

# Doing business in Spain 2017





With thanks to all those professionals at the offices of Crowe Horwath Spain who participated in the preparation of this guide.

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# 1. Introduction

Welcome to the Crowe Horwath Guide “Doing Business in Spain”. This guide endeavors to offer a general overview of the legal, tax and audit perspectives to be considered for those interested in investing in Spain. While not exhaustive, the purpose of this guide is to respond to some key questions that may arise.

We nevertheless recommend that suitable professional consultancy be obtained prior to embarking on an investment project in our country.

This guide covers the following areas:

- Incorporation in Spain
- Tax information
- Employment and Social Security implementation. Human resources
- Visas

# 2. About Crowe Horwath International

Crowe Horwath International is an organization of leading global firms in professional services, operating in 500 cities worldwide in over 125 countries with approximately 35,000 professionals.

Crowe Horwath International member firms undertake to provide a service of impeccable quality, with highly-integrated service delivery processes and a common set of core values that serve as a guide for daily decision-making, providing personal services for private as well as public businesses in all sectors, in audit, legal and tax, and consultancy areas.

# 3. About our firm

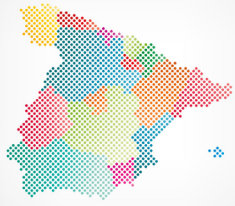
Crowe Horwath Spain has a team of more than 300 professionals comprised of economists, lawyers, consultants and engineers, among others, distributed throughout Spanish territory, with its main offices in Barcelona and Madrid.

Crowe Horwath Spain is currently comprised of three divisions by specialized area of service:

- Audit and Advisory
- Legal and Tax
- Hotels, Tourism and Leisure

Our broad client portfolio is comprised of the most diverse sectors of the Spanish economy.





## 4. General information

### Government

Spain is a parliamentary monarchy whose Head of State is King Felipe VI, and it is organized into 17 Autonomous Regions whose capital is Madrid. It is therefore one of the most decentralized countries in Europe.

Furthermore, it is a member of the European Union and its official currency is the Euro. The language is Spanish or Castilian Spanish, which is the second most spoken language in the world with almost 400 million native speakers. In addition, other co-official languages include the Galician, Basque and Catalan languages.

The President of the Government is elected every 4 years. The current Prime Minister is Mariano Rajoy (Partido Popular) who began his second term of office in October 2016.

Spain's economic situation has improved considerably according to the European Commission, confirming it is pulling out of the recession even faster than anticipated, placing itself at Europe's forefront in terms of GDP growth in 2016.

### Physical and geographic characteristics

With an area of over 500,000 square kilometers, it is the second largest territory in the European Union. It shares the Iberian Peninsula with Portugal and Andorra, and its territory also includes the Balearic Islands in the Mediterranean, the Canary Islands in the Atlantic Ocean, and Ceuta and Melilla in North Africa.

All of this provides Spain with some unique geographic and orographic characteristics. A Mediterranean climate in the south and on the east coast, a predominantly Atlantic climate on the north coast, and a continental climate in the interior of the peninsula.

Furthermore, its location makes it a key market from a geopolitical point-of-view. It is the main link between America and Europe, and Adolfo Suárez-Madrid-Barajas Airport receives the largest number of flights from such countries. It is also the gateway to the Mediterranean, and the Continent's closest country to the coast of Africa.

Spain - Global Competitiveness Index		
Date	Competitiveness Ranking	Competitiveness Index
2016	33rd	4.59
2015	35th	4.55
2014	35th	4.57
2013	36th	4.60
2012	36th	4.54
2011	42nd	4.49
2010	33rd	4.59
2009	29th	4.72
2008	29th	4.66
2007	29th	4.70

## Demographic profile

In 2017, Spain's population is close to 46.5 million, located mainly in urban areas. Major Spanish cities by population include Madrid with 3.1M inhabitants, Barcelona with 1.6M and Valencia with 0.7M.

Out of the Spanish population, which stands out as being highly qualified, 66% are of working age; and additionally 4 out of every 10 Spaniards have studied higher education at university, above the average for OECD and EU countries.

This, together with indicators of economic improvement, has resulted in a recovery of its global competitiveness, having recovered four positions since the onset of the crisis, as illustrated in the table above. (Source: Expansión)

The active population stands at 22.8 million, and the unemployment rate is around 18% with a sustained downward trend since the year 2012. Short and medium term forecasts show a continued decline.

## Economy

### Trade

Tremendous international growth and foreign investments have turned Spain into one of the most internationalized countries in the world. It is among the top 20 countries that import and export on a global level, in terms of goods as well as services.

Main trade partners include the EU countries themselves, benefiting from the Schengen agreement (free and unrestricted movement of people, goods, services and capital). Next come Africa and Asia, having replaced America as Spain's main non-EU partner.

In terms of the internal market, Spain has 46.5 million consumers with an average per capita income close to €24,000. This is furthermore increased by the arrival of more than 70 million tourists in the past year. This last figure is an all-time record, and places Spain among the world's top three tourist destinations. This trend is expected to continue and these figures are expected to grow in the coming years, not just owing to political uncertainty or terrorism in other destinations, but also thanks to major investments in infrastructures in recent decades, as well as to the high degree of specialization and development of destinations. All of this places the country in an ideal moment for the arrival of foreign investment.

### Infrastructures

Furthermore, Spain is one of the best-connected countries in the world. With a consolidated radial roadway network that facilitates land transport, more than 15,000 kilometers of expressways and highways make us the leading European country in terms of the total length of these types of roadways.

In addition, Spain has succeeded in establishing itself at the head of the high-speed railway sector (AVE), with the ability to connect Madrid and Barcelona in a little over 2 1/2 hours. The AVE, an exponential technology, is increasing its presence among provincial capitals year-by-year, enabling rapid and affordable travel between the country's major cities.

Air transport links major Spanish cities by means of its 46 airports, and connects Spain to major destinations around the world. In 2016, the number of passengers recorded by Spanish airports surpassed 230 million, led by Adolfo Suárez-Madrid-Barajas Airport with over 50M and Barcelona-El Prat Airport with almost 45M.

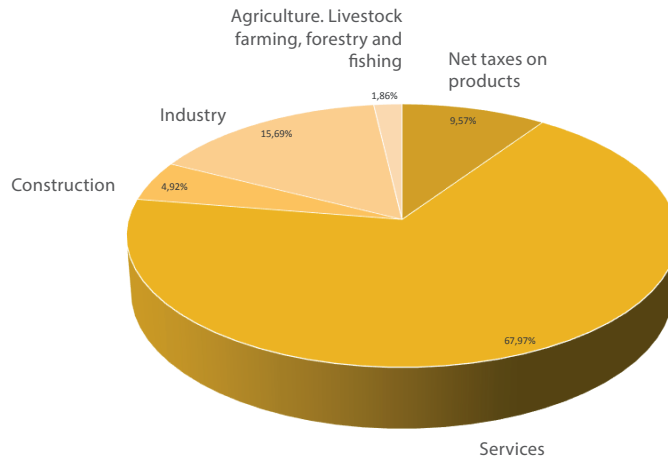
Lastly, Spain enjoys excellent maritime communications with over 46 international ports on the Atlantic as well as on the Mediterranean and Cantabrian coasts. Worthy of note is the recent start of operations on the Motorway of the Sea [Autopista del Mar] that connects Spain and France between the ports of Vigo and Saint-Nazaire respectively. Similar projects are underway with Italy, and alliances are also being promoted with major Chinese operators.

### Economic structure

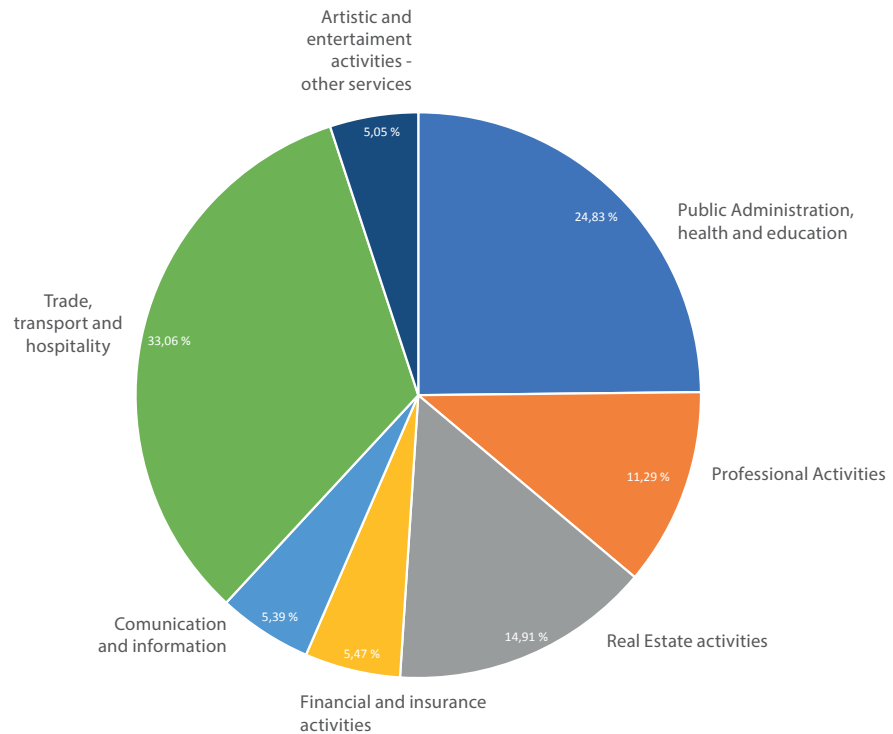
Spain's economic structure is that of a developed country in keeping with its contribution to the GDP. The services sector provides 68%, and industry 16% of GDP. In contrast, the weighting of agriculture has been gradually dropping as a result of the change to the economic model, having fallen to below 2%. The remaining 14% is distributed between construction and Net Taxes on products.

GDP has enjoyed accelerated growth during 2016 with an increase of 3.2%, and while the Bank of Spain forecasts a slight deceleration for the years 2017 and 2018, the country will maintain its position at the forefront of Europe. These data also place Spain far above the OECD average, and of countries such as the US and Japan as well.

### Spanish GDP by sectors



### Service sector





## 5. Incorporation in Spain

### Steps prior to investment in Spain

All persons, whether individuals or legal persons, interested in investing in Spain by means of a commercial enterprise or any other legal form of those described herein, should perform the following steps prior to establishment:

Obtain the NIE [Foreigner Identification Number]: Identification number of a foreign individual.

Obtain the NIF [Tax Identification Number]: Document issued by the Tax Agency to any legal person (NIF).

NIE [Foreigner Identification Number]		
Place Of Application	Documentation	Concession Period
Spain: (by the party concerned or legal representative) <ul style="list-style-type: none"> <li>■ Police Station</li> <li>■ Offices of foreign affairs.</li> </ul>	1. Form EX-15 in duplicate.  2. Original and copy of the complete passport of the applicant, travel document or registration card or identity document in the case of a European Union citizen.  3. If the application is submitted by a representative, (i) legalized copy of the applicant's passport, (ii) accreditation of sufficient powers-of-attorney, as appropriate, duly translated and legalized and apostilled. <sup>1</sup>  4. Payment of the corresponding fees, Form 720.	From 5 to 7 days.
Abroad:  Consular or diplomatic offices.		



<sup>1</sup> If the country of origin of these documents is not a signatory country to The Hague Convention, document legalization should take place by diplomatic legalization.

NIF [Tax Identification Number]	
Place of Application	Documentation
State Tax Administration Agency (AEAT).	<p>1. Form 036 (registration, amendment and de-registration in the census of taxable subjects, box 120), which should be signed by a representative of the enterprise with a NIE or Spanish national identification document.</p> <p>2. Original and photocopy of the power of attorney with sufficient capacity to sign Form 036. Such power should accredit the existence and validity of the foreign enterprise in accordance with the corresponding foreign laws.</p> <p>3. Document issued by the Mercantile Registry where the enterprise has its registered office providing evidence of the existence and validity of the foreign enterprise, duly legalized and apostilled.<sup>2</sup></p> <p>4. Copy of the NIE or Spanish National Identification Document of the signatory party.</p>

## Main characteristics of the types of enterprises in Spain

	Corporation <sup>3</sup>	Limited Liability Company <sup>4</sup>
Minimum Share Capital	€60,000	€3,000
Payout at Incorporation	Minimum of 25%.	Payout must always be 100%.
Contributions	<p>Monetary and non-monetary.</p> <p>A report from an independent expert is required for all non-monetary contributions.</p>	<p>Monetary and non-monetary.</p> <p>Non-monetary contributions do not require an independent expert report.</p> <p>The liability for the veracity of the non-monetary contribution falls jointly and severally on all shareholders and founders.</p>

<sup>2</sup> If the country of origin of these documents is not a signatory country to The Hague Convention, document legalization should take place by diplomatic legalization.

<sup>3</sup> Royal Legislative Decree 1/2010 approving the recast text of the Capital Companies Act ("LSC").

<sup>4</sup> LSC.

Shares - Equity Interests	Transferable securities. The issue of debentures and other securities is permitted.	These are non-transferable securities. The issue of debentures and other securities is permitted subject to restrictions.
Transfer of Shares - Equity Interests	The transfer is free unless otherwise stipulated in the corporate bylaws.	It must be recorded in a public document. In principle, they are not freely transferable. In general terms, unless established to the contrary in the Bylaws, a right of first refusal is recognized in favor of the shareholders.
Liability	Limited to the capital contributed.	

## Corporate boards

	Corporation	Limited Liability Company
General Meeting of Partners - Shareholders	<p>Ordinary general shareholders' meeting:</p> <p>Must meet within the first 6 months of each year to approve and review corporate management and decide upon the application of the results.</p> <p>Extraordinary general shareholders' meeting:</p> <p>Meets to address any other topic of corporate interest.</p>	
Convening General Meetings	<p>Meetings will be convened by the company's management board.</p> <p>They may also be convened at the request of a minority of partners or shareholders representing 5% of the share capital.</p>	
Form of Convening	<p>On the enterprise website, if created, registered and published in the terms of the LSC.</p> <p>In the BOE [Official Gazette of the Spanish State] and in one of the dailies of greatest circulation in the province where the registered office is located.</p> <p>The Bylaws may establish any other procedure for individual and written communication that ensures the reception of the notice by all shareholders.</p>	

General Meeting Attendance Quorums	This will depend on whether it is the first or second call.  The quorum may be increased in the Corporate Bylaws.	Majorities are determined by the type of resolution.  Majorities may be increased in the Corporate Bylaws.
Management Board	Sole Director, Joint and Several Directors, Joint Directors, Board of Directors.	
Directors' Term of Office	A maximum term of 6 years, for which they may be re-elected for periods of equal duration.	This may be perpetual unless otherwise provided in the Corporate Bylaws.
Director Remuneration	In principle, this is free-of-charge, but remuneration may be established in the Corporate Bylaws.	

## Common requirements for the establishment of commercial enterprises in Spain

1. Negative certification of the commercial name issued by the Central Mercantile Registry.
2. Preparation of powers for incorporation of the enterprise, as well as for any other procedure that may be required prior to incorporation, such as the NIE and NIF.
3. Request for provisional NIF.
4. Opening a bank account.
5. Preparation of the Corporate Bylaws.
6. Execution of the Deed of Beneficial Ownership by the representative (in the event of legal person shareholders) before a Spanish notary.<sup>5</sup>
7. Identification of the economic activity code describing the activity in accordance with the National Classification of Economic Activities (CNAE).
8. Declaration of Foreign Investment in the Foreign Investment Registry of the Ministry of Industry, Tourism and Trade. For informative and statistical purposes.
9. Execution of the public deed of incorporation before a Spanish notary.
10. Payment of the Transfer Tax and Stamp Duty (enterprise incorporation is currently exempt from this tax<sup>6</sup>).
11. Registration at the Provincial Mercantile Registry (RM).
12. Application for the definitive NIF before the AEAT.
13. Registration for the Tax on Economic Activities (IAE).
14. Registration for Value Added Tax (VAT).
15. Registration of the enterprise and its workers with the Social Security system.

<sup>5</sup> Royal Decree 304/2014, May 5, approving the Regulation of Act 10/2010, April 28, on the prevention of money laundering and the financing of terrorism

<sup>6</sup> Royal Legislative Decree 1/1993, September 24, approving the Recast Text of the Transfer Tax and Stamp Duty Act.

## Employer obligations

At the minimum, every enterprise that is duly incorporated in Spain should consider the obligations described in the table below:

Commercial	Accounting	Employment
<p>Formulation and approval, as appropriate, of the annual accounts by the General Meeting.</p> <p>Deposit of the annual accounts in the RM.</p> <p>Telematic record-keeping of company books before the RM.</p>	<p>Orderly record-keeping of all accounts.</p> <p>Minimum books:</p> <p>Inventory.</p> <p>Annual Accounts.</p> <p>Daily Ledger.</p>	<p>See the provisions of Chapter 2 on labor and social security obligations.</p>

## Branch

A branch is a secondary establishment endowed with representation and a certain amount of management autonomy, by means of which the activities of the parent company may be totally or partially undertaken, giving it the same legal personality as its parent company.

	Subsidiary	Branch
Main Characteristics	<p>Commercial enterprise, corporation (S.A.) or limited liability company (S.L.), in accordance with the type of enterprise chosen.</p> <p>With a legal personality that is separate from the parent company.</p>	<p>Establishment, without a legal personality separate from its parent company, with autonomy to exercise its activities.</p>
Share Capital	<p>The minimum amount required for the type of enterprise chosen.</p> <p>S.A.: €60,000</p> <p>S.L.: €3,000</p>	<p>No minimum is required by law.</p>
Management and Governance	<p>General Meeting and Management Board.</p>	<p>Representative appointed by the parent company, with residence in Spain.</p>
Formalization/Registration	<p>The common procedure is followed for company incorporation described in point 4 of this chapter.</p>	<p>Any resolutions for the creation of a branch by the competent body of the parent company must be executed before a Spanish notary.</p> <p>The public deed for the creation of the branch should include, as a minimum: 1) documents that accredit the existence of the enterprise; ii) its valid bylaws; iii) management board in force; and (iii) the resolutions for the creation of the branch by the competent body of its parent enterprise.</p>

## Joint venture

A joint-venture is a contractual figure by means of which two or more individuals or legal persons carry out a joint project by means of association or collaboration. These associations may materialize by the formalization of an agreement or the creation of an enterprise with a legal personality of its own.

Joint Venture	
Main Characteristics of this type of Association	<ul style="list-style-type: none"> <li>■ Undertaking of projects of particular complexity.</li> <li>■ Know-how.</li> <li>■ Cost reduction.</li> <li>■ Access to distribution channels.</li> <li>■ Growth of a production line already in existence.</li> </ul>
Types of Joint-Ventures Provided for under Spanish Legislation	<ul style="list-style-type: none"> <li>■ Incorporation of the S.L. or S.A.</li> <li>■ Temporary Joint Ventures (U.T.E.s);</li> <li>■ Economic Interest Groups (A.I.E);</li> <li>■ Joint Account Schemes (C.E.P.)</li> </ul>

## Representative office

This figure is not provided for in the Spanish legal system. However, Conventions to avoid Double Taxation contain and define this as: any fixed place of business, established by a non-resident enterprise that merely undertakes advertising and informative tasks on matters of concern to the parent enterprise with respect to trade, financial and economic affairs, without this entailing the performance of economic activities.

Representation Office	
Main Characteristics	<ul style="list-style-type: none"> <li>■ Has the same legal personality as the parent company.</li> <li>■ No economic activities may be performed.</li> <li>■ The only activities that may be performed are merely of an advertising and informative nature.</li> <li>■ The parent company is liable for all debts of the representative office.</li> <li>■ There is no management board; all actions will be carried out by the representative appointed for this purpose by the parent company.</li> </ul>
Formalities in Opening the Representation Office.	<ul style="list-style-type: none"> <li>■ Public deed containing the resolutions for the creation of the representation office by the parent company.</li> <li>■ Appointment of the representative, whether an individual or legal person, with residence in Spain.</li> <li>■ Assignment of funds.</li> <li>■ It is not subject to registration at the RM.</li> </ul>

## Other legal forms for conducting business in Spain

### Agency agreement

Agreement by which any individual or legal person, known as an agent, undertakes on behalf of another, known as the principal, in a continuous or lasting manner in exchange for remuneration, to promote and conclude acts or trade transactions on its behalf, as an independent intermediary and without assuming any risk or liability for such transactions, barring an agreement to the contrary.<sup>7</sup>

### Distribution agreement

Agreement by means of which one of the parties (distributor) acquires merchandise from the other party (manufacturer/supplier) for subsequent resale in its name and on its own behalf. In these agreements, the ownership of the goods is generally transferred with their delivery, with the distributor assuming any risks inherent thereto.

### Franchise agreement

Agreement by which one enterprise (franchisor), assigns to another (franchisee), in a given market and in exchange for direct or indirect compensation or both, the right to operate a business or commercial activity that the franchisor has previously developed with sufficient experience and success, to market given types of products or services.<sup>8</sup>

### Commission agreement

Agreement by which one party (commission agent) receives a mandate from the other (principal) for the purpose of undertaking a specific act or trade transaction. It is envisaged that the commission agent may act in its own name or in the name of the principal. The principal is obligated to pay a commission and to respect any rights of retention and priority of the principal. Any credits of the commission agent with the principal will be protected by means of the right to retain the merchandise.<sup>9</sup>

The main differences existing among the aforementioned forms of incorporation in Spain are summarized in the following table:

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7 Act 12/1992, May 27, on Agency Agreements.

8 Act 7/1996, January 15, on the organization of retail trade, relative to the regulation of the franchise system, and Royal Decree 201/2010, February 26 regulating the exercise of the trade activity under a franchise regime and the communication of data to the franchise registry.

9 Commerce Code.

	Agency	Distribution	Franchise	Commission
Purpose	<p>Agreement by which the agent undertakes to exercise trade activities in an employed capacity as an independent intermediary.</p> <p>In general this is rendered under conditions of exclusivity and includes non-competition agreements.</p>	<p>Agreement by which the distributor purchases products from the manufacturer/supplier for subsequent sale to third parties, thus permitting a high degree of self-organization.</p>	<p>Agreement by which the franchisor assigns the operation of a business to a franchisee in exchange for financial remuneration and imposes the obligation on the franchisee to comply with the business system.</p>	<p>Agreement by which the commission agent receives a mandate from the principal to undertake a specific act or commercial transaction.</p> <p>These are not usually rendered under an exclusivity regime.</p>
Liability	<p>Barring an express agreement to the contrary, the agent assumes no liability.</p>	<p>Once the merchandise is acquired by the distributor, the latter is fully liable for the risk and peril thereof.</p>	<p>In general, it is the responsibility of the franchisee to use the trade name, brand, products, know-how and to follow the business methods indicated by the franchisor; likewise, it is the responsibility of the franchiser to provide trade and technical assistance to the franchisee.</p>	<p>The commission agent may act before third parties:</p> <ul style="list-style-type: none"> <li>-In its own name, assuming liability before third parties.</li> <li>-In the name of the principal, without assuming liability.</li> </ul>



	Agency	Distribution	Franchise	Commission
Compensation	The agent may receive compensation in accordance with a method established beforehand, which may be a fixed or variable amount, or a combination of the two.	The distributor's compensation is the profit margin that it obtains, following the sale of the merchandise.	<p>The compensation of the franchiser is determined by:</p> <ul style="list-style-type: none"> <li>-An amount known as the "fee" paid by the franchisee at the start of the agreement.</li> <li>-Periodic payment of a "royalty" amount to be paid by the franchisee during the validity of the agreement.</li> </ul> <p>The compensation of the franchisee will depend on its economic activity.</p>	The commission agent will receive previously-agreed compensation, generally established as a percentage of the total transactions undertaken.
Term and Termination	<p>This is a stable and, in general, long-lasting contractual relationship, established in the agreement.</p> <p>Upon its termination, compensation is established "for clients", which is received by the Agent once it is proven that the turnover of the principal has been increased by the action of the agent.</p>	Freedom to establish the term and termination of the agreement.	This is a temporary and occasional professional relationship, after which the relationship will terminate.	

## Audit obligations

In Spain the requirements to be subject to an audit include the fulfillment during two consecutive years of at least two of the following circumstances: total assets in excess of 2.85 million Euros, a turnover greater than 5.7 million Euros or an average staff of employees greater than 50 workers.

(Euros)					
Legislation	Enterprise Type	Assets	Net Turnover Amount	Average Number of Employees	Conditions
Recast text of the LSC	Audit obligation	> 2,850,000	> 5,700,000	> 50	(1)
RD 602/2016	Formulation of the balance sheet, Statement of Changes in Equity and condensed annual report	≤ 4,000,000	≤ 8,000,000	≤ 50	(1)
RD 602/2016	Formulation of the condensed P&L account	≤ 11,400,000 ≤ 22,800,000		≤ 250	(1)
RD 1159/2010	Release from the consolidation obligation	≤ 11,400,000	≤ 22,800,000	≤ 250	(1)
LAC 22/2015	Medium-sized enterprises	≤ 20,000,000	≤ 40,000,000	≤ 250	(1)
LAC 22/2015	Small enterprises	≤ 4,000,000	≤ 8,000,000	≤ 50	(1)
RD 877/2015	Public interest entities (*)		> 2,000,000,000	> 4,000	(2)
LIS	Small-sized enterprises		< 10,000,000		(3)

(1) Two consecutive years fulfilling at least two of these circumstances

(2) Fulfillment of both figures for two consecutive years

(3) In the immediately preceding tax period

(\*) The following is considered a public interest entity:

- a. Credit institutions, insurance entities, as well as those entities issuing securities admitted to trading on official secondary securities markets or on an alternative stock market belonging to the expanding enterprise segment.
- b. Investment services enterprises and collection investment institutions that, for two consecutive years at the close of each one, have at least 5,000 clients, in the former case, or 5,000 equity interest holders or shareholders, in the latter case, and the management companies that manage such institutions.
- c. The pension funds that, for two consecutive years at the close of each one, have a minimum of 10,000 equity interest holders and the management companies that manage such funds.
- d. Banking foundations, payment entities and electronic money institutions.

- e. Any institutions other than those mentioned in the preceding paragraphs whose net turnover and average staff for two consecutive years at the closing date of each one of these is greater than 2,000,000,000 Euros and 4,000 employees, respectively.
- f. The group of companies in which the parent company is one of the institutions included in the aforementioned points.

## Insolvency proceedings

These are Spanish legal proceedings settled, in general, by Commercial Judges who, by means of this proceeding, resolve the insolvency situation of the debtor as an individual or legal person, with the understanding that the insolvency situation is any situation in which the debtor is not able to meet the payment of all obligations required of it.<sup>10</sup>

The Commercial Judge will determine whether the application for insolvency is appropriate (the application may be filed by the debtor itself, by creditors or by any other entitled parties); and, if insolvency is declared, an Insolvency Liquidator will be appointed and entrusted with managing the assets of the debtor under a substitution or intervention regime, as the case may be.

We emphasize that prior to the insolvency proceeding there is a figure known as “pre-insolvency”, in which any debtor has a period of 3 months in which to negotiate the orderly payment of any credits with its creditors, with the ability to approve debt relief and moratoriums. If the debtor is able to reach an agreement during this 3 months period with its main creditors, the proposal will be submitted to the approval of the Judge, and imposed on other debtors that may even have voted against it. However, if the debtor fails to reach an agreement with its creditors by the expiry of this period, insolvency should be sought before the competent Commercial Judge within the following month.

The insolvency procedure is divided into: i) Common Phase, ii) Arrangement Phase and/or iii) Liquidation Phase:

1. Common Phase: Main phase of the insolvency proceeding in which the insolvency body is formed (assets and liabilities).
2. Arrangement Phase: The debtor negotiates a payment plan with ordinary and subordinate creditors. This type of payment plan normally includes: 1) payment schedule, ii) debt relief and iii) moratoriums.
3. Liquidation Phase: The Insolvency Liquidator will submit a Liquidation plan to the Commercial Judge for approval, who should approve it. The aforementioned plan will establish the forms of disposal of the debtor’s net worth, in order to pay for the insolvency credits to the greatest extent possible.

## Sale of the Business Unit

Furthermore, it is worthy of note that Spanish insolvency legislation envisages a specific process of business “continuity” based on the transfer of the so-called business unit of insolvent enterprises. This process may include the block transfer of establishments, operations, brands, workers, etc. that comprise the production unit, and may take place during the common phase, as well as during the arrangement or liquidation phase. The process for carrying out these transfers will be directly managed by the Insolvency Administration, and should include a series of special features regulated in the LC and subject to approval by the insolvency Judge.

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<sup>10</sup> Insolvency Act 22/2003, July 9, (“LC”).

## Enterprise dissolution and liquidation

While enterprises generally come about with a vocation of indefinite permanence, commercial traffic may lead to situations in which it is advisable for them to dissolve and liquidate.

Among others, the main causes envisaged for dissolution would be: dissolution for legal causes; due to the cessation of the activity constituting its corporate purpose; for a manifest impossibility to achieve its corporate purpose; losses; or for any other cause established in its Bylaws.<sup>11</sup>

The procedure for enterprise dissolution and liquidation may be summarized in the following phases:

- 1st Phase: Dissolution. Corporate act that opens the process for enterprise liquidation; it is not the equivalent of extinguishing the legal personality. Its approval requires a resolution of the General Meeting.
- 2nd Phase: Liquidation. During this phase, the dissolved enterprise undertakes all actions necessary to liquidate and settle any obligations that may be pending. The name of the enterprise will be followed by "in Liquidation".
- 3rd Phase: Upon the termination of the liquidation, any surplus will be distributed and the legal personality will be extinguished.

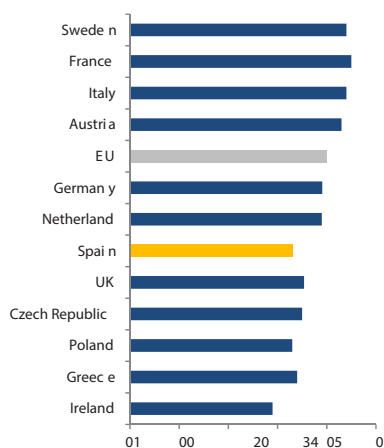


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## 6. Tax information

The Spanish tax system is considered to be modern and competitive, as illustrated by the existence of a number of reduced tax figures and an overall tax burden that is lower than that of surrounding jurisdictions, as illustrated in the chart below:



Source: Taxation Trends in the European Union 2014

The State Tax Administration Agency has positioned itself as one of the world's most efficient and innovative tax authorities, with the greatest available technical resources. It offers a wide range of services by means of specialized IT programs that assist taxpayers in the preparation and filing of their tax returns, as well as for the attainment of various types of tax certifications.

The Spanish tax system centralizes three different types of tax: taxes, fees and special contributions. Taxes are collected by the Central Tax Authorities, together with the Tax Authorities of the various Regional Governments. Tax figures likewise exist whose collection corresponds to City Councils.

Taxes are divided into direct taxes and indirect taxes. The following table illustrates this division:

### Direct taxes

- Corporate Income Tax
- Personal Income Tax
- Non-Residents Income Tax
- Wealth Tax
- Inheritance and Donation Tax

### Indirect taxes

- Value Added Tax
- Transfer Tax and Stamp Duty

### Local taxes

- Tax on Real Estate
- Tax on Economic Activities
- Tax on Construction, Installations and Works
- Tax on the Increase in Value of Urban Land

## Tax authority

Spanish legislation reserves the power to the Spanish Tax Authorities to tax income based on residence, for which two forms of taxation exist:

- Taxation by personal obligation: the Spanish Administration levies worldwide income obtained by Spanish residents (individuals as well as legal persons) regardless of the place of generation.
- Taxation by real obligation: the Spanish Administration likewise levies income obtained by non-residents (individuals as well as legal persons) generated in Spain.

Without prejudice to the preceding rules, in the case of persons (individuals or legal persons) residing in Spain that obtain income in other jurisdictions, the rules for the avoidance of double taxation may be applied, as contained in internal Spanish legislation as well as in the numerous Conventions signed by Spain for the avoidance of double taxation.

## Residence

Spanish rules for the taxation of individuals as well as legal persons contain a series of rules to determine residency for tax purposes (without prejudice to the application of the tie-breaker rules) contained in Conventions for the avoidance of double taxation signed by Spain, as well as in the Comments on the OECD Model Tax Convention.

- Individuals:
  - Presence in Spain for more than 183 days during the calendar year; or
  - Whose core or base of financial activities or interests is directly or indirectly located in Spain.
  - Presumption of Spanish fiscal residence insofar as the spouse (not legally separated) and minor children have their habitual residence in Spain.
- Legal persons:
  - Incorporated in accordance with Spanish laws; or
  - With their registered office in Spain; or
  - With effective management headquarters in Spanish territory.

## Fiscal year

- Individuals: coinciding with the calendar year.
- Legal persons: coinciding with the financial year.

## Limitation

The period of limitation is four years, generally starting as of the conclusion of the period for filing the corresponding tax return or as of the effective filing thereof.

## Network of conventions

102 (93 in force, 9 in various stages of processing: Azerbaijan, Bahrain, Belarus, Cape Verde, Qatar, Montenegro, Namibia, Peru and Syria). In addition, Treaties signed with Austria, Belgium, Canada, United States, Finland, India, Mexico, United Kingdom and Romania have been renegotiated.

## Corporate Income Tax (IS)

The tax rates are as follows:

- General rate (including small-sized enterprises): 25%
- Recently-created entities: 15% for the first year in which profits are generated and the following year.

In 2015, the Spanish Government undertook an in-depth reform of the tax system, including Corporate Income Tax, as a result of which the following modifications are worthy of emphasis:

- Simplification of documentation obligations for related transactions (transfer prices) for enterprises with net turnover of less than 45 million Euros.
- Elimination of any time restrictions for offsetting negative tax bases. The following quantitative limitations are nevertheless maintained:
  - Enterprises with a net turnover greater than 60 million Euros: limit of 25% of the prior tax base.
  - Enterprises with a net turnover between 20 and 60 million Euros: limit of 50% of the prior tax base.
  - Enterprises with a net turnover of less than 20 million Euros: limit of 70% of the prior tax base.

In all cases, negative tax bases of up to 1 million Euros may be offset during the tax period.

Corporate Income Tax legislation contains a series of special regimes, among others:

- Tax consolidation regime: regime in which the tax payable is calculated on the basis of the common tax base of the enterprises that form part of the consolidated group, applying a series of special rules for determining this, which eliminate and include certain transactions.
- For application of this regime, it is necessary for the stake (direct or indirect) of the parent company in the subsidiary companies to be at least 75% (70% in listed companies).
- Fiscal neutrality regime in restructuring operations: consisting of the deferral of income reported as a result of mergers, spin-offs, asset contributions, security swaps and changes of registered office to another European Union Member State. This also provides for exemption from other tax concepts (e.g. Transfer Tax and Stamp Duty, VAT) for these corporate restructuring operations.
- Special regime for enterprises engaged in property rentals: this consists of a tax allowance of 85% of the total tax payable corresponding to the effective undertaking of property rentals, provided that given requirements are fulfilled (e.g. holding of at least eight dwellings throughout the entire tax period, that the dwellings must be leased or for lease for at least three years, the existence of minimum resources – existence of human or material resources - etc.).
- Patent-Box tax regime: this is an incentive that consists of a 60% reduction of net income (income – expenses) from the assignment of an intangible asset (patents, industrial designs, utility models, know-how). Consequently, only 40% of the profits generated from this assignment are included in the tax base, provided that certain conditions are fulfilled (e.g. that the entity assigning the assets has participated in the creation of at least 25% of them, that the assigned assets are used in the development of an economic activity, etc.).  
This incentive is compatible with other incentives such as, deductions for R&D. It may likewise be applied in assignments of intangible assets among related enterprises.  
The possibility is envisaged of negotiating Advance Pricing Agreements (APA) with the Administration with regard to the qualification of the asset for application of the incentive, as well as to the value of the assigned asset.

## Regime for Foreign Security Holding Entities (ETVE)

Spanish tax regime for holdings. The ETVE itself, insofar as it complies with the requirements established in this regard, will benefit from a regime of general exemption with regard to (i) the dividends of its investees, (ii) stakes in profits of its investees, and (iii) the positive income obtained in the transfer of its stake in one investee entity, in the liquidation of the investee entity, in the separation of a shareholder, in the merger, total or partial spin-off, in capital decreases, non-monetary contributions or in the global assignment of assets and liabilities. In no case does the exemption apply in cases of income obtained by an investee entity residing in a country or territory classified as a tax haven.

The distribution of dividends to individual ETVE shareholders entails no deductions for dividends distributed against exemptible income (with the understanding that this is income not generated in Spain). The part of dividends distributed against non-exemptible income is subject to a withholding (with the understanding that this is income generated in Spain).

## Related transactions - transfer prices

Spanish legislation on documentation obligations for related transactions is in line with OECD Guidelines.

Barring the case of given specific transactions (e.g. asset assignments), the documentation obligation comes into play when the sum of all transactions undertaken in the course of the year with the same related enterprise exceeds the threshold of 250,000 Euros.

The possibility is envisaged of negotiating Advance Pricing Agreements (APA) with the Administration in terms of the assessment of the transactions.

## Personal Income Tax (IRPF)

In addition to the individuals deemed to be tax residents in Spain according to the rules set out above, those individuals who regularly reside abroad because they are members of Spanish diplomatic missions, consular offices, permanent offices and representations accredited before international organizations, or civil servants exercising public posts abroad, are likewise subject to IRPF.

IRPF has several tax rate scales: general scale, saving scale.

- General scale:

Tax Base (EUR)	Tax Rate (%) - State level	Tax Rate (%) - Autonomous region level	Total Tax Rate (%)
Up to 12,450	9.50%	9.50%	19%
From 12,450.01 through 20,200	12%	12%	24%
From 20,200.01 through 35,200	15%	15%	30%
From 35,200.01 through 60,000	18.50%	18.50%	37%
From 60,000.01	22.50%	22.50%	45%



It should be considered that the tax rate is comprised of two segments: State and Regional Government. Regional Governments have full freedom to regulate with respect to the autonomous region segment. In this regard, the "Regional level" column contains the rates applicable to IRPF taxpayers that do not reside in Spain. Taxpayers who reside in Spain should replace these with the scales approved by the Autonomous Region where they have their tax residence.

- Saving scale:

Tax Base (EUR)	Tax Rate (%) - State level	Tax Rate (%) - Regional level	Total Tax Rate (%)
Up to 6,000	9.50%	9.50%	19%
From 6,000.01 through 50,000	10.50%	10.50%	21%
From 50,000.01	11.50%	11.50%	23%

As in the case of the general tax rate scale, the "Regional level" column contains the rates applicable to IRPF taxpayers that do not reside in Spain. Taxpayers who reside in Spain should replace these with the scales approved by the Autonomous Region where they have their tax residence.

The recent reform introduced by the Government effective as of January 1, 2015 entailed significant changes. Some of these are described below:

- Increase of the quantities exempt from taxation in view of personal and family circumstances.
- Reduction of tax allowances that had been applied to individuals receiving income deriving from property rentals classified as the primary residence.
- Changes in relation to the tax regime for the sale of real estate.
- Elimination of the tax exemption on the first 1,500 Euros in dividends obtained in the calendar year.

## Special tax regime for workers relocated to spanish territory

Special tax regime applicable to individuals who acquire the status of tax residents in Spain as a result of their relocation to Spanish territory by virtue of a contract of employment or the acquisition of director status of an entity in whose share capital they either have no stake or a stake of less than 25%.

The particularity of this regime is that, despite the fact that the individual applying it is deemed a tax resident in Spain, any income from the work obtained is taxed in accordance with the rules applicable to non-residents, whereby they are taxed at a maximum rate of 24% up to a maximum tax base of 600,000 Euros; the rest of the tax base is taxed at a rate of 45%.

In addition, the regime offers other advantages, such as non-compliance with given reporting obligations (e.g. Form 720) or the filing of ISD (Inheritance and gift tax) and IP (Wealth tax) in the non-resident forms, in other words, solely considering assets located in Spain.

The regime is applied to the year of relocation and the 5 years subsequent thereto.

In order to opt for the application of this regime, the applicant may not have held Spanish fiscal residence status in the 10 years prior to relocation.

Professional athletes are expressly banned from this regime.

## Special tax regime for expatriate workers

Special regime that envisages the exemption from work income received by tax residents in Spain for work effectively performed abroad, up to a maximum of 60,100 Euros per annum, insofar as the territory in which they work has a tax of similar or analogous nature to the Spanish IRPF (this requirement is deemed as fulfilled if Spain has signed an Agreement for the Avoidance of Double Taxation, with a clause for the exchange of information, with the country of destination).

The specific rules for the appraisal of related operations (transfer prices) should be considered in those cases in which the recipient of the work performed abroad is associated with the employer of the relocated worker.

## Non-Resident Income Tax (IRNR)

Individuals and legal persons residing for tax purposes outside Spain are subject to taxation with respect to any income of Spanish origin that they may obtain.

In this sense, there are two types of taxation for non-residents, based on the way they obtain the taxable income:

- Income obtained by Permanent Establishment: only that income attributable to the Permanent Establishment generated in Spain will be subject to taxation. Just like enterprises (legal persons) with tax residence in Spain, non-resident Permanent Establishments in Spain will be subject to a tax rate of 25% applicable to the net profit generated in Spain.

In this regard, it is understood that a person operates by means of a permanent establishment in Spanish territory when, under any title, it continuously or regularly holds installations or workplaces of any type, in which it performs all or part of its activity, or acts therein by means of an authorized agent to contract, in the name and on behalf of the non-resident, who normally exercises such powers.

In particular, the following are understood as constituting a permanent establishment: management headquarters, branches, offices, factories, workshops, warehouses, shops or other establishments, mines, oil or gas wells, quarries, agricultural, forest or livestock enterprises or any other place of exploration or extraction of natural resources, and the works of construction, installation or assembly whose duration exceeds 6 months.

- Income obtained without a Permanent Establishment: IRNR taxpayers who obtain income in Spain without a permanent establishment will be subject to taxation solely in relation to income of Spanish origin in accordance with the following tax rates:

Income Type	Tax Rate (%)
General*	24%
Interest and dividends	19%
Capital gains	19%
Reinsurance operations	1.50%
Sea or air transport entities	4%
Seasonal foreign workers	2%

\* It should be considered that the general tax rate is 19% if the taxpayer is a resident in a European Union Member State. Income to which the general rate is applicable includes, among others, earned income, royalties.

## Inheritance and Donation Tax (ISD)

The taxable event of this tax is the acquisition of assets by mortis causa legal acts (inheritance, bequest or any other form of succession), as well as any gratuitous inter vivos legal transaction. This tax is required by personal obligation (on all assets acquired regardless of their location) from taxpayers with tax residence in Spain, and by real obligation (only on assets located or rights exercisable in Spain) to taxpayers whose tax residence is outside Spain.

The tax rate for determining the full tax charge is as illustrated below:

Tax Base (EUR) - Up to	Full Tax Charge (EUR)	Rest of the Tax Base (EUR) - Up to	Tax Rate (%)
0	-	7,993.46	7.65%
7,993.46	611.50	7,987.45	8.50%
15,980.91	1,290.43	7,987.45	9.35%
23,968.36	2,037.26	7,987.45	10.20%
31,955.81	2,851.98	7,987.45	11.05%
39,943.26	3,734.59	7,987.46	11.90%
47,930.72	4,685.10	7,987.45	12.75%
55,918.17	5,703.50	7,987.45	13.60%
63,905.62	6,789.79	7,987.45	14.45%
71,893.07	7,943.98	7,987.45	15.30%
79,880.52	9,166.06	39,877.15	16.15%
119,757.67	15,606.22	39,877.16	18.70%
159,634.83	23,063.25	79,754.30	21.25%
239,389.13	40,011.04	159,388.41	25.50%
398,777.54	80,655.08	398,777.54	29.75%
797,555.08	199,291.40	more	34%

The tax charge obtained from the application of the rates shown in the above table are obtained by multiplying the full charge by one of the multiplying coefficients provided, that vary between 1 and 2.4 based on the degree of kinship of the taxpayer with the deceased.

The fees and rates appearing above correspond to taxpayers that do not reside in Spain. With respect to taxpayers with tax residence in Spain, it should be taken into account that the Regional Governments have legislative power on matters such as tax rates, fees, multiplying coefficients, etc. shown above that may vary on the basis of the corresponding Regional Government. Likewise, there is a large number of Regional Governments (Madrid, among them) that provide for tax allowances of up to 99% of the tax liability and that are applicable if certain requirements are fulfilled.

In this regard, the tax will depend of the corresponding Regional Government:

- Inheritance: Autonomous Region in which the deceased resided.
- Donation of real estate: Autonomous Region in which the property is located.
- Donation of all other assets: Autonomous Region in which the recipient resides.

Worthy of note is the fact that allowances and other elements regulated by the Regional Governments are also applicable to taxpayers by real obligation (in other words, without tax residency in Spain) inasmuch as they are residents of another EU Member State. In this regard, the location of the majority of the assets transferred by virtue of the inheritance, request or donation in question will determine the application of Regional Government legislation.

## Wealth Tax (IP)

Levied on the taxpayer's ownership of the net worth attributable thereto (set of assets and rights of economic content held, less any charges and encumbrances that may decrease its value, as well as any personal debts and obligations for which they may be liable). The legislation on this provides for a minimum tax-free allowance of €700,000. Likewise, there are certain assets exempt from this tax (e.g. primary residence, up to a maximum of €300,000, stakes in family enterprises if several requirements are fulfilled, etc.).

The tax fees are shown below:

Tax Base (EUR) - Up to	Charge (EUR)	Rest of the Tax Base (EUR) - Up to	Tax Rate (%)
0	-	167,129.45	0.2%
167,129.45	334.26	167,123.43	0.3%
334,252.88	835.63	334,246.87	0.5%
668,499.75	2,506.86	668,499.76	0.9%
1,336,999.51	8,523.36	1,336,999.50	1.3%
2,673,999.01	25,904.35	2,673,999.02	1.7%
5,347,998.03	71,362.33	5,347,998.03	2.1%
10,695,996.06	183,670.29	more	2.5%

The fees and rates appearing above correspond to taxpayers that do not reside in Spain. With respect to taxpayers with tax residence in Spain, it should be considered that Regional Governments have the ability to establish different tax rates. Likewise, there is a large number of Regional Governments (Madrid, among them) that provide for tax allowances of up to 100% of the tax charge.

## Value Added Tax (VAT)

Value Added Tax is applicable to the following transactions:

- Deliveries of goods or rendering of services located in Spain;
- Intra-community acquisition of goods from another European Union Member State;
- Importation of goods from a jurisdiction outside the European Union;
- Application of a reverse charge mechanism in certain transactions (e.g. transactions undertaken by a non-VAT taxpayer whose recipient is a VAT taxpayer).

For these purposes, a VAT taxpayer is deemed to be any person (individual or legal person - employer or professional) that performs one of the transactions levied by VAT in the territory of tax application. Under Spanish VAT legislation, employers or professionals may recover any VAT paid in the acquisition of goods or services performed in the course of the business or professional activity. The refund of VAT charged in Spain to employers or professionals not established in the territory of tax application is also provided for in the procedure established in European Council Directive 9/2008. Agreements of reciprocity likewise exist with Canada, Japan, Monaco, Switzerland, Israel and Norway, so that any employers or professionals established in such jurisdictions may also recover VAT amounts charged in Spain.

On the other hand, regardless of the jurisdiction of establishment, the VAT charged in Spain for the following transactions may be recovered:

- The supply of templates, moulds and equipment acquired or imported in the territory of tax application by the non-established employer or professional, for its placement at the disposal of an employer or professional established in such territory, for use in the manufacture of goods to be shipped or transported outside the European Union for the non-established employer or professional, providing that at the conclusion of the manufacture the goods are dispatched to the non-established employer or professional or destroyed.
- The services of access, hotel, catering and transportation associated with the attendance at trade fairs, conventions and exhibitions of a trade or professional nature held in the territory of tax application.

The VAT Act provides for three different tax rates:

- General rate of 21%
- Reduced rate of 10% applicable, among others, to hotel and catering services.
- A super-reduced rate of 4% applicable to a restricted list of goods and services, such as basic foodstuffs.

Given transactions, such as financial or insurance services, as well as medical services or education, are exempt from VAT.

The general VAT regime (set out in this section) is applicable throughout the territory of tax application (throughout Spanish territory, with the exception of the Canary Islands, Ceuta and Melilla).

## Transfer Tax and Stamp Duty (ITP and AJD)

This tax figure includes three different taxes:

- Corporate Transactions: levied on enterprise incorporation transactions, capital increases, capital decreases, etc. The tax rate is 1%. Nevertheless, some of these transactions are exempt (e.g. incorporation, capital increases).
- Asset Transfer Tax: levied on transfers not subject to VAT. Tax Rate: 6%. Nevertheless, a significant number of Regional Governments have increased it to 10%.
- Stamp Duty: levied on the use of notary documents, among others. Tax Rate: 1%.

It should be considered that the aforementioned tax rates may vary as a result of the powers of Regional Governments to regulate these.

## Tax on Economic Activities (IAE)

This tax is levied on the performance of any type of economic activity. The tax rate depends on the activity in question (each activity is assigned a different code - similar to the CNAE code), as well as on other tax components (place where the activity in question is performed, meters comprising the establishments used, etc.).

## Tax on Construction, Installations and Works (ICIO)

This tax is levied on the undertaking of any type of work or installation that requires a prior permit from the City Council. The tax rate is set by the City Council in which the works or installations are performed, with a maximum rate of 4%.

A code is assigned to each activity (similar to the CNAE code).

## Tax on the Increase in Value of Urban Land (IIVTNU)

This tax is levied on the increase in value of urban land reported as a result of a transfer (inter vivos or mortis causa). The tax rate depends upon the time the transferred property was held, as well as its cadastral value, the city in which it is located and the number of inhabitants.

## Withholdings

Dividends: 19% (for residents and non-residents, for individuals as well as legal persons), unless those dividends qualify for application of the European Union Parent-Subsidiary Directive, in which case they are exempt or a lower rate may be applicable by virtue of the corresponding Convention.

Interest: 19% (for residents and non-residents, for individuals as well as legal persons), unless these are paid to a European Union resident, in which case they are exempt; or a lower rate may be applicable by virtue of the corresponding Convention.

Royalties: 19% (for residents and non-residents, with residence in another European Union Member State), unless those dividends qualify for application of the European Union Royalties Directive, in which case they are exempt or a lower rate may be applicable by virtue of the corresponding Convention. The rate applicable to non-residents (without residence in any European Union Member State) is 24%.

Sale of real estate by non-residents: a 3% withholding is applied to the sale amount, as payment on account of the tax charge resulting from the levy pursuant to the IRNR on the capital increase reported as a result of the sale.

## Exit Tax

As of January 1, 2015, when the taxable person loses such status due to a change of residence, capital gains are considered to be the positive differences between the market value of the shares or equity interests of any type of entity whose ownership corresponds to the taxable person, and their acquisition price, providing that the taxable person held such status for at least ten of the fifteen tax periods prior to the last tax period.

An exit tax is likewise provided for enterprises that change their residence to another jurisdiction.

It should be noted that this regime is not applicable in the case of changes of residence to other European Union Member States, in which case a series of reporting obligations are applicable.

Likewise, a deferment of the tax payment is possible.

## Canary Islands Special Zone (ZEC)

This is an economic instrument created to promote the economic and social development of the Archipelago and the diversification of its production structure.

Requirements (among others):

- Must be a newly-created entity with a registered office and effective headquarters in the geographic scope of the ZEC.
- At least one of the entity's directors must reside in the Canary Islands.
- Must make a minimum investment of 100,000 Euros (in Gran Canaria and Tenerife) or 50,000 Euros (in the rest of the Islands) in fixed assets associated with the activity within the first two years, as of the entry in the Official Registry of ZEC Entities.

Advantages (among others):

- A reduced tax rate of 4% (applicable through the maximum tax base, depending on the activity undertaken, the investment made and the number of workers employed; the rest of the tax base is levied at the general rate of 25%):

Net Creation of Employment	Industrial Activities	Service Activities	Other Services
Between 3 and 8 workers	1,800,000	1,500,000	1,125,000
Between 8 and 12 workers	2,400,000	2,000,000	1,500,000
Between 12 and 20 workers	3,600,000	3,000,000	2,250,000
Between 20 and 50 workers	9,200,000	8,000,000	6,000,000
Between 50 and 100 workers	21,600,000	18,000,000	13,500,000
More than 100 workers	120,000,000	100,000,000	75,000,000

- No withholding is applied to the dividends distributed by ZEC entity subsidiaries to their parent companies in another European Union Member State, in application of the Parent-Subsidiary Directive. Alternatively, the application of the rate determined by the Convention for the Avoidance of Double Taxation (signed by Spain with the jurisdiction in question).
- Exemption from Transfer Tax and Stamp Duty (ITP-AJD).
- Exemption from IGIC (VAT equivalent in the Canary Islands) for the delivery of goods and services among ZEC entities, as well as for imports.

## 7. Labor and Social Security implementation. Human resources

### Introduction

Once the enterprise has been incorporated and if it has employees, it will be necessary to comply with labor and Social Security obligations, in accordance with legislation in force, as set out below.

### Labor legislation in Spain

#### General legislation

The main rule that governs workers' rights on labor issues is the Workers' Statute (ET)<sup>12</sup>.

#### Collective Bargaining Agreements

Collective bargaining agreements are agreements between the employer and workers' representatives, which are the result of a collective negotiation relating to work conditions and productivity. Collective bargaining agreements may be classified according to their territorial scope, determined by the geographic space in which the agreement is applied. They will furthermore be applicable according to the sector or branch of company activity.

During their validity, they bind the parties included in their scope of application, regardless of the possibility of the non-application of certain working conditions in the company when certain economic, technical, organizational or production reasons exist.

### Work center

When a new work center opens, one of the essential conditions for its proper operation is for the employer to notify the competent authority, in this case the Directorate General for Employment, of the place where the services will be rendered. Such notice should be made within 30 days of the commencement of the activity.

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<sup>12</sup> Latest version in force: Royal Legislative Decree 2/2015, October 23, approving the recast text of the Workers' Statute Act.



Types Of Contracts				
	Indefinite	Fixed Term	Training	Telecommuting
Term	Indefinite.	For a specific project or service. For replacement employees. For production, market circumstances, etc.	Internships: From 6 months to 2 years. Training and apprenticeships: From 1 to 3 years.	This may be indefinite, fixed term, full or part time.
Formalization	Oral or written, but it is recommended that this be recorded in writing.			Written.
Place of Performance	At the work center.			Outside the work center.
Other Characteristics	Temporary contracts may become indefinite contracts.	These may take place for reasons such as replacements; for production or market circumstances; or for a specific project or service.	Internships: These are designed for holders of a higher- or medium-level university degree, in order to obtain professional experience. Training and apprenticeships: For the purpose of employee qualifications.	Provides the same rights as the contracts of employees who render their services at the work center.
Termination of Employment	The termination of employment may give rise to compensatory consequences or to worker readmission.	Temporary contracts may be terminated unilaterally by the employee upon expiry, with full legal effects. Compensation is established in certain cases. Following a recent ruling of the ECJ, in certain cases Spanish courts are beginning to recognize compensation for temporary employees, in the same way as for permanent employees.		Depending upon the type of contract

The employer is obligated to notify the State Employment Service (SEPE), of the content of any contracts of employment executed within 10 days of execution.

#### Working conditions

##### a. Wage structure

The wage is the remuneration received in exchange for the labor activity performed. The legal minimum wage is the minimum remuneration established by Law for all employed workers who render their services in any sector:

Minimum Wage (SMI) (2017)			
	Daily	Monthly	Yearly
Amounts (€ gross)	23.59	707.70	9,907.80

Specifically, it will be necessary to abide by the collective bargaining agreements to determine the employee wage structure.

##### b. Probation period

A probation period may be agreed upon in writing, subject to the duration that, as appropriate, may be established in the collective bargaining agreements. In the absence of a stipulation in the agreement, its duration may not exceed 6 months for graduate technicians, or 2 months for all other workers. During this period, the labor relationship may be terminated by either of the parties, without alleging any grounds whatsoever and without notice, barring a stipulation to the contrary.

Once this probation period has elapsed, if no withdrawal has taken place, the contract will take full effect, and the probation period will count toward the worker's seniority at the company.

##### c. Workday

The duration of the workday will be stipulated in the collective bargaining agreements or contracts of employment. Nevertheless, it is necessary to respect the legal minimums included in the following table:

Workday	<p>Stipulated by collective bargaining agreement or contract. Maximum of 40 hours/week.</p> <p>The minimum time between workdays will be 12 hours.</p> <p>Work periods over 6 hours will require a minimum rest period of 15 minutes.</p> <p>Maximum per workday: 8 hours for minors; 9 hours for everyone else.</p> <p>By collective bargaining agreement or agreement with the employer, 10% may be distributed intermittently over the year.</p>
Overtime	<p>These are hours worked beyond the maximum time of the workday. They are paid or compensated with rest times. Maximum of 80 hours/year.</p>
Vacation Period	<p>These days will be stipulated by collective bargaining agreement or contract of employment. May never be less than 30 calendar days.</p>

Paid Leave	<p>15 calendar days in the event of marriage.</p> <p>2 days for the birth of a child and for the death, accident or serious illness, hospitalization or surgical intervention without hospitalization requiring bed rest, of relatives up to the second degree of consanguinity or kinship.</p> <p>1 day for the transfer of primary residence.</p> <p>For union or other representation duties.</p> <p>For the necessary time to comply with an unavoidable public or private obligation.</p> <p>To perform union tasks.</p> <p>For the necessary time to prepare for childbirth and adoption formalities.</p>
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#### Senior executive contracts

This is a special employment relationship<sup>13</sup>. Senior executives are deemed as those workers who exercise powers inherent in the legal title of the enterprise and relative to its general objectives, with autonomy and full liability, restricted by the governance and management bodies of the enterprise.

This type of agreement may be terminated at the will of the enterprise or the executive, with advance notice of 3 months. In the event of employer termination, executives will have the right to the compensation established in the contract; in the absence of a stipulation, they will have the right to 7 days' wages per year, up to a maximum of 6 months.

#### Contracting with temporary employment agencies

Temporary employment agencies (ETT) place workers hired by them at the disposal of another user enterprise for a temporary period, who are subject to the regime of the user enterprise.

#### Hiring of disabled workers

Certain legal reservations exist that oblige enterprises to reserve jobs on their staff for disabled workers<sup>14</sup>. In enterprises with 50 workers or more, at least 2% should be disabled workers.

<sup>13</sup> Royal Decree 1382/1985, August 1, regulating the special employment relationship of senior management staff.

<sup>14</sup> Royal Legislative Decree 1/2013, November 29, approving the Recast Text of the General Act for the rights of disabled persons and their social inclusion.

## Termination of the contract of employment

Termination of the Contract for Reasons Other than Dismissal	Reason
Mutual Agreement of the Parties	The parties may voluntarily end their labor relationship.
Reasons Established in the Contract	The contract may be terminated for the reasons validly established therein, unless they constitute a manifest abuse of rights by the employer.
Worker Resignation	Notice of resignation with the advance notice indicated in the collective bargaining agreement or local customs.
By Worker Decision	Based on a contractual breach by the employer. In such cases, the worker will have the right to the compensation indicated for wrongful dismissal.
Expiry of the Period Agreed	At the end of the contract, except in those cases of temporary and training contracts, the worker will have the right to compensation of an amount equivalent to the proportional part of the sum that results from paying 12 days' wages for each year of service.

Contract Termination for Dismissal - Types of Dismissal:	Reason	Compensation		
		Null and Void	Wrongful	Lawful
Collective Layoff	Technical, financial or organizational reasons. <sup>15</sup>	Readmission of worker, with payment of processing wages.	(a) 45 days per year worked as from February 12, 2012, with a maximum of 42 monthly payments. (b) 33 days per year worked as from February 12, 2012, with a maximum of 24 monthly payments; or the readmission of the worker with the payment of processing wages.	Minimum of 20 days per year, with a maximum of 12 monthly payments.
Dismissal On Objective Grounds	Incompetence, non-adaptation, lack of attendance; or technical or organizational reasons that are not part of a collective layoff scheme.			
Disciplinary Dismissal	Serious and culpable breach of the worker.			

<sup>15</sup> It will be understood that financial reasons exist when the results of the enterprise reveal a negative financial situation such as the existence of current or forecast losses, or the persistent decrease of ordinary income or sales. The decrease will in all cases be deemed as persistent if, for three consecutive quarters, the level of ordinary income or sales of each quarter is less than the one recorded in the same quarter of the preceding year. Technical reasons will be deemed as occurring when changes occur, among others, in the area of production resources or instruments, organizational reasons when changes occur, among others, within the scope of the working systems and staff methods or in the means of organizing the production, and production reasons when changes occur, among others, in the demand for the products or services that the enterprise endeavors to place on the market.

## Social Security

### General Social Security Scheme

All employees and similar workers are obligatorily included in the field of application of the General Social Security Scheme (RGSS), unless by reason of their activity they should be included in the field of application of any special Social Security scheme, in accordance with the provisions of the General Social Security Act (LGSS)<sup>16</sup>.

### Registry of the enterprise with Social Security system

Prior to commencing the labor activity, it is necessary to register the company in the Social Security General Fund (TGSS) and to request its inclusion in the corresponding scheme. The registration is one-time only and valid throughout Spanish territory, and identifies the business circumstances of the workers who render services under the corresponding Social Security scheme, with the rights and obligations established thereby.

### Worker affiliation

Affiliation is the act by which individuals join the TGSS system. This may be done at the request of the workers themselves, the employers, or ex-officio by the TGSS. The employer has the obligation to enroll any workers not previously enrolled in the TGSS.

### Worker registration

The employer should register all workers that are going to render services in the TGSS. Registration should occur before the worker begins rendering services for the enterprise, but never more than 60 calendar days prior to the date scheduled for the worker to begin.

### Contributions to Social Security

All salaried and similar workers included in its scope of application and those employers for whom they work are obligated to contribute to the RGSS. The contribution consists of two capital inputs: from employers and from workers. Nevertheless, employers will cover the full contribution for occupational accidents and professional illness contingencies (AT and EP).

#### a. Contribution base.

The contribution base for all contingencies covered by the RGSS protective action, including AT and EP, will be comprised of the total payment, in cash or in kind, to which the worker has the right for the salaried work performed, barring the exceptions established in the LGSS.

Nevertheless, the following limits are established to the quantity of the contribution bases:

Limits To Contribution Bases (2017)	
Maximum	Minimum
€3,751.20 / month	€825.60 / month

<sup>16</sup> Latest version in force: Royal Legislative Decree 8/2015, October 30, approving the recast text of the General Social Security Act ("LGSS").

b. Contribution rate.

This is the percentage applicable to the contribution base that is distributed between employer and worker, which it is set annually by the State General Budget Act.

The general rates are outlines below, without prejudice to the fact that it may be necessary to analyze which contribution rate corresponds to each worker for each specific case.

Contribution Rates (%) (2017)			
Contingencies <sup>17</sup>	Enterprise	Workers	Total
Common	23.60	4.70	28.30
Overtime Due to Force Majeure	12.00	2.00	14.00
Other Overtime	23.60	4.70	28.30

Unemployment (%) (2017)	Enterprise	Workers	Total
General Rate	5.50	1.55	7.05
Full-Time Fixed-Term Contract	6.70	1.60	8.30
Part-Time Fixed-Term Contract	6.70	1.60	8.30

(2017)	Enterprise	Workers	Total
FOGASA <sup>18</sup>	0.20		0.20

(2017)	Enterprise	Workers	Total
Vocational Training	0.60	0.10	0.70

c. Fee.

The fee is the quantity to be deposited with the TGSS as a result of the contribution obligation.

<sup>17</sup> The percentages and rates for contributions to AT and EP - professional contingencies - depend on the CNAE-2009 Codes and the title of the economic activity. They are regulated in Final Provision nineteen. Amendment of Act 42/2006, December 28, on the State General Budgets for 2007. This is distributed between a percentage for temporary disability (IT) and a percentage for permanent disability, death and survivorship (IMS).

<sup>18</sup> Wage Guarantee Fund.

d. Allowances.

These are allowances in the fee that result from applying given percentages to it to reduce Social Security costs for enterprises.

In general, the following table lists the allowances that may be obtained:

Allowances
1. Full or part-time indefinite contracting, temporary contracting.
2. Conversion of temporary contracts into indefinite contracts.
3. Maintenance of employment.
4. Measures for the prevention of occupational risks.
5. Protection to given groups of workers or specific situations.

#### Special Scheme for Self-Employed Workers

Social protection for self-employed workers entails their inclusion in the Special Scheme for Self-Employed Workers (RETA). A worker is deemed as being self-employed or freelance when he regularly, personally and directly performs, outside the scope of the management and organization of another person, an economic or professional activity for profit, with or without salaried workers.

#### Affiliation, registration and benefits

Self-employed workers are obligated to request affiliation (unless they are already affiliated) with the TGSS.

In general, the coverage of the financial benefit for Temporary Disability (IT) deriving from common contingencies will be obligatory and should be formalized with a Mutual Insurance Company collaborating with the Social Security system.

This scheme has certain differences with respect to the General Scheme:

- The coverage of AT and EP contingencies is voluntary.
- Protection for cessation of the activity forms part of the protective action of the Social Security System and is voluntary in nature.

#### Contribution and contribution base

Self-employed workers are obligated to contribute to the RETA, at least at the minimum base. The contribution base is set on the basis of age, with the following limits:

Limits to Contribution Bases (2017)	
Maximum	Minimum
€3,751.20 / month	€893.10 / month

#### Flat contribution rate

Contribution rates will be applied to the contribution base.

The so-called flat rate is established for new, self-employed workers:

Flat Rate for New Self-Employed Employees (2017)	
First 6 Months	€50 of the fee for common contingencies
Months 7-12	50% reduction for the second semester
Months 13-18	30% reduction for the second semester

## Legal worker representation

In order to participate in enterprises, workers are recognized with the right of representation. In companies with more than ten (10) but less than fifty (50) workers, representation corresponds to staff delegates. Likewise, there may be one staff delegate in those enterprises with between six (6) and ten (10) workers, if they so decide by majority. In enterprises with fifty (50) or more workers, the body of representation will be the workers' committee.

### OCCUPATIONAL RISK-PREVENTION AND HEALTH PROTECTION

The prevention of occupational risks should form part of the enterprise's general management system in its activities overall and in all of its hierarchical levels thereof, by means of the implementation and application of a plan for the prevention of occupational risks, which will be maintained at the disposal of the labor authority, health authorities and workers' representatives<sup>19</sup>.

## Regime for foreign workers

### Workers from another European Union Member State

In general, EU citizens have the right to residence in Spain for a period greater than three (3) months, providing that they accredit their status as a worker in Spain, whether salaried or self-employed<sup>20</sup>.

### Transnational provision of services within the scope of the European Economic Area

Employers established in a European Union (EU) Member State or in a European Economic Area (EEA) signatory State that temporarily relocate their workers to Spain, should guarantee them the same minimum working conditions in force in Spain, regardless of the legislation applicable to the contract of employment.<sup>21</sup>

The enterprise, prior to commencement, should notify the competent Labor Authority of the relocation of its workers.

### Workers from a non-European Union Member State

When the worker is a non-EU and non-EEA citizen, a series of requirements are necessary for the authorization of work and temporary residence<sup>22</sup>.

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19 Act 31/1995, November 8, on the Prevention of Occupational Risks.

20 According to Regulation (EU) No. 492/2011, of the European Parliament and of the Council, the freedom of movement scheme for workers within the EU protects nationals of other Member States and the rest of the States party to the EEA Agreement, as well as nationals of the Swiss Confederation.

21 Act 45/1999, November 29, on the relocation of workers within the scope of a transnational provision of services.

22 For more information see:  
<http://extranjeros.empleo.gob.es/es/InformacionInteres/InformacionProcedimientos/index.html>



## 8. Visas

The purpose of the Entrepreneurial Support and Internationalization Act<sup>23</sup> is to support the entrepreneur and the business activity. Among other measures, this Act provides for a streamlined procedure for attaining visas in Spain. The residence visa contained in the Act constitutes sufficient title to reside in Spain for one year without the need to apply for a foreigner identification card.

### Requirements

- Not being in Spanish territory illegally;
- Over 18 years of age;
- Absence of a criminal record in Spain and in those countries of residence during the past five years, for crimes codified in the Spanish legal system;
- Would not be rejected from any country with which Spain has signed an agreement in this regard;
- Having public or private health insurance arranged with an insurance company authorized to operate in Spain;
- Having sufficient financial resources for themselves and their family members during their period of residence in Spain;
- Paying the charge for processing the authorization or visa.

### Cases of residence visas for investment

In general, non-resident foreigners entering Spanish territory to make a significant investment of capital may apply for a visa under certain circumstances:

- Initial investment in public debt, or equity interest;
- Acquisition of real estate in Spain;
- Investment in a business project accredited as being of general interest.

Initial Investment in an Amount Equal to or Greater than:	Acquisition of Real Estate in Spain:	Investment in a Business Project Accredited as Being of General Interest:
2 million Euros in Spanish public debt securities.	Investment equal to or greater than 500,000 Euros per applicant. The essential requirement necessary is solely relative to the sum of the investment (500,000 Euros per applicant), without the authorization for residence being granted with respect to the number of properties covered by the investment.	Fulfillment of any of these conditions: -Creation of jobs -Making an investment with a significant socio-economic impact. -Significant contribution to scientific and/or technological innovation.
1 million Euros in shares or equity interests.		
1 million Euros in investment funds, closed-end investment funds or venture capital funds established in Spain.		

<sup>23</sup> Act 14/2013, September 27, on entrepreneurial support and internationalization.

## Other cases for visa attainment

Foreigners may also be granted visas in the following cases:

- Visas for highly-qualified professionals: The enterprise should process residence authorization for highly-qualified professionals, which will take place in the Large Business and Strategic Groups Unit (UGE-CE). Once the authorization is obtained, the worker may apply for the visa.
- Visa for training or research: This visa is for those foreigners who wish to undertake activities of training, research, development and innovation in public or private enterprises (scientific and technical personnel in business entities, researchers hosted by public or private organizations, university professors, higher education centers or business schools).
- Visa for business relocation: This may be applied for by those foreigners relocating to Spain within the scope of a labor or professional relationship, or for reasons of professional training, with an enterprise or group of enterprises established in Spain or another country.

## 9. Dispute resolution

To resolve any possible conflicts that may arise in commercial relations, contracting employers increasingly agree on the inclusion of controversy resolution clauses as alternatives to legal action. The main channels of controversy resolution regulated in Spanish legislation are as follows:

1. **Mediation:** Mediation is understood as the form of controversy resolution in which two or more parties voluntarily try to reach an agreement on their own with the intervention of one or several mediators. The agreement reached is binding on the parties.

When a contract includes the written commitment to submit any controversies that may arise between the parties to mediation, the procedure stipulated should be followed in good faith prior to resorting to litigation or arbitration. If the controversies are not resolved by mediation, the parties may resort to another conflict resolution channel.<sup>24</sup>

2. **Arbitration:** Arbitration is defined as the means of controversy resolution by which the parties agree to submit to one or more arbitrators for the resolution of a conflict between them. The award (decision) issued by the arbitrators will be binding on the parties and may not be appealed against.<sup>25</sup>
3. **Court proceedings:** This is the ordinary proceeding for conflict resolution by which the parties decide to resort to State courts for the resolution of any conflict that may exist between them by a judge. The rulings (decisions) issued by Judges may be appealed against.<sup>26</sup>

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24 Act 5/2012, July 6, on mediation in civil and commercial matters.

25 Act 60/2013, December 23, Arbitration.

26 Act 1/2000, January 7, Civil Procedure.



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## About Crowe Horwath Spain

Crowe Horwath Spain has a team of over 300 professionals, including economists, lawyers, consultants and engineers distributed throughout Spain, with offices in Barcelona, Madrid, Valencia, San Sebastián, A Coruña y Vigo.

We offer our broad international experience in providing services in audit and advisory, tax and legal, and hotel, tourism and leisure consultancy.

Our organization operates under a common direction, applying the standards set by Crowe Horwath International, and taking into account the constantly changing environment and according to our corporate values.



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