

General State Budget Law for 2022: overview of the tax provisions

The law includes a 15% minimum corporate income tax rate and nonresident income tax rate (for taxpayers with a permanent establishment), a €1,500 cap placed on the reduction for individual pension plans and restrictions introduced for access to the increased €10,000 reduction for employer pension plans; and, as happens every year, a new set of events of exceptional public interest is determined.

The Spanish General Budget Law for 2022 ([Law 22/2021, of December 28, 2021](#)) was published in the Official State Gazette (BOE) on December 29, 2021.

It contains a wide range of provisions related to various taxes, which we summarize below.

1. Minimum tax rules for corporate income tax and nonresident income tax (permanent establishment)

Coming into effect for periods beginning on or after January 1, 2022, it introduces a 15% minimum corporate income tax rule. The rules on that minimum tax rate are as follows:

a) Scope of application

The minimum tax rate will apply to taxpayers:

- i. whose net revenues are at least €20 million in the twelve month period immediately preceding the start date of the taxable period; or
- ii. who are taxed under the consolidated tax group regime, irrespective of their net revenues figure.

This minimum tax rate will not apply where taxpayers are taxed at the following rates:

- i. A 10% rate (article 29.3 of the Corporate Income Tax Law, Law 27/2014, of November 27, 2014): eligible not-for-profit entities under Law 49/2002, of December 23, 2002, on the tax regime for not-for-profit entities and on tax incentives for patronage (Patronage Law).
- ii. A 1% rate (article 29.4 of the Corporate Income Tax Law).
- iii. A 0% rate (article 29.5 of the Corporate Income Tax Law): pension funds.

Nor will it apply to SOCIMIs, meaning the entities under Law 11/2009, of October 26, 2009, on listed corporations for investment in the real estate market.

b) Calculation method

i. Minimum net tax liability

Generally, the net tax liability (defined as the figure obtained after subtracting reductions and tax credits from the gross tax liability, and which can never be negative) cannot ever be lower than the “minimum net tax liability”.

The minimum net tax liability must be calculated as follows:

$$\text{TB} \times 15\%$$

Where TB = Tax Base (after offsetting tax losses), increased or decreased as follows:

- increased or decreased by the amounts relating to the leveling reserve under article 105 of the Corporate Income Tax Law for enterprises of a reduced size.
- decreased by the investments reserve under article 27 of Law 19/1994, of July 6, 1994, amending the Canary Islands Tax and Economic Regime.

However:

- The minimum net tax liability is 10% of the tax base for newly created entities that are taxed at 15%.
- The minimum net tax liability is 18% of the tax base for credit institutions and entities engaging in exploration, research and mining in relation to mineral deposits and underground hydrocarbon storage facilities.
- For cooperatives, the minimum net tax liability may not be lower than the figure obtained by multiplying by 60% the gross tax liability calculated by reference to Law 20/1990, of December 19, 1990, on the tax regime for cooperatives.
- For entities in the Special Canary Islands Zone: the positive tax base to be used in that calculation does not include the portion relating to transactions materially and effectively performed geographically within that zone, which is taxed at the special rate under article 43 of Law 19/1994.

ii. Minimum net tax liability where reductions and certain tax credits are applied

Where the taxable person is entitled to apply (i) reductions (including those under Law 19/1994), (ii) the tax credit for investments made by the port authorities (article 38 bis of the Corporate Income Tax Law) and/or (iii) double taxation tax credits (articles 31, 32, 100 and transitional provision twenty third of the Corporate Income Tax Law, subject to the applicable limits in each case), the minimum net tax liability is calculated as follows:

- If the reductions and the described tax credits bring the net tax liability to below the minimum net tax liability calculated as described in the preceding point, the figure obtained after subtracting these reductions and tax credits from the gross tax liability will be treated as minimum net tax liability.

- If the figure obtained after subtracting the described reductions and tax credits is higher than the minimum net tax liability calculated as described in the preceding paragraph, the other tax credits will be subtracted, subject to the applicable caps in each case, up to the amount of the minimum net tax liability.
- Any tax credits calculated by reference to Law 20/1991, of June 7, 1991, amending the tax elements of the Canary Islands tax and economic regime, and in Law 19/1994, will be applicable within their respective limits, even if the obtained net tax liability figure is lower than the minimum net liability figure mentioned above.

Any unused tax credits may be deducted in the following taxable periods under the specific legislation applicable to each tax credit.

In short, the minimum tax rules will primarily affect the application of certain tax credits such as the tax credit for research, development and technological innovation (R&D+i) or the tax credits for gifts to not-for-profit entities.

This may be seen in the following example. A company's circumstances were as follows:

- Its tax base (after offsetting tax losses) is €2,000.
- It incurs R&D expenses in its activities, which entitle it to apply a tax credit amounting to 225.

Under article 39 of the corporate income tax law, where the expenses incurred in activities of this type amount to more than 10% of the gross tax liability, tax credits for encouraging certain types of activities are applicable (including the R&D tax credit) subject to a cap amounting to 50% of the gross tax liability after subtracting reductions and international double taxation tax credits.

- It is not entitled to any reductions or other types of tax credits.

Its positions under the former legislation and following the 2022 General State Budget Law are compared below:

	Position before the 2022 General State Budget Law	Following entry into force of the 2022 General State Budget Law
Tax base (1)	2,000	2,000
Gross tax liability (25% x (1)) = (2)	500	500
Theoretical R&D tax credit (3)	225	225
Theoretical limit for applying the R&D tax credit: 50% x (2) = (4)	250	250
Net tax liability (2) – (3) = (5)	275	275
Minimum net tax liability 15% x (1) = (6)	N/A	300
Final net tax liability (higher of (5) and (6))	275	300
Applied R&D tax credits	225	200
Unused R&D tax credits	0	25

Lastly, this minimum tax rule will also affect any nonresident income taxpayers obtaining income in Spain through a permanent establishment.

2. Special corporate income tax regime for residential leases: lower reduction

Coming into effect for periods beginning on or after January 1, 2022, it lowers from 85% to 40% the reduction allowed for income from residential leases obtained by companies having the leasing of residential properties in Spain as their primary business activity, which are taxed under the special regime for entities engaging in residential property leasing (“EDAV”) contained in Chapter III, of Title VII of the Corporate Income Tax Law.

This means in practice that these types of entities will have a 15% effective corporate income tax rate in relation to the reduced income.

No change has finally been made to the 50% cap in article 49.3 of the Corporate Income Tax Law for claiming the exemption for avoiding double taxation (in relation to dividends or capital gains originating from reduced taxable income obtained by the shareholders of these residential property leasing entities). Therefore, the effective corporate income tax rate on reduced taxable income for shareholders of residential property leasing entities who are taxable persons for corporate income tax purposes will be higher than the standard corporate income tax rate (if we take the tax for the property leasing entity and its shareholder together).

3. New caps introduced on personal income tax reductions for contributions to employee benefits programs

Until 2020, the reduction to net taxable income for personal income tax purposes in respect of contributions to employee benefits programs was the same for both individual pension plans and for employer pension plans.

In both cases, the reduction cap amounted to the lower of €8,000 and 30% of the sum of net salary income and income from economic activities received individually in the fiscal year (plus €5,000 for the group care policy premiums paid by the employer).

Additionally, the taxpayer could reduce their net tax liability by up to €2,500 in respect of contributions to employee benefits systems for a spouse, if the spouse’s net salary income and income from economic activities was not above €8,000.

The General State Budget Law **for 2021** (Law 11/2020, of December 30, 2020, which we discussed in our [alert on December 31, 2020](#)) introduced a range of amendments:

- a. It lowered from €8,000 to €2,000 the annual cap on contributions to pension and employee benefits programs giving entitlement to a reduction.

However, the highest reduction that can be claimed is €10,000, where the increase comes from employers’ contributions.

For these purposes, employers’ contributions means (i) the employer’s own contributions to pension plans or employee benefit mutual insurance companies, in relation to which they are, in turn, sponsor and investor or mutual entity member; and (ii) any they make to employer

benefits programs or group care insurance policies in which they are, in turn, policyholder and insured.

- b. It lowered from €2,500 to €1,000 the annual cap on any contributions giving entitlement to a reduction that they make to employee benefits programs on behalf of their spouse.
- c. It also lowered from €8,000 to €2,000 the annual cap on the aggregate amount of reductions made by anyone paying premiums to private insurance policies covering only the contingency of severe or major care needs for the same taxpayer, including those for the taxpayers themselves.

For 2022 a further cap has been determined for net tax liability:

- a. The annual cap for contributions to pension and employee benefits programs giving entitlement to a reduction has been lowered from €2,500 to €1,500.

This cap will be increased by €8,500 (up to €10,000), where that increase comes from the employer's contributions or employee's contributions to the same employee benefits program, if the employee's contributions are equal to or lower than the employer's contributions. In other words, the employer's contributions must be equal to or higher than those made by the employee.

For these purposes, any amounts contributed by the employer that stem from a decision by the employee will be treated as contributions by the employee.

In relation to group care policies taken out by employers to cover pension obligations, it places an additional annual €5,000 cap for premiums paid by the employer.

The financial caps for contributions to benefits and pension programs have been amended accordingly.

- b. Lastly, the annual cap for all reductions claimed by anyone paying premiums to private policies that only cover the contingency of severe or major care needs in relation to the same taxpayer, including those of the contribution payer, is lowered from €2,000 to €1,500.

4. Extension of eligibility thresholds for tax objective assessment method for personal income tax purposes and for simplified and special VAT schemes for agriculture, livestock and fishing

Coming into effect on January 1, 2022 and for an indefinite term:

- a. It extends the threshold amounts determining eligibility for the objective assessment method for personal income tax purposes by reference to:
 - Aggregate amount of income from all economic activities. In this case, the threshold will amount to:
 - €250,000 generally; or
 - €125,000, where an invoice has to be issued and the customer is a trader or professional.

- The volume of purchases of goods and services. In this case, the threshold will be €250,000.

The specific threshold amount for agricultural, livestock and forestry activities remains unchanged at a volume of revenues amounting to €250,000.

- b. It also extends the thresholds for claiming the simplified VAT scheme (€150,000) and for the special VAT scheme for agriculture, livestock and fishing (€250,000).

5. New tax on economic activities classification caption for the activities of journalists and other information and communication professionals

Coming into effect for taxable periods beginning after the entry into force of the General State Budget Law for 2022, a new caption in the tax on economic activities classifications is created to provide a specific category for the activities carried on by journalists and other information and communication professionals who had previously never had their own classification.

The newly created caption is caption 863 “Journalists and other information and communication professionals”, the amount relating to this caption is €115.

To be classified in this category, taxable persons must be qualified for obtaining, processing, interpreting and disseminating information or content on any written, oral, visual, digital or graphic medium, as well as for advising on and implementing institutional or corporate communication programs.

6. Not-for-profit entities and tax incentives for patronage

6.1 Events of exceptional public interest

The following events of exceptional public interest have been determined, for the purposes of the Patronage Law (we provide below the names of the events, a translation where necessary and their dates):

1. “*Bicentenario de la Policía Nacional*” [Bicentenary of the Spanish National Police Force] (from January 14, 2022 through January 13, 2025).
2. “*Centenario Federación Aragonesa de Fútbol*” [Centenary of the Aragonese Football Association] (January 1, 2022 through December 31, 2023).
3. “*Plan 2030 de Apoyo al Deporte de Base*” [2030 Basic Sport Support Plan] (January 1, 2022 through December 31, 2024).
4. “*Universo Mujer III*” [3rd Women’s Universe] program (January 1, 2022 through December 31, 2024).
5. “*Programa de preparación de los deportistas españoles de los Juegos de París 2024*” [Program for preparation of Spanish athletes for the Paris 2024 Games] (January 1, 2022 through December 31, 2024).
6. “*100 años del fallecimiento de Joaquín Sorolla*” [100 years since the death of Joaquín Sorolla] (January 1, 2022 through December 31, 2024).

7. “*20 Aniversario de Primavera Sound*” [20th Anniversary of Primavera Sound] (January 1, 2022 through December 31, 2024).
8. “*Centenario del nacimiento de Victoria de los Ángeles*” [Centenary of the birth of Victoria de los Ángeles] (January 1, 2022 through December 31, 2024).
9. “*Conmemoración del 50 aniversario de la muerte del artista español Pablo Picasso*” [Commemoration of 50 years since the death of Spanish artist Pablo Picasso] (January 1, 2022 through December 31, 2024).
10. “*Todos contra el cáncer*” [Everyone against cancer] (date of entry into force of General State Budget Law for 2022 through December 31, 2024).
11. “*Año de Investigación Santiago Ramón y Cajal 2022*” [2022 Santiago Ramón y Cajal Research Year] (June 1, 2022 through May 31, 2025).
12. “*Año Jubilar Lebaniego 2023 – 2024*” [Lebaniego Jubilee Year 2023 - 2024] event (April 16, 2022 through April 15, 2025).
13. “*Mundo Voluntario 2030/ 35º Aniversario Plataforma del Voluntariado de España*” [Voluntary World 2030 / 35th Anniversary of Spain's Volunteer Platform] (January 1, 2022 through December 31, 2023).
14. Hosting in Spain of the “*7ª Conferencia Mundial sobre Turismo Enológico de la OMT 2023*” [7th UNWTO Conference on Wine Tourism] (January 1, 2022 through December 31, 2024).
15. “*Caravaca de la Cruz 2024. Año Jubilar*” [Caravaca de la Cruz 2024. Jubilee Year] (January 31, 2022 through January 30, 2025).
16. “*Bicentenario del Ateneo de Madrid*” [Bicentenary of the Ateneo in Madrid] (January 1, 2022 through December 31, 2024).
17. Barcelona Equestrian Challenge program (4th edition) (January 1, 2022 through December 31, 2024).
18. “*200 aniversario del Passeig de Gràcia*” [200th anniversary of Passeig de Gràcia] (January 1, 2022 through December 31, 2024).
19. “*Plan Decenio Milliarium Montserrat 1025-2025*” [Montserrat: Ten Millenia 1025-2025] (date of entry into force of General State Budget Law for 2022 through December 31, 2023).
20. “*Reconstrucción de la Piscina Histórica cubierta de saltos del Club Natació Barcelona (CNB)*” [Reconstruction of indoor swimming pool at Club Natació Barcelona (CNB)] (January 1, 2022 through December 31, 2024).
21. “*Alimentaria 2022*” and “*Hostelco 2022*” fairs (January 1, 2022 through December 31, 2024).
22. “*Barcelona Music Lab. El futuro de la música*” [Barcelona Music Lab. The future of music] program (January 1, 2022 through December 31, 2024).

Moreover, the length of the “Davis Cup Madrid” event, approved by the General State Budget for 2021, has now been extended until December 31, 2023.

6.2 Priority patronage activities

Following suit from previous years, it contains a list of priority patronage activities and programs for the purposes of claiming the tax incentives established for them in the Patronage Law.

For these activities, as in previous years, the tax credit rates and caps set out in that law will be five percentage points higher. The €50,000 limit per year and contributor for a few of the activities mentioned has not been changed.

7. Other issues

7.1 Transfer and stamp tax: titles of nobility

The stamp tax scale for administrative documents related to titles of nobility has been revised by 1%.

7.2 Public Fees

- a. Flat-rate fees have been raised by 1%, except for any that were created or revised specifically by rules approved on or after January 1, 2021. That exception also applies to the fee for adjusting information on the cadaster.

If that 1% revision gives a figure with three decimal digits for the fees chargeable by the Central Government Traffic Authority, they will be rounded up or down to the nearest cent.

- b. As a general rule, the quantification of the parameters needed to determine the amount of the fee for reserving the public radio spectrum has remained unchanged; as have the basic amounts of port fees.
- c. It has specified the applicable reductions and correction multipliers at public interest ports for occupancy, vessel, passenger and freight fees, as well as the correction multipliers applicable to the flat-rate fee for receiving waste generated by vessels, under the Revised State Ports and Merchant Shipping Law, approved by Legislative Royal Decree 2/2011, of September 5, 2011.
- d. Lastly, in relation to railroad fees, it has revised the fees for (i) official approval of facilities, (ii) certification of entities and rolling stock; (iii) granting of certificates and authorizations for entry into service and (iv) railroad safety services provided and activities performed.

7.3 Public multi-purpose income indicator

The public multi-purpose income indicator used in the personal income tax legislation, for example, (in relation to the exemption for financial assistance granted by public institutions to people with disabilities or to people aged over 65 to fund time spent at residential homes or day centers) is set, for 2022, at the following amounts:

- Daily public multi-purpose income indicator: €19.30
- Monthly public multi-purpose income indicator: €579.02
- Annual public multi-purpose income indicator: €6,948.24

It also specifies that where any reference to the minimum wage has been replaced with a reference to the public multi-purpose income indicator (as occurs in the exemption mentioned above), the annual indicator is €8,106.28, if the reference to the minimum wage involves the annual figure (unless nonmonthly salary payments are expressly excluded; in this case, the amount is €6,948.24).

7.4 Legal rate of interest for money and late-payment interest

Until December 31, 2022, the legal rate of interest for money has been set at 3%, and the late-payment interest rate, at 3.75%.

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