



# Investments in Spain and abroad

## New reporting obligations: A general guideline

In force as from 1 September 2023

On 1 September 2023, the Royal Decree 571/2023 (**RD**) comes into force. While the RD primarily focuses on the development of measures to oversee foreign direct investments (**FDI**) in Spain, it also introduces revisions related to mandatory reporting of specific investments in the Investment Registry of the Ministry of Industry, Trade and Tourism.

These updates include obligations with respect to real estate investments and certain acquisitions of equity stakes, among others. To align with global standards, the RD also incorporates new transactions which were not covered by previous regulations. These include new reporting obligations for intragroup financings, contributions made by certain shareholders to the equity of Spanish companies that do not involve a share capital increase and reinvestments of profits in companies.

Additionally, the obligation to declare investments in negotiable securities, which do not aim to influence company control, falling under the category of portfolio investments, has been abolished.

This briefing provides an overview of the new developments approved exclusively in relation to reporting obligations.

For a summary of relevant provisions impacting the Spanish FDI control regime, please click [here](#).

### 1. Parties obliged to report

Obligations set out in the RD refer to both: (i) investments in Spain by non-residents and (ii) investments abroad by Spanish residents:

Resident	Non-resident
Individuals who have their habitual residence in Spain. Put simply, this refers to people who live in Spain most of the time.	Individuals who have their habitual residence in foreign countries and not in Spain.
Spanish diplomats who are officially accredited abroad, as well as Spanish personnel serving in Spanish embassies, consulates, or international organisations located abroad.	Foreign diplomats officially accredited to the Spanish Government, as well as foreign personnel working in foreign embassies, consulates, or international organisations based in Spain.
Legal entities with registered offices in Spain	Legal entities with registered offices abroad.
Branches and permanent establishments in Spain of foreign individuals or legal entities.	Branches and permanent establishments of Spanish individuals or legal entities abroad.
Others determined by regulations ( <i>reglamentariamente</i> ) in similar cases.	Others determined by regulations ( <i>reglamentariamente</i> ) in similar cases.

## 2. Investments subject to reporting obligations

### A. Investments in Spain by non-residents

The reporting obligations apply to investments and disinvestments made in Spain by non-residents in relation to the following transactions:

- (a) **Stakes in Spanish companies:** investments in share capital by a non-resident investor who holds or achieves, through this transaction, a stake equal to, or exceeding, 10 per cent of the share capital or of its voting rights in a Spanish company, including the acquisition of securities granting rights to a stake in the share capital or political rights in a Spanish company.
- (b) **Collective investment institutions and closed-end collective investment entities:** the acquisition of shares in collective investment institutions and closed-end collective investment entities (hedge funds, real estate funds, venture capital funds, alternative investment funds and other similar entities), provided that the management company is a Spanish resident and as a result of the acquisition, the non-resident acquires (or has the right to acquire) a stake equal to or exceeding 10 per cent of the assets (*patrimonio*) or share capital.
- (c) **Shareholders' contributions:** contributions made by shareholders to the equity of Spanish companies that do not involve a share capital increase, provided that the shareholder holds a stake in the share capital equal to or exceeding 10 per cent.
- (d) **Branches in Spain:** establishment and increase of the endowment of non-residents' branches in Spain.
- (e) **Intragroup financing:** financing to Spanish companies or branches from companies within the same group through deposits, credits, loans, negotiable securities, or any other debt instrument, where the amount exceeds €1m, and its maturity exceeds one calendar year. This new reporting obligation has been suspended until the regulatory implementation of the RD, which has not yet been published, enters into force.
- (f) **Reinvestments:** reinvestment of profits in Spanish companies, provided that it is carried out by a non-resident investor holding a stake equal to or exceeding 10 per cent of the share capital of the Spanish company. This new reporting obligation has been suspended until the regulatory implementation of the RD, which has not yet been published, enters into force.
- (g) **Other investments:** other forms of investment, such as the establishment or formalisation of joint accounts (*cuentas en participación*), temporary business partnerships (*unión temporal de empresas*), foundations, economic interest groupings, or communities of property, or participation in any of them when the non-resident investor's stake represents a percentage equal to or exceeding 10 per cent of the total value, and it exceeds €1m.
- (h) **Real estate:** acquisition of real estate located in Spain, where the amount exceeds €500,000. This obligation was already in place but the amount above which the reporting is required has been significantly increased.

In addition, Spanish companies, branches in Spain of non-resident companies and management companies of Spanish collective investment institutions and closed-end collective investment entities with foreign holdings must submit an annual report to the Investment Register on the development of the investment if certain requirements are met.

### B. Investments abroad by Spanish residents

- (a) Spanish residents are required to report the following investments and their subsequent disinvestments made abroad:
  - Stakes in non-resident companies:** investments in share capital by a Spanish investor who holds or achieves, through this transaction, a stake equal to or exceeding 10 per cent of the share capital or voting rights of a non-resident company, including the acquisition of securities granting rights to a stake in the share capital or political rights in the foreign company.
- (b) **Collective investment institutions:** acquisition of shares in collective investment institutions, provided that the management company is a non-resident, and as a result, a stake (or the right to acquire it) equal to or exceeding 10 per cent of the assets (*patrimonio*) or share capital of the entity is to be acquired.
- (c) **Shareholders' contributions:** contributions made by shareholders to the equity of foreign companies that do not involve an increase in the share capital, provided that the shareholder holds a stake equal to or exceeding 10 per cent.
- (d) **Branches:** establishment and increase of the endowment of residents' branches abroad.
- (e) **Intragroup financing:** financing to non-resident companies or branches from Spanish resident companies within the same group through deposits, credits, loans, negotiable securities, or any other debt instrument, where the amount

exceeds €1m, and its maturity exceeds one calendar year. This new reporting obligation has been suspended until the regulatory implementation of the RD, which has not yet been published, enters into force.

- (f) **Reinvestments:** reinvestment of profits in non-resident companies, provided it is carried out by a Spanish resident investor holding a stake equal to or exceeding 10 per cent of the share capital of the non-resident company. This new reporting obligation has been suspended until the regulatory implementation of the RD, which has not yet been published, enters into force.
- (g) **Other investments:** establishment or formalisation of joint accounts (*cuentas en participación*), temporary business partnerships (*unión temporal de empresas*), foundations, economic interest groupings, or communities of property, or participation in any of them when the total value corresponding to the resident investor's stake represents a percentage equal to or exceeding 10 per cent of the total value, and it exceeds €1m.
- (h) **Real estate:** acquisition of real estate located abroad, where the amount exceeds €300,000. This obligation was already in place but the amount above which the reporting is required has been increased significantly.

In addition, Spanish residents holding investments abroad, Spanish companies with branches abroad and Spanish management companies of foreign investment funds must submit an annual report to the Investment Register on the development of the investment if certain requirements are met.

### 3. Procedure

Declarations must be made to the Registry of Investments, generally by the holder of the investment, through and within specific forms and deadlines to be determined by a future regulation (*reglamento*), which has not yet been enacted.

Until new regulation is passed, the same forms given under the previous regulations will apply:

Forms	Matter <sup>1</sup>
Forms DP-1, D-1A and D-1B	Foreign investments in Spain made through any of the transactions described in paragraphs a), b), c), d), and g) of section 2. A., above.
Forms DP-2, D-2A and D2B	Foreign investments in Spain made through the transactions described in paragraph h) of section 2. A., above.
Forms DP-3, D-5A and D-5B	Spanish investments abroad made through any of the transactions described in paragraphs a), b), c), d), and g) of section 2. B., above.
Forms DP-4, D-7A and D-7B for	Spanish investments abroad made through the transactions described in paragraph h) of section 2. B., above.
Not subject to declaration until the regulatory development of the RD enters into force.	Transactions described in paragraphs (e) and (f) of section 2.A., above) and in paragraphs e) and f) of section 2. B., above.
D-4	Annual reports on the development of foreign investment in Spain except for those relating to collective investment institutions, which shall not be submitted until the regulatory development of the RD enters into force.
D-8	Annual reports on the development of Spanish investment abroad except for those relating to collective investment institutions, which shall not be submitted until the regulatory development of the RD enters into force.

<sup>1</sup> We have assumed the existence of an error in the RD and have considered that the references to articles 3 and 6 of the RD made in the third transitional provision of the RD should in fact be made to articles 4 and 7 or the RD.

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