



DOING BUSINESS IN SPAIN

ALFA INTERNATIONAL
THE GLOBAL LEGAL NETWORK

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GENERAL INFORMATION

Location and Area

Spain is located in the southwest of Europe and it is the second-largest country in the European Union (EU) with 504.030 square kilometres. It includes the Canary Islands in Atlantic Ocean, the Balearic Islands in the Mediterranean Sea, the North African cities of Ceuta and Melilla and some surrounding uninhabited islands. Spain has a typical Mediterranean climate due to its 8.000 kilometres of coastline and lovely beaches.

Population and Language

Spanish is the official language of the country. There are other official languages, such as Catalan, Basque or Galician that are spoken in their corresponding Autonomous Community, according to their Autonomy Statute. The population of Spain in January 2014 is approximately 46 million people, with a population density of 93 inhabitants per square kilometres.

Spain is organized into 17 Autonomous Communities, each of which generally includes one or more Provinces (50), plus the Autonomous cities of Ceuta and Melilla in the Northern Africa. Each Autonomous Community exercise the powers assigned to it by the Constitution of 1978 as specified in its Autonomy Statute. Such Statutes, enables the Autonomous Communities to stipulate their institutional organisation which includes the basic powers: legislative, executive and judicial.

The Autonomous Communities are financially autonomous and also receive financing of the Central Government in the yearly budget.

Currency

As of 1st January 2014, the exchange rate for one Euro against the main world currencies was:

United States dollar	1.3754
Japanese yen	141.470
British pound sterling	0.827
Swiss franc	1.2225

Sources

The main government department or agencies which aid foreign companies in Business activities are:

Bank of Spain
c/ Alcalá, 48
28014 Madrid
Tel.: 0034 91 338 5000
www.bde.es

Ministry of Economy and Competitiveness
Paseo de la Castellana, 162
28046 Madrid
Tel: 0034 91 583 74 00
www.meh.es

Ministry of Industry, Energy and Tourism,
c/ Panama, 1
28046 Madrid
Tel: 0034 902 44 60 06
www.mityc.es

State Tax Agency
c/ Infanta Mercedes 37
28020 Madrid
Tel: 0034 91 583 70 00
www.aeat.es

Social Security
c/ Cedaceros, 11
28014 Madrid
Tel.: 0034 91 429 66 61
www.seg-social.es

State Credit Agency (ICO)
Paseo del Prado 4
28014 Madrid
Tel: 0034 91 592 16 00
www.ico.es

Spanish Institute for Foreign Trade
(ICEX)
Pº de la Castellana 14
28046 Madrid
Tel.: 0034 900 349 000
www.icex.es

Spanish Agency for International
Cooperation for Development (AECID)
Av. Reyes Católicos 4
28040 Madrid
Tel: 0034 91 583 81 00
www.aecid.es

Directorate General for Small and Medium
Enterprises
c/ Panama, 1
28071 Madrid
Tel: 0034 900 19 00 92
www.ipyme.org

Nationals of EU-Member States

Nationals of EU-Member States are not subject to the requirements applicable to other foreigners to obtain a work permit as an employee or self-employed person, because the EU rules on the free movement of workers are fully in force.

EU nationals must register themselves in the Central Register of Foreigners only if they are planning on staying more than three months in Spain, either to live or to work, being subject to the same obligations as an Spanish citizen. EU nationals might also be required to obtain a tax identification number (NIE) to enter in certain type of contractual obligations (i.e lease agreements).

If the period of residence is less than three months, the individual only needs his identity card or passport. If the individual has plans to engage economic activities on his own account, he must provide documentary evidence of having applied for the administrative authorizations required for such purpose.

INVESTMENT FACTORS

Government Attitude towards Foreign Investment

It is important to emphasise the various incentives and the help given to those EU member state companies that want to invest in Spain. These incentives will be explained below.

The Spanish Government and the rest of the Public Administrations have established a system for the encouragement of work and competitiveness. There is a great variety of aid and incentives for permanent employment and research in technological investigation.

Economic Trends

After almost 15 years of above average GDP growth, the Spanish economy began to slow down in late 2007 and entered into a recession in the second quarter of 2008. GDP contracted by 3.7% in 2009, ending a 16-year growth trend and by another 0.3% in 2010, before expanding moderately in 2011, making Spain the last major economy to emerge from the global recession.

The economy, however, has once again fallen into recession as deleveraging in the private sector, fiscal consolidation, and continued high unemployment weigh on domestic demand and investment, even though exports have shown signs of resiliency. The unemployment rate rose from a low of about 8% in 2007 to roughly 25% in 2012. The economic downturn has also hurt Spain's public finances. This led to the start in 2012 of an ambitious program of structural reform with a view to boosting growth and creating jobs, coupled with related fiscal consolidation measures. Since then the Government has passed several Acts that not only have reduced the increasingly unemployment rate but also helped restructuring the financial sector, and have implemented a major process to restructure the balance sheets of financial institutions consolidating a strong and secure banking system.

Although Spain's large budget deficit and poor economic growth prospects remain a source of concern for foreign investors, the government's ongoing efforts to cut spending and introduce flexibility into the labor markets are intended to assuage these concerns. The government is also taking steps to shore up the banking system, namely by using up to \$130 billion in EU funds to recapitalize struggling banks exposed to the collapsed domestic construction and real estate sectors.

Investment Incentives

Spain has developed and implemented a wide range of aid instruments and incentives in order to attract national and foreign investors. The main points in which the Spanish government has focused on are:

1. Training and employment;
2. Research and development;
3. Tourism and Industry.

Moreover, as Spain is an EU member, the foreign investor who decides to invest and start a business in Spain will be able to access to European programs addressed to support investments in Spain. Spain has traditionally benefitted from EU funding from the Structural Funds and the Cohesion Fund. It is estimated that between 2014 and 2020 European funding from the ERDF and financing for Trans-European Transport Networks (through the Connecting Europe Facility) will make a positive contribution of an estimated €2.5 billion to certain regions and priority areas.

European institutions are tasked with encouraging and supporting technological research and development. The Seventh Framework Programme (PF7) for technological research and development is the EU's the main tool for funding research in Europe. Its aim is to strengthen the scientific and technological base of European industry and encourage its international competitiveness.

Requirements and Regulations

Royal Decree Number 664/1999 is the legal regime of foreign investments in Spain, as well as for Spanish investments in foreign countries. These investments can be, for example, the participation of a foreign investor on a Spanish company, constituting branches of a foreign company, or participating in investment funds.

For the completion of the requirements set out by the Royal Decree Number 664/1999, the foreign investor has to fulfil a set of forms depending on the intended activity. As a general rule, foreign investments are only subject to reporting requirements once the investment has been made, while exchange control and capital movements are fully deregulated in Spain, there being complete freedom of action in this regard in all areas. Nevertheless, there are some exception to the latter specially regarding investments from tax havens and investments in certain regulated activities (air transportation, national security, etc.)

Freedom of Operations and anti-money laundering obligations

Spain, as part of the EU, signed the Maastricht Treaty which proclaimed the free movement of capitals in between member states and with third parties. Royal Decree Number 664/1999 is the result of the Treaty's aims, establishing freedom of investments as its main goal with a series of administrative requirements.

The only limit to the freedom of investments is the prerogative that the Council of Ministers has to suspend the investing whenever the activities may affect the exercise of public powers, public order, state security, or health.

The Directorate-General for Trade and Investments (“DGCI”) can generally or specifically require Spanish companies which have foreign shareholders, and Spanish branches of non-resident persons, to file an annual report with it on the status of their foreign investments, just for statistical purposes.

Ministerial Order EHA/1439/2006 on reporting movements of means of payment in the context of anti-money laundering, in force from February 13, 2007, establishes that export of coins, banknotes and bank checks to bearer, in euros or in foreign currency, although deregulated, is subject to prior administrative disclosure for purely informative purposes if the amount involved exceeds €10,000 per individual per trip. If the disclosure is not made, Spanish customs officials may confiscate these means of payment.

In addition, there is an specific regulation against money laundering (Act Number 10 of 28 April 2010 on the Prevention of Money Laundering and Terrorist Financing), which defines the obligation to declare who is the last beneficial owner that holds and/or controls more than the 25% of the share capital of the relevant company (if any transaction is carried out in Spain before a notary public), this excludes companies listed on a regulated market of the European Union or equivalent third countries..

FINANCIAL SERVICES

Spain's financial system is composed of credit market, stock market, monetary market and futures and option markets. The Bank of Spain acts as a settlement agent; it is the central bank operator in the country. Moreover, there are credit institutions that are mainly national or international banks, savings banks and savings unions. There are also the official credit institutions, investment institutions such as investment societies, investment funds or venture capital societies, market brokers and assurance or reinsurance companies.

The Public Administration mainly intervenes in the monetary market and in the credit and stock market. Its powers are limited to the control in the access of the different agents, as well as for the control of the different operations. The institution in charge of these functions is the Spanish National Securities Market Commission (CNMV).

ESTABLISHING A BUSINESS

Investing in Spain by foreign companies is connected to the general regime of liberalisation which can only be suspended by the Council of Ministers in those cases in which the investment can affect the exercise of public powers, public order, security or public health measures. It is considered as a "foreign investor", the non-resident physical or legal person, domiciled abroad or with his principal residence outside Spain.

Before setting-up a Spanish corporation or limited liability company, formation of a Spanish Branch or entering in any other kind of business venture the foreign investor must note that the applicable Spanish legislation requires that any individual or legal entity with economic or professional interests in Spain, or involved in a relevant way for tax purposes, must hold a tax identification number (in the case of legal entities) or a foreigner identity number (for individuals) a N.I.F./N.I.E. respectively. Such a identification number shall be usually obtained before executing the relevant transaction.

It is also important to underline the different regulations in force in Spain dealing with data protection and intellectual property. Data protection is regulated by the Act 15/1999 which protects data relating to individuals and in relation to their personal and familiar spheres. At the same time there is the Spanish Agency for the Protection of Personal Data (AEPD), a public entity which ensures the compliance of the abovementioned regulation and controls the access, rectification, opposition and cancelation of personal data held by third parties.

Royal Decree 1/1996 approves the Act for Intellectual Property which protects the copyright of Spanish, EU Member state, and third-state authors with regular residence in Spain and, if they

have habitual residence outside Spain or the EU, if the first publication is in Spain or at least published in the Spanish territory within 30 days since the first publication.

FORMS OF BUSINESS ENTITIES

In general

The main regulation for the incorporation of business entities is established in the Royal Decree 1/2010, which approves the Spanish Companies Act.

In addition, the restructuring of companies, such as merger and acquisitions, split-off, etc. are regulated by the Act 3/2009 of April 3..

Corporation

In general

Corporations (SA) are most commonly used for financing important investment projects, being the most representative form of capital based entities.

Forms of Business Entities

An SA's capital is divided into shares, and the decisions are taken by the board of directors and the shareholder's meeting. The responsibility of the shareholders is secondary to the one of the company itself.

Formalities of incorporation

Founder shareholders of the company (either individuals or entities) or their representatives (with sufficient powers of attorney) must appear before a Spanish Public Notary in order to execute the public deed of incorporation, which must include the company's by-laws. The public deed must be recorded at the Mercantile Register of the province where the corporation is based. Only when the company is recorded it acquires legal capacity. In between the execution of the public deed and its recording in the Mercantile Register, contracts can be celebrated on behalf of the company on formation but its enforceability shall be conditioned to the effective recording of the said incorporation deed in the relevant Mercantile Register, otherwise the representatives of the new company who have signed of its behalf will be deemed jointly liable.

Shareholders can be individuals or companies of any nationality or residence. In the case of companies of foreign nationality wishing to become shareholders of an existing SA or incorporate a new one it is necessary that a certificate be issued by the Commercial Register of the country where the company is resident, which evidences the incorporation and existence of said company as well as its management body. Such document, as well as the relevant powers of

attorney, if applicable, must be duly apostilled accordingly to The Hague Convention dated on 5 October 1961.

Corporate name

The first step in order to incorporate a company is to determine a corporate name and to request such name to the Spanish Central Mercantile Register.

If no other company registered in Spain holds the same corporate name, the Register issues a certificate reserving such name on behalf of one of the partners of the new SA. This certificate must be attached to the public deed of incorporation.

Minimum capital

The minimum amount of issued capital required for an SA is EUR 60.000. The capital must be fully subscribed and at least 25% of the nominal value of the shares must be paid in. The capital is divided into shares, which may be either bearer or registered adopting necessarily this last form while they are not fully paid-up.

The company's by-laws must state the manner and time period for the payment of the remaining portion of issued capital. No maximum time period for cash contributions is stated in the Law, and the maximum time period for contributions in kind is five years from the date of incorporation. Once the amount of the capital is agreed and paid in, the following steps must be taken:

- 1 Open a bank account in name of the company "in process of incorporation". To this effect, the bank will require a copy of the certificate issued by the Central Mercantile Register proving the reservation of the corporate name.
- 2 Transfer into this account an amount of at least equal to the 25% of the subscribed capital.
- 3 Obtain from the bank a certificate proving the reception of the amount transferred. If the shareholder is a non-Spanish-resident, the bank must state in the certificate the foreign origin of the funds. The certificate must be included in the incorporation deed that must be authorised within the two months after the bank deposit.

Shareholders

No minimum number of shareholders is required to form an SA. However, a specific regime is applicable to sole shareholder companies.

Sole-shareholder companies must state such circumstance in all company correspondence and commercial documentation. Likewise, contracts between the company and its sole shareholder need to be declared in the Annual Accounts and recorded in a special company registry.

Foreign Investments in Spain

When incorporating a new company or when pre-existing shares are being acquired before a Notary Public, a special form (D-1A) shall be signed by the foreign investor and later lodged in the Foreign Investment Registry with a copy of the transaction document.

Management Body

A board of directors, a sole director, two joint directors or two joint and several directors can compose the management body of an SA. The form selected must be stated in the by-laws. It can be changed at any time by the shareholders' meeting. If a board of directors is created, it must have a minimum of three members. There is no maximum. The members of the governing body can either be Spanish or foreign citizens.

The term of the post is to be set at the by-laws and cannot exceed six years, but can be renewed for equal periods indefinitely.

The chairman is engaged in summoning and chairing the board but has no casting vote, unless otherwise provided in the by-laws. The secretary can either be a board member or non-board member and is the person in charge of issuing the certificates of the corporate resolutions and granting the relevant deeds. The legal advisor of the company usually occupies this post. Powers of attorney to conduct day-to-day business can be granted to any of the board members or an employee of the company.

Business purpose, domicile, duration and restrictions

Together with the above explanation, some other aspects have to be foreseen: (i) the business purpose of the company, which shall be accurate and precise and usually establishes the general framework for the activities of the company, (ii) the duration of the company, usually the by-laws will stipulate that the duration is indefinite (iii) the corporate domicile, which must be located in Spain, (iv) the restrictions, if any, on the free transferability of shares or (v) the accounting year-end, on 31st December.

Limited-Liability Company

The limited-liability company (SL) is a company that allows one or more founding partners (either individuals or entities) that must subscribe to the entire, fully paid-up share capital. The number of investors in this type of company is unrestricted.

This type of company is currently the most used investment vehicle in Spain, specially among start-up projects and new entrepreneurs. The capital of the company is divided into equal participations, which must be fully paid-up and are not freely transferable. The subscribers'

liability is limited to the fully paid-up value of the participations. The capital of the SL has to be of at least EUR 3.000.

Limited Liability Companies were traditionally used for small or family-owned businesses and, in recent years, the form has become popular with other types of businesses. The requirements for incorporating a SL are almost the same as for an SA and thus the same comments made above for SA apply to SL, except for the following:

1. **FORMATION:** An SA may be incorporated through a successive (public) placement, pursuant to which the promoters prepare the incorporation documents and offer the shares to the public. This possibility does not exist for an SL.
2. **IDENTITY OF SHAREHOLDERS OR MEMBERS;** The shareholders of an SA can maintain their anonymity, assuming they hold bearer shares, unless they are the sole shareholders of the company, in which case the reporting requirements applicable to sole shareholder companies are triggered. On the contrary, there is greater control over the identity of members of a SL, who must appear in the company's member registry book. Sole member SL companies are subject to the same reporting requirements applicable to sole shareholder SAs.
3. **NEGOTIABILITY OF SHARES OR PARTICIPATION;** The shares of an SA are fully negotiable, while SL's participations are non-negotiable.
4. **TRANSFER OF SHARES OR PARTICIPATIONS:** The transfer of shares in an SA is generally unrestricted unless the by-laws provide otherwise. In practice the transfer is normally formalised in a public document issued by a notary, commercial broker or authorised consular official, but it can be also executed by means of a private contract, whereas the transfer of participations in an SL is generally subject to pre-emptive right and it must be executed according to the legislation by means of a public document issued by a Notary, Commercial Broker or authorised consular official.
5. **FINANCING:** An SA can participate in all types of financing activities, including the issuance of bonds, public offerings of shares and inter-company loans and guarantees. An SL, on the other hand, cannot issue bonds or participations in a public offering and may be restricted in its ability to provide loans or guarantees to members or company Directors.
6. **MANAGEMENT AND REPRESENTATION;** Unlike in an SA, an SL's by-laws may provide alternative types of director bodies, appoint directors for an indefinite term and designate substitute directors. However, an SL's board of directors may have no more than 12 members.
7. **INTERVENTION OF APPRAISERS AND AUDITORS:** Unlike an SA, the intervention of appraisers and auditors is not generally required for an SL, such as for the appraisal of non-monetary contributions and increase of capital by debt.
8. **WITHDRAWAL AND REMOVAL OF SHAREHOLDERS AND MEMBERS:** Compared to an SA, there are more extensive circumstances under which a member of a SL can be withdrawn from the company. In addition, the Companies Act provides the rules for the removal of SL members. There is no analogous provision for the removal of shareholders of an SA, nevertheless, the by-laws of the latter can include removal causes.

9. **INACTIVITY:** Unlike an SA, the inactivity of an SL company for three consecutive years is grounds for dissolution of the company, although the SL company may be reactivated if it has been dissolved but not yet liquidated.
10. **LIABILITY OF SHAREHOLDERS AND PARTNERS:** Both SA and SL are companies with capital in which the liability of the shareholders is generally limited to the amount of capital contributed by each. The general rule is clearly one of limited liability; however, under very exceptional circumstances, the corporate veil can be pierced to protect the interest of third parties.

In these exceptional cases, the courts have followed the criteria of “piercing of the corporate veil” as a reaction against the abusive taking advantage of the company’s legal status by the shareholders or partners for fraudulent purposes. The courts may obviate it and differentiate the equity of each of the partners to establish liabilities.

Super simplified steps for formation of limited liability companies were established under Royal Decree-Law 13/2010, of December 3, on Tax, Employment and Deregulation Measures to Promote Investment and the Creation of Employment in order to expedite the formation of limited liability companies by telematic means.

Branch

In addition to the forms of business, enterprise created under Spanish law that constitute separate legal entities, a foreign investor may operate in Spain through a branch that is a separate establishment without own legal personality. Its function is to carry on and develop the same business activity as the parent Company, being dependent for management support on the parent company.

The branch must have a legal representative who is empowered by the home office to manage the affairs of the branch. Apart from this requirement, there are no formal administration or management bodies. From the foreign investment legislation perspective, the branch must have an assigned capital that is not subject to any minimum amount.

The formation of a branch requires the execution of a public deed that must be registered at the Mercantile Register. The submission of several documents certifying that the parent company is incorporated and authorised according to the legislation of the country of origin is also required.

Except for the obvious differences in terms of internal structure and organisation, a branch operates much like a corporation in its dealings with third parties.

For both exchange and tax purposes it is considered as an independent entity and treated under practically the same rules as a Spanish-resident company but its liability is not limited to capital in Spain but it spreads to the whole capital of the parent company.

Representative Office

A representative office is an office opened by a non-resident in order to promote a particular activity of the company represented through the office. The representative office cannot generate any income, being only a source of expenses due to the need to maintain the office. A representative office is not subject to taxes in Spain (exception is made with municipality taxes).

Joint Ventures

There are three types of joint-venture structures in Spain, namely:

1. Temporary Joint Venture, which is not a corporation. They are useful for specific projects, especially for constructions or engineering projects. Despite they do not have legal capacity, their registration is compulsory.
2. Limited partnership agreement, which includes two types of members, i.e., the entrepreneur who contributes to a project and the managing participant. The first one has the right to participate in a percentage of the total benefit made by the project. It does not require any formality and one of its main characteristics is that the non-managing investors do not become shareholders.
3. European Economic interest groupings (EEIGs) which are non-profit legal entities, incorporated by notarial deed. These types of company structures were created on 1985-07-25 under [European Community](#) (EC) Council [Regulation 2137/85](#). It is designed to make it easier for companies in different countries to do business together, encourage cross-border cooperation, or to form [consortia](#) to take part in EU programmes..

Insurance Companies

Act Number 50/1980 regulates insurance contracts, which are those concluded by the insurance company with the insured person. Moreover, Act Number 26/2006 regulates mediation in insurances and private reinsurance between mediators, insurance agents, and insurance brokers with the insured subject.

Banks

Royal Decree 1245/1995 regulates the creation of banks, transnational activities, and the legal regime of credit institutions. The Ministry of Economy and Finance, with a prior report by the Bank of Spain and the Service for Prevention of Money Laundering, must authorize the creation of *ex novo* Banks.

Payment Services Providers

The Spanish Act 16/2009, which transposes the directive on payment services in the internal market and complementary regulations establishes the minimum requirements that all payment

services providers shall meet before and after obtaining the relevant authorization to be granted by the Ministry of Economy Bureau and the Bank of Spain, most of the requirements concern the share capital of the company, honorability of its partners and directors and economic guarantees for the users of the service.

Besides having the company being incorporated in Spain with a corporate domicile anywhere within the country, the law establishes a minimum share capital that ranges from the 20.000.-€ if the company only provides payment services, up to 125.000.-€ when the company performs all the activities listed in section 1.2 of the Spanish Act (Money remittance, execution of payment transactions where the funds are covered by a credit line for a payment service user...).

EXCHANGE CONTROLS

In General

The freedom of movement of capitals and economical transactions in Spain is free for EU-Residents due to the Maastricht Treaty signed up nearly twenty years ago. Furthermore, Spain has extended this regime to all foreign investors, with no differences between EU-residents and non-residents.

The only exception is for those investments done from tax havens which require a prior control by the Spanish Public Administration. These investors may be either physical or legal person non-resident in Spain.

Inward Direct Investment

The general rule is that there is no need for authorization or declaration in case of foreign investments due to the fact that not only EU-Member states are treated equally, but additionally Spain has extended this regime to the rest of the countries with a few requirements legally established, only an *ex post* control.

External investments are submitted in general to later declarations with the exceptions of tax haven, non-EU Member's investment in real estate for their embassies and foreign investments in national defence. Special requirements for air transport, radio, television, raw materials and strategic minerals among others are required.

Imports and Exports

The Decree EHA/1439/2006 which regulates the declaration of movements of payment methods in the scope of the prevention of money laundering requires that the export of any type of payment method is subject to administrative declaration when the total amount is above EUR 10.000 per person and transaction. If the subject does not declare the abovementioned

movement, the customs officers may seize them. This administrative declaration is required for information purposes.

Furthermore, the movement in national territory of any kind of payment method that is equal or above EUR 100.000 has to be previously declared to the custom officers.

Outward Investment

Those residents willing to make an investment outside of Spain have to declare in special cases to the Bank of Spain. For example, it is mandatory to declare those investments for financing and adjourning of payments and receipts over one year, or credit offsets and debts between residents and non-residents.

Another requirement is the declaration of credits and financial loans given by non-residents to residents, which further requires the obtaining by the resident of an identification number for financial operations, whenever the amount equals or exceeds EUR 3.000.000.

LABOUR

In General

Basic Law

The basic law in this field is the Workers' Statute (Royal Legislative Decree Number 1/1995), which defines the respective rights of employees and employers, general terms of labour contracts, procedures for dismissal, and collective bargaining rules.

In addition, there are specific regulations for different production sectors and certain groups of employed persons, such as commercial representatives and top management personnel.

Another important source of labour law is collective bargaining agreements, which may be negotiated at state, industry, regional, or company level. Individual employment contracts are thus subject to a number of mandatory provisions that condition the labour relationship. There also are detailed regulations affecting working hours and worker safety and health in specific industrial sectors.

Non-discrimination

The Workers' Statute generally prohibits employment discrimination on the basis of sex, marital status, age, race, social status, religion, political ideology the different official languages in Spain. It also prohibits discrimination because of physical or mental handicaps if the candidate is otherwise suitable for the job in question.

Minimum age

People under the age of 16 cannot be employed. Nevertheless there are certain protective measures for people under 18, such as the prohibition of working overtime or at night, or in certain dangerous or unhealthy activities or jobs.

Employment duration

Temporary contracts are generally “circumstance driven”, i.e., except for specific cases, there must be circumstances justifying such temporary hiring. The types of temporary contracts that can be arranged are as follows:

1. A “contract for a specific project or service” is arranged for the purpose of performing work or providing a service which is temporary, being the maximum duration of this contract three years and may be extended 12 months by collective labour agreement. After this period, the workers will acquire permanent status in the company.
2. A “casual contract due to production overload or backlog” has a maximum duration of 6 months within any 12-month period, unless otherwise stipulated in a collective labour agreement pertaining to a specific segment of workers of the activity. In that case, the maximum duration of the contract will be taken into account within any 18-month period and may neither exceed the 3/4 of it nor 12 months. .
3. A “contract to substitute employees entitled to return to their job” has a duration of the period during which the absent employee retains the right to return to his job.
4. A “work experience contract” can be arranged either with a university, junior college graduates or people with vocational qualifications or recognized equivalent qualifications, provided that not more than five years -seven years for disabled people- have elapsed since they completed the related training. The duration is from six months to two years. The contract is regulated by the Royal Decree Number 488/1998.
5. A “trainee contract” replaces the previous apprenticeship contract and can be arranged with workers over 16 and under 25 years old who do not have the necessary qualifications to obtain a work experience contract. This age limit does not apply to disabled people. The duration of this contract ranges from one year to three years, even though different duration can be established by a collective labour agreement with a minimum of six months and a maximum of three years. The contract is regulated by the Royal Decree Number 488/1998.

Indefinite employment

New modes of indefinite contracts have been regulated by acts 3/2012 and 4/2013:

- Indefinite contract to support entrepreneurs, for companies with less than 50 employees.
- Indefinite contract of a worker under 30 years old by a microenterprise.
- Contract for new entrepreneurship projects for employers under 30 years old who hire workers over 45 years old.

There are other modes of indefinite contracts for unemployed workers registered at the employment office that hold one of the following conditions:

- Persons between the age of 16 and 30 and over 45, employed with the contract to support entrepreneurs.
- persons with disabilities.
- victims of domestic or gender violence (no need of being registered as unemployed workers at the employment office).
- victims of terrorism and human trafficking .
- workers in social exclusion.
- women to serve in professions or occupations with lower rates of female employment.
- women in the two years immediately following the date of childbirth, adoption or foster care of children.
- women who return to employment after a period of five years off work.
- workers who have been registered one month continuously as applicants for employment.
- workers who, during the two years preceding the entering of the contract, were employed exclusively through temporary contracts, including training contracts.
- workers who, during the two years preceding the entering of the contract, had indefinite contracts extinguished by a different employer.
-

The indefinite hiring could entail some benefits and discounts in the employer input to the Social Security contribution.

Trial period

If the relevant collective agreement sets limits for trial periods, the trial period for a new employee must be stipulated in writing, and in accordance with such limits. Otherwise, trial periods cannot exceed six months for graduate technicians and two months in all other cases.

In companies with fewer than 25 employees, the trial period for non graduate employees cannot exceed three months.

In the temporary contracts with a six-month limited duration, the trial period cannot exceed one month, except as otherwise provided in the collective labour agreement .

The indefinite contract to support entrepreneurs can establish a trial period of one year.

Working hours

Working hours are as specified in collective agreements or individual employment contracts. The maximum legal workweek is 40 hours on an annualized average basis. Unless exceptional cases, overtime (i.e. hours worked in excess of the maximum legal or negotiated working hours) is voluntary and, if paid, cannot exceed 80 hours per year.

Overtime can be compensated by time off within four months from the date on which the overtime was worked. If payment for overtime is agreed upon in the collective agreement or individual contract, the hourly overtime rate cannot be less than the normal hourly rate. Overtime offset with time off does not count towards the 80-hour annual ceiling.

A minimum of one-and-a-half-days off per week is mandatory (usually Saturday afternoon and all day Sunday, or all day Sunday and Monday morning). Workers under 18 are entitled to two uninterrupted days off per week.

The public holidays designated as such by the Central Government, Autonomous Community authorities and by the respective municipal authorities cannot exceed 14 in number per year. The Government can move national holidays falling during the week to the following Monday. An annual vacation of 30 calendar days is obligatory. Employees are entitled to pay leave of absence in certain circumstances such as marriage (15 days), lactation, childbirth or death, among others.

Wages and salaries

The official minimum annual wage for people over 18 years old is EUR 9.034,20 for 2014 (including 12 monthly and 2 extra payrolls). However, the minimum wages for each professional category are ordinarily negotiated in collective bargaining agreements.

Salaries cannot be paid at intervals of more than one month. At least, two extra payrolls must be paid each year: one at Christmas and the other one at the date stipulated in the collective bargaining agreement (generally before summer vacation period). Thus an employee's gross annual salary is usually apportioned in 14 payrolls; however, payment in 12 monthly instalments may be agreed upon in a collective labour agreement.

Work and Residence Permits*Nationals of non-EU countries*

Under Spanish labour legislation, non-EU nationals over 16 years old intending to work in Spain must obtain a special work visa and work and residence permit.

Work permits are granted taking into account the employment situation of Spanish nationals for the same kind of work. However, there are certain preferential categories such as foreigners who

have a Spanish spouse, workers necessary to set up foreign imported machinery, or top executives.

General Information

Foreigners legally working in Spain generally have the same rights and obligations as Spanish citizens under the labour laws.

The Spanish company hiring non-Community foreign employees who are to work for the company in Spain, is responsible for the commencement of the application procedure for the work and residence permits through filing a set of documents before the Aliens office of the province where the work will be produced or, otherwise, in the Labour Area and Immigration of the Provincial Delegation. As long as the worker is hired as employee the Spanish company has to create an employment vacancy that will hardly be covered by a Spanish worker and must be submitted at the Public Employment Service.

Once the company has filed the documents, the worker has, within a month, to apply to the Spanish Consulate of his last place of residence for a visa to work and reside in Spain, furnishing the work permit application together with a copy of the visa application and other documents such as a medical certificate, a criminal law clearance, etc.

The work permit efficacy shall be suspended until the visa of residence is granted and the employee registered in the Social Security System within three months since his legal entry in Spain and by the employer who applied the procedure.

The employee must request the Foreign Identity Card in the foreign office or in the police station in the province in which the procedure will be applied, within a month since he is registered in the Social Security System.

Foreigners who intend to reside in Spain but who will not work in this country, either as employees or self-employed must obtain a residence visa before establishing their residence in Spain and a residence permit which can be temporary or permanent.

According to the Spanish regulations, a non-UE resident company may temporarily relocate employees into Spain as far as the company has a duly established working centre in Spain (i.e. subsidiary, branch, representative office, etc), to what effect a so called type G labour permit must be obtain.

For granting type G permit, the following requirements should be met:

- a. The relocated employee must have a labour contract with the foreign company of at least nine months of seniority having had a labour relation in the foreign country for at least one year.
- b. The maximum duration of the relocation in Spain is for a one year period, although it might be extended by a further period of one year.

Law on visas for entrepreneurs

This Act is aimed at investors, entrepreneurs, highly skilled professionals, researchers, and workers performing inter-company business operations, including their spouses and children under 18.

The Act facilitates a swiftness of processing, generally establishing a resolve within 10 days for all visa applications relevant to this law.

The Residence Visa issued under this law is sufficient to reside in Spain one year without having to obtain a foreign identity card. The renewal of Residency may take place even if absences exist for longer than six months per year in the case of Residency Visas and authorisations for foreign investors and for foreign workers performing inter-company operations abroad or that have established their base of operations in Spain.

General Requirements:

- Not to be on Spanish soil irregularly.
- Be older than 18 years.
- No criminal record in Spain or countries lived in during the last five years for offenses stipulated under Spanish Law.
- Not listed as objectionable in the territorial space of countries with which Spain has signed an agreement in this regard.
- Have a public insurance or private health insurance with a Health Insurance Institution authorised to operate in Spain.
- Have sufficient financial resources for yourself and for the members of your family during the period of residency in Spain (€2.130 monthly for yourself and € 532 for every family member that is in your care).
- Pay the fee for the processing of visa(s).

It is important to mention that the processing of the Residency Visa is extended to the spouse and children under 18 years of age or to elderly family members who are not able to provide for themselves due to their state of health, when they unite with or accompany applicants. Consequently they may apply, jointly and simultaneously or successively for a family residence visa, with proof of compliance with the above requirements.

The presence of the applicant of the visa is not required because biometric data is not required. The residency visa may be requested and obtained through a duly accredited representative.

TAXATION

In general

The Spanish tax system is composed of direct and indirect taxes. Direct taxes include corporate tax, income tax, non-resident income tax, inheritance and donation tax, and local taxes. Indirect taxes include value-added tax (VAT), wealth transfer and legal documented acts, custom duties and special taxes.

Corporate Income Tax

In general

Legislative Royal Decree 2 of 5 March 2004, by which the Corporate Income Tax Law was approved, and implemented by the Royal Decree 1777/2004, represented a major reform of corporate taxation in Spain. Its main objectives are harmonisation of rules for determining the tax base and accounting rules and the systemization of existing legislation.

The key factor in determining the application of corporate income tax is the “residence”. A company is deemed to be resident in Spain for tax purposes if it meets any of the following conditions:

- It is incorporated under Spanish law.
- Its registered office is located in Spain.
- Its effective management headquarters are in Spain.

In the event of a conflict of residence, the provisions of Spain’s tax treaties with other countries will, where applicable, prevail.

Resident companies are taxed on their worldwide income. Taxable income includes all the profits from business activities, income from investments not relating to the regular business purpose, and income derived from asset transfers.

In this connection, Spain’s tax treaties with other countries, where applicable, may influence the determination of the tax base for taxation in Spain. Taxation of non-resident entities is regulated separately under the Income Tax Act for Non-Residents.

Taxable income

Taxable income is the company’s gross income for the tax year, less certain deductions. It is determined from the annual financial statements prepared under Spanish generally accepted accounting principles as adjusted for certain statutory tax provisions.

In general, all necessary expenses incurred in producing income during the year and depreciation on income-producing property may be deducted from gross income to arrive at taxable income. Certain items are not deductible from gross income, such as the following:

1. Penalties and fines
2. Corporate income tax payments
3. Gifts and donations
4. Expenditures for the improvement or enhancement of capital assets
5. Depreciation charges that exceed the maximum rates prescribed by law, unless it can be proved that the rates correspond to the actual depreciation incurred

Tax rates

The general tax rate for residents and non-residents that conduct business activities in Spain through a permanent establishment is 30%. Entities that earned net turnover of less than EUR 8 million in the immediately preceding tax year are taxed at a rate of 25% on profits up to EUR 300,000.00, and at a rate of 30% on profits exceeding this amount. A super-reduced rate of 20%-25% will also apply for certain companies of a reduced size that create or maintain jobs. Other tax rates apply to certain specified entities.

Loss carry forwards

As a general rule, a resident entity can carry forward tax losses for offset against the taxable income of the following 18 years. For newly incorporated entities, this 18-year period commences in the first fiscal year in which the entity reports taxable income.

For tax periods beginning in 2011 through 2015, companies must consider the following limitations when using (offsetting) tax losses generated in prior periods:

- Companies or tax groups whose turnover during the 12 months preceding the beginning of the year has been at least EUR 20 million and less than EUR 60 million: carried forward losses may only be used to offset up to 50 percent of the taxable income.
- Companies or tax groups whose turnover during the 12 months preceding the beginning of the year has been at least EUR 60 million: carried forward losses may only be used to offset up to 25 percent of the taxable income.

Withholding Taxes and advance payments.

Spanish companies are also required to make three advance payments (in April, October and December of each year) based on any of the following methods:

1. Payments are calculated as 18% of the previous year's tax liability. General rate is 18%. The payments are due on 20 April, 20 October and 20 December.
2. Payments are based on the forecasted taxable income of the period as follows. General rate is 21%. Three payments due on:

- 20 April: Taxable income of the period January-March less withholdings.
- 20 October: Taxable income of the period January-September less withholdings and advance payment of 20 April.
- 20 December: Taxable income of the period January-November less withholdings and advance payment of 20 April and 20 October.

The second system is mandatory for companies whose annual turnover is more than EUR 6,010,121.04.

In this system and only during 2012, 2013 and 2014, the general rate will be 21% for companies whose annual turnover is between EUR 0 and EUR 10,000,000, 23% for companies whose annual turnover is between EUR 10,000,001 and EUR 20,000,000, 26% for companies

whose annual turnover is between EUR 20,000,001 and EUR 60,000,000 and 29% for those with turnover of more than EUR 60,000,000.

Double Taxation Relief

Tax credit for domestic double taxation of dividends and on transfers of shares. This credit completely eliminates double taxation when the resident company collecting the dividend owns at least 5 % of the resident company paying the dividend and has its holding during the 12-month period prior to the date on which the dividend is distributed.

If these requirements are not met, double taxation is not avoided altogether, since 50% of the dividend received is taxed (or 100 % should certain anti-abuse provisions be applicable). The credit can also be taken on transfers of shares in respect of the amount of undistributed earnings generated in the period of ownership of the holding, provided that the requirements described above are met.

Tax credit to avoid international double taxation. Traditionally, Spanish legislation has adopted the credit method and the three-tier-underlying tax credit (for dividends) to avoid international double taxation.

The exemption co-exists with the tax credit system (the taxpayer may opt for one or the other, although the application of both is incompatible).

Under the tax credit system, all the income or capital gains obtained abroad by companies resident in Spain are included in the tax base in calculating the tax due. The amount of tax effectively paid abroad will be deducted from the tax due, up to the limit of the tax that would have been payable on the income had it been obtained in Spain.

The exemption system is applicable to income from business activities carried on abroad through subsidiaries or permanent establishments: Under the exemption system, dividends or

profit participations derived from holding securities representing the equity of entities which are not resident in Spanish territory and the income (gains) obtained from the transfer of these securities are tax exempt in Spain provided the following requirements are met:

- 1 The direct or indirect interest in the capital or equity of the non-resident entity must be at least 5% and this interest must have been held by the Spanish entity uninterruptedly during the year prior to the date on which the profit distributed becomes claimable (or will be maintained for the time necessary to complete a year).
- 2 That the non-resident entity has been subject to a tax of an identical or analogous nature to the Spanish corporate income tax in the tax year in which the profit which is distributed has been obtained.
- 3 The income from which the dividends or profit participations arise must be derived from the carrying on of business activities abroad as defined by the Act.

Neutral tax regime for restructuring operations

The Corporate Income Tax Act provides for a special regime based on tax neutrality, that guarantees the exception from taxation (both direct and indirect taxation) for corporate reorganizations (mergers, spin-offs, contributions of assets) based on economic grounds.

The special regime based on the principles of non-intervention by the tax authorities and tax neutrality, which guarantees the deferral of or exemption from taxation of both direct and indirect taxation, for taxpayers carrying out such operations, along the same lines as the rest of the EU Member States.

Foreign portfolio holding company regime

A special tax regime applies to companies that have foreign portfolio holding company (ETVE) status. ETVEs are ordinary Spanish companies that engage in the administration and management of participation's in the equity of non-resident entities.

The regime of participation exemption and foreign tax relief method may be used to avoid double taxation on dividends received from abroad and on capital gains derived from transfers of shares of foreign companies if the following requirements are met:

- 1 At the time of the distribution of the dividend or the generation of the capital gain, the Spanish company has owned, directly or indirectly at least 5% of the share capital of the non-resident company for an uninterrupted period of at least one year. ETVEs are not required to hold the 5% share interest in the foreign company if the acquisition cost exceeds EUR 6 million. For dividends, the one year period can be completed after the distribution. In addition, the time period in which the participation is held by other group entities is taken into account for purposes of the computation of the one-year period.
- 2 The foreign company is subject to and not exempt from corporate tax in a tax system that is similar to Spain's corporate tax system.

- 3 The foreign company is not resident in a country identified by the Spanish tax authorities as a tax haven.
- 4 The foreign company derives at least 85% of its income from business activities conducted outside Spain.

Groups of companies

For tax purposes, a group of companies is defined as a group of corporations resident in Spain controlled by a parent corporation that is a resident of Spain and that is not controlled by another resident company.

The parent company may adopt any of these legal forms or, otherwise, it must have legal personality and be subject to and not exempt from corporate income tax.

A company is deemed to control another company if, on the first day of the tax year for which the consolidated regime applies, it satisfies the following requirements:

- 1 It owns, directly or indirectly, at least 75% of the other company's share capital, and it maintains such ownership for the entire tax year of consolidation.
- 2 It is not subject to certain look-through regimes.
- 3 It is not a subsidiary of another domestic controlling company.

Tax exempt companies, companies taxed at a different rate than the parent company and companies in specified legal situations, such as bankruptcy, may not be part of a group of companies.

Net operating losses of a group company suffered in tax years in which it did not belong to the group may offset only the taxable income generated by such company.

The consolidated return has significant advantages, most notably the fact that the losses of some group companies can be offset against the profits of others and inter-company profits are eliminated in calculating consolidated income.

Special Tax situations

The EU has harmonized the regulation of the different special taxes. This harmonization affects alcohol consuming, energetic products such as hydrocarbons, electricity, tobacco labouing and other intermediate products.

These taxes apply in a unique phase, for very specific consuming, and especially in the fabrication, production and importation of the abovementioned activities. These indirect and instantaneous taxes apply only to Spain and not to the Canary Islands, Ceuta or Melilla.

Taxes on Individuals

Personal Income Tax

In General. This tax is currently governed by the Act 35 of 28 November, 2006 on Personal Income Tax, and by the Royal Decree 439 of 30 March 2007, approving the Personal Income Tax Regulations and Act 22 of 18 December 2009 that regulates the financing system of the Autonomous Communities.

Persons subject to the tax. Individuals who usually are resident in Spain are subject to personal income tax. A taxpayer is deemed to be a usually resident at Spanish territory if any one of the following conditions is met:

- The taxpayer is physically present in Spanish territory for more than 183 days in the calendar year, or
- The main centre or base of the taxpayer's activities or economic interests is in Spain, either directly or indirectly.

In the absence of proof to the contrary, an individual is presumed to be resident in Spain if his spouse (from whom he is not legally separated) and dependent underage children are habitually resident in Spain.

Individuals who are payers of non-resident income tax and are resident in a member state of the EU may elect to be taxed under Spanish personal income tax if they demonstrate that their habitual domicile or residence is in another EU member state and that at least 75% of their total income during the year was obtained as salary income or business income in Spain.

Taxable event. Taxpayers subject to personal income tax are taxed on their entire worldwide income, including the income of foreign entities in certain circumstances. The Act distinguishes a general tax base and a Savings tax base. The general base is the result of adding:

- 1 Salary income
- 2 Income from real estate
- 3 Income from movable capital derived from the assignment of own funds to entities related to the taxpayer.
- 4 Other income from movable capital which is not considered savings income, such as that derived from the assignment of the right to use the image and intellectual property.
- 5 Income from business activities.
- 6 Imputation of income from real estate.
- 7 Imputation of income from entities under the international fiscal transparency system.
- 8 Imputation of income from assignment of rights of publicity.
- 9 Changes in the value of units in collective investment undertakings established in tax havens.

The positive balance resulting from adding and offsetting against each other, exclusively, capital gains and losses which are not considered savings income, such as:

- 1 Income derived from an entity due to the status of partner, shareholder.
- 2 Income from movable capital derived from the assignment of own funds to third entities not related to the taxpayer or derived from related entities that meet the requirements in order not to be included as general income (indicated above); and
- 3 The monetary return or payment in kind on capitalization transactions and life or disability insurance contracts.

Only the capital gains and losses which are classified as savings income will be included and offset against each other. If such result is negative, it may only be offset against positive balances of this type of income which are shown in the following four years, and only the maximum limit allowed by the law may be offset.

Exempt income. Noteworthy among the exemptions is that relating to salary income for work performed abroad. This exemption will apply to salary income accrued during the days spent by the employee abroad up to a limit of EUR 60,100 per year, if certain requirements are met, namely:

- 1 Salary income must be paid in respect of work effectively performed abroad, i.e., the taxpayer must be rendering services physically abroad.
- 2 In the case of services rendered by related entities to each other, an advantage or benefit occurs or may occur for the recipient.
- 3 The recipient of the services must be either a non-Spanish-resident entity or a permanent establishment situated abroad of a Spanish-resident company, and
- 4 A tax identical or similar to the Spanish personal income tax must exist in the other country and such country must not be a territory classified as a tax haven, this requirement being deemed to have been met when in that territory a Convention for the avoidance of double taxation with an exchange of information clause with Spain is applied.

Net tax base reductions. There are certain reductions which will be used to reduce the general net tax base without making it negative, while any remainder will be used to reduce the savings net tax base. The main applicable reductions are:

- 1 The taxpayer's personal allowance.
- 2 Allowance for descendants.
- 3 Allowance for ascendants.
- 4 Allowance for disability:

Determination of the gross tax payable. For the calculation of the (national and regional) gross tax payable for the general net tax base which exceeds the amount of the personal and family allowances, a general tax scale and an Autonomous Community tax scale are established.

The maximum marginal rate (for the year 2013) of the general tax scale is 30.5% and of the Autonomous Community tax scale is 25.5%.

Withholding. Payments of income from movable capital, gains on shares or units in collective investment undertakings, and salary income are subject to withholding at source that is treated as a prepayment on account of the final tax.

Moreover, employers are obliged to make personal income tax prepayments in respect of compensation in kind paid to their employees. The base and rate of withholding and prepayment for the main types of income are detailed in the table below:

THE BASE, RATE OF WITHHOLDING AND PREPAYMENT FOR THE MAIN TYPES OF INCOME			
	Income	Base	Rate
Salary income	General	Total amount of compensation paid	24.75 / 56 % (min.) / (max.)
	Contracts lasting less than one year		(minimum 2 %)
	Special dependent employment relationships		Minimum 18 %
	Board of directors members		42 %
	Courses, talks, assignment of literary, artistic or scientific works		21 % ^t
Income from movable capital	General	Full consideration claimable or paid	21 %
Professional activities	General		21 %
	Commencement of activity and subsequent two years	Amount of revenues or consideration obtained	7 %

THE BASE, RATE OF WITHHOLDING AND PREPAYMENT FOR THE MAIN TYPES OF INCOME			
	Income	Base	Rate
Capital gains	Transfers of Real Estate or reimbursements of shares and participations in collective investment schemes	Amount to be included in the tax base, calculated according to the Personal Income Tax Regulations	21 % applicable to the first 6.000€ 25 %, from 6.000€ to 24.000€ 27 %, from 24.000€
	Cash prizes	Amount of the prize	21%
Other income	Lease/sublease of urban property	Amount of rent and other items paid to the lessor or sublessor - VAT	21%
	Intellectual an industrial property lease/sublease of movable property and businesses	Full amounts paid	24%
	Licensing of rights of publicity	Full amounts paid	21 %

Taxpayers who are required to file a personal income tax return must, when filing their returns, calculate the related tax payable and pay it over in the place and manner and by the deadlines determined by the Ministry of Economy and Finance. The deadline is usually June 30.

Non-resident

In general

Individuals and entities non-resident in Spain are liable for non-resident income tax on the income and/or gains they obtain in Spain.

Non-resident with a permanent establishment

Taxpayers obtaining income and gains through a permanent establishment in Spain are taxed on all the income and gains attributable to the permanent establishment. Permanent establishment in Spain of non-resident individuals are subject to the same tax rate.

Non-resident without a permanent establishment

Taxpayers obtaining income and gains without permanent establishment are taxed separately on each full or partial accrual of income and or gains obtained in Spain.

There are certain exceptions, including among others:

- 1 Interest and other income from the transfer of own capital to third parties obtained without the intermediation of a permanent establishment by residents of other EU-Member States (except tax havens).
- 2 Dividends distributed by a Spanish subsidiary to its EU parent company.
- 3 Income paid as a result of the international sale of goods.

The tax rates applicable to non-residents without a permanent establishment are as follows Please take note the tax treaties signed by Spain and certain special rules where the non-resident resides in an EU country.

TYPE OF INCOME	RATE (%)
General (including royalties)	24.75 %
Dividends	21 %
Interest	21 %
Gains from transfer or redemption of units/shares in the capital or equity of collective investment institutions	21 %
Capital gains	21 %

Expatriates

Spanish personal income tax legislation contains a highly attractive regime for personnel assigned to Spain by multinational enterprises, since it allows individuals who become tax resident in Spain as a result of their assignment there to elect to be taxed either under the Spanish personal income tax rules or under the non-resident income tax rules during the tax period in which their tax residence changes and for the next five tax periods.

If they choose the latter, expatriates are only taxed on income and gains considered to have been obtained in Spain, at a standard rate of 24.75%.

Double Taxation Treaties in force with Spain

Spain has signed a series of treaties with Germany, Saudi Arabia, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Czech Republic, Chile, China, Colombia, South Korea, Costa Rica, Croatia, Cuba, Denmark, Ecuador, Egypt, UAE, Slovakia, Slovenia, United States, Estonia, Finland, France, Greece, Holland, Hungary, India, Indonesia, Iran, Ireland, Iceland, Israel, Italy, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Morocco, Mexico, Moldova, Norway, New Zealand, Poland, Portugal, United Kingdom, Romania, Russian Federation, El Salvador, Serbia, South Africa, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, States of the former USSR (except Russia), Venezuela and Vietnam.

The main aim of these treaties is to give legal security and reduce taxation on foreign investors. Currently Spain has signed 91 double taxation treaties being 79 of them in force. The rest of them are pending with Armenia, Barbados, Georgia, Hong Kong, Kazakhstan, Kuwait, Namibia, Nigeria, Pakistan, Panama, Peru, Senegal, Singapore and Syria.

Value added tax

In General

The Spanish value added tax (VAT) legislation (Act Number 37/1992, which came into force on 1 January 1993) implements the EU Directives on VAT, whose main rules are harmonized with in the different member states.

The tax is of an indirect nature, its main feature being that it does not normally imply any cost to traders or professionals, but only to end-consumers as traders are generally entitled to deduct VAT borne against VAT charged.

Within Spain, VAT is not applicable in the Canary Islands, Ceuta and Melilla.

The Canary Islands Indirect General Tax (CIIGT) is based on VAT and is an indirect general tax levied on goods and services supplied in the Canary Islands by traders and professionals and on imports of goods. The standard CIIGT rate is 5 %.

Another indirect tax (tax on production, services and imports) is applicable in Ceuta and Melilla.

Taxable events

The following transactions are subject to the tax, when carried out by traders or professionals in the course of their business activities:

- 1 Supplies of goods, generally defined as transfers of the right to dispose of tangible property, although certain transactions that do not imply such transfer also may be treated as supplies of goods for the purposes of the tax;
- 2 Intra-EU acquisition of goods (in general, acquisitions of goods dispatched or transported to the Spanish VAT territory from another Member State).
- 3 Imports of goods, these transactions being subject to the tax regardless of whether or not the importer is a trader; and
- 4 Supplies of services.

Value Added Tax Rates and Exemptions

The standard VAT rate is 21 %, applicable to most sales of goods and services. A reduced rate of 10 % is applicable, amongst others, to sales and imports of:

- 1 Human and animal foodstuffs, except alcoholic beverages;
- 2 Water;
- 3 Pharmaceutical products; and
- 4 Private homes.
- 5 Theatres and cinemas.

VAT applies to the following services:

- 1 Domestic transportation of passengers and their luggage;
- 2 Hotels; and
- 3 Restaurants

There is a reduced VAT rate of 4% applicable to:

- 1 Bread, flour, milk, cheese, eggs, fruits and vegetables;
- 2 Books, newspapers and magazines not mainly containing advertising;
- 3 Pharmaceutical specialties;
- 4 Automobiles of handicapped people;
- 5 Prostheses of handicapped people; and
- 6 Certain officially sponsored housing.

Following the EU model, certain transactions are VAT-exempt (e.g., supplies of goods and services relating to insurance and financial activities, health, education and rental of residential property). As these transactions imply that no VAT is charged by the trader, their performance does not qualify for the right to deduct the VAT borne as described below.

Place of Supply of Taxable Transactions

Spanish VAT is levied on transactions that are considered to be performed within the territory in which it applies. The Act establishes rules to determine the place in which a certain transaction is carried out.

Thus, in the case of supplies of goods, the general rules establish that the supply takes place in the Spanish VAT territory when the goods are made available to the acquirer in such territory. However, if the goods are dispatched or transported, the place of supply is generally that from which such transport is initiated. Other specific rules apply to, for instance, supplies of goods to be installed or assembled prior to supply.

As a general rule, services are deemed to be supplied in the Spanish VAT territory when the supplier has a place of business in such territory (see text, below).

Taxpayer

The taxpayer is the person obliged to charge VAT. This obligation falls normally on the traders or professionals who make the corresponding supplies of goods or services subject to the tax.

Notwithstanding the above rule, some exceptions are established under which it is the recipient of the supply who has to account for the VAT due.

If the supplier has a permanent establishment in the Spanish VAT territory, it will be considered as the VAT payer of the corresponding supplies, regardless of whether or not it carries out the taxable transactions from such establishment. The status of VAT payer gives rise to obligations to:

- 1 Submit declarations relating to the commencement, modification and cessation of the activities that result in their being subject to the tax;
- 2 Apply to the tax authorities for a tax identification number and notify and substantiate the number in such situations as are required;
- 3 Issue and deliver invoices or equivalent documents for their transactions, and keep copies thereof;
- 4 Keep such accounts and records as are required (specific VAT books);
- 5 Submit regularly or at the request of the tax authorities information on its economic operations with third parties;
- 6 Submit the appropriate returns (and an annual summary return) and pay in the resulting amount of the tax, these returns being filed quarterly or monthly, depending on the turnover of the VAT payer; and
- 7 Appoint a representative to comply with its obligations when the VAT payers are not established (i.e., do not have their place of business or a permanent establishment) in the Spanish VAT territory.

This final obligation is only incumbent on traders not established in the EU, unless they are

established in a country with which instruments of mutual assistance exist.

Deduction of Input Value Added Tax

VAT payers are generally entitled to deduct from the amounts of VAT charged on taxable transactions carried out by them the amounts of tax borne, insofar as the goods and services acquired are used by them to perform the following transactions:

- 1 Supplies of goods and services subject to and not exempt from VAT;
- 2 Transactions that, although exempted, relate to international trade (exports or intra-EU supplies); and
- 3 Transactions performed outside the Spanish VAT territory that would have given rise to the right to deduct had they been performed within the territory.

The right to deduct also is conditional upon formal requirements, and it may be exercised in a period of four years.

Refunds

Where the VAT charged exceeds the deductible VAT borne, the VAT payer must pay the difference through its periodic monthly or quarterly returns.

If, at the end of the year, the amount of deductible VAT borne exceeds the amount of VAT charged, the VAT payer is entitled to a refund which, in general, can only be requested through the last return of the year. Such refund must be obtained, in general, within the six months following the deadline for filing the last return of the year (January 30). Special rules apply to VAT borne in Spain by non-established traders.

Inheritance and Gift Tax

Inheritance and gift tax applies to Spanish resident heirs, beneficiaries and donees and is charged on all assets received (located in Spain or abroad).

Non-resident beneficiaries also are subject to this tax as non-resident taxpayers and must pay the tax in Spain only on the acquisition of assets and rights (that are located, exercisable, or to be fulfilled in Spain).

The tax is calculated by adjusting a tax scale of progressive rates with a coefficient that takes into account the previous net worth and the degree of kinship with the donor.

As with other taxes transferred to the Autonomous Community Governments, inheritance and gift tax legislation has been adapted to recognize the legislative power of those governments to approve reductions in the tax base and rates and in the coefficients for adjusting the tax payable, based on the taxpayer's previous net worth.

The Government is considering the possibility of progressively eliminating this tax at central government level, although since it is a tax that the Autonomous Community Governments are responsible for collecting, it has already been eliminated in practice by some Autonomous Community Governments (Cataluña, Cantabria, the Basque Country and Madrid).

Transfer tax and stamp tax

Corporate Transactions

Transactions such as incorporation, reduction at companies, are subject to a general tax rate 1%. The Corporate Law has eliminated the cases in which tax is levied on mergers, spin-offs, asset contributions and exchanges of securities, these transactions being defined in accordance with the Corporate Income Tax Law (special tax neutrality regime).

Since December 2010, specific commercial operations such as the incorporation and social capital increase of companies are not subject to this tax.

Transfers of Real Estate

Real estate transfers are subject to a general tax rate 6%. The Autonomous Communities are entitled to apply a different rate in certain cases. Most of them have decided to apply a 7% to a 10% rate to real estate transfers and a 1% to 2% rate of Stamp Tax to certain transactions.

However, if the vendor is a company, the transfer of build or the first supply of buildings is taxed under VAT. Second and subsequent supplies of real estate by companies, traders, or professionals in the course of their activity may opt to pay either transfer tax or VAT. This option is applicable if the acquire is a trader or professional who can deduct all his VAT.

Transfers of shares of Spanish companies are generally exempt from any indirect taxation, except when more than 50 % of the capital stock of a company is transferred (or shares increasing the stake in a certain entity when the acquirer already has more than 50 %) and at least 50 % of the assets of such company consist of real estate located in Spain: in this case the transaction will be considered for indirect taxation purposes to be a transfer of real estate subject to transfer tax. Transfer tax is a cost to the acquirer/beneficiary.

Transfers of Movable Assets and Administrative Concessions.

Such transfers are subject to a general tax rate of 4%.

Mercantile Law Public Deeds

Certain mercantile law public deeds are subject to a general tax rate of 0.3 %.

Local Taxes

In General

Legislative Royal Decree Number 2 of 5 March 2004 regulates the local taxation system. The Local Authorities, under the referred legislation, are empowered to modify some points of this type of taxes. The referred regulation states the following taxes:

- Real Estate Tax. This tax is levied annually on owners of Urban or Rural Real Estates or on holders of rights *in rem*, based on the cadastral valued determined pursuant to the Property Cadastral regulations.
- Tax on Economic Activities. This Tax is levied annually on any professional or business activity done within the territory of the Municipality. Exempted are taxpayers who start a business activity and during their first two financial statements, individuals, and those companies whose annual turnovers in the previous year were under EUR 1.000.000.

Tax on Increase in Urban Land Value

This Tax is levied on the increase in the value of any urban real state, when the land is transferred or levies a security interest of the referred properties. This tax is deductible for personal income tax purposes from the transfer value of Real Estate.

Tax on Motor Vehicles

The Tax is levied annually on the ownership of any motor vehicles, on the basis of the horsepower of the vehicle.

Tax on Erection and Installation Projects and Construction work

The Tax is levied on the current cost of any Work or Construction activity that requires the permit of the Municipality.

FAQ'S

What steps are necessary for setting up a company in Spain?

The basic requirements for setting up a company in Spain are its incorporation before a Notary Public and its filing with the “Registro Mercantil” (“Mercantile Register”). Nonetheless, in order to meet these requirements, the following steps must be carried out:

- In case of doing it by means of a representative, granting of representative powers by the founder/s to the person who will be responsible for incorporating the company.
- Application for a Tax Identification Number (“NIF”) in the case of a legal entity, or a NIE (Foreigners Identity Number) in case of a natural person, of the partners and foreign directors of the company that is to be incorporated.
- Application for a certificate to prove that no other company is operating under the same name.
- Opening of a bank account for transactions and to obtain a bank certificate.
- Incorporation of the company before a Notary Public by means of a deed of incorporation.
- Application for provisional Tax Identification Number for the company.
- Settlement of the “Impuesto sobre Transmisiones Patrimoniales” –“Capital Transfer Tax”.
- Filing with the “Registro Mercantil” (“Mercantile Register”).
- Obtaining the final Tax Identification Number of the Company.
- Legalization of Official Trade Books.
- Tax procedures.
- Employment procedures.

For further information, please click on the following [worksheet](#).

What is needed in order to formalize a valid power of attorney in Spain?

A power of attorney may only be granted by someone with legal authority: either the grantor himself, in case of a natural person, or a legal representative or director with sufficient powers, if the grantor is a legal entity.

a) In case of a Spanish legal entity, the power of attorney is granted in Spain. The person granting the power of attorney must appear before a Notary Public. Neither the presence nor the acquiescence of the attorney is necessary.

b) In case of a foreign legal entity, the power of attorney is granted in the country of origin. The person granting the power of attorney must appear before a Notary Public of the country where it is granted. The power of attorney must then be legalized via the Hague Apostille of 1961 if the country where it is being granted is a country member of the 1961 Hague Apostille. If the country where the power is being granted is not a member, all the steps of document legalization applicable to each case must be followed. If the power is not granted in Spanish, then it must be translated by a sworn translator.

In both cases, the grantor should present the document which proves her/his capacity and standing to grant the power.

What documents are required for the granting of a power of attorney?

The only document that is required in order to grant a power of attorney is proof that the grantor is an authorized representative; specifically:

If the grantor is a natural person, a document that proves his/her identity.

If the grantor is the representative of a company, the public document which proves his authority.

If the grantor is the Secretary of a company, the public document which proves his office.

What is a NIE?

The applicable regulations require in certain cases that foreign natural or legal persons in Spain obtain a Foreigner Tax Identification Number. In the case of natural persons, “NIE”, and, in the case of legal entities, a Tax Identification Number, “NIF”.

Who needs a NIE or a NIF?

Foreigners who, due to their financial, professional and social interests, have any interests in Spain, will be given, for identification purposes, a sequential number that is personal, unique and exclusive. This number will be the identification number and must appear on all the documents that are issued or processed to such person.

Foreign natural persons or legal entities in Spain must have a Spanish NIE or NIF, among others, in the following cases of mercantile practice: when they are partners or directors of Spanish companies, to grant deeds of sale of real property and deeds related to rights over properties, to carry out any sort of financial transaction within Spain (for example, opening a bank account) or completing any government form from the Spanish “Oficina de Extranjeros” (“Provincial Immigration Office”) or “Agencia Tributaria” (“Tax Agency”).

When can I apply for a NIE?

A NIE may be previously applied for in the consulate of the country of origin, or after arrival in Spain, at the relevant Provincial Immigration Office (“Oficina de Extranjería”). However, it is advisable to begin application proceedings before initiating any formalities in connection with incorporating a company, to avoid delays in the process. The filing of the NIE application shall be made in person or by a legal representative. Representatives must have a power of attorney authorizing them to act on behalf of the foreigner to obtain his NIE.

A NIF must be requested as a requirement prior to incorporating a company in Spain or before making any delivery, providing or acquiring goods or services, collecting sums or making payments, or for the performance of any corporate or professional activity.

What documents are necessary when applying for a NIE?

For requesting a NIE you need:

1. A standard form (Form EX15).
2. Complete passport or travel identification or, when necessary, a valid identity card.
3. Statement of the reasons for the application, issued by a Notary Public.

Applications submitted by the representative appointed by the person concerned are accepted, if the following documents are attached:

4. Standard application form (Form EX15).
5. Updated copy of all the pages of the passport, certified by a Notary Public, legalized or apostilled when necessary.
6. Certification regarding the validity of the powers granted to the appointed representative.
7. Statement of the reasons for the application.

When requesting a NIF, the following documents are necessary:

8. Standard application form (Form 036).
9. A photocopy of the identity card of the applicant, passport and NIE.
10. Document certifying the existence of the foreign legal entity or “certificate of good standing/ k-bis” apostilled or authenticated and with a sworn translation into Spanish. This document may be the deed of incorporation in its country and the company by-laws filed with an official registry in its country or a certificate issued by a Notary Public or tax authorities certifying the company's existence.
11. Applications filed in Spain by the representative appointed by the company are allowed, provided these enclose representation documents, in other words, a power of attorney granted by the authorized representative of the non-resident company, duly formalized before a Notary Public and apostilled or authenticated and its sworn translation, if appropriate, which empowers a person to obtain a NIF.

Where can I apply for a NIE or a NIF?

NIE

In Spain: at the Government Delegations and Sub-delegations via their services and the Provincial Immigration Office (“Oficina de Extranjería”) corresponding to the place in which the procedure began (i.e. where the services are provided, where the company is resident or domiciled...).

Abroad: at the diplomatic mission or consular section of Spain located in the foreigner's country of residence, where the reasons for the application must be communicated.

NIF

At the Spanish Tax Agency (“Agencia Tributaria”) in Spain.

What are the most common types of companies in Spain?

The most common types of companies are:

- “Sociedad de Responsabilidad Limitada” –“Limited Liability Company”-;
- “Sociedad Anónima” –“Public Company”-;
- “Sociedad Anónima europea” –“European Public Company”-;
- “Sociedad Civil” –“Civil Company”-;
- “Sociedad Colectiva” –“Collective Company”-;
- “Sociedad Comanditaria” –“Limited Partnership”-;
- “Sociedad Comanditaria por Acciones” –“Limited Partnership by shares”-;
- “Cooperativa” –“Co-operative”-.

Nonetheless, in practice, most companies in Spain are either “sociedades anónimas” – “public companies (S.A.)”- or “sociedades de responsabilidad limitada” –“limited liability companies (S.L.)”-, since both limit the liability of the shareholders to the amount that they have invested. Thus, according to statistics from the “Registro Mercantil Central” - “Central Mercantile Register”-, approximately 98% of Spanish companies are “sociedades de responsabilidad limitada” –“limited liability companies (S.L.)”- and the remaining 2% are “sociedades anónimas” –“public companies (S.A.)”. The presence of other types of company is negligible.

For more information and for a comparison between public companies and limited companies, see the following [worksheet](#).

What documents are necessary for the establishment of a company in Spain?

The following documents are necessary when incorporating a company in Spain:

1. Power of attorney.

The founders should grant a sufficient power of attorney to the person responsible for incorporating a new company in their name in Spain.

2. NIE or NIF of the foreign partners and directors.

If the founders wish to appoint a non-resident person as their representative, then this person may give a power of attorney to someone who can apply for the NIE or NIF (depending on whether the new director is a natural person or a legal entity) on their behalf.

3. Certificate of availability of the company name for registration.

The chosen name of the new company must be requested to the “Registro Mercantil Central” –“Central Mercantile Register”- which will, in turn, confirm the reservation of the same and check to ensure that it is available and may be used by the new company.

The certificate of availability of the company name can be requested by the Notary Public through the use of Web-based technology.

In principle, this certification is valid for three months and should be renewed if the new company is not incorporated within that period. Nonetheless, no one else may reserve the same name within the following three months so, in practice, the reservation remains valid for six months.

4. Bank certificate proving that the relevant payment has been made.

When the new company is incorporated, the relevant sum is usually paid in cash or transferred to a Spanish bank account in the name of the new company with the words “sociedad en formación” –“in process of incorporation-” added at the end. For the opening of this account, the bank will require a document that proves that all the steps to create a company are being taken, normally a copy of a certificate stating that the name that the new company intends to use is not being used by any other company. The deed of incorporation shall include the receipt of the bank certificate.

5. Documents required by the Spanish Notary Public.

In addition to the documents mentioned in the preceding paragraphs, the following will also be necessary:

- By-laws of the new company including, at least, the minimum requirements stipulated by Spanish law.
- Original identification documents and powers of attorney of the founders that incorporate the company.
- Foreign investment declaration duly filed (Form D-1A, available through download from Aforix by accessing the following link: [Aforix](#)) . This document is compulsory although its purpose is only informative, and it must be delivered to the “Secretaría de Estado de Comercio” –“Secretary of State for Trade”- within the first month of the new company’s existence. The Notary Public may take charge of this task, if so wished.

6. Deed of actual ownership.

Notaries Public shall identify the natural persons (name, surnames, nationality and identification number) that own or control, directly or indirectly, a stake over 25% of the share capital or of the voting rights of a Spanish company or the natural persons that by

other means have control, either directly or indirectly, of the management of the aforementioned company. The companies that quote in a regulated market of the European Union or other assimilated countries are exempt of this.

7. NIF (Provisional Tax Identification Number) before the Spanish Tax Agency (“Agencia Tributaria”). Notaries Public may request the provisional NIF by electronic means on behalf of the company.

8. Settlement of the Tax on Capital Transfer and Stamp Duty at the relevant payment offices according to the address of the company.

9. Documents needed in the “Registro Mercantil” –“Companies Register”-.

The public deed of incorporation of the company must be submitted. It can be submitted by the Notary Public by electronic means.

10. Obtaining of the final NIF before the Tax Agency.

11. Fiscal registration of commencement of activity before the Tax Agency, if appropriate.

12. Registration of the company with the Social Security, if appropriate.

Which is the most appropriate manner for setting up a company according to my business needs?

As a general rule, setting up a business requires the creation of a “sociedad anónima” – “public company (S.A.)”- or a “sociedad de responsabilidad limitada” –“limited liability company (S.L.)”-- choosing which type of company depends, among other factors, on the strategy for each business and the activities to be carried out in each specific case.

A branch could be more convenient given the fewer legal obligations. A representative office will only be used in the event that the activities carried out are merely those of coordination, collaboration or promotion of the head office’s activity.

...S.A. or S.L.?

In general terms, a “sociedad de responsabilidad limitada” –“limited liability company (S.L.)”- is used because:

- 1- It requires contributing less capital.
- 2- It requires less administrative formalities to operate.
- 3- It offers more flexibility for resolutions adopted by the partners.

A “sociedad anónima” –“public company (S.A.)”- is used in the following circumstances:

- 1- If an activity reserved by the Companies Act will be carried out (banking companies, pharmaceutical companies, pension funds management companies, insurance companies, among others).
- 2- If significant movement of capital is expected.
- 3- If, as a shareholder, who will not take part in the management of the company, the intention is to be especially formal in the performance of the company’s acts, which may have greater impact on the investment (for instance: merger, transformation, dissolution, convening an annual general meeting, capital reduction, non-monetary contributions, etc.)

In either case, before making a decision, consulting a legal advisor is recommended.

...branch or subsidiary?

A branch office is not a separate legal entity. It is dependent on the head office and does not require a minimum allocation. This option may be of interest if the head office wishes to have greater control over the branch’s activity. Keep in mind that the parent company will be held accountable with its own capital for the activities of its branch.

A subsidiary, because it is an independent legal entity, generally has greater flexibility of action and shares the risk with its head office.

...branch or representative office?

The representative office will only be useful when no economic activity is to take place in Spain and only if it is engaged in coordination, collaboration or promotion of the parent company’s office.

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