

# SPANISH MULTINATIONALS AND THE NEW TAX WORLD ORDER - ERNST & YOUNG ABOGADOS

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**The international growth of Spanish companies has brought for many an entirely new set of tax considerations, say Federico Linares and JosÃ© Luis Gonzalo at Ernst & Young Abogados.**

Among the major outcomes of the growth of Spanish multinationals over the last decade has been the emergence of true global players, say Federico Linares and JosÃ© Luis Gonzalo, partners at Ernst & Young Abogados. It is a trend prompted in part by macroeconomic developments but one that continues to raise new tax considerations, they say.

'A large number of Spanish companies are now successfully competing with longstanding multinational players for a share of the global market, and whose bottom line in many cases now largely depends on foreign activity,' says Linares. The causes behind such a development, Gonzalo suggests, are threefold:

La salida de multinacionales españolas ha sido influenciada en parte por tendencias macroeconómicas que, a su vez, han sido motivadas en gran medida por el trato fiscal dentro de la normativa nacional para operaciones extranjeras, apuntan Federico Linares y José Luis Gonzalo, socios de Ernst & Young Abogados. La expansión internacional conlleva una serie de retos fiscales, y a la luz del actual entorno económico, está conduciendo a empresas, junto con las autoridades fiscales, a mirar de forma más crítica la eficacia de sus estrategias corporativas.

'First, Spanish companies are no less affected than any other multinationals by the global growth of cross-border economic activity, and so have simply aligned with the trend. Second, despite the above average growth of the Spanish economy in the last few years many domestic companies have had to look overseas to maintain consistent levels of growth,' he says.

'And third, no doubt, the series of recent changes in Spanish tax legislation affecting cross border activity, for example, participation exemption and financial goodwill deduction, have helped greatly.'

The current downturn of the domestic economy is however prompting many Spanish multinationals to look to better balance profitability levels, suggests Linares, and inevitably the pursuit of shareholder value is affecting companies tax functions and considerations.

'This may be said both for specific projects, for example the need to enhance the after-tax profitability of a specific investment, and for corporate structures – notably the effective worldwide tax rate.'

A result of the rapid expansion of some companies has however been a relative lack of strategic emphasis placed on corporate structures, suggests Gonzalo.

'We are now seeing international reorganisations follow organic and postacquisition growth that seek to better align and simplify corporate governance, business, finance and tax objectives, but which are also introducing finance and other services subsidiaries, and other group-level functions, to more tax effective jurisdictions.' The latter is of particular importance for Spanish companies, which enjoy a system of participation exemption from foreign income, he suggests.

But in line with companies growth has been an increase in the awareness and preparedness of the Spanish tax authorities in international tax matters, adds Linares. This has brought with it an upturn in litigation with the authorities, a trend which he expects to continue.

'The cause of some of this friction may be as a result of the relative youth of some of the Spanish rules affecting the taxation of international transactions, and so recommend that in specific situations clients seek comfort from the tax ruling authorities, which in recent years have issued some understanding and favourable positions regarding the domestic taxation of foreign operations,' he says.

But companies also need to properly document the business case surrounding each transaction, emphasises Gonzalo. 'It is not enough to simply know that one exists, as there remains the prospect that Spain may yet introduce tax shelter provisions similar to those already introduced in the UK and Portugal.'

They emphasise also however that such considerations extend not only to domestic companies international operations.

'The Spanish subsidiaries of foreign multinationals are also now under close scrutiny by the domestic tax authorities, as they are across the European Union, especially in connection with internal transactions that create tax base erosion, for example leveraged acquisitions, related party pricing and reorganisations,' says Linares.

Again, an increase in litigation is predicted and consequently companies need to pay more careful

consideration to general and specific anti-abuse rules.

'The emphasis of companies, whether foreign or Spain-based, has to be towards a consistency of tax planning within the overall business strategy of the group, and to appoint the resources necessary to effect such strategies,' he says.