Doing Business in Spain
Preface

This guide has been prepared by Baker Tilly España, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Spain.

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This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be downloaded from www.bakertillyinternational.com.

Doing Business in Spain has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Spanish matters can be obtained from Baker Tilly España, contact details can be found at the end of this guide.

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1 Fact Sheet

Facts and figures as presented in sections 1 through 4 are correct as at 20 November 2016.

Geography

Location: Southern Europe
Area: 505,370km²
Land boundaries: Andorra, France, Gibraltar, Portugal, Morocco (Ceuta and Melilla)
Coastline: Mediterranean Sea, North Atlantic Ocean and Bay of Biscay
Climate: Temperate: clear, hot summers in interior, more moderate and cloudy along coast; cloudy, cold winters in interior, partly cloudy and cool along coast
Terrain: Large, flat to dissected plateau surrounded by rugged hills; Pyrenees Mountains in north
Time zone: GMT +1

People

Population: 46.44m (July 2016)
Religion: Catholic 94%, other 6%
Language: Official languages include Castilian Spanish (nationwide), Catalan, Galician, Basque and Aranese

Government

Country name: Kingdom of Spain
Government type: Parliamentary monarchy
Capital: Madrid
Administrative divisions: The Kingdom of Spain consists of 17 semi-autonomous communities, and the two autonomous cities of Ceuta and Melilla situated along the Moroccan coast
Political situation

Spain is a parliamentary monarchy. The monarch is a constitutional Head of State, and holds no executive role. The government is headed by the President who is elected by the National Assembly, which in turn is elected by direct popular vote.

Economy

GDP – real growth rate: 3.2% (Q3 2016)
Labour force: 23.35m (2014)
Unemployment: 18.9% (Q3 2016)
Currency (code): Euro (€)
2 Business Entities and Accounting

2.1 Companies

There are several types of Spanish companies.

It is not a mandatory requirement that foreigners doing business in Spain establish a company, and foreign enterprises can operate in Spain utilising a branch structure (see 2.4).

2.1.1 Sociedad Anónima (SA)

An SA is a public corporation in which the shareholders' liability is limited to the amount of their capital contribution. An SA must be incorporated in the form of a notarial deed and must have a capital of at least €60,000. At least 25% of the par value of the subscribed shares must be paid in.

Contributions to capital may be made in cash or in kind (eg property or property rights, but not labour or services). All outstanding non-cash contributions must be fully paid in within five years.

The management of an SA may be vested in one director, in several directors acting individually, in two directors acting jointly and severally, or in a board of directors acting jointly. If a board of directors is established, it must have at least three.

2.1.2 Sociedad de Responsabilidad Limitada (SRL)

The minimum share capital requirement for an SRL is €3,000. An SRL may issue shares with no voting rights if the shares are issued for a nominal amount not exceeding 50% of the total share capital. Upon incorporation, all the units of stock comprising the company's capital must be fully subscribed and paid in.

SRLs may generally adopt the same management structures as SAs (see 2.1.1 above), except the maximum number of directors allowed is 12.
2.1.3 Sociedad Limitadad de Nueva Empresa (SLNE)

The SLNE is a limited liability company and, compared to the SRL, has simplified requirements for incorporation. The minimum share capital requirement is €3,000 and the share capital cannot exceed €120,000. Shareholders must be individuals. The SLNE’s activities are limited to certain sectors, including tourism, agriculture, fishing, forestry, transportation and communications.

2.2 Partnerships

A partnership is generally formed by two or more persons or entities to undertake business as co-owners. It is not a separate legal entity and the partners are jointly and severally liable to an unlimited extent for the actions of the partnership and the other partners.

A limited partnership must have at least one general (no limited liability) partner. Limited liability partners cannot be involved in the management of the business. Limited partnerships are treated as companies for taxation purposes.

2.3 Sole Proprietorship

A sole proprietorship arises when an individual undertakes a business in their own right. The individual is personally liable for the actions/debts of the business.

An individual may also establish business as a limited liability entrepreneur (empresario de responsabilidad limitada (ERL)). An ERL is similar to a sole proprietorship; however, the the liability of an ERL does not include the individual's primary residence if its value does not exceed €300,000 (not exceeding €450,000 in populations with over one million inhabitants).

2.4 Branches

When a foreign company carries on business in Spain, the operations are known as a “branch”. The branch is regarded as a permanent establishment which must keep its own books and records.

Because a branch has no legal personality separate from the head office, the head office is liable for the debts of the branch.
2.5 Joint Ventures

There are three legal forms for implementing a joint venture in Spain:

- Temporary business association (*unión temporal de empresas* or UTE)
- Economic interest grouping (*agrupación de interés económico* or EIG) or European EIG (EEIG), and
- A partnership agreement known as a *contrato de cuentas en participación*.

UTEs are a form of temporary business association set up for a specified or unspecified period of time with the intention of carrying out a specific project or service.

EIGs and EEIGs are non-profit legal entities created for the sole purpose of helping their profit-making members achieve their objectives. They may neither act on behalf of their members nor act in place of the members in their business operations. Business enterprises commonly use this form of entity to provide centralised services for a group of companies, such as purchasing, sales, data processing or administrative services.

The *contrato de cuentas en participación* is a type of unincorporated partnership in which one or more entrepreneurs (non-managing participants) contribute in cash or in kind to a project or venture that is managed by another entrepreneur (managing participant). In consideration, the non-managing participants receive the right to an agreed share of the profit or loss resulting from the project.

2.6 Audit and Accounting Requirements

All companies are required to prepare (and have audited where required), an annual financial report (including comparatives) that presents a true and fair view of the company’s state of affairs, profit or loss, and cash flow. Abbreviated accounts may be prepared in certain circumstances. Financial reports must comply with the Spanish accounting standards.

Consolidated financial statements of companies whose securities are traded in regulated markets must be prepared in accordance with the International Financial Reporting Standards (IFRS) as adopted by the EU. Other companies, may prepare their consolidated financial statements using either IFRS or Spanish generally accepted accounting principles (GAAP).

When preparing separate financial statements, GAAP must be applied, although this is largely based on IFRS.

Formulation of accounts must be carried out by the company directors within a three-month period after the end of the fiscal year. Most SAs are required to be audited by a registered auditor.
2.7 Filing Requirements

Companies must file their annual accounts (and consolidated annual accounts if applicable), a certificate of the resolution of the shareholders’ meeting approving the annual accounts, details of the distribution of earnings, the management report (if applicable), and the audit report (if applicable) with the Commercial Register within one month following approval.

Companies must file tax returns by reference to their financial year, which need not correspond with the calendar year. Returns must be filed within 25 days of the approval of the accounts, which in turn must occur within six months of the financial year end.
3 Finance and Investment

3.1 Exchange Control

There are no exchange control restrictions in Spain. Spanish foreign investment laws guarantee the freedom to repatriate invested capital plus any capital gain realised on the disposal of a foreign investment. The law also guarantees the right to remit profits and dividends. These rights can be exercised without limitation. However, residents are generally required to report all transactions with foreign entities, subject to exceptions.

Spanish companies or branches are freely allowed to open and use foreign currency bank accounts in Spain without being subject to any information requirement. Equally, they may, subject to certain disclosure requirements, freely open and maintain bank accounts abroad, either in Euro or in foreign currency.

Cash currency exports or imports of €10,000 or more per person per journey require prior verification by the authorities.

Certain foreign investments in specific fields of activity require prior authorisation (eg gaming, television, radio, air transport and national defence). In general, foreign investments in Spain, including any return on these investments and the results of their liquidation, are free from exchange controls. Nevertheless, they must be reported to the authorities. The authorities require an advance notice when the foreign investment is made from a country or territory qualifying as a tax haven.

3.2 Banking and Sources of Finance

The Spanish National Bank (Banco de España) is responsible for (amongst others) implementing the Eurosystem’s monetary policy, the stability of the financial system and payments system regulation. The prudential regulation of banks, insurance companies, superannuation (pension) funds, credit unions, friendly societies and building societies are also the responsibility of the National Bank.

The commercial banks operating in Spain provide the majority of short and medium-term loans/financing. Spanish banks are free to participate in virtually all forms of financial services. There is also a wide range of merchant banks operating in Spain, many of which are associated with some of the world’s largest financial institutions.
3.3 Investment Incentives and Restrictions

For business related incentives, see 5.7.
There are generally no restrictions on foreign business investment in Spain (see 3.1).
4 Employment Regulations

For employment tax considerations, see 5.3.

4.1 General Employment Matters

4.1.1 Employment law and contract

The Workers Statute provides minimum terms and conditions of employment in Spain. A contract of employment may be concluded orally or in writing. However, certain contracts are required to be in writing, including temporary contracts lasting for more than four weeks. In the absence of a written contract, written particulars of employment must be given to the employee, which should include the following information:

- Place of work
- Job title or nature of work
- The employment start date
- The expected duration of the contract if it is temporary
- Rate or calculation method of pay
- Hours of work
- Details of paid leave
- The collective bargaining agreement (CBA), where relevant.

The contract can include a probationary period.

There is a national minimum wage that applies to all employees. The statutory working schedule is a maximum of nine hours in a working day, up to 40 hours in a working week. Employees are entitled to 30 calendar days’ paid annual holiday per year, not including public holidays.

These work conditions can be revised in a CBA on condition this can be justified on grounds of competitiveness, productivity, or for technical or organisational purposes.
4.1.2 Employee representation

While employees generally have the right to join a trade union, apart from CBAs, employee representation in Spain is mainly through works councils that may have union involvement. The right to organise a works council and the number of representatives allowed on the council depends on the number of employees. The maximum number allowed in large firms is 75.

Employers are required to inform and consult with work council representatives regarding key developments in the business, including:

- Transfers of ownership
- Employment of new staff and their contracts
- Changes to the workforce through restructuring (including large-scale redundancies), and
- Changes to working conditions.

4.2 Visas

Certain non-EU citizens seeking to enter Spain must obtain a visa prior to entry. The majority of these require a visa only if their stay will exceed 90 days. The person must apply for the visa through a Spanish consulate in their country of residence.

Persons looking to establish, manage, or invest in a business within Spain should apply for an investment visa.

An investor residence visa is available for investors who make a significant investment in Spain in real estate assets (€500,000 or more), shares or bank deposits (€1 million or more), public debt (€2 million or more), or in business projects of general interest to the authorities.

There are a number of other visa types available. For further information visit http://www.investinspain.org
5 Taxation

Facts and figures as presented in section 5 are correct as at 24 November 2016.

5.1 Corporate Income Taxes

Spanish resident businesses are subject to taxation on their worldwide taxable income. Non-resident businesses are subject to tax on their Spanish source taxable income only.

A company is considered Spanish tax resident if it is either:

- Incorporated in Spain, or
- Carries on business in Spain and has either its central management or registered office there.

Any company located in a country or territory listed by the Spanish authorities as a tax haven is considered a resident of Spain at any time that it has rights that are fulfilled in Spain, or during any period when its main activity is carried on in Spain or its main assets (whether held directly or indirectly) are located in Spain. However, a company may prove that its principal place of business is effectively outside Spain and that it was incorporated for valid business purposes other than the simple management of securities or other assets.

The countries and territories qualifying as tax havens are listed in Royal Decree 1080/1991, 5 July 1991.

The general tax rate applicable to resident companies and permanent establishments of non-resident companies is 25%. A 30% rate applies to certain financial institutions and companies in the hydrocarbon sector.

A reduced tax rate of 15% applies to qualifying small enterprises with a turnover of less than €10m in the immediately preceding tax period.

New companies benefit from a reduced tax rate of 15% for the first year in which the company makes a profit and in the following year.

Taxable income must generally include any capital gains. Capital losses can be used to reduce any current year capital gains.

Tax losses can generally be carried forward indefinitely. The amount carried forward is generally limited to the greater of €1m, or 60% of the tax base for the year (prior to the application of capitalisation reserve and compensation). A change in company ownership or business activity may restrict a loss carry-forward. Losses may not be carried back.
Corporate groups can lodge a consolidated tax return including all subsidiaries that are at least 75% owned. All transactions within a consolidated group are ignored for income tax purposes.

The tax year is the company’s fiscal year. Tax returns are generally due for filing within six months and 25 calendar days after the end of the tax year.

Corporate income tax is payable in advance generally on 20 April, 20 October and 20 December. The amount to be paid is computed by applying a rate to the tax liability. The general interim payment rate is 18%, based on tax liability for the previous tax year. Companies with net revenue exceeding €10m are subject to:

- an interim payment rate of 24% (29% for financial institutions and hydrocarbon sector companies)
- a mandatory minimum prepayment of 23% of accounting profits (25% for financial institutions and hydrocarbon sector companies), subject to exclusions and exceptions.

### 5.2 Personal Taxes

Spanish resident individuals are subject to tax on their worldwide taxable income. Non-resident individuals are subject to tax on their Spanish source taxable income only.

The rates and tax brackets for 2016 for residents are as follows:

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€ – €12,450</td>
<td>19%</td>
</tr>
<tr>
<td>over €12,450 – €20,200</td>
<td>24%</td>
</tr>
<tr>
<td>over €20,200 – €35,200</td>
<td>30%</td>
</tr>
<tr>
<td>over €35,200 – €60,000</td>
<td>37%</td>
</tr>
<tr>
<td>over €60,000</td>
<td>45%</td>
</tr>
</tbody>
</table>

These tax rates consist of a national tax and an Autonomous Communities tax. Some regions have higher tax rates, which means that the maximum tax rate is higher. For example, the maximum tax rate is 49% for Andalucia, and 48% for Catalonia.
For savings income (which includes passive income such as interest, dividends and capital gains), the following rates apply for residents for the 2016 tax year:

<table>
<thead>
<tr>
<th>Savings Net Tax Base</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>€0 – €6,000</td>
<td>19%</td>
</tr>
<tr>
<td>over €6,000 – €50,000</td>
<td>21%</td>
</tr>
<tr>
<td>over €50,000</td>
<td>23%</td>
</tr>
</tbody>
</table>

For non-residents, the income tax rate is 24% (19% for residents of other EU countries).

Capital gains realised from assets sold within one year of ownership are taxed as for ordinary income. Gains realised from the sale of a taxpayer’s main private residence are exempt; however, this applies to Spanish residents only, which has been challenged by the European Court of Justice as discriminating against non-residents. Gains realised on certain shares purchased in newly or recently established companies are also exempt.

Capital losses can be used to reduce any current year capital gains. Capital losses cannot be offset against income and vice versa.

No deductions are permitted for employment income obtained by non-residents without a permanent establishment (PE) in Spain, other than certain charitable donations recognised by statute. Withholding tax paid on a taxable event is deducted from the overall tax liability.

Gift and inheritance tax rates may vary between Autonomous Communities and are based on the degree of family relationship between the beneficiary and benefactor. Under national legislation, rates (after reductions) are on a sliding scale ranging from 7.65% to 34%, depending on the value of the gift/estate received by the beneficiary.

A wealth tax, which had been abolished in 2008, was reintroduced in 2011. For residents, the tax applies to worldwide assets; for non-residents it applies to Spanish assets. Generally, the first €700,000 of assets are excluded; after that, rates of between 0.2% and 2.5% apply through eight bands. Exemptions include the taxpayer’s main residence up to a maximum value of €300,000.

Residents of Spain for at least 10 of the previous 15 years losing Spanish tax residency may be subject to an exit tax on unrealised capital gains on shareholdings above €4,000,000, or above €1,000,000 where the taxpayer owns more than 25% of the shareholding.
5.3 Employment Related Costs and Taxes

5.3.1 Social security costs

Employers and employees are required to make social security contributions of around 29.9% and 6.35%, respectively, on maximum monthly salary of up to €3,642.

5.3.2 Fringe benefits

Resident and non-resident employees are liable to income tax on fringe benefits earned through their employment. The market value of the fringe benefit is added to the employee’s salary; the tax is then withheld at source by the employer as payroll tax.

5.3.3 Pensions and superannuation

Employers’ compulsory contributions are considered fringe benefits enjoyed by employees and are subject to income tax. Employers’ contributions are not deductible from the employers’ taxable income.

Employees’ compulsory contributions to pension plans are deductible up to certain limits.

5.4 Withholding tax

5.4.1 Domestic payments

Dividend, interest and royalty payments are generally subject to a 19% withholding tax.

There is no withholding tax on dividends paid to a company that has a share equal to or above 5% of the paying company’s capital, where this share has been held over the previous year.

5.4.2 Payments abroad

Dividend and interest payments made abroad are generally subject to a 19% withholding tax. Royalty payments are taxed at 19% if paid to a resident of an EU/EEA jurisdiction with which Spain has provisions for the effective exchange of tax information, otherwise 24%.

Dividend and royalty payments made to connected corporate recipients within the EU are generally exempt.
For payments made to recipients in countries with which Spain has a double tax treaty, the rates of withholding tax may be reduced under the terms of the treaty.

### 5.5 Value Added Tax (VAT)

VAT is levied on the supply of goods and services in Spain and on the importation of goods into Spain.

Trading entities which are required to be registered for VAT must generally charge their customers VAT of 21% on the value of their supplies. VAT registration is mandatory for all enterprises supplying goods and services in Spain.

Some supplies are taxable at reduced rates. For example, most food, agricultural and farming products, medical products and tools, prescription spectacles, sales of new houses, transportation, hotel services and services provided by artists and actors are subject to VAT of 10%. A 4% rate applies to staple foods, books, newspapers, magazines, medicines and care services provided by companies to care homes.

Registered traders can generally recover the VAT with which they themselves are charged on their purchases of goods and services, although there are exceptions.

### 5.6 Other Taxes

#### 5.6.1 Stamp duty

Stamp duty is an indirect tax levied at varying rates on:

- The transfer of assets between private individuals
- Certain corporate transactions, and
- Declarations or transactions documented and registered under seal.

The following corporate transactions are exempt from stamp duty: incorporation, capital increase, other contributions made by shareholders, and change of registered offices to Spanish territories.

#### 5.6.2 Property taxes

A property transfer tax ranging from 6% to 10% applies to the sale of shares in property holding companies located in tax havens, and in situations where the VAT does not apply.

Non-resident companies usually pay a 3% tax on the cadastral value of property purchased in Spain.

Some municipalities levy a local annual tax on the assessed value of property.
5.6.3 Environmental taxes

There are a number of environmental taxes including for nuclear fuel and radioactive waste, the sale of electricity, petrol, gas and hydroelectricity.

5.6.4 Excise taxes

Excise taxes are levied on selected products, including hydrocarbon products, alcohol, alcoholic beverages and tobacco.

5.7 Tax Credits and Incentives for Businesses

5.7.1 Research and development (R&D) expenditure

Free depreciation can be applied to R&D expenses recorded as intangible fixed assets, and for new fixed assets and buildings acquired between 2011 and 2015 and used for R&D activities. Generally, the depreciation rate for buildings used for R&D is limited to 10% annually.

Unused R&D tax deductions can be carried forward for 18 years (see below).

5.7.2 Tax credits

Performing certain activities gives companies the right to subtract from their tax liability a tax credit calculated by applying a rate to the cost or expenses incurred.

Generally, the total amount of tax incentives which may be deducted against the annual corporate tax liability is limited to a percentage of the tax liability. This means that there may still be a charge for tax even if substantial tax credits are unused. Unused tax deductions can be carried forward for 15 years. Unused R&D tax deductions can be carried forward for 18 years.

The taxable liability limitation percentages applicable for 2016 are:

<table>
<thead>
<tr>
<th>Type of Cost or Expense</th>
<th>Tax Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed assets to protect the environment</td>
<td>8%</td>
</tr>
<tr>
<td>R&amp;D expenses</td>
<td>25%</td>
</tr>
<tr>
<td>Technological innovation</td>
<td>12%</td>
</tr>
<tr>
<td>Films</td>
<td>20% on the first €1m; 18% on the excess</td>
</tr>
</tbody>
</table>
5.7.3 Capitalisation reserve

Companies may reduce their tax base by 10% of their increase in net equity if certain requirements are met, including:

- the increase in entity is maintained for five years
- a reserve for the amount of the reduction appears on the balance sheet

5.7.4 Tax relief on intellectual property

A 60% relief may be claimed in respect of qualifying income derived from the assignment of use or from the exploitation of patents, designs or models, plans, secret formulas or processes, or rights to information concerning industrial, commercial or scientific operations subject to conditions.

Exploitation of marks, literary, artistic or scientific works, cinematographic films and others are excluded.

5.7.5 Regional incentives

Enterprises that are resident and/or have their business in the Canary Islands have special tax advantages:

- A 50% reduction in corporate income tax payable on profits realised in the Canary Islands. There is also a 50% relief on tax liability for income generated in Ceuta and Melilla.
- Up to 90% reduction in the taxable base of undistributed profits, on condition such profits are reinvested in the Canary Islands within three years
- Reduced taxes for companies setting up in the Canary Islands Special Economic Zone.

5.7.6 Social security incentives

Employers are entitled to an exemption from social security contributions in respect of new employees who:

- Are under the age of 30
- Have been enrolled at the Spanish unemployment office for an uninterrupted period of 12 months during the 18-month period prior to employment
- Have no previous work experience or have work experience not exceeding three months in duration
- Receive training from the employing company, and
- Are employed on a part-time basis (up to 50% of full-time hours).
The exemption rate is 75% for companies with at least 250 employees, and 100% for all other companies. The exemption can be applied for a period of one year. This can be extended for a further year if the employee is continuing to be trained or where training was completed within the previous six months.

A social security exemption of up to 100% for 12 months is also available to employers who, following a qualifying interruption in business activity, continue to employ workers using measures such as working time reduction.

Flat social security rates of €50 or €75 generally apply in respect of newly hired, permanent part-time employees, depending on the number of hours worked. Qualifying conditions include a requirement that the employment contract be maintained for at least three years, and the new employee must result in an increase in the company’s workforce. The flat rate applies for the first 24 months of employment.

5.7.7 Small business reinvestment tax credit

A tax credit is available for companies with an annual turnover of less than €10m. Such companies may deduct up to 10% of profits that have been reinvested in economic activity from taxable income.
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