

Doing business in Spain



Contents



Chapter 1. A profile of Spain	3
Chapter 2. Legal framework for business	7
• <i>Accounting regulations in Spain</i>	8
• <i>Accounts audits in Spain</i>	8
• <i>Content of financial data</i>	9
Chapter 3. Doing business in Spain	11
• <i>Setting up a company</i>	12
• <i>Opening a branch</i>	13
• <i>Purchasing real estate</i>	13
Chapter 4. Spanish tax system	17
• <i>National taxes</i>	17
• <i>Corporate tax</i>	18
• <i>Income tax</i>	21
• <i>Non-resident income tax</i>	24
• <i>Wealth tax</i>	26
• <i>Inheritance and gift tax</i>	26
• <i>Value-added tax</i>	27
• <i>Capital-transfer tax</i>	29
• <i>Special taxes</i>	29

Chapter 5. Labour law	31
• <i>Hiring personnel</i>	31
• <i>Standard regulations for employment contracts</i>	32
• <i>Terminating employment contracts</i>	32
• <i>Hiring members of top management</i>	33
• <i>Hiring personnel from temporary employment agencies</i>	33
• <i>Workers' representatives</i>	34
• <i>Visas and permits</i>	34
• <i>Social Security</i>	34
• <i>Preventing occupational hazards</i>	35
 Chapter 6. Legal framework for e-business	 37
• <i>Civil and commercial regulations</i>	37
• <i>Information society services and e-commerce</i>	38
• <i>Protection of personal data</i>	39
• <i>Intellectual and industrial property rights and domain names</i>	40
 Appendix:	 43
• <i>Links of interest</i>	43

Foreword



As a partner and director of PKF in Spain, it is my pleasure to introduce our firm to you.

PKF in Spain paramount goals are to achieve excellence in all aspects of our own and our clients' businesses, provide our professionals with in-depth, specialized training and enhance still further the recognition our firm enjoys for the quality of services provided to its clients and friends.

We have belonged to PKF international since 1992. This means that we can always count on the solid backing of an international organization with branches in more than 119 countries around the world.

Furthermore, the other members of the PKF Association in Spain are always available to complement our services in any part of the country.

In our opinion, belonging to the PKF Association offers high added value for our organization as well as our clients. Indeed, it constitutes a valuable tool with great potential and distinct advantages that fits in perfectly with our philosophy and system of working. The quality of our services thereby guarantees comprehensive attention adapted to the needs of each client.

An overall perspective of our business has shown us that our clients cover a wide spectrum: from small family businesses to large multinationals. We are therefore prepared to provide tailor-made solutions for all our clients, regardless of size and business area, based on our experience over the years.

Félix Pedrosa

Chapter 1



A profile of Spain

National name:

Reino de España

Ruler:

King Juan Carlos I (1975)

Geography

Land area: 499,542 sq km; total area: 504,782 sq km (Including the Balearic and Canary Islands).

Spain occupies 85% of the Iberian Peninsula, which it shares with Portugal, in southwest Europe. Africa is less than 16 km south at the Strait of Gibraltar. A broad central plateau slopes to the south and east, crossed by a series of mountain ranges and river valleys. Off Spain's east coast in the Mediterranean are the Balearic Islands (5,014 sq km), the largest of which is Majorca. 97 km west of Africa are the Canary Islands (7,273 sq km).

Climate

Spain is extremely hot during mid-summer, in July and August. The rest of the year the climate is generally temperate in the north, but warm in the south. The best time to visit is during spring or autumn, except for the Atlantic coast, which has heavy rains in October and November. August is the busiest month, while May and October are the best times for both ideal weather and fewer crowds. Madrid and the high central area can get very cold during winter.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Madrid												
Rainfall (mm)	35	36	39	45	43	31	10	11	34	48	53	44
Min Temp (°C)	0	2	3	6	9	13	16	16	13	8	4	2
Max Temp (°C)	11	12	16	17	22	28	32	32	28	20	14	11
Barcelona												
Rainfall (mm)	38	37	47	47	44	38	27	44	76	96	51	44
Min Temp (°C)	4	5	7	8	12	16	19	19	17	12	8	6
Max Temp (°C)	13	14	16	17	20	24	27	28	26	21	17	14
Seville												
Rainfall (mm)	66	61	90	57	41	8	1	5	19	70	67	79
Min Temp (°C)	6	7	9	11	13	17	20	20	18	14	10	7
Max Temp (°C)	15	17	20	24	27	32	36	36	32	26	20	16

Geographic and Political Context

Spain is made up of 17 autonomous communities, each with its corresponding government. Certain differences may consequently be observed in the legislation in force that falls within the competence of one autonomous community or another.

Government

- Parliamentary monarchy.

Population

- Population (January 1, 2005): 44,108,530
- Birth rate: 10.73/1000
- Infant mortality rate: 4.12/1000
- Life expectancy: 78.03
- Capital and largest city: Madrid, population: 3,155,359

Other large cities:

- Barcelona, population: 1,593,075
- Valencia, population: 796,549
- Seville, population: 704,154

Monetary units

- Euro

Languages

- Spanish (Castilian Spanish) in all the territory
- Catalan, in Catalonia Region;
- Galician, in Galicia Region;
- Basque, in Pais Vasque Region

Ethnicity/race

- Composite of Mediterranean and Nordic types

Religions

- Roman Catholic 94%, other 6%

Literacy rate

- 97.7% (United Nations Development Programme Report 2005)

Economic summary

- Gross Domestic Product/ Purchasing Power Parity: \$1,126,565 million; per capita \$26,320 (International Monetary Fund, 2005).
- Real growth rate: 3.4% (2005).
- Inflation: 3.7% (2005).
- Unemployment: 10.7%. (2005)
- Arable land: 27%. (2005)
- Agriculture: grain, vegetables, olives, wine grapes, sugar beets, citrus; beef, pork, poultry, dairy products; fish.
- Labor force: 20.67 million (2004): agriculture: 5.3%, manufacturing, mining, and construction 30.1%, and services 64.6%
- Industries: textiles and apparel (including footwear), food and beverages, metals and metal manufactures, chemicals, shipbuilding, automobiles, machine tools, tourism, clay and refractory products, pharmaceuticals, medical equipment.
- Natural resources: coal, lignite, iron ore, uranium, mercury, pyrites, fluorspar, gypsum, zinc, lead, tungsten, copper, kaolin, potash, hydropower, arable land. Exports: \$194.3 billion f.o.b. (2005 est.): machinery, motor vehicles; food-stuffs, pharmaceuticals, medicines, other consumer goods. Imports: \$271.8 billion f.o.b. (2005 est.): machinery and equipment, fuels, chemicals, semifi nished goods, foodstuffs, consumer goods, measuring and medical control

instruments. Major trading partners: France, Germany, Portugal, Italy, UK, Netherlands (2004).

Communications

- Telephones: main lines in use: 17,934,500 (2004)
- Mobile cellular: 44,3 million (2006).
- Internet users: 21.0 million (2006).

Transportation

- Railways: total: 14,268 km (2005)
- Highways: total: 664,852 km (2005)
- Waterways: 1,045 km.
- Ports and harbors: Aviles, Barcelona, Bilbao, Cadiz, Cartagena, Castellon de la Plana, Ceuta, Huelva, La Coruna, Las Palmas (Canary Islands), Malaga, Melilla, Pasajes, Gijon, Santa Cruz de Tenerife (Canary Islands), Santander, Tarragona, Valencia, Vigo.
- Airports: 47 (2006).

Chapter 2



Legal framework for business

True and effective accounting law came into force in Spain with the passing of Act 19 of 25 July 1989 on Partial Reform and Adaptation of Commercial Legislation to EEC Company Law Directives.

Many laws and provisions then followed to make up a body of mercantile and accounting regulations that was completely independent and separate from other regulations (such as tax regulations and legislation governing the supervision and control of public institutions).

The main laws and regulations that make up Spain's mercantile and accounting legislation are as follows, in chronological order:

- Act 19 of 12 July 1988 on Auditing of Accounts.
- Act 19 of 25 July 1989 on Partial Reform and Adaptation of Commercial Legislation to EEC Company Law Directives.
- Commercial Code.
- Restated Text of the Public Limited Companies Act.
- Regulations governing the Act on Auditing of Accounts.
- General Chart of Accounts.
- Limited Liability Companies Act.
- Mercantile Register Regulations.

The Spanish financial system was reformed more recently, upon publication of Act 44 of 22 November 2002. This Act reformed a number of aspects of previous laws on auditing, public limited and limited-liability companies and other mercantile regulations in force until that date. The main goal of said Act was to instil the markets with trust and promote Spanish companies' drafting codes of good governance.

Accounting regulations in Spain

The legal regulations governing the obligation to keep accounts books in Spain and the compulsory principles and evaluation rules are set out in the General Chart of Accounts and other mercantile legislation in force. As the General Chart of Accounts states:

Accounts books should be kept in accordance with the rules and principles of evaluation stipulated in Evaluation Rule 22, included in Part V of the General Chart of Accounts (Royal Decree 1643/1990), which states that the generally accepted accounting principles and rules shall be those set out in:

- Commercial Code, Articles 25-49
- Restated Text of the Public Limited Companies Act, Articles 171-222
- General Chart of Accounts
- The regulations that develop legislation as provided for by the Accounting and Auditing Institute
- Any other specifically applicable legislation.

The Spanish Accounting and Auditing Institute is currently in the process of presenting its draft of the new General Chart of Accounts, by means of which the International Accounting Standards will be adopted in Spain.

Accounts controls in Spain. Annual audits

The auditing profession is regulated in Spain by Act 19 of 12 July 1988 and the regulations that develop it in Royal Decree 1636 of 20 December 1990.

Additional Provision 1 to the Act stipulates that it is compulsory for annual accounts to be audited in the following cases:

- Companies that are listed on an organized secondary market
- Companies that issue debentures for sale to the public
- Companies that usually act as financial intermediaries

- Companies whose object includes activities regulated by the Insurance Act
- Companies that receive subsidies or financial aid from the Spanish government
- Companies that exceed certain limits for two years running
- Corporate groups: annual accounts should be audited by an independent auditor.

Content of financial data to be published. Annual Accounts

The economic and financial data that companies have to make public every year are called the Annual Accounts.

The Annual Accounts consist of the following financial statements:

- Balance Sheet
- Profit and Loss Account
- Annual Report (which includes the Statement of Source and Application of Funds)
- Management Report

These financial statements may be submitted:

- In an abbreviated format or
- In the full format

Chapter 3



Doing business in Spain

Setting up a Spanish company or opening a branch or permanent establishment:

Spanish legislation offers investors a variety of business formats in which to invest. Traditionally, the most frequently adopted forms of companies are the public limited company (Sociedad Anónima - SA) and the limited-liability company (Sociedad de Responsabilidad Limitada - SL).

Joint ventures with other companies set up in Spain:

Joint ventures are one of the most attractive and ideal ways of doing business in Spain, given that they provide for sharing risks and combining resources and experience.

Spanish regulations distinguish between different forms of joint ventures:

- Economic Interest Grouping (EIG) or European Economic Interest Grouping (EEIG).
- Temporary Business Associations (UTEs).
- “Participation Account”: a form of collaboration with one or more Spanish entrepreneurs contemplated by the Spanish legal system.
- Joint ventures through SAs or SLs.

Other ways of investing:

- Entering into a distribution agreement.
- Operating through a representative.
- Operating through a commission agent.
- Setting up a franchise.

- Purchasing shares in an existing company.
- Purchasing real-estate property in Spain

Setting up a company

The formalities and expenses involved in setting up a company are practically the same for public limited companies (SAs) as for limited-liability companies (SLs). The following formalities are necessary for setting up an SA.

It usually takes between 6 and 8 weeks to constitute an SA.

Setting up an SA through capital contribution.

- The formal act of constitution is executed before a notary public, who drafts the corresponding public deed: the Memorandum and Articles of Association.
- The share capital should be fully subscribed and at least 25% should be paid up when the company is constituted. The remaining 75% should be paid up within the period stipulated in the Articles of Association (in the case of an SL, the full share capital is payable upon constitution).
- The minimum share capital required is €60,102 for SAs (and €3,006 for SLs).

In terms of formalities, it is necessary to:

- Obtain a name-clearance certificate for the new company from the Central Mercantile Register. This should be the first step of all to ensure that the proposed name can be used.
- Provide credentials as to the identity of the founding partners.
- Provide supporting document as proof of having paid up the share capital and (where applicable) the means of payment.
- Obtain a form for filing the subsequent declaration of the foreign investment at the Foreign Investments Registry of the Directorate General for Trade and Investments (DGCI).
- Draw up the Memorandum and Articles of Association.
- Obtain a Fiscal Identification Number (NIF) for the new company.
- Obtain a Non-Resident Fiscal Identification Number (NIE) for any Administrators who do not live in Spain.

- Pay capital-transfer tax.
- Record the company in the Mercantile Register.
- File the subsequent declaration of the foreign investment at the Directorate General for Trade and Investments (DGCI) of the Ministry of Industry, Tourism and Trade.
- Register the company on the business-tax roll.
- Register the company on the VAT roll.
- Obtain an opening licence.
- Register the company with the Social Security and obtain insurance cover for occupational accidents. Register the employees with the Social Security.
- Fulfil certain formalities with the Provincial Delegation of the Ministry of Employment and Social Affairs.

Expenses:

- Capital-transfer tax: 1%.
- Notary public's fees for drafting the deed.
- Fees for recording the company in the Mercantile Register.
- Opening licence.
- Other expenses (e.g. professionals' fees).

Opening a branch

On the whole, in terms of requirements, formalities and expenses, opening a branch is very similar to setting up a company. The main differences are as follows:

Legal formalities and expenses:

- The deed of establishment of a branch must be executed before a notary public.

This procedure consists of publicly formalizing the resolution to open a branch previously adopted by the parent company's competent organ of administration.

Purchasing shares in an existing company

Transfers of shares in SLs should always be certified by a public broker.

For transfers of shares in SAs, the intervention of a public broker is necessary when so required by Spanish regulations.

Expenses:

- The fees of the public broker who certifies the operation.

Purchasing real-estate property in Spain

- Purchases of real-estate property must be formalized before a Spanish notary public or Spanish consul abroad. The documents to be presented are: proof of identity of the parties and, where applicable, the corresponding powers of attorney; the selling party's title deed; the form (for signature) for the declaration of the investment to be filed at the Foreign Investments Registry of the Directorate General for Trade and Investments (DGCI); and payment of the purchase.
- Payment of capital-transfer tax or VAT and stamp duty. Capital-transfer tax is applicable at the standard rate of 7% (6.5% in the Canary Islands) if the selling party is an individual who is not a property developer.
- The following taxes will be payable if the selling party is a company or an individual working as a property developer:
 - Transfers of development land and first deliveries of buildings: 16% VAT (7% if the building is for housing) plus stamp duty at the standard rate of 1%.
 - Transfers of rural, unbuildable land and second or subsequent deliveries of buildings: capital-transfer tax or VAT. VAT is applicable if the acquiring party is an entrepreneur or professional who has the right to deduct the full input VAT amount and the selling party waives its exemption to charge this tax (provided certain requirements are fulfilled).
 - If the property is located in the Canary Islands (where VAT is not applicable), the situation is as follows:
 - If the selling party is a property developer (whether an individual or body corporate), either of the following may apply:
 - Transfers of development land and first deliveries of build-

dings: 5% Canary Islands general indirect tax (IGIC) plus stamp duty at the standard rate of 0.75% (or 0.5% for buildings to be used as the owner's usual residence).

- Transfers of rural, unbuildable land and second or subsequent deliveries of buildings: capital-transfer tax (6.5%) or IGIC (applicable if the acquiring party is an entrepreneur or professional and the selling party waives its exemption to charge this tax), provided certain requirements are fulfilled.
- If the selling party is an individual who is not a property developer: capital-transfer tax.
 - Recording in the Land Register.
 - Subsequent declaration to the DGCI when the total amount exceeds €3,005,060.

Expenses:

- Notary public's fees.
- Capital-transfer tax or VAT and stamp duty (see above).
- Fees for recording in the Land Register.
- Capital gains tax (municipal tax on the increase in the value of urban land).
- Property tax (IBI). A yearly tax calculated on the cadastral value of the property.

Chapter 4



Spanish tax system

The Spanish tax system consists of three different kinds of dues: State taxes, duties and special taxes.

Duties and special taxes are levied in return for services and utilities provided to the public. This publication will focus basically on national taxes, which are of greatest interest to foreign investors.

PKF publishes a Tax Guide every year, in which it provides summarized, updated information on Spanish tax regulations.

National taxes

Spanish national taxes are divided into direct and indirect taxes, as per the following table:

Direct taxes	Corporate tax (IS)
	Income tax (IRPF)
	Non-resident income tax (IRNR)
	Wealth tax (IP)
	Inheritance and gift tax (ISD)
Indirect taxes	Value-added tax (VAT)
	Capital-transfer tax (ITP) and stamp duty (AJD)
	Special taxes (IIEE)
	Customs import duties
	Taxes on insurance premiums

Corporate tax (IS)

The basic regulations are governed by Royal Legislative Decree 4 of 5 March 2004.

All resident companies in Spain are obliged to pay IS, which is levied on a company's total earnings for the year.

Taxation of non-resident companies is governed by the provisions of Royal Legislative Decree 5 of 5 March 2004.

The requirements that define whether a company is “resident” for tax purposes are as follows:

- It must be constituted in accordance with Spanish law.
- It must have its registered office in Spain.
- It must have its effective headquarters in Spain.

Appraisal rules.

As a rule, assets are appraised at acquisition price or production cost. Assets appraised at market value include: assets transferred or acquired at a profit, assets distributed to partners as a result of a company liquidation, share-capital reductions involving return of invested capital, assets transferred as a result of a merger, takeover or total or partial spin-off, assets acquired through swaps, etc.

It should be borne in mind that legislation in force establishes a special system of tax neutrality affecting transactions that form part of a process of company restructuring.

Special appraisal rules are also established for operations between associated companies.

Undercapitalization rule.

This rule is applicable when a company's net remunerated indebtedness towards non-resident companies with which it is associated exceeds the result of multiplying its equity by the coefficient 3. In this case, any interest on the corresponding excess is considered to be dividends. Not applicable between EU Member States.

Valuation changes.

Depreciation: Only tax deductible if actually charged and entered into the accounts.

Official depreciation coefficients:

	Maximum	Minimum
Industrial buildings	3%	1.47%
Commercial buildings	2%	1%
Furniture	10%	5%
IT equipment	25%	12.5%
Software	33%	16.7%
Vehicles	16%	7.14%
Machinery	12%	5.55%

Provision for bad debts: A provision to cover the risk of insolvent debtors. At least six months must have elapsed from the due date, or the debtor must have been declared bankrupt.

Provisions for bad debts from associated companies are not deductible unless the debtor has been declared insolvent.

Provision for decline in portfolio value: The provision may not exceed the difference between the theoretical book value at the beginning and close of the financial year.

Provision for risks and charges: On the whole, these provisions are not deductible unless they are made to cover liabilities deriving from monetary obligations or warranties for repairs and revisions.

Non-deductible expenses.

Following are some examples of expenses that are not tax deductible:

- Expenses that entail payment from the company's own capital.
- Expenses incurred in recording IS in the accounts.
- Fines and penalties.
- Donations and gifts.
- Expenses incurred for services carried out with individuals or bodies corporate residing in tax havens.
- Transfers to internal provisions and pension funds.

Increases and decreases in net worth.

These are deemed to be income. In property transfers, the depreciation of money should also be borne in mind and the acquisition cost and corresponding amortizations should be adjusted.

Offsetting of negative tax bases.

During the subsequent fifteen years. For newly formed companies, this period may be counted from their first tax period that has a positive tax base.

Tax rate.

The standard tax rate is 30%. There are other kinds of special rates for specific companies.

Deductions from the tax liability.

Among others, the main deductions are:

Deduction for reinvestment of extraordinary profit. The final rate, after deduction, is 18%.

Under current Spanish legislation, there are a number of tax incentives for specific activities by means of which a plan is established to reduce deduction rates as from 2007 until they are entirely phased out in 2013.

(See the PKF annual Tax Guide for further details.)

Deduction to avoid double taxation in Spain: Dividends and surplus acquired from internal sources. Provided certain requirements are complied with, this deduction entirely eliminates double taxation.

Deduction to avoid international double taxation: Provided certain requirements are complied with, tax paid abroad can be deducted; however, it may not exceed the total tax liability that would have been payable in Spain for the corresponding income.

Withholding tax and advance payments.

Certain kinds of income are subject to withholding tax at source and instalments are payable on account of the final tax due.

Spanish companies pay three instalments on account during the financial year:

in April, October and December.

Tax consolidation of company groups.

Certain company groups may be taxed on their consolidated tax base. This is an optional system and the parent company must own at least 75% of the capital of its group subsidiaries.

Other special systems.

These depend on the particular characteristics of the taxpayer and the activities carried out. They include:

- Spanish and European Economic Interest Groupings
- Temporary Business Associations (UTEs)
- Venture-capital firms and funds
- Investment funds
- Foreign-securities holding companies (ETVEs)
- System of tax neutrality for company-restructuring operations: mergers, spin-offs, transfers of assets and exchanges of shares.

Tax incentives for small companies.

These measures affect companies with an annual net turnover of less than €8 million. If the company forms part of a group, the aforementioned amount refers to the joint turnover of the whole group.

Tax incentives are applicable in terms of depreciation, provisions, deductions and even the tax rate.

Formal obligations.

The tax period coincides with a company's financial year. Tax returns are presented within 25 calendar days from the end of the six-month period following the relevant tax period.

Income tax (IRPF)

Current regulations are set out in Act 35 of 28 November 2006.

As with IS, taxation of non-resident individuals is governed by the provisions of Royal Legislative Decree 5 of 5 March 2004.

The main factors that determine an individual's "residence" in Spain for tax purposes are as follows:

- He/she must live for more than 183 days in any calendar year in Spanish territory.
- The main or basic core of his/her business/professional activities is based in Spain.

Tax payable on:

Spanish income tax is applicable to individuals' worldwide income.

Tax system:

Individual or joint (family unit) tax returns may be filed. A single tax scale is applicable and tax paid is shared between the Spanish government and the corresponding autonomous community.

Tax base:

Made up of:

- Income from employment (in money and kind)
- Income from real property
- Income from investments
- Income from economic activities
- Income from property leases
- Income from image rights
- Capital gains and losses

Exemptions:

Earnings from work carried out abroad: up to €60,100 per year.

Capital gains and losses:

Tax is applicable to the difference between the transfer value and the acquisition value. Updating coefficients are applicable exclusively to acquisitions of real-estate property.

Reducing coefficients are applicable to capital gains obtained from assets acquired before 31 December 1994.

Net tax base:

This is the gross tax base after certain deductions have been made. A general net tax base is calculated, and also one applicable just to savings.

Total tax liability:

The official tax scale by means of which the corresponding tax liability can be determined (national and autonomous community) may be consulted in the PKF Tax Guide.

Deductions:

Deductions are applicable mainly to the following: investment in the usual place of residence, income earned in Ceuta and Melilla, economic activities, donations, action taken to protect and promote Spanish and World Heritage.

Withholdings:

Income subject to withholding tax is as follows:

Income from employment:
General
Employment contracts of less than 1 year
Special dependent employment relations
Members of Boards of Directors
Courses and conferences
Income from investments
Professional activities
Capital gains:
Transfers and reimbursement of equity shares and shares in investment funds
Other income:
Leases/subleases of urban real-estate property
Income from intellectual property rights
Income from authorization to use image rights

Non-resident income tax (IRNR)

Taxation of non-resident bodies corporate and individuals is governed by Legislative Royal Decree 5 of 5 March 2004.

Distinction between:

- Income from activities carried out by means of a permanent establishment in Spain
- Income from activities not carried out by means of a permanent establishment in Spain.

Income obtained by means of a permanent establishment:

On the whole, the general tax rate is applicable to the net tax base. In these cases, non-resident companies have the same rights to deductions and rebates as Spanish resident companies.

Income obtained without a permanent establishment:

Each total or partial sum is taxed, each operation being completely separate from all others.

Parties paying income to non-residents are obliged to withhold tax or pay in tax amounts on account for all income paid.

Exemptions in Spain include: interest and other revenues obtained from capital loans to third parties; certain capital gains, earnings distributed by resident subsidiaries in Spain to their parent companies that are residents of other EU Member States.

Bodies corporate/individuals who acquire real-estate property located in Spain from a non-resident without a permanent establishment in Spain are obliged to make the corresponding withholding as payment on account.

Income obtained from activities carried out without a permanent establishment in Spain is usually taxed at a lower general rate than the general rate applicable to resident bodies corporate and individuals.

Spain has signed agreements with several countries whereby taxation in Spain of income

obtained by companies operating without a permanent establishment in Spain is reduced or eliminated altogether (*consult PKF Tax Guide*).

A special tax rate is applicable to real-estate property belonging to non-resident bodies corporate.

Tax representative.

Certain non-resident taxpayers are required by law to appoint an individual or body corporate with residence in Spain to represent them before the Spanish tax authorities with respect to their obligations to pay IRNR.

This obligation corresponds to non-resident taxpayers that:

- a) Operate in Spain through a permanent establishment.
- b) Do not have a permanent establishment in Spain but obtain revenue from services, technical assistance, installation or assembly work deriving from engineering contracts, and economic activities in general.
- c) Are required to do so by the Spanish tax authorities, owing to the amount and characteristics of the income obtained.
- d) Are foreign companies affected by the income-attribution system.
- e) Are individuals or bodies corporate that own assets or rights located in Spanish territory (except in the case of securities traded on official secondary markets) but have their place of residence in countries or regions which do not effectively exchange tax data with Spain.

The representative's appointment should be duly accredited and communicated to the branch of the tax office at which the tax return will be filed, within two months after the appointment is made. The appointment should be made before the conclusion of the relevant term for filing tax returns.

The following parties shall be jointly and severally liable for payment of tax due by non-resident taxpayers:

- a) Payers of non-residents' revenue (except in cases of capital gains).
There shall be no such liability when the obligation to withhold tax is applicable, as provided for in the IRNR Act.
- b) Depositaries or managers of non-residents' assets or rights. A prior administrative deed of secondary liability is required.

The tax administration may take direct action when non-residents have their place of residence in a tax haven.

- c) Representatives of permanent establishments. A prior administrative deed of secondary liability is required.

Wealth tax (IP)

The regulations governing wealth tax are set out in Act 19 of 6 June 1991. This tax is administered and collected by the autonomous communities.

Tax payable by:

All individuals who are residents of Spain are subject to pay IP on all their assets on 31 December of each year. Non-residents are subject to pay IP on any assets and rights located in Spain.

The Act allows for the exemption of certain assets.

Net tax base:

This is obtained by subtracting the minimum exempt amount from the tax base.

Total tax liability:

Spanish national legislation establishes the relevant tax scale if the corresponding autonomous community does not regulate it.

Inheritance and gift tax (ISD)

The regulations governing inheritance and gift tax are set out in Act 29 of 18 December 1987.

This tax is applicable to all resident heirs, beneficiaries and transferees of gifts for the total of the assets received. Non-residents are subject to pay ISD tax on any such assets and rights located in Spain.

This tax is administered and collected by the autonomous communities.

The tax is calculated on a progressive scale based on a coefficient that bears the beneficiary's existing wealth and age in mind, as well as the degree of kinship between the transferor and transferee.

The Act provides for reductions to the tax base in certain cases.

Value-added tax (VAT)

The regulations governing VAT are set out in Act 37 of 28 December 1992, which implements the EU directives on the tax.

Tax payable on:

VAT is an indirect tax on supplies of goods and services, intra-Community acquisitions and imports of goods by entrepreneurs/professionals within the scope of their business.

Rates:

The standard tax rate is 16%. There is a reduced rate of 7% and an extra-low rate of 4% applicable to a restricted list of specific operations.

Exemptions:

Certain operations are VAT exempt, in which case the right to deduct input tax is limited. Other operations, such as supplies and exports of goods to another Member State, are defined as exempt, but allow for the right to deduct Input VAT.

Location:

Operations are taxed when they are understood to be carried out in the territory where the tax is applicable. Generally speaking, supplies of goods are understood to be carried out in Spain when they are made available to the purchasing party within Spanish territory. In the case of services provided, as a rule it is the country where the provider of the services has its business headquarters or permanent establishment. There are certain exceptions to both of these rules.

Taxpayer:

The taxpayer is the party obliged to charge VAT and pay it to the tax authorities. In certain

exceptional cases, the taxpayer is the recipient of the operation.

Deducting input tax:

Input VAT may be deducted when certain formal requirements are met. It may be deducted within a period of four years.

VAT returns:

VAT returns are filed every month or every quarter, depending on the taxpayer's annual turnover.

Reimbursement of VAT to entrepreneurs without a permanent establishment in Spain is governed by specific provisions and is subject to the fulfilment of certain requirements.

Tax representative.

Non-residents without a permanent establishment in the EU (except for Norway) that carry out operations subject to Spanish VAT are obliged to appoint an individual or body corporate with residence in Spain to represent them with respect to their obligations set out in the Spanish VAT Act.

Exceptions to this rule are:

- Non-resident taxpayers that only carry out VAT-exempt operations involving tax-free zones, bonded warehouses and duty- and tax-suspension systems.
- Non-resident taxpayers without a permanent establishment in Spain but with an establishment in the EU, the Canary Islands, Ceuta or Melilla.

However, the aforementioned excluded non-resident taxpayers may also appoint a tax representative if they so wish.

The Spanish tax authorities should be notified of the appointment before any operations are carried out by the party without a permanent establishment in Spain. Said notice should be given by means of a tax-roll statement, together with a public or private deed of appointment and a photocopy of the appointed representative's Fiscal Identification Card (NIF).

The tax representative is under no liability towards the Spanish tax authorities except for the liability corresponding to a manager or empowered party.

Capital-transfer tax and stamp duty (ITP and AJD)

The regulations governing this tax are set out in Royal Legislative Decree 1 of 24 September 1993.

Tax payable on:

There are three modalities:

- Gainful capital transfers (ITP): Payable on transfers of assets, goods and rights.
- Corporate transactions (OS): Payable on operations involving company financing.
- Stamp duty (AJD): A duty affecting the formal nature of a document, rather than the actual deed.

The tax is payable by the acquiring party and is not recoverable.

Tax rates

	Rate %
Corporate transactions	1%
Transfers of real-estate property	6%
Transfers of movable assets and government concessions	4%
Certain in rem rights	1%
Public deeds	0.5%

These rates may be modified by the autonomous communities.

Special taxes and duties (IIEE)

Special taxes and duties are payable on such consumer goods as alcohol and alcoholic drinks, beer, hydrocarbons and the manufacture, transformation and imports of tobacco products.

A special tax is also payable on the production, imports and intra-Community purchases of electricity.

Import duties

Duties paid on imports when goods are cleared through customs. There is a harmonized international coding system for goods and the EU tariff (TARIC).

Tax on insurance premiums

The tax is payable on insurance and capitalization operations based on actuarial techniques.

Local taxes

The most common local taxes are as follows:

Property tax (IBI):

Payable on ownership of real-estate property and in rem rights thereon.

Business tax (IAE):

Payable on business activities.

Road tax (IVTM):

Payable on ownership of vehicles, calculated based on the engine horsepower.

Tax on building, installation and construction work (ICIO):

Payable on the actual cost of any building or construction work that requires a municipal permit.

Tax on the increase in value of urban land (IIVT):

Payable on the increase in the value of urban land calculated when ownership is transferred.

Chapter 5



Labour law

The fundamental law that governs this area is the Workers' Statute (Royal Legislative Decree 1 of 24 March 1995), which sets out the respective rights of workers and employers, the general terms and conditions of employment contracts, the procedures to be followed when dismissing personnel and the rules for collective bargaining, among others.

Furthermore, specific regulations are applicable to different industries and certain worker groups and special labour-relations groups.

Further important sources of labour law are collective wage agreements, which may be bargained at individual company level or nationwide industry level, and employment contracts that set out individual relationships between the parties.

Hiring personnel

Employment contracts may be entered into indefinitely or for a specific length of time:

- Contracts for a specific term, or temporary contracts (entered into to meet specific production circumstances, a construction project or service).
- Contracts to encourage companies to hire personnel indefinitely (special incentives offered by the government).
- Part-time contract (shorter hours than the workday stipulated in the collective agreement).
- Training contracts: (training and in-company training sessions).

Standard regulations for employment contracts

Trial period

Any of the foregoing contracts may establish a trial period, during which either party may terminate the contract without being required to justify the decision. This subject is regulated by collective agreements.

Working hours

As a rule, the maximum working hours are 40 hours/week. Agreements may be reached as to how the working hours are distributed throughout the year, which may follow an irregular pattern.

Overtime is permissible, but only up to 80 hours/year.

It is obligatory to allow workers at least one and a half rest days per week.

Wages and salaries

Wages and salaries are regulated by the corresponding collective agreements and are also agreed upon between the parties.

Terminating employment contracts

A foreign company that hires personnel to provide services on the Spanish market is not obliged to set up a permanent establishment in Spain, with all the expenses that entails. However, in this case, companies are required to register at the Spanish Ministry of Economy and Finance and the Social Security. They must also grant power of attorney to someone in Spain to represent them in their dealings with the public administrations, present any required documents, etc.

Terminating employment contracts

Objective dismissal:

The following are causes for objective dismissal: worker's incompetence, failure to adapt,

absenteeism; the company's need to cut back on jobs for financial, technical, organizational or production reasons or owing to insufficient budget allocation.

Disciplinary action:

A worker's failure to meet disciplinary requirements.

Dismissal ruling

When a worker is dismissed for any objective or disciplinary cause, he or she may challenge the employer's action by lodging an appeal with the Employment Appeal Court. The court will rule on the dismissal as follows:

- Justified: In this case, no compensation is due because dismissal has been carried out in accordance with law.
- Unjustified: Compensation is due, amounting to 45 days' salary per year worked, with a maximum of 42 months' salary.
- Null and void: The worker is readmitted to the company and full salary is paid from the dismissal date to the date of readmission.

Hiring members of top management

A member of top management is an employee who has broad powers to administer and manage issues relating to the company's overall objectives, exercises authority with full independence and responsibility and is answerable only to the company's governing body. These employment relations are regulated by Royal Decree 1382 of 1 August 1985.

Hiring personnel from temporary-employment agencies

The Workers' Statute expressly prohibits the temporary assignment of workers unless it is through temporary-employment agencies, which provide their corporate clients with workers to meet their temporary requirements.

Workers' representatives

Workers may participate in a company's activities through individual representatives and/or trade unions. In the first case, whether personnel has individual representatives or a workers' committee depends on the number of employees in the company. In the second case, workers who belong to a trade union have the right to participate in the company or work centre through the trade-union section.

The functions of workers' committees and personnel representatives are the same and include, among others, the right to information on personnel hiring and the company's financial situation.

Visas and work and residence permits

According to Spanish regulations on foreigners, anyone who does not have Spanish nationality is deemed to be a foreigner. Foreigners' fundamental rights and freedoms in Spain are regulated in Organic Law 4 of 11 January 2000 and Royal Decree 2393 of 30 December 2004, which approved the regulation of the Organic Law.

While the rights of nationals of EU Member States to work in Spain are not limited in any way, nationals of non-EU countries have to apply to the Spanish authorities for a permit.

Social Security

The Spanish Social Security system covers all Spaniards and foreigners who reside or are legally in Spain, regardless of sex, marital status or profession, provided they live in Spanish territory and work as employees, are self-employed or belong to associated work cooperatives.

The Social Security system is structured into a number of systems, with a General System covering all employees who do not fall within any of the special systems applicable to certain activities (workers at sea, etc.).

Under the Social Security General System, contributions are shared between the employer and employee. Employees are classified into professional categories to determine the corresponding contribution. There are maximum and minimum bases for each category that are usually revised every year.

There are 11 contribution groups into which employees are classified, depending on their professional categories.

The Act accompanying the General National Budget for 1999 stipulated that any executive salaried administrators who do not have effective control over the company should be included in the Social Security General System for employed personnel under the classification “similar”.

Prevention of occupational hazards

In accordance with Act 54 of 12 December 2003 on the prevention of occupational hazards, employers must protect the health and safety of their employees and, without limitation, are obliged to comply with the law and remedy any situations of risk. Furthermore, they must design preventive action from the start of their business activity and take permanent action to improve existing levels of protection. This involves an obligation to perform risk evaluations, adopt measures to be put into practice in emergencies, organize resources for protection activities and guarantee the health of workers and pregnant and breastfeeding women.

Chapter 6



E-business legal framework

The different aspects of e-business are now subject to specific regulations in Spain. Consequently, any e-business transactions also involve legislation on distance sales and advertising, as well as regulations governing the general terms and conditions of contracts, electronic signatures, personal-data protection, intellectual and industrial property rights, and the information society and e-business.

A fundamental aspect to be borne in mind with respect to electronic transactions is that the applicable regulations vary depending on who the recipient is. Thus, a transaction carried out between companies (“business to business” or B2B) is not the same as a transaction where the end customer is an individual (“business to consumer” or B2C), because in the latter case legislation on the protection of personal data and consumer regulations, among others, must also be taken into account.

Civil and commercial regulations

a) Civil Code and Commercial Code

Both codes have recently been modified by the Act on Information-Society Services and e-Business, which stipulates that consent to a contract entered into by automatic means is understood to exist from the moment acceptance is given.

b) Distance sales

All operators who carry out distance sales, such as those made on telematic systems, should obtain the corresponding authorization and register on the Register of Distance-Sales Enterprises.

The Act stipulates that the following data must be included in all distance-sales quotes:

- The supplier's identity.
- The product's special features and price and any transport charges.
- The form of payment, means of delivery or execution and the quote's period of validity.

It also sets out a series of consumers' rights:

- The need for consumers to give their express consent.
- The prohibition to send consumers goods they have not requested.
- Consumers' right to cancel a purchase within seven days after receiving the product.

c) Consumer protection

Any e-business activities designed for consumers must comply with consumer-protection regulations. The Royal Decree that regulates contracts entered into by telephone and electronic means includes the following obligations:

- Consumers must be provided with information on all clauses of the agreement, and the general terms and conditions and documentary support of the sales contract must be sent to them.
- Consumers have the right to terminate a contract within a period of seven working days.

Likewise, the Act on Guarantees in the Sale of Consumer Goods includes a free-of-charge warranty covering all consumer goods for a period of two years.

Act on Information-Society Services and e-Commerce (LSSI)

The LSSI defines an information-society service as being any distance service rendered for payment by electronic means at the recipient's individual request. This also includes services not paid for by recipients, given that such services still constitute economic activities for the rendering party.

The obligations of the LSSI are applicable to all service renderers established in other

Member States of the European Union and the European Economic Area when the recipients of the services are located in Spain and the services involve:

- Intellectual and industrial property rights.
- Advertising by investment funds.
- Direct insurance business.
- Obligations deriving from contracts with consumers.
- The lawfulness of unrequested business communications by e-mail.

The LSSI covers certain important new aspects, including:

- Specific obligations of renderers of information-society services
 - To notify the register, within one month, of the domain name they use to identify themselves on the Internet.
 - To provide means whereby the recipients of services and the competent bodies can have easy, direct access free of charge to information about the rendering party and the product price.
- A specific system for e-mail business communications, without prejudice to the regulations in force on marketing, advertising and protection of personal data.
- Regulation of contracts entered into by e-mail, whereby contracts are recognized when the parties give their consent and other requirements in terms of validity are met, while the parties' prior agreement on the use of electronic means is not required.

Protection of personal data

The Personal Data Protection Act regulates the way in which individuals' personal data should be processed when obtained by public and private bodies in the course of their activities, in order to prevent indiscriminate use of these data. The Act does not regulate data referring to bodies corporate.

The main aspects to be taken into consideration are as follows:

- Processing specially protected data requires the express consent of the interested party.
- Except in exceptional cases, communicating personal data to third parties requires the prior consent of the interested party.

- The interested party's consent is not required before communicating personal data to a third party that renders a service that involves access to said data.
- Interested parties' rights to access, modify, cancel and oppose the processing of their personal data are recognized.
- The Spanish Data-Protection Agency (www.agpd.es) must be notified before files of personal data are created.

Intellectual and industrial property rights and domain names

a) Intellectual property

The Intellectual Property Act establishes that intellectual property is any original literary, artistic or scientific creation expressed in any tangible or intangible means or media, whether currently known or which may be invented in the future. Consequently, all creations that meet the originality requirement may be protected as intellectual property, including the content, source codes and graphic design of websites.

b) Industrial property

Inventions are patentable and, in the area of e-business, patents can be taken out on compression and coding algorithms. However, drawings, rules and methods for doing business and computer programs cannot be patented.

c) Domain names

The public corporation Red.es performs the function of public authority for assigning domain names with the ".es" suffix. In accordance with the Spanish Master Plan, an accreditation or link between the requested domain and the party requesting its registration is required, and the following requirements must also be fulfilled: the domain name may not be previously assigned, it must fit in with syntax guidelines, comply with the derivation regulations and not be included within the established prohibitions. Furthermore, there are a good many new third-level domains: ".com.es", ".nom.es", ".org.es", ".gob.es" y ".edu.es".

d) Telematic invoicing

Electronic invoicing is based on the use of advanced electronic signatures or any other system of electronic-data interchange that provides for

guaranteeing the authenticity of invoices sent by e-mail and the reliability of their content.

e) **Electronic signatures**

An “electronic signature” is a set of data in electronic form that is consigned or associated with other data and can be used as a means of identifying the signing party.

d) **E-money**

Electronic money is a monetary value represented by a credit payable by its issuer that is stored on electronic media and accepted as a means of payment by other companies. Before issuing electronic money, a number of specific management procedures and controls are required to ensure operations are carried out properly and to guarantee the stability of the financial system.

APPENDIX



Links of interest

Institution	Link
Data Protection Agency	www.agpd.es
Tax Authorities	www.aeat.es
Spanish Association of Accounting and Business Administration	www.aeca.es
Spanish Association for Standardization and Certification	www.aenor.es
Bank of Spain	www.bde.es
Barcelona Stock Exchange	www.borsabcn.es
Madrid Stock Exchange	www.bolsamadrid.es
Barcelona Chamber of Commerce	www.cambrabcn.es
Securities and Investments Board	www.cnmv.es
Spanish Congress of Deputies	www.congreso.es
General Council of the Judicial Power	www.poderjudicial.es

Institution	Link
Ombudsperson	www.defensordelpueblo.es
Spanish Government Headquarters	www.la-moncloa.es
Institute of Chartered Accountants	www.icjce.es
Accounting and Auditing Institute	www.icac.meh.es
Spanish Institute for Foreign Trade	www.icex.es
National Statistics Institute	www.ine.es
Ministry of Public Administration	www.map.es
Ministry of Agriculture, Fisheries and Food	www.mapya.es
Ministry of Foreign Affairs and Cooperation	www.mae.es
Ministry of Culture	www.mcu.es
Ministry of Defence	www.mde.es
Ministry of Economy and Finance	www.meh.es
Ministry of Economy and Finance	www.meh.es
Ministry of Education and Science	www.mec.es
Ministry of Public Works	www.mfom.es
Ministry of Industry, Tourism and Trade	www.mityc.es

Institution	Link
Ministry of the Interior	www.mir.es
Ministry of Justice	www.justicia.es
Ministry of the Environment	www.mma.es
Ministry of the Presidency	www.mpr.es
Ministry of Health and Consumer Affairs	www.msc.es
Ministry of Labour and Social Affairs	www.mtas.es
Ministry of Housing	www.mviv.es
PKF in Spain	www.pkf.es
PKF International	www.pkf.com
Registry of Auditors of Accounts	www.rea.es
Central Mercantile Registry	www.rmc.es
Spanish Senate	www.senado.es
Constitutional Court of Spain	www.tribunalconstitucional.es
Audit Office	www.tcu.es
Supreme Court	www.poderjudicial.es



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