

# Spain

## Legal overview

### Executive Summary

Spain is relatively lightly regulated when it comes to corporate formalities. Many documents can be completed in an electronic format and company registrations are cheap, simple and many filings can be completed over the internet.

### Registered companies and partnerships

The two most common ways for a non-Spanish company to establish a Spanish presence are through either a Spanish resident subsidiary company or a Spanish permanent establishment (such as a branch office).

A company that is incorporated in Spain is automatically a Spanish resident unless an applicable double tax treaty provides otherwise.

A non-Spanish incorporated company is a Spanish tax resident if it has its “central management control” in Spain (subject to any applicable double tax treaty). However, in determining the status a number of factors must be considered and no single factor is necessarily conclusive.

### Classification of registered companies

In Spain, there are two principal types of company:

#### **Public Limited Company (“Sociedad Anónima”)**

These may have the following features:

Minimum capital of EUR60,000 with an initial paid up capital of at least 25%

## **Capital divided into shares**

Transfer of shares and freedom to transfer the shares

Shareholders have limited liability according to their own contribution

Types of contributions include money and assets, although assets require an expert valuation to confirm the value

Corporate bodies may have a General Meeting and Administrative Board

An Administrative Board is formed of either a sole director, two directors (individual or joint), or a Board of Directors (usually led by a Chief Executive Officer)

Term of office is six years maximum. This is renewable and may be revoked at any time

### **Limited Liability Companies (“Sociedad Limitada”)**

These may have the following features:

Minimum capital of EUR3,000 all of which must be paid up on incorporation

Capital divided into shares

Free transfer of shares to spouse, ascendants’ and descendants’ relatives, partners and companies of the Group except statutory provision

Shareholders have limited liability according to their own contribution

Types of contributions include money and assets but an expert valuation report on the value of assets is optional. The contribution is the Sole responsibility of the person providing the contribution and his/her own successors

Corporate bodies may have a General Meeting and Administrative Board

An Administrative Board is formed of either a sole director, two or more directors (individual or joint), or a Board of Directors (usual-

ly lead by a Chief Executive Officer)

Term of office is indefinite excepting by-law provisions and may be revoked at any time.

## **Constitutional documents and formalities**

The main constitutional document for a company is its articles of association. All registered companies must have articles of association and a company must register its articles of association at a public registry unless it adopts the statutory template model articles. In addition to its articles of association, a company has a memorandum of association. In Spain, this is a very simple document and provides basic information about, for example, the initial shareholders.

Other formalities that are required for the setting up of a company include;

- Certification of the corporate name;
- Bank deposit for the social capital amount;
- Obtaining individual NIE by the partner or by the director of the company;
- Public deed before a Notary;

Obtaining provisional VAT number and communication of the Company tax base and the Spanish VAT number to the Tax Office;

- Liquidation of the Constitution tax in the Region's Tax Office: 1% (currently exempt);
- Registration of the public deed in the Commercial Registry;
- Statement of Investment in the Foreign Investments General Directorate: one month from the public deed; and
- Obtaining a definitive VAT number.

## **Share capital**

Share capital only applies to a company limited by shares.

In the Limited Liability Societies, the share capital must be fully paid up at the time of incorporation. Otherwise, in Public Limited Companies, at least 25% of the share capital must be fully paid up at the time of incorporation.

In Limited Liability Companies, the liability of the shareholders is limited to their contribution to the issued shares.

## **General Meetings**

The General Meetings of the Capital Companies can be ordinary or extraordinary.

The ordinary General Meeting must be held within the first six months of each year in order to approve the corporate management of the company and the accounts of the previous fiscal year.

If no prior notice has been given, any meeting shall be considered as an extraordinary General Meeting.

The General Meeting will be able to deal with any matter, without the need for prior notice, provided that the holders of the entire share capital are present or represented and all the participants accept the holding of the meeting without prior notice.

Some of the decisions of a company, particularly on certain constitutional issues, must be decided by the shareholder(s) of the company.

## **Directors**

A private limited company requires at least one director. The director or directors usually have the general day-to-day management of the business and take all decisions except for those reserved for the shareholders.

The management of the company will become a sole administrator, several administrators or a board of directors.

The administrators of private limited companies may be natural or legal persons.

The directors owe fiduciary duties to the company which are codified in company legislation. This means they are under an obligation, as an example, to act in the best interests of the company and not just follow the shareholders' instructions.

## **Financing of a company**

Companies are financed in a number of ways:

- Capital contribution from shareholders in the form of shares.
- Loan, debt and bank finance.
- Equity investment from private equity funds.
- Grants.



From the directors'/shareholders' point of view, the advantage of limited liability in practice might be negated to the extent that any personal guarantees are required to be given to third party funders.

## **Commencement of business**

There are various requirements that need to be filed before a company may commence business. A simple company formation will generally take about three days to **register the public deed** of the constitution. A company will need to register with the tax authority and will need to open a bank account. For an overseas company, it can take between three and four weeks to be ready to trade.

## **Mergers and acquisitions**

Private limited companies are normally sold via private negotiations. Where one entity acquires the shares of another it is referred to as a "share-sale". Sometimes, it can be preferable to purchase the business of another entity, leaving liabilities with the target corporate entity, referred to as an "asset-sale".

Takeovers of public limited companies in Spain are strictly governed under the relevant codes of practice. There are restrictions on offering shares in private companies for sale to the public and such negotiations are usually conducted with a small number of interested parties on a confidential basis.

## **Corporate insolvency**

If a company becomes insolvent, the procedures that apply include a liquidation of the business, administration or some form of rescue package.

Where a company goes into administration or is wound up on grounds of insolvency, the directors' conduct is reviewed. If directors have acted contrary to insolvency laws, they can face disqualification proceedings or, in a serious situation, proceedings to recover monies from them personally.

Rescue mechanisms include what is known as a "company voluntary arrangement". This is when the company and its creditors come to an agreement which is implemented and supervised by a qualified insolvency practitioner and may involve the creditors

being paid a proportion of the monies they are owed in full and final settlement.

Under an administration, the company is given breathing space under which there is a moratorium to allow it to be rescued or re-organised, or have its assets realised, following which the company is wound-up.

## **Winding up of companies**

Winding up or liquidation is a last resort, although it may be the simplest and most effective way of applying pressure to the company. This involves the appointment of a liquidator who must be a qualified insolvency practitioner who collects in and sells the company's assets and distributes the cash received in accordance with legal obligations. There are two types of liquidation; either a compulsory liquidation by order of the Court (obligatory), or a voluntary liquidation by resolution of the company (voluntary).

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# Tax overview

## Company Registration

### Constitutional documents and formalities

As mentioned above there are different types of company with different characteristics, although both have articles of association as their main constitutional document. Other formalities for the setting up of a company.

As well as the matters mentioned above, those setting up a company will need to deal with the following:

- Certification of corporate name
- Bank deposit for the initial capital amount
- Obtaining individual NIE by the partner/natural person or by the director of the company
- Public deed executed before a Notary
- Obtaining a provisional VAT number and informing the Tax Office of the Company tax base and Spanish VAT number
- Payment of the Constitution tax in the Region's Tax Office is 1% (currently exempt)
- Registration of the public deed in the Commercial Registry
- Statement of Investment in the Foreign Investments General Directorate one month after the public deed
- Obtaining the definitive VAT number
- Formalities for the establishment of a branch office
- Setting up a branch requires different formalities. These include;
- Providing General Meeting Minutes and Statutes of the parent Company with a certified and apostilled translation into Spanish
- Payment of a bank deposit for the amount decided by the parent company
- Notarial deed agreement of branch establishment
- Obtaining provisional VAT number and informing the Tax Office of
- Registration of the public deed in the Commercial Registry. No certification of the corporate name is required
- Statement of Investment in the Foreign Investments General Directorate one month after the notarial deed

## **Setting up taxation**

Companies will need to make a payment of the Corporate Transactions (OOSS). This is 1% of capital, although it is currently exempt.

## **National current benefit taxation**

### **Corporate income tax**

Taxable income includes worldwide profits less deductible expenses and is based on the income disclosed in the financial statements. Some expenses are not considered deductible for tax purposes.

The general Corporation Income Tax ("CIT") rate in Spain is 25%. Other tax rates may apply, depending on the type of company that is taxed and the type of business carried out.

Special types of charges include:

Small entities: 25%

Cooperatives fiscally protected: 20% (extra-cooperative results will go to the general rate)

Newly created entities (except those that should be taxed at a lower rate), that carry out economic activities, will be taxed at 15% in their first tax period, subject to requirements.

Tax credits for foreign investors:

50% tax credit on CIT levied on income obtained in Ceuta and Melilla through companies established and carrying on activities during a full business cycle in these areas because of their specific geographic location.

50% tax credit of the corporate tax quota corresponding to results obtained by specially protected cooperatives.

99% tax credit on the CIT levied on income obtained from the supply of local public services, except when the state company in question is owned, partially or wholly, by a quoted/non-quoted company or individual.

As for deductions, only a percentage of the investment made (%)

deduction), the value of which varies from one modality to another, is deductible. The variable deductions are a fiscal incentive to encourage a diverse range of activities such as:

- Research and development;
- Technological innovation;
- Creation of employment for disabled workers;
- Creation of employment for entrepreneurs; and
- Spanish and foreign film productions and live shows.

#### **Trade Tax** (local profit tax)

There is no local profit tax in Spain.

#### **Other taxes** (VAT, property taxes)

Spanish VAT is payable on supplies of goods and services carried out in Spanish VAT territory and on imports/intra-EU acquisitions of goods and services.

There are three rates for the different types of goods and services, which are as follows:

- Ordinary rate of 21%, applied to regular supplies of goods and services;
- Reduced rate of 10%, applied to basic necessities; and
- Super reduced rate of 4%, applied to basic necessities other than those classified under the reduced rate.

#### **Activities Tax** (IAE)

To calculate the fee that will be paid, different factors are involved, but the most important one to consider is the rate corresponding to the declared activity.

Individual regulations define the activities any mad, for example, set the minimum qualifying quotas. Regulations may also set a percentage applicable to a different levels of production. In addition, there may be regulations relating to quotas of physical space in square metres where such activity must be carried out.

On the other hand, in some activities, there is the option to choose between a municipal, provincial or national fee, depending on where the company will develop the activity. A weighting coefficient must be applied to the amount of the resulting tariff.

Exemptions to IAE apply for:

- The first two exercises when activity starts; and
- Turnover less than EUR1,000,000

### **Property tax (IBI)**

The tax base of the property tax is calculated using criteria such as location, urban situation, execution costs, age of the property, use, quality and market values.

The value of the taxable base is determined for each site from the data provided by the real estate register and will consist of the registered value of the land and the value of the construction.

The legislation that determines and regulates the value of a property is the regulatory rules of the Real Estate Cadastre (Real Estate Cadastre Law 48/2002).

## **Treaties for the avoidance of double taxation**

### **General rules**

Spain has subscribed to bilateral conventions with several countries in order to avoid double taxation. Companies should obtain up to date advice on which countries and the relevant rates.

### **Benefit distribution** (national withholding taxes, International tax exemption options)

The general dividend withholding tax rate in Spain is 19%. This rate can be reduced to as low as 0% under legislation, double tax treaties or the EU Parent-Subsidiary Directive.

### **Tax treatment of losses**

Losses that have been subject to liquidation or self-assessment may be offset with the positive income of the following tax periods without a time limit for the periods beginning on 1 January 2015 or later.

There is, however, a limit of 60% of the tax base before the application and payment of the reserved capital from 1 January 2016.

## **Employer obligations** (salary taxes, social security)

There are two types of employer, which are treated differently and with the following characteristics:

**Self-employed** (single relationship and self-employed workers) requires:

- Communication with the Tax Office (Tax Authorities)
- Registration in the RETA (Special Regime for Self-Employed)
- Monthly payment to social security
- Self-declaration of tax e.g. VAT, personal income tax (IRPF)

**Subordinate work** (worker-employer relationship)

Employer obligations:

- Enrolment of staff in the Social Security Register (INPS)
- Employment Agreement setting out the conditions of employment
- Minimum payment of the minimum professional wage and compliance with any relevant collective agreement
- Monthly/quarterly payment of Income Personal Tax (IRPF) – Public Finance
- Monthly/quarterly payment to social security

Employee obligations:

- Meet and agree to the conditions contained in the contract of employment/work
- Comply with employment legislation

It should be noted that the Spanish Workers Statute imposes a legislative framework on the relationship between employers and employees. Collective agreements also set minimum standards for certain sectors and/or specific activities which the employer must comply with.

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