to file copies of their financial statements and related auditors’ report with the National Securities Market Commission.

The official records and documentation filed with the Mercantile Register and the National Securities Market Commission may be inspected by the general public.
### Exhibit I
Balance sheet as of December 31, 20XX and 20YY
(currency: Euros)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>20XX</th>
<th>20YY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Due from Shareholders for Uncalled Capital (A)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fixed and Other Noncurrent Assets:</strong></td>
<td></td>
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<tr>
<td>Start-up expenses</td>
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<tr>
<td>Intangible assets</td>
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<tr>
<td>R&amp;D expenses, licenses, trademarks, patents, etc.</td>
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<td></td>
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<tr>
<td>Goodwill</td>
<td></td>
<td></td>
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<tr>
<td>Computer software</td>
<td></td>
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<tr>
<td>Leased assignment rights</td>
<td></td>
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<tr>
<td>Depreciation</td>
<td></td>
<td></td>
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<tr>
<td><strong>Tangible fixed assets:</strong></td>
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<td></td>
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<tr>
<td>Land and buildings</td>
<td></td>
<td></td>
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<tr>
<td>Production equipment and machinery</td>
<td></td>
<td></td>
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<tr>
<td>Other equipment, office furniture and fixtures</td>
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<td></td>
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<tr>
<td>Advances and construction in progress</td>
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<tr>
<td>Other tangible assets</td>
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<tr>
<td>Provisions</td>
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<tr>
<td>Depreciation</td>
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<tr>
<td><strong>Financial investments:</strong></td>
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<tr>
<td>Holdings in Group companies</td>
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<td>Holdings in associated companies</td>
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<tr>
<td>Loans to Group companies and associated companies</td>
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<td>Other long-term financial investments</td>
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<td>Other loans</td>
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<tr>
<td>Long-term deposits and guarantee deposits provided</td>
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<td>Provisions</td>
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<tr>
<td><strong>Treasury stock:</strong></td>
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<tr>
<td>Total fixed and other noncurrent assets (B)</td>
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<td><strong>Deferred Charges (C)</strong></td>
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<td><strong>Current Assets:</strong></td>
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<tr>
<td>Inventories</td>
<td></td>
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<tr>
<td>Raw materials and supplies and replacement parts</td>
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<tr>
<td>Finished and semi-finished products</td>
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<tr>
<td>Provisions</td>
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<td>Accounts receivable</td>
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<tr>
<td>Trade receivables</td>
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<tr>
<td>Receivable from Group and associated companies</td>
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<tr>
<td>Other accounts receivable</td>
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<tr>
<td>Personnel</td>
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<td>Public Administrations</td>
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<tr>
<td>Provisions</td>
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<td><strong>Short-term financial investments:</strong></td>
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<tr>
<td>Holdings in Group and associated companies</td>
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<td>Loans to Group and associated companies</td>
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<td>Other loans</td>
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<tr>
<td>Short-term deposits and guarantee deposits provided</td>
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<tr>
<td><strong>Short-term treasury stock:</strong></td>
<td></td>
<td></td>
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<tr>
<td>Cash</td>
<td></td>
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<tr>
<td>Prepaid expenses</td>
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<tr>
<td>Total current assets (D)</td>
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<tr>
<td><strong>Total Assets (A+B+C+D)</strong></td>
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<table>
<thead>
<tr>
<th>SHAREHOLDERS’ INVESTMENT AND LIABILITIES</th>
<th>20XX</th>
<th>20YY</th>
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<tbody>
<tr>
<td><strong>Shareholders' Investment:</strong></td>
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<tr>
<td>Subscribed capital stock</td>
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<tr>
<td>Paid-in surplus</td>
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<tr>
<td>Revaluation reserve</td>
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<tr>
<td>Other reserves:</td>
<td></td>
<td></td>
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<tr>
<td>Legal reserve</td>
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<tr>
<td>Reserve for treasury stock</td>
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<tr>
<td>Reserves for shares of the controlling company</td>
<td></td>
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<tr>
<td>By laws reserves</td>
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<tr>
<td>Other</td>
<td></td>
<td></td>
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<tr>
<td><strong>Prior years' income/loss:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income/loss for the year</td>
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</tr>
<tr>
<td><strong>Interim dividends:</strong></td>
<td></td>
<td></td>
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<tr>
<td>Total shareholders’ investment (A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Deferred Revenues:</strong></td>
<td></td>
<td></td>
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<tr>
<td>Capital subsidies</td>
<td></td>
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<tr>
<td>Exchange gains</td>
<td></td>
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<tr>
<td>Total deferred revenues (B)</td>
<td></td>
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</tr>
<tr>
<td><strong>Provisions for Contingencies and Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance of debentures and other marketable securities</td>
<td></td>
<td></td>
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<tr>
<td>Payable to credit entities</td>
<td></td>
<td></td>
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<tr>
<td>Payable to Group and associated companies</td>
<td></td>
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<tr>
<td>Other payables</td>
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<tr>
<td>Uncalled capital payments payable</td>
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<tr>
<td>Provision to other operations</td>
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<tr>
<td>Advanced revenues and advance interest collected</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total long-term liabilities (D)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Current Liabilities:</strong></td>
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<td></td>
</tr>
<tr>
<td>Issuance of debentures and other marketable securities</td>
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<tr>
<td>Short-term debt with credit entities</td>
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<tr>
<td>Short-term debt with Group and associated companies</td>
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<tr>
<td>Trade accounts payable</td>
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<td>Other payables:</td>
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<td>Public Administration</td>
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<td>Notes payable</td>
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<td>Other payables</td>
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<tr>
<td>Compensation payable</td>
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<tr>
<td>Short-term deposits and guarantee deposits provided</td>
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<tr>
<td>Provision for other operations</td>
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<tr>
<td>Advanced revenues and advance interest collected</td>
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<tr>
<td>Total current liabilities (E)</td>
<td></td>
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</tr>
<tr>
<td><strong>Total Shareholders’ Investment and Liabilities (A+B+C+D+E)</strong></td>
<td></td>
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</tbody>
</table>
Exhibit II
Statements of income for the years ended December 31, 20XX and 20YY

<table>
<thead>
<tr>
<th>DEBIT</th>
<th>20XX</th>
<th>20YY</th>
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</thead>
<tbody>
<tr>
<td>Decrease in finished goods and work-in-process</td>
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</tr>
<tr>
<td>Purchases</td>
<td></td>
<td></td>
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<tr>
<td>Personnel expenses</td>
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<td></td>
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<tr>
<td>Period depreciation and amortization</td>
<td></td>
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<tr>
<td>Variation in operating provisions</td>
<td></td>
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</tr>
<tr>
<td>Other operating expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net revenues</td>
<td></td>
<td></td>
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<tr>
<td>Interest and similar expenses</td>
<td></td>
<td></td>
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<tr>
<td>Variation in provisions for financial investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange losses</td>
<td></td>
<td></td>
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<tr>
<td>Financial revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating revenues</td>
<td></td>
<td></td>
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<tr>
<td>Variation in provisions for intangible assets, tangible fixed assets and control portfolio</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Losses on intangible assets, tangible fixed assets and control portfolio</td>
<td></td>
<td></td>
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<tr>
<td>Losses on transactions involving treasury stock and own debentures</td>
<td></td>
<td></td>
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<tr>
<td>Extraordinary expenses</td>
<td></td>
<td></td>
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<tr>
<td>Prior years’ expenses and losses</td>
<td></td>
<td></td>
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<tr>
<td>Extraordinary revenues</td>
<td></td>
<td></td>
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<tr>
<td>Revenues before tax</td>
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<tr>
<td>Income tax</td>
<td></td>
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<tr>
<td>Income for the year</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>CREDIT</th>
<th>20XX</th>
<th>20YY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in finished products and work-in-process</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capitalized expenses of in-house work on fixed assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other operating revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from shareholdings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from other marketable securities and loans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other interest and similar revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange gains</td>
<td></td>
<td></td>
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<tr>
<td>Financial loss</td>
<td></td>
<td></td>
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<tr>
<td>Ordinary losses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gains on disposal of intangible assets, tangible fixed assets and control portfolio</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gains on transactions involving treasury stock and own debentures</td>
<td></td>
<td></td>
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<tr>
<td>Capital subsidies transferred to income for the year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extraordinary revenues</td>
<td></td>
<td></td>
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<tr>
<td>Prior years’ revenues and income</td>
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<tr>
<td>Extraordinary losses</td>
<td></td>
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<tr>
<td>Losses before tax</td>
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<tr>
<td>Losses for the year</td>
<td></td>
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I. Introduction

The basic law in this field is the Workers’ Statute (Legislative Royal Decree 1/1995), which defines the respective rights of employees and employers, general terms of labor employment contracts, procedures for dismissal and collective bargaining rules.

In addition, there are specific regulations for different industries and certain groups of employees such as commercial representatives and senior management personnel.

Another important source of labor law is collective labor agreements, which may be negotiated at the company level (or more reduced scope) or by industries at the State level or more reduced territorial scope.

Individual employment contracts also contain numerous mandatory provisions which condition labor relationships.

There are also detailed regulations affecting working hours and occupational health and safety in specific industries.

Also significant in this field is Legislative Royal Decree 5/2000, of August 4, approving the Revised Law on Labor Infringements and Penalties. The Legislative Royal Decree imposes for the most serious cases fines of up to € 90,151.82 (in the legislation on prevention of occupational risks, there are fines of up to € 601,012.10).

Law 12/2001, on Urgent Measures to Reform the Labor Market in order to Increase and Improve the Quality of Employment, which amends various articles of the Workers’ Statute and other labor provisions and regulates permanent employment promotion contracts and part-time contracts should also be noted.

Additionally, Law 39/1999 on the Reconciliation of the Work and Family Lives of Female Employees was published on November 5, 1999, signaling a major advance in promoting equality between men and women and introducing a range of measures designed to make family responsibilities compatible with the possibility of promotion and advancement at work. This Law has been implemented in part by Royal Decree 1251/2001 regulating Benefits under the Social Security System for Maternity and for Risks during Pregnancy.

Law 29/1999 introduced changes (to Law 4/1994) as regards temporary employment agencies, in an attempt to have the terms of employment enjoyed by employees of client companies also applied as far as possible to the workers supplied to them to meet their temporary needs, so as to avoid biased and discriminatory practices.

Law 45/2002, of December 12, on Urgent Measures to Reform the Unemployment Protection System and Improve Occupability, which makes certain changes to the unemployment protection system and to other labor provisions, was recently enacted. The amendments to the unfair dismissal system of Royal Decree 5/2002, of May 24 should particularly be noted.
The main general rules of Spanish labor law are summarized below:

1. Non-discrimination

The Spanish Workers’ Statute generally prohibits discrimination in hiring or in the workplace based on sex, marital status, age, race, social status, religion or political ideology, joining a labor union or otherwise, or on the basis of the different official languages in Spain.

This protection is also expressly extended to foreigners (i.e., those other than Spanish or EU nationals) under Organic Law 4/2000, of January 11, amended by Organic Law 8/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.

It also prohibits discrimination because of physical or mental handicaps if the candidate is otherwise suitable for the job in question.

Directive 2002/73/EC of the European Parliament and of the Council, of September 23, 2002, was recently published, amending Directive 76/207/EEC, on the application of the principle of equal access to work and working conditions of men and women. This new provision expressly defines the terms direct discrimination, indirect discrimination, harassment and sexual harassment, all of which are prohibited because they violate the principle of equal treatment of men and women. The Member States are also encouraged to include in their respective laws the measures necessary to avoid discrimination at the workplace.

Law 33/2002, of July 5, introduces the principle of equal payment of men and women, thus amending article 28 of the Workers’ Statute, which only mentions equal salary.

2. Minimum age

Persons under the age of 16 cannot work. There are also certain protective measures for persons under the age of 18, such as the prohibition against such persons working overtime or at night, or in certain hazardous or unhealthy activities or jobs.

3. Form of contract

In general the contract may be made verbally or in writing. However, in certain cases the contract should necessarily be made in writing (for example, part-time and temporary contracts and training contracts with a duration of more than four weeks).

If this requirement is not met, the contract is understood to be permanent and full-time, unless otherwise evidenced.
### I. Types of contract

According to the duration of the employment relation, employment contracts may be made for an indefinite term or for a specific duration. In general, contracts are made for an indefinite term and their unfair termination entitles the worker to receive the indemnifications established by law.

Temporary contracts are therefore generally “circumstance-driven;” i.e., except in certain specific cases, there must be circumstances justifying such temporary hiring. If the type of temporary contract does not conform to a cause established by law, the contract is deemed to be permanent.

Set forth below are the main types of contracts and their principal features. Contracts for a specific duration should be differentiated from training contracts.

The first group, according to the cause established by law, includes contracts for a specific project or service, casual contracts due to production overload or backlog and contracts to substitute employees entitled to return to their job. All these contracts should be made in writing and the cause for their temporary nature should be placed on record. Otherwise, the contract will be deemed to be made for an indefinite term, unless evidence of its temporary nature is provided.

If the employment contract is made for a term of more than one year, the party intending to terminate the contract should serve notice at least fifteen days in advance or, as the case may be, give the advance notice established in the applicable Collective Labor Agreement.

<table>
<thead>
<tr>
<th>Type</th>
<th>Cause</th>
<th>Term</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract for a specific project or service</td>
<td>Performance of a specific independent and self-contained service or project within the company’s business.</td>
<td>In principle uncertain. It will depend on the time of performance of the specific service or project.</td>
<td>It should mention the work and project clearly and precisely. Its termination entitles the employee to receive an indemnification of 8 days of salary per year worked.</td>
</tr>
<tr>
<td>Casual contract due to production overload or backlog</td>
<td>To meet market needs, production overload or backlog.</td>
<td>Maximum of 6 months within a period of 12 months (may be extended by a sectorial collective agreement for 18 months but it may never exceed 3/4 of that period, or the maximum term of 12 months).</td>
<td>It should mention the work and project clearly and precisely. Its termination entitles the employee to receive an indemnification of 8 days of salary per year worked.</td>
</tr>
<tr>
<td>Contract to substitute employees entitled to return to their job</td>
<td>To substitute workers entitled to return to their job by provision of law, of a collective agreement or of an individual contract.</td>
<td>From the beginning of the period until the return of the replaced worker or expiry of the term established for the substitution.</td>
<td>One of the formalities is that it should contemplate the name of the replaced worker and the cause for his substitution.</td>
</tr>
</tbody>
</table>
Also set forth below are the main features of training contracts:

<table>
<thead>
<tr>
<th>Contract</th>
<th>Purpose</th>
<th>Duration</th>
<th>To be noted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work experience contract</td>
<td>Contracts with persons with a university degree or high or middle-level professional qualifications or an officially recognized equivalent degree qualifying them to perform their profession.</td>
<td>Minimum of 6 months and maximum of 2 years. It may be extended twice, always with the limit of two years. Once the term has expired, the same person may not be hired again under the same type of contract by the same or by another company.</td>
<td>As a general rule, not more than 4 years may elapse from the completion of the respective studies. The minimum salary to be paid will be between 60% and 75% of the salary established in the collective agreement for a worker holding the same or an equivalent post (first and second year of the contract).</td>
</tr>
<tr>
<td>Trainee contract</td>
<td>To acquire the theoretical and practical training necessary for a certain work post.</td>
<td>Minimum of 6 months and maximum of 2 years (it may be extended up to 3 years under a collective bargaining agreement). Once the term has expired, the same person may not be hired again under the same type of contract by the same or another company.</td>
<td>Made with workers from 16 to 21 of age who do not have the qualifications necessary to obtain a work experience contract. According to the payroll, a maximum number of trainee contracts is established. The employer undertakes to provide theoretical training that will never be less than 15% of the maximum working hours. The contract will be deemed ordinary if the theoretical training obligations are breached.</td>
</tr>
</tbody>
</table>

**a) Contract to promote hiring for an indefinite period**

Law 12/2001 contemplates a type of contract to promote hiring for an indefinite period. It applies to the following groups:

- The unemployed aged over 45.
- Unemployed workers who have been registered as job seekers at the National Employment Institute (INEM) for at least six months.
- The disabled.

b) Workers who, on the date of signing a new contract to promote hiring for an indefinite period, were employed at the same company under a temporary contract, including trainee contracts, arranged before December 31, 2003.
If a contract of this type is terminated on objective grounds and its termination was then adjudged to be unjustified, the indemnity would be 33 days’ pay per year worked, with periods of less than one year being prorated by month, up to a maximum of 24 months’ pay.

The employment promotion program for the year 2003 was approved by Law 53/2002, of December 20, on Tax, Administrative and Social Measures. Under this Law, companies that employ on a permanent basis unemployed workers included in any of the groups contemplated in said provision, or that transform already existing temporary contracts into permanent contracts are entitled to the discounts on the employer contribution to social security for ordinary contingencies.

b) Part-time contract

Employment contracts may be made full-time or part-time. The part-time contract, after Law 12/2001 came into force, is defined as the contract in which a number of hours of work has been agreed with the worker per week, month or year, less than the working hours of a “comparable full-time worker” (this term means a full-time worker of the same company and workplace who performs identical or similar work). This new ceiling replaces the previous 77% of the full-time working hours established by law or collective agreement. A part-time contract is also that made with a reduction of from 25% to 85% of the working hours and salary when the worker meets the conditions required to be entitled to the contributive retirement pension of the social security system, except as regards his age, although this should be a maximum of five years less than that required.

Part-time workers have the same rights as full-time workers, considering the existence of rights recognized proportionally, according to the time worked.

2. Trial period

Collective labor agreements may establish time limits for trial periods, which should always be stipulated in writing. Otherwise, trial periods cannot exceed:

– Six months for graduate technicians.
– Two months in all other cases.

In companies with fewer than 25 employees, the trial period for non-graduate employees cannot exceed three months.

Trainee contracts also have their specific trial periods. The special employment relations (domestic workers, senior executives, …) have their own maximum periods.

3. Working hours

– Working hours are as specified in collective labor agreements or individual employment contracts.

– The maximum statutory working week is 40 hours of time actually worked, calculated on an annualized average basis. The irregular distribution of the working hours throughout the year may be agreed by a collective agreement or by agreement between the company and the workers’ representatives.

– Overtime can be compensated as time off within four months from the date on which the overtime was worked. If payment for overtime is agreed upon in the collective labor agreement or individual contract, the hourly overtime rate cannot
be less than the normal hourly rate.

– Other than in exceptional cases, overtime (i.e. hours worked in excess of the maximum statutory or agreed working hours) is voluntary and, if paid, cannot exceed 80 hours per year.

– Overtime compensated with time off does not count towards the 80-hour annual ceiling.

– A minimum one and a half days off per week is mandatory (usually Saturday afternoon and all day Sunday, or all day Sunday and Monday morning) which may be accumulated for periods of up to fourteen days. Workers under 18 are entitled to two uninterrupted days off per week.

– Central Government, Autonomous Community authorities and the respective municipal authorities cannot designate more than 14 public holidays a year. The Government can move national holidays falling on weekends to the following Monday and all public holidays that fall on a Sunday will be moved to the following Monday.

– An annual paid vacation of 30 calendar days is obligatory. The worker should know the corresponding dates at least two months in advance.

– Employees are entitled to paid leave of absence in certain circumstances such as marriage (15 days), union duties, unavoidable public and personal duties, breastfeeding, childbirth, moving home, serious illness, hospitalization or death of relatives to the second degree of consanguinity, and so on.

### 4. Wages and salaries

The official minimum wage is established by the Government each year, and in 2003 it amounts to €6,316.80 for persons over 18 years of age (including 12 monthly and 2 extra payroll payments).

However, the minimum wages for each job category are usually negotiated in collective labor agreements.

Salaries cannot be paid at intervals of more than one month.

At least two extra payroll payments must be paid each year: one at Christmas and the other on the date stipulated in the relevant collective labor agreement (generally before the summer vacation period). Thus, an employee's gross annual salary is usually apportioned in 14 payroll payments; however, payment in 12 monthly installments can be agreed on in a collective agreement.
IV. Termination of employment contracts

I. Dismissals

An employment contract may be terminated for certain reasons which normally do not give rise to a dispute, such as mutual agreement, death, expiration of the contract term, retirement, and so on.

In addition, the law regulates three principal grounds for dismissal of an employee:

- Collective layoff
- Objective causes
- Disciplinary action

The following table shows the causes and main features of the various types of dismissal:

<table>
<thead>
<tr>
<th>Dismissal</th>
<th>Legal causes</th>
<th>Observations</th>
</tr>
</thead>
</table>
| Collective layoff | Economic, technical, organization or production causes, whenever these affect, in a 90-day period, at least:  
• The entire payroll, if the number of workers affected is more than 5 and the business of the company ceases entirely;  
• At least 10 workers in companies with less than 100 employees;  
• 10% of the employees in companies with from 100 to 300 workers;  
• More than 30 workers, in companies with 300 or more employees. | The termination is performed through an administrative procedure. Dismissals will only be possible if the Labor Authorities approve them by an administrative ruling.  
The procedure includes the obligation of granting a period of consultations with the workers’ representatives and, if none, with the employees directly.  
The consultations are intended to reach an agreement for the termination of the contracts. Nevertheless, the Labor Authorities may approve the dismissals even if no agreement is reached.  
The legal indemnification consists of 20 days of salary per year worked, up to a maximum of 12 months of salary or more if so agreed. |
| Objective causes  | • Supervening or known ineptitude of the worker.  
• Inability of the worker to adapt to the changes in his job.  
• Objectively evidenced need to cancel posts of work due to economic, technical, organization or production reasons.  
• Justified by intermittent absences from work, reaching certain percentages of working days.  
• In indefinite-term contracts arranged directly by public authorities or by non-profit-making entities to implement certain public plans and programs, for want of the appropriate allocation to enable them to continue. | The employer should serve at least 30 days of advance notice in writing.  
The advance notice may be replaced by payment of the salaries for said period.  
The indemnification (20 days of salary per year worked up to a maximum of 12 months of salary) should be made available to the worker simultaneously with the written notice of dismissal.  
It may be appealed, as if it were a disciplinary dismissal. |
| Disciplinary Action | Serious and wilful breach of contract by the worker:  
• Repeated and unjustified absenteeism.  
• Insubordination or disobedience.  
• Physical or verbal abuse towards the employer.  
• Breach of contractual good faith or abuse of trust.  
• Wilful diminution in the ordinary job productivity.  
• Habitual drug or alcohol abuse which adversely affects job performance. | The employee must be given written notice of dismissal, stating the causes and effective date of dismissal.  
If a workers’ representative or labor union delegate is dismissed, an adversary procedure should be instituted. If the worker is a labor union member, the union delegates should be granted a hearing. These safeguards may be increased by Collective Agreement.  
If these formalities are not met, a further dismissal may be performed in a term of twenty days paying the employee the salaries that accrue in the meanwhile, with effects as of the date of the new notice. |
2. Classification of the dismissal

A worker dismissed for any objective cause or disciplinary action may appeal the decision made by the employer before the Labor Courts, although a conciliation hearing must first be held between the worker and the employer to attempt to reach an agreement. This conciliation hearing is held before an administrative body of conciliation and arbitration.

The dismissal will be classified in one of the three categories set forth below:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Category</th>
<th>Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair</td>
<td>Conforming to law</td>
<td>Disciplinary dismissal: Validation of the dismissal, the worker is not entitled to indemnification.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Objective dismissal: Payment of 20 days of salary per year worked, up to a limit of 12 months.</td>
</tr>
<tr>
<td>Unfair</td>
<td>No legal cause exist for the dismissal or the procedure adopted is incorrect.</td>
<td>The employer may either:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• reinstate the worker.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• or terminate his contract, paying indemnification of 45 days of salary up to a maximum of 42 months of salary.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If the dismissed worker is a workers’ representative, the choice will rest with him.</td>
</tr>
<tr>
<td>Null</td>
<td>• Its cause is a form of discrimination.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• It implies a violation of fundamental rights</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• It affects pregnant workers during the period of suspension of the contract due to maternity, risk during pregnancy, adoption or fostering, reduction of working hour to care for children or handicapped persons or reduction for breastfeeding.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Failure to comply with the formalities for objective dismissals (unless no advance notice is served).</td>
<td>• Immediate reinstatement of the worker.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Payment of the unpaid salaries.</td>
</tr>
</tbody>
</table>

For cases of dismissals declared to be unjustified, the obligation to pay salaries during the proceeding, with the option of paying compensation from the date of dismissal until notification of judgment, or until the worker finds other employment before judgment is passed, or until the date of deposit of the compensation (and salaries during the proceeding) at the Labor Court is also applicable where the following requirements are met:

- The company recognizes the dismissal to be unjustified.
- The worker is offered the legal compensation and salaries during the proceeding.
- The respective amount is deposited at Court at the worker’s disposal.
- The dismissed worker is so informed.
- He accepts the compensation or subsequent declaration of unjustified dismissal.
However, if the deposit is made at Court within 48 hours after the dismissal, salaries during the proceeding will not be payable.

Salaries during the proceeding will also be payable if the dismissal is declared unjustified and reinstatement is the option taken.

However, if the worker has received unemployment benefit, the employer must deduct the benefit paid by the management entity from the salaries during the proceeding, and refund its amount to the latter.

Before Royal Decree 5/2002 came into force, whenever the dismissal was declared unjustified, the worker was entitled to receive the salaries accrued from the date of dismissal to the date of notification of judgment, namely “procedural” salaries. This provision has been amended and, if the employer decides to terminate the contract and pay the appropriate indemnification, the worker is no longer entitled to these procedural salaries; however, if it is decided to reinstate the worker, he will be entitled to these salaries.

Please note that at present a new regulation of this event is under debate at Parliament and the worker will probably once again be entitled to receive procedural salaries even if the employer decides to terminate his contract.
V. Senior executive contracts

As mentioned earlier, special rules apply to certain categories of employees, including most notably senior executives and their special labor relationships, which are governed by Royal Decree 1382/1985, of August 1.

A senior executive is an employee who has broad management authority in relation to the company’s general objectives and exercises that authority independently and with full responsibility, reporting only to the company’s governing body.

The terms of employment for such executives are subject to fewer constraints than those for ordinary employees.

As a general rule, the parties (employer and senior executive) have a wide margin of maneuver in defining their relationship by contract.

Senior executives can be dismissed without cause (i.e., contractual withdrawal by employer), serving notice at least 3 months in advance, in which case they are entitled to an indemnity of seven days’ pay per year worked, up to a maximum of six months’ pay, or such other indemnity as may have been agreed on.

The senior executive may freely cancel his contract serving at least three months of advance notice.

Certain causes for cancellation are classified which entitle the senior executive to the agreed indemnity and, failing an agreement, that established for the event of cancellation of the contract unilaterally by the employer.

Alternatively, a senior executive can be dismissed on any of the grounds stipulated in general labor legislation (objective causes, disciplinary reasons).

If the dismissal is adjudged to be unjustified, the senior executive is entitled to 20 days’ pay per year worked, up to a maximum of 12 months’ pay, unless otherwise agreed to by contract.

It should be noted that the statutory minimum indemnity for senior executives is lower than that for ordinary employees. However, in practice senior executive contracts usually provide for indemnity payments that are higher than the statutory minimum.
VI. Contracts with temporary employment agencies

In line with the general guidelines established by the European Union, Law 14/1994 regulated for the first time in Spain the activities of temporary employment agencies, which involve supplying manpower to their client companies to cover their temporary needs. Law 31/1995, on the Prevention of Occupational Risks, subsequently made changes to Law 14/1994 as regards the liability of client companies.

The reform of the Law on Temporary Employment Agencies by Law 29/1999 provides greater legal certainty to the workers of companies of this kind, in their labor relationships with client companies and encourages job security and improves their pay. Accordingly, the Spanish Parliament has placed workers from temporary employment agencies on the same footing as employees of client companies in terms of minimum pay. Disclosure obligations to employee representatives are also extended.

Pursuant to Law 29/1999, a manpower supply contract (statutorily defined as a contract between a temporary employment agency and a client company under which workers are supplied to provide services at the latter) can be concluded in the same circumstances, subject to the same conditions and requirements, and for the same term as those relating to a fixed-term contract entered into by the client company pursuant to the Workers’ Statute.

The latest reform introduced by Law 12/2001 in the area of contracts with temporary employment agencies permits a temporary employment agency to enter into an employment contract with a worker to cover successive manpower supply contracts with different client companies so long as the manpower supply contracts are fully stipulated when the employment contract is signed and, in all cases, they address one of the situations justifying the hiring of casual labor under Article 15.1.b) of the Workers’ Statute, with each supply of manpower having to be formalized in the employment contract.

The Temporary Employment Agency Law establishes various events in which companies are unable to enter into manpower supply contracts:

– To replace workers on strike in the client company.

– To perform activities and work subject to regulations because of their particular hazard to health or safety.

– When the company has cancelled the posts of work that it intends to fill by unjustified dismissal or for the causes contemplated for termination of the contract unilaterally by the worker, collective dismissal or dismissal for economic causes in the twelve months immediately preceding the date of the manpower supply contract.

– To lend workers to other temporary employment agencies.
Labor unions collectively represent workers’ interests territorially (nationwide and so on) and by industry. Various employers’ associations also exist whether nationally or otherwise.

At company level, personnel are represented by personnel delegates or workers’ committees (depending on the number of employees) that may, or may not, belong to a labor union. The right to elect personnel delegates applies in companies that have between six and ten employees, if all the employees unanimously elect to be represented. At companies with more than ten employees there is an automatic right to elect such representatives.

Furthermore, employees of Community-scale enterprises or Community-scale groups of enterprises are entitled, on prior request, to establish a European workers’ committee or a procedure to inform and consult workers. This right is recognized under Law 10/1997 (amended in some respects by Law 44/1999), on the Rights to Inform or Consult Workers at Community-scale Enterprises and Community-scale Groups of Enterprises.

1. Functions of workers’ committees

The functions of workers’ committees and personnel delegates are the same, and include the following:

– To receive quarterly information on the economic situation, output, sales and labor force variations at the company.

– To be notified of the balance sheet, income statement and annual report of the company, on the same terms as the shareholders.

– To issue a report on certain labor issues, such as redundancy procedures and professional training plans of the company, before the employer implements its decision.

– To issue reports on mergers, absorptions or changes in the legal form of the company, if they affect the number of jobs.

– To be informed of certain labor-related matters (standard contracts, penalties for very serious infringements, absenteeism, and so on).

– To monitor compliance with labor regulations.

There are also certain statutory safeguards established regarding the dismissal of, or imposition of penalties on, employee representatives.

2. Collective labor agreements

Collective labor agreements are negotiated between employers or employers’ associations and employee representatives, and are mandatorily binding on the parties. Collective labor agreements have a sectorial scope (governing a certain industry) and a functional scope (they may be negotiated at the State level or at a lower territorial level and at the company level). Collective bargaining has become a decisive factor in the reform of Spanish labor legislation.

Such agreements are generally for one or two years, although they can be extended for longer periods.
Certain labor law provisions are particularly relevant when acquiring or selling an ongoing business in Spain. For example, if a business is transferred, both the seller and the buyer are jointly and severally liable for labor claims which arose prior to the sale for a period of three years thereafter. When a business is transferred, the employees are also transferred, and the new employer is subrogated in the former employer’s labor and social security rights and obligations, including pension commitments, as provided in the legislation specific thereto and, in general, as many employee welfare and supplementary obligations as the former employer may have entered into.

The seller and buyer must previously inform their respective employees of the transfer. The information must at least comprise the following:

– Proposed date of transfer.
– Reasons for the transfer.
– Legal, economic and social consequences of the transfer for the employees.
– Measures envisaged for the employees.

If there are no elected representatives at the affected companies, the information must be supplied directly to the employees affected by the transfer.

There is also an obligation (applicable to both the seller and the buyer) to arrange for a period of consultations with elected employee representatives where, as a result of the transfer, labor measures are adopted for the personnel affected. The consultation period will address the measures envisaged and their consequences for the employees and must be arranged sufficiently in advance of the date on which such measures are to be taken.

If the change in ownership results in significant changes in business activities, philosophy or management, senior management personnel may be entitled to terminate their employment within three months following the occurrence of these changes and to receive an indemnity equal to seven days’ pay per year worked, up to a maximum of six months’ pay, or such indemnity as may have been agreed on with each senior executive.
IX. Relocation of workers under a crossborder working arrangement

Law 45/1999, of November 29, has introduced several measures to monitor and provide protection for relocations of workers under crossborder working arrangements.

There are a number of minimum terms of employment that employers in the European Union, and in the European Economic Area (the EU plus Norway, Switzerland, Iceland and Liechtenstein) must guarantee to their employees relocated temporarily to Spain, except for merchant navy firms in respect of their sailing personnel, irrespective of the law applicable to their employment contracts.

This Law applies to relocations for a limited time period in the following cases:

– Within the same company or within a group of companies.
– Under international services contracts.
– When the workers of a temporary employment agency are posted to a user company in another Member State.

The only exceptions to the above are in the case of employee relocations during training periods and those relocations that are not performed by temporary employment agencies for terms of less than eight days.

The minimum terms of employment to be guaranteed by employers in the above countries in accordance with Spanish labor legislation are: working time, pay (which must be at least that provided for the same post under the relevant legal provision, regulation or collective labor agreement), equality of treatment, the rules on underage work, prevention of occupational risks, nondiscrimination against temporary and part-time workers, respect for privacy, for dignity, rights of strike and assembly, and the freedom to join a labor union. If employees relocated to Spain enjoy more favorable terms, those terms apply.

The employers in such cases are also required to disclose certain information, and perform certain obligations, to the labor authorities for monitoring and coordination purposes.

Specifically, they should report the relocation to the Spanish labor authorities before the worker starts to work and regardless of the duration of the relocation.

The legislation on labor infringements and penalties classifies a series of events in this respect. Formal defects in the reporting of worker relocations to Spain constitute a minor infringement, while the reporting of the relocation after it has been performed is a serious infringement. Failure to report the relocation and misrepresentation or concealment of the data contained in the report are considered to be gross infringements.

Failure to meet the minimum working conditions mentioned above, which are classified according to the penalties applicable to Spanish employers, are considered to be administrative infringements.
The recently-enacted Organic Law 8/2000 (of December 22) on the Rights and Freedoms of Foreigners in Spain and their Social Integration clarifies and even amends certain of the provisions introduced by the previous Organic Law 4/2000 (of January 11), in an attempt to provide greater guarantees for a policy to ensure the integration of nationals from third countries who reside legally on Spanish soil, and encouraging nondiscrimination of this group in Spanish economic, social and cultural life.

This Law introduces the following main new features: it clarifies the definition of “foreigner” (non-Spanish national or non-Community national); it affords to foreign nationals the constitutional safeguards in Article 13 of the Spanish Constitution on civil liberties; it introduces enforcement measures to combat illegal immigration, as well as measures to combat human trafficking, and enables certain activities linked to this traffic to be monitored.

With regard to residence, the new Law differentiates between the following situations: visit (for a period shorter than 90 days, albeit extendible in certain cases); temporary residence (a period longer than 90 days but shorter than 5 years); and permanent residence.

To be self-employed workers, foreigners require an administrative approval. Employers who intend to engage a foreigner who is not authorized to work in Spain should previously obtain an authorization from the Ministry of Labor and Social Affairs.

The Law on the Status of Foreigners was implemented by regulations approved under Royal Decree 864/2001.

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1. Nationals from non-EU countries

Under Spanish labor legislation, non-EU nationals intending to work in Spain must obtain a special work visa and a work and residence permit. The Spanish labor authorities grant different types of work permit depending on the type of work and its duration. The current types of work permit are as follows:

<table>
<thead>
<tr>
<th>Employee work permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit Type</td>
</tr>
<tr>
<td>B (initial)</td>
</tr>
<tr>
<td>B (renewal)</td>
</tr>
<tr>
<td>C</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Self-employee work permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit Type</td>
</tr>
<tr>
<td>D (initial)</td>
</tr>
<tr>
<td>D (renewal)</td>
</tr>
<tr>
<td>E</td>
</tr>
</tbody>
</table>
Labor and social security regulations

Work permits are granted taking into account the employment situation of Spanish nationals for the same kind of work.

However, there are certain preferred categories such as foreigners who have Spanish family ties, workers necessary to set up or repair imported machinery, or senior executives.

Foreigners legally working in Spain generally have the same rights and obligations as Spanish citizens under Spanish labor legislation.

To obtain a work permit, the first step is to fill out an official application form which, together with a number of documents (including the job offer, profile of the vacancy to be filled, memorandum of the company’s activities, and so on), is filed in addition to other more specific documents for self-employed work permits (activity or establishment project and evidence that the permits and licenses required for start-up have been applied for) before the responsible authorities.

After filing this application, the foreigner must apply to the Spanish Consulate in his or her last country of residence for a special residence visa to work.

Once a work permit has been granted by the Ministry of Labor, the application papers are transferred to the Ministry of the Interior, which is responsible for issuing residence permits.

The Spanish labor authorities notify the local Spanish Consulate of the grant of the work permit through the Ministry of Foreign Affairs, and the foreigner should collect the special visa from the Consulate and subsequently collect the work and residence permit from the Ministry of the Interior in Spain.

Foreigners who intend to reside in Spain but not work there, whether as employees or as self-employed workers, must obtain a residence visa and a residence permit before establishing their residence in Spain.

Nevertheless, the Ruling of January 14, 2003 further to the publishing of the Resolution of the December 27, 2002 Council of Ministers, approving the quota of foreign (non-Community) workers who may be hired in Spain in 2003, includes relevant changes to the aforementioned legal regime. The provisions on the hiring of foreign manpower in 2003 (10,575 work posts throughout Spain) are established by provinces and by industrial sectors, together with the mechanisms through which access is provided to such manpower (mainly through general employment offers).

| Special permits |
|-----------------|-----------------|-----------------|
| Permit Type     | Scenario                          | Duration           |
| F               | Employee or self-employed work permit for workers residing in the frontier area of a State to which they return each day. | Five years at most, renewable on expiry |
| G               | Temporary relocation of a foreign employee of an enterprise established in a non-EU or non-EEA country. | The duration of the relocation, with a limit of one year (renewal for a further year) |
| A               | Seasonal permit for activities such as the assembly and maintenance of installations or construction of electricity, gas, railroad, telephone or other infrastructures. | The duration of the relocation, with a limit of one year (renewal) |
| T               | Work permit for seasonal activities or services. | Nine months at most within any twelve-month period |
2. Nationals from EU Member States

Nationals from other EU Member States are not subject to the requirements applicable to other foreigners to obtain a work permit as an employee or a self-employed worker, because EU legislation on the free movement of workers applies fully. They are therefore entitled to perform any activity both as employees and as self-employed workers, in the same terms as Spanish citizens.

EU, Switzerland and European Economic Area nationals must apply for an EU Residence Card at the police station in the locality where they are going to live or work.

There are two types of residence cards, depending on the duration of residence in Spain:

– 3 months to 1 year: Temporary residence card, valid for the duration of the residence.

– Longer than 1 year: Residence card for up to 5 years, automatically renewable.

If the period of residence is shorter than 3 months, the individual only needs his or her identity card or passport.
**XI. Social security system**

All employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel, civil servants who reside and/or perform their duties in Spain, and even unemployed persons (subject to certain conditions) are required to register with, and must pay contributions to, the Spanish social security system.

In the case of non-Spanish individuals, regard must be had to the social security treaties and regulations between Spain and other countries, the provisions of which may affect their benefits and payment of social security contributions.

Since January 1, 1986, the date of Spain’s accession to the EU, EU social security legislation applies to Spain.

Two EU Regulations (Regulation Nos. 1408/71 and 574/72, as amended by Regulation No. 1249/92) ensure that the workers to whom they are applicable are not adversely affected from a social security standpoint by moving from one Member State to another, including Switzerland. The following basic rules apply in such cases:

- Workers are subject only to the social security legislation of one Member State. As a general rule, the applicable social security legislation will be that of the country in which the worker carries on his activity. There are some exceptions to this general rule.

- If certain requirements are met, the time during which a worker of one Member State contributes to the social security system of another Member State will count as a period of contribution to his or her own country’s social security system for the purpose of determining his or her future benefits under his or her national social security system.

- If a worker of one EU Member State is temporarily relocated to another Member State to work for his company in that other Member State, the worker will remain subject to the social security legislation of the first Member State, provided that the foreseeable duration of the work to be done does not exceed 12 months and he or she is not sent to replace another employee who has completed the period of time for which he or she was relocated. This 12-month period can be extended for an additional period of the same duration and, where appropriate, subsequently as provided in the bilateral treaties.

There are different contribution programs under the Spanish social security system:

a) General social security program.

b) Other situations within the general social security program qualifying for special treatment, namely:

- Artists.
- Railroad workers.
- Sales representatives.
- Bullfighting professionals.
- Professional soccer players.

c) Special social security programs for:

- Agricultural workers.
- Seamen.
- Self-employed workers.
- Civil servants and military personnel.
- Domestic personnel.
- Coal miners.
- Students.

Classification under these programs depends on the nature, conditions and characteristics of the activities carried on in Spain.
Unless one of the special programs applies, an employer and its employees are subject to the general social security program.

Under the general program, social security contributions are paid partly by the employer and partly by the employee. Personnel are classified under a number of professional and job categories for the purpose of determining their social security contribution. Each category has maximum and minimum contribution bases, which are generally reviewed from year to year. Employees whose total compensation exceeds the maximum base, or does not reach the minimum base, must bring their contributions into line with the contribution base for their respective category.

For 2003, the maximum contribution base will be € 2,652 per month for all professional categories and groups. The minimum bases will be increased according to the professional categories and contribution groups, from January 1, 2003 in respect of those of 2002, in the same percentage as the increase of the minimum inter-professional wage. Therefore the situation for the general social security program in 2003 is as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum Base (Euros/month)</th>
<th>Maximum Base (Euros/month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineers and graduates</td>
<td>784.20</td>
<td>2,652.0</td>
</tr>
<tr>
<td>Technical engineers and assistants</td>
<td>650.70</td>
<td>2,652.0</td>
</tr>
<tr>
<td>Clerical and workshop supervisors</td>
<td>565.50</td>
<td>2,652.0</td>
</tr>
<tr>
<td>Unqualified assistants</td>
<td>526.50</td>
<td>2,652.0</td>
</tr>
<tr>
<td>Clerical officers</td>
<td>526.50</td>
<td>2,652.0</td>
</tr>
<tr>
<td>Messengers</td>
<td>526.50</td>
<td>2,652.0</td>
</tr>
<tr>
<td>Clerical assistants</td>
<td>526.50</td>
<td>2,652.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum Base (Euros/day)</th>
<th>Maximum Base (Euros/day)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foremen classes 1 and 2</td>
<td>17.55</td>
<td>88.4</td>
</tr>
<tr>
<td>Foremen class 3 and craftsmen</td>
<td>17.55</td>
<td>88.4</td>
</tr>
<tr>
<td>Laborers</td>
<td>17.55</td>
<td>88.4</td>
</tr>
<tr>
<td>Workers under 18 years of age</td>
<td>17.55</td>
<td>88.4</td>
</tr>
</tbody>
</table>

The contribution rates applicable to employers and employees in the general social security program in 2003 are the following:

<table>
<thead>
<tr>
<th></th>
<th>Employer (%)</th>
<th>Employee (%)</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General contingencies</td>
<td>23.6</td>
<td>4.7</td>
<td>28.3</td>
</tr>
<tr>
<td>Unemployment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>– General Rule¹</td>
<td>6.0</td>
<td>1.55</td>
<td>7.55</td>
</tr>
<tr>
<td>– Full-time fixed-term contracts</td>
<td>6.7</td>
<td>1.6</td>
<td>8.3</td>
</tr>
<tr>
<td>– Part-time fixed-term contracts</td>
<td>7.7</td>
<td>1.6</td>
<td>9.3</td>
</tr>
<tr>
<td>Professional training</td>
<td>0.6</td>
<td>0.1</td>
<td>0.7</td>
</tr>
<tr>
<td>Wage Guarantee Fund</td>
<td>0.4</td>
<td>–</td>
<td>0.4</td>
</tr>
</tbody>
</table>

**Total contribution** 30.6 / 31.3 / 32.3 6.35 / 6.4 / 6.4 36.95 / 37.7 / 38.7

¹ It includes: indefinite-term contracts (including part-time indefinite-term contracts and indefinite-term contracts for seasonal work), and fixed-term contracts (in the form of training contracts, relief and substitute contracts, except for contracts under which reductions are received pursuant to Royal Decree-Law 11/1998), and any type of contract made with disabled workers who have been recognized a degree of disability of not less than 33% of their physical or mental capacity.
The total employer contribution rate is increased by higher percentages for occupational accident and occupational disease contingencies, depending on how hazardous the employee’s work is, in accordance with the system of scales established by Royal Decree 2930/1979, the percentages of which will be reduced by 10%.

Lastly, for several years the classification of members from the managing bodies of companies under the social security system has been a contentious and confusing issue. The Law accompanying the 1999 General State Budget Law (which came into force on January 1, 1999) settled the debate by introducing new legislation on the matter. Thus, under this Law, executive directors who receive compensation and who do not have actual control of the company should be included under the general social security program for employees as “comparable” workers (i.e., without entitlement to unemployment benefit or the Wage Guarantee Fund). The effects of this Law were backdated one year before its commencement date, i.e., to January 1, 1998.
XII. Prevention of occupational risks

Under Law 31/1995 on the Prevention of Occupational Risks and its implementing legislation, employers must ensure the health and safety of their employees, which does not only mean complying with the legislation and remedying situations of risk, but also planning preventive action from the outset of their business activities and planning an ongoing action to perfect the existing protection levels. This includes the obligation to perform risk assessments, adopt measures in emergency cases, provide protective equipment and to ensure the health of employees, which includes ensuring that pregnant or breastfeeding women do not perform tasks which may put them or their unborn children/babies at risk.

All employers must have a prevention service to provide advice and assistance in prevention tasks, for which the employer should nominate one or more workers. In companies with fewer than six workers, this service may be provided directly by the employer, provided that it customarily performs its business at the workplace and has the necessary capacity for the purpose. It is also possible for a prevention service to be organized externally or outsourced. Prevention services are fully governed by Royal Decree 39/21997, implementing Law 31/1995.

The Prevention Delegates, as employee representatives with specific risk prevention duties, supervise, monitor and advise on any measure in this area. Furthermore, at companies with more than 50 employees, a Health and Safety Committee must be established and employers must consult this Committee regularly on employee health and safety procedures.

A failure to comply with these obligations may give rise to liability under administrative, labor, criminal and civil law. The Ministry of Labor and Social Affairs may impose substantial fines in the case of very serious infringements.

Increasingly stringent regulations on the prevention of occupational risks are being implemented in Spain and the EU to afford greater protection to workers.
## Legal framework and tax implications of e-commerce in Spain

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E-commerce-related activities are now being regulated more specifically by Spanish legislation.

Therefore, in transactions involving e-commerce, regard should be had to legislation on distance sales, advertising, standard contract terms, electronic signatures, data protection, intellectual and industrial property, and e-commerce and information society services. Apart from these specific laws, it is also necessary to look to the general legislation on civil and commercial contracts.

In any event, the Spanish legislature is currently making resolute headway in regulating transactions of this nature. Examples of its aim to legislate on matters relating to new information technologies include the Law on E-commerce and Information Society Services, and the Royal Decree-Law on Electronic Signatures, the review of which is currently in full swing.

A fundamental point to bear in mind when undertaking any initiative in the area of electronic transactions is that the applicable legislation varies depending on the potential recipient of the related offer. Consequently, there is greater leeway for the parties to agree as they see fit if the transaction takes place between companies (business to business) than if the commercial dealings are between a company and a private consumer as the final recipient (business to consumer), since, among others, consumer protection legislation will apply in the latter case.

E-commerce raises tax issues that can be addressed with difficulty from a purely Spanish perspective. Perhaps for that reason, unlike other occasions, the Spanish tax authorities have not seen fit to adopt unilateral measures, preferring to wait until a consensus is reached on the measures to be adopted regionally and even worldwide. As will be explained below, the process of reaching a consensus on the VAT treatment of online e-commerce is fairly advanced, as is shown by the recent approval of the EU Directive on e-commerce and its consequent transposition into Spanish law from July 1, 2003 onwards.

As for the direct taxation issues (the existence of permanent establishments, the legal characterization of income, the transfer pricing problem and the application of the “place-of-effective-management” rule) it is foreseeable that consensus will take the form of a coordinated, more uniform interpretation of the various criteria determining the tax treatment of e-commerce, rather than a legislative change. As will be explained later, an example of this greater coordination is the prospective amendment of the commentaries on the OECD Model Convention.
II. Defining regulatory principles

I. Civil and commercial legislation

a) Civil and Commercial Codes

Electronic contracts are fully subject to the rules established by the Spanish Civil Code on obligations and contracts. In addition to these rules, Spain also has specific legislation regulating various aspects of e-commerce.

In this sense, both the Civil Code and the Commercial Code, by virtue of the amendments made by the Law on E-commerce and Information Society Services, dispose that, in contracts concluded by automatic devices, consent is granted since the declaration of acceptance.

b) Distance sales

Equally applicable to electronic sales is Retail Trade Law 7/1996 in its Chapter on distance sales, amended by Law 47/2002. This Law defines “distance sales” as sales concluded without the simultaneous physical presence of the buyer and the seller, where the seller’s offer and the buyer’s acceptance are conveyed exclusively through any remote communication technique. Therefore, sales made by telematic means would be treated as distance sales.

Under the Retail Trade Law, operators that conclude distance sales must obtain the relevant authorization and be registered on the Register of Distance-Sales Enterprises, which is located at the Directorate-General of Domestic Trade of the Ministry of Economy.

This Law also establishes the requirements for the terms of distance sale offers, which must include:

- the identity and address of the supplier;
- the basic features of the product, the price (including taxes and delivery), and the transportation expenses;
- the payment method, and delivery or types of fulfillment of orders;
- the existence of a right of withdrawal or termination;
- the period for which the offer remains valid;
- the minimum duration of the contract;
- the circumstances in which the seller could, in substitution of the requested product, supply a product of equivalent quality and price, and
- whether the seller adheres to an alternative dispute resolution procedure.

In this type of sale, consumers are also afforded a number of rights, such as:

- the need for their express consent to the distance transaction, so that the failure to reply cannot be construed as acceptance of the offer;
- prohibition on unsolicited shipments, where the shipments include a request for payment;
- the right to withdraw (with exceptions in cases such as the sale of goods that can be copied, the packaging for which has been opened) within seven days from receipt of the product, without penalty or any need to give reasons;
- the duty to provide the buyer with written information in the language of the proposed contract on the address of the seller’s establishment, on the conditions for exercising the right of
withdrawal or termination, and on after-sales service and warranties and conditions for rescinding indefinite-term contracts.

c) Consumer protection

Whenever e-commerce activities are targeted at consumers, it is necessary to comply with consumer protection legislation, namely Consumer and User Protection Law 26/1984.

Law 47/2002 supplements the Consumer and User Protection Law, providing a warranty period for consumer goods of not less than six months until Directive 1999/44/EC becomes effective.

Equally applicable is the Standard Contract Terms Law 7/1998, when pre-formulated clauses are incorporated to a plurality of contracts.

In this connection, e-commerce is specifically regulated in Royal Decree 1906/1999, on telephone or electronic contracts with standard terms, which implements Article 5.3 of the Standard Contract Terms Law.

The Royal Decree establishes the requirements that must be met by distance contracts concluded by telephone, or by electronic or telematic means and which contain standard contract terms. “Standard contract terms” means pre-formulated terms the inclusion of which in a contract has been imposed by one of the parties (regardless of who actually drafted them, or their external appearance, scope, or other circumstances) and which have been drafted for inclusion in numerous contracts.

This rule does not apply expressly to certain types of contract such as, for example, government contracts, employment contracts, contracts for the incorporation of companies, contracts for regulating family relations, and so on.

Conversely, the rules imposed by this Royal Decree apply to those contracts which contain standard contract terms that have been adhered or consented to in Spain, whatever the law applicable to them.

To such effect, the Royal Decree imposes the following obligations when contracting by telephone or by electronic or telematic means with standard contract terms:

– To provide the consumer with prior information on all the terms of the contract at least 3 days before the conclusion of the contract, and to send the consumer the full wording of the standard terms by any suitable means.

– To send to the adhering party immediately (or, at the latest, when the thing is delivered or when performance of the contract begins) a written receipt or, at the adhering party’s request, a receipt on any other lasting medium fit for the means of communication used and information, in that party’s language or in that used to make the offer, on all the terms of the contract concluded.

– The adhering party can exercise the right to withdraw from the contract, without incurring any penalty or expense, within seven business days, according to the official calendar of the adhering party’s place of habitual residence. Time in the seven-day period will start running upon receipt of the merchandise where the purpose of the contract is the delivery of goods, or from the conclusion of the contract where the contract is for the
provision of services. If the information on the standard terms or the documentary confirmation is provided after the delivery of the merchandise or the conclusion of the contract, time in the seven-day period will start running from the performance of such obligations.

- The pre-formulating party also has the burden of proving that it has performed the duties imposed by the Royal Decree. Such duties include that of ensuring the existence and content of prior information on the terms, the delivery of the standard terms of, and documentary support for, the contract and, if applicable, the express waiver of the adhering party to the right of withdrawal.

2. Telematic billing

A Ministry of Finance Order, dated December 5, 2002, repealing the Order of the Ministry of Finance and Economy dated March 22, 1996, further implements the telematic invoicing rules provided for in the VAT Law. As established in this Order, electronic invoices are based on the use of advanced electronic signature systems or on any other system for the exchange of electronic data that makes it possible to guarantee the authenticity of the origin of invoices issued by electronic means and the integrity of their contents.

“Electronic invoice” is defined in the Order as any electronic document that meets the issuing and content requirements imposed by the legislation on the issuance and delivery of invoices by traders and professionals.

To implement an electronic invoicing system, advanced electronic signature systems accepted and published by the State Tax Agency, must be used, or where other systems for exchanging electronic data are used, prior authorization must be obtained from the Financial and Tax Inspection Department of the State Tax Agency.

Additionally, the Order imposes the obligation of managing and keeping electronic invoices by electronic means that ensure full access to the information, as well as the obligation of making them available to the tax authorities. However, exceptionally, traders or professionals of a reduced size and, as the case may be, final consumers may keep them on hard copy, with a graphic authentication mark, produced by a system accepted and published by the State Tax Agency.

3. Electronic signatures

One of the main concerns of operators using new information technologies for business activities is technical security and legal certainty. It was in response to this concern that Royal Decree-Law 14/1999 on Electronic Signatures was approved. The aim of this Law is to regulate the use of electronic signatures and make them legally effective, as well as regulate the provision of certification services to the public.

“Electronic signature” is defined by the Royal Decree-Law as a set of data, in electronic form, attached to or logically associated with other electronic data, and used as a method for formally identifying the author or authors of the document which includes it.

A special category of electronic signature is an “advanced electronic signature,” which can identify the signatory and is created by means which the signatory keeps under its sole control, in such a way that it is uniquely
linked to the signatory and to the data to which it relates, thereby making any subsequent change in data detectable. Given its special characteristics, this kind of electronic signature has enhanced effects.

In the area of e-commerce, a fundamental consequence of this is that an advanced electronic signature is afforded the same evidential value as that of a holographic signature, since it is based on a recognized certificate and produced by a secure signature creation device.

To enable the fulfillment of these requirements to be proved, the Royal Decree-Law establishes a presumption that an advanced electronic signature meets the conditions necessary to have this effect where it is based on a recognized certificate issued by an accredited certification services provider, and the secure signature creation device is certified.

However, the Royal Decree-Law provides that an electronic signature that does not meet the requirements mentioned in the preceding paragraph cannot be denied legal effectiveness nor will it be excluded as evidence in a trial.

The Royal Decree-Law also establishes that an electronic signature that does not meet the requirements mentioned in the preceding paragraph cannot be denied legal effectiveness nor will it be excluded as evidence in a trial.

4. Personal data protection

Another aspect that may have e-commerce implications is the possible processing of any personal data under transactions of this nature.

Personal Data Protection Organic Law 15/1999 regulates the processing of an individual’s personal data obtained by public and private entities in the course of their duties. Under the Law, personal data cannot be used indiscriminately and there are penalties in the event of a breach of the statutory obligations.

The Organic Law applies to “personal data,” meaning any information concerning identified or unidentified individuals. Accordingly, it does not apply to data concerning legal entities.

Personal data protection legislation revolves around the following principles:

– The data subject must give prior consent to the processing of his or her personal
data, except for the exceptions envisaged by the Law.

- The processing of specially protected data (i.e., data referring to ideology, labor union membership, religion, beliefs, ethnicity, health, and sex life) require the data subject’s express consent (in writing in the first four cases).

- The data subject must be informed of a number of matters in relation to the envisaged processing of his or her personal data.

- Personal data may only be processed where they are adequate, relevant and not excessive in relation to the purpose for which they have been obtained.

- Personal data may only be communicated to a third party if the data subject has given his or her prior consent for such purpose, unless such communication is permitted by Law.

- When the communication is addressed to a third party classified by the Law as a data processor, which provides a service entailing access to such data, prior consent by the data subject is not required, but the relationship must be regulated in a contract for services that includes a number of provisions established by the Law.

- Data subjects are afforded the rights of access, rectification, cancellation, and opposition to and of the processing of their personal data.

- The creation of personal data filing systems must be previously notified to the Data Protection Agency, the agency in charge of enforcing this legislation.

Royal Decree 994/1999, approving the Regulations on security measures for automated filing systems containing personal data, provides that technical and organizational measures must be taken to ensure the security of automated filing systems. Such measures will vary depending on the nature of the personal data being processed.

It should also be noted that communications of data involving the international movement of personal data require the prior authorization of the Director of the Data Protection Agency, where such data is to be sent to countries without a level of protection comparable to that of Spain, except in a number of specific cases such as, for example, where the data subject gives his or her unambiguous consent to the transfer of his or her data. In this connection, it is assumed that EU Member States ensure an adequate level of protection. In other cases, a declaration in this connection is required from the EU Commission or a ruling from the Data Protection Agency that the data protection offered by the country in question is appropriate.

5. Intellectual and industrial property and domain names

a) Intellectual property

The legal protection of intellectual property is hugely important when engaging in e-commerce in the “information society.” For this reason, it is essential to determine as clearly as possible the ownership of the rights which can flow from content and information based on new technologies, the main hallmark of which is to facilitate the transmission and broad dissemination of such content and information. The key Spanish legislation in
this area is Legislative Royal Decree 1/1996, approving the Revised Intellectual Property Law.

Article 10 of the Revised Law establishes that all original literary, artistic or scientific creations expressed by any means or on any medium, whether tangible or intangible, currently known or invented in the future, are intellectual property. Accordingly, any creations meeting the originality requirement are capable of being protected, including graphic designs and source codes of, and information contained on, websites.

Website content will be afforded such protection as pertains to the specific category of the content (graphics, music, literary works, audiovisual, databases, etc.) and, therefore, the person in charge of the website must hold the related rights, either as the owner (of the collective work under his management, developed by commission or by employees) or as a licensee.

Intellectual property has two clearly differentiated facets: on the one hand, the author’s moral right to the work in question, which is nonwaivable and inalienable, that is to say, the right to the paternity of the work, to demand that its integrity be respected, and to modify the work or withdraw it from the market; and on the other hand, the author’s economic right to the work, which is waivable and alienable even after death, and is composed of the rights of reproduction, distribution, and public communication.

In protecting intellectual property, the owner may seek both civil and criminal remedies. The Revised Law affords the holder of the rights of exploitation the possibility of applying for the cessation of unlawful activities (e.g., a website unlawfully disseminating a protected work could be closed down) and of seeking damages. From a criminal law standpoint, the protection of intellectual property on the Internet is based on Article 270 of the Criminal Code, which defines crimes against intellectual property as the reproduction, plagiarism, distribution or public communication of a literary, artistic or scientific work, in whole or in part, or the transformation, interpretation or performance thereof affixed on any type of medium or communicated by any means, without the permission of the holders or assigns of the relevant intellectual property rights.

b) Industrial property

When engaging in e-commerce, regard should also be had to industrial property matters. Inventions can be patented and, with respect to e-commerce, patents on encryption and compression algorithms may be established. However, Article 4.c of Patents and Utility Models Law 11/1986 provides that plans, rules, and methods for conducting a business, as well as software, cannot be patented.

c) Domain names

Another fundamental issue that Internet operators should bear in mind is the registration and use of domain names. This issue is addressed by the Order of the Ministry of Development dated March 21, 2000, as amended by the Order of the Ministry of Science and Technology dated July 12, 2001, and by Law 34/2002 on E-commerce and Information Society Services, which regulate the system for assigning Internet domain names under the country code for Spain (.es).

Under the Order, only Spanish or foreign individuals who legally reside in Spain and
entities with separate legal personality and formed under the laws of Spain and registered in the relevant Spanish Public Register can be assigned an “.es” domain name, unlike entities without separate legal personality. Nonetheless, the first branch (duly registered in the Mercantile Register) of a legally formed foreign company can be allocated an “.es” domain name.

There are also restrictions on the domain names assignable. In other words, any name applied for must:

– not have been previously assigned;

– comply with the rules of syntax, meaning that only letters of the alphabet of any of the official languages of Spain can be used, that neither the first nor the last character of the domain name can be a hyphen, and that the domain name cannot be shorter than three nor longer than sixty-three characters;

– not be included among the prohibitions which prevent, among others, the assignment of domain names comprising names of places, general names for products, services, establishments, professions, and so on, or names which are contrary to law, ethics, or public policy;

– comply with the rules of derivation, under which only domain names corresponding to the full name of the organization, an acronym of that name or a legally registered business name or trademark can be assigned.

Lastly, it should be noted that the assignment of a domain name does not confer on its holder any rights in the name, except to use it for the purpose of establishing the appropriate link to the Internet domain name system.

6. Law 34/2002, on E-commerce and Information Society Services


The ECISSA defines as information society services any service provided for a valuable consideration, long-distance, through electronic channels and upon individual request by the recipient, including also those not paid by the recipient, to the extent that they constitute an economic activity for the provider. Specifically, the following are deemed to be information society services:

– the contracting of goods and services through electronic means;

– the organization and management of auctions using electronic means or of virtual shopping centers or markets;

– the management of purchases on the network by groups of persons;

– the sending of commercial communications;

– the supply of information through telematic channels, and

– video upon demand, as a service that the user may select through the network and, in general, the distribution of contents upon individual request.

The ECISSA will apply to information society service providers established in Spain. In this
respect, the provider is considered to be established in Spain when its place of residence or registered office is located in Spanish territory, provided that it coincides with the place where its administrative management and business administration are actually centralized. Otherwise, the place where such management or direction is performed will be considered.

Likewise, the ECISSA will apply to the services of providers resident in or with registered office at any other State when the services are offered through a permanent establishment located in Spain. Therefore, the use of technological means located in Spain to provide or access the service will not alone determine that the provider has an establishment in Spain.

The above notwithstanding, the requirements of the ECISSA will apply to service providers established in another State of the European Union or the European Economic Area when the recipient of the services is located in Spain and the services affect:

– intellectual or industrial property rights;
– advertising issued by collective investment institutions;
– direct insurance activities;
– obligations arising from contracts with consumers, or
– the lawfulness of non-requested commercial communications by e-mail.

In any case, the organization, transfer, amendment and extinguishment of rights in rem on real properties located in Spain will be subject to the formal requirements of validity and effectiveness established by the laws of Spain.

The ECISSA includes important new features in respect of the information society service providers and e-mail activities, among which we may note:

– The principle of free provision of services not subject to prior authorization is established to provide information society services, except as regards public policy, public health protection, public security or consumer protection.

– The following obligations are imposed on information society service providers:

- To notify a domain name that is used for their identification on the Internet, within one month, to the registry where they are entered to acquire legal status or for the sole purposes of publicity.

- To put in place the means to permit the recipients of the services and the responsible bodies to access easily, directly and free of charge, information on the provider (corporate name, registered office, entries on registries, tax identity number ...), on the price of the product (stating if it includes applicable expenses and shipping expenses) and on the codes of conduct to which it has adhered.

- For providers of intermediation services, to cooperate with the responsible authorities in interrupting the provision of information society services or in withdrawing contents.

- In respect of network and e-mail service and network operators, access suppliers and data hosting service providers, to withhold the connection and traffic data during the provision of an information society service for a maximum of 12 months, upon the terms established by the implementing legislation pending approval.
– A specific system of liabilities is established for information society service providers, without prejudice to the provisions of civil, criminal and administrative legislation.

- Network operators and access suppliers will not be liable for the information transmitted unless they have originated the transmission, changed the data or selected these or their recipients.

- Service providers that make a temporary copy of the data requested by users are not liable for the stored information unless they change it, permit access by recipients who fail to comply with the conditions established for the purpose, fail to observe the generally accepted standards for the update of the information, interfere in the lawful use of the technology, fail to withdraw the stored information or do not render their access impossible when they become aware that a court or responsible administrative authority has ordered that it be withdrawn or that access to it be impeded.

- Data storage or hosting service providers will not be liable for stored information if they are unaware that such information is unlawful or, if they are so aware, if they act diligently to withdraw or render access to the data impossible.

- The providers of services providing links or search instruments or contents will not be liable if they are unaware of the unlawful nature of the activity or the information to which they refer or if they are so aware, if they act diligently to omit or render useless the respective link.

– A specific system is established for commercial communications through electronic channels, without prejudice to the legislation in force on commercial, publicity and personal data protection matters. Thus, commercial communications through electronic channels must be clearly identifiable, stating the individual or corporation for whom they are performed, including at the beginning of the message the word “publicidad” (advertisement) and stating clearly the conditions for access and participation, in the case of discounts, prizes, gifts, competitions or promotional games. Additionally, advertising or promotional communications sent by e-mail or similar form of communication that have not been previously requested, or expressly authorized, by the recipients are prohibited.

– Contacts through electronic channels are regulated, recognizing the effectiveness of the agreements made through electronic channels when consent has been granted and other requirements necessary for their validity are met. Additionally, the following policies are established for contracts made through electronic channels:

- The requirement that a document should be placed on record in writing is considered to be met when it is contained on electronic support.

- Documents on electronic support are admitted as documentary evidence in lawsuits.

- Determination of the legislation applicable to the contract made through electronic channels will be governed by the provisions of international private law.
- A series of obligations is established prior to the commencement of the contracting procedures, relating to the information that should be furnished on the formalities for the making of the contract, the validity of offers or proposals of contracts and the availability, if any, of general contracting conditions.

- The offeror is obliged to confirm receipt of the acceptance within 24 hours after its receipt by an acknowledgement sent by e-mail or equivalent means to that used in the contracting procedure, permitting the recipient to file such confirmation.

- Agreements made through electronic channels in which the consumer participates will be assumed to have been made in the place where the consumer has his customary place of residence. When these contracts are made between entrepreneurs or professionals, they will be assumed to have been made, in the absence of a provision on the matter, in the place where the service provider is established.

- The recognition is made of a cause of action for cessation against conduct contravening the ECISSA that is detrimental to collective or general consumers’ interests and the promotion of the out-of-court settlement of dispute.

- Minor, serious and gross infringements due to failure to comply with the obligations imposed in the ECISSA, with penalties of up to €600,000, are established.
III. Tax implications of e-commerce in Spain

1. Problems, general principles and initiatives taken in relation to taxation

Except for Spain’s commitments to the European Union on value added tax (“VAT”), at present there is no tax regime in Spain which specifically regulates the trading of goods and services on the Internet. Therefore, the same taxes and the same rules as those for other forms of commerce apply. This approach is in tune with the principles enunciated by the Spanish Tax Agency in the Report of the Commission analyzing the impact of e-commerce on the Spanish tax system, prepared by the Office of the Secretary of State for Finance.

With respect to VAT and formal VAT obligations, the European Union approved three bodies of legislation recently:


– Council Directive 2001/115/EC of December 20, 2001 amending Directive 77/388/EEC with a view to simplifying, modernizing and harmonizing the conditions laid down for invoicing in respect of VAT. The terms of this Directive must be transposed into Spanish VAT legislation (as in those of other Member States) by January 1, 2004 at the latest. Although the Law on Tax Measures adapts the references on invoicing in the VAT Law to the new Directive, the terms of the Directive will be transposed by subsequent regulations into Spanish law.

The first two bodies of legislation referred to are temporary in scope since they must be reviewed by the EU Council before June 30, 2006, which must either adopt the necessary measures on an adequate mechanism for taxation in the place of consumption or extend the three-year period.

The provisions of these Directives and their transposition into Spanish law are examined in Section 3 below, on the indirect taxation of e-commerce.

2. Direct taxation

Despite there being no differences in the tax treatment of income obtained electronically, there are a number of issues that have been addressed by both the OECD and by the Spanish tax authorities themselves:

a) The permanent establishment issue.

b) Legal characterization of income generated by the sale of goods and services on the Internet.

c) Determination of taxable income and the transfer pricing problem.
d) Application of the place-of-effective-management rule to determine the tax residence of taxpayers engaging in e-commerce.

The most relevant considerations and the progress made in analyzing those issues are summarized below:

**a) The permanent establishment issue**

The issue specifically addressed is whether one or more of the following elements can be regarded as permanent establishments in the country where a company selling a good or supplying a service on the Internet is located:

– Server.
– Website on server.
– ISP (Internet Service Provider).

The OECD has published a report in January, 2003, which proposes, among other issues, amendments to the commentaries on Article 5 of the Model Convention (in relation to the definition of “permanent establishment”) so as to make room for the elements which define new forms of commerce.

The main conclusions drawn from the report are as follows:

– A distinction must be made between a computer or server (which can constitute a permanent establishment) and the software used by that computer (which cannot constitute a permanent establishment). This distinction is important because the entity that operates the server hosting the website is normally different from the entity that carries on business over the Internet (hosting agreements).

– A website does not in itself constitute tangible property and, therefore, cannot be deemed a “place of business” if this is defined as facilities, equipment, or machinery capable of constituting a permanent establishment.

– In order for a server to constitute a fixed place of business it must be permanent, in that it must be located in a certain place for a sufficient length of time. What counts is whether, in fact, it is moved from one place to another rather than whether or not it can be moved. In this regard, a server used for e-commerce can be a permanent establishment regardless of whether or not there is personnel to operate that server, where no personnel are required for the operation assigned to the server.

– When determining whether or not the server installed by a given company in a country constitutes a permanent establishment of that company, it is particularly important to analyze whether the company engages in business activities specific to its corporate purpose through that server or whether, on the contrary, it only engages in activities of a preparatory or auxiliary character (such as advertising, market research, data gathering, providing a communications link between suppliers and customers, and making backup copies).

– ISPs do not generally constitute permanent establishments of companies that engage in e-commerce on websites, since ISPs are not normally agents of a dependent status for those nonresident companies.
b) Legal characterization of income

The second relevant issue in this area concerns the characterization of income and, in particular, the possibility that certain goods delivered online may, merely by virtue of the fact that they are protected by intellectual or industrial property laws (such as music, books and, in particular, software), be characterized as generators of royalties and, therefore, be subject to taxation in the country of source.

The amendments to the commentaries on the OECD Model Convention recently introduced establish the characterization as business profits (instead of royalties) of almost all payments made for all intangible goods delivered electronically, on the ground that the subject-matter of those transactions are copies of images, sounds or text rather than the right to exploit them commercially.

The Spanish tax authorities have yet to comment these amendments to the commentaries on the Model Convention, but even though it seems that they have adopted a slightly more flexible attitude in recent rulings, their traditional stance in principle remains unchanged, despite the amendments.

It should also be noted that in the amendment to Article 12 of Nonresident Income Tax Law 41/1998 by Law 46/2002, of December 18, Partially Reforming the Personal Income Tax, Corporate Income Tax and Nonresident Income Tax Laws, amounts such as those paid for the use or the granting of use of rights in software are characterized as royalties.

c) Determination of taxable income and the transfer pricing problem

The extensive use of intranets among different companies belonging to multinational groups and the enormous mobility of transactions over computer networks create highly complex problems when applying the traditional arm’s-length principle to valuing intercompany transactions. This is because:

– E-commerce encourages the detachment of activities from their location, since it hugely multiplies the number of transactions between companies within the same group.

– The special characteristics of online trade in content and services on the Internet make it very difficult to ascertain the market value of commercial transactions, above all bearing in mind that, sometimes, electronic content can be downloaded and services can be received free of charge.

Due to the above, tax authorities in OECD countries (including Spain) are advocating the development of bilateral or multilateral systems for advance pricing agreements, applying the OECD transfer pricing guidelines to e-commerce. Noteworthy in this regard is the creation of an EU Joint Transfer Pricing Forum in which, among other matters, nonlegislative measures will be proposed to enable a uniform application of the OECD guidelines in the European Union.
d) Application of the place-of-effective-management rule

The special characteristics of e-commerce (which include easy detachability from location, relative anonymity, and the mobility of the parties involved) make the traditional rules on determining which country has the jurisdiction to tax the worldwide income obtained by one enterprise (based on the principle of residence by reference to the place of formation, the place of the registered office, or the place of effective management) more difficult to apply to taxpayers engaging in e-commerce.

Indeed, the parameters established in the tax treaties for the purpose of apportioning tax powers among States in case of conflict (most of them based on the “place-of-effective-management” principle) are overridden in an area such as e-commerce, where the various managing bodies of the same enterprise can be located in different jurisdictions and be totally mobile during the year. In this regard, it can be extremely difficult to determine which place is the enterprise’s place of effective management, and this can lead to double taxation or no taxation at all.

Although the international organizations that have examined this issue and the Spanish tax authorities themselves are aware of this problem, they have yet to arrive at clear conclusions on how to resolve it. Accordingly, a close watch must be kept on progress in the work being done in this area.

3. Indirect taxation

It is in the area of VAT where the most relevant coordinated legislative measures have been adopted.

The indirect taxation implications for e-commerce mainly concern “online e-commerce,” a term that refers to products supplied on the Internet in digitized form (books, software, photographs, movies, music, and so on) and downloaded by a customer in real time onto his or her computer, having clicked on to the supplier’s website and paid for the products in question (in contrast to offline supplies where products sold on the Internet are subsequently delivered by using conventional means of transportation).

Offline e-commerce poses fewer technical difficulties in relation to the VAT treatment of transactions because it still involves the physical supply of a tangible good. Accordingly, the traditional VAT concepts apply: domestic transactions, intra-Community acquisitions, and schemes for distance sales or imports.

The main VAT issues arising in relation to e-commerce (especially online e-commerce) are in essence the following:

– The definition of “taxable event” as a supply of goods or services in online e-commerce transactions and the application of the relevant rules for determining the place of supply and which country’s VAT applies.

– The determination of the VAT rates applicable to the different types of e-commerce.

– The adaptation of the formal obligations and management of VAT to the realities of e-commerce and, particularly, the obligations regarding invoices.
Each of these issues is briefly outlined below:

**a) Definition of “taxable event” as a supply of goods or services for the purpose of determining the place of supply**

The Law on Tax Measures introduces certain changes to the current VAT Law as from July 1, 2003. One of the aims of these changes is to redress the damaging economic distortions now suffered by EU-based operators, and to bring the VAT Law into line with the changes introduced by Directive 2002/38/EC. The changes are based on the premise that all EU Member States will uniformly treat transactions performed electronically as supplies of services:

- The services affected by the changes are electronically supplied services including transactions for computer software, data processing, and other similar services relating to the use of computers and the supply of information, provided that they are supplied for consideration, where their transmission is sent initially and received at destination by electronic data processing equipment. The fact that the supplier and recipient of a service communicate by e-mail does not of itself mean that the service is an electronically supplied service.

- The services are deemed to have been supplied in the territory where Spanish VAT applies if:
  - the recipient is a trader or professional and his place of business is in Spain; or
  - the supplier is established in Spain and the recipient is a nontrader residing in the EU or having an unidentifiable domicile; or
  - the services are supplied from outside the EU and the recipient is a nontrader domiciled in Spain;
  - the recipient is a trader or professional, the services are actually consumed in Spain, and the services have not been deemed supplied pursuant to the above rules in the EU, Canary Islands, Ceuta or Melilla.

In this connection, the place of supply for electronically supplied services can be summarized in accordance with the following table:

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Recipient</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU/Non-EU</td>
<td>Trader established in Spain</td>
<td>Spain</td>
</tr>
<tr>
<td>EU/Non-EU</td>
<td>Non-EU trader and actual consumption in Spain</td>
<td>Spain</td>
</tr>
<tr>
<td>Spain</td>
<td>Nontrader resident in the EU</td>
<td>Spain</td>
</tr>
<tr>
<td>EU</td>
<td>Nontrader resident in Spain</td>
<td>Country of origin</td>
</tr>
<tr>
<td>Non-EU</td>
<td>Nontrader resident or domiciled in Spain</td>
<td>Spain (Application of special scheme)</td>
</tr>
</tbody>
</table>

- As regards determining who is the taxable person, it has been decided to fully apply the current legislation (Article 84 of the VAT Law) which establishes that:
  - In general, the supplier of services is the taxable person, regardless of where he is established.
  - In special circumstances, the recipient of the services (rather than the supplier) is the taxable person and is obligated to reverse charge the VAT under the “reversal of VAT liability” mechanism (this applies only where the
b) Determination of the VAT rates applicable to the various types of e-commerce

In line with the view held by the Spanish tax authorities, the standard VAT rate of 16% will apply in all cases, since it is a type of service for which the VAT Law makes no special provision.

c) Formal obligations and management of taxes

As regards formal obligations and the management of taxes, both the EU and the Spanish tax authorities ascribe to the principle that this form of commerce should not be hindered by the imposition of formal obligations that reduce the speed with which transactions should be performed.

Of particular relevance in this regard are the developments introduced in Council Regulation (EEC) No. 218/92 on administrative cooperation in the field of indirect taxation (VAT), which, among other matters, provides that individuals and legal entities involved in intra-Community transactions can access the databases kept by the tax authorities of each Member State. This possibility of identifying reliably the status under which the recipient is acting (trader, professional or final consumer) is absolutely decisive for the proper tax treatment of each transaction.

Lastly, as a result of Directive 2001/115/EC, which must be transposed by Member States into their national laws by January 1, 2004:

– Invoices in intra-Community transactions may be issued electronically without the need for prior administrative authorization, provided that the issuer
has advanced electronic signature mechanisms that guarantee the identity and content of the invoice so issued.

– Invoices received may be stored in an electronic format.
– The mandatory details that must be included on invoices are limited.

As mentioned earlier, at present only minor, necessary adaptations have been made to Spanish legislation to reflect the basic provisions of Directive 2001/115/EC, while the detailed implementation of the Directive has been left for subsequent regulations.

While the future transposition by regulations of the Directive is awaited, it is worth highlighting the recent approval of Order 3134/2002, implementing the applicable rules on electronic invoices that had previously been held in abeyance by the Royal Decree on Invoices pending implementation by regulations.

The Order applies to persons resident in Spain or operating there through a permanent establishment and, for the first time, expressly acknowledges that electronic invoices will be accepted for the purposes of charging and deducting VAT and for supporting expenses or credits taken for the purposes of other taxes.

In this regard, the authenticity of the origin of such invoices and the integrity of their content must be guaranteed by using an advanced electronic signature based on the use of an electronic certificate and generated by a signature creation device approved by the Spanish State Tax Agency, or by means of other proposed elements where so authorized by the Spanish tax authorities.

In order to use an electronic invoicing system, a prior application must be submitted to the Spanish State Tax Agency, and will be automatically approved in cases where the prospective system has been recognized previously under a Resolution published in the Spanish Official State Gazette.

Electronic invoices must be kept as a general rule in digitized form, together with the signature verification mechanisms, guaranteeing the authenticity of their origin and the integrity of their content during the statute of limitations.
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<td>1. Legal steps</td>
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<tr>
<td>2. Costs</td>
<td>281</td>
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I. Introduction

The previous chapters provide general information about the Spanish legal framework, specifically covering those areas that may be of interest to foreign investors investing in Spain.

This chapter deals with, from a very practical viewpoint, the main ways for a foreign investor to establish a business presence in Spain as well as the main steps to be taken in connection with certain common forms of investment.

The main aspects of the Spanish legislation on exchange control and foreign investments are also covered. Although these areas are fully liberalized, there are specific reporting obligations to be accomplished. As a general rule, foreign investments are subject only to notification after the investment has been made.

As regards the ways of establishing a business presence, the alternatives of sole ownership of a business and joint ventures are analyzed, whether in the form of economic interest groupings, temporary business associations, participation account agreements (silent partnerships), or where two or more partners set up together a Spanish S.A. corporation or S.L. limited liability company. There are also other channels for conducting a business without requiring a physical presence, through the arrangement of distribution, agency, commission agency and franchising agreements.

Lastly, the steps to be taken for the following types of investment are analyzed:

- Incorporation of a Spanish corporation (Section V)
- Formation of a Spanish branch (Section VI)
- Acquisition of shares of an existing Spanish corporation (Section VII)
- Acquisition of Spanish real estate (Section VIII)
II. Exchange control regulations

Exchange controls and capital movements are fully liberalized and in all areas there is complete freedom of action.

The liberalization process reached its peak with the approval in December 1991 of Royal Decree 1816/1991 on Foreign Transactions, modified by Royal Decrees 42/1993 and 1638/1996, and of several implementing regulations which dramatically changed the previous situation.

A new piece of legislation in this area is being debated in Parliament, but this should not imply relevant changes to the rules currently in force.

The main features of the Spanish exchange control scenario can be summarized as follows:

1. Freedom of action

As a general rule, all acts, business transactions and operations between residents and nonresidents which involve or may involve payments abroad or receipts from abroad are completely deregulated. This deregulation includes payments or receipts made either directly or by offset of the underlying transactions, as well as transfers to or from abroad derived from such payments or receipts. It also covers the import or export of means of payment.

2. Safeguarding clauses

The Spanish Government is authorized, under exceptional circumstances, to prohibit or limit certain transactions with nonresidents or the related payments, receipts or bank transfers if they seriously affect Spanish interests, or in application of measures adopted by international bodies of which Spain is a member.

Additionally, preventive measures may be adopted by the Spanish Government if exceptionally extensive short-term capital movements are likely to gravely affect Spanish monetary policy.

These measures will have to be adopted in accordance with EU legislation on capital movements.

3. Statistical information

In order to calculate the Spanish balance of payments and to maintain statistical and tax control of monetary flows, certain mechanisms are envisaged for payments to and receipts from abroad. These mechanisms are as follows:

- As a general rule, payments, receipts and transfers between residents and nonresidents, denominated either in euros or in foreign currency, should be made through deposit-taking entities (normally banks) registered in the Bank of Spain’s Official Register. In these cases, the resident party must provide the registered entity with certain data (e.g. names and addresses of both parties) and specifically with a description of the transaction giving rise to the payment, receipt or transfer. This information must be periodically transmitted by the registered entities to the Ministry of Economy for tax and statistical control purposes.

- Payments and receipts between residents and nonresidents can be made, in Spain or abroad, in coins, bank notes or bearer checks, denominated either in euros or in foreign currency, and must be declared by the resident party within 30 days if they
Practical guidelines

Since residents are allowed to freely open and hold bank accounts abroad, denominated either in euros or in foreign currency, these bank accounts can be credited and debited for payments to and receipts from nonresidents. These credits and debits must be notified to the Bank of Spain using specific forms if they exceed a specified threshold. Credits and debits under this threshold only need to be notified if expressly requested by the Bank of Spain. As a general rule, no netting-off is permitted in communicating these data, although certain exceptions are envisaged.

– Nonresidents intending to credit bank accounts held in Spain by nonresidents by means of bank notes or bearer checks, in euros or foreign currency, or to transfer abroad such means of payment, are obliged to evidence the origin of such funds. Otherwise, the registered entities will not be able to proceed with these transactions.

Exceptionally, the Spanish Ministry of Economy may, by making the relevant regulations, require prior clearance or declaration for payments, receipts or transfers to or from abroad arising from certain transactions yet to be specifically defined, if such clearance or declaration were advisable in order to have adequate knowledge of the transactions made and of compliance with tax obligations.

4. Specific transactions to be reported to the Bank of Spain

The following transactions made by Spanish residents must be reported to the Bank of Spain under the conditions to be defined by the latter:

– Financing and deferrals of payments and receipts for more than one year between residents and nonresidents deriving from commercial transactions or the provision of services.

– Offsets of credits and debits between residents and nonresidents deriving from commercial transactions or the provision of services.

– Offsets of credits and debits deriving from intermediation in financial markets by intermediary entities.

– Financial loans received by residents from nonresidents or granted by residents to nonresidents. Securities such as bonds, promissory notes, etc. not traded on Spanish stock exchanges issued by Spanish residents and acquired by nonresidents are considered as financial loans from nonresidents.

Additionally, the authorized banks and resident individuals or entities which perform business transactions and operations with nonresidents or have assets or liabilities abroad are obliged to provide the Spanish authorities and the Bank of Spain with any data that may be required in order to monitor such transactions for statistical and tax purposes.
5. Import and export of certain means of payment

The main feature of the Spanish exchange control system, as discussed above, is the complete freedom of action (subject to specified information requirements). This principle also applies to the import and export of certain means of payment.

The export of coins, bank notes and bearer checks, denominated either in euros or in foreign currency, is only subject to prior declaration if the amount involved exceeds €6,010.12 per individual per trip. If the declaration is not made, the Spanish customs officials will retain these means of payment.

The import of the above-mentioned means of payment by nonresidents is subject in certain cases to prior declaration to the Spanish customs authorities if higher than €6,010.12.

6. Types of bank accounts

Nonresident individuals and legal entities can hold bank accounts on the same conditions as resident individuals and legal entities. The only requirement is to documentarily evidence, on opening the bank account, the nonresident status of the holder of the account. Additionally, such status must be confirmed to the authorized bank every two years. Other minor formalities are stipulated.

Moreover, residents may, subject to certain declaration requirements, freely open and hold bank accounts abroad either in euros or in foreign currency. The opening of such bank accounts by resident parties must be declared to the Bank of Spain within 30 days and information must be provided on the debits and credits posted to the account if they exceed a certain threshold.

Finally, Spanish residents are allowed to freely open and hold bank accounts in Spain denominated in foreign currencies at registered entities, without subjection to any information requirement.

7. Residence for exchange control purposes

For exchange control purposes, individuals are deemed to be resident in Spain if they are domiciled, or reside mainly, in Spain. Legal entities with registered offices in Spain, and the establishments and branches in Spain of foreign legal entities or of individuals resident abroad, are likewise resident in Spain for exchange control purposes.

Nonresidents for exchange control purposes are individuals domiciled abroad or whose principal residence is abroad, legal entities with registered offices abroad, and the permanent establishments and branches abroad of Spanish resident individuals or entities.

Spanish nationals are deemed to be resident in the absence of proof to the contrary, and foreign nationals are deemed to be nonresident unless they hold an official Spanish residence permit.
Royal Decree 664/1999 modified the former rules by deregulating practically all transactions of this kind (with the provisos and exceptions set forth below) and eliminating the requirement for “prior verification”. The new rules are designed to adapt Spanish domestic law to the rules on the freedom of movement of capital contained in Articles 73 B et seq. of the Treaty on European Union.

The most noteworthy aspects of the applicable rules are as follows:

– Practically identical rules are established for foreign investment in Spain and Spanish investments abroad.

– “Prior verification”, as a mechanism for controlling foreign investments, disappears completely. Foreign investments are, as a general rule, subject only to notification after the investment has been made. The only exceptions are: (i) investments from tax havens, which in general must be notified beforehand, and (ii) foreign investments in activities directly related to national security, and real estate investments for diplomatic missions by States that are not members of the European Union and require “prior verification” from the Spanish Council of Ministers.

– There is no longer any obligation for foreign investments to be formalized in the presence of a Spanish public notary (unless specific legislation provides otherwise), doing away with the latter’s role in notifying investments to the Foreign Investments Register.

– The Royal Decree does not apply to certain foreign investments in Spain below € 3,050,060.52 (unless the investment originates from a tax haven) and they do not, therefore, need to be reported.

– The former categorization of investments as direct investments, portfolio investments, real estate investments and other investments, disappears.

– Regulation of foreign investments in specific industries falls outside the scope of application of this Royal Decree. The following investments will be subject to the requirements imposed by the competent body established by industry-specific legislation: investments in the air transportation and radio industries, in industries relating to raw materials of strategic interest and mining rights, in the television, gaming, telecommunications and private security industries, in industries concerned with the manufacturing, marketing or distributing of arms and explosives, and in national security-related activities (these latter activities are subject to the clearance rules contained in the Royal Decree). However, once those requirements are met, the provisions of the Royal Decree will then be applicable.

I. Rules on foreign investments

a) Investors

Investors can be nonresident individuals (that is, Spanish nationals or foreigners domiciled abroad, or who have their principal place of residence there), legal entities whose registered offices are located abroad, and public agencies of foreign States.

A change of registered office of legal entities or a change of residence of individuals is enough to change the classification of an investment as a Spanish investment abroad or a foreign investment in Spain, the reporting requirements for
which are regulated by the regulations implementing the Royal Decree.

However, under the Royal Decree a Spanish company in which foreign shareholders have a majority holding is not deemed to be an investor, which means that investments made by such companies in other Spanish companies are not now deemed to be foreign investments in Spain.

b) Investments regulated

The various types of investment covered by the rules established by the Royal Decree are as follows:

- Participation in Spanish companies, including their incorporation and subscription and acquisition of shares in corporations or the subscription of shares in limited liability companies, and any legal transaction under which voting and other nonfinancial rights are acquired.

- Establishment of, and increase of capital allocated to, branches.

- The subscription and acquisition of marketable debt securities issued by residents (debentures, bonds, promissory notes).

- Participation in mutual funds recorded in the Registers of the Spanish National Securities Market Commission.

- The acquisition by nonresidents of real estate in Spain valued at more than €3,050,060.52, or where the investment originates from a tax haven, whatever its amount.

- The formation, formalization or participation in joint ventures, foundations, economic interest groupings, cooperatives and joint-property entities, with the same characteristics as in the previous paragraph.

Foreign investments not included in the above list are not subject to the rules of the new Royal Decree. Specifically, investments in real estate and joint ventures, foundations etc. of less than €3,050,060.52 are excluded unless they originate from tax havens.

The Royal Decree also does not apply to participating loans, which were deemed formerly to be investments subject to the reporting/verification rules when the weighted average time to maturity exceeded 5 years.

Foreign investments to which the Royal Decree does not apply are totally deregulated, and no notice is required (although they may be subject to industry-specific regulations). Nevertheless, the rules on exchange control and notification of monetary flows to or from other countries remain in force.

c) Party required to report foreign investments

As a general rule, the nonresident owner of the investment and, in addition, any Spanish public notary acting in the transaction, are obliged to report the investment to the authorities.

However, depending on the type of asset invested in (mutual funds and securities), credit, financial, deposit-taking or management entities for the assets involved in the transaction may be obliged to report the investment. In the case of registered shares, the Spanish company receiving the investment will be obliged to report it.
**d) Reporting rules**

As a general rule, all foreign investments and the liquidation thereof that are subject to the rules of Royal Decree 664/1999 must be reported after the event to the Investments Register at the Ministry of Economy. Only investments from tax havens must also be reported beforehand to the Foreign Investments Register, except in the following cases:

– Investments in marketable debt securities issued or offered publicly, whether or not they are traded on an official secondary market, and units in mutual funds recorded in the Registers of the Spanish National Securities Market Commission.

– Where the foreign interest does not exceed 50% of the capital stock of the Spanish company in which the investment is made.

It is important to stress that this prior reporting obligation is not equivalent to the former prior verification requirement, and, once the investment has been reported, the investor may make his investment without having to wait for any reply from the authorities.

**2. Monitoring of foreign investments**

The Directorate-General of Trade and Investments of the Ministry of Economy is in charge of monitoring compliance with the provisions of the Royal Decree.

In this connection, Spanish companies which have foreign shareholders and Spanish branches of nonresident persons, and residents owning investments abroad can be required specifically or generally to file an annual report with the Directorate-General on the status of their foreign investments.

Owners of investments, Spanish companies with nonresident shareholders, public authenticating officials, companies providing services, or investment companies and credit entities and other finance entities that have taken part in investment transactions may also be required by the Directorate-General to provide the information necessary in each particular case.

**3. Safeguarding clause**

**a) Suspension of the deregulation rules**

The Spanish Council of Ministers can suspend the application of the deregulation rules established in the Royal Decree to investments that, because of their nature, form or conditions to which they are subject, affect or may, even if only occasionally, affect activities relating to the exercise of governmental power or activities that affect, or could affect, public order, security or health.

The effect of the suspension is that the investments concerned must undergo a prior procedure to obtain administrative clearance from the Council of Ministers. In such cases, the application is filed with the Directorate-General of Trade and Investments, and the decision is taken at the proposal of the Minister of Economy or the head of the Department with jurisdiction over the particular matter, after a report from the Foreign Investments Board.
b) Investments in national security-related activities

Under the Royal Decree itself, the Council of Ministers may exercise the powers of suspension described above (suspending the deregulation rules) in respect of foreign investments in Spain in activities directly related to national security, such as the production or marketing of arms, munitions, explosives and other armaments.

Telecommunications, which under the former rules were deemed to be an activity directly related to national security, disappear from this category, although any limitations established by telecommunications industry regulations still apply.

However, in the case of listed companies engaging in national security-related activities, only acquisitions by nonresidents of more than 5% of their capital stock, or acquisitions of less than 5% that enable such investors to form, directly or indirectly, part of their managing bodies, will require clearance.
I. Sole proprietorship vs. joint venture

A distinction may be drawn between various alternatives once the foreign investor has decided to invest in Spain:

– Incorporation of a Spanish company (an S.A. or any other of the forms of business enterprise described in Chapter 3) or formation of a branch.

As previously mentioned, various kinds of mercantile entities envisaged by Spanish law can be used by foreign investors to invest in Spain. Traditionally, the corporation (S.A.) has been the most commonly used form, although the limited liability company (S.L.) has gained popularity in recent years.

The following sections of this Chapter explain the legal steps and costs of incorporating a Spanish corporation and setting up a branch (the main steps and costs of the acquisition of shares of an existing Spanish company are also explained in this Chapter).

– Association with other entrepreneurs already established in Spain.

Foreign investors may find a joint venture with a Spanish company to be the most appropriate form of presence in Spain, since it allows the parties to share risks and combine resources and expertise.

There are different vehicles which can be used to set up a joint venture under Spanish law, as explained below:

- An Economic Interest Grouping (“Agrupación de Interés Económico”, EIG) or a European EIG (EEIG).

- A Temporary Business Association (“Unión Temporal de Empresas” or UTE).

- Another possibility is to execute a form of Spanish partnership agreement known as a Participation Account Agreement (silent partnership), “contrato de cuenta en participación”, with a Spanish company.

- Joint ventures through Spanish corporations or limited liability companies.

However, not every investor wishing to operate and/or distribute his goods or services in Spain needs necessarily to set up a new entity or enter into an association with other existing entities. Penetration in the Spanish market and a satisfactory response to existing demand can be achieved through the various forms of distribution agreements available in Spain, without having to physically establish a center of operations in Spain. The various alternatives include:

– Signing a distribution agreement.

– Operating through an agent.

– Operating through commission agents.

– Franchising.

Each of these forms of doing business in Spain offers various advantages that should be balanced against the possible problems that each one may raise and that need to be considered from the tax and legal points of view.
2. Forms of business cooperation

One of the most common forms of business cooperation between companies is the joint venture (JV). Different forms of joint venture are provided by Spanish legislation for carrying on a business between one or more partners.

a) Temporary Business Associations (UTEs)

Under Spanish law, UTEs are temporary business cooperation vehicles set up for a specified or unspecified period of time, for the purpose of carrying out a specific project or service. UTEs allow several companies to operate together in one common project. This form of association is very common for engineering and construction projects but can be used in other sectors as well.

UTEs are not corporations and have no legal personality. They are formed by notarial deed and are registered in the Spanish Ministry of Finance’s Special Register of UTEs. Furthermore, they may be also registered at the Commercial Registry. However, UTEs must comply with bookkeeping and accounting requirements similar to those of corporations.

UTEs are governed by Law 18/1982, on the Tax Regime of Groupings and Temporary Business Associations and Regional Industrial Development Companies (see Chapter 4, page 107).

b) Economic Interest Groupings (EIGs)

One of the main differences between UTEs and EIGs is that the latter are entities of a mercantile nature which have their own legal personality as separate legal entities.

Additionally, the EIG must be founded as a not-for-profit entity and may only be created in order to help its members achieve their objectives. They may not act on behalf of their members nor may they substitute for them in their operations. Consequently, the EIG is most commonly used to provide centralized services within the context of a wider association or group of companies, such as centralized purchasing, sales, information management or administrative services.

Spanish law lays down certain requirements for EIGs:

– They may not interfere with their partners’ decisions on personnel, finance or investment matters, and may not manage or control their activities.

– They may not hold, directly or indirectly, a portfolio of investments in other companies unless shares or holdings need to be acquired in order to achieve the EIG’s purpose. If this is the case, the shares or holdings must be immediately transferred to its partners.

– They must be formed by notarial deed.

EIG members are considered personally and severally liable for the entity’s debts, although secondarily to the EIG. Their main obligation is to contribute to the EIG’s capital, as agreed, and to share in its expenses.
There are two main governing bodies in an EIG: its members’ meetings and its managers. The managers are jointly liable with the EIG for all tax obligations accrued and for any damage caused unless they can prove that they acted with due diligence.

The European EIG (EEIG) also has its own legal personality and EEIGs incorporated in Spain share the main features contemplated under EEC Regulation 2137/85, which provides the basic governing rules for EEIGs.

c) Participation Account Agreement
(Silent partnership)

The nature of this form of business cooperation, which is close to an unincorporated partnership agreement, consists of the financial collaboration by virtue of which one or more entrepreneurs (nonmanaging investor-participant) provide with monetary or in kind contributions to another entrepreneur (managing participant) in order to share an interest in the performance of certain activities carried out by the managing participant. Such an interest refers to both the positive and negative results of that particular business (i.e. income or losses arising from the activity in question).

The contributions, whether monetary or in kind, do not qualify as capital contributions as such, but rather this agreement only creates a right in favor of the nonmanaging investors to share in the results of the activity concerned. Therefore, nonmanaging investors are not shareholders in the managing company.

As indicated in the Commercial Code, this type of agreement does not require any legal formality (public deed or filing with the Mercantile Register), although, in practice, both parties usually reflect it in a public deed, to be used, if necessary, as a proof before third parties.

Under current legislation, the remuneration obtained by the nonmanaging investors must be recorded as an expense in the accounts of the managing participant. This expense qualifies as a tax-deductible item, at 35%, for corporate income tax purposes.

Lastly, the execution of this agreement in a public instrument is regarded as a taxable event under the “Corporate Transactions” heading of the Transfer Tax Law.

d) Joint ventures through Spanish corporations or limited liability companies

Notwithstanding the comments made in other sections on the formation, basic characteristics and features of the governing bodies of corporations (“Sociedad Anónima”, S.A.) and limited liability companies (“Sociedad de Responsabilidad Limitada”, S.L.), we outline below the legal or bylaw requirements for the adoption of resolutions at the shareholders’ and board meetings of both types of company (as well as other general matters), since such companies are frequently used as the vehicle for joint ventures.
## Spanish Corporations Law

### a) General matters:

<table>
<thead>
<tr>
<th>Article</th>
<th>Minimum stake required</th>
<th>Minority Shareholders Rights in a Spanish S.A. and S.L.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 114.1</td>
<td>1%</td>
<td>Right to request the presence of a notary public at the Shareholders’ Meeting.</td>
</tr>
<tr>
<td>Art. 100</td>
<td>5%</td>
<td>Right to request the calling of a Shareholders’ Meeting at any time.</td>
</tr>
<tr>
<td>(*)</td>
<td>1 or 5%</td>
<td>Right to request the suspension of a resolution of the Shareholders’ Meeting when such resolution has been contested at Court.</td>
</tr>
<tr>
<td>Art. 134.2</td>
<td>5%</td>
<td>Right to oppose an extrajudicial settlement of an action for liability filed by the Company against directors.</td>
</tr>
<tr>
<td>Art. 134.4</td>
<td>5%</td>
<td>Right to file an action for liability of directors if such claim has not been filed by the company itself.</td>
</tr>
<tr>
<td>Art. 143</td>
<td>5%</td>
<td>Right to contest any resolution adopted by the Board of Directors.</td>
</tr>
<tr>
<td>Art. 205.2</td>
<td>5%</td>
<td>Right to request the Mercantile Registrar to appoint an auditor.</td>
</tr>
<tr>
<td>Art. 206</td>
<td>5%</td>
<td>Right to request the Court to revoke the appointment of an auditor.</td>
</tr>
<tr>
<td>Art. 269</td>
<td>5%</td>
<td>Right to request the Court to appoint a receiver to monitor the liquidation process should the company be dissolved for any reason.</td>
</tr>
<tr>
<td>Art. 112.2</td>
<td>25%</td>
<td>Right to request any kind of information regarding the Company to be disclosed at a Shareholders’ Meeting.</td>
</tr>
</tbody>
</table>

### b) Quorums of attendance and majorities required to adopt resolutions at Shareholders’ and Board Meetings of S.A. Corporations:

<table>
<thead>
<tr>
<th>Article</th>
<th>Minimum stake required</th>
<th>Quorum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 102</td>
<td>25%</td>
<td>Quorum at first call for Shareholders’ Meeting. No quorum is required at second call. In any case, a simple majority is required for the adoption of resolutions.</td>
</tr>
<tr>
<td>Art. 103.2</td>
<td>25%</td>
<td>Quorum at second call for meetings where special resolutions, such as issuance of debentures, increase or reduction of capital, re-registration, merger, spin-off or any other amendment of the bylaws, are adopted. If at such meetings shareholders representing less than 50% of the voting stock are present, a 2/3 majority is required for the adoption of resolutions.</td>
</tr>
<tr>
<td>Art. 103.1</td>
<td>50%</td>
<td>Quorum at first call for meetings where special resolutions, such as issuance of debentures, increase or reduction of capital, re-registration, merger, spin-off or any other amendment of the bylaws, are adopted.</td>
</tr>
<tr>
<td>Art. 140</td>
<td>50%</td>
<td>Required majority of votes cast by members present or represented for the adoption of resolutions by the Board of Directors.</td>
</tr>
<tr>
<td>Art. 141.2</td>
<td>66%</td>
<td>Required majority of votes cast by members of the Board of Directors present or represented for the permanent delegation of authority to the Executive Committee or in the managing director.</td>
</tr>
</tbody>
</table>

### c) Quorums and majority of votes required for the adoption of resolutions at Shareholders’ and Board Meetings of S.L. limited liability companies:

<table>
<thead>
<tr>
<th>Article</th>
<th>Minimum stake required</th>
<th>Quorum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 53.1</td>
<td>33%</td>
<td>Quorum for meetings the agenda of which includes resolutions not listed in articles 53.2 a) nor 53.2 b). In any case, a simple majority of the votes cast is required.</td>
</tr>
<tr>
<td>Art. 53.2 a)</td>
<td>50%</td>
<td>Required majority of votes for resolutions to increase or reduce capital or to amend the bylaws in any way.</td>
</tr>
<tr>
<td>Art. 53.2 b)</td>
<td>66%</td>
<td>Required majority of votes for resolutions such as re-registration, merger, spin-off, disapplication of the preemptive right in capital increases, removal of shareholders, etc.</td>
</tr>
<tr>
<td>Art. 57</td>
<td>50%</td>
<td>Required majority of votes cast by members present or represented for the adoption of resolutions by the Board of Directors.</td>
</tr>
<tr>
<td>Art. 57</td>
<td>66%</td>
<td>Required majority of votes cast by members of the Board of Directors present or represented for the delegation of authority to the Executive Committee or the managing director.</td>
</tr>
</tbody>
</table>

(*) According to Art. 727 of Law 1/2000, on Civil Procedure.
3. Distribution, agency, commission agency and franchising agreements

a) Distribution agreements

The different channels through which the supply of goods and services is routed to the consumers have been substantially developed, providing investors with various forms of distribution agreements. These agreements offer foreign investors a very interesting alternative to the organization of a company or branch or the entering into commercial cooperation agreements with previously existing entrepreneurs, for carrying out their operations in Spain, since the initial investment required is considerably low.

Several types of distribution agreement have emerged in practice. Please note that they are unregulated agreements that allow the parties broad discretion to decide on the contents of the contract, since there is no current specific legislation on this area.

Under a distribution agreement, one of the parties undertakes to achieve the most widespread distribution of a good or service belonging to the other party. Distributors are legal entities that form an intrinsic, albeit not truly integrated, part of the commercial network of the venture and are united by a business relationship and by the desire to boost sales.

Agreements in the Spanish distribution networks or system can be divided into the following broad categories:

– Commercial concession or exclusive distribution agreements

The supplier not only undertakes not to provide his products to more than one distributor within a specified territory but also not to sell those products himself within the territory of the exclusive distributor.

– Sole distribution agreements

The only difference from the aforementioned agreement is that, in the case of sole distribution agreements, the supplier reserves the right to supply the agreed products to users in the territory of the concession.

– Authorized distribution agreements under the selective distribution system

There are certain products which, because of their nature, require special treatment by distributors and sellers. The form of distribution used in both cases is called “selective distribution” because the distributors are carefully selected according to their capacity for handling technically complex products and for preserving a certain image or brand name.

As for the tax treatment of distribution agreements, nonresident manufacturers not established in Spain will record business income in Spain on the sale of their goods to distributors, and this income is typically not taxable in Spain (for more information, see the comments on taxation in Chapter 4). As for the taxation of individual or corporate distributors resident in Spain, see the comments on taxation in Chapter 4.

b) Agency agreements


Through an agency agreement, an individual or company, called an agent, undertakes, vis-à-vis another, to negotiate commercial acts or operations on behalf of
another, as an independent intermediary, on a continuous or regular and remunerated basis without assuming the risk and hazard of said operations, unless otherwise agreed.

The essential components of the agreement are as follows:

- The agent is an independent intermediary.
- The agent's duties vis-à-vis his principal must be continuous and regular.
- A commercial agent does not act in his own name and on his own behalf, but rather in the name and on behalf of one or more principals.
- Remuneration is essential, and therefore excludes unpaid agents from the scope of the law.

The agent must, of his own accord or through his employees, negotiate and, if required by contract, conclude the commercial acts or operations he is instructed to handle. Among other specific regulations it is provided that:

- It is the agent's general duty to act diligently and in good faith safeguarding the interests of his principal.
- An agent cannot subcontract his activities unless expressly authorized to do so by his principal.
- An agent is authorized to negotiate the acts or operations detailed in the agency agreement but can only conclude them on behalf of the principal when he is expressly authorized to do so.
- The agent may act on behalf of different principals, unless the related goods or services are identical or similar, in which case the consent of the existing principals is required.

There are three types of remuneration for an agent: a fixed sum, a commission, and any combination of the two. In the absence of any agreement, the remuneration (type and amount of percentage) is fixed in accordance with the commercial practices in the place where the agent carries on his activities. Where no such practice exists, the remuneration will be fixed taking into account all aspects of the operation.

The restraint of trade clause -restricting or limiting the activities that can be carried out by the agent once the agency agreement has been terminated- can never be valid for more than two years after termination of the agency agreement, as a general rule.

Regarding its tax treatment, the key issue is determining whether a commercial agent can be considered as a permanent establishment in Spain of the principal, and this will depend on whether or not there is a relationship of dependence between them. In connection with the taxation of residents and nonresidents in Spain, see our comments in Chapter 4.

c) Commission agency agreements

This is the mandate under which the authorized agent (commission agent) undertakes to perform or participate in a commercial act or agreement for the account of another (the principal).

Commission agents may act:

- in their own name, i.e. they are not direct representatives and they acquire rights against the contracting third parties and vice versa, and
- on behalf of their principal. This gives rise to the effects of direct representation and, accordingly, the principal acquires rights against third parties and vice versa.
The obligations of commission agents are as follows:

- To defend the interests of their principals as if such interests were their own and to perform their engagement personally. Commission agents may delegate their duties if they have authority to do so and may use employees under their responsibility.
- To account for amounts that they have received as commission and to reimburse any excess amount. They are required to return any unsold merchandise.
- In general, commission agents are not liable to their principal for the performance by third parties of the related agreements, although this risk is secured by a commission del credere under which commission agents are held personally liable for the performance by third parties of their obligations.
- Unless their principal consents, commission agents are barred from buying for their own account or for the account of another the goods that they have been instructed to sell, and from selling the goods that they have been instructed to buy.

The types of consideration which the principal undertakes to provide are, firstly, a commission and, secondly, lien and preference rights in favor of the commission agent as security for his claims against his principal.

As for the tax treatment of transactions under this type of agreement, a nonresident principal not established in Spain will record business income in Spain on the sale of his goods and this income is typically not taxable in Spain (for more information, see the comments on taxation in Chapter 4). As for the tax treatment of individual or corporate commission agents resident in Spain, see the comments on taxation in Chapter 4.

**d) Differences and similarities between agency agreements and commission agency agreements**

The main similarity between the two types of agreement is that, in both cases, an individual or legal entity undertakes to pay another compensation for arranging an opportunity for the former to conclude a legal transaction with a third party or for acting as the former's intermediary in concluding that transaction.

The main difference between them is that agency agreements involve an engagement without interruption, whereas commission agency agreements involve occasional engagements.

**e) Franchising**

Franchising is a system for marketing goods, services and/or technology. It is based on close, ongoing cooperation between enterprises that are legally and financially distinct and independent (the franchisor and its individual franchisees) and, under this system, the franchisor grants a right to, and imposes an obligation on, its individual franchisees to do business using the franchisor's concept.

In return for a direct or indirect financial consideration, this right entitles, and obliges, individual franchisees to use the brand name and/or trade or service mark for the goods or services, the know-how, the technical and business methods, the procedures and other intellectual property rights of the franchisor, backed by the ongoing provision of commercial and technical assistance under, and during
the term of, the relevant written franchising agreement between the parties.

With regards to any express rules governing these business dealings, Royal Decree 157/1992 only mentions that franchising agreements are authorized under the Antitrust Law if they meet the requirements stipulated in Commission Regulation (EEC) No. 4087/88, replaced by Regulation (EC) No. 2790/1999.

The current system of franchises was amended by Royal Decree 2485/1998, of April 13, which was designed to establish the basic conditions for carrying on franchise activity. The Royal Decree establishes, in the first place, what is described as commercial activity under a franchise, stipulating that it is a contract whereby one enterprise (the franchisor) assigns to another (the franchisee), in exchange for a direct or indirect financial consideration, the right to operate a franchise to market certain types of products or services, including a series of actions such as the following:

– Use of a common business name or sign and uniform presentation of the premises or means of transport forming the subject-matter of the contract;
– Transfer by the franchisor to the franchisee of know-how, and
– Continued provision by the franchisor to the franchisee of commercial or technical assistance during the term of the agreement.

Secondly, a public administrative Register of Franchisors has been established, which is hierarchically subordinate to the Directorate-General of Internal Trade of the Ministry of Economy. Individuals and legal entities must register with this Register before commencement of the activity to be assigned.

The main functions of the Register are as follows:

– To register franchisors with the Register.
– To update periodically the list of franchisors registered with the Register.
– To register the cancellations of franchisors agreed by the Autonomous Communities.
– To issue certificates of accreditation of the franchisors registered.
– To provide access to the information on the Register to the administrative bodies of the Autonomous Communities.
– To supply public information to interested persons.

With regard to the various types of agreement, the following can be mentioned: industrial franchising agreements (for the manufacture of goods), distribution franchising agreements (for the sale of goods) and service franchising agreements (relating to the provision of services).

The advantages offered by a franchising agreement include the fact that a franchising agreement is a form of product and/or service distribution that enables a uniform distribution network to be swiftly created with limited investment. Franchising also enables independent traders to set up installations more rapidly and with greater chances of success than if they did so themselves without the know-how and assistance of the franchisor, thereby increasing their competitiveness. The uniform nature of a franchised distribution network and the ongoing
cooperation between franchisor and franchisee ensure constant product and service quality.

The general requirements of the EC Regulation to be met by franchising agreements in order to avoid violating antitrust law are:

– The use of a common mark or other distinctive sign and the uniform presentation of premises, in order to preserve the unity of the network.

– The communication by the franchisor to the franchisee of secret, substantial and identified know-how.

– Ongoing provision of assistance by the franchisor.

Lastly, as regards the tax treatment of franchising agreements, the nature of the consideration paid by the franchisee to the franchisor should be analyzed since it could be considered as a royalty and as business income, or only as a royalty, depending on the different services rendered and rights granted (if royalties, they are taxed in Spain at 25% or at the reduced tax treaty rate, if any). For the tax treatment of the franchisee, see our comments on the taxation of resident entities (Chapter 4).
V. Incorporation of a Spanish corporation

The most common form of legal entity under Spanish mercantile law is the corporation ("Sociedad Anónima" - S.A.), and the second most common is the limited liability company ("S.L."). However, it should be noted that similar steps and expenses are involved for both legal structures.

1. Legal steps

The example given here is of the incorporation of an S.A. by means of cash contributions.

The formal act of incorporation takes place in the presence of a notary public, who executes the related public deed of incorporation (articles of incorporation). The capital stock must be fully subscribed and at least 25% paid in at the time of incorporation; the remaining 75% must be paid in within the period stipulated in the bylaws. The minimum capital stock required is €60,101 (compared with the much lower figure of €3,005 for an S.L., which must be fully paid in on formation).

The basic requirements for forming a corporation are as follows:

– Issuance by the Spanish Central Mercantile Register of a certificate of clearance for use of the name of the new company. This step should precede all others, so as to have assurance that the proposed name can in fact be used.

– Execution of the notarized public deed of incorporation.

– Evidence of the identity of the founder shareholders.

The notary will require the persons who appear before him for this purpose to exhibit: evidence of their identity; the power of attorney (if applicable) to represent a third party on whose behalf any of them appears; evidence of payment and method of contribution (if applicable); the name clearance certificate from the Mercantile Register (see above); and the form (for signature by the notary, if applicable) to declare subsequently the foreign investment to the DGCI’s Foreign Investment Register (see previous sections). It is also necessary to provide the notary with the bylaws of the company.

If a shareholder is represented at the act of incorporation, the power of attorney to be used must be sufficient and, if issued abroad, must be duly legalized. There are two main procedures for such legalization:

- Execution of the power of attorney in the presence of the Spanish consul in the foreign investor’s country. The foreign investor would have to appear before the Spanish consul, giving evidence of his identity and granting the related power of attorney. If a company, rather than an individual, is the foreign shareholder, apart from his identity, the person appearing before the consul must evidence his power to execute, in the name and on behalf of the shareholder, the power of attorney to the person designated. The Spanish consul will demand presentation of whatever documentation he considers necessary, and will proceed to execute a
Practical guidelines

- The second procedure for legalization is similar to the first one, but is applicable when a foreign public authenticating officer is involved. Thus, the foreign investor would appear before the authenticating officer, giving evidence of his identity and granting the related power of attorney. If the foreign investor is a company, its representative would execute the power of attorney in the presence of the public authenticating officer, who would certify the document, and who would have to satisfy himself as to the identity and capacity of the representative of the foreign investor to grant the power of attorney. The signature of the foreign authenticating officer would also have to be subsequently legalized (either by the “apostille” procedure approved by The Hague Convention of October 5, 1961, when applicable, or by a Spanish consul abroad). Under this second procedure, the power would normally be executed in the language of the authenticating officer who attests to the act. For this reason, it would be necessary to subsequently prepare an official translation into Spanish.

− Evidence of payment can be provided in the form of appropriate bank documentation for delivery to the notary attesting to the act of incorporation of the company.

− Assignment of a tax identification number to the new company. This is a necessary step for registration of the company in the Mercantile Register. This step (which involves no cost) consists of filing a special form (also used for VAT purposes) with the competent tax authorities. A provisional number is granted automatically. Once the company has been registered in the Mercantile Register, it must obtain the definitive tax identification number within a maximum period of six months from the issuance of the provisional number.

− Payment of transfer tax (see 2. below).

A special form must be filed within a maximum period of 30 days from the act of incorporation. Again, this is a necessary requirement for registration of the company in the Mercantile Register.

− Registration in the Mercantile Register. Once the above-mentioned steps have been completed, the public deed of incorporation of the company is delivered to the Mercantile Register for formal registration of the company.

− Registration of the company for the purposes of the business activities tax. A special form must be filed with the competent tax authorities and the related tax must be paid (see 2. below). This step must be completed at least ten days before the company starts its activities.

− Registration of the company for VAT purposes.

− Payment of opening license tax (see 2. below).

− Registration of the company for Spanish social security and occupational accident insurance purposes, and registration of the employees for social security purposes.

− Compliance with certain procedural formalities at the local office of the Ministry of Labor.
2. Costs

- Transfer tax at 1% on the capital amount.
- Fees of the notary public handling the incorporation, which are charged on a sliding scale based on the capital amount. For guidance purposes, the official rates amount to €90 for the first €6,010, applying afterwards a range from 0.45% down to 0.03% for capital in excess of €601,012, and up to €6,010,121. For the amount exceeding €6,010,121, the Notary will receive the amount that is freely agreed upon by the granting parties. Royal Decree-Law 6/2000 establishes the possibility of a 10% discount on the notarial fees in any case.
- Fees for registering the company in the local Mercantile Register, following its incorporation in the presence of the notary. Here, too, there is a sliding scale of officially approved charges ranging from 0.2% down to 0.005% for capital amounts in excess of €6,010,121. In any case the total amount of the fee cannot exceed €2,181. As in the case of notaries’ fees, Mercantile Register fees were reduced by 5%.
- Registration of the company for business activities tax purposes (see 1. above). The applicable regulations allow the Administration to levy this tax at inception and annually thereafter.
- Opening license tax (see 1. above): a one-time municipal levy, ordinarily of a relatively small amount.
- Other expenses (e.g. professional fees), which are not readily quantifiable.
VI. Formation of a branch

In general terms, the requirements, procedural formalities and costs of forming a branch are very similar to those for the incorporation of a subsidiary. The main legal steps and costs of forming a branch are summarized below, highlighting the differences with respect to the incorporation of a subsidiary.

I. Legal steps and costs

– Subsequent declaration to the DGCI in certain cases (see Sections III and V for more detailed information). In some cases, prior declaration is required.

– Execution of the notarized public deed of formation in the presence of a Spanish notary public. This formality consists of notarizing the resolution to form the branch adopted previously by the parent company’s competent body.

In addition, the notary public will require not only documentation similar to that required in the case of a subsidiary (i.e. evidence of the identity of the person who appears before him; his power of attorney to represent the parent company; evidence of the payment and method of contribution (if applicable); and the form, where applicable, to declare of the foreign investment to the DGCI’s Foreign Investment Register), but also evidence of the existence of the parent company, its bylaws, the names and personal data of its directors, as well as the resolution adopted by the competent body of the parent company to form a branch.

– Assignment of a tax identification number (*).

– Payment of transfer tax (exempt if certain requisites are met) (*).

– Registration in the Mercantile Register (*).

– Registration of the branch for business activities tax purposes (*).

– Registration of the branch for VAT purposes (*).

– Payment of opening license tax (*).

– Registration for social security purposes (*).

– Compliance with the labor formalities (*).

2. Branch vs. subsidiary

Summarized below are the main differences between the two types of entity that should be taken into consideration. It should be noted that most of the differences arise from the matters discussed in previous chapters.

From a Spanish legal standpoint, the main differences between a branch and a subsidiary are as follows:

– Minimum capital: an S.A. must have a minimum capital of € 60,101 (€ 3,005 for S.L.’s, € 60,101 for mixed partnerships, and no legal minimum for general partnerships). A branch does not require any minimum assigned capital.

– A subsidiary is a separate legal entity, whereas a branch is not a legal entity and has the same legal identity as its parent company.

– The liability of the shareholders of a subsidiary incorporated as an S.A. (or S.L.) for the debts of the subsidiary is limited to the amount of the capital contributions they make or undertake to make, with the exceptions analyzed in Chapter 3. In the case of a branch, there is no limit to the parent company’s liability.

(*) As in the case of a subsidiary.
From a tax standpoint, as stated earlier, both the branch and the subsidiary are, in general terms, taxed under Spanish corporate income tax at 35% on their net income, but there are some other aspects that should be mentioned, among others:

– Remittance of profits: The remittance of branch profits and the distribution of a subsidiary’s dividend to a non-EU parent company resident in a nontreaty country are taxable in Spain at the rate of 15%; if the parent company is EU-resident, the remittance or distribution is normally tax-exempt.

If the parent company is resident in a non-EU country with which Spain does have a tax treaty, the dividends would be taxable at the reduced treaty rate and the remittance of branch profits would, under most of the treaties, not be taxable in Spain.

– Share in parent company overheads. In practice, it is normally easier for these expenses (if any) to qualify as deductible in the case of a branch than in the case of a subsidiary.

– Interest on loans from a foreign parent company to its Spanish branch is not tax-deductible for the branch. By contrast, the interest on loans from the shareholders of a subsidiary is normally tax-deductible for the subsidiary, provided that the transaction is valued on an arm’s-length basis.

3. Computation of Spanish corporate income tax

Below is a very simple example of the computation of Spanish corporate income tax on the profit obtained by a Spanish subsidiary or by the branch in Spain of a foreign company.

<table>
<thead>
<tr>
<th>Parent company in</th>
<th>EU country (1)</th>
<th>Treaty country</th>
<th>Nontreaty country</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subsidiary:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit of Spanish subsidiary</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Spanish income tax (35%) (2)</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Dividends</td>
<td>65</td>
<td>65</td>
<td>65</td>
</tr>
<tr>
<td>Withholding tax on dividends</td>
<td>– (4)</td>
<td>6.5 (5)</td>
<td>9.75 (3)</td>
</tr>
<tr>
<td>Total tax in Spain</td>
<td>35</td>
<td>41.5</td>
<td>44.75</td>
</tr>
<tr>
<td><strong>Branch:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit of Spanish branch</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Spanish income tax (35%)</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Profit remitted to the parent company</td>
<td>65</td>
<td>65</td>
<td>65</td>
</tr>
<tr>
<td>Withholding tax</td>
<td>– (4)</td>
<td>– (4)</td>
<td>9.75 (3)</td>
</tr>
<tr>
<td>Total tax in Spain (5)</td>
<td>35</td>
<td>35</td>
<td>44.75</td>
</tr>
</tbody>
</table>

(1) Spain has tax treaties in force with all EU countries.
(2) See special tax rate for small and medium-sized companies in Chapter 4.
(3) Withholding tax rate = 15%.
(4) Exempt, provided certain conditions are met.
(5) The withholding tax rate on dividends used in this example is 10% (the most common rate in the tax treaties entered into by Spain).
(6) The withholding tax rate on dividends will apply if provided for in the corresponding tax treaty (e.g. the U.S., Canada and Brazil).
(7) Branch profit tax will apply if provided for in the corresponding tax treaty (e.g. the U.S., Canada and Brazil).
(8) Branch profit 15%.
(9) Subject to the provisions of the corresponding tax treaty.
VII. Acquisition of shares of an existing Spanish corporation

1. Legal steps

– Subsequent declaration of the acquisition to the DGCI is required (See section III of this Chapter).

– Transfers of shares in a limited liability company must, in all cases, be attested to by an authenticating officer; transfers of shares in Spanish corporations must be attested to by an authenticating officer where so required by Spanish legislation or if so agreed on by the parties. The authenticating officer will require evidence of the following: identity of the parties involved and, if applicable, the related powers of attorney (if one or both of them act on behalf of another individual or entity); the seller’s title to the shares and the appropriate forms, if applicable, to declare the foreign investment to the DGCI’s Foreign Investment Register.

– Payment of transfer tax, if applicable: As described in the transfer tax section, transfers of shares of companies whose assets consist mainly of Spanish real estate are, in certain cases, subject to transfer tax at 6% (a 7% rate is applied in certain Autonomous Communities).

– In the case of a Spanish consul abroad, a similar sliding scale tied to the price fixed is applicable. For guidance purposes, there is a minimum fee for amounts below € 1,202 and then rates that range from 0.75% and 0.05% for amounts in excess of € 300,506.

– No transfer tax arises on this transaction, except in the cases mentioned above.

3. Special considerations for acquisitions of shares of Spanish companies between nonresidents

Acquisitions of shares of Spanish companies between nonresidents that have already taken place abroad may be formalized before a Spanish authenticating officer.

The documents to be delivered to the Spanish authenticating officer formalizing the transaction for Spanish purposes in certain cases include the special forms on which the investments and corresponding divestment are declared to the DGCI’s Foreign Investment Register.

2. Costs

– Fees of the authenticating officer attesting to the transaction: in the case of a notary public, the scale applicable for the incorporation of a subsidiary or the formation of a branch is also applicable here.
I. Legal steps

– General

- Subsequent declaration is required when the amount exceeds € 3,005,060 (prior declaration to the DGCI in certain cases).

- Execution of the notarized public deed of purchase.

The acquisition must be attested to by a Spanish notary public or by a Spanish consul abroad, to whom it is necessary to show evidence of: the identity of the parties and, if applicable, the related powers of attorney; the seller's title to the property; the special form (for his signature) to declare the investment to the DGCI's Foreign Investment Register; and the effective payment of the investment.

- Payment of transfer tax or VAT and stamp tax.

If the vendor is a private individual who is not deemed to be a property developer, transfer tax at 6% would be applicable regardless of the nature of the real estate to be sold (higher rates are applied in certain Autonomous Communities).

If the vendor is a company or an individual developer, the following cases can arise:

* Transfers of buildable land and first delivery of buildings: VAT at 16% (7% if the building is for housing) plus stamp tax at 0.5%. The stamp tax rate can be modified by the Autonomous Communities.

- Registration of the property in the Official Property Register.

This step should be completed as soon as the public deed of purchase is notarized, in order to ensure that the acquirer's property rights are duly protected.

– If the real estate is located in the Canary Islands (where VAT is not applicable), the following would be applicable:

- If the vendor is a developer (individual or company) the following cases can arise:

  * Transfer of buildable land and first delivery of buildings: Canary Islands Indirect General Tax (CIIGT) at 5% plus stamp tax at 0.5% (regardless of the nature of the real estate).

  * Transfer of rural (unbuildable) land and second or subsequent delivery of buildings: Transfer tax or CIIGT. CIIGT is applicable if the acquiror is an entrepreneur or professional, and the vendor chooses to pay CIIGT rather than transfer tax.

- If the vendor (individual or company) is not a developer: Transfer tax (regardless of the nature of the real estate).

(VIII. Acquisition of Spanish real estate)

Although there are few differences. Among others, Valencia and Madrid have enforced their own legislation over this subject (Valencia: 1% or 0.1% rate on habitual abode; Madrid: 0.4 to 1% in general. 1.5% when the vendor chooses to pay VAT and this choice is contained in the public deed of execution).
2. Costs

- Notary public fees (as in previous sections).

- Transfer tax or VAT and stamp tax (see above).

- Property Register fees. Here, again, a sliding scale is applicable, ranging from 0.4% (only for the first € 6,010) down to 0.02% for amounts exceeding € 601,012.

- Municipal tax on the increase in urban land value. This tax is optional for municipalities and is based on the deemed increase in the value of urban land from the date of the last sale to the date of the current sale. Although this tax is payable by the seller, the authorities claim it from the purchaser. The amount of this tax depends (among other circumstances) on where the land is located.

- Property tax. An annual tax (“Impuesto sobre Bienes Inmuebles”) is levied on the cadastral value of the real estate from the date of acquisition.
Useful addresses

I. Relevant institutions
II. Other institutions
III. Stock exchanges and National Securities and Exchange Commission
IV. Banks
V. Autonomous Community development companies
VI. Principal Spanish economic and trade offices abroad
I. Relevant institutions

SECRETARÍA DE ESTADO DE COMERCIO Y TURISMO
(SECRETARIAT OF STATE FOR TRADE AND TOURISM)
Paseo de la Castellana, 162
28071 Madrid
Ph: 00 34 (91) 349.35.00
Fax: 00 34 (91) 457.21.03
E-Mail: buzonoicial@sectyp.sscm.mcx.es
Web: www.mcx.es

INSTITUTO ESPAÑOL DE COMERCIO EXTERIOR (ICEX)
(SPANISH INSTITUTE FOR FOREIGN TRADE)
Paseo de la Castellana, 14-16
28046 Madrid
Ph: 00 34 (91) 349.61.00
Fax: 00 34 (91) 577.07.50
E-Mail: icex@icex.es
Web: www.icex.es

DIRECCIÓN GENERAL DE COMERCIO E INVERSIONES
(GENERAL DIRECTORATE FOR TRADE AND INVESTMENTS)
Paseo de la Castellana, 162
28071 Madrid
Ph: 00 34 (91) 349.36.56
Fax: 00 34 (91) 349.60.08
Web: www.mcx.es

SUBDIRECCIÓN GENERAL DE INCENTIVOS REGIONALES
(GENERAL SUBDIRECTORATE OF REGIONAL INCENTIVES)
Castelló, 117 (2nd fl.)
28006 Madrid
Ph: 00 34 (91) 545.08.09
Fax: 00 34 (91) 545.09.08
Web: www.mineco.es

DIRECCIÓN GENERAL DE TRIBUTOS
(GENERAL DIRECTORATE OF TAXES)
C/ Alcalá, 5
28014 Madrid
Ph: 00 34 (91) 595.80.00
Fax: 00 34 (91) 595.84.54
Web: www.minhac.es

DIRECCIÓN GENERAL DEL TESORO Y POLÍTICA FINANCIERA
(GENERAL DIRECTORATE OF THE TREASURY AND FINANCIAL POLICY)
Paseo del Prado, 6
28014 Madrid
Ph: 00 34 (91) 209.95.00
Fax: 00 34 (91) 209.97.45
Web: www.mineco.es

CENTRO DE DESARROLLO TECNOLÓGICO INDUSTRIAL (CDTI)
(TECHNOLOGICAL AND INDUSTRIAL DEVELOPMENT CENTER)
C/ Cid, 4
28001 Madrid
Ph: 00 34 (91) 581.55.00
Fax: 00 34 (91) 581.55.84
E-Mail: info@cdti.es

DIRECCIÓN GENERAL DE POLÍTICA DE LAS PEQUEÑAS Y MEDIANAS EMPRESAS
(GENERAL DIRECTORATE OF SMALL BUSINESS POLICY)
C/ María de Molina, 50, (2nd fl.)
28071 Madrid
Ph: 00 34 (91) 545.08.39
Fax: 00 34 (91) 545.08.90
E-Mail: infopyme@ipyme.org
Web: www.ipyme.org
Ph. info: 900 190 092
DIRECCIÓN GENERAL DE TRABAJO
(GENERAL DIRECTORATE OF LABOR)
C/ Pío Baroja, 6
28009 Madrid
Ph: 00 34 (91) 363.18.00
Fax: 00 34 (91) 363.20.38
Ph. info: 00 34 (91) 363.18.85
Web: www.mtab.es

DIRECCIÓN GENERAL DE ORDENACIÓN
DE LAS MIGRACIONES
(GENERAL DIRECTORATE OF
MIGRATION)
Paseo del Pintor Rosales, 44-46
28008 Madrid
Ph: 00 34 (91) 363.70.00
Fax: 00 34 (91) 363.90.58
Web: www.mtab.es/migraciones/

DIRECCIÓN GENERAL DE ASUNTOS
CONSULARES Y PROTECCIÓN DE LOS
ESPAÑOLES EN EL EXTRANJERO
(GENERAL DIRECTORATE OF CONSULAR
AFFAIRS)
C/ General Pardiñas, 55
28006 Madrid
Ph: 00 34 (91) 379.17.00/379.16.10
Fax: 00 34 (91) 577.70.34
Web: www.mae.es

AGENCIA ESTATAL DE ADMINISTRACIÓN
TRIBUTARIA: DPTO. DE ADUANAS E
IMPUESTOS ESPECIALES
(STATE TAX ADMINISTRATION AGENCY:
CUSTOMS AND TARIFFS DEPARTMENT)
Avda. Llano Castellano, 17
28034 Madrid
Ph: 00 34 (91) 728.94.50
Fax: 00 34 (91) 358.18.52
Web: www.aeat.es

MINISTERIO DE AGRICULTURA, PESCA
Y ALIMENTACIÓN
(MINISTRY OF AGRICULTURE, FISHING
AND FOOD)
Paseo de la Infanta Isabel, 1
28071 Madrid
Ph: 00 34 (91) 347.50.00
Fax: 00 34 (91) 347.54.95
E-Mail: informac@mapya.es
Web: www.mapya.es

DIRECCIÓN GENERAL
DE INVESTIGACIÓN
(DIRECTORATE GENERAL OF RESEARCH)
Paseo de la Castellana, 160
28071 Madrid
Ph: 00 34 (91) 349.40.00
Fax: 00 34 (91) 457.80.66
E-Mail: info@mcyt.es
Web: www.mcyt.es

INSTITUTO NACIONAL DE EMPLEO
(NATIONAL EMPLOYMENT INSTITUTE
- INEM)
C/ Condesa de Venadito, 9
28027 Madrid
Ph: 00 34 (91) 585.98.88
Fax: 00 34 (91) 377.58.81
Web: www.inem.es

COMPAÑÍA ESPAÑOLA DE
FINANCIACIÓN DEL DESARROLLO
(COFIDES)
C/ Príncipe de Vergara, 132
28002 Madrid
Ph: 00 34 (91) 745.44.80/562.60.08
Fax: 00 34 (91) 561.00.15
E-Mail: cofides@cofides.es
Web: www.cofides.es
II. Other institutions

CONSEJO SUPERIOR DE CÁMARAS DE COMERCIO, INDUSTRIA Y NAVEGACIÓN DE ESPAÑA (CSC)
(SUPREME COUNCIL OF CHAMBERS OF COMMERCE, INDUSTRY AND NAVIGATION OF SPAIN)
C/ Velázquez, 157
28002 Madrid
Ph: 00 34 (91) 590.69.00
Fax: 00 34 (91) 590.69.08/10
E-Mail: csc@cscamaras.es
Web: www.camaras.org

CEOE
(THE SPANISH EMPLOYERS CONFEDERATION)
C/ Diego de León, 50
28006 Madrid
Ph: 00 34 (91) 566.34.00
Fax: 00 34 (91) 562.80.23
E-Mail: ceoe@ceoe.es
Web: www.ceoe.es

CEPYME
(THE SPANISH SMALL BUSINESS CONFEDERATION)
C/ Diego de León, 50
28006 Madrid
Ph: 00 34 (91) 411.61.61
Fax: 00 34 (91) 564.52.69
E-Mail: elempresario@cepyme.es
Web: www.cepyme.es

AGENCIA ESPAÑOLA DE COOPERACIÓN INTERNACIONAL (AECI)
(SPANISH AGENCY FOR INTERNATIONAL COOPERATION)
Avda. Reyes Católicos, 4
28040 Madrid
Ph: 00 34 (91) 583.81.00
Fax: 00 34 (91) 583.83.11/583.83.10
E-Mail: infoaeci@aeci.es
Web: www.aeci.es
III. Stock exchanges and National Securities and Exchange Commission

BOLSA DE MADRID  
(MADRID STOCK EXCHANGE)  
Plaza de la Lealtad, 1  
28014 Madrid  
Ph: 00 34 (91) 589.26.00  
Fax: 00 34 (91) 589.12.52  
E-Mail: info@bolsamadrid.es

BOLSA DE BARCELONA  
(BARCELONA STOCK EXCHANGE)  
Paseo de Gracia, 19  
08007 Barcelona  
Ph: 00 34 (93) 401.35.55  
Fax: 00 34 (93) 401.36.25  
E-Mail: informacion@borsabcn.es

BOLSA DE BILBAO  
(BILBAO STOCK EXCHANGE)  
C/ José María Olábarri, 1  
48001 Bilbao  
Ph: 00 34 (94) 403.44.00  
Fax: 00 34 (94) 403.44.30  
E-Mail: bolsabilbao@sarenet.es

BOLSA DE VALENCIA  
(VALENCIA STOCK EXCHANGE)  
C/ Libreros, 2-4  
46002 Valencia  
Ph: 00 34 (96) 387.01.00  
Fax: 00 34 (96) 387.01.33/60  
E-Mail: webmaster@bolsavalencia.es

COMISIÓN NACIONAL DEL MERCADO DE VALORES (CNMV)  
(SPANISH NATIONAL SECURITIES MARKET COMMISSION)  
P° de la Castellana, 19  
28046 Madrid  
Ph: 00 34 (91) 585.15.00  
Fax: 00 34 (91) 319.33.73  
E-Mail: dap@cnmv.es  
Web: www.cnmves
IV. Banks

BANCO DE ESPAÑA
(BANK OF SPAIN)
C/ Alcalá, 50
28014 Madrid
Ph: 00 34 (91) 338.50.00
Fax: 00 34 (91) 531.00.59
E-Mail: webmaster@bde.es
Web: www.bde.es

INSTITUTO DE CRÉDITO OFICIAL (ICO)
(OFFICIAL CREDIT INSTITUTE)
Paseo del Prado, 4
28014 Madrid
Ph: 00 34 (91) 592.16.00
Fax: 00 34 (91) 592.17.00
E-Mail: www.ico.es
V. Autonomous Community development companies

ANDALUCÍA
INSTITUTO DE FOMENTO DE ANDALUCÍA (IFA)
C/ Torneo, 26
41002 Sevilla
Ph: 00 34 (95) 503.07.00
Fax: 00 34 (95) 503.07.75/80
Web: www.ifa.es

ARAGÓN
INSTITUTO ARAGONÉS DE FOMENTO (IAF)
C/ Teniente Coronel Valenzuela, 9
50004 Zaragoza
Ph: 00 34 (976) 70.21.01/00
Fax: 00 34 (976) 70.21.03
Web: www.iaf.es

ASTURIAS
INSTITUTO DE DESARROLLO ECONÓMICO DEL PRINCIPADO DE ASTURIAS (IDEPAR)
Parque Tecnológico de Asturias
33420 Llanera (Asturias)
Ph: 00 34 (985) 98.00.20
Fax: 00 34 (985) 26.44.55
Web: www.ifrasturias.com

BALEARIC ISLANDS
OFICINA DE PROMOCIÓN INDUSTRIAL
C/ Reina Constanza, s/n
07006 Palma de Mallorca
Ph: 00 34 (971) 17.65.07
Fax: 00 34 (971) 17.61.54
Web: www.idi.es

BASQUE COUNTRY
SOCIEDAD PARA LA PROMOCIÓN Y RECONVERSIÓN INDUSTRIAL, S.A. (SPRI)
C/ Gran Vía, 35-3º
48009 Bilbao
Ph: 00 34 (94) 403.70.00
Fax: 00 34 (94) 403.70.22
Web: www.spri.es

CANARY ISLANDS
SOCIEDAD CANARIA DE FOMENTO ECONÓMICO, S.A. (SOFESA)
CONSEJERÍA DE ECONOMÍA, HACIENDA Y COMERCIO
C/ Nicolás Estévez, nº 30-2º
35008 Las Palmas de Gran Canaria
Ph: 00 34 (928) 30.74.56
Fax: 00 34 (928) 30.74.67
Web: www.invertirencanarias.com
ZEC TENERIFE
Avenida José Antonio, 3 - 5º
Edificio Mapfre
38003 - Santa Cruz de Tenerife
Ph: 00 34 (922) 29.80.10
Fax: 00 34 (922) 27.80.63
Web: www.zec.org

CANTABRIA
SOCIEDAD PARA EL DESARROLLO REGIONAL DE CANTABRIA, S.A., (SODERCAN)
C/ Eduardo Benot, 5-1º-C
39003 Santander
Ph: 00 34 (942) 31.21.00
Fax: 00 34 (942) 21.70.11/27.32.40
Web: www.sodercan.com
CASTILLA LA MANCHA
D.G. PROMOCIÓN Y DESARROLLO EMPRESARIAL
Avd. Río Estenilla, s/n
45071 Toledo
Ph: 00 34 (925) 26.98.00/02
Fax: 00 34 (942) 26.78.72
Web: www.jccm.es

CASTILLA – LEÓN
CONSEJERÍA DE INDUSTRIA.
AGENCIA DE DESARROLLO ECONÓMICO (ADE)
C/ Duque de la Victoria, 16-2º
47001 Valladolid
Ph: 00 34 (983) 36.12.33
Fax: 00 34 (983) 36.12.44
Web: www.jcyl.es/ade

CATALUÑA
CENTRO DE INNOVACIÓN Y DESARROLLO EMPRESARIAL (CIDEM)
C/ Provenza, 339-5º
08037 Barcelona
Ph: 00 34 (93) 476.72.84/00
Fax: 00 34 (93) 476.73.03/00
Web: www.cidem.com

CONSORCIO DE PROMOCIÓN COMERCIAL DE CATALUÑA (COPCA)
Paseo de Gracia, 94
08008 Barcelona
Ph: 00 34 (93) 484.96.27
Fax: 00 34 (93) 484.96.66
E-mail: info@copca.com
Web: www.copca.com/infoexport

EXTREMADURA
SOCIEDAD DE FOMENTO INDUSTRIAL (SOFIEX)
Avda. José Fernández López nº 4
06800 Mérida (Badajoz)
Ph: 00 34 (924) 31.91.59/79
Fax: 00 34 (924) 31.92.12
Web: www.sofiex.es

GALICIA
INSTITUTO GALLEGO DE PROMOCIÓN ECONÓMICA (IGAPE)
Complejo Administrativo San Lázaro, s/n
15703 Santiago de Compostela (La Coruña)
Ph: 00 34 (981) 54.11.80
Fax: 00 34 (981) 55.11.90
E-Mail: dg@igape.es
Web: www.igape.es

LA RIOJA
CONSEJERÍA DE HACIENDA Y PROMOCIÓN ECONÓMICA.
AGENCIA DE DESARROLLO ECONÓMICO DE LA RIOJA
C/ Muro de la Mata, 13-14
26001 Logroño
Ph: 00 34 (941) 29.15.00
Fax: 00 34 (941) 29.15.44/37
E-Mail: ader@ader.es
Web: www.ader.es

MADRID
INSTITUTO MADRILEÑO DE DESARROLLO ECONÓMICO (IMADE)
José Abascal, 57-2º
28003 Madrid
Ph: 00 34 (91) 399.74.00
Fax: 00 34 (91) 399.74.59
Web: www.investinmadrid.com
Web: www.madrid.org/imade
**MURCIA**

**INSTITUTO DE FOMENTO DE LA REGIÓN DE MURCIA**
Avda. de la Fama, 3
30003 Murcia
Ph: 00 34 (968) 36.22.07
Fax: 00 34 (968) 36.61.63
Web: www.murcia-inversiones.com

**NAVARRA**

**SOCIEDAD DE DESARROLLO DE NAVARRA (SODENA)**
Avda. Carlos III, 36, 1º Dcha.
31003 Pamplona
Ph: 00 34 (948) 42.19.42
Fax: 00 34 (948) 42.19.43
Web: www.sodena.com

**VALENCIA**

**INSTITUTO VALENCIANO DE EXPORTACIÓN (IVEX)**
Plaza América, 2, 7º
46004 Valencia
Ph: 00 34 (96) 197.15.00
Fax: 00 34 (96) 197.15.40
Web: www.ivex.es
VI. Principal Spanish economic and trade offices abroad

ABIDJAN (Ivory Coast, Liberia, Sierra Leone, Guinea-Conakry, Niger, Burkina Faso)
Immeuble Alliance, Porte A 3ème étage
Av. Terrason de Fougères
04 P. O. Box 957
Abidjan 04 (Ivory Coast)
Ph: 00 (225) 20 21.32.92/25.29/70.72
Fax: 00 (225) 20 21.28.48
E-Mail: buzón.oficial@abidjan.ofcomes.mx.es

AMMAN (Jordan)
Abed El Hamid Sharaf St.
Ahmed Abbas and Sons Building
P. O. Box 927148
Amman - 11110 (Jordan)
Ph: 00 (962-6) 560.12.81/568.92.05
Fax: 00 (962-6) 560.31.61
E-Mail: buzón.oficial@amman.ofcomes.mx.es

ANKARA (Azerbaijan)
And Sokak, 8/14
06680 Cankaya
Ankara (Turkey)
Ph: 00 (90-312) 468.70.47/468.70.48/468.70.49
Fax: 00 (90-312) 468.69.75
E-Mail: buzón.oficial@ankara.ofcomes.mx.es

ALGIERS (Algeria)
46, Rue Mohamed Chabane
16030 El-Biar Algiers (Algeria)
Ph: 00 (213-21) 92.26.97/92.27.11
Fax: 00 (213-21) 92.26.90
E-Mail: buzón.oficial@algiers.ofcomes.mx.es

ASUNCIÓN (Paraguay)
Presid. Franco Esq. Ayolas
AYFRA Building, Tower B, 8th fl.
Asuncion (Paraguay)
Ph: 00 (595-21) 498.441/442
Fax: 00 (595-21) 498.443
E-Mail: buzón.oficial@asuncion.ofcomes.mx.es

ATHENS (Greece)
Vasileos Konstantinou, 44
Athens 116-35 (Greece)
Ph: 00 (30-10) 724.71.95 / 724.73.90
Fax: 00 (30-10) 729.17.36
E-Mail: buzón.oficial@atenas.ofcomes.mx.es

BAGHDAD (Iraq)
Hay Babil
Area 929 Street 5, House nº 38
Bagdad (Iraq)
Ph: 00 (964-1) 718.57.13/718.62.11/
(873).762.243.460 (satellite)
Fax: 00 (873) 600.053.771 (satellite)
00 (964-1) 718.73.99

BANGKOK (Thailand, Laos, Cambodia, Myanmar)
26th Floor; Serm-Mit Tower
159 Sukhumvit 21 Road
10110 Bangkok (Thailand)
Ph: 00 (66-2) 258.90.20/258.90.21/258.97.45/
260.84.00
Fax: 00 (66-2) 258.99.90
E-Mail: buzón.oficial@bangkok.ofcomes.mx.es

BEIJING (Mongolia, China and North Korea)
14, Liang Ma he Naniu, 2-2-2
100600 Beijing (China)
Ph: 00 (86-10) 65.32.20.72/31.03
Fax: 00 (86-10) 65.32.11.28
E-Mail: buzón.oficial@beijing.ofcomes.mx.es

BEIRUT (Lebanon)
Tabaris, Place Gebran Tueini
Ashada Bldg. 4th Floor
Beirut (Lebanon)
Ph: 00 (961-1) 327.500/325.633/325.622
Fax: 00 (961-1) 333.203
E-Mail: buzón.oficial@beirut.ofcomes.mx.es

Useful addresses
CARACAS (Venezuela, Netherlands Antilles, Barbados, Antigua, Bahamas, Suriname, Bermuda, Dominica, Grenada, Saint Kitts & Nevis, Saint Vincent & The Grenadines, St. Lucia, Guyana, Trinidad and Tobago, and Aruba)
Avda. Francisco de Miranda
Los Palos Grandes
P. O. Box. 61394 (1060-A) 1062 Caracas (Venezuela)
Ph: 00 (58212) 284.92.77/285.58.48/285.79.26
Fax: 00 (58-212) 284.99.64
E-Mail: buzon.oficial@caracas.ofcomes.mcx.es

CASABLANCA (Morocco)
6 Rue H’Saine Ramdan
Casablanca (Morocco)
Ph: 00 (212-22) 31.31.18/54.33.06
Fax: 00 (212-22) 31.32.70
E-Mail: buzon.oficial@casablanca.ofcomes.mcx.es

CHICAGO (USA) (Illinois, Indiana, Iowa, Minnesotta, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Wisconsin, Kentuckty, Kansas, Michigan)
500 N. Michigan Av. Room 1500
Chicago, Illinois 60611 (USA)
Ph: 00 (1-312) 644.11.54/55
Fax: 00 (1-312) 527.55.31
E-Mail: buzon.oficial@chicago.ofcomes.mcx.es

COPENHAGEN (Denmark, Lithuania)
Vesterbrogade, 10-39 
1620 Copenhagen V (Denmark)
Ph: 00 (45-33) 21.33.88/21.94.98/21.97.56
Fax: 00 (45-33) 21.33.90
E-Mail: buzon.oficial@copenhague.ofcomes.mcx.es

DAKAR (Senegal, Mauritania, Gambia, Mali, Guinea Bissau, Cape Verde)
41. Rue Amadou Assane Ndoye
B. P. 4146 Dakar (Senegal)
Ph: 00 (221) 821.03.68/821.86.93
Fax: 00 (221) 821.49.66
E-Mail: buzon.oficial@dakar.ofcomes.mcx.es

DAMASCUS (Syria, Cyprus)
61 Al Hidjaz Al Jadid St.
Damascus (Syria)
P. O. Box 2738
Ph: 00 (963-11) 333.00.15/333.36.19
Fax: 00 (963-11) 333.73.68
E-Mail: buzon.oficial@damasco.ofcomes.mcx.es

DUBAI (United Arab Emirates, Qatar)
Emirates Towers Offices, 26th Floor Seihkh Zayed Rdl
P. O. Box 504929
Dubai (United Arab Emirates)
Ph: 00 (971-4) 330.01.10
Fax: 00 (971-4) 330.01.12
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