

# Guide to Spanish Tax Law Research

## ABBREVIATIONS AND BASIC EXPRESSIONS

BOE	State Official Journal (State)
Congreso	Lower House (State)
Cortes	Designates both Houses (Congress & Senate)
IAE	Impuesto sobre Actividades Económicas (Tax on Business Activities; local tax)
IBI	Impuesto sobre Bienes Inmuebles (Tax on Real Estate; local tax)
ICIO	Impuesto sobre Construcciones, Instalaciones y Obras (Tax on Building Works; local tax)
IIEE	Impuestos Especiales (Excise Tax)
IIVTNU	Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana (Tax on the Increase in Value of Urban Land; local tax)
IP	Impuesto sobre el Patrimonio (Wealth Tax)
IRNR	Impuesto sobre la Renta de No Residentes (Non-Residents Income Tax)
IRPF	Impuesto sobre la Renta de las Personas Físicas (Personal Income Tax)
IS	Impuesto sobre Sociedades (Corporate Income Tax)
ISD	Impuesto sobre Sucesiones y Donaciones (Gifts and Inheritance Tax)
ITPyAJD	Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (Transfers Tax)
IVA	Impuesto sobre el Valor Añadido (Value Added Tax)
IVTM	Impuesto sobre Vehículos de Tracción Mecánica (Tax on Vehicles; local tax)
Ley	Act of Parliament (State “Cortes” or Autonomous Regions Parliaments)
Ley Orgánica	A special kind of Act of Parliament that requires to be approved by absolute majority (State)
LGT	Ley General Tributaria (General Law on Taxation) Act 58/2003
Parliament	Each Autonomous Region has its own Parliament
RD	Royal Decree (a regulation issued by the State Council of Ministers; the Council of Ministers is called “the government”)
RDLeg.	Legislative Royal Decree (it has the force of an Act of Parliament, but it is issued by the government for the purpose of consolidating the existing Act and its modifications)
Senado	Senate (State)

## I. CONSTITUTIONAL AND EUROPEAN LAW.

### I.1. Political organization.

Spain is organized in 17 “Comunidades Autonomas” or autonomous regions, plus 2 autonomous towns (Ceuta and Melilla). The autonomous regions are: Navarra and País Vasco (which enjoy a special status); Andalucía; Aragón; Asturias; Baleares; Canarias;

Cantabria; Castilla La Mancha; Castilla León; Cataluña; Extremadura; Galicia; Madrid; Murcia; Rioja; and Valencia.

Each autonomous region has its own elected Parliament, with the power to enact laws, and its own President (elected by its Parliament), who in turn appoints a government. Each autonomous region has its own Statute of Autonomy (“Estatuto de Autonomía”), which is the basic Act that regulates the powers and political organization of that autonomous region (the equivalent in a federal country would be the State Constitution). Formally, a Statute of Autonomy is a “Ley Orgánica”, which is a State Act that must be approved by absolute majority. The Statute of Autonomy must be approved also by the Parliament of the autonomous region.

Some autonomous regions are divided into two or more “provincias” (provinces) or, in the case of archipelagos, islands. Each province (or island) has its own “diputación provincial” or provincial government (“cabildo insular”, in the case of islands), which is not directly elected by the citizens but by the members of the local councils or town halls.

The town halls (“Ayuntamientos”) are the most basic political organization, and its members (“concejales”) are elected by the citizens.

The term “local entities” refers to “provincias”, “islas” and “ayuntamientos”, while “Diputaciones provinciales”, “cabildos insulares” and “ayuntamientos” are called local governments.

On top of it all, Spain has a central government, commonly called “the State”. At the “State” level, the legislative power is attributed to “las Cortes” (denomination that includes both Houses), which in turn are divided in Congress or Lower House (“Congreso” <http://www.congreso.es> ) and Senate (“Senado” <http://www.senado.es> ). “Las Cortes” elect a President of the government, who in turn appoints a government (a Council of Ministers). The regulations issued by the State government (i.e. the Council of Ministers) are called Royal Decree (Real Decreto, RD). The regulations issued by an autonomous regions’ government are called Decree (Decreto). Note however that regulations issued by the State government before the re-institution of monarchy were called “Decreto”, not “Real Decreto”.

The Spanish Constitution only grants regulating power to the government. This means that Ministers and other authorities do not have regulating power of their own, so this power must be granted to them either by an Act or by a government regulation. The granting of regulating power must be specific in nature and limited in scope. When he is granted regulating power, a Minister can issue a Ministerial Order (Orden Ministerial). A Minister or other authority can issue guidelines that their subordinates should observe when applying the law (the equivalent of a memo in a private company). These guidelines do not oblige the citizens or the judiciary. Most frequently these guidelines are called “Circular” or “Instrucción”. Sometimes the term “Circular” or “Instrucción” is misused to name a regulation (either a Decree or an Order or a regulation from an authority that is not a Minister but has been granted regulating power nevertheless). Sometimes the term “Circular” or “Instrucción” is abused to introduce a regulation by an authority that has not been properly granted regulating power, but nevertheless intends to create an obligation on citizens. When analysing a “Circular” or an “Instrucción” it is very important to ascertain whether the authority that issued it had regulating power or not, because their binding nature depends on it.

The judiciary is a State organization and is unique for the whole territory. There is only one Court (“Tribunal Constitucional”, <http://www.tribunalconstitucional.es> ) that can decide that an Act passed by the State “Cortes” or by the autonomous regions’ Parliaments is void for contradicting the Constitution. Other Courts can refer a

constitutionality question to the Constitutional Court when they have doubts about the constitutionality of an Act, but they can not decide the unconstitutionality themselves. Nevertheless, the Courts can decide by themselves the unconstitutionality or the unlawfulness of regulations (implementing provisions issued by the government of the State, the government of the autonomous regions, the provincial governments or the town halls).

Related links:

Congress <http://www.congreso.es>  
Senate <http://www.senado.es>  
State Government <http://www.la-moncloa.es>  
Constitutional Court <http://www.tribunalconstitucional.es>  
Links to the autonomous regions: <http://www.aeat.es/fisterritorial/enlaces.htm>  
Federation of Town Halls and Provinces: <http://www.femp.es/>

## **I.2. Power to tax.**

In Spain the power to tax is shared between the “State” and the 17 “Comunidades Autonomas” or autonomous regions. The autonomous towns of Ceuta and Melilla and the local governments (“ayuntamientos” and “Diputaciones provinciales” or “Cabildos insulares”) have very limited taxing powers.

The power to tax is attributed mainly to the State, but:

- The autonomous regions of the Basc Country and Navarra (“Comunidades Autónomas de régimen foral”) enjoy wide taxing powers. They have the power to regulate their own income taxes (personal income tax, corporate income tax, non-residents income tax). Their taxing powers are established in Ley Orgánica 12/2002, for the Basc Country, and in Ley Orgánica 25/2003 for Navarra. For historical reasons, in the case of the Basc Country the power to tax is attributed, not to the Parliament of the autonomous region, but to the provincial governments of its provinces (Guipúzcoa, Vizcaya and Álava), and therefore each of them has the power to enact, for example, a different Personal Income Tax. In practice, though, the three provinces legislate nearly verbatim among themselves.
- The rest of the autonomous regions (“Comunidades Autónomas de regimen común”) have limited taxing powers. Nevertheless, as will be explained when dealing with the main taxes, they can legislate on certain aspects of the Personal Income Tax, the Gifts and Inheritance Tax, the Wealth Tax, the Tax on Transfers and the Tax on Gaming and Bets. Their taxing powers are established in Ley Orgánica 8/1980 and Ley 21/2001.

The Canary Islands have a peculiar tax system. In these islands VAT is not applied, and instead they apply a similar tax, Impuesto General Indirecto Canario, IGIC (which is regulated by the State). There is also a favourable tax regime in the Corporate Income Tax (Zona Especial Canaria) to offset the disadvantage of their remoteness.

Local governments only have taxing power regarding matters in which the applicable State Act gives them some scope for decision (for example, in some local taxes the applicable Act gives the possibility to apply a rate “not above 4%”; the local government will have the power to decide the applicable rate with that maximum). Local taxes and the taxing powers of local governments are regulated in Real Decreto

Legislativo 2/2004 (a “Real Decreto Legislativo” is a consolidated text of the applicable Act and its modifications).

Related links:

State Ministry of Economy and Treasury

<http://www.minhac.es/portal/>

State Tax Administration - Agencia Estatal de la Administración Tributaria (AEAT)

<http://www.aeat.es>

State Official Journal

<http://www.boe.es>

Official Journals of the Autonomous regions:

<http://www.boe.es/g/es/boletines/bccaa.php>

Taxation in the Canary Islands:

<http://www.zec.org>

<http://www.canarias.org/esp/negocios/ref.html>

### **I.3. Tax administration and allocation of revenue.**

The State administers most of the main taxes (Personal Income Tax, Corporate Income Tax, Non-residents Income Tax, Value Added Tax, Excise Taxes, customs duties). Nevertheless, in the Basque Country and Navarra, most taxes are administered by the provincial governments (in the case of the Basque Country) or the autonomous government (in the case of Navarra). In a quite peculiar arrangement, they collect taxes and then pay the State a lump sum (called “cupo”) to finance the State’s public expenditures.

In the rest of the autonomous regions, their local governments administer the Inheritance and Gift Tax, the Transfers Tax, the Wealth Tax, some Excise taxes (Excise Tax on Certain Means of Transport and Excise Tax on the Retail Sale of Certain Oils) and the Tax on Gaming and Bets.

Related links:

Tax Administration - Agencia Estatal de la Administración Tributaria (AEAT)

<http://www.aeat.es>

Tax Administration – Useful information for non-residents in English

<http://www.aeat.es/normlegi/noside/english/home.html>

### **I.4. Constitutional principles.**

Article 31 of the Spanish Constitution establishes that “Everyone shall contribute to sustain public expenditure according to their ability to pay, through a fair tax system based on the principles of equality and progressive taxation, which in no case shall be of a confiscatory scope”. Therefore the main tax principles are: ability to pay; generality (“everyone”); equality; progressive taxation; prohibition of confiscation. It is interesting to note that the fulfilment of the equality principle is to be decided based on the practical effects of the law and not just on its wording. Equality is thus judged based on an appraisal of the law’s results.

The Constitutional Court has decided the unconstitutionality of several Acts based on this provision (for example the Judgment 45/1989 decided that the obligation of joint taxation for families was unconstitutional).

### Related links

Spanish Constitution (in English):

<http://www.constitucion.es/constitucion/lenguas/ingles.html>

<http://www.oefre.unibe.ch/law/icl/sp00000.html>

### **I.5. European Law.**

Article 93 of the Spanish Constitution articulates the relationship between internal law and EU law. This provision allows the attribution of competences “derived from the Constitution” to an international institution or organization by means of a Ley orgánica (a State Act that requires the approval by absolute majority). Being the competences attributed “derived from the Constitution” there is no internal law above EU law, besides the Constitution itself. Further still, although the Spanish Constitution requires that the establishment of any tax or public contribution be made by an Act, it has been construed that this requirement does not apply to EU law, since in the EU legal framework there is no equivalent to an “Act”.

The EU has the exclusive competence over customs law and customs duties. Some other taxes have been harmonized. That is the case for VAT, which has been the subject of several EU Directives (the most important of which is the 6<sup>th</sup> Directive 77/388/CEE). It is also the case, although to a lesser degree, for some Excise Taxes. In the field of direct taxation the impact of EU law is still marginal, although clearly increasing. In this area the Directives that have been issued so far are: the Parent-Subsidiary Directive; the Mergers Directive; the Cross-border Interest and Royalty Payments Directive; and the Taxation of Savings Income Directive. There is also an Arbitration Convention in force. Although not of a binding nature, the Code of Conduct on Business Taxation should also be mentioned as an active (and ongoing) effort to combat harmful tax competition. The interpretation of EU law falls within the jurisdiction of the European Court of Justice (ECJ). In the last few years the ECJ has delivered several rulings applying the basic freedoms in the field of direct taxation with an important impact on national tax law (for example, Spain has eliminated thin-capitalization rules in respect of entities resident in another EU Member State, article 20.4 RDLeg. 4/2004, on the understanding that they could collide with EU law as it is construed by the ECJ).

### Related links:

European Commission – Taxation and Customs Union:

[http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

Text of EU legislative measures in the field of customs law:

[http://www.europa.eu.int/eur-lex/en/lif/ind/en\\_analytical\\_index\\_02.html](http://www.europa.eu.int/eur-lex/en/lif/ind/en_analytical_index_02.html)

Text of EU legislative measures in the field of direct taxation:

[http://europa.eu/eur-lex/en/lif/reg/en\\_register\\_092020.html](http://europa.eu/eur-lex/en/lif/reg/en_register_092020.html)

Activities of the EU in the field of taxation:

<http://europa.eu/scadplus/leg/en/s10000.htm#DIRECTE>

European Court of Justice:

<http://europa.eu.int/cj/en/transitpage.htm>

### Reference books:

A good introductory book is:

Falcon y Tella: *Introducción al Derecho Financiero y Tributario de las Comunidades Europeas*, Madrid, Civitas, 1988.

## II. SPANISH TAX SYSTEM

### II.0. General remarks.

The text of State Acts and regulations (including all sorts of them: Real Decreto, Orden Ministerial, “Circular”, “Instrucción”, etc.) mentioned in this section can be obtained freely online at:

<http://www.aeat.es>

Notice, however, that some texts might have been subject to modifications. When available, it is advisable to use an updated consolidated text (some, but not all, of the texts available at the Tax Administration website are updated). Check if you are using an updated consolidated version or not! Beyond legal texts, the Tax Administration website offers a lot of resources, although it might take some time to locate them, getting used to the website. Besides the references we will provide to textbooks and the like, it is worth mentioning that the Tax Administration provides free of charge most of the software needed to comply with tax obligations.

Back to legislation, if you know the date of an Act or regulation, the quickest way to get the full text is to go to the website of the Official Journal (BOE), at:

<http://www.boe.es>

“BOE” publishes not only all State Acts and regulations (all sorts of them), but also acts of the autonomous regions (but not their regulations). Acts and regulations of the autonomous regions are published in their respective Official Journal. A link to the Official Journal of all the autonomous regions can be found at:

<http://www.boe.es/g/es/boletines/bccaa.php>

You can find an updated list of Acts and regulations in tax matters published in the State Official Journal (with their respective date of publication), ordered by year and tax (starting from 2001) at:

<http://www.uv.es/ibanezs/pages/novedades.htm>

### II.1. General Concepts and Procedural Rules.

State Act 58/2003, establishing the General Law on Taxation (Ley General Tributaria, LGT), regulates the principles, general concepts and tax procedures for the whole tax system. The implementing provisions are:

- General Regulations on Tax Auditing, RD 939/1986 (a new “Regulation on Tax Implementation” is in the making and will supersede the General Regulations on Tax Auditing).
- General Regulations on Tax Collection, RD 939/2005.
- General Regulations on Tax Offences, RD 2063/2004.
- General Regulations on Tax Review Procedures, RD 520/2005.

#### Reference books:

- A highly recommendable reference book on general concepts and procedures is:

Martin Queralt/Lozano Serrano/Tejerizo López: *Manual de Derecho Financiero y Tributario. Parte General*, Tecnos, Madrid (there is a new edition each year).

- A practical guide to tax procedures (orientation: professionals):

*Memento Procedimientos Tributarios*, Francis Lefebvre (there is a new edition each year).

## **II.2. Personal Income Tax.**

The Personal Income Tax (Impuesto sobre la Renta de las Personas Físicas, IRPF) is a State Tax, except in the Basque Country and Navarra, where their authorities have the power to establish their own tax (in practice, though, they follow quite closely the State tax), and to administer it.

At the State level, the Act in force is RDLeg. 3/2004. The tax has two different tax schemes: the State Tax Scheme and the autonomous region's Tax Scheme (it represents a third of total revenue). Autonomous regions have the power to modify the latter; they can also establish tax deductions. Capital gains derived from assets that have been owned for more than one year are taxed at a fixed rate (9,06% is the State rate, plus 5,94% which is the autonomous regions rate; therefore the total tax is 15%; the autonomous regions can modify their rate). The Tax is administered by the State Tax Administration (AEAT).

A new Personal Income Tax Act is being approved by Congress, and it will be a shift towards a dual tax system, with active income being taxed at progressive rates (the top rate being around 42%-43%) and passive income being taxed at 18%. Besides that, though, the new Act will maintain the concepts and detail of the existing law.

### Reference books:

*Memento IRPF*, Francis Lefebvre (there is a new edition every year)

Pérez Royo, I.: *Manual del Impuesto sobre la Renta de las Personas Físicas*, 3<sup>a</sup> ed., Marcial Pons, Madrid, 2000.

The Tax Administration publishes a comprehensive handbook every year, also available free online at its website <http://www.aeat.es>

## **II.3. Corporate Income Tax.**

The Corporate Income Tax (Impuesto sobre Sociedades, IS) is a State Tax, except in the Basque Country and Navarra, where their authorities have the power to establish their own tax (in practice, though, they follow quite closely the State tax, although with reduced rates and more generous deductions), and to administer it. Some measures adopted in the past by the Basque Country and Navarra have been deemed State Aid by the EC Commission and the ECJ.

The other autonomous regions have no taxing power in this area.

At the State level, the Act in force is RDLeg. 4/2004. The new Personal Income Tax Act will introduce changes in the Corporate Income Tax as well, affecting the tax rates (the general rate will be lowered to 30% in two steps; the tax rate applicable to small and medium sized enterprises will be lowered to 25% starting 01.01.2007) and some tax deductions (with the aim of simplifying the tax).

### Reference books:

*Memento IS*, Francis Lefebvre (there is a new edition every year)

Rubio Guerrero et al.: *Manual del Impuesto sobre Sociedades*, Instituto de Estudios Fiscales, Madrid, 2003.

Sanz Gadea: *Impuesto sobre Sociedades*, Centro de Estudios Financieros, Madrid, 2004.

The Tax Administration publishes a comprehensive handbook every year, also available free online at its website <http://www.aeat.es>

#### **II.4. Non-Residents Income Tax.**

The Non-Residents Income Tax (Impuesto sobre la Renta de No-Residentes, IRNR) is a State Tax that applies both to non-resident individuals and corporations. The autonomous regions can not legislate on this tax.

At the State level, the Act in force is RDLeg. 5/2004.

##### Reference books:

Cordón Ezquerro et alter: *Manual de Fiscalidad Internacional*, Instituto de Estudios Fiscales, Madrid, 2nd edition, 2005.

Sánchez López et alter: *Comentarios a la Ley del Impuesto sobre la Renta de No Residentes*, Aranzadi, 2003.

Baena Aguilar et alter: *Comentarios a la Ley del Impuesto sobre la Renta de No Residentes*, Civitas, 1990.

#### **II.5. Wealth Tax.**

The Wealth Tax (Impuesto sobre el Patrimonio, IP) is a State Tax, except in the Basque Country and Navarra, where their authorities have the power to establish their own tax (in practice, though, they follow quite closely the State tax), and to administer it.

The other autonomous regions have the power to modify the amount of the minimum non-taxed wealth, the tax rates (State tax rates are applied in the absence of the autonomous regions' tax rates) and tax deductions. The revenue obtained is for the autonomous regions.

The tax has progressive rates, with eight brackets (the top marginal tax rate, for the portion of an estate over 10.695.996,06 € is 2,5%; the lower tax rate is 0,2%).

At the State level, the Act in force is Ley 19/1991.

##### Reference books:

Merino Jara: *El Impuesto sobre el Patrimonio*, Edersa, 2002.

#### **II.6. Gifts and Inheritance Tax.**

Only gifts and inheritance acquired by individuals (not by legal entities) are taxed by the Impuesto sobre Sucesiones y Donaciones (ISD). It is a State tax, except in the Basque Country and Navarra, where their authorities have the power to establish their own tax (in practice, though, they follow quite closely the State tax), and to administer it.

The other autonomous regions have the power to establish reductions in the tax base, the tax rates (State tax rates are applied in the absence of the autonomous regions' tax rates) and deductions. At the State level, the Act in force is Ley 29/1987.

##### Reference books:

Bermúdez/Pérez de Ayala: *Comentarios al Impuesto sobre Sucesiones y Donaciones*, Lex Nova, 2001.

Caamaño Anido/Peña Alonso: *El Impuesto sobre Sucesiones y Donaciones*, Edersa, 2002.

## **II.7. Value Added Tax.**

VAT (Impuesto sobre el Valor Añadido, IVA) is a harmonized tax in the EU. In Spain, only the State is competent to regulate it, the autonomous regions can not legislate in VAT matters. Nevertheless, part of the tax revenue collected is distributed to the regions. The Act in force is Ley 37/1992.

In the Canary Islands VAT is not applied. Instead, a very similar tax is applied (Impuesto General Indirecto Canario, IGIC). Therefore, when merchandise goes from the Canary Islands to Spain, for VAT purposes, it is treated as an import.

### Reference books:

Abella Poblet/Del Pozo López: *Manual del IVA*, Publicaciones Abella, Madrid, 1986.

Zurdo Ruiz-Ayúcar: *Tratado sobre el IVA*, Centro de Estudios Financieros, Madrid, 1993.

*Memento IVA*, Francis Lefebvre (there is a new edition every year)

The Tax Administration publishes a comprehensive handbook every year, also available free online at its website <http://www.aeat.es>

## **II.8. Transfer Tax.**

Transfers which are not taxed by VAT, either because they are exempt or because they are outside the scope of VAT (mainly because the transferor is not an entity, nor an individual carrying on a business or profession), are taxed by the transfer tax, the Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (ITPyAJD). This tax also taxes some company reorganisations (incorporation, mergers, acquisitions, liquidation...; note, however, that the Mergers Directive can result in the non-application of this tax) and also some formalities (the equivalent of the French “droits d’enregistrement” or “registry rights”). Indeed these are three different taxes that, for historical reasons, are included in the same Act.

The Transfers Tax is a State Tax, except in the Basque Country and Navarra, where their authorities have the power to establish their own tax (in practice, though, they follow quite closely the State tax), and to administer it.

The other autonomous regions administer this tax, and have the power to establish the tax rate that applies to some types of transfers and also to establish deductions.

The Act in force is RDLeg. 1/1993.

### Reference books:

*El Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*, Colegio de Registradores de la Propiedad, Madrid, 2005.

Colomer Ferrandiz: *Jurisprudencia del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*, Madrid, 2003.

García Gil: *Tratado del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*, 3rd edition, Madrid, 2004.

## **II.9. Excise Tax.**

Some of the Excise Taxes (Impuestos Especiales, IIEE) are harmonized at the EU level. Spain applies the following excise taxes: on beer, wine, intermediate products, alcohol and spirits and tobacco; on oil; on certain transport means; on the retail sale of certain oil derivatives; on insurance premiums.

Autonomous regions can not legislate in this area. The Act in force is Ley 38/1992.

### Reference books:

González Sánchez/López Espadafor: *Ley de Impuestos Especiales*, Edersa, 2001.

Solana Villamar: *Manual comentado de Impuestos Especiales*, Actualidad, 1994.

González Jaraba: *Los impuestos especiales de ámbito comunitario*, La Ley, Madrid, 2005.

## **II.10. Customs Duties.**

Customs duties are an EU-wide tax. The main Regulations in this field are:

- Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (*OJ L 302, 19.10.1992, p. 1–50*);
- Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (*OJ L 253, 11.10.1993, p. 1–766*); and
- Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (*OJ L 256, 7.9.1987, p. 1–675*).

Spanish State authorities only have limited power over implementing provisions. Nevertheless, since EU Regulations on customs matters do not cover many procedural aspects of the tax, the domestic procedural rules apply (on tax audits, for example).

For customs duties purposes, the Canary Islands are part of the Common Customs Territory of the EU, and therefore when merchandise goes from the Canary Islands to the rest of Spain it is not treated as an import for customs duties purposes (although it is treated as an import for VAT purposes). The cities of Ceuta and Melilla are not included in the Common Customs Territory of the EU, and therefore when merchandise goes from these cities to the rest of Spain it is treated as an import for customs duties purposes.

### Related links:

Customs website: <http://www.uv.es/ibanezs/aduanero/index.htm>

### Reference books:

Lux: *Guide to Community Customs legislation*, Bruylant, Brussels, 2002.

Pelechá Zozaya: *El Código Aduanero Comunitario y su aplicación en España*, Marcial Pons, Madrid, 1995.

Galera Rodrigo: *Derecho aduanero español y comunitario*, Civitas, 1995.

## **II.11. Gaming and Bets Tax.**

The most important lotteries and the like in Spain are run by the State. There is also a lottery run by the Association of Blind People. These are outside the scope of this tax. Games and bets run by private companies are taxed by the Gaming and Bets Tax (Impuesto sobre el Juego).

The autonomous regions administer this tax, and have the power to establish exemptions, the taxable base, the tax rates and deductions. At the State level the Act in force is RD Ley 16/1977, but since the powers of the autonomous regions in this field are so wide, this Act must be read along with the Act approved in each of them.

Reference books:

Orón Moratal: *Régimen fiscal del juego en España*, Tecnos, Madrid, 1990.

## **II. 12. Taxes of the autonomous regions.**

The autonomous regions can create new taxes that do not invade the competences of the State and of local entities, as defined in Ley Orgánica 8/1980. The Constitutional Court has made an interpretation which is favourable to the taxing powers of autonomous regions (Judgment 37/1987). In practice, autonomous regions have created minor taxes, most of them environmental taxes, but not only (for example, there are also some on malls).

## **II.13. Local Taxes.**

RD Leg. 2/2004 regulates the treasury of local entities and the taxes that local entities can levy. These are:

- Real Estate Tax (Impuesto sobre Bienes Inmuebles, IBI). Taxes the ownership of real estate, based on its cadastral value.
- Tax on Economic Activities (Impuesto sobre Actividades Económicas, IAE). Taxes the undertaking of economic activities. Since 2001 most taxpayers are exempt from this tax (only companies with a turnover above 1 million euros are obliged to pay the tax).
- Tax on Vehicles (Impuesto sobre Vehículos de Tracción Mecánica, IVTM). Taxes the ownership of vehicles in general, depending on their horsepower.
- Tax on Building Works (Impuesto sobre Construcciones, Instalaciones y Obras, ICIO). Taxes building works based on its budgeted cost (as approved by a certified architect).
- Tax on the Increase of Value of Urban Land (Impuesto sobre el Incremento del Valor de los Terrenos de Naturaleza Urbana, IIVTNU). When urban land or a building or a part of it is sold or transferred, this tax taxes the increase in value (as determined by the law, not the real increase) of the land from the moment in which it was acquired to the moment of the sale or transfer.

The latter two are optional (each Town Hall must decide whether they want to levy it or not). The State Act allows the town halls some level of discretionary power regarding the tax rates, deductions and, in some cases, the tax base.

Reference books:

Acín/Rodríguez/Arroyo/Rubio: *Manual práctico de tributación local*, Bayer Hermanos, 1999.

Casana Merino/Álvarez Arroyo: *Tributos Locales*, Edersa, 2002.

Poveda Blanco: *Los impuestos municipales*, Tecnos, 2000.

### III. INTERNATIONAL TAX LAW, TREATIES

Among other international organizations relevant for taxation, Spain is member of the EU, UN, OECD and WTO.

International treaties are especially protected by article 96 of the Spanish Constitution. They cannot be modified or superseded by an internal Act (i.e. no treaty override is possible). The procedures established in the Treaty itself or those provided in international law are to be respected.

You can access the full text of all the double taxation conventions ratified by Spain at:

<http://www.aeat.es/normlegi/cdi/home.html>

A comprehensive book on the international aspects of Spanish tax legislation and of international tax rules in force in Spain is:

Cordón Ezquerro et al.: *Manual de Fiscalidad Internacional*, Instituto de Estudios Fiscales, Madrid, 2nd edition, 2005.

Serrano Antón et al.: *Fiscalidad Internacional*, Centro de Estudios Financieros, Madrid, 2005.

### IV. ADMINISTRATIVE MATERIALS.

Article 88 of the LGT provides that taxpayers have the right to lodge written tax questions to the Tax Administration (“consulta tributaria”). In most cases, the answer given by the Tax Administration is binding (article 89 LGT). Prior to Act 58/2003, the answer to tax questions was not binding, except in selected matters (article 107 of the LGT of 1963).

A free access database of the tax questions lodged and their answers (classified as binding and not binding) is available at the Tax Administration website:

<http://www.aeat.es>

It should be noted that in Spain, following the French tradition, there is a compulsory administrative review procedure. This means that the taxpayer cannot lodge a case in a Court of Justice unless he has previously gone through the applicable administrative review procedure (in theory this is meant to give the Administration the opportunity to rectify before a case goes to the Courts). Administrative review procedures are free for the taxpayer. Many tax cases do not reach the Courts, either because the taxpayer gets his case reviewed favourably or because he does not want to incur the cost of a judicial procedure.

The main bodies in charge of administrative review are the “Tribunales Económico-Administrativos”. Despite their name “Tribunales”, they are not Courts. Although some of their features try to emulate those of a proper Court of justice, their members do not enjoy the independence (in the widest sense) that is unique to Judges and Magistrates.

The website of the “Tribunal Económico-Administrativo Central” (the highest administrative review body) offers a free access database of administrative cases:

<http://serviciosweb.minhac.es/apps/doctrinateac/>

A comprehensive collection of administrative tax cases is available at:

Jurisprudencia Tributaria, Aranzadi-Thomson (orientation: research-professionals; court rulings on tax matters, some with commentary) <http://www.aranzadi.es>

The Spanish Westlaw incorporates the contents of this publication in its database.

#### V. CASE LAW.

In Spain there are no specialized tax courts. Instead, tax cases are tried in administrative law courts. There are four levels of administrative law courts (lower level first): Juzgados de lo Contencioso; Tribunal Superior de Justicia (Sala de lo Contencioso-Administrativo); Audiencia Nacional (Sala de lo Contencioso-Administrativo); Tribunal Supremo (Sala de lo Contencioso-Administrativo). The Constitutional Court has exclusive jurisdiction over constitutional matters.

#### Related links:

A public-access database of court judgments is available online at:

<http://www.poderjudicial.es>

All judgments of the Constitutional Court are available in full text at:

<http://www.tribunalconstitucional.es>

The Spanish Westlaw has a database of tax judgments and administrative doctrine. Other editors also offer specialized tax databases (Quantor Fiscal, Carta Tributaria, Tirant Online, among others).

#### VI. TREATISES, TEXTBOOKS AND OTHER BOOKS.

A widely used reference book for professionals, covering the whole tax system is:

*Memento Fiscal*, Francis Lefebvre (there is a new edition each year).

There are also specific, more detailed “Memento” on the main taxes: *Memento IRPF*; *Memento IS*; *Memento IVA*. There is also a specific *Memento on Tax Procedures*.

There is a new, updated edition of each Memento every year.

French users will be particularly acquainted with these books and their style, since it is the Spanish version of the French “*Memento*”. In general their quality is quite high.

There are several textbooks used for university students. Since at the law schools there are two courses on taxation (the first year covers general concepts and procedures; the second covers taxes in particular) most textbooks are either “Parte General” (General concepts and procedures) or “Parte Especial” (Taxes in particular).

Among the former (“Parte General”):

- Martín Queralt/Lozano Serrano/Tejerizo López: *Manual de Derecho Financiero y Tributario. Parte General*, Tecnos, Madrid (there is a new edition each year).
- Pérez Royo, F.: *Derecho Financiero y Tributario. Parte General*, Aranzadi, Navarra, 2005.
- Calvo Ortega: *Derecho Tributario. Parte General*, Civitas, Madrid, 2005.
- Ferreiro Lapatza: *Curso de Derecho Financiero español*, vol. 1 and 2, Marcial Pons, 2005.

Among the latter (“Parte Especial”):

- Martín Queralt/Tejerizo López/Cayón Gallardo/et alter: *Curso de Derecho Tributario. Parte Especial*, Aranzadi, Cizur Menor (Navarra), there is a new edition each year.
- García Añoveros, et alter: *Manual del sistema tributario español*, Civitas, Madrid.

- Ferreiro Lapatza: *Curso de Derecho Financiero español*, vol. 3, Marcial Pons, 2005.

There are several editors who offer recompilation of the main tax Acts and regulations (either for the whole tax system or for specific taxes). Traditionally they offer useful notes for the reader, cross references, chronological and analytical indexes. There is a new edition each year. Among them:

*Código Tributario*, Aranzadi-Thomson

*Código Tributario*, La Ley

*Legislación Básica del Sistema Tributario Español*, Civitas-Thomson

*Leyes Tributarias*, Centro de Estudios Financieros

## VII. PERIODICALS.

There are many specialized tax journals in Spain. The libraries of several Spanish universities have undertaken a common project in order to offer an online service of research journals summaries (not only law journals, but other fields as well). They also offer free e-mail service of new arrivals of summary of the journals previously earmarked by the researcher. This joint project is named "dialnet", and it is available at: <http://dialnet.unirioja.es/>

These are some of the Spanish tax law journals:

Revista Española de Derecho Financiero (REDF), Civitas-Thomson, Madrid (orientation: research)

<http://www.civitas.es>

Crónica Tributaria (CrT), Instituto de Estudios Fiscales, Madrid (orientation: research; some articles are freely available online)

<http://www.ief.es>

<http://www.ief.es/Publicaciones/Revistas/Cronica%20Tributaria/CronicaTributaria.asp>

Tribuna Fiscal (TF), CISS-Praxis, Valencia (orientation: professionals-research)

<http://www.ciss.es/>

Quincena Fiscal (QF), Aranzadi-Thomson (orientation: professionals-research)

<http://www.aranzadi.es>

Jurisprudencia Tributaria (JT), Aranzadi-Thomson (orientation: research-professionals; court rulings on tax matters, some with commentary)

<http://www.aranzadi.es>

Revista de Tributación, Centro de Estudios Financieros – CEF (orientation: research-professionals)

<http://www.cef.es/>

Nueva Fiscalidad (orientation: research)

<http://premium.vlex.com/>

Revista Técnica Tributaria (RTT) (orientation: professionals-research)

<http://www.aedaf.es>

Carta Tributaria (CT) (orientation: professionals-research; repertoire jurisprudence, administrative doctrine)

Impuestos (orientation: professionals)

<http://publicaciones.laley.net/>

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