

DOING BUSINESS
IN SPAIN (COVID-19 TIMES)

WAYS TO INVEST IN SPAIN

COMPANIES

In Spanish law there are two (2) main types of companies for conducting investment operations (financial, asset holding, business, etc.), these are: S.L. (Sociedad Limitada [Private Limited Company]) and S.A. (Sociedad Anónima [Public Limited Company]). Their main features are:

- The Share Capital is [sic: at least] €60,000 in the S.A. represented by registered or bearer shares actions (with the possibility of 25% disbursement) and [sic: at least] €3,000 in an S.L. represented by registered ownership interests (100% disbursement);
- Transfers or sales are less restricted in the S.A. (especially in cases with bearer shares) while these are usually syndicated and more restricted in the S.L.
- The Governing Body can be structured in the same way in the S.A. and S.L.: Sole Director, Joint and Several Directors, Joint Directors and Board of Directors (from 3 to 12 members in the S.L. and 3 or more in the S.A. with no maximum number) and with the relevant duration, since in the S.A. the maximum term is six (6) years (with the possibility of extension or renewal), while in the S.L. the position may have an indefinite duration
- Special Companies (for special investments). While the S.L. is the most commonly used form when establishing a company (more than 92% of cases) the

performance of certain activities, regulated by a special law, requires the establishment of an S.A., such as in the fields of banks, insurers or, as far as Real Estate is concerned, SOCIMIs (Sociedades Anónimas Cotizadas de Inversión Inmobiliaria [Real Estate Investment Trusts]).

- The approximate period for making a company operational is typically between 2 to 3 weeks in the S.L. and 3 to 4 weeks for the establishment of an S.A.

PROCEDURE FOR ESTABLISHING COMPANIES

- Obtaining the company name.
- Powers of attorney if either (i) the partners or shareholders do not sign the deed of incorporation or (ii) the partners or shareholders are, in turn, companies. When the powers are granted abroad, they must be legalized (apostilled) and translated into Spanish.
- Drafting of the company's articles of incorporation.
- Public deed of incorporation to be issued before a Spanish notary public.

- In cases with multiple partners or shareholders; and depending on the different needs or interests in the Target company to be established by each of the shareholders, assess the need to establish Shareholders' Agreements to govern the relationships between the shareholders themselves, and between the shareholders and the company: corporate bodies, transfer of shares, economic matters (dividends, funding)
- Registration in the Commercial Registry (registering the establishment)
- Request the NIF (Número de Identificación Fiscal [Tax Identification Number]) or, where appropriate, the NIE (Número de Identificación de Extranjeros [Foreigner Identification Number]) for both the Company and its foreign partners and directors, whether they are individuals or legal entities.
- Foreign investment: (in the case of foreign partners or shareholders) certain

administrative (government) notifications must be made prior to movement of capital in order to limit matters relating to tax fraud, money laundering, etc.

BRANCH

Finally, it is important to highlight the concept of a "Branch" as an establishment that is secondary to the Holding or Parent Company (Spanish or foreign) and has a permanent representative status and independent management, through which the activities of the company are carried out.

Branches do not have their own legal personality and, therefore, they are entities without limitation of liability. Notwithstanding the above, branches must be established through a public deed and registered in the Commercial Registry.



RESTRUCTURING THE COMPANY

If a company has financial difficulties as a result of the economic situation, it is possible to negotiate with its creditors a refinancing of its payment obligations through a “pre-bankruptcy” procedure. This procedure provides for a period of 3 months for such negotiations, and during this time the company’s assets cannot be executed.

If refinancing is not successful, it is possible to file for bankruptcy and try to negotiate through a bankruptcy agreement, which is an agreement with the company that removes and waits for payment obligations that must be approved by the majority of creditors, although it affects all of them.

There is also the possibility of transferring part or all of the company’s business activity (“productive unit”) to a third party, so that it can continue this activity as a successor company. Usually this transfer includes the obligation to take over the labour contracts signed by the company.



TAX MATTERS

IS (IMPUESTO SOBRE SOCIEDADES [CORPORATION TAX])

Nature: direct tax that taxes the global income of companies resident in Spain.

Residence: Companies established under Spanish law, whose registered offices are located in Spanish territory or whose places of actual management are in Spain, are considered resident in Spain.

Tax base: This is the result of applying the applicable off-balance-sheet adjustments to the result of the financial year.

Applicable tax rate: The general rate is set at 25% (15% if a new activity is started). There are also reduced rates depending on the nature of the entities.

Dividends and capital gains: These are exempt if the stakeholding that generates them is greater than 5% (or €20 million) and it is held for one year.

Additionally, if the entity that generates them is foreign, then that company must either be subject to an IS analogous to the Spanish one and pay at least 10% in tax, or else it must reside in a jurisdiction with which Spain has signed an Agreement to prevent double taxation.

Limitation on net financial expense deductibility: This is limited to 30% of the operating profit, although net financial expenses

up to €1 million are deductible in all cases. In addition, the deductibility of financial expenses arising from debts aimed at the acquisition of capital stakes is limited if certain restructuring operations occur subsequently.

Offsetting of a negative tax base: This is limited to a certain percentage (70%, 50% or 25%) according to the Net Turnover for the financial year. In all cases, €1 million may be offset.

Related party transactions: Obligation to value at market price when applying the approved valuation methods. Need for documentation depending on the volume of related party transactions.

Special schemes: The most relevant are:

- **Small companies:** For those whose Net Turnover has not exceeded 10 million in the previous year.
- **Tax consolidation:** Applicable when the percentage stake in the subsidiaries is not less than 75% of the capital and they have the same tax year.
- **Restructuring operations:** Ensures tax neutrality in mergers, divestitures and other restructuring operations.

Formal Obligations: split payments in April, October and December of the current year; submission of the tax return within 25 days after 6 months from closing.

IRPF (IMPUESTO SOBRE LA RENTA DE LAS PERSONAS FÍSICAS [INCOME TAX])

Nature: tax that is levied upon the global income obtained by individual persons resident in Spain.

Residence: An individual is considered a resident in Spain when they remain more than 183 days in Spanish territory or the centre of their financial interests is in Spain. Residence is presumed when the centre of vital interests is in Spain.

Applicable tax rate: certain income such as work or economic activity income is taxed on a progressive scale up to a maximum rate of approximately 50%. Other income such as savings (interest, dividends or equity gains) is taxed at a maximum rate of around 23%. These rates may vary depending on the Autonomous Community.

International worker mobility incentives: inpatriates can enjoy, upon prior request, a special scheme (paying taxes as non-residents when they meet certain requirements); and expatriates can take advantage of an exemption for income arising from work performed abroad..

IRNR (IMPUESTO SOBRE LA RENTA DE NO RESIDENTES [NON-RESIDENT INCOME TAX])

Nature: tax that is levied upon income obtained in Spain by individuals or legal entities that are not tax residents in Spain.

Permanent Establishment (Establecimiento permanente [EP]): income attributed to the EP is taxed according to the rules for IS.

Obtaining income without EP:

Tax rates: These are established based on the type of income, with the most notable being: the general rate of 24% (19% for EU residents) and 19% for dividends, capital gains and interest.

Main exemptions:

Exemption for capital gains (excluding properties, real estate companies and substantial stakes in companies) and interest obtained by EU residents.

Exemption for dividends, interest and fees under EU Directives, when they are paid to EU-based affiliates and certain requirements are met.

The possible application of Agreements to prevent double taxable may reduce or even eliminate the taxation.

INCENTIVES FOR INTERNATIONAL SENIOR MANAGERS

International executives can pay tax in Spain on income obtained in Spanish territory (with the exception of income from employment, which will all be taxed, regardless of the country of origin). A fixed tax rate of 24% on the first 600.000,00 euros and 47% on the first 600.000,00 euros will be applied to income subject to tax in Spain.

INDIRECT TAXES

VALUE ADDED TAX (VAT)

Nature: indirect tax that is levied on deliveries of goods, intra-community acquisitions and imports carried out by business owners or professionals in Spanish territory (excluding Canary Islands, Ceuta and Melilla). VAT is based on a system of neutrality in which business owners and professionals charge it to their customers and pay it to their suppliers. If the VAT paid exceeds the VAT charged, the business owner receives a tax credit, and if the opposite is the case, the excess must be paid.

There are numerous exemptions applicable to the real estate, financial and health care sectors. The tax rates are 21%, 10%, and 4%.

TPO (TRANSMISIONES PATRIMONIALES ONEROSAS [ONER- OUS ASSET TRANSFERS])

Nature: indirect tax that is levied on onerous transfers of goods and rights as well as on the establishment of property rights for use, enjoyment, warranty, personal rights (loan) and administrative concessions made by persons or entities other than business owners or professionals in the exercise of their activity, as well as certain real estate transactions not subject to or exempt from VAT.

Tax rates: 1%-11% depending on the taxable event and Autonomous Community.



LEGAL ACTS TAX

Documented legal acts.

This includes, among others, the granting of public documents that can be registered. Types: 0.5%-2.5%.

CORPORATE TRANSACTIONS

A tax that applies a rate of 1% to certain corporate transactions such as capital reduction or dissolution with return of contributions.

The establishment of companies and capital increases, among others, are exempt from this tax.

IAE (IMPUESTO SOBRE ACTIVIDADES ECONÓMICAS [ECONOMIC ACTIVITIES TAX])

Impuesto local que grava a las sociedades con INCN igual o superior a 1 millón de euros por realizar actividades en un determinado municipio, provincia o en todo el territorio español mediante la aplicación de tarifas definidas en función de la actividad económica desarrollada.

IMPUESTO SOBRE BIENES INMUEBLES (IBI)

A local tax that is levied on companies whose Net Turnover is equal to or greater than €1 million for the performance of activities in a given town, province or the entire Spanish territory, by applying rates that are defined based on the economic activity that is performed.

IBI (IMPUESTO SOBRE BIENES INMUEBLES [PROPERTY TAX])

A local tax charged on an annual basis that is levied on the holding of real estate without considering its use for business or private purposes. The taxable base thereof is the cadastral value of the property.

ICIO (IMPUESTO CONSTRUCCIONES, INSTALACIONES Y OBRAS [CONSTRUCTION, FACILITIES AND WORKS TAX])

A local tax that is levied on any construction, installation or work for which a building permit is required. Maximum rate 4% of the cost of the work (depending on the town).

TAX ON THE INCREASE OF VALUE OF URBAN PROPERTIES

This taxes the increase in land value that occurs as a result of an inter vivos or mortis causa transfer.

INHERITANCE AND DONATIONS TAX

Autonomous Community and annual tax that is levied on the wealth of individuals. There are significant differences by territory in terms of exemptions.

EMPLOYMENT ISSUES

The employment relationship is regulated by: legal and regulatory provisions, collective bargaining agreements, employment contract; and by local and professional practices and customs.

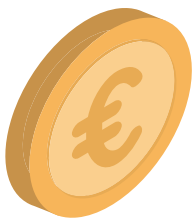
- Minimum regulation: ET (Estatuto de los Trabajadores [Workers' Statute]).
- Specific regulation: Collective bargaining agreement applicable to the Company's activity. The collective bargaining agreement improves the working conditions set forth in the ET.

TYPES OF CONTRACTS

For an indefinite time

Temporary

Internship



SALARY

According to the salary agreed in the employment contract, which cannot be less than the one established in the collective bargaining agreement for the applicable professional category. Under no circumstances may the established salary be less than the SMI (Salario Mínimo Interprofesional [Interprofessional Minimum Salary]) which is set at Euro 950,00 for the year 2020 (Euro per year at 13.300,00).



WORKING HOURS

As agreed in the contract or in the collective bargaining agreement and they cannot exceed a maximum of 40 hours per week calculated as a yearly average. In any case, the annual maximum ordinary working hours are 1,826 hours (ET) or as set out in the collective bargaining agreement, if less.



HOLIDAYS

30 calendar days (ET) or the duration set out in the collective bargaining agreement or in the contract if it is more beneficial.



COMPANY REGISTRATION WITH SOCIAL SECURITY AND LEGAL NOTICE OF THE OPENING OF A WORK CENTRE

The Company must obtain a CCC (Código Cuenta de Cotización [Contribution Account Code]) which is the Company's registration number with social security. A contribution account code must be obtained for each province in which the Company has work

centres. Obligation to submit the legal notice of the opening of a work centre to the competent Labour Authority within 30 days of the commencement of the activity.

FOREIGN EMPLOYEES

Non-EU foreigner: It is necessary to obtain a work authorization in advance (depending on the specific situation, there are different types of authorizations)

EU foreigner: A Foreigner Identification Number (NIE) is required:

In both cases, they must be enrolled in Social Security to obtain their social security enrolment number.

MANAGEMENT TEAM: PARTICULARITIES TO TAKE INTO CONSIDERATION

As for the Company's management team, and in particular, those who will hold the position of General Manager of the Company, the adequacy of the contractual relationship must be analyzed in terms of the powers held by the management and representation of the Company, as well as the potential participation in the share capital. Thus, the contractual link with the Company, could be classified as:

- Ordinary labour relationship (Workers' Statute).
- Special employment relationship (Royal Decree 1382/1985, of August 1, 1985, regulating the special employment relationship of senior management personnel)

FLEXIBILITY MEASURES FOR COMPANIES IN THE COVID-19 ENVIRONMENT

During the current health crisis, the Spanish government has adopted a series of measures in the field of employment that aim to support the maintenance of employment and provide companies with mechanisms that allow them to reduce structural and social security costs in the face of the general fall in activity that affects all sectors. Within these measures, the Temporary Regulation of Employment Files for Force Majeure and Economic and Technical Causes should be highlighted,

The aim of this project is to contribute to the temporary adjustment of the companies' structural costs.

SOCIAL SECURITY CONTRIBUTIONS

In general, the Company must contribute for all salary items recorded in the payroll receipt. The taxable base used for the contributions consists of the monthly salary items and the proportional part of the extraordinary payments, considering: Maximum taxable contribution base: €4,070.10 (in 2019).

The types of contributions applicable to the General Social Security Regime are as follows:

- To be paid by the Employee: 6.35% for all contingencies (6.40% in fixed-term contracts).
- To be paid by the Company: 29.90% for all contingencies except for AT (Accidentes de Trabajo [Occupational Accidents])/EP (Enfermedades de Trabajo [Occupational Illnesses]) (31.10% for

fixed-term contracts). Correctly identifying and classifying the Company's economic activity according to the CNAE (Clasificación Nacional de Actividades Económicas [National Classification of Economic Activities]) as it influences the contribution rate for the AT and EP Premiums Rate.

The Company is responsible for paying the Employee's and the Company's social security contributions monthly in arrears (January is paid to Social Security in February).

The social security payment documents ("Contribution Payment Receipt") to be direct debited or paid electronically will be prepared by the department that prepares the payroll receipts.

OCCUPATIONAL RISK PREVENTION

La Empresa debe implementar un Plan de Prevención de Riesgos Laborales, Evaluación de Riesgos Laborales y Planificación de Actividad Preventiva.

La Empresa puede contratar un Servicio de Prevención Ajeno para cubrir esta actividad.

Obligatorio disponer de dicha documentación y facilitar formación e información sobre los riesgos existentes en el puesto de trabajo a los empleados con carácter previo a su incorporación.



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