
Doing Business in Spain

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MSI's guide on Doing Business in Spain provides current information about the financial, regulatory and legal considerations that could affect business dealings within Spain. For further assistance please contact one of our MSI member firms in Spain.

Country overview

Introduction

Spain is among the most attractive countries for foreign investment. It was ranked 11th for attracting foreign investments according to the A.T.Kearney FDI Confidence Index 2017' report. Spain is located in south-western Europe on the Iberian Peninsula, between the Mediterranean Sea and the Atlantic Ocean. This strategic location, together with the Mediterranean climate, good quality of life and a competitive cost of living, are some of the most decisive factors that explain its appeal to investors.

Population

Spain has a total population of 46.7 million inhabitants with over 5 million foreign residents.

Government

Spain is a parliamentary monarchy. The King is the Head of State and ratifies the key appointments to the executive, legislative and judicial branches. The country's supreme law is the 1978 Constitution, which establishes fundamental rights and regulates the relationship between the legislative, executive and judicial branches.

It comprises 17 autonomous regions and two autonomous cities (Ceuta and Melilla in North Africa), all with their own devolved powers in certain areas.

Spain is a member state of the European Union. This is an important advantage for business and investment, as it is part of a unified, borderless market which allows the free movement of labour and capital.

Languages

The country's official language is Spanish. However, there are other official languages such as Catalan, Basque and Galician in some autonomous communities.

Currency

The official currency in Spain is the Euro.

Economic summary

GDP: €1.202 billion
Income per capita: €25,700
Inflation: 1.67% (2018)

Setting up a business

There are different ways to set up a business in Spain.

Legal types of business entities

1. Company or corporation

The most common forms are limited liability (SL) and public limited (SA) companies, both of which limit the shareholder's liability to the amount of the investment. An SL can be founded with a minimum capital of €3,000.00, which is divided into shares that may not be freely sold. The minimum capital for an SA is €60,000.00, divided into shares. It is not necessary for all of the capital to be paid in at the time of incorporation. This can be done with a minimum of 25%.

For both types of companies, the capital contribution may be monetary or non-monetary, with the peculiarity that an independent expert's report is required for a non-monetary contribution to an SA.

The law allows companies to have a sole shareholder, which must be reported to the Commercial Registry within six months. Otherwise, the sole shareholder will be personally, jointly and severally liable on an unlimited basis for the debt assumed by the company while it is a sole shareholder company. This status must be declared on all commercial and business documents.

2. Branch or permanent establishment

These entities do not have their own legal personality but they do have a certain degree of autonomy as they can do business and interact with third parties in the name of the parent company. The parent company is liable with all of its assets for the actions of these entities.

3. Business partnership

This consists of associating with another enterprise that is already established in Spain. This type of partnership can take on different forms such as joint ventures, participating loans, economic interest groups etc.

It is possible to operate through collaborators under distribution, agency, commission and franchise agreements without the need to have a direct presence.

Process of how to set up a business

To start a business it is necessary to register with both the tax administration and the social security administration. The registrant must obtain a tax ID number, which will be a NIE or NIF depending on whether it is an individual

or a legal entity. If a separate company is being set up, it must be incorporated in a public deed and registered in the pertinent Commercial Registry. The company's shareholders and directors must have Spanish NIFs or NIEs.

If any of the documents are in a foreign language, a certified or apostilled sworn translation must be provided in order to be recognised by Spanish authorities.

Financial year of taxes and financial accounts

By default the financial year coincides with the calendar year. However, the company is free to choose different dates, which cannot exceed 12 months.

Accounting and auditing

Under Spanish law all enterprises must keep orderly accounts, appropriate to their activity along with an inventory book, a journal and annual accounts. Companies are also required to keep a minutes book where all of the resolutions adopted at the ordinary and extraordinary general meetings are recorded, as well as the resolutions adopted by the company's other governing bodies.

The annual accounts must always be audited by an auditor unless at least two of the requirements listed below are met during the two financial years immediately preceding the balance sheet date:

1. Total assets do not exceed €2,850,000;
2. Annual turnover does not exceed €5,700,000;
3. Average number of employees during the financial year does not exceed 50
4. Even if they do not exceed the above limits, some companies, are still required to have their accounts audited. These companies include: listed companies, credit and financial institutions, insurance companies, etc.

Filing annual accounts

Limited companies are required to file their annual accounts and directors' reports in the Commercial Registry of

their district. Companies required to audit their accounts must also submit the auditor's opinion along with the annual accounts; otherwise the filing will be rejected by the registry.

Taxation

The Spanish tax system is *modern and competitive*. Spain is ranked eighth in the Eurozone and tenth in the EU for the lowest tax burden (Eurostat, 2017). The Spanish Tax Agency offers taxpayers a wide range of services aimed at facilitating compliance with their tax obligations. Among other things, it provides taxpayers with computer software to help them prepare their tax returns and to submit and pay their tax returns electronically using an electronic signature certificate recognised by the Tax Agency, a world leader in terms of efficiency, innovation and technology.

VAT

The standard rate of VAT is 21%. Further, there is a reduced rate of 10% on certain products and services and a super reduced rate of 4%.

Corporate tax (IS)

Companies that are tax residents in Spain must pay *tax on their worldwide income*. An enterprise is considered a Spanish resident if its administrative headquarters or registered offices are located in Spain, or if it is incorporated under Spanish law. The general corporate tax rate at this time is 25%. However, with the tax incentive for newly created companies, the rate is 15% for the first two financial years. Companies are taxed on the profits earned in the financial year which, as mentioned above, cannot exceed 12 months.

Shareholder exemptions

According to the EU Parent-Subsidiary Directive dividends or profit-sharing in subsidiaries are exempt from corporate tax (IS) so as to eliminate double taxation. These rules are intended to benefit companies that hold at least 5% of the capital or shareholdings that cost more than €20 million, as long as the shares are held continuously for at least one year.

Tax loss carry forward

Spanish corporate tax law allows companies to offset prior year's tax losses with no time limits. However, there is a general quantitative limit which means that no more than 70% of the taxable income for a given year can be offset by prior year losses. These losses can be fully offset if the amount is less than €1 million.

Personal income tax

This tax applies to the world-wide income of natural persons who are tax residents in Spain. A tax resident in Spain is anyone who resides more than 183 days of the year in Spanish territory or whose core or primary economic interests or activities are directly or indirectly located in Spain. A person is presumed to be a tax resident of Spain if his/her spouse or minor children live in Spain.

Personal income tax (IRPF) divides income into two basic groups depending on the type of income:

1. Group 1 is subject to a progressive tax rate that varies according to the autonomous community where the taxpayer lives. Under current law, the maximum rate is 48%.

2. Group 2 is subdivided into three brackets: up to €6,000 the rate is 19%; up to €50,000 the rate is 21% and from €50,000 upwards the rate is 23%. This tax applies to all income obtained by the taxpayer during the tax period, which coincides with the calendar year. It accrues on the last day of the calendar year, 31 December.

Taxation of posted workers

As an incentive for attracting talented workers, there is a set of special tax rules for individuals who reside in Spain for work reasons. They are allowed to pay taxes as if they were non-residents for the financial year in which they move to Spain and the next five years with a fixed rate of 24% up to €600,000.

Non-resident income tax

Non-resident individuals or entities that earn income in Spain must file a non-resident income tax return. The tax rules

vary depending on the taxpayer's characteristics.

Wealth tax

This tax is levied on wealth of natural persons. Under the regulations, anyone **who owes taxes**, even after all tax credits and deductions are applied, or who has assets or **rights in excess of €2,000,000** shall be subject to this tax.

It accrues on 31 December of each year and the taxable base is **the individual's net worth**. This comprises all assets and economic rights owned by the taxpayer, less any charges or encumbrances that reduce their value, as well as the debts and personal obligations for which the taxpayer is responsible.

However, the law provides for a wide range of exemptions as long as certain requirements are met, some of which include an exemption for primary residence, business and professional assets, and shareholdings in certain businesses and professional entities (the so-called family businesses).

All proceeds from this tax go to the autonomous communities. In Catalonia the tax rate is progressive and ranges from 0.21% to 2.75% with a minimum exemption of €500,000. In other autonomous communities (Madrid) this tax does not apply or has a maximum marginal rate of 2.5%.

Inheritance and gift tax

This tax is levied on the acquisition of goods and rights through inheritance and/or donation, or by any similar means. This tax also applies to life insurance benefits if the policyholder is someone other than the beneficiary. The taxpayer is a natural person successor-in-title, donee or beneficiary of the operation.

As management and settlement are handled by the autonomous communities, there are different credits and deductions depending on the territory. There are extensive reductions if certain requirements are met, among them is a 95% reduction on the taxable base for the transfer of family businesses or professional activities.

The tax rate ranges from 7% to 32%.

Non-resident tax withholdings

For non-residents who earn income, the paying entity is legally required to withhold taxes at the legally determined rate, depending on the type of income, and as stipulated in the Double Taxation Agreements, without prejudice to the exemption provided for in the Non-Resident Income Tax Law (LIRNR) for certain types of income.

The general withholding rate for non-residents, from EU, Norway and Iceland is 19%. It is 24% for residents of other countries.

HR/ Labour Law

Workers' statute

Labour relations are generally regulated by the provisions of Royal Legislative Decree 2/2015 of 23 October, which approved the Workers' Statute. Certain critical issues relating to workers' labour relations may be regulated under collective bargaining agreements, which are agreements between labour representatives and management representatives.

Ordinarily, contractual terms are open-ended. However, there are other types of fixed term contracts that can be used in certain cases as permitted by law.

Social security

As a general rule, all employers, employees, independent contractors and civil servants must register and contribute to the Spanish social security system. There are different contribution schemes, depending on the taxpayer's activity: a general scheme, a general scheme with special provisions and a special scheme.

Social security contributions are paid partly by the employer and partly by the employee.

The amount is based on the worker's employment and professional category with each category having a minimum and maximum taxable base.

The standard contribution rates cover certain common contingencies, as well as a number of additional percentage points for the contingencies of on-the-job accidents and professional illnesses.

Pension

Spain has a mandatory pension system that is funded by contributions to its social security system. There are contributory or non-contributory pensions schemes:

Contributory pensions are calculated on the basis of the amounts paid in and must meet certain requirements.

Non-contributory pensions are economic benefits that are paid to citizens in situations of need, who lack sufficient resources to survive, even if they have never contributed or have not contributed enough to receive a contributory pension.

At present, the age at which a person can receive a retirement pension depends on the person's age and the cumulative contributions. Thus, the law requires that the person must be 67 year's age, or 65 years of age if he has paid at least 38 years and 6 months into the system. The minimum age may be lowered under special circumstances to early or partial retirement, but never below 52 years' of age.

Wages

The minimum wage is set annually by the Spanish government. In 2019, the minimum wage is €900 per month, which is divided into 14 payments (€12,600 per year).

Visa and work permits

EU nationals and their family members may reside and work in Spain without having to obtain work permits.

Non-EU foreigners will need administrative authorisation to live and work in Spain.

Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Spain should seek professional advice from our member firms before making any business or investment decision.

Contact our member firms in Spain to discuss your requirements:

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