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TAXATION OF NON-RESIDENTS

(Non-Resident Income Tax)

INCOME ACCRUED UP TO 31-12-2010



Tax Agency
MINISTRY OF ECONOMY AND FINANCE

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1. THE TAXPAYER AND RESIDENCY

The way in which an individual or organisation must pay tax in Spain is determined by whether they are resident or not resident in the country.

A. Residency for natural persons (private individuals).

Natural persons are considered to have their usual place of residence in Spain when **any** of the following circumstances apply:

- They remain in Spain for more than 183 days during a calendar year. In order to determine the period of stay, the sporadic absences are calculated, except those where the tax residency in another country is proven. In the case of countries or territories labelled as tax havens, the Tax Administration can demand proof of stay in that tax haven over a period of 183 days in the calendar year.

In order to determine the period of stay, temporary stays in Spain that are the consequence of contractual obligations in agreements of cultural or humanitarian collaborations performed free of charge with the Spanish Public Administrations are not included.

- They situate the main base or centre of their activities or economic activities, directly or indirectly, in Spain.

Also, it is presumed, except when proven otherwise, that a taxpayer has their usual place of residence in Spain when, using the above criteria, the not legally separated spouse and the under-age dependant children are usually resident in Spain.

In addition, individuals of Spanish nationality who prove their new residency in a tax haven (Appendix V), will continue to hold the condition of taxpayers for Personal Income Tax, both in the taxable period in which they make their change of residence as well as in the four following tax periods. However, this provision will not apply to individuals resident in Andorra who prove their status as salaried employees, provided that they comply with certain requirements.

A natural person will be considered as either resident or not resident during a calendar year, as a change of residence does not imply an interruption of the taxable period.

▪ Accreditation of tax residency.

Tax residency is proven by means of a certificate issued by the responsible Tax Authority of the country concerned. The period of validity of these certificates is one year.

A person can have a residence permit or administrative residence in a State and not be considered a tax resident therein.

▪ **Special circumstances.**

Individuals of Spanish nationality, their not legally separated spouse and their under-age children, who have their usual place of residence abroad, will continue to be considered **income tax (IRPF) payers** if they are:

- Members of Spanish Diplomatic Missions, including both the head of the mission and the members of the diplomatic, administrative, technical or service staff.
- Members of Spanish Consular Offices, including both the head of the office and the civil servants or service staff with the exception of honorary vice-consuls or honorary consular agents and the staff under them.
- Holders of State official positions or employment as members of delegations and permanent representatives accredited to international organisations or who form part of delegations or missions of observers abroad.
- Working civil servants exercising an official position or job abroad, which is not diplomatic or consular in nature.

However, **these considerations will not apply** when:

- a) The people listed above are inactive civil servants or holders of official positions or employment and had their usual place of residence abroad prior to the acquisition of any of the circumstances listed above.
- b) In the case of not legally separated spouses or under-age children, when their usual place of residence was abroad prior to the acquisition by the spouse, father or mother of any of the circumstances listed above.

▪ **Residency and Agreements**

The internal legislation of each State is taken into consideration in all the agreements signed by Spain in order to define a person as being resident in a State. Bearing in mind that each State can establish different criteria, two States may consider a person as a resident.

In these cases, the agreements generally establish the following criteria to avoid a person being considered resident in both States:

- 1) A person will be resident in the State in which they have their permanent home available to them.
- 2) If they have a permanent home available to them in both States, they will be considered resident in the State with which they have the closest personal and economic relations (centre of vital interests).
- 3) If the above criteria could not be determined, they will be considered resident in the State where they usually live.
- 4) If a person usually lives in both States or does not live in either of them, they will be considered resident of the State of which they are a national.

- 5) Lastly, if they are a national of both States, or of neither, the responsible authorities will resolve the case by mutual agreement.

B. Residency for legal persons

An organisation is considered to be resident in Spain when it complies with **any** of the following criteria:

- It was incorporated according to Spanish Law.
- It has its registered address in Spanish territory.
- Its effective head office is in Spanish territory. An organisation is considered to have its effective head office in Spanish territory when the management and control of the sum of its activities is exercised from said territory.

In the case of a **change of address**, the tax period will end when this change has taken place.

The Tax Administration will presume that an organisation located in a country or territory considered to be a tax haven has its residence in Spanish territory when its main assets, directly or indirectly, consist of assets situated in or rights that it satisfies or exercises in Spanish territory, or when its main activity is undertaken here, except when it proves that its address and effective management take place in that country or territory, and also that its incorporation and operations correspond with valid economic motives and substantive business reasons that are distinct from the simple management of securities or other assets.

▪ Accreditation of tax residency.

A legal organisation proves its tax residence in a specific country by means of a certificate issued by the Tax Authority. The period of validity of these certificates is one year.

2. INCOME OBTAINED IN SPAIN AND EXEMPTIONS

Non-resident natural and legal persons will be considered non-resident income taxpayers insofar as they obtain income in Spanish territory.

A. Income obtained in Spain.

The two traditional criteria according to which income may be considered to have been obtained in Spain, are territoriality and payment. However, in accordance with the regulations in force since 1 January 2003, the criterion of payment will be applicable only to that income for which it is expressly established. For each type of income, the criteria whereby this income is considered to have been obtained in Spanish territory is indicated below.

Income derived from economic activity

- That obtained **through a permanent establishment (PE)** situated in Spanish territory

- That not obtained **through permanent establishment** when:
 - It is obtained as a consequence of economic activities performed in Spanish territory, except revenue from the installation or assembly of machinery or facilities coming from abroad when these operations are performed by the supplier and their amount does not exceed 20% of the cost price. The above notwithstanding, income is not considered to have been obtained in Spanish territory when it is obtained as payments in the international buying and selling of goods, including expenses and commissions.
 - It is income for provisions of services used in Spanish territory. When these service provisions partially support economic activities performed in Spanish territory, only be that income supporting the activity performed in Spain will be considered to have been obtained in Spain.
 - It is produced from the personal action in Spanish territory of artists and sports people, even when it is received by a different person or organisation.

Work income

- In general, this is income derived from a personal activity performed in Spanish territory.
- Public remuneration paid by the Spanish Government, except where the work is wholly performed abroad and such income is subject to a personal tax abroad.
- Remuneration of employees of ships and aircraft in international traffic paid by resident employers or organisations or by permanent establishments located in Spanish territory, except where the work is performed wholly abroad and such income is subject to a personal tax abroad.

Pensions and similar benefits

- When they derive from employment in Spain.
- When they are paid by a resident person or organisation or by a permanent establishment situated in Spanish territory.

Remuneration of directors and members of Boards of Directors, of Boards performing their duties or of representative organisations.

- When it is paid by an organisation resident in Spanish territory.

Income from liquid capital

- Dividends and other income derived from participation in funds belonging to organisations resident in Spain.
- Interest and other income obtained by assignment to others of own capital paid by resident individuals or entities or by permanent establishments situated in Spanish territory or remunerations on capital used in Spanish territory.

- Fees paid by resident individuals or organisations or by permanent establishments situated in Spanish territory or which are used in Spanish territory.
- Other income from liquid capital not previously mentioned paid by natural persons performing economic activities, in the exercise of their activities or organisations resident in Spanish territory or by permanent establishments situated in Spanish territory.

Income from real estate

- Income derived, directly or indirectly, from real estate assets situated in Spanish territory or from rights relating to these assets.

Income assigned to natural person taxpayers who are titleholders of urban real estate not performing economic activities

- Of buildings situated in Spanish territory.

Capital gains.

- When they derive from securities issued by resident individuals or organisations.
- When they derive from other liquid assets situated in Spanish territory or from rights that must be satisfied in Spanish territory.
- When they come from real estate assets located in Spanish territory.
- When assets situated in Spanish territory or rights that must be satisfied or exercised in Spanish territory are incorporated into the taxpayers assets, even when not derived from a previous transfer, such as net gains from gambling activities.

Possible exemptions applicable to any type of income:

Income paid to non-resident natural or legal persons by permanent establishments situated abroad when the corresponding services are directly linked with the activity of the permanent establishment abroad are not considered to have been obtained in Spanish territory.

B. Exemptions

The following types of income obtained by non-residents not through a permanent establishment are exempt from non-resident income tax:

1. Income which, in accordance with **Income tax** regulations, are **exempt** (except those under section 7.y of the Income Tax Act) and which are received by **natural persons**, such as:

- **Scholarships/grants (Becas)**

Starting from 1 January 2004 public scholarships and scholarships awarded by non-profit organisations to which is applicable the special regime regulated in part II of Act 49/2002 of 23 December, on the tax regime of non-profit organisations and the tax incentives for patronage, set up to support regulated courses, both in Spain and abroad, at all levels and grades of the educational system. Likewise, public grants and those awarded by non-profit organisations mentioned above for research in the field described by Royal Decree 63/2006, of 27 January, whereby the Statute of research staff in training was passed, as well as those grants awarded for research by those organisations to civil servants and other staff at the service of the Public Administrations and to university lecturing and research staff.

Until 31 December 2003 public scholarships for studies at all levels and degrees of the educational system up to university degree or equivalent were exempt.

- **Pensions (Pensiones)**

Pensions recognised by Social Security as a consequence of absolute permanent disability or severe disability or for retired public servants as a consequence of being unfit for work or permanent disability.

- **Lottery winnings, betting and draws.**

Winnings from lotteries and betting organised by the State Lottery and Betting Organisation (Loterías y Apuestas del Estado) and the Autonomous Communities, as well as draws organised by the Spanish Red Cross and by the National Organisation for the Blind (Organización Nacional de Ciegos - ONCE).

2. Old age pensions recognised by Royal Decree 728/1993, of 14 May, establishing old age pensions in favour of Spanish emigrants.¹
3. The **interest and capital gains** derived from **liquid assets** obtained by residents of other Member States of the European Union (**EU**) or by permanent establishments of those residents situated in another Member State of the EU (Appendix VI) with three exceptions:

¹ The present regulations for old age pensions are contained in Royal Decree 8/2008, of 11 January, regulating benefits according to need for Spanish citizens resident abroad and returned, derogating Royal Decree 728/1993, of 14 May, which established old age pensions for Spanish emigrants.

- When the interest and/or capital gains are obtained through a tax haven (Appendix V).
 - When the capital gains result from the transfer of shares, holdings or other rights in an entity, the assets of which are mostly real estate located in Spain.
 - When the capital gains are derived from the transfer of shares, holdings or other rights in an organisation and the taxpayer, at some point during the twelve-month period prior to the transfer, has directly or indirectly held at least 25% of the capital or assets of said organisation.
4. Income derived from **Public Debt**, except that obtained through a tax haven (Appendix V).
 5. Income and capital gains derived from **securities issued in Spain** by **non-residents**.
 6. Income from **non-resident accounts**.

The condition of taxpayer of non-resident income tax, for the exclusive purpose of applying the exemption to the obligation for the corresponding withholding of tax from non-resident accounts can be accredited before the relevant organisation either by a certificate issued by the Tax Authority of the country of residence or by providing a declaration of being a tax resident of another State. This declaration must be in the format of the form that appears in Appendix VI of the Order of 9 December 1999, approving Forms 216 and 296 (BOE of 16 December).

Furthermore, the Bank of Spain and the registered organisations referred to by the regulation of financial transactions abroad, who have accounts in Spain open to non-residents are obliged to file Form 291 "Non-resident income tax. Informative declaration of income from non-resident accounts", with the aim of providing information about these accounts to the Tax Administration.

7. The profits distributed by **subsidiary companies** resident in Spain to their **parent companies** resident in another Member State of the **EU** or to the permanent establishment of the parent company situated in other Member States (Appendix VI), provided that they meet specific conditions.

A parent company is one which has at least 20% direct participation in the equity of another company (this percentage will be 15% from 1 January 2007 and 10% from 1 January 2009). The investee company is the subsidiary. For this exemption to be applicable, the parent company must not have its residence or the permanent establishment must not be situated in a country or territory defined as a tax haven (Appendix V).

8. The income derived from the **assignment of securities** or the reimbursement of shares in investment funds made in **official secondary markets** of Spanish securities, obtained by resident individuals or organisations in a country with which Spain has signed an Agreement with a clause for information exchange, except when it is obtained through a tax haven (Appendix V).

9. Scholarships and other amounts received by individuals, paid by Public Administrations, by virtue of international cultural, educational and scientific agreements or treaties or by virtue of the annual international co-operation plan approved by the Council of Ministers.
10. Income from the leasing, cession or assignment of containers or bareboat ships and aircraft, used in maritime navigation or international flights.

In the case of aircraft, effective from 1 January 2010, the exemption will also apply when the degree of use on international routes accounts for more than 50% of the total distance travelled in flights by all the aircraft used by the lessee company.

11. The **dividends** and shares in profits obtained by individuals resident in another Member State of the **European Union** or in countries or territories with which there exists **an effective exchange of tax information**, with a limit of €1,500, which will be applicable to the totality of the income obtained during the calendar year. This exemption does not apply if the dividends are obtained through a tax haven (effective from 1 January 2007).
12. Dividends and profit sharing without the use of a permanent establishment by pension funds equivalent to those regulated in the revised text of the Pension Plans and Funds Act, which are resident in another European Union Member State or by permanent establishments of said institutions in another European Union Member State (effective from 1 January 2010).
Equivalent pension funds are considered to be social welfare institutions which meet certain requirements.
13. Dividends and profit sharing obtained by unit trust institutions without the use of a permanent establishment regulated by Directive 2009/65/EC. Under no circumstances can the application of this exemption result in tax being paid at a lower rate than would have resulted from levying the same tax rate on said income as would have been levied on unit trust institutions domiciled in Spanish territory as corporation tax (effective from 1 January 2010).

3. OTHER PERSONAL ELEMENTS

In addition to the taxpayer, in the non-residents area, the following personal elements, among others, are of special importance:

- The representative
- Joint and several guarantors
- The withholder

A. The representative

The non-resident taxpayer has an obligation to appoint a representative with residence in Spain in the following situations:

- When they operate through a permanent establishment.

- When they provide services, technical assistance, installation or assembly work derived from engineering contracts and in general activities or financial operations in Spain not through a permanent establishment.
- When the Tax Administration so requires.
- When they are residents in countries or territories with which no effective tax information exchange agreement exists, who are holders of assets situated in, or rights that are settled or exercised in Spanish territory, excluding securities traded in official secondary markets.

However, taxpayers may voluntarily appoint a representative with residence in Spain who can serve as a communication channel with the Tax Administration.

The representatives of non-resident taxpayers who operate in Spain through a permanent establishment and of organisations in the special tax regime for income attribution established abroad with a "presence in Spanish territory" will be jointly and severally responsible for the payment of tax liabilities.

B. Joint and several guarantor

The following will be jointly and severally responsible for the payment of tax liabilities corresponding to the income they have paid or the income from assets or the deposit or management of rights they recommended:

- The **payer** of the income accrued without a PE
- The **depositor** or manager of the assets or rights not effected through a permanent establishment

In the case of a **payer** of income as well as of a **depositor or manager of assets or rights belonging to residents in countries or territories considered as tax havens**, the actions of the Tax Administration can be carried out directly with the guarantor, without the prior action of attributing responsibility.

However, joint and several responsibility will not exist when it results from the application of the obligation to withhold tax.

C. The withholder

The withholder is obliged to withhold and deposit the non-resident's tax due.

Taxpayers obliged to withhold tax.

Some of the organisations obliged to withhold tax or to deposit on account, with respect to the income they pay or deposit that is subject to non-residents income tax, are as follows:

- The **organisations resident** in Spain (also those organisations in the tax regime for income attribution).
- The **natural persons resident** in Spain who undertake **economic activities**.

- Non-resident income taxpayers **with** permanent establishment.
- Non-residents taxpayers **with no** permanent establishment, with respect to the work income that they pay.

Income types subject to withholding of tax.

Generally, any income subject to income tax is subject to withholding of tax.

Exceptions to the obligation to withhold tax

There is no obligation to withhold tax in relation to the following income types:

- Exempt income types (see specific section of exemptions).

The above notwithstanding, there is an obligation to withhold tax with respect to the income types referred to in points 11, 12 and 13 of the specific section on exemptions.

- Income types exempt by virtue of the Agreement to avoid double taxation.
- Income types deposited for non-resident income taxpayers with no permanent establishment when the payment of the tax is accredited.

The non-resident taxpayer has the right to file and pay their income tax. If this circumstance is accredited, there is no obligation to withhold tax.

- Capital gains. However, there is an obligation to withhold tax with respect to:
 - Prizes from participation in games, competitions, raffles or random combinations.
 - Transfer of real estate assets situated in Spanish territory.
 - Income derived from the transfer or reimbursement of stocks or shares representative of capital or assets of unit trust institutions, **except** those from participation in investment funds and companies regulated by article 49 of the Regulation of Act 35/2003 on unit trust institutions, passed by Royal Decree 1309/2005.

Amount of the withholding.

The amount withheld should be a quantity equivalent to the tax liability that derives from the tax.

However, the withholder should not take into account the following expenses or deductions (which are applicable on calculating the tax): Deductible expenses, the liability of the special tax on fixed assets belonging to non-resident organisations and the deduction for donations.

Obligation to file

In general, withholders must submit a tax return and make the corresponding deposit using form 216. They are also obliged to submit an annual summary, form 296.

However, withholdings corresponding to income deriving from transfers and reimbursements for shares in the equity capital of Unit Trust Institutions (e.g., investment funds) will be paid in using form 117, and will be included in the annual informative tax return 187.

4. INCOME OBTAINED THROUGH PERMANENT ESTABLISHMENT

Non-resident taxation in Spain varies considerably according to the existence or not of a permanent establishment in Spanish territory, so this concept is of particular importance.

A. Definition of permanent establishment

It is considered that a natural person or organisation operates through permanent establishment when they have available in Spanish territory:

| | |
|---|---|
| Head office | Oil or gas wells |
| Branch offices | Quarries |
| Offices | Farming, forestry, livestock operations or any other place of exploration or extraction of natural resources. |
| Factories | |
| Workshops | |
| Warehouses, shops or other establishments | Construction, installation or assembly works whose duration exceeds six months. |
| Mines | |

In short, when a non-resident has available in Spain, in any capacity, facilities or places of work of any type in which they usually perform all or some of their business or when they act in Spain through an agent authorised to contract on behalf of and for the account of the non-resident person or organisation, provided they habitually exercise these powers, they are considered to be non-residents acting through permanent establishment.

B. Taxable base, tax rate, deductions, tax period, accrued amount and supplementary taxation

Non-residents who obtain income through permanent establishment in Spain will pay tax on the totality of the income attributable to this establishment, wherever the income is obtained.

Attributable income comprises income from the economic activities or operations undertaken by this permanent establishment, that deriving from elements related to the permanent establishment and the liable capital gains or losses deriving from the related elements.

Liable capital gains or losses are those linked functionally to the undertaking of the activity. Liable capital gains or losses are considered to be those reassigned within the three tax periods following the time when they were made.

The assets representative of holdings in the capital of an organisation are only considered liable capital gains or losses when the permanent organisation is a branch office registered in the Companies Register, these assets are reflected in the accounts of the permanent organisation and, being a permanent organisation that can be considered to be parent organisation, this permanent organisation has a corresponding organisation of material resources and staff available to direct and manage these shares.

▪ Taxable base

The taxable base of the permanent establishment is determined in accordance with the provisions of the General Corporate Income Tax Regime (régimen general del Impuesto sobre Sociedades), with the compensation for negative taxable base regime (fifteen years) being applicable, with the following special circumstances:

- Application of the regulations for related party transactions performed by the permanent establishment with the head office, or with another permanent establishment of the same head office and with other individuals or organisations connected to the head office or its permanent establishments, either those situated in Spanish territory or abroad.
- Generally, non-deductibility of the payments that the permanent establishment makes to the head office for fees, interest, commissions, technical assistance services and for the use or assignment of assets or rights.
- Deductibility of part of the management general administration expenses charged by the head office to the permanent establishment, as long as they are reflected in the accounts of the permanent establishment and are charged continually and rationally. For the determination of these expenses, it is foreseen that the taxpayers can submit proposals to the Tax Administration for the valuation of the part of the management general administration expenses that will be deductible.

▪ Tax Rate

Generally \longrightarrow 35% (32.5% for periods started from 1 January 2007 and 30% for those started from 1 January 2008)

Research and exploitation of hydrocarbons —————> 40% (37.5% for periods starting from 1 January 2007 and 35% for periods starting from 1 January 2008)

- **Deductions and refunds**

Permanent establishments can apply the same deductions and refunds as Corporation Tax payers (Impuesto sobre Sociedades - IS) to their net tax liability.

- **Tax period and accrued amount**

The tax period coincides with the financial year declared, without exceeding twelve months. The tax becomes payable on the last day of the taxable period.

Permanent establishments are obliged to comply with the same accounting obligations, registered or formal, that are required of resident organisations.

- **Supplementary taxation**

When permanent organisations of non-resident **organisations** (not natural persons) transfer income abroad, a supplementary tax of 18% (19% from 1 January 2010) will be due on the quantities transferred.

However, this tax **will not be applicable** to those permanent establishments whose head office has its tax residence in another Member State of the **EU** (Appendix VI), except in the case of a country or territory considered as a tax haven, or in a State that has signed an Agreement for avoiding double taxation with Spain, in which no other situation is expressly established, provided that there exists reciprocal treatment.

The supplementary tax must be declared on Form 210 and in the period of one month from the date of transfer of the income abroad.

C. Tax withheld, account deposits and staged payments. Tax return

- **Tax withheld (retenciones) and deposits on account (ingresos a cuenta)**

Permanent establishments are subject to the same regime of tax withheld at source as organisations subject to Corporation Tax.

- **Staged payments (pagos fraccionados)**

Permanent establishments are obliged to make staged payments towards the tax under the same conditions as the entities subject to corporation tax. The formal obligations relating to **staged payments** are:

- **Filing periods:**

The first 20 calendar days of the months of April, October and December.

- **Forms:**

- Generally, Form 202

When no deposit needs to be made as a staged payment, the presentation of form 202 is not obligatory, unless the permanent establishment is a Large Company.

- Large Companies, form 218 (form 218 was eliminated in 2010). This Form should be submitted even when no deposit is being made.

- **Where to file the return:**

- Form 202

The filing of Form 202 and the deposit can be made with any collaborating tax collecting organisation (bank, savings bank or credit co-operative) sited in Spanish territory.

- **Tax return**

Permanent establishments must file the **return** for the tax on the same forms and in the same time periods as resident organisations subject to Corporation Tax.

- **Time period:**

25 calendar days following the 6 months after the conclusion of the tax period.

- **Forms:**

200 or 201 (form 201 has been eliminated for tax periods beginning from 2008).

- **Where to file the return:**

General tax return: Form 200

The place of filing depends on the result of the tax return (see table).

| Result of the tax return | Where to file the return |
|------------------------------------|---|
| Positive (amount to deposit) | In any branch, within Spanish territory, of an authorised collaborating organisation (bank, savings bank, or credit co-operative). |
| Refund | Generally, at any branch of an authorised collaborating organisation, within Spanish territory, in which the taxpayer has an account opened in their name and in which they wish to receive the amount of the refund requested. |
| Waive of the refund or zero charge | In the offices of the Tax Agency personally or by registered post. |

This form must be presented online by permanent establishments classified as large companies.

5. INCOME OBTAINED FROM SOURCES OTHER THAN PERMANENT ESTABLISHMENT

A. Taxable base, tax rate, deductions

The income obtained from sources other than permanent establishment must be declared separately for each partial or total accrual of income subject to tax.

The taxation applied will be operation by operation, so there is no compensation between capital gains and losses.

▪ Taxable base

Generally, the taxable base is the whole quantity received, i.e. without deduction for any expenses.

From 1 January 2010, **when calculating the taxable base for taxpayers resident in another European Union member state** on income earned without permanent establishment, the expenses described in the law on personal income tax can be deducted, **provided that** proof is provided that these expenses are directly related to income earned in Spain and have a direct economic connection that is inseparable from the activity carried out in Spain.

In the case of provisions of services, technical assistance, installation or assembly works resulting from engineering contracts and, in general, from activities or financial operations performed in Spain other than permanent establishment, it will be the difference between the gross income and the personnel expenses, the supply of materials incorporated into the works or service and supplies.

The taxable base corresponding to the income derived from operations of reinsurance will be constituted by the amounts of the premiums paid, in reinsurance, to the non-resident reinsurer.

The taxable base corresponding to capital gains will be determined applying the income tax rules to each change in capital.

As regards capital gains (derived from rights or shares in an organisation whose assets are mainly composed of real estate assets situated in Spanish territory or which attribute to the holder the right to enjoy real estate assets situated in Spanish territory), the proceeds of the transfer of rights or shares in resident organisations in countries or territories with which there does not exist an effective exchange of tax information, the value of the transfer will be determined by the market value, at the time of transfer, of the real estate assets situated in Spanish territory or of the rights to enjoy those assets. The real estate assets situated in Spanish territory will remain liable for the payment of the tax.

The taxable base corresponding to the charged income from real estate assets situated in Spanish territory (in the case of non-resident individuals) will be determined in accordance with the personal income tax (IRPF) regulations.

▪ **Tax Rate**

- 1) Generally, 24% (up to 31 December 2006 it was 25%).
- 2) Work income received by non-resident individuals by virtue of a fixed term contract for seasonal workers, in accordance with that established in the working regulations, 2%.
- 3) Dividends and other income derived from shares in the equity of an entity. The tax rate depends on the year the income was accrued (see table).

| Year of accrual | 2003-2006 | 2007-2009 | 2010 |
|-----------------|-----------|-----------|------|
| Tax rate | 15% | 18% | 19% |

- 4) Interest and other income obtained from the transfer of equity capital to third parties. The tax rate depends on the year the income was accrued (see table).

| Year of accrual | 2003-2006 | 2007-2009 | 2010 |
|-----------------|-----------|-----------|------|
| Tax rate | 15% | 18% | 19% |

- 5) Royalties paid to a company resident in a Member State of the EU or to a permanent establishment of this company situated in another Member State of the EU, 10%, provided that certain requirements are met (effective from 1 January 2005).
- 6) Pensions and other similar benefits received by individuals not resident in Spanish territory, whoever the person who has generated the right to the payment, will be taxed in accordance with a scale (see specific section for pensions).
- 7) Work income of natural persons not resident in Spanish territory, provided that they are not contributors of personal income tax (IRPF), who provide services in Diplomatic Missions and Spanish Consular Representations abroad, when there are no specific rules derived from International treaties to which Spain is party, will be taxed at 8%.
- 8) Income derived from reinsurance operations, 1.5%.
- 9) Shipping or air transport organisations resident abroad, whose ships or aircraft touch Spanish territory, 4%.
- 10) Capital gains derived from the transfer or reimbursement of shares or stakes representative of capital or assets of unit trust institutions which will pay tax at the rate in force for the year in which the income is accrued (see table).

| Year of accrual | 2003-2006 | 2007-2009 | 2010 |
|-----------------|-----------|-----------|------|
| Tax rate | 15% | 18% | 19% |

- 11) Capital gains other than the above, declared at the time of transferring assets (see table).

| Year of accrual | 2007-2009 | 2010 |
|-----------------|-----------|------|
| Tax rate | 18% | 19% |

▪ **Deductions**

The deductions allowed from the taxable income are as follows:

- Deductions for donations, under the conditions described in the Income Tax Act and in the Act on the tax regime of non-profit organisations and of tax incentives for patronage.
- Tax withholdings that have been applied on the taxpayer's income.

B. Ways of declaring income other than through permanent establishment by non-residents.

Taxpayers for this tax will not be obliged to file a tax return corresponding to the income to which tax withholdings have been applied. Neither will they be obliged to file a tax return for those income types subject to withholding of tax but exempt by virtue of the provisions in the Tax Act or in any applicable double taxation agreement.

In particular, there is still the obligation to declare in the following cases of receiving income:

- Income subject to taxation by non-resident income tax but exempt from the obligation to withhold tax and make deposits on account. These include, for example, capital gains resulting from the sale of shares.
- Income charged from urban real estate assets (only natural persons).
- Income paid by people who do not hold the condition of being a withholder. For example, income obtained by letting buildings when the lessor is a natural person and pays the rent for reasons other than carrying out an economic activity.
- Capital gains obtained by transfer of real estate assets.
- In order to request a refund of an excess of tax withheld or account deposit in relation to the amount of tax.

Ordinary return: Form 210

Serves to declare any type of income (only one income) obtained by a non-resident with no permanent establishment except the capital gains resulting from the **transfer of real estate assets** which are declared on their own **specific Form (212)**.

- **Where to file the return:**

These tax returns must be filed at the offices of the Tax Agency or Tax Administrations in accordance with the following rules:

- If it relates to real estate income or an income charged to a natural person who is titleholder of an urban building, that of the place where the building is situated.
- In other cases:
 - If the tax return is filed by the Representative, a Joint and Several Guarantor, or a Withholder, the office corresponding to their tax address.
 - If the tax return is filed by the taxpayer, the tax address of their representative. In the absence of a Representative:
 - If income is being declared, the office of the tax address of the payer.
 - If capital gains subject to tax withholding are being declared, the office of the Withholder's tax address; if there is no withholder, the tax address of the trustee or manager of the assets or rights or failing these, the Tax Agency office in Madrid.

However, the Central Delegation of Large Taxpayers and the Management Units of Large Companies will be responsible with respect to the management functions attributed to them or in the case of tax returns filed by the taxpayer, and, in application of the rules set out in the previous paragraphs, the Withholder or Joint and Several Guarantor who determine the place of filing.

▪ **Deposit or request for refund:**

- In tax returns with an amount to deposit, the deposit will be made as follows:

The filing of the tax return, with or without identification labels, and the deposit can be made with any collaborating tax collecting organisation (bank, savings bank or credit co-operative) located in Spanish territory.

- In tax returns with refunds or without an amount to deposit, in the responsible Branch or Administration, according to the previous rules.

▪ **Filing period:**

The time period for filing tax returns is:

- Tax returns to deposit or zero charge:
 - Generally, one month from the date of accrual of the income declared.
 - Income charged from urban real estate assets (see table).

| | | |
|-----------------|---|---|
| Year of accrual | 2007 and previous years | From 2008 |
| Filing period | From 1 January to 30 June following the year of accrual (*) | The calendar year following the date of accrual (*) |

(*) 31 December of each year

Non-resident taxpayers, whose estate subject to tax in Spanish territory is exclusively composed of housing, may file the wealth tax return corresponding to its ownership and the non-resident income tax for the corresponding charged income on **Form 214**.

The filing and deposit of this tax return can be made during the calendar year immediately following that referred to in the tax return.

IMPORTANT:

Due to the elimination of Wealth Tax, effective from the 2008 tax period, form 214 is revoked.

For accruals produced in 2008 and later tax years, form 210 will be used to submit for the other subsisting tax item (income from urban buildings).

- Tax returns with request for refund: They can be filed after the end of the tax return period corresponding to the deposit of the tax withheld or deposits on account motivating the refund with the following filing periods:
 - a) If the request is derived from the application of an Agreement to avoid double taxation (Appendix 1), except in the case described in letter b) following:
 - relating to income accrued after 1 January 2003, four years, except when the Treasury Minister establishes a different filing period in the case where there is no reciprocal agreement.
 - relating to income accrued until 31 December 2002, two years.
 - b) If the request derives from an application of an Agreement to avoid double taxation (Appendix I), relating to income referred to under an Order for the development of the Agreement (Appendix II), provided that this is in force at the moment of the accrual, in the time period stipulated in that Order.
 - c) In all other cases, four years.

Group return: Form 215

Allows the grouping of various incomes generated in the same calendar quarter by one or several taxpayers in the same tax return.

This tax return cannot include the following incomes:

- Income where the taxable base is determined by the difference between gross earnings and certain expenses.

- Income charged from urban real estate assets.
- **Filing periods:**

In the first 20 calendar days of the months of April, July, October and January.

For the tax returns with request for refund, the filing periods are the same as those indicated on Form 210.

- **Where to file the return and make the deposit:**

The place for filing the return and making the deposit is the same as that indicated for Form 210.

C. Taxation of the most common income types not obtained through a permanent establishment by non-resident taxpayers

Work income

Generally, work income for jobs performed in Spain by non-residents, is subject to taxation of the whole amount at a general rate of ¹24% (until 31 December 2006, it was 25%).

Special cases:

- Work income of non-resident natural persons in Spanish territory, provided that they are not income tax payers, who perform their services in Diplomatic Missions and Spanish Consular Representations abroad, when there are no specific rules derived from International Treaties to which Spain is party, are taxed at a rate of 8%.

However, if the work is performed wholly abroad and the income received by the individuals described above is subject to a personal tax abroad, it will be considered that the income was not obtained in Spanish territory and therefore is not subject to non-resident income tax.

- Work income received by non-resident individuals by virtue of a fixed term contract for seasonal workers, in accordance with labour regulations, will be taxed at a rate of 2%.

Income from economic activities

In the case of income from economic activities performed in Spain by non-residents **not through PE**, the taxable base will be determined by the difference between the gross income and the following expenses:¹

¹ When calculating the taxable base for taxpayers resident in another European Union member state on income earned without a permanent establishment, the expenses described in the law on personal income tax can be deducted, provided that proof is provided that these expenses are directly related to income earned in Spain and have a direct economic connection that is inseparable from the activity carried out in Spain. (Effective from 1 January 2010).

- Personnel costs
- Supply expenses
- Supplies

For the taxable base determined by the difference between income and expenses, the general taxation rate is 24% (until 31 December 2006, it was 25%).

The income from the provision of services by independent professionals and from artistic or sports activities will be included in the income from economic activities.

Income derived from real estate assets

Irrespective of whether the real estate assets are let or not, the income derived from them is subject to non-resident income tax. However, the tax treatment is different depending on whether or not they are let.

▪ Urban buildings not leased

Non-resident taxpayers, titleholders of urban buildings, which they use for their own use and not involved in economic activities or leave empty, are subject to non-resident income tax. To this effect, they must calculate as income an amount of 1.1% of the building's assessed value (2% if the assessed value has not been revised or modified since 1 January 1994), and the tax rate on this income is 24% (until 31 December 2006 it was 25%).

▪ Let or sublet buildings

The income is calculated by taking the **gross** amount that is received from the tenant, including all the assets transferred with the building and excluding Value Added Tax, without deducting any expenses².

If the building is only let for part of the year, the income must be determined as in the previous paragraph for the months during which it is let and for the rest of the year, the income will be the proportional part of 1.1% (or 2% if the assessed value has not been updated since 1 January 1994) of the assessed value.

The applicable tax rate is in general 24% (up to 31 December 2006 it was 25%).

¹ When calculating the taxable base for taxpayers resident in another European Union member state on income earned without permanent establishment, the expenses described in the law on personal income tax can be deducted, provided that proof is provided that these expenses are directly related to income earned in Spain and have a direct economic connection that is inseparable from the activity carried out in Spain. (Effective from 1 January 2010).

² When calculating the taxable base for taxpayers resident in another European Union member state on income earned without a permanent establishment, the expenses described in the law on personal income tax can be deducted, provided that proof is provided that these expenses are directly related to income earned in Spain and have a direct economic connection that is inseparable from the activity carried out in Spain. (Effective from 1 January 2010).

In the case where buildings are let and the individual has available in Spain at least one premises exclusively for managing this activity and if there is any person employed on full-time contract, the activity performed can be considered to be a business performed through permanent establishment and must be taxed in accordance with the rules described in the section on "Income obtained through permanent establishment".

Income received in the form of dividends or interest

Non-residents in Spain who obtain dividends or interest paid by a resident person or organisation (public or private) must pay tax in Spain through the non-resident income tax. If an Agreement exists, these income will be taxed at a rate below the general rate and in the case of interest, residents of a country of the European Union will be exempt, provided that the interest is not obtained through a tax haven.

Interest on Public Debt (until 22-4-2008 the exemption required that this not be obtained through tax havens) and income from non-resident accounts are also exempt.

Regarding dividends, the following are exempt (except when received through a tax haven):

- Those distributed by subsidiary companies resident in Spain to their parent companies resident in other Member States of the EU (Appendix VI), provided that they comply with specific conditions.
- Those obtained by natural persons resident in another Member State of the European Union or in countries or territories with which there is an effective exchange of tax information, with the limit of €1,500, which will be applicable over the totality of the income obtained during the calendar year (effective from 1 January 2007).
- Dividends and profit sharing without the use of a permanent establishment by pension funds equivalent to those regulated in the revised text of the Pension Plans and Funds Act, which are resident in another European Union Member State or by permanent establishments of said institutions in another European Union Member State (effective from 1 January 2010). Equivalent pension funds are considered to be social welfare institutions which meet certain requirements.
- Dividends and profit sharing obtained by unit trust institutions without the use of a permanent establishment regulated by Directive 2009/65/EC. Under no circumstances can the application of this exemption result in tax being paid at a lower rate than would have resulted from levying the same tax rate on said income as would have been levied on unit trust institutions domiciled in Spanish territory as corporation tax (effective from 1 January 2010).

- **Taxable base:**

This will be the total amount ¹ of these dividends and interest.

- **Tax rate:**

The tax rate depends on the year the income was accrued (see table). For the residents of countries with a tax agreement, tax limits are established.

| Year of accrual | 2003-2006 | 2007-2009 | 2010 |
|-----------------|-----------|-----------|------|
| Tax rate | 15% | 18% | 19% |

¹ From January, when calculating the taxable base for taxpayers resident in another European Union member state on income earned without permanent establishment, the expenses described in the law on personal income tax can be deducted, provided that proof is provided that these expenses are directly related to income earned in Spain and have a direct economic connection that is inseparable from the activity carried out in Spain. (Effective from 1 January 2010).

Pensions

When residents abroad receive a pension paid by a Spanish resident, the pension will be subject to Spanish tax for its gross amount, and the rate applied will be as shown in the following tables:

| (Until 31/12/2006) Annual pension amount --- Up to (euros) | Charge --- euros | Remainder of pension --- Up to (euros) | Rate applicable --- Percent |
|---|------------------------|--|-----------------------------------|
| 0.00 | 0.00 | 9,616.19 | 8% |
| 9,616.19 | 769.30 | 5,409.11 | 30% |
| 15,025.30 | 2,392.03 | and over | 40% |

| (From 1-1-2007) Annual pension amount --- Up to (euros) | Charge --- euros | Remainder of pension --- Up to (euros) | Rate applicable --- Percent |
|--|------------------------|--|-----------------------------------|
| 0 | 0 | 12,000 | 8% |
| 12,000 | 960 | 6,700 | 30% |
| 18,700 | 2,970 | and over | 40% |

Example:

Mr. J.C.G., resident in Paraguay during 2010, receives a retirement pension paid by Spanish Social Security, which yields a gross monthly amount of €1,100. He receives 12 payments in the year.

Determine the amount of the corresponding tax on the pension obtained by this taxpayer.

Solution:

- Determination of the annual pension amount for the application of the tax scale.*
 $1,100 \times 12 = 13,200$
- Application of the tax scale.*

| | |
|---|------------|
| Up to 12,000 at 8% | 960 |
| Remainder 1,200 (13,200 – 12,000) at 30%..... | <u>360</u> |
| Resulting charge | 1,320 |
- Determination of the average tax rate.*
 $Average\ tax\ rate = (1,320 / 13,200) \times 100 = 10\%$
- Determination of the amount of tax corresponding to the monthly pension.*
 $1,100 \times 10\% = \text{€}110$

Example (cont.):

Note: As this is income subject to and not exempt from non-resident income tax, the organisation making the pension payment (Social Security), as the Withholder organisation, should withhold tax of an amount equivalent to the tax due by the taxpayer. i.e. on the gross amount of the pension (€1,100), a withholding percentage of 10% (€110) will be applied, resulting in a net amount to be received by the taxpayer, once the tax has been deducted of €990.

Gains from Sale of Real Estate.

The capital gains obtained from the sale of real estate are taxable income.

In general, gains are determined by the difference between the transfer and acquisition values.

The **acquisition value** will consist of the real amount for which the real estate was purchased, to which the amount of expenses and taxes inherent to the acquisition paid by the individual, who is now the transferor, will be added. According to the year of acquisition, this value will be corrected by applying updating coefficients that are established on an annual basis in the General State Budget Act (the updating coefficients to be applied in 2009 and 2010 are detailed in Appendix III). The amount so determined will, if applicable, be reduced by the amount of the depreciation applied by the regulation, in any event applying the minimum depreciation. This depreciation will be updated according the relevant year.

The **transfer value** will be the real amount realised by the sale, reduced by the amount of expenses and taxes inherent in the transfer paid by the seller.

The capital gain on which taxation will be paid consists of the difference between the transfer value and the cost price, determined as described above.

Nevertheless, in the case of **individuals**, if the real estate was **acquired before 31 December 1994**, the capital gain calculated previously may be reduced if a **transient regime is applicable**.

In these cases the following **rules** must be taken into account:

1- If the transfer was carried out before 29-11-2006: The total amount of the capital gain will be reduced by 11.11% for each year after two years that it remains in the estate from the date of acquisition up to 31-12-1996, rounded up.

Example: real estate acquired on 6 January 1991 and transmitted on 1 July 2006:

- number of years between the date of acquisition and 31 December 1996, rounded up: 6 years.

- percentage reduction applicable: $11.11\% \times 4 = 44.44\%$

2- If the transfer was carried out after 30-11-2006: Only that fractional part of the capital gains generated before 20 January 2006 will be susceptible to reduction.

Rule 1 - Calculation of the part of the capital gain generated before 20-01-2006

The fractional part of the capital gain susceptible to reduction is determined by the proportion of the number of days elapsed from the date of acquisition up to 19 January 2006 with respect to the total number of days elapsed from the date of acquisition to the date of transfer.

Rule 2 - Calculation of the reduction

To determine the reduction amount, apply a reduction of 11.11% to the capital gains portion susceptible to reduction for each year the asset has been owned by the taxpayer since the year of acquisition and until 31-12-1996; the result is rounded up.

If the taxpayer has acquired the real estate on two different dates or the real estate has been subject to improvement, it will be necessary to make the calculations as if there were two capital gains, with different periods of ownership in the application of the reduction coefficients and different updating coefficients.

▪ **Tax rate:**

The tax rate depends on the year the income was accrued (see table).

| | | |
|-----------------|-----------|------|
| Year of accrual | 2007-2009 | 2010 |
| Tax rate | 18% | 19% |

▪ **Form:**

212

When the real estate that is the object of transfer is shared between a married couple and both partners are non-residents, it is possible to file just one tax return.

▪ **Filing period:**

Three months counting from the end of the period which the new owner has for depositing the tax withholding (this period is, in turn, one month from the date of sale).

▪ **Place:**

The Tax Agency office or Administration corresponding to the place where the real estate is situated.

Withholding on account

The person acquiring the real estate, whether resident or not, is **obliged to withhold and deposit in the Public Treasury an amount of 3% of the consideration agreed for acquisitions made from 1 January 2007** (for acquisitions made up to 31 December 2006, the rate was 5%). For the seller, this withholding acts as a payment on account of capital gains tax arising from the transaction. Therefore, the purchaser will give a copy of form 211 (used to deposit the withholding) to the non-resident seller, so that the seller can deduct this withholding from the tax to be paid as a result of the tax arising from the capital gain. Should the amount withheld be greater than the tax liability, it is possible to obtain a refund of the difference.

- **Filing period:** 1 month after the date of transfer of the real estate.

▪ **Form:**

211

Refund of excess withholding

In the case of capital gains loss or in the case that the withholding is greater than the tax payable, there is a right to refund of the excess withheld. The procedure for refund

is initiated with the filing of tax return Form 212. The refund is made by bank transfer to the account indicated on the tax return.

Example:

Mr G.K., resident in Germany, acquired an apartment in Torremolinos on 1 January 1991 for an amount equivalent to €100,000 (1):

The apartment has never been let.

On 1 January 2010, he sold the apartment for €200,000. For his part, Mr J.M.F., the acquirer of the real estate, withheld an amount of €6,000 (the amount equivalent to 3% of the sale price).

Taxation of the capital gains obtained.

Solution:

Determination of the amount of capital gains:

- Transfer value €200,000
- Updated acquisition value (2) $100,000 \times 1.2780 = €127,800$
- Capital gain €72,200

Application of the transient regime:

- No. days elapsed between the dates of purchase and sale. 6,940 days
- No. days elapsed between the date of purchase and 19-01-2006. 5,498 days
- Fractional part of the capital gain susceptible to reduction (3) €57,198.21
- No. years of ownership to 31/12/1996. 6 years.
- Reduction by abatement coefficients (4) €25,418.88
- Reduced capital gain (5) €46,781.12

(1) In the solution, expenses and taxes inherent in the acquisition and transfer have not been taken into account, which generally are also included in the acquisition and transfer values.

(2) This coefficient for updating the cost price is established in the General State Budget Act for 2010. See Appendix III.

(3) $(5,498 / 6,940) \times 72,200 = €57,198.21$

(4) $57,198.21 \times 11.11\% \times 4 = €25,418.88$

(5) $72,200 - 25,418.88 = €46,781.12$

| | |
|---|-----------|
| Tax rate | 19% |
| Tax payable..... | €8,888.41 |
| Withholding 3% | 6,000.00 |
| Differential amount (8,888.41 - 6,000.00) | €2,888.41 |

6. OPTIONAL REGIMES

A. Workers who move to Spanish territory

Natural persons who acquire their tax residence in Spain as a consequence of their move to Spanish territory, **can opt to be taxed according to non-resident income tax, maintaining their condition as Income taxpayers**, for a period during which they make their change of residence and during the 5 following tax periods, provided they comply with the following conditions:

- They have not been residents in Spain during the 10 years prior to their move to Spanish territory.
- That their move to Spanish territory is a consequence of a work contract.
- That the work is performed effectively in Spain.
- That the work they perform is for a company or organisation resident in Spain or for a permanent establishment of a non-resident organisation situated in Spain.
- That the work income resulting from the work relationship is not exempt from taxation by the non-resident income tax.
- Forecast tax payments arising from the work contract in each of the tax periods in which this special system is applied should not exceed €600,000 a year (this condition applies only to taxpayers displaced to Spanish territory from 1 January 2010).

The taxpayer opting to pay taxes according to the non-resident income tax will remain subject to the real obligation for Wealth Tax.

The fundamental characteristic of the taxpayers taking advantage of this option is that they do not have the status of residents for the application of a double taxation agreement, being subject to taxation exclusively for the income they receive from sources situated in Spain or from wealth situated on our territory.

The procedure for exercising this option is described in section VIII of the Personal Income Tax Regulation (IRPF).

Opting for, declining or exclusion from the special regime is submitted using **Form 149**. The documentation described in section 119.1 of the Income Tax Regulation must be attached to the notification of the option.

The taxpayers who opt for the Special Regime must file a special personal income tax (IRPF) return on **Form 150**.

Order EHA/848/2008 (BOE of 31 March) approved form 150 for filing special income tax and form 149 for notifying the option, waiver or exclusion of or from the special system.

B. Taxpayers resident in other Member States of the European Union (EU).

Payers of Non-resident Income Tax (IRNR) who:

- Are natural persons (private individuals).
- Accredited their residence in other Member States of the EU (Appendix VI), except residents in countries or territories qualified by regulation to be tax havens (Appendix V).
- Accredited that at least 75% of the totality of their income in the tax period consists of the sum of their work income and income obtained from economic activities obtained during the same tax period in Spanish territory, when they have paid tax on this income by non-resident income tax.

may request the application of this optional regime, the purpose of which is to calculate their tax liability in Spain according to the Income Tax rules, but **without losing their status as non-resident income taxpayers.**

The Order of 12 July 2000 (Official State Gazette of 14 July) approved the request form for the application of this optional regime and determined the place and the time period of its filing.

Once the request has been submitted and proof has been provided of compliance with the conditions governing its application, the Tax Administration will, take into account the totality of income obtained by the taxpayer in the tax period and their personal and family circumstances and following the calculation scheme used for Personal Income Tax, it will determine the corresponding average tax rate.

The average tax rate will be applied over that part of the taxable base corresponding to income obtained in Spanish territory.

If the result of this procedure is an amount lower than the quantity paid as a non-resident income taxpayer during the tax period, then the excess will be refunded.

7. SPECIAL TAX ON REAL ESTATE ASSETS OF NON-RESIDENT ORGANISATIONS

In general, non-resident organisations, which are proprietors or have, in any capacity, real estate assets or rights of enjoyment over real estate assets in Spain, are subject to pay non-resident income tax by a Special Tax.

However, the Special Tax will not be required of:

- 1) States and foreign public institutions and international organisations (in this case they are relieved of the obligation of filing the Special Tax return).
- 2) Organisations with the right to the application of an Agreement to avoid double taxation that contains a clause for the exchange of information in such terms and

with the requirements of section 42 of the Consolidated Text of the Non-resident Income Tax Act.

- 3) Organisations which carry out in Spain, in a continuous or habitual way, economic operations other than simple tenancy or letting of buildings in the terms of section 20.2 of the non-resident income tax regulation.
- 4) Companies listed in the officially recognised secondary securities markets. This clause will also apply when the property is held indirectly through an organisation with the right to apply an Agreement to avoid double taxation with an information exchange clause.
- 5) Non-profit charity or cultural organisations under the terms of section 42 of the Consolidated Text of the Non-resident Income Tax Act.

- **Taxable base for the Special Tax:**

The taxable base will normally be the assessed value (valor catastral) of the real estate assets.

- **Tax rate:**

3%

- **Deductibility of the tax:**

The charge arising from the Special Tax will take into consideration deductible expenses for the determination of the taxable base for non-resident income tax.

- **Tax Return Form:**

The tax return form to be used by the organisations listed is Form 213.

- **Filing period:**

The time period to file the tax return is the month of January following the date of accrual of the Special Tax, which is 31 December of each year.

- **Where to file the return:**

| Result of the tax return | Where to file the return |
|---------------------------------|---|
| Positive (amount to deposit) | The filing of the tax return, with or without identification labels, and the deposit can be made with any collaborating tax collecting organisation (bank, savings bank or credit co-operative) located in Spanish territory. |
| Zero charge (negative) | In these cases, the tax return will be filed in the Tax Agency Office or Administration in whose territorial area the real estate is located, by means of delivery in person or by registered post. |

8. ELECTRONIC FILING OVER THE INTERNET AND THE POSSIBILITY OF PAYMENT BY DIRECT DEBIT

A. Scope of application and restrictions

1) Electronic filing over the internet will be applicable for the following tax returns:

| Form | Restriction |
|---|---|
| Form 210 and Form 215 , in both cases when the result is an amount to deposit (not including tax returns with zero charge or amount to be refunded). | When the filer's section is completed with the details of the taxpayer's representative. That is, online filing can only be performed if the filer's section is allocated to the taxpayer or the Joint and Several Guarantor , without prejudice to the fact that the filing can be carried out through a person or organisation authorised to file tax returns electronically representing other people or by those who are empowered to file returns electronically. |
| Form 212 , whatever its result: Amount to deposit, to refund or zero charge. | |
| Form 211 (this will always be an amount to deposit) | When the number of non-resident transferors or acquirers is greater than 12. |
| Form 213 , whatever the result: Amount to deposit of zero charge. | When the list of properties is greater than 14. |
| Form 214 (this will always be an amount to deposit) | Effective from the 2008 tax period, this is excluded from the scope of application of the online tax return filing system. ¹ |

Documentation: When additional documentation required by the regulations has to accompany the tax returns, it should be submitted in electronic document format in the Tax Agency general online register.

However, in the electronic filing of Form 212, it will not be necessary to attach a copy for the transferor of Form 211; instead, the identifying data of Form 211, which appears on the screen, should be completed and sent.

2) Direct debit of the payment of tax liability is only possible for Forms 213, 214¹ and 215 as only these have a fixed period for filing the tax return.

B. Technical requirements

The taxpayer, Joint and Several Guarantor and the acquirer obliged to withhold tax must have a tax identification number (Número de Identificación Fiscal - NIF).

¹ Due to the elimination of Wealth Tax, effective from the 2008 tax period, form 214 is revoked.

For accruals produced in 2008 and later tax years, form 210 will be used to submit for the other subsisting tax item (income from urban buildings).

If a married couple files a single tax return resulting from the transfer of real estate assets, Form 212, both must have a tax identification number.

A user certificate issued by the National Factory for Money and Stamps-Royal Mint (Fábrica Nacional de Moneda y Timbre-Real Casa de la Moneda - FNMT) must be installed in the browser in order to generate the electronic signature or any other electronic certificate admitted by the Tax Agency.

If a married couple files a single tax return resulting from the transfer of real estate assets, Form 212, both must have obtained the corresponding user certificate.

Collaborator Company: Persons or organisations authorised to file tax returns electronically on behalf of others may use this facility with respect to the tax returns corresponding to Forms 210, 215, 212, 211, 213 and 214¹. For this purpose, they must have their user certificate installed in their browser.

Power of attorney (Apoderamiento): By means of the handing over of a power by the grantor in the Tax Agency's offices, an individual or organisation can be given power of attorney for the electronic filing of the tax return Forms described in this section. This filing will require the use of the electronic certificate by the attorney.

In these cases (Collaborator Company or Power of Attorney), when the tax return shows an amount to be deposited, the bank account for making the payment must be that of the holder of the electronic certificate signing the tax return (Collaborator Company or Attorney). However, the charge account can belong to a person other than the person ordering the payment¹.

In the case of opting for payment by direct debit, the bank account must be that of the taxpayer or the Joint and Several Guarantor, if applicable.

C. Procedure for electronic filing

Connect to the Tax Agency at the following address www.agenciatributaria.es and within the Virtual Office (oficina virtual) complete and send the tax data of the Forms appearing on the computer screen adjusted to the content of the Forms 210, 212, 211, 213 or 214² of the tax return as applicable.

To file Form 215, connect to the Tax Agency at the following address www.agenciatributaria.es and in the Virtual Office, download a programme allowing the completion and sending of the tax data of the forms that appear on the computer screen adjusted to the contents of this Form, or send a file with the same characteristics as that generated by the completing of the form with the same programme.

Depending on the result of the tax return and the option to pay by direct debit or otherwise, proceed in the following ways:

¹ See Resolution 3 of June 2009 by the General Directorate of the Tax Agency.

² Due to the elimination of Wealth Tax, effective from the 2008 tax period, form 214 is revoked.
For accruals produced in 2008 and later tax years, form 210 will be used to submit for the other subsisting tax item (income from urban buildings).

a) Tax returns with amounts to be deposited (Forms 210, 215, 212, 211, 213 and 214²) which are not paid by direct debit.

Connect to the Collaborating Organisation electronically or directly or through the Tax Agency or go to their offices in order to make the corresponding deposit and provide the data relating to this deposit.

The Collaborating Organisation, once it has accepted the amount, will assign a Complete Reference Number (Número de Referencia Completo - NRC) associated with the deposit made.

Later, connect to the Tax Agency over the Internet www.agenciatributaria.es and in the Virtual Office proceed to:

1. Select the type of tax return to send and enter the Complete Reference Number associated with the deposit that has been assigned by the Collaborating Organisation.
2. Select the user certificate to generate the electronic signature, and in the case of a married couple filing a tax return for income resulting from the transfer of real estate assets, Form 212, select the user certificate of the spouse as well. If the filer is an individual or organisation authorised to file tax returns representing others, or an attorney for electronic filing, a single signature is required, that corresponding to their certificate.
3. Send the complete tax return with the electronic signature or signatures to the Tax Agency.

If the tax return is accepted, the Tax Agency will return on-screen the data of the summary sheet of Form 215 or the tax return of Forms 210, 212, 211, 213 or 214¹, as applicable, validated with an electronic code together with the date and time of filing. The accepted tax return should be printed and kept, as well as the summary sheet, if applicable, duly validated.

If the tax return is rejected, the errors found will be shown so that they can be corrected.

b) Tax returns with amounts to deposit (Forms 213, 214¹ or 215) the payment of which is made by direct debit (2)

In these cases, sending the tax return does not require prior communication with the Collaborating Organisation to make the deposit and obtain the Complete Reference Number as previously described.

The transmission of the tax return, including the corresponding direct debit order, and the other later actions is made in accordance with that described in numbers 2 and 3 or the previous section.

¹ Due to the elimination of Wealth Tax, effective from the 2008 tax period, form 214 is revoked.

For accruals produced in 2008 and later tax years, form 210 will be used to submit for the other subsisting tax item (income from urban buildings).

(2) Order EHA/3398/2006, of 26 October, establishes the possibility of direct debit only in electronic filing made within the filing period, for Forms 210 (income arising from urban real estate), 213, 214 and 215, provided that their filing is made in the following time periods:

Form 210, income type 02 (income arising from urban real estate): From 1 January to 23 December (for accruals produced in the financial year 2008 and subsequent years).

Form 213: From 1 to 25 January of each year, for the tax accrued on 31 December of the previous year.

Form 214: From 1 January until 23 December of the calendar year following the year to which the tax return refers (this form is eliminated for accruals produced in the financial year 2008 and subsequent years).

Form 215: From days 1 to 15 of the months of April, July, October and January in relation to income accrued in the previous calendar quarter.

In these cases, the tax liability resulting from the tax return can be paid by direct debit at the credit organisation acting as collaborator in tax collection management (bank, savings bank or credit co-operative), located in Spanish territory, in which an account is open in the name of the taxpayer, or the Joint and Several Guarantor filing, from which the direct debit will be paid. The Tax Agency will notify the direct debit order to the collaborating organisation, which will then debit the account for the amount of the order on the last day of the voluntary payment period.

Individuals or organisations authorised to electronically file tax returns representing others, or attorneys empowered to make electronic filings, can forward the direct debits, which have previously been communicated by the third parties they are representing, to the banks.

c) Tax returns with amounts to be refunded (Form 212), with a request for refund or waive of refund, or zero charge (Forms 212 and 213).

The procedure to file these tax returns is similar to that described for tax returns with amounts to be deposited, except that it is not necessary to make the connection with the Collaborating Organisation to make the deposit and obtain the Complete Reference Number associated, nor the direct debit of the deposit.

9. AGREEMENTS AVOIDING DOUBLE TAXATION

Taxation described up to this point is that established in general Spanish legislation for various types of income. In the case where the taxpayer is resident in a country with which Spain has signed an Agreement to avoid double taxation, it will be necessary to be familiar with its provisions as in some cases taxation is less, and in others, income may not be submitted for taxation in Spain if specific circumstances concur. In the cases in which the income is not taxed in Spain or is taxed at a lower tax rate, the non-resident taxpayer must justify that they are resident in a country with which Spain has subscribed an Agreement by means of a residence certificate issued by the Tax Authorities of that country.

Types of income

As a general rule, and without prejudice to the special circumstances contained in the various Agreements, the treatment of different types of income described in the Agreements is as follows:

Company profits:

Company profits can only be subject to taxation in the country of residence of the taxpayer, except when they are obtained through permanent establishment, in which case they are taxed in Spain.

Professional activities:

As in the previous case, the Agreements attribute taxation power for taxing this income to the country in which the taxpayer is resident, unless they are obtained by means of or through a fixed base, in which case, they are taxed in Spain.

Artistic and Sports activities:

As a general rule, the income for activities performed in Spanish territory is taxed in Spain. However, there are special circumstances in various Agreements with respect to this type of income.

Income from real estate:

The Agreements signed by Spain attribute power to tax the income from real estate assets to the State where the real estate is situated. Therefore, the income resulting from real estate assets situated in Spain is taxed in accordance with Spanish law.

Dividends, interest and fees:

The regime of shared taxation is followed between Spain and the State where the taxpayer is resident; therefore, Spain has the right to levy tax on this income, but with the limitation on tax indicated in the Agreement (Appendix IV).

Work income:

Generally, income received for employment exercised in Spain is taxed by the Spanish State, except where the following three circumstances are jointly seen: That the non-resident does not remain in Spain more than 183 days during the tax year in question, that the remunerations are paid by a non-resident employer and that these remunerations are not supported by permanent establishment or a fixed base that the employer has in Spain.

Directors:

Shares, attendance expenses and other similar remunerations the taxpayer obtains as a consequence of being a member of a board of directors of a Spanish company resident in Spain are subject to taxation by the Spanish State.

Pensions:

Pensions, understood to be remunerations originating from a previous employment, are subject to different treatments depending on whether they are public or private. A public pension is understood to be that received for being a former public employee. I.e. that which is received for services provided to a State, to one of its political subsections or a local organisation. A private pension is understood to be any other type of pension received by being a former private employee, as distinct from that defined as a public employee.

- For private pensions, most of the Agreements establish the right to impose taxation exclusively in favour of the State of residence of the taxpayer.
- For public pensions, the right to impose taxation is in favour of the State from which the pension derives, not the State of residence, except in some Agreements where, if the taxpayer has the nationality of the State of residence, the taxation power corresponds to the State of residence.

Students:

In general, the amounts received for maintenance charges, studies and training are exempt if they come from sources abroad.

Capital gains:

Except for capital gains resulting from the transfer of real estate situated in Spanish territory, which is taxed in Spain, the taxation power normally corresponds to the State of residence.

10. SPECIAL PROCEDURE TO DETERMINE THE TAX WITHHELD ON WORK INCOME IN THE CASE OF CHANGE OF RESIDENCE

This is a voluntary procedure that can be used by employed workers, the purpose of which is to anticipate the effects of the change of residence on the tax withheld on work income.

Taxpayers must be residents or with permanent establishment in Spain.

A. Workers who move to Spanish territory.

Employed workers who do not pay Personal Income Tax, but who will acquire this status as a consequence of moving to Spanish territory can notify the Tax Administration of this circumstance by using **Notification Form 147**.

The Tax Agency will issue workers with an identification document to be delivered to the payer of the remuneration, in order for them to withhold tax according to the Personal Income Tax (IRPF) regulations from the date indicated.

To apply this procedure the existence of objective data must be proven in the employment relationship that estimate, as a consequence of the employment, that the worker will stay in Spanish territory for more than 183 days in the calendar year in which the move took place, or alternatively, in the following calendar year.

For this purpose, the communication form will be accompanied by a **supporting document from the payer of the remuneration stating** the recognition of the employment relationship with the worker, the date on which work began in Spanish territory, the workplace and its address, the length of the contract and the intention of the payer that the worker will carry out work in Spanish territory for a minimum period of over 183 days during the calendar year in which the date of commencement of the

work falls, or, alternatively, that this minimum period of stay will take place during the following calendar year.

- **Where to file the return**

In the Administration or Office in whose territorial area the home address is located in Spanish territory at the time of filing the return. If this cannot be determined, the workplace location will be used. Failing this, the tax address of the payer of the remuneration will be used.

- **Filing period**

From 30 days prior to the date of entry in Spanish territory notified and up to 183 days after the time of the move, or up to 30 June of the following year, if the minimum period of stay required must take place in this year.

B. Workers who move abroad

Employed workers who do not pay non-resident income tax, but who will acquire this status by being moved abroad by their employer, can notify the Tax Agency by using **Notification Form 247**.

The Tax Agency will issue workers with a document to give their employer in order for the latter to withhold tax for IRNR (Non-resident income tax), from the date indicated in the document.

The effects of the document will be extended, in terms of the practice of withholding tax for Non-resident Income Tax, for a maximum of two calendar years, the year of the move and the following year, or if it is not applicable to calculate the year of the move, the two years immediately following it.

The use of this procedure will not exonerate the worker from accrediting their new tax residence to the Tax Administration.

To apply this procedure, the existence of objective data must be proven in the employment relation that show, as a consequence of the employment in another country, that the worker will stay in that country for more than 183 days in the calendar year in which the move took place, or alternatively, in the following calendar year.

The accreditation will be carried out using a **supporting document from the payer of the remuneration that states** the recognition of the employment relationship with the worker, the country or territory to which the move is made, the length of the contract, the date on which work commences in the other country, the length of the stay and the estimated date on which the stay is due to end.

- **Where to file the return**

In the Administration or Office corresponding to the tax address before the move.

- **Filing period**

From 30 days before the notified date of leaving Spanish territory and, at most, up to the end of the period in which it is estimated that the effects of the documents issued by the Tax Agency are applicable.

Appendices

Appendix I. COUNTRIES WITH AGREEMENTS

| EUROPEAN UNION | | |
|---------------------------------|------------|------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Germany | 05-12-1966 | 08-04-1968 |
| Austria ⁽¹⁾ | 20-12-1966 | 06-01-1968 |
| Belgium ⁽¹⁰⁾ | 14-06-1995 | 04-07-2003 |
| Bulgaria ⁽¹²⁾ | 06-03-1990 | 12-07-1991 |
| Czech Republic ⁽¹¹⁾ | 08-05-1980 | 14-07-1981 |
| Denmark ⁽⁶⁾¹⁵ | 03-07-1972 | 28-01-1974 |
| Slovak Republic ⁽¹¹⁾ | 08-05-1980 | 14-07-1981 |
| Slovenia ⁽¹¹⁾ | 23-05-2001 | 28-06-2002 |
| Estonia | 03-09-2003 | 03-02-2005 |
| Finland ⁽²⁾ | 15-11-1967 | 11-12-1968 |
| France | 10-10-1995 | 12-06-1997 |
| Greece | 04-12-2000 | 02-10-2002 |
| Hungary ⁽¹¹⁾ | 09-07-1984 | 24-11-1987 |
| Ireland ⁽³⁾ | 10-02-1994 | 27-12-1994 |
| Italy | 08-09-1977 | 22-12-1980 |
| Latvia | 04-09-2003 | 10-01-2005 |
| Lithuania ⁽¹¹⁾ | 22-07-2003 | 02-02-2004 |
| Luxembourg ⁽¹⁶⁾ | 03-06-1986 | 04-08-1987 |
| Malta ⁽³⁾ | 08-11-2005 | 07-09-2006 |
| The Netherlands | 16-06-1971 | 16-10-1972 |
| Poland ⁽¹¹⁾ | 15-11-1979 | 15-06-1982 |
| Portugal | 26-10-1993 | 07-11-1995 |
| United Kingdom ⁽⁴⁾ | 21-10-1975 | 18-11-1976 |
| Romania ⁽¹²⁾ | 24-05-1979 | 02-10-1980 |
| Sweden | 16-06-1976 | 22-01-1977 |

| REST OF EUROPE | | |
|-----------------------------|------------|------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Croatia ⁽¹³⁾ | 19-05-2005 | 23-05-2006 |
| Iceland | 22-01-2002 | 18-10-2002 |
| Macedonia | 20-06-2005 | 03-01-2006 |
| Moldova ⁽¹⁷⁾ | 08-10-2007 | 11-04-2009 |
| Norway ⁽⁷⁾ | 06-10-1999 | 10-01-2001 |
| Russian Federation | 16-12-1998 | 06-07-2000 |
| Switzerland ⁽¹⁴⁾ | 26-04-1966 | 03-03-1967 |
| Turkey | 05-07-2002 | 19-01-2004 |
| Former USSR ⁽⁵⁾ | 01-03-1985 | 22-09-1986 |

| AMERICA | | |
|-----------------------------------|------------|------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Argentina | 21-07-1992 | 09-09-1994 |
| Bolivia | 30-06-1997 | 10-12-1998 |
| Brazil ⁽⁹⁾ | 14-11-1974 | 31-12-1975 |
| Canada | 23-11-1976 | 06-02-1981 |
| Chile | 07-07-2003 | 02-02-2004 |
| Columbia | 31-03-2005 | 28-10-2008 |
| Cuba ⁽⁸⁾ | 03-02-1999 | 10-01-2001 |
| Ecuador | 20-05-1991 | 05-05-1993 |
| United States ^{(3) (18)} | 22-02-1990 | 22-12-1990 |
| Jamaica | 08-07-2008 | 12-05-2009 |
| Mexico | 24-07-1992 | 27-10-1994 |
| Salvador, El | 07-07-2008 | 05-06-2009 |
| Trinidad and Tobago | 17-02-2009 | 08-12-2009 |
| Venezuela | 08-04-2003 | 15-06-2004 |

| ASIA | | |
|----------------------------|------------|------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Saudi Arabia | 19-06-2007 | 14-07-2008 |
| China | 22-11-1990 | 25-06-1992 |
| Korea ⁽³⁾ | 17-01-1994 | 15-12-1994 |
| United Arab Emirates | 05-03-2006 | 23-01-2007 |
| Philippines ⁽³⁾ | 14-03-1989 | 15-12-1994 |
| India | 08-02-1993 | 07-02-1995 |
| Indonesia | 30-05-1995 | 14-01-2000 |
| Iran | 19-07-2003 | 02-10-2006 |
| Israel | 30-11-1999 | 10-01-2001 |
| Japan | 13-02-1974 | 02-12-1974 |
| Malaysia | 24-05-2006 | 13-02-2008 |
| Thailand | 14-10-1997 | 09-10-1998 |
| Vietnam ⁽³⁾ | 07-03-2005 | 10-01-2006 |

| AFRICA | | |
|-----------------------|------------|------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Algeria | 07-10-2002 | 22-07-2005 |
| Egypt ⁽¹³⁾ | 10-06-2005 | 11-07-2006 |

| AFRICA | | |
|----------------|-------------|-------------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Morocco | 10-07-1978 | 22-05-1985 |
| South Africa | 23-06-2006 | 15-02-2008 |
| Tunisia | 02-07-1982 | 03-03-1987 |

| OCEANIA | | |
|--------------------------|-------------|-------------------------------------|
| Country | Date | BOE (Official State Gazette) |
| Australia ⁽³⁾ | 24-03-1992 | 29-12-1992 |
| New Zealand | 28-07-2005 | 11-10-2006 |

- (1) This Agreement has been changed in articles 2, 11 and 24 by the Protocol signed on 24-02-1995, published in the Official State Gazette (BOE) on 2 October 1995.
- (2) Changed by exchange of notes on 27-4-90 (Official State Gazette of 28 July 1992).
- (3) Not applicable to Wealth Tax.
- (4) Changed by exchange of notes on 13-12-1993 and 17-06-1994 (Official State Gazette of 25 May 1995).
- (5) Applicable to Ukraine, Belarus, Moldova (17), Georgia, Armenia, Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan and Kyrgyzstan.

For Exchange of Notes between Spain and the countries indicated below, the agreement to avoid double taxation between Spain and the USSR, of 1 March 1985, is no longer in force from the dates indicated below:

| COUNTRY | DATE | Official State Gazette |
|----------------|-------------|-------------------------------|
| Armenia | 10-10-2007 | 23-06-2010 |
| Azerbaijan | 28-01-2008 | 23-06-2010 |
| Georgia | 10-10-2007 | 23-06-2010 |
| Moldova | 01-10-2007 | 23-06-2010 |
| Kazakhstan | 08-07-2008 | 23-06-2010 |
| Uzbekistan | 21-07-2010 | 11-10-2010 |

- (6) This Agreement has been changed in articles 2, 3, 9, 10, 14, 17, 19, 22, 24 and 25 and article 29 has been deleted by the Protocol signed on 17-03-1999, published in the Official State Gazette (BOE) on 17-05-2000.
- (7) The provisions were applied from 01-01-2001 and from this date the Agreement signed on 25-04-1963 is no longer applicable.
- (8) Changed by exchange of notes on 09-11-1999 and 30-12-1999 (BOE 10-01-2001).
- (9) See the Resolution of 22-09-2003 (BOE 02-10-2003) on the interpretation of different points of this agreement.
- (10) The provisions were applied from 01-01-2004 and from this date the Agreement signed on 24-09-1970 is no longer applicable.
- (11) From 1 May 2004 these countries became part of the European Union (EU).
- (12) EU Member State from 1 January 2007.
- (13) The provisions were applied from 01-01-2007.
- (14) This Agreement has been changed by the Protocol dated 29 June 2006 (BOE 27-03-2007).
- (15) Denmark lodged a complaint regarding this agreement and the protocol modifying it (BOE 19-11-2008). Consequently, the agreement and the protocol modifying it ceased to be in force on 1 January 2009.
- (16) Modified by the protocol of 10-11-2009 (BOE 31-05-2010).

- (17) The provisions were applied from 01-01-2010.
- (18) See the Amicable Agreement relating to the treatment of limited liability companies (LLC), S Corporations in the USA, and other business organisations considered to be partnerships or organisations not subject to US Corporation Tax (BOE 13-08-2009).

Appendix II. ORDERS FOR THE DEVELOPMENT OF AGREEMENTS AND TIMELINES

| Country | Date | BOE (Official State Gazette) |
|-----------------|------------|------------------------------|
| Germany | 10-11-1975 | 04-12-1975 |
| Austria | 26-03-1971 | 29-04-1971 |
| Belgium (*) | 27-02-1973 | 26-03-1973 |
| Denmark (**) | 04-12-1978 | 05-01-1979 |
| The Netherlands | 31-01-1975 | 13-02-1975 |
| United Kingdom | 22-09-1977 | 11-10-1977 |
| Sweden | 18-02-1980 | 01-03-1980 |

(*) The content of this Order is applicable to types of income referred to in it whose accrual was produced before 01-01-2004, because from this date the old Agreement signed on 24-09-1970 and the Order putting it into effect dated 27-02-1973 were cancelled.

(**) Denmark lodged a complaint regarding the agreement with Denmark and the protocol modifying it (BOE 19-11-2008). Consequently, the agreement and the order modifying it ceased to be in force on 1 January 2009.

| Countries | Types of income | Start date of period | Filing period |
|---|-----------------|--|---------------|
| Germany | Dividends | General table (1) | 1 year |
| | Fees | · If date of accrual is between 01-01 and 30-09 of year N: 01-01 year N+1 · If date of accrual is between 01-10 and 31-12 of year N: 01-01 year N+2 | |
| Austria Belgium | Dividends | General table (1) | 1 year |
| | Fees | | |
| Denmark (**) | Dividends | Accrual date + 2 months | 1 year |
| | Fees | | |
| The Netherlands United Kingdom | Dividends | · If date of accrual is between 01-01 and 30-09 of year N: 01-01 year N+1 · If date of accrual is between 01-10 and 31-12 of year N: 01-01 year N+2 | 2 years |
| | Fees | | |
| Sweden | Dividends | · If date of accrual is between 01-01 and 30-09 of year N: 01-01 year N+1 · If date of accrual is between 01-10 and 31-12 of year N: 01-01 year N+2 | 1 year |
| | Fees | | |

(1) General table

| Month of accrual | January | Feb. | March | April | May | June | July | August | Sept. | Oct. | Nov. | Dec. |
|------------------|----------|------|-------|---------|-----|------|------------|--------|-------|------------|------|------|
| Start date | 21 April | | | 21 July | | | 21 October | | | 21 January | | |

Appendix III. COEFFICIENTS FOR UPDATING ACQUISITION PRICE.

For assets transferred during **2009**, the updating coefficients are as follows:

| Year of purchase | Coefficients |
|----------------------|--------------|
| 1994(1) and previous | 1.2653 |
| 1995 | 1.3368 |
| 1996 | 1.2911 |
| 1997 | 1.2653 |
| 1998 | 1.2408 |
| 1999 | 1.2185 |
| 2000 | 1.1950 |
| 2001 | 1.1716 |
| 2002 | 1.1486 |
| 2003 | 1.1261 |
| 2004 | 1.1040 |
| 2005 | 1.0824 |
| 2006 | 1.0612 |
| 2007 | 1.0404 |
| 2008 | 1.0200 |
| 2009 | 1.0000 |

(1) However, if the investment was made on 31 December 1994, a coefficient of 1.3368 is to be applied.

The application of a coefficient other than one requires the investment to have been made at least one year in advance of the date of transfer of the real estate asset.

For assets transferred during **2010**, the updating coefficients will be:

| Year of purchase | Coefficients |
|----------------------|--------------|
| 1994(1) and previous | 1.2780 |
| 1995 | 1.3502 |
| 1996 | 1.3040 |
| 1997 | 1.2780 |
| 1998 | 1.2532 |
| 1999 | 1.2307 |
| 2000 | 1.2070 |
| 2001 | 1.1833 |
| 2002 | 1.1601 |
| 2003 | 1.1374 |
| 2004 | 1.1150 |
| 2005 | 1.0932 |
| 2006 | 1.0718 |
| 2007 | 1.0508 |
| 2008 | 1.0302 |
| 2009 | 1.0100 |
| 2010 | 1.0000 |

(1) However, if the investment was made on 31 December 1994, a coefficient of 1.3502 is to be applied.

The application of a coefficient other than one requires the investment to have been made at least one year in advance of the date of transfer of the real estate asset.

Appendix IV. TAX RATES IN THE AGREEMENTS

| Country | Dividends | | | Interest | Fees |
|------------------------|-----------|-------------------|------------------|----------|----------------|
| | General | Parent-Subsidiary | | | |
| | | % Minimum Share | Rate | | |
| Germany | 15 | 25 | 10 | 10 | 5 |
| Saudi Arabia | 5 | 25 | 0 | 0/5 | 8 |
| Algeria | 15 | 10 | 5 | 0/5 | 7/14 |
| Argentina | 15 | 25 | 10 | 0/12.5 | 3/5/10/15 |
| Australia | 15 | - | - | 10 | 10 |
| Austria | 15 | 50 | 10 | 5 | 5 |
| Belgium | 15 | 25 | 0 | 0/10 | 5 |
| Bolivia | 15 | 25 | 10 | 0/15 | 15/0 |
| Brazil | 15 | - | - | 10/15 | 10/15 |
| Bulgaria | 15 | 25 | 5 | 0 | 0 |
| Canada | 15 | - | - | 15 | 0/10 |
| Czech Republic | 15 | 25 | 5 | 0 | 0/5 |
| Chile | 10 | 20 | 5 | 5/15 | 5/10 |
| China | 10 | - | - | 10 | 10 |
| Columbia | 5 | 20 | 0 | 10 | 10 |
| Korea | 15 | 25 | 10 | 10 | 10 |
| Croatia | 15 | 25 | 0 | 8 | 8 |
| Cuba | 15 | 25 | 5 | 10 | 0/5 |
| Denmark ⁽⁶⁾ | 15 | - | 0 ⁽¹⁾ | 10 | 6 |
| Ecuador | 15 | - | - | 5/10 | 5/10 |
| Egypt | 12 | 25 | 9 | 10 | 12 |
| United Arab Emirates | 15 | 10 | 5 | 0 | ⁽³⁾ |
| Slovak Republic | 15 | 25 | 5 | 0 | 0/5 |
| Slovenia | 15 | 25 | 5 | 5 | 5 |

| Country | Dividends | | | Interest | Fees |
|---------------|-----------|-------------------|------|----------|----------|
| | General | Parent-Subsidiary | | | |
| | | % Minimum Share | Rate | | |
| United States | 15 | 25 | 10 | 10 | 5/8/10 |
| Estonia | 15 | 25 | 5 | 0/10 | 5/10 |
| Philippines | 15 | 10 | 10 | 10/15 | 10/15/20 |
| Finland | 15 | 25 | 10 | 10 | 5 |
| France | 15 | 10 | 0 | 10 | 0/5 |
| Greece | 10 | 25 | 5 | 0/8 | 6 |
| Hungary | 15 | 25 | 5 | 0 | 0 |
| India | 15 | - | - | 15 | 10/20 |
| Indonesia | 15 | 25 | 10 | 10 | 10 |
| Iran | 10 | 20 | 5 | 7.5 | 5 |
| Ireland | 15 | 25 | 0 | 0 | 5/8/10 |
| Iceland | 15 | 25 | 5 | 5 | 5 |
| Israel | 10 | - | - | 5/10 | 5/7 |
| Italy | 15 | - | - | 12 | 4/8 |
| Jamaica | 10 | 25 | 5 | 0/10 | 10 |
| Japan | 15 | 25 | 10 | 10 | 10 |
| Latvia | 10 | 25 | 5 | 0/10 | 5/10 |
| Lithuania | 15 | 25 | 5 | 0/10 | 5/10 |
| Luxembourg | 15 | 25 | 10 | 10 | 10 |
| Macedonia | 15 | 10 | 5 | 5 | 5 |
| Malaysia | 5 | 5 | 0 | 0/10 | 5/7 |
| Malta | 5 | 25 | 0 | 0 | 0 |
| Morocco | 15 | 25 | 10 | 10 | 5/10 |
| Mexico | 15 | 25 | 5 | 10/15 | 0/10 |
| Moldova | 10 | 25/50 | 5/0 | 0/5 | 8 |
| Norway | 15 | 25 | 10 | 0/10 | 5 |

| Country | Dividends | | | Interest | Fees |
|---------------------|------------------------|-------------------|---------------------|---------------------|--------------------|
| | General | Parent-Subsidiary | | | |
| | | % Minimum Share | Rate | | |
| New Zealand | 15 | - | - | 10 | 10 |
| The Netherlands | 15 | 25/50 | 5/10 | 10 | 6 |
| Poland | 15 | 25 | 5 | 0 | 0/10 |
| Portugal | 15 | 25 | 10 | 15 | 5 |
| United Kingdom | 15 | 10 | 10 | 12 | 10 |
| Romania | 15 | 25 | 10 | 10 | 10 |
| Russian Federation | 5/10/15 ⁽²⁾ | - | - | 5 | 5 |
| Former USSR | 18 | - | - | 0 | 5 |
| Salvador, El | 12 | 50 | 0 | 0/10 | 10 |
| South Africa | 15 | 25 | 5 | 0/5 | 5 |
| Sweden | 15 | 50 | 10 | 15 | 10 |
| Switzerland | 15 | 25 | 10/0 ⁽⁴⁾ | 10/0 ⁽⁴⁾ | 5/0 ⁽⁵⁾ |
| Thailand | 10 | - | - | 10/15 | 5/8/15 |
| Trinidad and Tobago | 10 | 25/50 | 5/0 | 0/8 | 5 |
| Tunisia | 15 | 50 | 5 | 5/10 | 10 |
| Turkey | 15 | 25 | 5 | 10/15 | 10 |
| Venezuela | 10 | 25 | 0 | 0/4.95/10 | 5 |
| Vietnam | 15 | 25/50 | 7/10 | 10 | 10 |

Data in percentages

(1) See article 10 of the Agreement

(2) See article 10 of the Agreement

(3) See article 12 of the Agreement

(4) The exemption for Parent-Subsidiary dividends is applicable to income obtained from 01-06-2007.

(5) The exemption for fees between associated companies is applicable to income obtained from 02-07-2011.

(6) Denmark lodged a complaint regarding this Hispano-Danish agreement and the protocol modifying it (BOE 19-11-2008). Consequently, the agreement and the protocol modifying it ceased to be in force on 1 January 2009.

Appendix V. TAX HAVENS ⁽¹⁾

1. Principality of Andorra
2. Dutch Antilles **(4) (10)**
3. Aruba **(5)**
4. Kingdom of Bahrain
5. Sultanate of Brunei
6. Republic of Cyprus
7. United Arab Emirates **(2)**
8. Gibraltar
9. Hong Kong
10. American Anguilla
11. Antigua and Barbados
12. The Bahamas
13. Barbados
14. Bermuda
15. Cayman Islands
16. Cook Islands
17. Dominican Republic
18. Grenada
19. Fiji
20. Islands of Guernsey and Jersey (Channel Islands)
21. Jamaica **(6) (7)**
22. Republic of Malta **(3)**
23. Falkland Islands
24. Isle of Man
25. Mariana Islands
26. Mauritius
27. Montserrat
28. Republic of Nauru
29. Solomon Islands
30. Saint Vincent and the Grenadines
31. Saint Lucia
32. Republic of Trinidad and Tobago **(9)**
33. Turks and Caicos Islands
34. Republic of Vanuatu
35. British Virgin Islands
36. United States Virgin Islands
37. Hashemite Kingdom of Jordan
38. Republic of Lebanon
39. Republic of Liberia
40. Principality of Liechtenstein
41. Grand Duchy of Luxembourg, for purposes of income received by Companies referred to in paragraph 1 of the Protocol appended to the Agreement, to avoid double taxation, dated 3 June 1986. **(8)**
42. Macao
43. Principality of Monaco
44. Sultanate of Oman
45. Republic of Panama
46. Republic of San Marino
47. Republic of Seychelles
48. Republic of Singapore

(1) The countries or territories stated in the regulations will have the status of tax haven.

Those countries or territories that sign an agreement with Spain to avoid international double taxation will cease to have the status of tax havens. Such agreements will include an exchange of information clause or an agreement to exchange information on tax matters in which it is expressly stated that the countries will cease to be tax havens from the moment at which the agreements are applied.

The countries or territories referred to in the above paragraph will become tax havens again at the moment in which these agreements cease to be applicable (First Additional Provision of Act 36/2006, dated 29 November 2006, on measures for preventing of tax evasion).

Whilst countries or territories with the status of tax haven are not determined by regulation, such countries or territories will be so considered as described under section 1 of Royal Decree 1080/1991, dated 5 July, whereby the countries or territories referred to in section 2, subsection 3, number 4, of Act 17/1991, of 27 May, on Urgent Tax Measures, and 62 of General State Budgets Act 31/1990, of 27 December, for 1991 (Second Transient Provision Act 36/2006) are determined.

- (2)** The Agreement between Spain and the United Arab Emirates to avoid double taxation came into force on 2/04/2007 (see Appendix I).
- (3)** The Agreement between Spain and Malta to avoid double taxation came into force on 12/09/2006 (see Appendix I).
- (4)** From 27-01-2010 (the date the Agreement on the exchange of tax information became effective – BOE 24-11-2009 -) this is no longer considered a tax haven.

- (5) From 27-01-2010 (the date the Agreement on the exchange of tax information became effective – BOE 23-11-2009 -) this is no longer considered a tax haven.
- (6) The Agreement between Spain and Jamaica to avoid double taxation came into force on 16-5-2009 (see Appendix I).
- (7) The companies mentioned in paragraph A of section V of the Protocol of the Agreement are excluded from it and from the effects of the application of the first additional provision of the Tax Evasion Prevention Act 36/2006.
- (8) From 16-07-2010 (the date the Protocol modifying the Agreement became effective – BOE 3-05-2010) this is no longer considered a tax haven.
- (9) The Agreement between Spain and Trinidad and Tobago to avoid double taxation came into force on 28-10-2009 (see Appendix I).
- (10) From 10 October 2010 (date of the dissolution of the Dutch Antilles) Curaçao and Sint Maarten became autonomous States of the Kingdom of the Netherlands. The remaining islands (Bonaire, Sint Eustatius and Saba) became special municipalities of the Kingdom.

Appendix VI. MEMBER STATES OF THE EUROPEAN UNION

| Countries | Agreement (*) |
|-------------------------------|---------------|
| Germany | Yes |
| Austria | Yes |
| Belgium | Yes |
| Bulgaria ⁽²⁾ | Yes |
| Czech Republic ⁽¹⁾ | Yes |
| Cyprus ⁽¹⁾ | - |
| Denmark ⁽³⁾ | NO |
| Slovakia ⁽¹⁾ | Yes |
| Slovenia ⁽¹⁾ | Yes |
| Spain | - |
| Estonia ⁽¹⁾ | Yes |
| Finland | Yes |
| France | Yes |
| Greece | Yes |
| Hungary ⁽¹⁾ | Yes |
| Ireland | Yes |
| Italy | Yes |
| Latvia ⁽¹⁾ | Yes |
| Lithuania ⁽¹⁾ | Yes |
| Luxembourg | Yes |
| Malta ⁽¹⁾ | Yes |
| The Netherlands | Yes |
| Poland ⁽¹⁾ | Yes |
| Portugal | Yes |
| United Kingdom | Yes |
| Romania ⁽²⁾ | Yes |
| Sweden | Yes |

(*) The countries with which Spain has signed agreements to avoid double taxation are indicated by "Yes".

⁽¹⁾ European Union Member States from 1 May 2004.

⁽²⁾ European Union Member States from 1 January 2007.

⁽³⁾ The BOE of 19-11-2008 published the complaint by Denmark regarding the Hispano-Danish agreement. The agreement ceased to be in force on 1 January 2009.

Appendix VII. Countries and territories with agreements to exchange tax information

| COUNTRY OR TERRITORY | DATE | BOE (Official State Gazette) |
|-------------------------------|-------------|-------------------------------------|
| Dutch Antilles ⁽¹⁾ | 10-06-2008 | 24-11-2009 |
| Aruba | 24-11-2008 | 23-11-2009 |

⁽¹⁾ From 10 October 2010 (date of the dissolution of the Dutch Antilles) Curaçao and Sint Maarten became autonomous States of the Kingdom of the Netherlands. The remaining islands (Bonaire, Sint Eustatius and Saba) became special municipalities of the Kingdom.

Appendix VIII. Regulations

- Legislative Royal Decree 5/2004, dated 5 March, approving the codifying legislation of Non-resident Income Tax Act (BOE 2 March).
- Personal Income Tax Act 35/2006, dated 28 29 November, and partially changing the Laws on Corporation Tax, Non-resident Income Tax and Wealth Tax (BOE 29 November).
- Law 36/2006, of 29 November, on measures for the prevention of tax evasion (BOE 30 November).
- Royal Decree 1776/2004, dated 30 January, approving the Regulations for Non-resident Income Tax (BOE 5 August).
- Royal Decree 1804/2008, of 3 November, developing the Tax Evasion Prevention Act 36/2006 of 29 November, modifies the Regulations for applying the tax system for non-profit organisations and tax incentives for patronage, approved by Royal Decree 1270/2003, and modifies and approves other tax regulations (BOE 18 November).
- Royal Decree 1794/2008, of 3 November, approving the Regulations for amicable direct tax procedures (BOE 18 November).
- Royal Decree 1080/1991, dated 5 July, determining countries or territories considered to be tax havens (BOE 13 July).
- Order EHA/3290/2008, of 6 November, approving form 216 "Non-resident income tax. Income obtained from sources other than permanent establishment Withholdings and payment on account. Tax return-deposit document" and form 296 "Non-resident income tax. Non-residents who are not permanently established. Annual declaration of withholding and account deposits" (BOE 17 November).
- Order HAC/3626/2003, dated 23 December, approving tax return forms 210, 215, 212, 211 and 213 for Non-resident Income Tax, that must be used to declare income obtained not through permanent establishment, the withholding of tax carried out during the acquisition of real estate assets by non-residents with no permanent establishment and the special tax on real estate assets of non-resident organisations, as well as the tax return Form 214, simplified non-resident real estate tax and non-resident income tax return; establishing the general conditions and the procedure for online filing of these tax returns and other rules referring to taxation of non-residents (BOE 30 December).
- Order of 21 December 2000 establishing the general conditions and the procedure for the electronic filing over the internet of the tax returns corresponding to Forms 216 and 296, and others (BOE 28 December).
- Order of 12 July 2000, approving the request Form for the optional regime regulated in section 33 of Act 41/1998, dated 9 December, on non-resident income tax and taxation rules, for individual taxpayers resident in other Member States of the European Union and determining the place, method and its filing period (BOE 14 July).
- Order of 13 April 2000 establishing the procedure to make effective the practice of withholding tax at the applicable tax rate in each case, or the exclusion from withholding of tax, on the interest and dividends obtained by taxpayers with no

permanent establishment for non-resident income tax derived from the issue of negotiable securities with the exception of the interest derived from specific Public Debt securities (BOE 18 April).

- Order EHA/3202/2008, of 31 October, approving form 291 "Non-resident income tax. Non-residents with no permanent establishment. Information tax return for non-resident accounts", and the physical and logical designs for its presentation in a directly computer-readable format, and establishing the procedure for electronic filing by teleprocessing (BOE 10 November).
- Order HAC/117/2003, dated 31 January, approving the Forms for communicating to the Tax Administration the change of address for the purposes of withholding of tax on work income and regulating the method, place and its filing period (BOE 1 February).
- Order EHA/848/2008, dated 24 March, approving the Income tax return form of individuals in the special taxation regime of non-resident income tax applicable to workers displaced to Spanish territory, as well the notification Form 149 for the exercise of the option of paying tax by this regime and modifying other provisions relating to the administration of certain self-assessments (BOE 31 March).