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Taxation in the video game sector

Guide prepared by

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Contents

1. What tax obligations exist in the video game sector?	5
2. Tax benefits	10
3. Useful tools	14

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Introduction to the **Guide**

As in any other sector, companies and professionals in the video game sector must comply with their tax responsibilities.

In addition, there are tax tools that allow video game companies to optimise their taxes by taking advantage of available tax incentives, such as credits for investment in research & development (R&D).

This guide delves into the tax obligations of companies in the video game sector in Spain and provides a description of the main tax benefits, as well as a list of useful tax tools. In particular, it will be useful for:

→ Complying with tax regulations: *What are the key tax obligations for video game companies in Spain?*

→ Learning to manage taxes: *How and by what deadline must I file my taxes?*

→ Taking advantage of tax opportunities: *What tax benefits exist in the video game sector?*

→ Optimising compliance with your obligations: *Which tools facilitate tax compliance in the video game sector?*



1. What tax obligations exist in the video game sector?



Under Spanish law, the main tax obligations applicable to individuals and companies in the video game sector are:

Legal persons resident in Spain:

Taxes

- » Corporate Income Tax.
- » Value-Added Tax.
- » Economic Activities Tax.
- » Employee Withholdings (IRPF).

Keeping of accounts

Natural persons resident in Spain:

Taxes

- » Personal Income Tax.
- » Employee Withholdings (IRPF).

Keeping of accounts

Persons not resident in Spain:

Permanent Establishment (*Establecimiento Permanente*) (“EP”) in Spain: tax similar to IS for resident legal persons

Non-EP in Spain: similar to IRPF for resident legal persons

Other obligations

Identification proceedings with the Tax Agency

Other taxes according to the activities carried out

As we have seen in the preceding summary, the tax obligations of taxpayers in the video game sector in Spain vary depending on whether they operate as one of the following:

A

Legal person resident in Spain

B

Natural person resident in Spain





C

Legal or natural person not resident in Spain

Furthermore, these individuals or legal entities can file and pay their taxes independently (individual taxation) or jointly, as sometimes groups of related companies file a single tax return, combining their income and deductions to calculate the total tax payable (tax consolidation).

It should also be noted that, sometimes, even when a natural or legal person is legally required to pay taxes in Spain, there are certain circumstances in which they may be exempt from doing so. In other words, in some situations, there are people who are not subject to taxation in Spain, as the necessary conditions are met for an exemption to apply.

1.1. Applicable taxes for taxpayers in Spain

Tax	Description
Corporate Income Tax <i>(Impuesto sobre Sociedades)</i> ("IS") 	This is a tax paid by companies on their annual profits. It is calculated on the tax base, which is the tax-adjusted accounting result.
Personal Income Tax <i>(Impuesto sobre la Renta de las Personas Físicas)</i> ("IRPF") 	This tax is levied on income earned by natural persons resident in Spain. It includes salaries, income from capital, economic activities and capital gains.
Value-Added Tax <i>(Impuesto sobre el Valor Añadido)</i> ("IVA") 	This is an indirect tax on consumption arising from the purchase of goods or professional services. A distinction must be made between input IVA, which is paid by businesses on goods and services, and output IVA, which is charged by businesses on their sales.
Economic Activities Tax <i>(Impuesto sobre Actividades Económicas)</i> ("IAE")	This is a tax levied on the exercise of economic activities. These economic activities may be either business, professional or artistic and may be carried out on specific premises or without premises.
Non-Resident Income Tax <i>(Impuesto sobre la Renta de no Residentes sin establecimiento permanente)</i> ("IRNR") 	This tax is levied on income earned in Spain by non-residents. It covers income from employment, economic activities, real estate and other income.
Withholding Tax <i>(Retenciones a cuenta)</i>	This is the legal duty of certain taxpayers to withhold a portion of the payment they make to another person or company and deliver it directly to the Tax Agency. It is an advance on the tax to be paid by the payee on his or her tax return.

1.2. Resident legal persons

Firstly, under tax legislation, entities that meet any of the following requirements¹ are considered to be resident in Spanish territory:

A

They must have been incorporated in accordance with Spanish law.



B

They must have their registered office in Spanish territory.



C

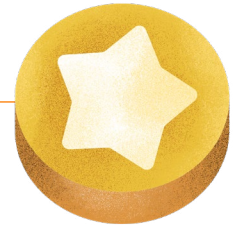
They must have their place of effective management in Spanish territory.



1. For definitions of "Registered office" and "Place of effective management", see (j) and (m) in the Glossary of Definitions.



Companies in the video game sector will be subject to the following taxes:



IS

- » 25 % of the profits.
- » There are tax reliefs to reduce the resulting amount.

IVA

- » Generally, 21% is applied.
- » A video game publisher collects IVA by adding it to the price of the video game.
- » Deductions can be made for the purchase of goods and services necessary for the development or marketing of the video game.

IAE

- » This is based on fixed tariffs.
- » There is an exemption from IAE for the first 2 years of activity or if turnover is less than 1 million euros.

Obligation to withhold taxes

- » IRPF and IRNR.
- » When paying income to workers, self-employed persons or service providers not established in Spain.

The above taxes are paid through one of the following declarations and self-declarations:

Tax	Obligation	Filing period
IS	Self-assessment² ➤ Form 200 (individual taxation) or ➤ Form 220 (tax consolidation)	Within 25 calendar days after 6 months have elapsed following the end of the tax period.
	Advance instalment payments ➤ Form 202 (individual taxation) or ➤ Form 222 (tax consolidation)	In the first 20 days of April, October and December.
IAE	High activity/Variation of tax elements ➤ Form 036 (when exempt) or ➤ Form 840 (when not exempt)	Within 1 month of the incorporation or commencement of the activity, or the events giving rise to the variation to be declared.
IVA	➤ Form 303 self-assessment form	Quarterly (to be filed from 1 to 20 April, July and October and from 1 to 30 January) or monthly (to be filed from 1 to 30 of the following month).
	➤ Form 390 (annual summary)	From 1 to 30 January of the year following the year to which the information refers.

2. The process by which taxpayers calculate and pay their taxes themselves. This is done by submitting specific forms to the Tax Agency.

Tax	Obligation	Filing period
IRPF WITHHOLDINGS	➤ Form 111 (declaration and payment)	Within 20 days of the end of each calendar quarter.
	➤ Form 190 (annual summary)	From 1 to 31 January.
IRNR WITHHOLDINGS	➤ Form 216 (income)	Between 1 and 20 April, July, October and January.
	➤ Form 296 (annual summary)	From 1 to 31 January.

Commercial entities are required to keep accounts under the Commercial Code and the General Accounting Plan, and must keep certain accounting and corporate books.

1.3. Resident natural persons

The Spanish Personal Income Tax Regulation (*Impuesto sobre la Renta de las Personas Físicas*) (the “IRPF”) establishes that a person is a tax resident in Spain if one of the following conditions is met, although proof to the contrary is possible in certain cases:

A

If you spend more than 183 days a year in Spain.

B

If the main focus of your activities or economic interests is in Spain.

C

If your non-separated spouse and/or underage children reside in Spain.

Having clarified the circumstances under which a person is considered a tax resident in Spain, we can now address the specific tax obligations to which they are subject. In this case, a video game developer who works independently must pay the following taxes:

Obligations of self-employed developers

What? IRPF on income from economic activities

How much? Between 19% and 47%

How? Form 100 for self-assessment of income tax (IRPF)

When? Between the beginning of April and 30 June

Other obligations:

Withholdings on behalf of workers, professionals and service providers that are not established in Spain.

Compliance with IVA obligations under the same terms as legal persons.

IAE (Filing of Form 036): This is simply a reporting requirement; you don't have to pay anything.

1.4. Non-resident natural or legal persons

Non-resident individuals or legal entities are taxed on the income they obtain in Spanish territory through the IRNR.

Firstly, these persons will be subject to IRNR if they are not tax resident in Spain, as explained in the previous section. Therefore, we must verify that they do not meet the requirements to be considered legal entities or individuals that are resident in Spain.

Secondly, we must analyse what is meant by a permanent establishment under tax law because of its relevance for the purposes of determining the specific tax obligations of non-resident individuals or legal entities:

When is a Permanent Establishment used?

- » If a person has in Spanish territory, on a continuous or habitual basis, facilities or workplaces of any kind, in which they carry out all or part of their activity, or acts there through an agent authorised to contract, in the name and on behalf of the non-resident, who habitually exercises such powers.
- » This includes head offices, branch offices, offices, factories, workshops, warehouses, shops or other establishments, mines, oil or gas wells, and quarries, among others.

It is crucial to know whether a person obtains income by acting through a permanent establishment in Spain or not, as the tax obligations arising from one or the other situation are different. These obligations can be summarised as follows:

IRNR	With a Permanent Establishment	Without a Permanent Establishment
Applicable rate	25%	19-24%
Applicable tax	IS	IRPF
Form to be submitted	Form 200	Form 210
Filing period	Within 25 calendar days after 6 months have elapsed following the end of the tax period	Varies according to taxation

In addition, it should be noted that if the income is subject to tax in Spain and in another country, there **are are Double Tax Conventions in place (“DTCs”)**. These conventions may change how much developers pay in Spain, or even exempt them from paying certain taxes, depending on the specific rules of the convention that applies to their situation.





1.5. Other obligations to consider

Carrying out economic activities in Spain involves a series of official procedures, including:

Obligations:

- » Obtaining a Tax Identification Number (*Número de Identificación Fiscal*) (“**NIF**”).
- » Reporting the start and cessation of an activity for the purposes of the IAE and IVA.
- » Reporting changes of address and changes of directors.
- » Adherence to special regimes.
- » The obligation to withhold.

How should this information be filed?

- » Form 036.
- » Form 037.

Where should it be submitted?

- » Notifications from the Tax Agency must be submitted electronically at its single authorised electronic address (DEHú).
- » It must be submitted using a previously obtained electronic certificate.

2. Tax benefits

2.1. Deduction for research and development and technological innovation activities

For publishers and game developers, tax incentives are one of the most valuable forms of assistance they can receive. Incentives are ways of reducing the amount of tax you have to pay. Among these deductions is the R&D&I deduction, which is explained in the following table.³ The deduction for **technological innovation** activities is of particular interest to developers, who can deduct 12% of certain expenses related to technological innovation.

A

What do we mean by technological innovation?

An activity which results in a technological breakthrough by creating **new** products or production processes or substantial improvements to existing ones.

B

But what is meant by new?

Products or processes whose characteristics or applications, from a technological point of view, **differ substantially from those which previously existed.**

3. Chart extracted from the White Paper on Spanish Video Game Development 2022.

For the video game sector, this means that if publishers or developers are working on something that really innovates or improves how games are made or work, they could pay less tax thanks to these incentives. However, to be able to apply this deduction, the expenses must be directly linked to the development of technological innovation, either in Spain or in any EU country. Expenses may include salaries, social security, external collaborations, depreciation of equipment and materials used in development.

» **Requirements to apply the deduction:**

A report issued by the Ministry of Economy and Competitiveness verifying compliance with the required scientific and technological criteria.

» **Limits of deduction:**



18 years



It cannot exceed 25% or 50% (in some cases) of the tax liability.

2.2. Patent box: reduction in income from certain intangible assets

The law offers tax relief when the rights to exploit certain intangible assets are transferred. This reduction has the following characteristics:

a_ Examples of assets to which the reduction applies:

- » Patents.
- » Legally protected utility models, designs and models.
- » Assets which derive from R&D and technological innovation activities.
- » Registered advanced software that results from research and development activities.

b_ How to calculate the reduction:

$$60 \times \frac{\text{Numerator}}{\text{Denominator}}$$

Expenses incurred by the video game company that are related to the creation of the asset, including subcontracting to **third parties** that are not related to the developer. These expenses are increased by 30%, but the numerator may not exceed the amount of the denominator.

Expenses incurred by the video game developer in relation to the creation of the asset, including subcontracting to third parties, **whether or not they are related** to the developer, and, where applicable, those arising from the **acquisition of the asset**.

c_ Requirements for obtaining the reduction

- » The acquirer of the rights to use or own the asset **must use it for the development of an economic activity**.
- » The assignee **may not be a resident of a tax haven** or zero-tax territory.
- » It **must be differentiated from the consideration for any ancillary services**, if any.
- » A **separate accounting record** must be kept for the application of the reduction.

d_ Recommendations for coordinating with the Tax Agency

To avoid problems with the Tax Agency, we recommend requesting the following agreements regarding the assignment and transfer of intangible assets:

A prior agreement whereby the Tax Agency classifies the assets as belonging to the category of intangible assets.

A prior agreement on the valuation of the proceeds from the transfer of the assets and the associated costs, as well as the income generated from the transfer of the assets.

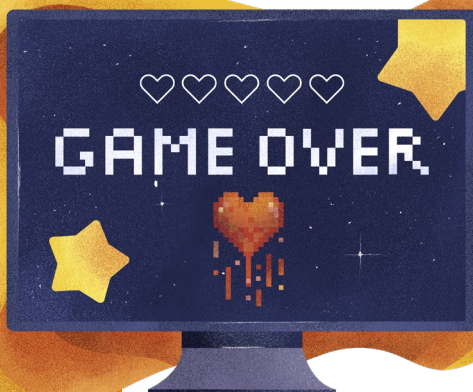
2.3. The Startups Law

The main objectives of the Startups Law⁴ are to improve entrepreneurship and make Spain more attractive to entrepreneurs. This is achieved, in part, by providing tax incentives to startups or emerging companies, which are defined as those legal entities, including technology-based companies, that meet a series of conditions that companies in the video game sector are likely to fulfil.

To apply the tax benefits provided for in this regulation, it is necessary to request that the National Innovation Company SME, S.A. (*Empresa Nacional de Innovación SME*) ("**ENISA**") evaluate the startup and certify that it meets both the official requirements and that its business model is innovative and scalable.⁵

Companies to which this law applies are eligible for a number of tax benefits as soon as they obtain positive tax bases. In other words, when they make a profit and are therefore subject to IS or IRNR. Among the benefits provided for by the Law are the following:

- » A reduced tax rate of 15% for 4 tax periods.
- » An exemption from making advance instalment payments on account for 2 tax periods.
- » Deferment of the tax debt for 6 or 12 months for the first two tax periods.
- » Special conditions for the application of the IRPF exemption regime regarding income attributable to the delivery of shares to employees or the exercise of stock options.



4. Law 28/2022, of 21 December, on the promotion of the ecosystem of emerging companies (<https://sede.agenciatributaria.gob.es/Sede/no-residentes/irnr-establecimiento-permanente/definicion-establecimiento-permanente.html>).

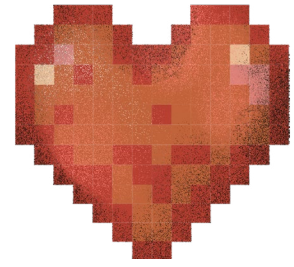
5. To establish this, the degree of innovation, the life stage of the company, the business model, the volume of customers, and the experience and training of the team, among other factors, are assessed.

2.4. Tax incentives for small entities

There are certain incentives that generally apply to small entities, defined as those whose net turnover in the immediately preceding tax period is **less than 10 million euros**.

These tax incentives include:

- a_ The flexible depreciation and accelerated depreciation⁶ of certain items.
- b_ Special features in the deductibility of finance leases.⁷
- c_ The deduction of impairment losses due to possible insolvencies.⁸
- d_ The possibility to reduce the tax base by up to 10% (and up to a maximum of EUR 1 million) in exchange for an equalisation reserve.⁹



2.5. Economic and Fiscal Regime (“REF”) of the Canary Islands

For video game companies in the Canary Islands, the benefits provided for in the REF would apply, including an improvement of the IS deduction for technological innovation activities of up to 45% (instead of the 12% already mentioned), provided that **the expenditure is carried out in the Canary Islands**. In addition, there is also the Canary Islands Special Zone (*Zona de Especial Conservación*) (“**ZEC**”), for the creation of companies in the Canary Islands, where there are a series of benefits subject to the fulfilment of certain requirements:

A

Benefits

- » A reduced IS rate of 4%.
- » An exemption from the Tax on Property Transfers and Documented Legal Acts (*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*) (“**ITPAJD**”).
- » An exemption from IGIC (equivalent to IVA in the Canary Islands) on imports and transactions between ZEC entities.
- » Companies can fully deduct dividends received from other entities resident in the same country, thus eliminating the double tax burden on the same income.

B

Requirements

- » The company must be a newly created entity or branch.
- » At least one of the directors must be resident in the Canary Islands.
- » An investment of a minimum of €100,000 (on a capital island) or €50,000 (on a non-capital island).
- » The creation of at least 5 jobs (on a capital island) or 3 jobs (on a non-capital island).
- » The corporate purpose must consist of activities authorised within the scope of the ZEC, including (i) the publishing of video games; (ii) the publishing of other computer programs; or (iii) sound recording and music publishing activities.

6. The definitions of “flexible depreciation” and “accelerated depreciation” are provided in the Glossary of Definitions, letters (n) and (a), respectively.

7. Definition available under (b) of the Glossary of Definitions.

8. Definition available under (j) of the Glossary of Definitions.

9. Definition available under (r) of the Glossary of Definitions.

3. Useful tools

Below are some tools that can facilitate tax compliance for video game developers, such as:



Databases

- » **Tax queries** raised by taxpayers and answered by the Directorate General for Taxation, both binding and general, and new written tax queries may be raised.
- » **Case law and criteria** of the economic-administrative tribunals, which may be useful in resolving any interpretative doubts.
- » **The INFORMA database** which contains the main criteria for applying tax regulations in a Q&A format.



Calendar

- » **A taxpayer calendar** that is updated annually to specify the due dates for the various applicable deadlines.



Assistance

- » **Virtual assistance tools** for various taxes (IRPF, IAE, IRNR, IVA, among others).
- » The Tax Agency's **withholding tax calculation service**. There is also a Basic Tax Information telephone line (telephone 91 554 87 70, also available via 901 335 533), which is open from Monday to Friday, from 9 am to 7 pm (3 pm in August).

Glossary of definitions

Accelerated depreciation	A method of depreciation that allows the value of a fixed asset to be deducted more quickly than straight-line depreciation. It is used to encourage investment in certain assets.
Financial leases	Contracts for the rental of goods that include an option to purchase at the end of the lease period. They allow companies to use assets without the need to purchase them initially.
Self-assessment	The process by which taxpayers calculate and pay their taxes themselves. This is done by submitting specific forms to the Tax Agency.
Positive tax base	The amount on which the tax payable is calculated, after applying the permitted deductions and reductions. It represents the net taxable profit.
Change of address	The change of the tax address of a person or company. It must be notified to the Tax Agency in order to update the tax records.
Assignee	A person or entity that receives rights or goods through an assignment. In the context of taxation, it can refer to someone who acquires a credit or debt.
Accounting under the Commercial Code and the General Accounting Plan	This is the obligation to keep detailed and accurate records of all of a company's financial transactions.
Contributor	A natural or legal person who is obliged to pay taxes to the State. This obligation arises from earning income, owning property or carrying out economic activities.
Double Tax Conventions	Agreements between countries to avoid the same income being taxed twice. They establish rules to determine which country has the right to tax certain income.

Deduction of credit impairment losses due to possible insolvencies	A reduction in the corporate tax base for estimated losses due to the possible insolvency of debtors. This helps to reflect a company's financial situation more accurately.
Tax deduction	A reduction in the tax base for certain expenses or investments. This allows for a reduction in the amount of tax payable. It reduces the amount of tax to be paid.
Double taxation	A situation where the same income is taxed by two different tax jurisdictions. Double taxation conventions seek to avoid this situation.
Registered office	The physical location where the entity carries out its main activity or where its central administration and management are located.
IS	Corporate Income Tax (<i>Impuesto sobre Sociedades</i>).
IVA	Value-Added Tax (<i>Impuesto sobre el Valor Añadido</i>).
IAE	Economic Activities Tax (<i>Impuesto sobre Actividades Económicas</i>).
IRNR	Non-Resident Income Tax (<i>Impuesto sobre la Renta de no Residentes sin establecimiento permanente</i>).
IRPF	Personal Income Tax (<i>Impuesto sobre la Renta de las Personas Físicas</i>).
Flexible depreciation	The possibility to depreciate the value of fixed assets freely, without following a fixed schedule. This allows companies to reduce their corporate tax base more quickly.
Advance instalment payments	Corporate income tax prepayments which are carried out during the year. They are based on estimated profits and are regularised at the end of the fiscal year.
Tax haven	A jurisdiction which offers very favourable tax conditions, such as low or no taxation, to foreign individuals and companies. These jurisdictions often have strict financial confidentiality laws, making transparency and the exchange of information with other tax authorities difficult.
Place of effective management	Tax legislation provides that a company has its effective place of management in Spanish territory when the management and control of all its activities are located there.
Equalisation reserve	A fund that companies can set up to offset future tax losses. It allows the tax base for corporate income tax to be reduced in profitable years.

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