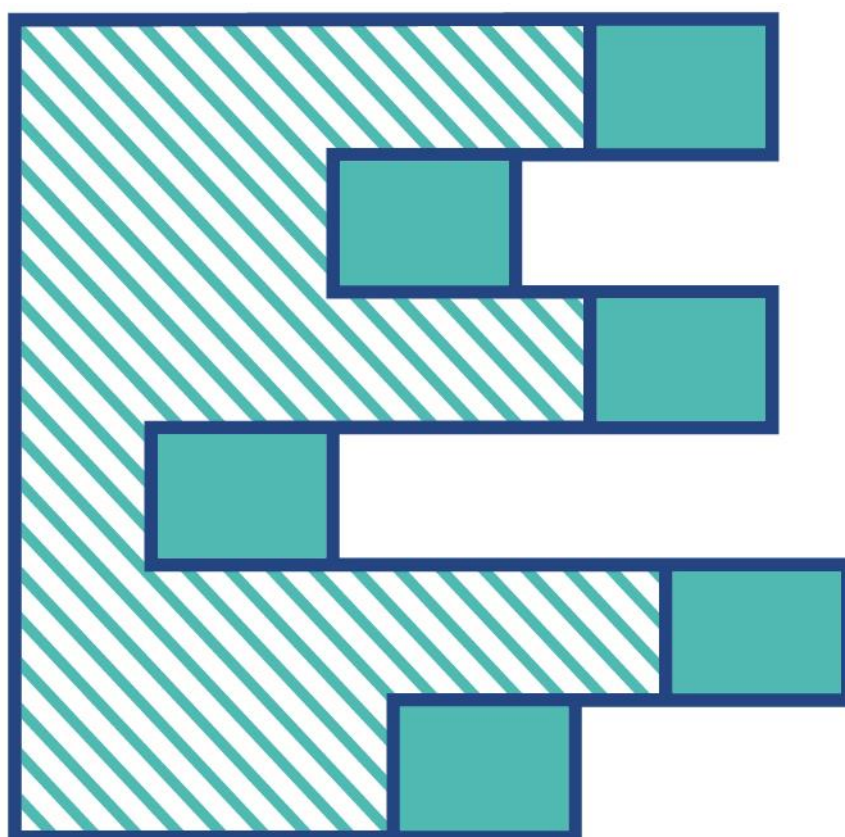


Methodology and regulation applicable to Foreign Investment in Catalonia

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METHODOLOGY AND REGULATION APPLICABLE TO FOREIGN INVESTMENT IN CATALONIA

1. Introduction

The Royal Decree 664/1999 of April 23 on foreign investment regulates, among other matters, foreign investment in Spain. In accordance with this law, foreign investments are fully liberalised.

The guidelines and practices recommended at an international level by the 5th edition of the Balance of Payments Manual (IMF) establishes that foreign direct investments are operations in which the investor intends to control or influence the management and administration of a company that operates outside the territory in which it resides. **It is considered that this control is achieved when the participation of the investment in the company's share capital is equal or higher than 10% of this share capital.**

The Registry of Foreign Investment, integrated into the Sub-directorate General for Foreign Trade of Services and Investments of the Spanish Ministry of Economy and Competitiveness, is the institution that officially registers at a statistical level the flow and stock of foreign investment in Spain.

This registry provides quarterly and yearly data of the flow of investments in gross and net (after deducting divestitures) figures at a level of autonomous communities. It also provides a sectoral disaggregation and a geographical distribution of the investing countries with respect to the gross investment. The Registry of Foreign Investment can be found at the following website: <http://datainvex.comercio.es/>

2. Foreign investment included in the Registry of Foreign Investment

The Royal Decree 664/1999 refers to investments that must be accounted for as foreign investment. Therefore, operations carried out by non-listed companies in Spain and performed by non-resident investors are accounted for in the following cases:

- a) Participation in non-listed Spanish companies (Joint Venture or Procurement operations)
- b) Participation higher than 10% in non-listed Spanish companies
- c) Establishment of foreign-company branches
- d) Additional financing of foreign-company branches
- e) Reinvestments (considering as reinvestments only those operations that affect the share capital of the Spanish company: share capital increase by means of foreign monetary contributions, reinvestment of profits, capitalisation of loans, contribution with assets and liabilities from group companies in Spain, property located in Spain, assets belonging to a foreign company (e.g. ETVE), assets belonging to a Spanish company, etc.) by foreign company affiliates established in Spain (only if the capital required to make the investment originates from abroad). If the reinvestment is made with capital belonging to the Catalanian affiliate, it shall not be considered a foreign investment as far as the Registry of Investment is concerned
- f) Investments intended for the participation in joint account contracts, foundations, economic interest groups, cooperatives and community properties when the total value of the participation of foreign investors is higher than 3,005,060.52 euro or when it originates from tax havens, regardless of the amount ¹

¹ In regards to investments originated from regions or countries considered as tax havens by the Royal Decree 1080/1991, the company must submit a prior declaration before making any investment, which shall be submitted using the form DP-1.

- g) Transfer between non-resident shareholders of shares belonging to Spanish companies. It does not involve a foreign monetary contribution (e.g. purchase / sale of shares within a same group of companies or another foreign group)

3. Investments not included in the Registry of Foreign Investment as far as accounting is concerned

- Investments financed with loans granted by the foreign parent company to the affiliate established in Catalonia
- Foreign investment in property
- Asset restructuring in Spain within the same group of companies or in different groups of companies, when the parent company is a non-resident company
- Reinvestment of profits (except when the capitalisation of loans and/or profits are destined to share capital instead of reserves)
- Transfers between non-resident investors of assets or shares in resident companies

4. Declaration of foreign investments

Any company that makes a foreign investment in a Spanish company must declare it once the investment has been completed.

The due time and proper form of the declaration and liquidation is established in the Resolution of 1 July 2010, which approves the forms required for the declaration of foreign investments.

The deadline for the submission of investment declaration or liquidation forms is ONE MONTH from the date in which the investment was formalised.

The company must declare the foreign investment within the established period by submitting the form D-1A DECLARATION OF FOREIGN INVESTMENT IN NON-LISTED COMPANIES, BRANCHES AND OTHER TYPES OF INVESTMENT before the Registry of Investments of the Spanish Ministry of Economy and Competitiveness. The form can be downloaded directly from:

<http://www.comercio.gob.es/es-es/inversiones-exteriores/declaracion-inversiones-exteriores/paginas/declaracion-inversiones-exteriores.aspx>

As a general rule, the person responsible for submitting the declaration a posteriori shall be the non-resident holder.

As far as the Registry of Foreign Investment is concerned, the investments shall be registered when the form D-1A is submitted. However, they shall be assigned in the period in which the operation has been carried out even if the payment has not been made. Nevertheless, if there is any delay in the submission of this form, any information can be amended in the quarterly updates carried out by the Registry of Investments when this information is related to previous periods, such as the result of operations declared in the last period but where the investment was made before.

5. Supervision and penalty system

The Sub-directorate General for Foreign Trade of Services and Investments of the Spanish Ministry of Economy and Competitiveness supervises the foreign investment operations that are carried out in Spain. If these operations fulfil the requirements for the submission of the form D-1A and the companies have not submitted the form within the deadline for said purpose, they shall be contacted to request the submission of the corresponding documentation. If

this form is not submitted, penalties may be established. The penalties shall be applied by the Sub-directorate General for Inspection and Control of Movements of Capital.

6. Annual report

In the following cases, Spanish companies participated by non-resident investors must submit to the Administration an Annual Report that includes the development of the investment:

- a) Branches in Spain, in all cases
- b) Spanish companies with a share capital or an equity of the non-resident investors higher than 3,005,060.52 euro and when the participation of non-resident investors in the share capital is equal or higher than 50% ²
- c) Spanish companies with a share capital or an equity of the non-resident investors higher than 3,005,060.52 euro and where a non-resident investor, considered individually, has a participation equal or higher than 10% of the share capital or of the total voting rights
- d) Spanish companies that control a group of companies where the participation of non-resident investors in the share capital is equal or higher than 50% or when a non-resident investor considered individually has a participation equal or higher than 10% of the share capital or of the total voting rights. In this case, the share capital or the equity of the non-resident investors shall not be considered

This annual report must be submitted within a period of 9 months from the closing of the accounting year using the form D4 accompanied by a copy of the Corporate Tax or the financial statements.

7. Regulation applicable in Divestitures

When a foreign-capital company is dissolved or a foreign company reduces its participation in the share capital of a Spanish company or it transfers its shares to resident investors, the company must also submit a declaration before the Spanish Ministry of Economy and Competitiveness.

In this case, the company must submit the form D-1B DECLARATION OF THE LIQUIDATION OF FOREIGN INVESTMENT IN NON-LISTED COMPANIES, BRANCHES AND OTHER TYPES OF INVESTMENT.

In this case, the company shall have 30 days to submit the declaration. The form can be found at the following website:

<http://www.comercio.gob.es/es-es/inversiones-exteriores/declaracion-inversiones-exteriores/paginas/declaracion-inversiones-exteriores.aspx>

8. Difference between the data published by the Registry of Investments of the Spanish Ministry of Economy and Competitiveness and the data published by the Bank of Spain

The statistical items in matters of foreign investment included in the collection of data published by Datainex (Registry of Foreign Investment) have been established in the document up to this date.

This data has frequently differed from the foreign investment statistics published by the Bank of Spain in the Balance of Payments. In addition to the previously mentioned reason, this is because the Bank of Spain includes the following items into its statistics:

² In listed companies, this 50% calculation shall be made taking into account only the participations of non-resident investors that individually represent 5% of the share capital.

- Reinvestment of profits (even if allocated to reserves)
- Investment by non-resident individuals or corporations in Property
- Financial flows between related companies (operations financed by means of a loan from the parent company to a Spanish affiliate)

The Bank of Spain does not differentiate between the immediate country and the ultimate country, and the investments are allocated always to the immediate country from where the investment was made. In this case, the operations are registered based on a cash basis (i.e. as the payments are made).

It is also relevant that the **Bank of Spain includes the value of the net transactions**. On the contrary, the Registry of Investments includes the value of the gross operations (gross foreign investment). If from the gross flow of foreign direct investment we subtract the flow of divestitures that are carried out in the same period, we will obtain the net flow of foreign direct investment.

The Bank of Spain transfers its statistical data to the UNCTAD on a yearly basis. It is this data that the public body publishes for Spain in its reports and yearly statistics regarding the analysis of FDI flows to the world.

9. The methodology used by the UNCTAD to record the statistic of foreign investment to the world

UNCTAD collects foreign investment data for each country in the world (through central banks, ministries, statistical offices, etc.). To calculate its statistics, UNCTAD includes statistical data from the balance of payments of each country, the registry of companies and other sources. These are completed with information provided by companies and the press.

UNCTAD's methodology uses the FDI definitions included in the 5th edition of the IMF's Balance of Payments Manual. As mentioned previously, operations of foreign direct investment shall be considered FDI when the investor intends to control or influence the management and administration of a company that is operating outside the territory in which it resides. It is considered that this control is achieved when the participation of the investment in the company's share capital is equal or higher than 10% of this share capital.

Specifically, it includes the investments that are allocated to the company's share capital, the reinvestment of profits and the short and long-term provision of loans between companies (parent company-affiliate).

However, not all countries include these components of the investment. Therefore, the FDI data between countries cannot always be compared. Specifically, the data related to the reinvestment of profits that is usually obtained from surveys carried out on companies are not reported for all countries.

Prepared by the authors, Catalonia Trade&Investment. Sources used for the preparation of this document:

- *Royal Decree 664/1999 of April 23 on Foreign Investment*
- *Order of 28 May 2001 by the Spanish Ministry of Economy, which establishes the procedures applicable to the declarations of foreign investments and their liquidation, as well as the procedures to submit annual reports and administrative files*
- *Resolution of 1 July 2010 by the Directorate General for Trade and Investment, by means of which the declaration forms are approved for foreign investments when the personal responsible for declaring is the investor or the company with foreign participation and which replaces the previous resolution on this matter*

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