

## **METHODOLOGY AND REGULATION APPLICABLE TO FOREIGN INVESTMENTS IN CATALONIA**

### **1. Introduction**

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

The Foreign Investments Registry, an agency of the Deputy Directorate for International Trade of Services and Investments of the Spanish Ministry of Economy and Competitiveness, registers, at a statistical level and officially, the flows and stock of foreign investment in Spain.

The main purpose of registering this data is to facilitate the administrative, statistical and economic knowledge of transactions carried out in Spain by foreign (natural or legal) persons.

Likewise, the registry provides detailed information about the autonomous regions, quarterly and annual data regarding gross and net investment flows (after deducting disinvestments). It also provides, with regard to gross investments, a sectorial breakdown and geographical distribution of the investing countries. The Foreign Investment Registry can be accessed at <http://datainvex.comercio.es/>.

To this end, Royal Decree 664/1999 sets out that the following investors are considered as foreigners and, consequently, holders of foreign investments in Spain:

- (a) natural persons not residing in Spain, who are Spanish natives or foreigners who reside or have their main residence overseas; and
- (b) legal persons residing overseas as well as public entities under foreign sovereignty.

### **2. Foreign investments included in the Foreign Investments Registry**

Royal Decree 664/1999 sets out that the following investments, carried out by a non-resident investor, must be accounted for as foreign investments:

- (a) Shareholding in non-listed Spanish companies (incorporation or acquisition of shares or stocks, through a purchase and sale transaction, a capital increase or any other transaction that involves the acquisition by a non-resident person);
- (b) Shareholding more than 5% of the share capital of a listed Spanish company;
- (c) Establishment of and share capital increase in a branch;
- (d) Subscription and acquisition of marketable securities corresponding to loans issued by residents;
- (e) Shareholding in investment funds registered with the National Markets and Competition Commission Registry;

- (f) Acquisition of real estate property located in Spain, provided that its value exceeds EUR 3,005,060.52, or when the investor resides in a tax haven<sup>1</sup> country, regardless of the amount.
- (g) Incorporation, formalization and participation in joint ventures, foundations, economic interest groupings, cooperatives and joint-property entities, when the total value corresponding to the foreign investors' participation exceeds EUR 3,005,060,52 or when the investor resides in a tax haven, regardless of the value.

Likewise, the transactions described above must also be notified to the Foreign Investment Registry in case of disinvestment, so that the non-resident acts as a transferor.

### **3. Declaration of foreign investments**

Non-resident companies must declare any foreign investment transaction that they execute in Spain. Resolution of 27 July 2016, issued by the General Directorate of International Trade of Services and Investments specifies the declaration forms for foreign investments. By virtue of this Resolution, the forms related to investments and disinvestments made by non-residents are the following:

- (a) Before the foreign investment – forms DP-1 and DP-2;
- (b) After the foreign investment – forms D-1A and D-2A;
- (c) Annual declarations – form D-4; and
- (d) After liquidation of foreign investment – forms D-1B and D-2B.

In accordance with Law 39/2015, of 1 October, on Common Administrative Procedures of Public Administrations, the above forms must be filed by electronic means, provided that the investor or recipient of the investment is a legal person. The forms must be filed using the support programme (AFORIX) available on the website of the Trade Department: <https://sede.comercio.gob.es> accessing the option *Electronic Procedures and services* → *Download software help* → *AFORIX* → *Programme to complete Foreign Investment Forms (Procedimientos y servicios electrónicos->Descarga de programas de ayuda->AFORIX Programa para la cumplimentación de Formularios de Inversiones Exteriores)*.

#### **3.1 Declarations to submit before the investment – forms DP-1 and DP-2**

Prior to the investment and regardless of its value, it is mandatory to file with the Foreign Investment Registry form DP-1 (foreign investments in Spanish private companies) and form DP-2 (foreign investment in real estate located in Spain) if the investment originates from a tax haven country.

The declaration is valid for six (6) months.

#### **3.2 Declarations to submit after the investment – forms D-1A and D-2A**

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<sup>1</sup> For investments originating from regions or countries which are considered tax havens, pursuant to RD 1080/1991, the company must submit a declaration prior to making the investment by using form DP-1.

It is mandatory to file with the Foreign Investment Registry form D-1A (foreign investment in Spanish private companies) and form D-2A (foreign investment in real estate located in Spain, provided that its value exceeds EUR 3,005,060.52) when the investment originates from a foreign investor.

Both declarations must be filed after the investment takes place and within one (1) month.

### **3.3 Annual forms – form D-4**

The investor must file with the Foreign Investment Registry form D-4, regarding the annual reporting on foreign investments in Spanish companies in the following cases:

- (a) branches in Spain;
- (b) companies with a share capital or shareholder equity exceeding EUR 3,005,060.52 as well as the participation of non-resident investors in their share capital is equal or higher than 50%<sup>2</sup> or if the participation of a non-resident investor, considered individually, is equal or higher than 10% of the company's share capital or of the company's total voting rights; or
- (c) companies that control a holding company where, either the share of non-resident investors in its share capital is equal or higher than 50%, or if the participation of a non-resident investor, considered individually, is equal or higher than 10% of the company's share capital or of the company's total voting rights, regardless of the amount of the share capital or equity of the Spanish company.

This declaration must be filed annually, within nine (9) months after the company receiving the investment ends its fiscal year, together with a copy of its Corporate Income Tax or annual accounts.

### **3.4 Forms to submit after liquidating foreign investments– forms D-1B and D-2B**

When the investor (liquidating the investment) is foreign it must file with the Foreign Investment Registry, form D-1B (declaration of liquidation of foreign investment in Spanish private companies) and form D-2B (declaration of liquidation of foreign investment in real estate, provided that its value exceeds EUR 3,005,060.52).

Both declarations must be filed after the liquidation of the investment takes place and within one (1) month.

## **4. Monitoring and penalty system**

The Deputy Directorate of International Trade of Services and Investments of the Treasury and Competitiveness Ministry monitors foreign investment transactions in Spain. If these transactions meet the requirements to file the above forms, if the non-resident investors or the obliged companies do not file them within the established legal deadlines, they shall be contacted and required to submit the relevant documentation.

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<sup>2</sup> For listed companies the calculation of the 50% shall be applied taking into account only those shares owned by non-residents and that individually correspond to 5% of their share capital.

If the forms are not filed upon being requested, the Deputy Directorate for the Monitoring and Control of Capital Movements shall impose a sanction in accordance with the following:

- (a) Very serious infractions shall result in the imposition of the following sanctions:
  - (i) fine, ranging from all the financial value of the transaction to a minimum fine of EUR 30,000; and
  - (ii) public or private admonition.
- (b) Serious infractions shall result in the imposition of the following sanctions:
  - (i) fine, ranging from 50% of the financial value of the transaction to a minimum amount of EUR 6,000; and
  - (ii) public or private admonition.
- (c) Minor infractions shall result in the imposition of the following fines:
  - (i) fine, ranging from 25% of the financial value of the transaction to a minimum amount of EUR 3,000; and
  - (ii) public or private admonition.
- (d) When the parties, subject to this obligation, file the declarations after the deadline, without the administration's prior action or request, the following sanctions shall be imposed:
  - (i) if less than six (6) months have elapsed, a fine between EUR 150 and EUR 300;  
or
  - (ii) if more than six (6) months have elapsed, a fine between EUR 300 and EUR 600.

Sources used to prepare this document:

- RD 664/1999, of 23 April, on Foreign Investment.
- Law 19/2003, of 4 July, on the legal regime on movement of capitals and economic transactions overseas.
- Law 39/2015, of 1 October, on the Common Administrative Procedures of Public Administrations.
- Order of 28 May 2001, issued by the Ministry of Economy, setting out the procedures applicable to foreign investments and their liquidation, as well as the procedures to file annual reports and administrative files.
- Resolution of 27 July 2016, issued by the General Directorate of International Trade and Investments, approving the foreign investment declaration forms to be used when the investor or company that has to file the declaration has a foreign share, replacing the previous resolution. Resolutions on this matter.

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