

GENERAL REGULATORY FRAMEWORK ON FOREIGN INVESTMENTS IN THE BASQUE COUNTRY

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LEGAL SYSTEM FOR FOREIGN INVESTMENTS IN THE BASQUE COUNTRY

01.

FREEDOM OF INVESTMENT AS A GENERAL RULE

A foreign investor may invest freely in the Autonomous Community of the Basque Country (hereinafter ACBC) as a general rule **without the need for prior authorisation or notification**, as foreign investments ¹in Spain are subject to an *a posteriori* declaration system for merely administrative and statistical purposes.

This means that, once an investment has been made, the foreign investor must declare it in the Investment Register of the Directorate General of International Trade and Investments of the Ministry of Economy, Industry and Competitiveness of the Spanish Government **within a maximum period of one month**.

<http://www.comercio.es/es-ES/inversiones-exteriores/declaracion-inversiones-exteriores/Paginas/declaracion-inversiones-exteriores.aspx>

02.

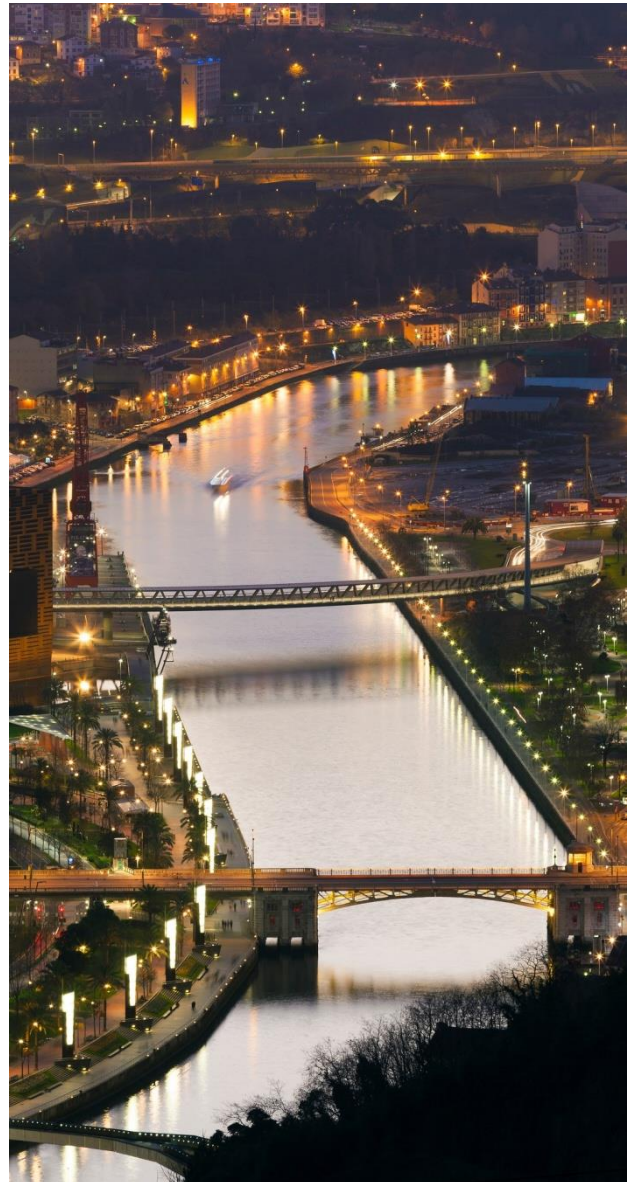
EXCEPTIONS TO AND CLARIFICATIONS OF THE GENERAL RULE

- » *Investments made from tax havens.* As a general rule they require an **advance administrative declaration**² with there being exceptions³ for certain investment types and volumes:
- » *Investments made in Defence-related activities.* These require the prior authorisation of the Council of Ministers of the Government of Spain
- » *Investments in property by non-EU Member States for their diplomatic headquarters.* These require the prior authorisation of the Council of Ministers of the Government of Spain

03.

ADDITIONAL REGULATORY REQUIREMENTS FOR SPECIFIC SECTORS

Investments in the sectors of air transport, radio, raw materials, minerals of strategic interest and mining rights, television, gambling, telecommunications, private security, manufacturing, marketing and distribution of weapons and explosives, and activities related to national defence (in addition to prior authorisation) **must meet the criteria required by the competent bodies recognised for this purpose in the specific regulations of each sector of activity.**



¹The types of investment transactions and the holders thereof are those described in the investor and investment target section of the **Foreign Investment Regime Table in the ACBC (and in Spain)**. Transactions other than those in the table are completely liberalised, without any communication being required for them. This is without prejudice to any sectoral regulations that may apply to them and to the provisions of the rules controlling them. Holders other than those in the Table are not considered to be a liable investor and therefore this not considered a foreign investment for all purposes.

²A prior declaration is not equivalent to prior authorisation, and, once a declaration has been made, an investor can make an investment without waiting for notification from the Administration. In any event, the declaration is valid for six months, meaning that, once notified, the investment must be made within that period.

³(1) Investments in publicly issued or offered transferable securities, whether traded on an official secondary market or not. (2) Holdings in investment funds registered in the Registers of the Spanish National Securities Commission (CNMV). (3) Cases in which the foreign holding does not exceed 50% of the capital of the Spanish company in which the investment is made. (4) Acquisitions of foreign investments in Spain as a result of lucrative transfers *inter vivos* or *mortis causa*.

04.

NON-RESIDENT⁴ HOLDERS WITH AN OBLIGATION TO DECLARE as a general rule (and the notary public where applicable), except for certain transactions.

In general, an investment will be declared by the investor (the non-resident holder). When the transaction has involved a Spanish notary public, the latter is obliged to submit information on said transactions to the Investment Register.



⁴Unless there is an express rule to the contrary, foreign investments must not be formalised before a Spanish notary public. Only as a result of their legal system or by agreement of the parties.

⁵Exceptions contained in the Foreign Investment Regime Table in the ACBC.



Investor

(holder of a foreign investment)

- Individuals not resident in Spain¹.
- Legal entities domiciled abroad.
- Public entities with foreign sovereignty².



Investment target

(types of investment transactions subject to declarations³)

- Holdings in Spanish companies⁴.
- Establishment and expansion of branch offices.
- Subscription and acquisition of securities representing borrowings issued by residents (bonds, debentures, promissory notes). Holdings in investment funds registered in the Registers of the Spanish National Securities Commission.
- The acquisition by non-residents of properties situated in Spain, the amount of which exceeds 3,005,060 euros, or when the investment comes from tax havens, regardless of the amount.
- The constitution, formalisation or holdings in joint venture agreements, foundations, economic interest groupings, cooperatives and joint ownership arrangements, with the same conditions applicable to the acquisition of properties by non-residents.



Obligation to declare

- In general, an investment will be declared by the investor.
- When the transaction has involved a Spanish notary public, the latter is obliged to submit information on said transactions to the Investment Register.
- Exceptions:
 - In the case of investments in securities, investment service companies, credit institutions or other intermediary financial institutions have an obligation to declare.
 - In the case of investments made in securities not traded on secondary markets, but where the parties have voluntarily deposited or registered such securities, the depositary or administrator of such securities has an obligation to declare.
 - In the case of investments in Spanish investment funds, the fund management company has an obligation to declare.

¹Spaniards or foreigners domiciled abroad, or who have their main residence there. Individuals of Spanish nationality and legal entities domiciled in Spain are presumed to be resident in Spain unless there is evidence to the contrary.

²A Spanish company which is majority owned by foreign capital is not considered to be an investor. A change in the registered office of legal entities or the transfer of residence of individuals will determine the change in the classification of an investment as being a Spanish investment abroad or a foreign investment in Spain.

³The types of investment transactions not covered (e.g. equity loans) are fully liberalised, without any communication being required. This is without prejudice to any sectoral regulations that may apply to them and to the provisions of the rules controlling them.

⁴This includes both the constitution of the company and the subscription and acquisition of all or part of its shares or the assumption of shares in the company. It also includes subscription rights on shares, debentures convertible into shares or other similar securities which, by their nature, give the right to a holding in the capital, and any legal business by virtue of which political rights are acquired.



Monitoring

The Directorate General of International Trade and Investments of the Ministry of Economy, Industry and Competitiveness of the Spanish Government may require Spanish branches of non-resident holders to submit an annual report on the execution of investments or any other type of information they deem necessary.



Declaration forms

A1: «Declaration of foreign investment in securities. Monthly or annual summary».

A2: «Declaration of foreign investment in securities. List of monthly transactions or annual deposits».

DP-1: «Prior declaration of foreign investment from tax havens in non-listed companies, branches and other forms of investment».

DP-2: «Prior declaration of foreign investment from tax havens in property».

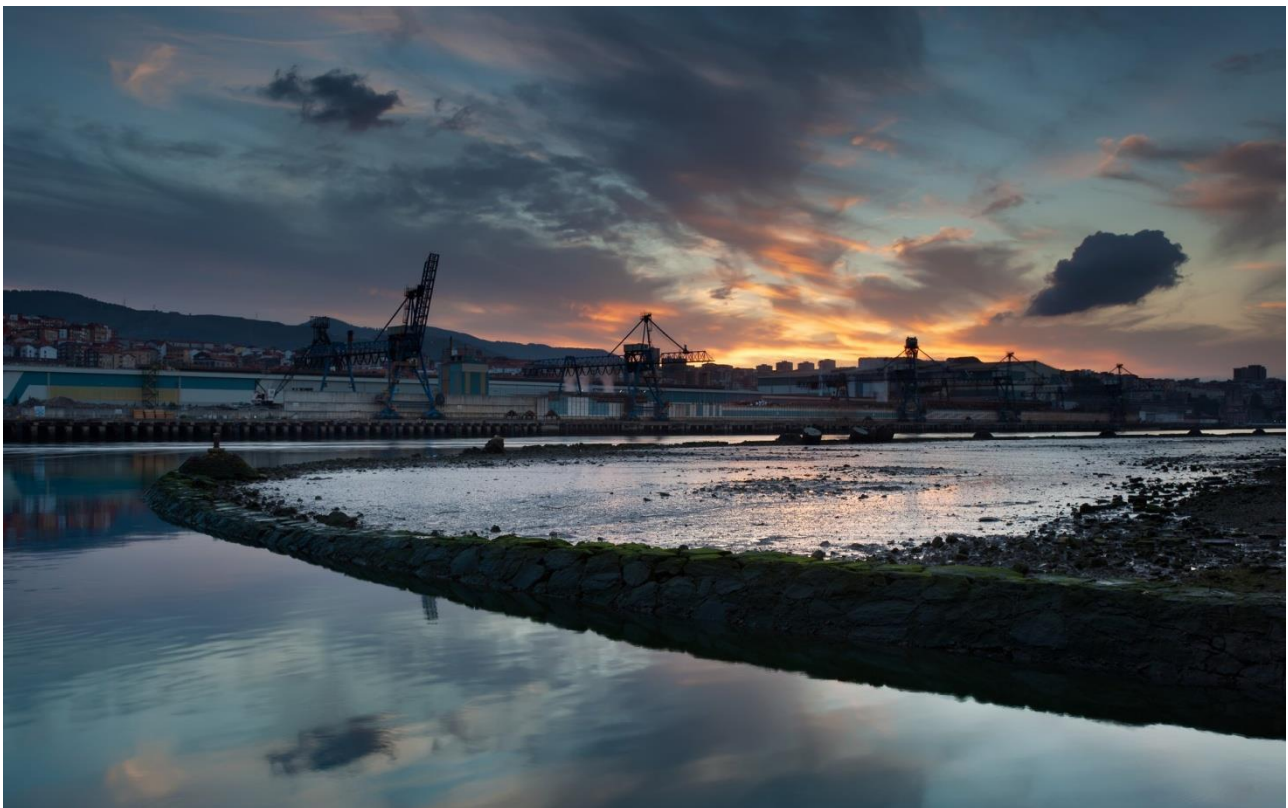
D-1A: «Declaration of foreign investment in non-listed companies, branches and other forms of investment».

D-1B: «Declaration of liquidation of foreign investment in non-listed companies, branches and other forms of investment».

D-2A: «Declaration of foreign investment in property».

D-2B: «Declaration of liquidation of foreign investment in property».

D-4: «Annual report on the development of investment in Spanish companies with foreign holdings in their capital and branches».



TRANSFERS ABROAD AND EXCHANGE CONTROL

The basic principle on which legislation in the Basque Country is based is the **freedom of capital and financial transactions with foreign entities**. Thus, any acts, business, transactions and operations between residents and non-residents that involve or may result in foreign collections and payments and transfers to or from foreign countries and changes in accounts or financial debtor or creditor positions vis-à-vis foreign countries are free, subject to certain limitations regulated by sectoral regulations.

Notwithstanding the foregoing, there are certain reporting obligations regarding such movements.

01.

DECLARATION OF FOREIGN TRANSACTIONS TO THE BANK OF SPAIN (Bank of Spain Circular 4/2012)

Individuals and legal entities (public or private) resident in Spain that carry out transactions with non-residents or hold assets or liabilities abroad must declare / notify them to the Bank of Spain merely for information and statistical purposes.

» **Obligation to make a declaration / communication:**

- Individuals that usually reside in Spain¹¹.
- Legal entities with registered offices in Spain.
- Branch offices and permanent establishments in Spanish territory of individuals or legal entities resident abroad.
- Others to be determined by legislation in similar cases.

» **Frequency of declaration / communication:** This depends on the volume of the transactions made by the persons obliged to declare or communicate during the immediately preceding year or, where applicable, on the balances of their assets and liabilities at the end of the preceding year:

Transaction volume / asset and liability balances	Frequency	When to declare
Volume < €1 mm	Only at the express request of the Bank of Spain	2 months from the date of request
€1 mm < Volume < €100 mm	Yearly	20 days after the end of each calendar year
€100 mm < Volume < €300 mm	Quarterly	20 days after the end of each calendar quarter
Volume > €300 mm	Monthly	20 days after the end of each calendar month

¹¹Except for accredited Spanish diplomats abroad and Spanish staff providing services in Spanish embassies and consulates or in international organisations abroad.

02.

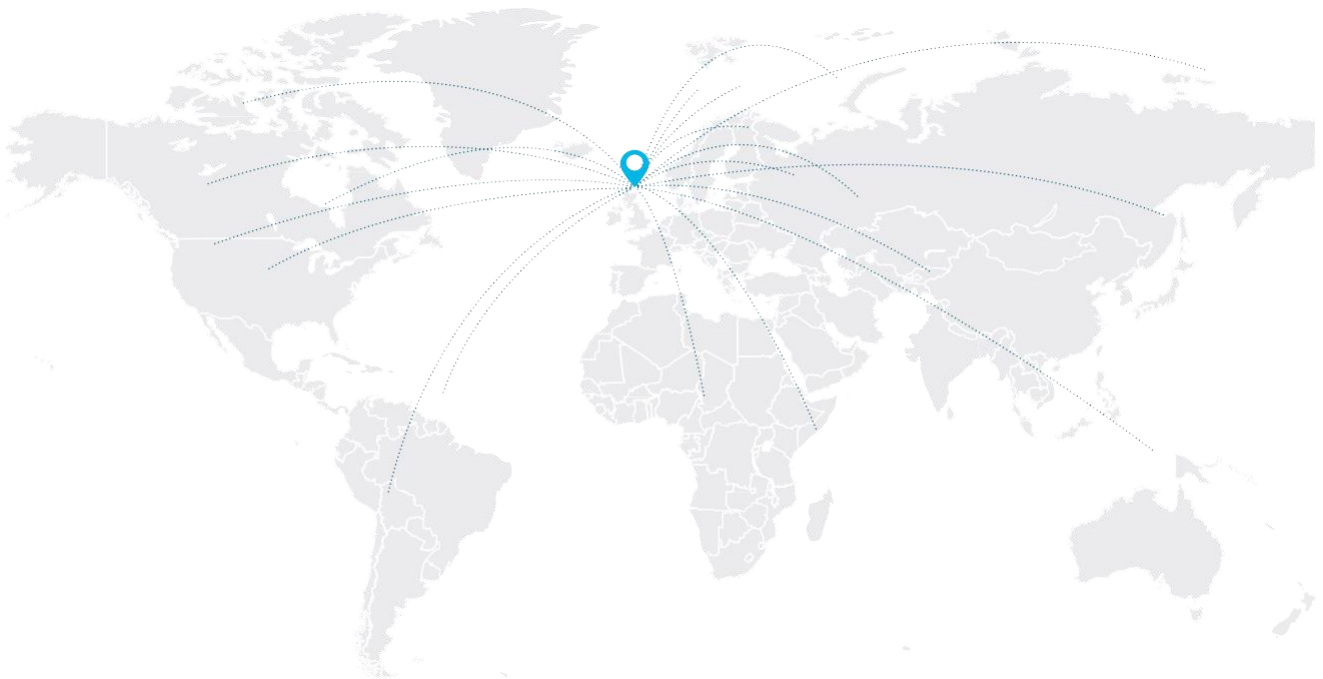
DECLARATION OF IMPORT AND EXPORT of certain payment means¹² to the Bank of Spain

The outflow or inflow out of or into Spanish territory of payment means for an amount equal to or greater than 10,000 EUROS or its equivalent in foreign currency is subject to prior administrative declaration. If no such declaration is made, Spanish customs officials may requisition these payment means.

03.

DECLARATION OF MOVEMENTS¹³ of certain payment means in Spanish territory to the Bank of Spain

The movements in Spanish territory of payment means for an amount equal to or greater than 100,000 EUROS or its equivalent in foreign currency is also subject to prior declaration.



¹²“Payment means” are considered to be paper and metal money - euros or foreign currency - cheques made payable to the bearer denominated in any currency, and any other physical means, including electronic ones, designed to be used as a means of payment to the bearer. For the sole purpose of the outflow or inflow out of or into national territory, “payment means” shall also mean bearer-negotiable instruments, including monetary instruments such as travellers’ cheques, negotiable instruments including cheques, promissory notes and money orders, whether issued to bearer, endorsed without restriction, issued to the order of a fictitious payee or in any other form by virtue of which title thereto is transmitted upon delivery, and incomplete instruments including cheques, promissory notes and money orders, signed but with the name of the payee omitted.

¹³“Movement” is understood to be any change of place or position occurring outside the domicile of the holder of the payment means.

APPLICABLE REGULATIONS

01.

ON FOREIGN INVESTMENTS

- » Royal Decree 664/1999 of April 23 on foreign investments.
<https://www.boe.es/buscar/doc.php?id=BOE-A-1999-9938>
- » ORDER from the Ministry of the Economy of May 28, 2001, laying down the procedures applicable to foreign investment declarations and the liquidation of foreign investments, and the procedures for submitting annual reports and authorisation dossiers.
https://www.boe.es/diario_boe/txt.php?id=BOE-A-2001-11164
- » Resolution from the Ministry of Economy and Competitiveness of July 27, 2016, on the Directorate General of International Trade and Investment, approving the foreign investment declaration forms when the person obliged to make a declaration is an investor or a company with foreign holdings, which replaces previous Resolutions on this matter.
https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-7855.

02.

ON THE CONTROL OF FOREIGN EXCHANGE AND TRANSACTIONS

- » Law 19/2003 of July 4 on the legal system governing the movement of capital and financial transactions abroad and on certain measures to prevent money laundering.
<https://www.boe.es/buscar/doc.php?id=BOE-A-2003-13471>.
- » Royal Decree 1816/1991 on foreign financial transactions.
<https://www.boe.es/buscar/doc.php?id=BOE-A-1991-30763>

