# *Base Erosion and Profit Shifting applicable legislation in Spain*

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Milano, 8th April 2014

# *Base Erosion and Profit Shifting applicable legislation in Spain*

-Applicable legislation in Spain

- Action 3. Strengthen Controlled Foreign Corporations (CFC) rules.

- Action 6. Prevent treaty abuse.

- Action 7. Prevent artificial avoidance of PE status.

# *Base Erosion and Profit Shifting applicable legislation in Spain*

Action 3. Strengthen Controlled Foreign Corporations (CFC) rules

Art. 107 Corporate Income Tax Law. Under that article income derived from foreign subsidiaries will be subject to CFC taxation in Spain if:

- the Spanish taxpayer holds 50% or more of the foreign company,

- the corporation tax effectively paid is less than 75% of the Spanish tax, and

- the foreign company realizes passive income (real estate income, dividends, income from financial services and capital gains).

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Action 3. Strengthen Controlled Foreign Corporations (CFC) rules

- Art. 107 does not apply to an EU resident company if the Spanish taxpayer proves that its formation and operations meet valid economic reasons and that the CFC carries on a real business.

- Art. 107 does not apply if passive income does not exceed more than 15% of the foreign corporations total net profit or 4% of total income.

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Action 6. Prevent treaty abuse.

Art. 13 General Tax Law.

The taxes shall be levied according to the juridical nature of the performed fact, business or event, regardless of the form or denomination given by the concerned persons and leaving aside possible defects that may affect its validity.

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Action 6. Prevent treaty abuse.

•Art. 15 General Tax Law. Conflict in the application of tax law (abuse of Law).

A conflict in the application of the fiscal Law is deemed if the taxpayer avoids totally or partially the taxable event or if the taxpayer lessens the tax base or the tax debt by means of acts or business that met the following conditions:

a) The business considered as a whole are notoriously contrived for the achievement of the result obtained, and

b) That their use does not result in legal or relevant economic effects, other than tax savings and the effects that would have been obtained normally.

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Action 6. Prevent treaty abuse.

•Art. 16 General Tax Law. Simulation.

In the acts or businesses where there simulation, the taxable event will be that effectively performed by the parties.

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Action 7. Prevent artificial avoidance of PE status

Art. 13 Income Tax Law on non residents

A taxpayer is deemed to have a permanent establishment (PE) in Spain:

• if he continuously or habitually has in Spain facilities or places of work of any kind where he performs all or part of his business,

• if he acts in Spain by means of an agent authorized to sign contracts on the name and in account of the taxpayer, if the agent exercises the powers habitually.

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Action 7. Prevent artificial avoidance of PE status

The term PE includes especially:

- a place of management
- a branch
- an office
- a factory
- a workshop
- a warehouse
- a shop or other establishments
- mine, oil well, quarry or other place of extraction of natural resources
- agricultural, forestry or livestock operations
- building site or construction or assembly project which exists for more than six months.