

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

# Tax Controversy 2025

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**Spain: Law and Practice**

Jose María García Guirao  
and María Marín Martínez  
Devesa Law Firm



# SPAIN



## Law and Practice

### Contributed by:

Jose María García Guirao and María Marín Martínez  
**Devesa Law Firm**

## Contents

### 1. Tax Controversies p.6

- 1.1 Tax Controversies in This Jurisdiction p.6
- 1.2 Causes of Tax Controversies p.6
- 1.3 Avoidance of Tax Controversies p.6
- 1.4 Efforts to Combat Tax Avoidance p.7
- 1.5 Additional Tax Assessments p.7

### 2. Tax Audits p.8

- 2.1 Main Rules Determining Tax Audits p.8
- 2.2 Initiation and Duration of a Tax Audit p.9
- 2.3 Location and Procedure of Tax Audits p.9
- 2.4 Areas of Special Attention in Tax Audits p.10
- 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits p.10
- 2.6 Strategic Points for Consideration During Tax Audits p.10

### 3. Administrative Litigation p.11

- 3.1 Administrative Claim Phase p.11
- 3.2 Deadline for Administrative Claims p.12

### 4. Judicial Litigation: First Instance p.12

- 4.1 Initiation of Judicial Tax Litigation p.12
- 4.2 Procedure for Judicial Tax Litigation p.13
- 4.3 Relevance of Evidence in Judicial Tax Litigation p.14
- 4.4 Burden of Proof in Judicial Tax Litigation p.14
- 4.5 Strategic Options in Judicial Tax Litigation p.14
- 4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation p.15

### 5. Judicial Litigation: Appeals p.15

- 5.1 System for Appealing Judicial Tax Litigation p.15
- 5.2 Stages in the Tax Appeal Procedure p.16
- 5.3 Judges and Decisions in Tax Appeals p.16

## **6. Alternative Dispute Resolution (ADR) Mechanisms p.17**

- 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction p.17
- 6.2 Settlement of Tax Disputes by Means of ADR p.17
- 6.3 Agreements to Reduce Tax Assessments, Interest or Penalties p.17
- 6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests p.17
- 6.5 Further Particulars Concerning Tax ADR Mechanisms p.17
- 6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax p.17

## **7. Administrative and Criminal Tax Offences p.17**

- 7.1 Interaction of Tax Assessments With Tax Infringements p.17
- 7.2 Relationship Between Administrative and Criminal Processes p.18
- 7.3 Initiation of Administrative Processes and Criminal Cases p.19
- 7.4 Stages of Administrative Processes and Criminal Cases p.19
- 7.5 Possibility of Fine Reductions p.21
- 7.6 Possibility of Agreements to Prevent Trial p.21
- 7.7 Appeals Against Criminal Tax Decisions p.21
- 7.8 Rules Challenging Transactions and Operations in This Jurisdiction p.22

## **8. Cross-Border Tax Disputes p.22**

- 8.1 Mechanisms to Deal With Double Taxation p.22
- 8.2 Application of GAAR/SAAR to Cross-Border Situations p.22
- 8.3 Challenges to International Transfer Pricing Adjustments p.23
- 8.4 Unilateral/Bilateral Advance Pricing Agreements p.23
- 8.5 Litigation Relating to Cross-Border Situations p.23

## **9. State Aid Disputes p.24**

- 9.1 State Aid Disputes Involving Taxes p.24
- 9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid p.24
- 9.3 Challenges by Taxpayers p.24
- 9.4 Refunds Invoking Extra-Contractual Civil Liability p.24

## **10. International Tax Arbitration Options and Procedures p.24**

- 10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs) p.24
- 10.2 Types of Matters That Can Be Submitted to Arbitration p.25
- 10.3 Application of Baseball Arbitration or the Independent Opinion Procedure p.25
- 10.4 Implementation of the EU Directive on Arbitration and/or the MLI p.25
- 10.5 Existing Use of Recent International and EU Legal Instruments p.25
- 10.6 New Procedures for New Developments Under Pillars One and Two p.25
- 10.7 Publication of Decisions p.26
- 10.8 Most Common Legal Instruments to Settle Tax Disputes p.26
- 10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes p.26

## **11. Costs/Fees** p.26

11.1 Costs/Fees Relating to Administrative Litigation p.26

11.2 Judicial Court Fees p.26

11.3 Indemnities p.27

11.4 Costs of ADR p.27

## **12. Statistics** p.27

12.1 Pending Tax Court Cases p.27

12.2 Cases Relating to Different Taxes p.27

12.3 Parties Succeeding in Litigation p.27

## **13. Strategies** p.27

13.1 Strategic Guidelines in Tax Controversies p.27

Contributed by: Jose María García Guirao and María Marín Martínez, **Devesa Law Firm**

**Devesa Law Firm** specialises in business law, including commercial law, civil law, tax law, advice on M&A matters, capital markets, labour law and legal management of processes related to these areas. The firm's multidisciplinary team of legal professionals, who have all worked for

large or medium-sized international law firms and consultancies, having qualified at prestigious universities and business schools, offer companies, investors and institutions in Spain outstanding legal and tax services from offices in Alicante, Madrid and Valencia.

## Authors



**Jose María García Guirao** is managing partner of tax at Devesa. Jose María has amassed significant experience providing tax advice to national and international companies. He

is a consummate specialist in tax litigation and tax inspections. He complements his professional activity as a professor of tax procedure on renowned postgraduate programmes.



**María Marín Martínez** is a principal associate within Devesa's Tax department and has more than 20 years' experience in legal and tax advice. María is also specialised

in advising family businesses and national and international business groups, participating in business and asset restructuring, tax and corporate planning for international business groups, advice on tax and commercial matters, tax audits and investigations and preparation of tax reports.

---

## Devesa Law Firm

2nd Floor  
Calle de Velázquez, 59  
28001 Madrid  
Spain

Tel: +34 911 745 342  
Email: [administracion@devesa.law](mailto:administracion@devesa.law)  
Web: [www.devesa.law](http://www.devesa.law)

# DEVESA

## 1. Tax Controversies

### 1.1 Tax Controversies in This Jurisdiction

Tax litigation in Spain generally arises from taxpayers disagreeing with verification and audit proceedings conducted by the Spanish Tax Authorities (STA). The Spanish public administration is divided into three distinct territorial entities with taxing powers: the State, the Autonomous Communities and the Local Authorities. Each has its own competent bodies for managing the taxes assigned to it.

At state level, taxing powers are delegated to the Spanish Tax Agency (*Agencia Estatal de Administración Tributaria* – AEAT), which is split into three departments: Inspection, Management and Collection. The Inspection Department is responsible for monitoring and auditing the three main taxes: Corporate Income Tax (CIT), Value Added Tax (VAT) and Personal Income Tax (IRPF). These audits are often conducted applying rigorous, revenue-favourable criteria, frequently resulting in taxpayer disputes.

The Management Department oversees compliance among the majority of taxpayers, usually by means of automated data cross-checks. These are mass audits that tend to result in lower-value assessments but affect a far larger number of taxpayers. Tax disputes often arise when novel, restrictive interpretations are applied, which is a fairly common. Lastly, the Collection Department oversees enforcing tax debts previously assessed but unpaid within the statutory deadline.

The Autonomous Communities are primarily responsible for non-VAT indirect taxes (such as Transfer Tax and Stamp Duty), Wealth Tax and Inheritance and Gift Tax. Notably, significant

controversy is seen in the context of real estate taxation under these devolved taxes.

Local Authorities manage taxes primarily related to immovable property (such as Property Tax – IBI, Capital Gains Tax on Urban Land – IVTNU, and Construction Tax – ICIO).

In recent years, a number of laws have been enacted which have subsequently been challenged by taxpayers on grounds of unconstitutionality or incompatibility with the laws of the European Union (EU). These challenges have often led to appeals being filed against tax assessments with a view to recovering amounts paid in the event of subsequent annulment of the legal provision.

### 1.2 Causes of Tax Controversies

Within AEAT audit procedures, most disputes occur in connection with audits of VAT, Corporate Income Tax and Personal Income Tax. Certain recurring issues reflect the evolving case law. Generally, tax audits focus on disallowing the deductibility of expenses and, more notably, on challenging the application of tax benefits and special regimes. This latter aspect is the main source of conflict, as many taxpayer actions are undertaken specifically to access such tax benefits, and restrictive interpretations by the AEAT frequently result in disputes.

With respect to the Autonomous Communities, tax controversies usually result from the valuation of real estate for indirect taxation purposes, as well as from the interpretation and application of tax reliefs set out in legislation.

### 1.3 Avoidance of Tax Controversies

Spanish law provides certain instruments intended to reduce tax litigation.

- *Binding Rulings* taxpayers may submit queries to the Directorate General for Taxation (Dirección General de Tributos – DGT), whose responses are, in principle, binding on the Tax Authorities. However, such rulings have proven controversial in practice for several reasons. Firstly, although the law stipulates a maximum response time of six months, this deadline is rarely met. Secondly, audit bodies may disregard the ruling if a court later adopts a different interpretation or if the factual circumstances underpinning the ruling are deemed not to coincide exactly with the actual events.
- *Advance Pricing Agreements (APAs)* in the area of transfer pricing, the Corporate Income Tax Law allows taxpayers to request the prior valuation of their intra-group transactions. This requires submitting a proposed valuation to be analysed by the Tax Authorities.

## 1.4 Efforts to Combat Tax Avoidance

Spain has been particularly active in implementing both EU anti-avoidance directives and international best practices. Key initiatives include the following.

- Council Directive (EU) 2016/1164, as amended by Directive 2017/952 (ATAD I and II) concerning hybrid mismatches.
- Council Directive (EU) 2021/514 (DAC 7), introducing reporting obligations for digital platform operators – whether resident or not in the EU – and establishing a new framework for enhanced administrative cooperation through “*joint tax audits*”.
- Council Directive (EU) 2023/2226 (DAC 8), which imposes new reporting and due diligence obligations on crypto-asset service providers to allow the automatic exchange of information on crypto transactions. In October 2024, the Spanish Council of Ministers

launched a public consultation on a draft bill for transposing DAC 8 into national law. The draft bill envisages amendments to the General Tax Law and the Personal Income Tax Law, introducing new obligations for certain crypto service providers and adjusting existing rules on foreign financial accounts and crypto-assets. These provisions are expected to enter into force on 1 January 2026.

- Council Directive (EU) 2022/2523, which establishes a global minimum effective tax rate of 15% for multinational and large domestic groups operating in the EU. Spain implemented this measure through Law 7/2024, published in the Official State Gazette on 21 December 2024. The law introduced a top-up tax applicable to groups with annual consolidated revenues of at least EUR750 million. It applies to fiscal years commencing on or after 31 December 2023.

## 1.5 Additional Tax Assessments

In Spain, tax audits by the Tax Authorities typically conclude with the issuance of an additional assessment. Such assessments may be either final, covering the entire tax obligation, or provisional, covering only part, depending on the type of procedure initiated.

Appealing an assessment entails thoroughly completing the administrative review procedure, which enables the Tax Authorities to reconsider its own measures. Additional assessments are often accompanied by penalties. These can be appealed by the same means.

It is important to note that appealing an assessment does not automatically suspend the obligation to pay. Suspension must be expressly requested, and appropriate guarantees must be provided.

If the debt is subsequently annulled and had already been paid, the amount will be refunded with interest.

Importantly, appeals against penalties are automatically suspended during the administrative review process without the need to provide security.

## 2. Tax Audits

### 2.1 Main Rules Determining Tax Audits

The principal tax audits in Spain are those carried out by the State Tax Agency (Agencia Estatal de Administración Tributaria – AEAT). Each year, generally between February and March, the Official State Gazette (BOE) publishes the General Guidelines of the Annual Tax and Customs Control Plan, which identifies the primary areas of focus.

Audits are repeated annually on many of these areas, since they are considered to pose a heightened risk of tax avoidance or non-compliance.

The strategic lines of action for 2025 include the following.

- Sources of information and risk analysis
  - (a) Optimising the use of data obtained from reporting models and international exchanges of information.
  - (b) Centralised coordination of best practices to standardise the selection criteria for taxpayers subject to audit.
  - (c) Designing a comprehensive model for analysing the quality of information aimed at improving the usability of data collected.
- Domestic tax controls

- (a) *Multinational groups, large enterprises and fiscal groups* special focus on transfer pricing, business restructurings, the deductibility of expenses, and tax optimisation structures.
  - (b) *Asset analysis* identification of discrepancies between lifestyle and declared income, abuse of intermediary entities, and simulation of tax residence.
  - (c) *Concealment of activity and misuse of corporate structures* detection of shell companies or those lacking genuine economic activity, as well as improper use of VAT deductions or tax reliefs.
  - (d) *Control of business activity* monitoring sectors with high exposure to the informal economy, e-commerce and cross-border payments.
- E-Commerce and emerging technologies
    - (a) Oversight of digital operators and payment platforms, using new information flows derived from CESOP and DAC7.
    - (b) Supervision of corporate structures established to unlawfully obtain VAT deductions.
  - Combating fraud in the hydrocarbon sector and other strategic areas
    - (a) Control of the hydrocarbon distribution chain and enforcement of regulations designed to prevent fraud.
    - (b) Cooperation with judicial authorities and European bodies such as the European Public Prosecutor's Office (EPPO).
  - Monitoring of tax incentives and state aid
    - (a) Examination of the application of tax benefits in SOCIMIs (listed real estate investment companies), economic interest groupings and audiovisual production financing.
    - (b) Verification of compliance with limits and eligibility requirements for State aid in accordance with EU legislation.

## 2.2 Initiation and Duration of a Tax Audit

Tax audits are always initiated by formal notification known as a Commencement Communication. For legal entities, this notification is usually transmitted electronically, given that, under Spanish law, all legal persons are required to access their designated electronic mailbox at least every ten days to check for communications. Failure to do so does not prevent the notification from taking effect, but it will be deemed to have been served tacitly after the lapse of the prescribed period.

In Spain, tax obligations generally become time-barred after four years from the filing date unless a valid administrative action interrupts the limitation period. Nonetheless, audits often focus on specific issues (such as the tax neutrality of a corporate restructuring) or on full audits covering a two- or three-year period. There is, however, a ten-year statute of limitations for auditing tax-loss carryforwards intended to offset future profits.

The maximum duration of a tax audit is 18 months. However, this may be extended to 27 months under certain conditions.

If the statutory time limit is breached, the principal consequence is the loss of the interruption effect on the statute of limitations, potentially time-barring the audited tax period.

It is also important to note that audits may commence via on-site inspections at the taxpayer's premises without prior notice. These surprise visits generally require prior judicial authorisation and are typically justified by the need to secure evidence that could not otherwise be obtained, such as the imaging of hard drives or servers.

## 2.3 Location and Procedure of Tax Audits

Audits are usually conducted at the offices of the tax authorities, with the taxpayer's representative physically attending and providing the requested documentation and explanations.

However, at the discretion of the tax inspectorate, the audit may also take place:

- at the taxpayer's registered office, or at the office or residence of the taxpayer's representative;
- at the location where the taxable activity is wholly or partly performed; or
- at the location where any evidence, even partial, of the taxable event or underlying factual circumstances is held.

Throughout the audit, the tax authorities may also request information from third parties, including other taxpayers and foreign authorities.

Once the tax auditor has gathered the necessary documentation, a proposal for tax adjustment is submitted to the Chief Inspector. This proposal, setting out the basis and amount of the reassessment, is reflected in an official Record ("*Acta*"), which may be signed as "*in agreement*", "*in disagreement*", or, in certain circumstances, as the outcome of a negotiated settlement.

For "*Agreed Records*" (*Actas con Acuerdo*), the taxpayer benefits from a 65% reduction in any penalties imposed, though these records require advance payment of the reassessed tax. For "*Conformity Records*" (*Actas de Conformidad*), the penalty reduction is 30%, which may increase by a further 40% if the penalty is not challenged.

## 2.4 Areas of Special Attention in Tax Audits

As noted in 2.1 Main Rules Determining Tax Audits, audit priorities are defined in the General Inspection Plan. However, there are areas which consistently attract scrutiny:

- deductibility of expenses for Corporate Income Tax and VAT purposes;
- application of R&D-related tax incentives;
- application of special regimes for small and medium-sized enterprises;
- review of tax-loss carryforwards from prior years;
- analysis of financial ratios in relation to declared income;
- verification of valid economic reasons in tax-deferred corporate restructurings; and
- valuation of related-party transactions (transfer pricing).

## 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

Recent years have seen a significant increase in audits concerning cross-border transactions, particularly those involving multinational groups. Indeed, this area is consistently highlighted in the annual Tax Control Plan.

These audits encompass the detection of artificial profit shifting through inappropriate inter-company transactions, supported by continuous information gathering and mandatory reporting (notably via Form 232).

In 2025, the State Tax Agency will pay particular attention to international taxation and transfer pricing, covering areas such as business restructurings, valuation of intangible assets in intra-group transactions, deductibility of royal-

ties and intra-group services, recurring losses, and related-party financing. It will also assess low-risk structures with a significant economic footprint, focusing on valuation methodologies and profitability indicators. Special attention will be paid to profit-shifting schemes where income is retained abroad despite being taxable in Spain.

Concurrently, the Agency aims to strengthen the elimination of double taxation resulting from audits by Spanish or foreign tax authorities pursuant to tax treaties.

## 2.6 Strategic Points for Consideration During Tax Audits

A successful audit strategy must begin with thorough risk assessment and an understanding of what the inspectorate is likely to pursue, including the scope of the information available to it.

Audits should be handled by professionals with expertise in tax controversy, given the legal significance of every statement made during the process. Each meeting generates an official record which, as a public document, carries strong probative value. Once a fact is recorded therein, it becomes extremely difficult to challenge it at a later stage.

Depending on the nature of the case, it may become evident that the inspectorate is unreceptive to certain arguments, in which case the focus should shift towards building a solid foundation for future litigation rather than seeking to persuade the auditors. Conversely, where circumstances are favourable, a negotiated settlement may be advisable, particularly given the potential reductions in penalties – particularly where the taxpayer is in a position to make prompt payment under an Agreed Record.

## 3. Administrative Litigation

### 3.1 Administrative Claim Phase

The procedure for challenging a tax assessment in Spain must always start via the administrative route. As noted above, the law grants the Tax Authorities the opportunity to review their own acts before obliging the taxpayer to resort to the courts.

Where the assessment has been issued by the State Tax Administration (AEAT) or by a regional tax authority, the taxpayer may initiate the dispute either by lodging an optional appeal for reconsideration before the same body that issued the act or by directly filing an economic-administrative claim before the competent Economic-Administrative Tribunal.

#### Optional Appeal for Reconsideration

As this appeal is submitted to the same body that issued the decision being challenged, it is generally only effective where the purpose is to correct a manifest arithmetical or factual error, without involving any legal interpretation. It is extremely uncommon for the issuing authority to alter its legal position having maintained it throughout the administrative proceedings. Consequently, this appeal is often reserved for clear-cut errors, or may be used strategically to delay the progression of the case.

A decision on the appeal for reconsideration opens the way to an economic-administrative claim.

#### Economic-Administrative Claim

These claims are formal proceedings for reviewing the conduct of the Tax Administration, and are adjudicated by the Economic-Administrative Tribunals. The tribunals comprise regional chambers and a central body, with jurisdiction deter-

mined by the amount in dispute. If the contested liability is less than EUR150,000 per tax period, the claim will be resolved in a single instance before the Regional Economic-Administrative Tribunal, whose decision brings the administrative phase to an end and opens the door to judicial proceedings in the event of an unfavourable outcome.

If the contested liability exceeds EUR150,000 per period, the taxpayer may choose to follow a two-tier procedure – first before the Regional Tribunal and subsequently before the Central Economic-Administrative Tribunal – or to expedite the proceedings by submitting the claim directly to the latter. The decision issued at the conclusion of the economic-administrative procedure then entitles the taxpayer to access judicial review.

Although these tribunals tend to adopt positions that are more favourable to the Treasury, they generally issue well-reasoned resolutions and not infrequently find in favour of the taxpayer. The criteria adopted by the Central Economic-Administrative Tribunal (TEAC) are binding on the Tax Authorities, which must conform to them in subsequent assessments.

It is also important to note that taxpayers may submit any evidence they deem relevant during this stage, and the tribunals are obliged to evaluate such evidence in their decisions.

The filing of an appeal does not, in itself, suspend the obligation to pay the disputed tax debt. The taxpayer must either make payment, request a deferral or payment in instalments, or apply for a suspension. In either case, security is generally required. Although the law allows for suspension without a guarantee, in practice such requests are rarely granted.

In contrast, the challenge of a tax penalty does automatically suspend enforcement of the sanction for the duration of the administrative proceedings without any need to provide security.

For tax assessments issued by local authorities, access to the economic-administrative procedure will depend on whether the relevant municipality has established a Local Economic-Administrative Tribunal. If not, the appeal for reconsideration will be mandatory, and its resolution will conclude the administrative phase.

Finally, the law does provide for special review remedies in a limited number of exceptional circumstances, such as the revision of acts deemed null and void ab initio, or the revocation of final acts. However, these remedies are rarely invoked or applied in practice by the Tax Authorities.

### 3.2 Deadline for Administrative Claims Administrative Phase

Depending on the type of remedy submitted, the maximum time limit for the resolution will vary. It is important to note, however, that the statutory deadlines for decision-making in Spain are largely indicative. Failure by the competent authority to respond within the prescribed time will generally allow the taxpayer to consider the appeal rejected by administrative silence and to proceed with the next stage. Furthermore, if the four-year limitation period is exceeded during the process, the tax debt may become time-barred.

In procedures initiated by the taxpayer – such as a request to rectify a self-assessment or a self-assessment claiming a refund – the authorities have six months to issue a decision.

In the case of an appeal for reconsideration, the time limit for resolution is one month.

### Economic-Administrative Phase

As a general rule, the time limit for resolving economic-administrative claims is one year, irrespective of whether the matter is before a Regional Economic-Administrative Tribunal or the Central Economic-Administrative Tribunal.

There is, however, a special abbreviated procedure applicable to claims involving an amount of less than EUR6,000, which must be resolved within a maximum of six months.

## 4. Judicial Litigation: First Instance

### 4.1 Initiation of Judicial Tax Litigation

When all administrative avenues have been exhausted, the taxpayer is entitled to initiate judicial proceedings. These are conducted before the Administrative Courts (*Juzgados y Tribunales de lo Contencioso-Administrativo*), and it is compulsory for the taxpayer to be represented by a court attorney (*procurador*) and assisted by a barrister (*abogado*).

The nature of the procedure and the competent court will depend on the body that resolved the administrative phase – these differ based on whether the act originated from a municipal authority or from an Economic-Administrative Tribunal.

The time limit for filing a contentious-administrative appeal is two months.

In these judicial proceedings, what is challenged is not the tax assessment per se but rather the administrative resolution that rejected the taxpayer's previous appeal. This distinction is cru-

cial, as it is often mistakenly believed that the litigation concerns the assessment itself, when, in reality, it is the legality of the administrative decision that is under judicial review. Of course, this indirectly involves the assessment, but for the purposes of assessing compliance with legal requirements, the main focus must be on the administrative resolution.

## 4.2 Procedure for Judicial Tax Litigation

The first matter to be determined in judicial proceedings is the competent court. As a general rule, actions arising from municipal authorities are heard by the local Administrative Courts (*Juzgados de lo Contencioso-Administrativo*). If the amount in dispute is less than EUR30,000, the procedure will be simplified; if it exceeds that threshold, an ordinary procedure will apply. Conversely, actions originating from the State or Regional Tax Authorities will invariably follow the ordinary procedure and will be heard either by the High Courts of Justice (*Tribunales Superiores de Justicia*) of the corresponding autonomous community or by the National Court (*Audiencia Nacional*).

Second-instance judicial review is exceptional in the administrative-litigation jurisdiction and generally proceeds either by way of appeal before the High Court of Justice or by a cassation appeal (*recurso de casación*) before the Supreme Court.

### Simplified Procedure

The simplified procedure commences with a written submission setting out all the grounds of opposition to the administrative resolution, accompanied by all documentary evidence that the claimant intends to use. The Tax Authorities' response is usually given orally during the hearing, when the evidence is also assessed.

Judgments handed down by the Administrative Courts in simplified procedures are final and not subject to appeal.

### Ordinary Procedure

The ordinary procedure begins with a writ of initiation in which the claimant merely expresses the intention to challenge the administrative resolution, a copy of which must be enclosed. If the tax debt has been suspended during the administrative stage, the claimant may simultaneously request interim relief, seeking to maintain the suspension throughout the judicial proceedings. In such cases, the court will usually require security. If the dispute concerns a penalty, suspension is not automatic, and the court will have discretion to determine whether to require a guarantee.

Once the court receives the full administrative file from the authority that issued the contested decision, it will forward it to the claimant and grant a 20-day period in which to file the statement of claim. This document must contain a full account of the disputed facts and the legal grounds on which annulment of the administrative resolution is sought. All evidence intended to be relied upon must be submitted with the statement of claim, and the claimant may also request that the court take specific measures of evidence, such as the appointment of a court expert.

Upon receipt of the defence from the State Legal Service (*Abogacía del Estado*), the court will open the evidentiary phase, during which the requested evidence will be admitted and examined.

Finally, a closing brief will be submitted summarising the arguments and evidence adduced. Following this, the court will issue its judgment.

It is worth highlighting that, where the claimant seeks to challenge the constitutionality of a legal provision or its compatibility with EU law, it is during the judicial phase that the court may be requested to refer a question of unconstitutionality to the Spanish Constitutional Court or a preliminary ruling to the Court of Justice of the European Union (CJEU), as appropriate.

### 4.3 Relevance of Evidence in Judicial Tax Litigation

The importance of evidence in judicial proceedings depends largely on whether the dispute concerns factual findings made by the Tax Authorities or the legal interpretation of those facts.

In any event, the courts enjoy broad discretion in the assessment of evidence, and are not bound by the evidence submitted during the administrative phase. However, if the court considers that new evidence was withheld in bad faith, it may reject it.

The types of evidence most commonly relied upon include the following.

- *Documentary evidence* this includes public or private documents proving the existence of a specific fact. Public documents are afforded greater evidentiary weight.
- *Expert evidence* parties may submit reports prepared by their own experts or request the appointment of a court-appointed expert, whose fees must be initially paid by the requesting party but whose opinion typically carries significant weight with the court.
- *Witness evidence* parties may request the examination of witnesses whose testimony may assist the court in its fact-finding duties.

### 4.4 Burden of Proof in Judicial Tax Litigation

As in administrative review and tax application procedures, the burden of proof in judicial tax litigation lies with the party seeking to rely on a particular fact. For example, if the Tax Authorities seek to increase the taxable base of a given tax, it must substantiate that part of the income has been undeclared. Conversely, if the taxpayer seeks to deduct an expense or claim a tax benefit, it is incumbent upon them to prove that the expense is connected to their taxable activity and that its amount is accurate.

### 4.5 Strategic Options in Judicial Tax Litigation

It is essential to define a litigation strategy from the very outset, ideally from the initiation of the tax audit, in order to be in the best possible position should judicial proceedings become necessary. Ordinarily, it is advisable not to reveal all legal arguments during the audit phase, particularly where it is anticipated that the Tax Authorities will be unreceptive. Disclosing such arguments may only serve to provide the Tax Authorities the opportunity to refute them or develop additional counterarguments.

During the economic-administrative phase, it is crucial to align legal arguments with the doctrine established by the Central Economic-Administrative Tribunal (TEAC), or, alternatively, to present the case as sufficiently exceptional so as to avoid the creation of a precedent applicable to a broad class of taxpayers.

In contrast, during the judicial phase, it is often advantageous to invoke general principles of law and rely on legal reasoning with which judges may be more familiar – bearing in mind that many judges come from a civil law background before specialising in tax litigation.

Regarding evidence, any materials not submitted previously may now be introduced. Expert reports prepared by court-appointed experts are recommended in particular, and are frequently influential.

It is also at this stage that the taxpayer may raise arguments concerning the unconstitutionality of a legislative provision or its incompatibility with EU law, and request that the court submit a constitutional question ( *cuestión de inconstitucionalidad*) or a request for a preliminary ruling to the CJEU.

In cases involving potential unconstitutionality of the applicable legislation, it is essential to lodge a formal challenge, as the Constitutional Court usually limits the effects of its judgments to taxpayers who have previously contested the legislation in question.

## 4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

Following the reform of the cassation appeal (*recurso de casación*) procedure in 2015, judgments issued by the Spanish Supreme Court in tax matters have become particularly influential in the interpretation of tax law.

The Supreme Court's rulings establish binding jurisprudence that must be followed by both the Tax Authorities and the lower courts. Accordingly, it is vital for practitioners to remain informed of the Court's evolving case law.

Unfortunately, it is becoming increasingly common for the legislator to amend tax laws in response to taxpayer-favourable jurisprudence, thereby neutralising the effect of such judgments. Nonetheless, Supreme Court rulings remain an essential interpretative tool.

The Spanish Constitutional Court has also issued recent case law in tax matters – eg, its decision declaring the municipal capital gains tax (*Impuesto sobre el Incremento de Valor de los Terrenos de Naturaleza Urbana*) unconstitutional. However, access to this court is limited, and usually results from questions of constitutionality referred by lower courts.

Finally, the case law of the Court of Justice of the European Union (CJEU) is binding, and must be observed by the Spanish courts and the Tax Administration alike.

## 5. Judicial Litigation: Appeals

### 5.1 System for Appealing Judicial Tax Litigation

In judicial tax litigation, the competent court will depend on the territorial body that issued the tax assessment in question.

- *Local entities (municipalities)*: appeals against tax assessments issued by municipalities are brought before the local contentious-administrative courts. These courts do not generally possess a high level of specialisation in tax matters, as they deal with a wide range of issues pertaining to public law and administrative proceedings.
- *State Tax Authorities (AEAT) or Regional Tax Authorities* resolutions issued by the Regional or Central Economic-Administrative Courts (TEAR or TEAC), concluding the administrative phase, are subject to judicial review before the High Courts of Justice of the corresponding Autonomous Communities or, in the case of matters of greater significance, before the National High Court (*Audiencia Nacional*).
- *Contentious-Administrative Courts* these courts handle appeals against resolutions

issued by local authorities and the local economic-administrative tribunals.

- *High Courts of Justice (Autonomous Communities)* these courts are competent to hear appeals against resolutions issued by the economic-administrative tribunals of the respective Autonomous Communities (where the contested amount is below EUR150,000), as well as resolutions of the Central Economic-Administrative Court (for matters concerning taxes devolved to the Autonomous Communities and exceeding EUR150,000). Additionally, they act as appellate courts in second-instance proceedings for local tax matters exceeding EUR30,000 in respect of judgments rendered by contentious-administrative courts.
- *National Court (Audiencia Nacional)* this court adjudicates, as a court of sole instance, appeals against resolutions issued by the Central Economic-Administrative Court relating to state taxes where the disputed amount exceeds EUR150,000.
- *Supreme Court (Tribunal Supremo)* the Contentious-Administrative Chamber of the Supreme Court hears extraordinary appeals (*recurso de casación*).

## 5.2 Stages in the Tax Appeal Procedure

### Filing of the Appeal

All appeals must be initiated by means of a written submission signed by a solicitor and a procurator, specifying the administrative action being contested and the procedural rules that permit this. The appeal must be lodged before the competent court.

Furthermore, if a request is made to suspend the enforcement of the contested act, the appropriate application for interim relief must be filed as a separate procedural step.

### Statement of Claim

This is the most crucial stage. Once the court has made the administrative file available, the claimant will be granted a period of 20 days to submit the pleading, setting out the grounds for opposing the disputed action and, where appropriate, to request the collection of evidence.

### Evidence/Closing Submissions

If evidence is requested, and once the State Legal Service filed its statement of defence, the evidentiary phase will take place. Upon its conclusion, the parties will be permitted to submit their closing arguments.

### Judgment

Upon completion of all procedural stages, the court shall render its judgment resolving the dispute.

## 5.3 Judges and Decisions in Tax Appeals

Cases are decided as follows.

Single-Judge Panels:

- Contentious-administrative courts.

Multi-Judge Panels (minimum of three magistrates):

- the High Courts of Justice (Autonomous Communities);
- the National Court; and
- the Supreme Court.

## 6. Alternative Dispute Resolution (ADR) Mechanisms

### 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

The Spanish tax system does not provide for conventional alternative dispute resolution (ADR) mechanisms. Pursuant to domestic legislation, the rights of the Spanish Treasury may not be subject to the outcome of either judicial or extra-judicial settlements, and neither may tax-related disputes currently under administrative or judicial proceedings be submitted to arbitration.

Nonetheless, Spanish law provides for certain procedural instruments that could, in practice, produce similar outcomes to conventional ADR mechanisms. These include:

- Advance Pricing Agreements (APAs) in the area of transfer pricing; and
- agreements concerning deferrals or instalments of payment, also applicable in the enforcement phase.

### 6.2 Settlement of Tax Disputes by Means of ADR

See 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction.

### 6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

See 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction.

### 6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

Submitting a binding consultation (*consulta vinculante*) to the General Directorate for Taxation (DGT) could be recommended when there are no settled interpretative criteria regarding the

taxpayer's planned transactions. This provides a measure of legal certainty in advance of implementation.

The resolution issued by the DGT is binding upon the State Tax Administration when applying the tax rules to the requesting taxpayer.

### 6.5 Further Particulars Concerning Tax ADR Mechanisms

See 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction.

### 6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

See 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction.

## 7. Administrative and Criminal Tax Offences

### 7.1 Interaction of Tax Assessments With Tax Infringements

The tax penalty procedure is governed by the principle of autonomy with respect to remaining tax application procedures. In other words, it is processed separately from the procedures that may result in a tax assessment (tax management or inspection procedures).

In practice, this means that not every tax assessment implies the commission of a tax offence. However, assumptions that may result in a tax debt levied by the tax authorities can also serve as a basis for the initiation of penalty proceedings.

The tax authorities must issue the tax assessment and the penalty separately in order to safeguard the taxpayer's right of defence and ensure impartiality in the imposition of fines. It

is therefore not possible to incorporate the penalty directly into the assessment. The penalty is based on sanctionable conduct, whereas the assessment merely addresses an obligation to pay. There is clearly a significant relationship between tax assessments and tax penalties, since a penalty usually results from issues identified during the tax application procedure that triggered the tax assessment.

The most frequently applied tax penalty relates to failure to pay a tax debt, obtaining tax refunds or incorrect accreditation of negative items (undue tax credits). For a penalty to be imposed on the taxpayer, it is essential that an additional analysis of intent or negligence be carried out.

## Infringements Arising From Tax Avoidance

Most tax offences are general transgressions, such as failure to pay taxes, obtaining undue refunds, falsifying declarations, or failure to comply with accounting or reporting obligations, based on facts reclassified by the tax authorities assessing that, under the formal appearance of certain businesses or structures, tax avoidance has been deliberately pursued in contravention of tax rules.

The two main anti-avoidance rules are: a) those that correct what is known as “*conflict in the application of the rule*” (Article 15 of the General Tax Act) and b) “*simulation*” (Article 16 of the General Tax Act).

- “*Conflict*” applies when legal forms or figures that are manifestly ill matched to economic reality are used with the primary purpose of obtaining a tax saving. In these cases, any settlement may demand the tax and eliminate the tax advantages obtained, and late payment interest will be due. However, no special mention is made of a penalty. “*Simulation*”

refers to the concealment of the true nature of a business or legal act to be replaced with a different one in order to totally or partially avoid tax – eg, by invoicing fictitious operations, or pretending that a donation is a purchase or sale, etc. In most cases, simulation does carry a penalty, as it implies an act of deception and, therefore, culpable behaviour (fraud, or at least negligence) that is consistent with the types of offences covered by the General Tax Act.

Therefore, if the inspection file concludes that there was simulation, the probability of imposing a sanction is very high, unlike in the case of “*conflict in the application of the rule*”, where the law expressly rules out the automatic imposition of sanctions by the mere declaration of such a conflict

## 7.2 Relationship Between Administrative and Criminal Processes

### Tax Offences and Penalties

#### *Penalty procedures and how they relate to criminal proceedings*

Tax penalty procedures are initiated when the tax authorities identify possible breaches of tax obligations. As mentioned in 7.1 **Interaction of Tax Assessments With Tax Infringements**, as a general rule, they are processed autonomously and independently of tax enforcement procedures. However, in certain cases (eg, agreed assessments, or when the taxable person waives this separation), joint processing may take place.

During the administrative procedure, if there are indications of a tax offence, the tax authorities must refrain from initiating or continuing the sanctioning procedure, referring the proceedings to the criminal jurisdiction in application of the non bis in idem principle. This means that the administrative sanctioning procedure is suspended, so the authorities cannot impose

sanctions for identical conduct in the event of a criminal conviction. If no criminal offence is eventually identified, the authorities can resume the administrative sanctioning procedure, sticking to the facts declared proven by the criminal jurisdiction so as to avoid imposing a double sanction on the taxpayer.

The most representative criminal offences channelled in this way tend to be made against the Public Treasury (regulated by Articles 305 and 305 bis of the Criminal Code), when the amount defrauded exceeds EUR120,000 (per tax period and tax), or in cases of aggravated fraud (eg, using tax havens, organised schemes, particularly high amounts, etc).

### 7.3 Initiation of Administrative Processes and Criminal Cases

Tax penalty proceedings are always initiated ex officio, by notification of the decision of the competent body, in most cases following a procedure commenced by a declaration, a data verification, or a verification or inspection procedure (in general no later than six months after resolution of these procedures is notified).

If, during the tax penalty procedure, there are indications that a tax offence has been committed, the tax authorities must refrain from initiating or continuing the penalty procedure, referring the proceedings to the criminal jurisdiction.

However, the last five years in particular have seen an increase in the number of cases that, having met the criteria for criminal offences, are referred to the Public Prosecutor's Office for prosecution.

This increase does not mean, in absolute terms, that the majority of tax sanctioning procedures end up as criminal proceedings, but rather that

the STA has increasing resources and technology to identify the most serious cases of fraud that warrant criminal prosecution, instead of limiting itself exclusively to administrative sanctions.

Compared to the past, the fight against fraud has intensified through international cooperation mechanisms and advanced cross-checking tools, contributing to the increase in cases in which criminal conduct is suspected.

### 7.4 Stages of Administrative Processes and Criminal Cases

#### Tax Penalty Administrative Proceedings (Articles 209-212 of the General Tax Act)

- Commencement
  - (a) The penalty procedure is always initiated ex officio via an agreement notified to the taxpayer.
- Instruction
  - (a) At this stage, the facts and evidence obtained in the tax enforcement procedure (verification, inspection, etc) are collected and assessed.
  - (b) A draft resolution is prepared, setting out the facts, their legal qualification and the possible infringement, together with the proposed sanction.
  - (c) The proposal is submitted to the party concerned, who is given a period in which to make representations and provide evidence.
- Termination of the procedure
  - (a) The procedure may be terminated by a decision (imposing the sanction or declaring the non-existence of an infringement) or by expiry (if no decision is taken within the legal time limit, usually six months).
  - (b) The decision must state the proven facts, the infringement committed and the sanction imposed (explaining the applicable

graduation criteria and reductions).

- (c) In the event of forfeiture, the proceedings are closed without the possibility of initiating a new procedure for the same facts.

- Appeals against penalties see **3.1 Administrative Claim Phase**

- (a) The penalty imposed can be appealed independently; however, if both the assessment and the penalty are contested, the two claims are usually joined.

## The Tax Criminal Case

This is governed by the Criminal Procedure Act (LECrim). Criminal proceedings for offences against the Tax Authorities are generally initiated when the Tax Authorities detect indications of a tax offence. They may then refer the case file to the Public Prosecutor's Office or to the relevant criminal jurisdiction.

## Phases of Criminal Proceedings

Once the file has been referred, the criminal procedure follows several stages. First, an investigation is carried out to determine the existence of a tax offence. During this phase, evidence is collected and the actions documented in communications, proceedings, minutes, reports, proposals or assessments are evaluated. This evidence must be ratified, assessed and contradicted in the oral trial. If a conviction is handed down, the amount defrauded is set at the criminal judgement and the Tax Authorities must adjust the administrative settlement to that determined by the criminal court.

## Effects of the Criminal Judgment

The criminal judgment has significant effects on the tax assessment. If the conviction establishes a fraudulent amount identical to the administrative assessment, it is not necessary to modify the assessment, but late payment interest must be paid. If the amount is different, the initial

assessment must be rectified to conform to the amount established in the criminal proceedings. If no offence is found, the Tax Authorities may initiate a new penalty procedure based on the facts proven in the criminal jurisdiction. In addition, the criminal judgement may prevent the imposition of administrative sanctions for the same facts, in application of the non bis in idem principle.

The bodies involved in criminal proceedings for offences against the Public Treasury include the Tax Authorities, which initiate the process when they detect indications of a crime, and the Public Prosecutor's Office, which may receive the file for processing. In the judicial sphere, the criminal judge is responsible for assessing the evidence and setting the amount of the debt, as well as passing sentence. In the event of a conviction, the STA'S collection bodies are responsible for enforcing the sentence by means of the enforcement procedure, informing the judge or court of any incident in the enforcement. Coordination between the administrative and criminal departments is essential to ensure the correct application of penalties and the collection of debts.

## Deciding Judicial Body/Authority

- The investigation phase is conducted by the examining magistrate, or Juzgado Central de Instrucción if the offence is of national scope.
- The oral trial and sentencing are the responsibility of the Criminal Court (less serious crimes) or the Provincial Court (serious crimes).
- In exceptional cases of particular relevance, the Audiencia Nacional could intervene if the law so provides (eg, crimes with a high national impact).
- On appeal, the High Court of Justice or the Audiencia Nacional (if the Audiencia Nacional

handed down the judgment) and the Supreme Court can review the case.

## 7.5 Possibility of Fine Reductions

For tax penalties, legislation provides for various instances in which reductions can be applied if the taxpayer fulfils certain conditions.

### Conformity With the Settlement and the Penalty

- By agreeing to the regularisation and the penalty, without lodging an appeal or complaint, the obligor can benefit from a 30% reduction on the penalty amount.
- If, in addition, payment is made during the voluntary period, an additional reduction of 40% is available, reaching an overall reduction of close to 58% when the penalty conforms with and is paid within the stipulated timeframe.

### Agreed Minutes

- Minutes with agreement are another means of accessing penalty reductions, allowing a 65% reduction on the amount imposed.
- Unlike conformity, in this case there is no additional reduction for voluntary payment, as payment is a prerequisite for the signature of the act.
- Voluntary regularisation.
- It is possible to completely avoid penalties if the taxpayer regularises their obligations prior to the start of the tax authorities' verification procedures, provided that this regularisation is complete and truthful (including payment of the debt, late-payment interest and surcharges).
- For declarations of an informative or census nature, voluntary regularisation may entail reduced penalties, but need not necessarily be completely eliminated.

All of the above reductions are dissuasive in nature, and may sometimes lead taxpayers to waive their legitimate rights and to accept the imposition of unfair penalties simply because they have access to lower tax charges.

## 7.6 Possibility of Agreements to Prevent Trial

It is possible to avoid or stop a criminal prosecution for an offence against the tax authorities if payment is made prior to the investigation phase. In such a case, full regularisation results in exemption from criminal liability.

If criminal proceedings have already been initiated, financial reparation (payment of principal, interest and surcharges) does not usually cancel the trial, but considerably reduces the sentence thanks to the mitigating factor of reparation of damage or negotiated criminal agreement.

Irrespective of the administrative channel (acts of conformity, acts with agreement), criminal priority means that the last word lies with the criminal judicial bodies, the Public Prosecutor's Office and the State Attorney's Office, where appropriate. However, payments and the agreements (acts of conformity or acts with agreement) reached in administrative proceedings constitute fundamental elements to mitigate or even avoid, in certain cases, criminal sanctions.

## 7.7 Appeals Against Criminal Tax Decisions

The type of appeal depends on which body prosecutes the offence in the first instance:

- *If the trial is held before the Juzgado de lo Penal*
  - (a) the offence is considered to be of medium gravity (penalties of up to five years'

imprisonment, according to the rules of the abbreviated procedure); or

(b) the sentence handed down by the Criminal Court may be challenged by an appeal to the Provincial Court.

- *If the trial is held before the Provincial Court*
- in more serious cases, or when the sentence requested exceeds the limits of the Criminal Court; or
  - (a) when the judgement of the Provincial Court is not appealed to any intermediate court, but (if applicable) an appeal in cassation to the Supreme Court is possible, provided that the legally required conditions are met (eg, the sentence imposed exceeds a certain threshold, there is an infringement of the law, violation of due process, etc).
- *Appeal in cassation before the Supreme Court* an appeal in cassation is an extraordinary appeal brought before the Supreme Court (Criminal Division) against judgments handed down:
  - (a) by the Provincial Court, in sole instance; or
  - (b) by the High Courts of Justice, in proceedings in which they have jurisdiction at first instance (less frequent cases).

The main grounds for appeal are infringement of the law (misinterpretation of the Criminal Code or other criminal law) or breach of due process (violation of fundamental rights, serious procedural defects, etc). If the appeal is successful, the Supreme Court may annul or revoke the judgment and issue a new decision or, where appropriate, order a retrial.

- *Appeal for protection before the Constitutional Court* once the ordinary judicial channels (appeal or cassation) have been exhausted, if the convicted person considers that funda-

mental rights have been violated (for example, the right to effective judicial protection, to a defence, to the presumption of innocence, etc), an appeal for protection can be lodged with the Constitutional Court. This is not a third criminal instance, but a specific mechanism to review the alleged infringement of constitutional rights.

- *Appeal for review (exceptional)* in very exceptional circumstances (appearance of new evidence, contradictory judicial decisions on the same facts, etc), an appeal for review may be lodged with the Supreme Court to overturn a final judgment, but only in cases specifically provided for in the Criminal Procedure Act.

## 7.8 Rules Challenging Transactions and Operations in This Jurisdiction

See 7.1. Interaction of Tax Assessments With Tax Infringements.

## 8. Cross-Border Tax Disputes

### 8.1 Mechanisms to Deal With Double Taxation

See 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits.

See 10.8 Most Common Legal Instruments to Settle Tax Disputes.

See 10.5 Existing Use of Recent International and EU Legal Instruments.

### 8.2 Application of GAAR/SAAR to Cross-Border Situations

Spain has consistently enforced General Anti-Avoidance Rules (GAAR) and Specific Anti-Avoidance Rules (SAAR) in cross-border tax

matters, particularly in cases involving treaty shopping, hybrid structures, and artificial transactions designed to exploit tax treaty benefits.

The Spanish courts have generally supported the application of these anti-abuse measures, ruling that double tax treaties (DTTs) do not prevent the tax authorities from challenging abusive arrangements that lack economic substance. With the introduction of the Principal Purpose Test (PPT) under the Multilateral Instrument (MLI), Spain is expected to reinforce its stance against Base Erosion and Profit Shifting (BEPS), although this new framework may also increase legal uncertainty and lead to more disputes between taxpayers and tax authorities.

While the Spanish courts have yet to issue major rulings based solely on the PPT, they have already applied similar anti-abuse principles in previous cases, aligning with the OECD's approach to treaty abuse.

As a result, taxpayers operating in Spain will need to review and adapt their corporate structures, ensure stronger documentation of the commercial purpose behind transactions, and, where necessary, seek advance rulings or rely on the Mutual Agreement Procedure (MAP) to minimise potential challenges from the tax authorities.

### 8.3 Challenges to International Transfer Pricing Adjustments

See 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits.

### 8.4 Unilateral/Bilateral Advance Pricing Agreements

Yes, APAs are widely used in Spain to ensure tax certainty and reduce transfer pricing disputes. While unilateral APAs provide quick certainty, bilateral and multilateral APAs are preferable as they prevent double taxation and allow alignment between jurisdictions.

The main stages are as follows.

- *Pre-filing (optional)* the taxpayer can request an informal meeting with the STA to discuss the potential APA and assess feasibility.
- *Formal request and documentation submission* the taxpayer submits a detailed APA request, including transfer-pricing documentation, economic analysis, and proposed methodology.
- *Evaluation and negotiation* the STA examines the request, conducts further analysis, and negotiates (for bilateral/multilateral APAs, this involves discussions with foreign tax authorities).
- *Agreement and resolution* if approved, the APA establishes binding terms for the agreed period (up to four years, renewable).
- *Monitoring and compliance* the taxpayer must comply with the APA terms and submit annual compliance reports.

### 8.5 Litigation Relating to Cross-Border Situations

See 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits.

## 9. State Aid Disputes

### 9.1 State Aid Disputes Involving Taxes

There is currently no record of an applicable tax scheme or incentive in force that is challenged as state aid. In the past, there have been claims by the EU of tax advantages obtained by certain investors in various situations having been declared as state aid – eg, the “*old tax lease regime for ships*” (the current tax lease regime applicable in Spain is validated by the EU), or the Spanish tax regulation of financial goodwill arising on the acquisition of shares in non-resident entities. All related regulations have since been modified or designed to comply with EU legislation, ensuring that they do not distort competition in the EU internal market. Alignment with EU law is crucial to avoid penalties and to ensure that tax benefits are applied in a fair and equitable manner.

### 9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid

Depending on the nature of the elements of the tax liability concerned, there are two types of state aid recovery procedures: those that involve the regularisation of elements of the tax liability and those that do not. The enforcement of recovery decisions may influence the quantification or assessment of the tax debt, and, in some cases, may be carried out through an inspection procedure.

### 9.3 Challenges by Taxpayers

Taxpayers who receive a supplementary assessment or repayment notification for fiscal state aid generally challenge it before the national and/or European courts, seeking to annul or reduce the refund. The validity of the Commission’s decision cannot be disputed internally (that is the sole responsibility of the European courts – ie, the General Court of Justice and the Court of

Justice of the EU). However, they can challenge, for example, the identification of the beneficiary, the calculation of the advantage, the way in which the interest is applied, etc.

The outcome varies from case to case, but there is always a long judicial process, as the qualification of the measure as aid and, above all, the determination and implementation of recovery (actual beneficiaries, amounts, dates, interest, etc) are disputed.

### 9.4 Refunds Invoking Extra-Contractual Civil Liability

See 11.3. Indemnities.

## 10. International Tax Arbitration Options and Procedures

### 10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

Spain, which joined the Multilateral Instrument (MLI) in January 2022, does not currently apply Part VI (compulsory arbitration). It has expressly reserved the right not to participate in this system, which is why there is no mandatory and binding arbitration clause in most of its DTTs.

Spain’s general reservation implies that the provisions of the Arbitration Chapter (Articles 18 to 26) do not apply, so bilateral treaties have not been amended to include this mechanism through the MLI.

There are, however, certain Conventions (eg, with the USA) that include bilateral arbitration negotiated outside the MLI. The Convention with the USA includes an arbitration clause, although this does not constitute automatic or unconditional arbitration in all cases, nor is it articulated

in the same way as the mechanism of Part VI of the MLI. It requires prior passage through the Friendly Settlement Procedure and is subject to specific conditions, so that it is activated only if the requirements set out in the text agreed by both States are met.

## 10.2 Types of Matters That Can Be Submitted to Arbitration

The only treaty that provides for arbitration is the Spain-US Treaty. See **10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)**.

## 10.3 Application of Baseball Arbitration or the Independent Opinion Procedure

Agreements with other states have not been amended to incorporate either of the two methods of arbitration provided for in the MLI (ie, “baseball” and “independent ruling”).

## 10.4 Implementation of the EU Directive on Arbitration and/or the MLI

Council Directive (EU) 2017/1852 of 10 October 2017 on the mechanisms for resolving tax disputes in the European Union was transposed into the Spanish domestic legal system through RD 399/2021, in combination with the General Tax Law, with the MAP being the mechanism chosen for the resolution of international disputes in matters of direct taxation.

## 10.5 Existing Use of Recent International and EU Legal Instruments

OECD statistics on mutual agreement procedures show that Spain has seen an increase in MAP requests in the last five to six years, in line with the intensification of controls and the complexity of international operations.

The most frequent type of dispute is usually profit tracing or transfer pricing. Depending on

the complexity of the case and the willingness of the other jurisdiction to cooperate, the files can take several years to complete, but a significant proportion are nevertheless closed with partial or full settlements.

Since arbitration in Spain functions as a supplementary method to the MAP, the number of disputes that actually reach the arbitration stage is still low if the dispute is not settled opting for the amicable procedure.

## 10.6 New Procedures for New Developments Under Pillars One and Two

Pillar 2 has recently been incorporated into Spanish legislation through a domestic law that incorporates a minimum required taxation on multinational groups to ensure that they do not abuse treaty shopping and pay a minimum tax in the territories in which they operate.

The objective is to mitigate tax competition between different countries and, while it can be expected to have a positive effect, it requires a great deal of coordination between them, necessitating robust and standardised information-exchange tools.

Due to the different scale of adaptation between the various countries, a phase of increased disputes or friction is likely in the early years, with cases of double taxation or lack of mutual country recognition. However, in general terms, the conflict prevention and resolution tools adopted can be expected to favour a cooperative resolution once homogeneity between jurisdictions has improved and the new rules have been consolidated. Spain’s experience in cooperation mechanisms (APAs, MAP, EU arbitration) can also be said to offer a relatively solid basis for preventing and managing potential disputes.

## 10.7 Publication of Decisions

In resolving tax disputes and for procedures under the EU Arbitration Convention and Directive 2017/1852, the agreement reached by the competent authorities following the intervention of the arbitration panel may be published in full if the countries and the taxpayer give their consent.

If there is no consent, a summary is published with basic information about the case (dispute, legal basis, sector, outcome, arbitration method, etc).

Prior to publication, the Spanish authority must inform the taxpayer, who has 60 days to object to the publication of data affecting confidential business information or public order.

## 10.8 Most Common Legal Instruments to Settle Tax Disputes

In Spain, international tax disputes are still generally resolved in accordance with national regulations in a litigation procedure between taxpayers and the state, since these disputes are mostly generated as a result of an assessment carried out by the Spanish tax authorities. As mentioned, the mutual agreement procedure is generally applied for the resolution of double taxation disputes.

## 10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

In principle, taxpayer representation by a proxy (a legal representative) or lawyer is not necessary in international tax arbitration in Spain, although the assistance of an expert in this area is highly recommended.

## 11. Costs/Fees

### 11.1 Costs/Fees Relating to Administrative Litigation

Both the administrative and the economic-administrative phases are free of charge.

### 11.2 Judicial Court Fees

Representation by a solicitor (legal representative) and a lawyer is required at the judicial or contentious-administrative phase, and fees can be freely agreed depending on the scale and complexity of the proceedings. If the cost of the proceedings is imposed on the unsuccessful party, the fees are assessed on the basis of a scale.

In contentious-administrative tax litigation, costs are imposed on the person whose claim is totally rejected, unless the court finds serious doubts of fact or law. In appeals (regular appeal, cassation), costs are imposed on the appellant who has their appeal dismissed in its entirety. If the appeal is partially upheld, or there are reasonable legal doubts, usually no costs are imposed, with each party bearing their own. Costs are payable at the end of the proceedings, if the judgment imposes them on one of the parties. They are not paid in advance, except for the lawyer's or barrister's own fees, which each party must cover as the proceedings progress.

If the taxpayer loses completely, it is normal for them to pay the Tax Authorities' costs (usually the fees of the State Attorney and the AEAT's solicitor). If the taxpayer wins, the AEAT could be ordered to pay costs, although, in practice, many courts do not impose costs on the Administration if they have any reasonable doubts.

If the case is partially upheld, each party will generally pay their own costs. If a party advanc-

es a necessary cost (eg, translations or expert reports) and wins the case, it can ask for it to be included in the cost award so that the losing party will reimburse it.

Interest is not automatically charged on such repayments, but enforcement can be sought if the condemned party does not pay voluntarily.

### 11.3 Indemnities

Where the court upholds the taxpayer's claims and recognises their right to reimbursement of court costs, the Tax Authorities (STA) must pay the amount set out in the court decision.

If the tax assessment is annulled, the STA is obliged to reimburse the taxpayer the amounts unduly paid, together with the accrued interest for late payment. In cases where the debt has been suspended by means of guarantees, the cost of such guarantees must also be reimbursed to the taxpayer.

Additionally, in cases where the actions of the STA have been in bad faith, recklessness or lack of diligence during the verification, inspection or collection procedure, the taxpayer may consider the possibility of initiating a claim for state liability.

### 11.4 Costs of ADR

See 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction.

## 12. Statistics

### 12.1 Pending Tax Court Cases

There are no public statistics on pending cases.

### 12.2 Cases Relating to Different Taxes

The latest report published by the Ministry of Finance is for fiscal year 2023, for which complaints, applications and claims were as follows:

#### PIT

- complaints submitted: 60,166;
- complaints resolved: 61,055;
- successful claims: 30,041; and
- claims dismissed: 26,250;

#### CIT

- applications submitted: 9,381;
- claims resolved: 10,802;
- successful claims: 3,953;
- claims dismissed: 6,089.

#### VAT

- complaints submitted: 24,883;
- complaints resolved: 28,517;
- successful claims: 13,093;
- claims dismissed: 13,772.

### 12.3 Parties Succeeding in Litigation

See 12.2 Cases Relating to Different Taxes.

## 13. Strategies

### 13.1 Strategic Guidelines in Tax Controversies

See 2.6 Strategic Points to Consider During Tax Audits.

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Rob.Thomson@chambers.com](mailto:Rob.Thomson@chambers.com)