



**IBERAUDIT**  
**KRESTON**

*Doing Business in Spain*

# DOING BUSINESS IN SPAIN



# CHOICE OF LEGAL FORM

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Business in Spain may be conducted by incorporated companies, partnerships, individuals and branches of foreign constituted enterprises. Companies:

1. **Corporation - Sociedad Anónima (S.A.):** The minimum capital amounts € 60.000,- divided in shares. It is possible to establish the company with a partial payment of the 25% (€ 15.000- ).

Capital contributions can be made either in money or by other valuable rights, real estate or goods, but for this non monetary contribution a special report must be issued by an expert appointed by Commercial Registry.

2. **Limited Liability Company - Sociedad Limitada (S.L.):** The minimum capital amounts € 3.000, Capital contributions can be either monetary or non-monetary. The latter one does not require expert's special report.

The corporate capital is not distributed in stock shares but in quotas ("participaciones") which are always registered.



# CHOICE OF LEGAL FORM

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3. **Sole proprietorships**: Law permits that companies (Corporation, and Limited Liability Company) could have a sole shareholder. This fact should be declared to the Commercial Registry in a term of six months in order to avoid transfer of liability from the company to the sole shareholder or partner. This circumstance has to be inserted by means of the expression “sociedad unipersonal” in all commercial and trading documents of the company.

4. **Branches**: A branch is not a legal entity, but a part of the foreign company to which it belongs.

To set up a branch a public deed must be prepared and filed with the Mercantile Registry. The legal and tax requirements for a branch are very similar to those required for a subsidiary.

Basically, the difference between a Branch and a Subsidiary is the personality and the corresponding responsibility. Branch shares legal personality with the principal establishment as they are the same legal entity.



# AUDITING & ACCOUNTING REQUIREMENTS

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The accounting is mainly regulated in Spain by the General Accounting Plan of 2008.

It is required to keep the necessary accounting records which must include at least the following statutory accounting books:

- Journal ("Libro Diario")
- General Ledger ("Libro de Inventario y Cuentas Anuales")
- Annual accounts.

The statutory books must be duly stamped in the Mercantile Registry, and the company must keep these records together with related business documents for at least six years from the date of the last entry.



# AUDITING AND ACCOUNTING REQUIREMENTS

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1. Auditing is obligatory for all companies which for two consecutive years fulfill at least two of the following conditions:
  - Net Annual sales above Euro. 5.700.000
  - Total assets above Euro. 2.850.000
  - Average number of employees above 50.
2. Auditing is also obligatory for companies which, although not exceeding the above-mentioned figures, fulfill certain conditions: for example, companies quoted on the Stock Exchange, finance and credit companies; recipients of official subsidies; life insurance companies, etc.
3. All commercial firms are obliged annually to deposit in the Mercantile Registry their annual accounts, and also the Directors' Report. In this way, information about the accounts of all companies is at the disposal of the public.

The auditors' report has to be deposited in the Mercantile Registry together with the annual accounts.



# FINANCE & INVESTMENT

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## Exchange control

- Spanish regulations regarding foreign exchange control have been liberalized. In general, authorization is not necessary for the majority of foreign transactions.
- Although authorization may not be required, some transactions must be notified to the Bank of Spain. The withdrawal from or bringing into Spain of more than 10,000€- or the equivalent in a foreign currency per person and trip, must be reported.
- Shall be declared money transactions in Spain of more than 100.000€. This applies to residents and non Spanish residents.
- For payments between residents and non-residents and bank transfers which the amount exceeds € 6,010.12- the bank will ask for information on the bank account and for data relating to the transaction.



# FINANCE & INVESTMENT

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## Sources of finance

- Spain has a diversified and modern financial system, which is completely integrated within international financial markets.

## The law and money laundering

- The Spanish legal system about money laundering has been recently modified to adjust the Spanish rule to the European regulation.
- Among other innovations, the new law extends the number of professionals under obligation to collaborate with the authorities, when there is a suspicion of money laundering, from not only casinos, state agencies and finance companies, to now also auditors, advisors, consultants and in some cases notaries, lawyers (not to forget that rules on lawyers' professional secret prevail over laws on money laundering) and solicitors.





# DIRECT TAXATION / COMPANIES

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- Spanish resident companies are taxpayers of the Corporate Income Tax on their worldwide profits. The standard rate of Spanish corporate income tax for the year 2012 is 30 %. However, small-size companies (turnover less than 10 million Euro) benefit from a reduced rate of 25% applicable to the taxable base up to Euro 300.000, being the excess subject to standard rate 30%. This tax rate could be reduced till 20% if some employment rules are followed (maintain or employment increase) and annual turnover less than 5 Million Euro.
- There are three payments on account: the first till the 20th April, the second till the 20th October and the third the 20th December. The Corporate tax should be paid during the 25 days following the 6 months after the end of the financial year. It means, actually, that if the financial year finishes on 31st December, the Tax return should be fulfilled during the 25 first days of July of the next year.

## Taxable profits

- Taxable income is defined as the amount of income obtained in the tax period. This taxable income is determined from the accounting records, as the difference between computable revenues and deductible expenses.
- Since January 2004 the decision from the ECJ in the Lankhorst-Hohorst case has been introduced in the Spanish Corporate Tax Law. Therefore the thin-capitalization rules are no longer applicable when the associated enterprise is resident in another EU Member Estate, so the repayments in respect of a loan capital will no be considered as a covert distribution of profits.



# DIRECT TAXATION / COMPANIES

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## Capital allowances

- Capital allowances are deductible from profits. Depreciation is reflected on the accountancy and that depreciation is deductible in order to determine the tax liability but there are some limits established by the law. Free depreciation is allowed for investments in new fixed assets acquired during year 2011 and from January to March 2012.

## Interest payments

- Interests payments are deductible from profits with the limit of 30% of operating Profits when interest amount exceeds 1 Million Euro.

## Royalty payments

- Payments of royalties are also deductible. Moreover, the rules for associated companies are also applicable when royalties are paid between associated companies: market value must be justified.
- If the payee is a non resident, the payment will be also withheld at 24,75 %. However if royalties are paid to other European Member resident associated companies they will be exempt from non resident income tax.
- Treaties to avoid double taxation include special provisions for royalties and should be taken into consideration when applicable.



# DIRECT TAXATION / COMPANIES

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## Dividend payments

- Dividend payments are not deductible from profits. Dividends paid to a Spanish resident company or individual are subject to a withholding tax, unless in some cases. Dividends paid to non Spanish resident companies or individuals have also to be withheld. The general tax rate in both cases is 21%.
- As same as before, treaties to avoid double taxation have to be regarded as they usually establish special rules for dividends.

## Tax period

- The tax period coincides with the economic period or exercise. The tax period cannot exceed twelve months, unless it can be inferior.

## Due dates for payment

- The tax period coincides with the financial year declared without this being able to exceed twelve months. The tax is accrued on the last day of the tax period.

## Relief for losses

- The Spanish Corporate Income Tax law permits companies to carry forward the losses incurred in one year to the following 18 years.



# DIRECT TAXATION / COMPANIES

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During years 2012 and 2013 limitation for tax losses compensation are applicable for companies with gross turnover higher than 20 Million Euros

Gross Turnover	Maximum Compensation
From 20 M € to 60 M €	50% profit
More than 60 M €	25% profit



# DIRECT TAXATION / INDIVIDUALS

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## Overview

- Individuals, who are Spanish residents according to the Spanish Personal Income Tax Law, are taxpayers of this tax of their worldwide income and capital gains.
- An individual is understood to be a tax resident in Spain when any of the following circumstances arise:
  - Remaining in Spain for more than 183 days during the calendar year.
  - Basing the core business or base for these activities or economic interests in Spain, directly or indirectly.
  - Treaties to avoid Double Taxation include special provisions regarding residence criteria and should be taken into consideration when applicable.
- None less, for individuals who become Spanish residents because they have moved to Spain for work with a labor contract and their year salary is not higher than € 600.000, they can choose to be taxed as non resident at a fixed rate of 24,75% for all their Spanish incomes.



# DIRECT TAXATION / INDIVIDUALS

- Tax system for Spanish residents (tax rate calculated from the application of progressive scales ranging from 24,75% to 56%)

Tax basis (up to euros)	Gross tax due (euros)	Remaining tax basis (up to euros)	Tax rate
0,00	0,00	17.707,20	24,75%
17.707,20	4.382,53	15.300,00	30,00%
33.007,20	8.972,53	20.400,00	40,00%
53.407,20	17.132,53	66.953,00	47,00%
120.000,20	48.600,44	55.000,00	49,00% (1)
175.000,20	75.550,44	125.000,00	51,00% (2)
300.000,20	139.300,44	onward	52,00% (3)

(1) In certain regions of Spain is applicable an additional rate of 2%, resulting 51%

(2) In certain regions of Spain is applicable an additional rate of 4%, resulting 55%

(3) In certain regions of Spain is applicable an additional rate of 4%, resulting 56%

- The tax period coincides with the calendar year: from January 1st to December 31st of each year. The tax return must be presented to the Spanish Tax Administration between May 1st and June 30th of the following year of the year accrued.



# DIRECT TAXATION / INDIVIDUALS

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## Sole Traders

- The self-employed are taxpayers of the Personal Income Tax, then, their worldwide income will be subject to this tax. The Law refers to this income as income obtained from “economic activities”, this is the self-organization of production means and human resources or of one of them with the purpose of intervening in the production or distribution of goods or services.

## Taxation of employees

- Employees are taxpayers of the Spanish Personal Income Tax. Their taxable liability is determined according to their salary.
- The employer has two main obligations which are:
  - To pay the social security each month.
  - To present the tax return and to realize the payment regarding the withholding tax applied over the salary of its employees. This duty has to be attended each quarter (for small-size companies) or each month (big-size companies).

Strict sanctions are applicable if these duties are no attended.



# DIRECT TAXATION / INDIVIDUALS

## Taxation of savings income

- Savings income are withheld at the fixed tax rate of 21%. Referring to savings income derived from the participation in a company (e.g. dividends) same withholding tax rate is applicable.
- Final tax rate depends on total income:

Income	Tax Rate
up to 6,000€	21%
6,000 to 24,000	25%
over 24,000	27%

## Income from land and property

- The income obtained by the letting of these sources has to be added to the taxable base. Rentals from the letting of a house which has housing destination are reduced 60%. This reduction could be increase to 100% if certain conditions are met. Not rented properties which are not the habitual housing, even they are used by the owner or not, are taxed 2% or 1.10% applied over their cadastral value.

## Capital gains

- Capital gains will be taxed on fixed tax rate of 21%. However goods acquired before the 31st of December 1994 have a reduction when calculating the capital gain derived from their selling. This reduction rule does not apply for goods related to business activities.





# DIRECT TAXATION / INDIVIDUALS

## Taxation of savings income

Savings income are withheld at the fixed tax rate of 21%. Referring to savings income derived from the participation in a company (e.g. dividends) same withholding tax rate is applicable. Final tax rate depends on total income :

Taxable base on savings	Tax rate	Complementary levy	Total
from 0 to 6,000€	19%	2%	21%
from 6,000€ to 24,000€	21%	4%	25%
more than 24,000€	21%	6%	27%

## Income from land and property

The income obtained by the letting of these sources has to be added to the taxable base. Rentals from the letting of a house which has housing destination are reduced 60%. This reduction could be increase to 100% if certain conditions are met. Not rented properties which are not the habitual housing, even they are used by the owner or not, accrue a taxable income calculated as 2% or 1.10% applied over their cadastral value.

## Capital gains

Capital gains will be taxed on fixed tax rate of 21%. However goods acquired before the 31st of December 1994 have a reduction when calculating the capital gain derived from their selling. This reduction rule does not apply for goods related to business activities.



# DIRECT TAXATION / INDIVIDUALS

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## Inheritance Tax

- The inheritor of the deceased is bound to pay the inheritance tax on the net value of the assets and rights acquired. That means that any inherited charges or obligations are deductible in general.
- The tax rate is determined by applying a tax scale, and it goes from 7.65% to 34%
- It exists several Local and Regional Government rules that could give a substantial reduction in the taxation for specific cases.



# DIRECT TAXATION / INDIVIDUALS

## Wealth/Net Worth Tax

This tax was not applicable since 1<sup>ST</sup> of January 2008.

However, the actual circumstances and the effects from economic crisis made it necessary its application with two important changes:

- The reintroduction is temporary for 2011 and 2012 and shall be presented in 2012 and 2013.
- The limit of exemption in habitual residence has been increased until maximum of 300,000€ and the minimum wealth value exemption is 700,000€. Depending on the Autonomous Community, mentioned amounts could be different

This tax shall becomes chargeable on 31st December.

The positive tax basis (net wealth value) will be taxed according to the income tax rate scale approved by the Autonomous Community were the tax payer is resident, or in its absence by the General scale approved by the State.

For 2011 the tax rate approved by the State is:

Tax basis (up to Euros)	Gross Tax due (Euros)	Remaining tax basis (up to Euros)	Tax rate
0.00	0.00	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	onward	2.5%



# NON RESIDENTS CORPORATION TAX

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Non-resident companies in Spain are subject to Company Income Tax for the revenues and capital increases generated in Spain, and the revenues paid to them by residents.

## Corporations with a permanent establishment

Non residents who obtain revenue through a permanent establishment in Spain shall be taxed on all the revenue that may be imputed to that establishment, whatever the source from which it is obtained.

The general taxation rate is the same than for the Sp. Corporations, 30% when certain conditions are met complementary tax applicable for income distributed outside Spain.

## Corporations without a permanent establishment

The income obtained without a permanent establishment being used must be taxed separately for each total or partial accrual of the income taxed.

The general taxation rate of 24,75% will be applied to the taxable base obtained. However for capital gains financial income the tax rate applicable is 21%.



# INDIRECT TAXES

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## Value Added Tax

Value Added Tax is chargeable on all sales of goods in Spain, together with all services given by businesses in Spain, acquisitions of goods in the European Union and imports.

It is chargeable at three positive rates, the lower rate of 4%, the reduced rate of 10% and the standard rate of 21%.

## Customs Duty

Imports are subject to VAT and customs duties. The concept of import only refers to merchandises coming from non European Union Member Countries, as this matter has been harmonized inside the European Union based on the principle of free circulation of goods, establishing a uniform system for taxing imports on the Community Customs Code.

Taxable base in both cases is different; moreover the custom duty has to be added in order to determine the taxable base for import VAT.



# OTHER TAXES

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## Stamp Duty

Stamp duty is payable for Spanish residents and non residents who acquire goods or rights in Spain. The tax rates are as follows:

- Property sales: from 3% to 10%
- Corporate transactions: 1%
- Execution public documents: from 0.5% to 2%

## Economic Activities Tax

An annual tax, at fixed amounts in the tax code, is levied on the practice of professional and industrial activities by individuals and companies and taking into account the floor area of the premises occupied for the performance of the activity. Companies which annual turnover is under Euro 1.000.000 are exempt to pay this tax.

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