

# SETTING UP BUSINESS IN SPAIN



## General Aspect

Spain is a country located in southwestern Europe on the Iberian Peninsula. Its mainland is bordered to the south and east by the Mediterranean Sea except for a small land boundary with Gibraltar; to the north by France, Andorra, and the Bay of Biscay; and to the west by the Atlantic Ocean and Portugal. Spanish territory also includes the Balearic Islands in the Mediterranean, the Canary Islands in the Atlantic Ocean off the African coast, and two autonomous cities in North Africa, Ceuta and Melilla, that border Morocco. With an area of 504,030 km<sup>2</sup>, Spain is the second largest country in Western Europe and the European Union after France.

Spanish is spoken all over the country and so is the only language with official status nationwide. Other languages have been declared co-official, along with Spanish, in (some of) their constituent communities where they are spoken:

Basque (euskera) (2%) in the Basque Country and Navarre;

Catalan (català) (17%) in Catalonia and the Balearic Islands; Valencian (valencià), a distinct variant of Catalan, is official in the Valencian Community;

Galician (galego) (7%) in Galicia.

Spain is formed by 17 Autonomous Communities; some of them have their own regulations.

## Legal Forms of Business Entities

Legal form	Feature	Remarks
<b>Private Limited Company</b> (Sociedad de responsabilidad limitada)	<p>Limited Companies are constituted in a public document issued by a Notary and have to be registered in the Companies Register. Limited Companies require a minimum social capital of 3.000 Euros, with there being no established maximum. The social capital is divided into company shares. The transmission of shares prior to the company's inscription in the Companies Register is not permitted. Before transferring shares to third persons, there is an obligation to prior notification to the directors, partners and companies of the same group, who have right of first refusal.</p> <p>Partners are not personally responsible for the company's debt beyond the amount invested upon subscribing their participation in the social capital, except for several cases fixed by the Law.</p>	Suitable for small and medium-sized companies because of the lower minimum share capital required and the high degree of flexibility in terms of management and organisation.

<p><b>Public Limited Company</b> (Sociedad anónima)</p>	<p>Public Limited Companies are constituted in a public document issued by a Notary and have to be registered in the Companies Register. Limited Companies require a minimum social capital of € 60,000 with there being no established maximum. Shares may be represented via titles or book entries, which imply the non-existence of a physical certificate of the possession of the shareholder.</p> <p>Shares can be easily transferred, except for several cases fixed by Law. Clauses stipulating a total non-transferability of shares are considered void.</p> <p>Shareholders are not personally responsible for the company's debt beyond the amount invested upon subscribing their share in the social capital, except for several cases fixed by the Law, e.g. veracity of the investments and their value, for all the contracts and obligations signed on behalf of the company prior to the registration in the Companies Register, etc.</p>	<p>Advisable for large businesses or projects, both commercial and industrial and require a substantial capital investment.</p> <p>There are some fields in which the investment must be mandatorily made through a Public Limited Company, e.g. banking, insurance and television, among others.</p>
<p><b>Civil Law Partnership</b> (Sociedad Civil)</p>	<p>Business relationship formed by two or more people who contribute with money, equipment and/or labour and divide the profit amongst them as they have agreed. Partnership does not require a minimum financial investment.</p> <p>Accordingly, any debts or financial obligations will also be divided among the parties.</p> <p>The agreement of constitution does not have to be registered in the Companies Register except, for example, when the parties contribute a real estate.</p>	<p>No minimum share capital is required and it does not have legal personality.</p>
<p><b>Branch of activity</b> (Sucursal)</p>	<p>Organisation depending on its parent, which can be located abroad. It has the same legal personality as its parent and runs a similar activity.</p> <p>A branch has to be set up through a public deed issued by a Notary and registered in the Companies Register.</p> <p>A permanent address and fiscal representative in Spain is required.</p>	<p>Suitable for foreign companies looking for a presence in Spain to initiate business or maintain contacts with business partners, especially in cases of uncertain success.</p>

## Organizational Questions

Topic	Feature	Remarks
<b>Commercial Register</b>	Companies of all legal forms must be entered in the Company Register, except Civil Law Partnership.	If a company is legally required to be registered, but takes up business operations before being entered in the Companies Register, partners are personally liable for any losses up to the point of registration.
<b>Register at the Tax Authorities</b>	Any company (company, partnership, sole Proprietorship) needs to be registered at the Tax Authority Register and get a tax number ( N.I.F ).	
<b>Bank Account</b>	To open a bank account individuals from UE states need a valid Identification document ( DNI or NIE ) or passport.  It is also necessary to be registered at the Tax Authority Register and get a tax number ( N.I.F ).  Companies need a certificate of the commercial register, the articles of association and the Tax Number.	
<b>Transfer of Goods and Machinery</b>	Within the EU goods and machinery can circulate freely. Imports from non-EU states to Spain cause customs, import VAT, and in some cases other special taxes depending on the product.	
<b>Transfer of Capital</b>	Within EU capital can be moved in and out of Spain without any restrictions, but in some cases is necessary to inform the authorities about the transfers.	Depending on the amount of the transfer of capital, needs to be informed to the tax authorities.
<b>Visa and Residence permit</b>	All EU citizens can set up business and take up self-employed work in Spain without the requirement of any permit, but they need to obtain a tax number (NIE).	

# Employment

Topic	Feature	Remarks
<b>Work permit</b>	EU citizens are released from the obligation to obtain a work permit. Foreigners from the aforesaid countries and their families will have to register their stay in Spain and obtain a work permit.	
<b>Labour law</b>	<p>Labour conditions in Spain are mainly regulated in the Labour Code (Estatuto de los Trabajadores), the convention of every specific economic sector and other labour laws.</p> <p>The minimum remuneration for work for full-time employees is specified by law. In 2017 that amount is 9.906,40 euros per year, 707,70 euros per month, and 23,59 euros per day.</p> <p>A minimum of 30 natural days of paid holidays a year is guaranteed (for a year of full working period, and 2.5 day per working month)</p> <p>Working hours are usually 40 hours a week.</p>	
<b>Social system</b>	<p>The social security system is feed by the employer contributions and the employee contributions.</p> <p>The payment of the social security contributions is absolutely compulsory for all companies and professionals.</p>	



# Taxation

Tax	Feature	Remarks
<p><b>Corporate Income Tax</b></p> <p>(Impuesto sobre Sociedades)</p>	<p>Companies which are considered resident in Spain are subjected to Corporate Tax (Impuesto sobre Sociedades).</p> <p>For a resident company, the taxable income is the result of the financial statements of that Company adjusted for disallowed expenditures, exempt profits, special deductions and losses carried forward.</p> <p>Basically the system is based on two kinds of companies:</p> <ul style="list-style-type: none"> <li>• Big companies (turnover of more than 10 millions Euros a year): taxation rate is reduced to 25% in taxable years starting from 2016.</li> <li>• Small and medium-sized enterprises with a turnover of no more than 10 millions Euro a year: in 2016, taxation rate is 25%, for the entire taxable base.</li> </ul> <p>New companies incorporated from 1/1/2013 the first tax period: taxation rate is 15%.</p> <p>For a non-resident company the taxable income is basically the Spanish source income.</p>	<p>Dividends received from another company are subject to corporate income tax at the normal rate of 25%.</p> <p>It is possible to apply an exemption, in case than a company holds 5% or more participation during one year, a 100% of deduction could be applied.</p> <p>Withholding tax is not applicable for dividends distributed to resident companies that have got also participation over 5% during the year before their acquisition.</p> <p>Dividends distributed between subsidiary and mother companies, both residents in countries of the EU, are exempt under certain circumstances, according to the EU parent subsidiary Directive.</p>
<p><b>Economic activity tax</b></p>	<p>There is a local tax over economic, professional and artistic activities undertaken in Spain.</p> <p>Individuals who undertake this activity are exempt, but they must declare it to Tax Administration.</p> <p>There is also an exemption on this tax for companies whose yearly turnover is lower than € 1,000,000.</p>	

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<b>Individual Income Tax</b>  (Impuesto sobre la Renta de las Personas Físicas)	<p>Individuals with habitual residence in Spain are subject to personal income tax.</p> <p>Usual residence:</p> <ul style="list-style-type: none"> <li>• Remain in Spain for more than 183 days during a calendar year. Temporary absences are considered.</li> <li>• Main base or centre of activities of business or economic interest in Spain.</li> <li>• Husband/wife and under age children resident in Spain.</li> </ul> <p>All income obtained in Spanish territory are subject to tax, regardless of the place where it was produced and of the payer's residence.</p> <p>The tax is levied on the disposable income, which is the result of reducing the rent in the amount laid down by the legislation as minimum personal and family income.</p> <p>The tax return can be filed individually or together with the other members of the family household.</p> <p>Progressive general tax rates from 19% / 21.50% to 43,5% / 48%, depending on the Autonomous Community.</p> <p>Special tax rates of 9,5% (10,5%, more than 6,000€; 11,5%, more than 50.000€) for savings income and capital gains.</p>
<b>Individual Income Tax</b> (Withholding tax)	<ul style="list-style-type: none"> <li>• Earned income: depending on the amount and other different circumstances.</li> <li>• Dividends, rates: 19%</li> <li>• Independent activities income: 15%</li> <li>• Administrators: 19% / 35%</li> <li>• Real estate leases: 19%</li> </ul>
<b>Value Added Tax (VAT)</b> (Impuesto sobre el Valor Añadido)	<p>VAT is due on sales of goods and services in Spain, UE acquisitions from UE countries and imports from other countries not UE.</p> <p>The rates are:</p> <p>General: 21 %</p> <p>Reduced: 10 % (house to live, health products, live shows,...)</p> <p>Super-reduced: 4% (bread, flavour, eggs, milk, books,...)</p>

<b>Payroll Taxes</b>	<p>A tax is withheld at source by the payer of wages, salaries, director's fees, bonuses, pensions and benefits.</p> <p>Withholding tax is based on progressive tax rates on the earned income and the personal and family situation of the person in order to do an adjusted prepayment of the final tax, but these will depend on the other source of incomes. From 2% to 45%</p>																		
<b>Social Security Contribution</b>	<p>For employers: on wages and salaries, social security is due. The minimum taxable basis is €825,60 and the maximum taxable basis is €3.751,20.</p> <p>The social security contribution is distributed as follows</p> <table border="1" data-bbox="595 408 1456 678"> <thead> <tr> <th>Concept</th> <th>Company charge</th> <th>Employee charge</th> </tr> </thead> <tbody> <tr> <td>General</td> <td>23.60 %</td> <td>4.70 %</td> </tr> <tr> <td>Unemployed</td> <td>5.50 – 6,70 %</td> <td>1.55 -1,60 %</td> </tr> <tr> <td>Salary fund</td> <td>0.20 %</td> <td>--</td> </tr> <tr> <td>Professional knowledge</td> <td>0.60 %</td> <td>0.10 %</td> </tr> <tr> <td>Total (%)</td> <td>29.90%</td> <td>6.35%</td> </tr> </tbody> </table> <p>Additionally a plus for accidents must be added and it's between 0.90 % and 8.10% depending on the activity of the employer. For autonomous workers: the contribution is a 29.90% of the bases (minimum basis of €893,10 and maximum of €3.642).</p>	Concept	Company charge	Employee charge	General	23.60 %	4.70 %	Unemployed	5.50 – 6,70 %	1.55 -1,60 %	Salary fund	0.20 %	--	Professional knowledge	0.60 %	0.10 %	Total (%)	29.90%	6.35%
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<b>Goods Transfer Tax:</b>	<p>Some Autonomous Communities have their own legislation. State law is liable to non residents or in case this legislation does not apply.</p> <p>When VAT does not apply, the transfer of goods or assets are subject to Transfer Tax, to the following rates over the transfer value:</p> <table border="1" data-bbox="595 922 1276 1133"> <tbody> <tr> <td>Buildings in general:</td> <td>7 - 11 % (1) (2)</td> </tr> <tr> <td>Goods (furniture, machines,...):</td> <td>4 % (2)</td> </tr> <tr> <td>Cars, boats and antiques</td> <td>5 -8%</td> </tr> <tr> <td>Company transactions:</td> <td>1%</td> </tr> <tr> <td>Stamp Tax:</td> <td>0.5 – 1,8 % (1)</td> </tr> </tbody> </table> <p>(1) Depending on the Autonomous Communities.  (2) This Tax is not compatible with VAT.</p>	Buildings in general:	7 - 11 % (1) (2)	Goods (furniture, machines,...):	4 % (2)	Cars, boats and antiques	5 -8%	Company transactions:	1%	Stamp Tax:	0.5 – 1,8 % (1)								
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<b>Corporate Groups</b>	<p>In Spain every company is considered as an individual unit but a corporate group of companies could pay corporate tax like a "consolidated group". It means that a group of companies could request the application of this regime to Tax Administration. The parent company of the group must have directly or indirectly at least 75% ownership in capital of other companies or 70% if they are negotiated in the stock market, the Spanish parent will be required to hold more than 50% of the voting rights.</p> <p>Spanish subsidiaries held indirectly through a foreign intermediary company will be able to be part of a consolidated group, as well as Spanish subsidiaries held directly or indirectly by a foreign parent (horizontal tax consolidation).</p> <p>The application of this regime has advantages like the possibility of compensation of profits and losses between the group companies or not compulsory documentation of transfer price operation between group companies.</p>
<b>Inter-company Relations</b>	<p>The basic principle is that the transactions with related parties have to be on arm's length basis.</p>
<b>Withholding Taxes</b>	<p>In general, non-residents withholding tax is 19% for UE residents, 24% for non UE residents (19% for dividends and capital gains) with non treaty countries.</p> <p>Double Taxation Agreements state lower or none taxation. In these cases, the non resident must justify that he is a resident of a country with which Spain has signed the Agreement.</p>
<b>Special regime for companies that have shares of foreign companies (ETVE)</b>	<p>There is a special regime (ETVE) for companies that only have shares (minimum 5% or acquisition price of the participation over 20 million Euro) of foreign companies to conduct business outside.</p> <p>These companies have not to declare in Spain dividends from their subsidiaries (or permanent establishment located abroad that distributed income to a non resident shareholder) according to the following:</p> <p>The Spanish company should own the non resident company shares for one year before obtaining the dividends.</p> <p>The non resident company should be taxed with a similar corporate tax to pay in the foreign country and not be resident in a tax heaven.</p> <p>The dividends must come from economic activity in the foreign country.</p> <p>Also the capital gain for the selling of the shares of the subsidiary foreign company would not be included in the corporate tax of the Spanish company (ETVE). In this case, the buyer should not be related with the seller of the shares.</p> <p>The company should have economic substance.</p> <p>To apply the regime the Spanish company should ask for to Tax Administration.</p>
<b>Inheritance and gifts tax</b> (Impuesto sobre sucesiones y donaciones)	<p>This Tax must be paid by individuals (not companies) when there is an acquisition of rights or goods in case of inheritance or gift.</p> <p>Individuals resident in Spain are subject to this Tax regardless of the location of the goods. The Tax has a progressive rate up to 36,5 %, depending on the Autonomous community.</p> <p>A reduction of 95 % could be applied under certain circumstances over: transfer of shares (family companies).</p> <p>Some Autonomous Communities have their own legislation. Most of them have established deductions with some relatives (from to 99%) that reduce or practically abolish inheritance taxation. State law is liable to non residents or in case this legislation does not apply.</p>

# Non residents taxation

**Individuals and entities non resident in Spain are taxed only on their incomes from sources within Spain.**

The Double Taxation agreements signed by Spain and most of other countries avoid the double taxation of certain kind of incomes. The law distinguishes between income obtained through a permanent establishment (taxed at 25%) and income obtained not through a permanent establishment, taxed separately for each type of rent and taxed at 24% or 19% for dividends, interests and capital gains and other tax rates more specifics.

Most income obtained in Spain by non resident is subject to withholding tax.

Individuals resident in a State Member of the European Union in some conditions can request the application of a special regime which purpose is to calculate their liability in Spain according to the rules existing for resident taxpayers.



This material has been prepared by Antea Alliance of Independent Firms. It is intended as general guide only. Accordingly, we recommend that readers seek appropriate professional advice regarding any particular problems that they encounter. This information should not be relied on as a substitute for such an advice. While all reasonable attempts have been made to ensure that the information contained herein is accurate, Antea Alliance of Independent Firms accepts no responsibility for any errors or omission it may contain whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies upon it.

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