Overseas to Spain

A guide from Gesdocument offers you first-hand details on the steps and procedures for entrepreneurs and investors looking to move to Spain.
Are you looking to move to Spain?

With this guide, Gesdocument offers you first-hand details on the steps and procedures for entrepreneurs and investors looking to move to Spain.

- Should we start our business activity in Spain as a subsidiary, as a branch office or as a representative office?
- Main taxes and deductions.
- Hiring employees: Corporate setup and types of contracts of employment.
- Residence visa for investors and entrepreneurs.

1. **Should we start our business activity in Spain as a subsidiary, as a branch office or as a representative office?**

The decision to establish a business in Spain as a subsidiary, a branch office or a representative office depends on the foreign investor’s intentions in Spain.

A representative office is a fast way of introducing a business in Spain: It can rent premises or open bank accounts like a non-resident and freely perform preliminary studies on the market conditions for its activity. This option restricts company activity in Spain to non-economic business because the Spanish Tax Authorities may determinate that, if other activities are undertaken, it could be considered a permanent establishment and not a representative office.

If the intention of the foreign investor is finally to develop work in Spain, it could be constituted as a branch office or a subsidiary. The difference between both is the level of power of decision and the responsibility of the representatives with regards to the Spanish Tax Authorities.

**Procedures for setting up a business (S.A. /S.L.)**

The procedures indicated are standard for setting up a business, although they may vary considerably in the case of regulated sectors where the regulations for foreign investment or specific sectorial standards may establish limits or additional requirements.

We have highlighted the specific procedures for foreigners in green.
<table>
<thead>
<tr>
<th>PROCEDURE</th>
<th>DESCRIPTION</th>
<th>INSTITUTION / BODY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Negative company name certificate. This certifies that the company name chosen does not coincide with that of any other existing company. The name is reserved for a period of six months. The certificate remains valid for three months however, although it is renewable. It must be shown to the notary public when signing the deed of incorporation.</td>
<td>Central Companies Register. <a href="http://www.rmc.es/Deno_solicitud.aspx">http://www.rmc.es/Deno_solicitud.aspx</a></td>
</tr>
<tr>
<td>2.</td>
<td>Opening of a current account and request for a bank deposit certificate indicating the start-up capital. To deposit the minimum start-up capital and certify as such before the notary public when signing the deed of incorporation.</td>
<td>Any bank or savings bank.</td>
</tr>
<tr>
<td>3.</td>
<td>Obtaining the Foreigner’s Identification Number (NIE). Necessary to be considered a partner or director in a Spanish company.</td>
<td>Any Provincial Government Office or Spanish consulate / embassy.</td>
</tr>
<tr>
<td>4.</td>
<td>Drafting of the company by-laws. These establish the essential rules for company operations.</td>
<td>Law firm.</td>
</tr>
<tr>
<td>5.</td>
<td>Granting of powers. A document in which the partner who may be unable to attend the signing of the deed of incorporation of the company before the notary public authorises another person to appear on his/her behalf. This can also be granted abroad with the inclusion of the 1961 Hague Convention Apostille (stamp making the power granted abroad effective in Spain).</td>
<td>Notary Public.</td>
</tr>
<tr>
<td>6.</td>
<td>Granting of the deed of incorporation of the company. This is when the partners or their representatives appear before a notary public to formally constitute the company.</td>
<td>Notary Public.</td>
</tr>
<tr>
<td>7.</td>
<td>Declaration or authorisation of the investment in the Foreign Investment Register. This is for administrative and economic purposes (Government control on the source of investments made).</td>
<td>Ministry of the Treasury Foreign Investment Register. Term: during the month following the granting of the deed of incorporation (date of the investment).</td>
</tr>
<tr>
<td>8.</td>
<td>Census declaration a. Obtaining a provisional Tax Identification Code (CIF). b. Registration for the following taxes: - Value added tax (IVA), - Corporate income tax (IS), - Business tax (IAE). Presentation of the official form (036) to obtain the provisional CIF, which identifies the company for tax purposes and informs the Authorities of the start of company activity. Automatic registration for taxes simply by presenting the 036 form. Newly created companies are exempt from payment of IAE during the first two years of business. They are then only subject to payment as of a certain turnover.</td>
<td>Office of the Inland Revenue corresponding to the tax domicile of the company. Term: prior to the start of business.</td>
</tr>
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<tr>
<td><strong>9.</strong></td>
<td><strong>Presentation of form 600.</strong> (Transfer tax - ITP - and stamp duty - AJD - exempt).</td>
<td>Currently exempt from payment of taxes. Required for listing of the company in the Companies Register.</td>
</tr>
<tr>
<td><strong>10.</strong></td>
<td><strong>Listing in the Companies Register.</strong></td>
<td>Makes company constitution public so that it can acquire legal status.</td>
</tr>
<tr>
<td><strong>11.</strong></td>
<td><strong>Obtaining of the corresponding administrative permits, authorisations and registers.</strong></td>
<td>Varies according to the type of business activity.</td>
</tr>
<tr>
<td><strong>12.</strong></td>
<td><strong>In the case of employees:</strong> &lt;br&gt; a. <strong>Company listing with the Social Security</strong>&lt;br&gt; b. <strong>Registration and membership of employees with Social Security</strong></td>
<td>The company must be listed with the Social Security for its employees to be registered (form TA-6). Once the company has been listed, the employees should register using the RED System.</td>
</tr>
<tr>
<td><strong>13.</strong></td>
<td><strong>Notification of the opening of a workplace</strong></td>
<td>Notification to the appropriate labour authorities of the start of a new business of any kind, regardless of whether or not the company appoints employees provided that there is a workplace.</td>
</tr>
<tr>
<td><strong>14.</strong></td>
<td><strong>Obtaining of the final tax identification code (CIF)</strong></td>
<td>Obtaining of the final CIF card to prevent the previously requested provisional card from expiring.</td>
</tr>
<tr>
<td><strong>15.</strong></td>
<td><strong>Legalisation of company books.</strong></td>
<td>There are four books: the Journal, the Inventory and Annual Accounts Book, the Minutes Book and, in the case of a sole partner, the Register of Contracts with the Sole Partner.</td>
</tr>
</tbody>
</table>
Procedures for setting up a branch office

The procedures are the same as for setting up a business, although certain singularities are highlighted below.

<table>
<thead>
<tr>
<th>PROCEDURE</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The following documents from the foreign parent company must be provided:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Agreement from the corresponding corporate body relating to the decision to constitute the branch office.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Granting of powers to the representative, who may be an individual or a legal entity. In both cases, legally residing in Spain.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Certificate of the appropriate register or body from the Government of the parent company confirming the valid existence of the parent company and the validity of the company by-laws and the managing director posts.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Opening of a current account and transfer of funds.</td>
<td>Any bank or savings bank.</td>
</tr>
<tr>
<td></td>
<td>Although minimum capital is not required, the necessary funds to undertake the activity must be provided.</td>
<td></td>
</tr>
</tbody>
</table>

Procedures for setting up a representative office

<table>
<thead>
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<th>DESCRIPTION</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>The following documents from the foreign parent company must be provided:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Agreement from the corresponding corporate body relating to the decision to constitute the representative office.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Granting of powers to the tax representative/ managing director of the representative office.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Certificate of the appropriate register or body from the Government of the parent company confirming the valid existence of the parent company and the validity of the company by-laws and the managing director posts.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Opening of a current account and transfer of funds.</td>
<td>Any bank or savings bank.</td>
</tr>
<tr>
<td></td>
<td>Although minimum capital is not required, the necessary funds to undertake the activity must be provided.</td>
<td></td>
</tr>
</tbody>
</table>
2. Main taxes and deductions

This section offers an overview of the current tax system in Spain to make investors familiar with the main tax concepts that exist.

Types of tax

These are different ways of classifying taxes. The most common one distinguishes between direct taxes (those imposed directly on source of wealth, property or income) and indirect taxes (imposed on consumption).

Based on this classification, the main taxes currently existing in Spain are as follows:

**Direct taxes:**

- Personal Income Tax (Impuesto sobre la Renta de las Personas Físicas), imposed on the income obtained by people residing in Spain, regardless of the place where the income was earned and the place of residence of the payer.
- Non-Resident Income Tax (Impuesto sobre la Renta de no Residentes), imposed on the income obtained in Spain by people not residing in our country.
- Corporate Income Tax (Impuesto sobre Sociedades), imposed on the profits obtained from Company business. More specifically, it is applied to the net profit, i.e. any expenses required in obtaining the profit are subtracted from the revenues obtained.
- Tax on Inheritance and Donations (Impuesto sobre Sucesiones y Donaciones), which is paid by people when they receive money or other goods gratuitously. Included here are cases in which an inheritance or legacy is received from a deceased person ("mortis causa" acquisitions) and cases in which a donation is received from a living person ("inter vivos" acquisitions).
- Capital Gains Tax (Impuesto sobre el Patrimonio), imposed on the group of goods and rights possessed by a person, subtracting any encumbrances, debts and obligations for which that person is responsible.

**Indirect taxes:**

- Value Added Tax (Impuesto sobre el Valor Añadido), imposed on consumption.
- Transfer Tax and Stamp Duty (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados), applies to transfers of all types of goods and rights (e.g. second-hand property or vehicles), to certain operations performed by companies (including capital decrease and company dissolution) and to documents that must be officially recorded (such as copies of public deeds, notarised documents, etc.).
• Tariffs, applied to goods subject to import or export.

• Excise, imposed on the purchase or consumption of certain goods, such as alcoholic beverages, tobacco, certain means of transport and hydrocarbons.

As well as these taxes, the existence of local taxes must be considered, which include the following:

✓ Property Tax (Impuesto sobre Bienes Inmuebles).
✓ Business Tax (Impuesto sobre Actividades Económicas).
✓ Road Tax (Impuesto sobre Vehículos de Tracción Mecánica).
✓ Urban Land Value Tax (Impuesto de Incremento del Valor de los Terrenos de Naturaleza Urbana).
✓ Tax on buildings, sites and installations (Impuesto sobre construcciones, obras e instalaciones).

The most relevant concepts are discussed below.

**Direct taxes in the case of undertaking a business activity**

Starting a business in Spain involves a set of different tax obligations depending on the chosen legal form in which the business is to operate.

Whether or not the different direct taxes apply will depend on whether the business is undertaken by individuals (sole traders) or legal entities (commercial entities) and can be summarised as follows:

<table>
<thead>
<tr>
<th></th>
<th>INDIVIDUALS</th>
<th>LEGAL ENTITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Income Tax</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Non-Resident Income Tax</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Corporate Income Tax</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

**Personal Income Tax**

Personal Income Tax (IRPF) is a personal and direct tax imposed on the income of individuals according to their nature and personal and family circumstances.

Income is considered all earnings and capital gains and losses, etc., regardless of the place where they were earned and whatever the place of residence of the payer.

In order to calculate the tax, the income is classified according to its origin as general income (salaries, benefits from business activities, capital gains and losses dating back less than one year, prizes, etc.) or income from savings (interest from bank accounts, gains or losses due to the transfer of goods dating back over one year, etc.).
Non-Resident Income Tax

The way in which an individual or legal entity must pay tax on income in Spain is determined according to whether or not he/she is a resident of this country. Residents pay IRPF (Personal Income Tax) or Corporate Income Tax and non-resident individuals and legal entities, however, pay Non-Resident Income Tax (IRNR).

The **tax residence** concept is established, where applicable, in the Double Taxation Agreements that generally stipulate that anyone remaining in Spain for over 183 days during the calendar year or anyone forming the main core or base of his/her activities or business interests in Spain shall be considered a resident in Spain.

Non-resident individuals and legal entities must pay IRNR on income obtained in Spain.

Insofar as taxation on income arising from business activities, IRNR taxation is different depending on whether or not the business operates through a permanent establishment, i.e. whether or not it has a permanent workplace in Spain.

**If operating through a permanent establishment**, all income attributable to that establishment must be taxed in Spain, wherever it was obtained, and the provisions of the General Corporate Income Tax System will apply to calculate the taxable base. The general tax rate will be 30%.

**If not operating through a permanent establishment**, the taxable base will generally be the difference between total revenue and the following expenses: personnel expenses, procurement of materials used on site or in work, and supplies.

Where the taxpayer is a resident of another EU Member State, the expenses established in the IRPF Act can be deducted when determining the taxable base, provided the taxpayer can prove they are related to income obtained in Spain and have a direct and inseparable economic link to the business undertaken in Spain. This income will be taxed at the general tax rate of 24% (24.75% from 1st January 2012 to 31st December 2014, both inclusive).

Corporate Income Tax

Corporate Income Tax (IS) is a direct tax applied every year on the net profit obtained from the activity of companies undertaking their business within Spain.

The accounting profit or loss is used as a basis for calculating the net profit, which is then corrected as a result of existing discrepancies between accounting and tax regulations by means of off-balance sheet adjustments.

IS also includes a series of deductions and bonuses that are expanded on in a later section.

Insofar as the current tax rate in Spain, its percentage depends on the circumstance of each company and ranges from 15% to 30% *.

* There are lower tax rates for companies with specific activities, such as non-profit-making organisations, variable capital investment companies or property investment companies, etc.
Value Added Tax

Value Added Tax (IVA) is a tax on consumption, as it is imposed on the supply of goods and provision of services by entrepreneurs and professionals and imports inside and outside the European Union. The real taxpayers are the end consumers, who pay the tax within the price they pay for the good or service purchased, with the entrepreneurs and professionals acting as mere “collectors” for the Inland Revenue.

The general tax rate of IVA is 21%, although there are another two reduced rates of 10% and 4% that are applied to certain goods or services of general use or those considered essential items, such as food, catering services, books and newspapers, etc.

Business Tax

Business Tax (IAE) is a municipal tax imposed on business activities in Spain. Both individuals and legal entities with a turnover of less than 1,000,000 Euros are exempt.

Deductions

- Note the following with regards to the tax incentives regulated under the IS Act aimed at encouraging business activity:

2. The deductions scheme (El régimen de deducciones).

The special scheme for **Foreign Security Holding Companies** (ETVE) was created to avoid double taxation imposed on revenues earned abroad by Spanish companies operating in foreign countries. This system consists of exempting the dividends distributed by non-resident invested companies and the profit generated through the transfer of these shares.

ETVE are companies dealing in the management and administration of shares in non-resident companies through a business activity, i.e. managed by the company itself and not transferred to third parties. To be able to adhere to this system, the option must be communicated to the Ministry of the Treasury and the conditions required by Law must be met (including the fact that ETVE securities must be nominal and, in some cases, the percentage of share in the capital stock of the non-resident company must be at least 5%, etc.).

Below is a brief summary of the main deductions on activity applicable to both IRPF and IS.

The scheme of **deductions to encourage certain activities** is summarised in the following tables:

<table>
<thead>
<tr>
<th>Modality</th>
<th>Deduction percentage in 2014</th>
<th>Limit factor in 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scientific research (R&amp;D)</td>
<td>25/42</td>
<td>The total sum of these deductions as a whole may not exceed 25% of the total tax liability deducted. The limit increases to 50% when the amount of the deduction corresponding to R&amp;D and TI expenses for the year exceeds 10% of the total tax liability deducted.</td>
</tr>
<tr>
<td>Qualified research personnel</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>Technological innovation (TI)</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Spanish heritage assets</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Book publishing</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td>Environmental installations</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>Reinvestment of extraordinary profits</td>
<td>12%</td>
<td></td>
</tr>
<tr>
<td>Creation of employment through the contracting of the first employee</td>
<td>Set amount 3,000 Euros</td>
<td></td>
</tr>
<tr>
<td>Deduction through investment of profits for small enterprises</td>
<td>10% yearly profits</td>
<td></td>
</tr>
<tr>
<td>Creation of employment for companies with a workforce &lt; 50 employees</td>
<td>50% of the total sum of the unemployment benefit that the employee is yet to receive or the sum corresponding to 12 monthly payments of the acknowledged unemployment benefit, whichever is the lowest amount</td>
<td></td>
</tr>
</tbody>
</table>

**Contents**

**Patent box**

- 60% reduction on income obtained through the transfer of rights to use or licence-in patents, drawings or models, diagrams, formulas or secret procedures and of rights on information relating to industrial, commercial or scientific experiments.
- The transferring company must have created the assets subject to transfer.
- The assignee must use the rights to use or licence-in when undertaking a business activity.
- The assignee must not reside in a tax haven.
- Where a transfer agreement includes additional provisions of services, the payment corresponding to them must be distinguished in said agreement.
- The company must have analytical accounting records.

**Conditions**

- The transferring company must have created the assets subject to transfer.
- The assignee must use the rights to use or licence-in when undertaking a business activity.
- The assignee must not reside in a tax haven.
- Where a transfer agreement includes additional provisions of services, the payment corresponding to them must be distinguished in said agreement.
- The company must have analytical accounting records.
3. **Hiring employees: Corporate setup and types of contract of employment**

What corporate setup do I need to hire employees in Spain?

- **Local Treasury of the Social Security:**
  - Social Security Registration and Social Security Numbers.
  - Registration is an administrative procedure carried out by the General Treasury of the Social Security to acknowledge that an individual is carrying out an activity that falls within the scope of the Social Security System and that he/she has thus been included.

- **Registration in the Social Security Scheme.**
  Contributions become obligatory when employment starts and remains so while the working relationship between the employer and the employee continues. It is also compulsory during periods of temporary disability, risk during pregnancy, risk during breastfeeding, maternity and paternity leave and trial periods for workers.

  Contributions cease to be compulsory when employment ends, provided that the worker’s employment termination is filed within the following 6 calendar days.

  If the worker's termination is presented after the 6-day deadline, the company must pay contributions for the number of days after the deadline before the company presented the termination of employment and termination is not retroactive.

- **Company registration.**
  Registration is the administrative procedure by which the General Treasury of the Social Security assigns a number to an entrepreneur so that it can identify and control his/her obligations within the corresponding Social Security Scheme. This number is considered the primary and main Contribution Account Code. It can be requested by filling out the TA.6 form.

  All other numbers that may be assigned to the employer will be linked to the Main Contribution Account Code. It is important to note that the entrepreneur must request a Contribution Account Code (TA.7 form) in each province where his/her activities are carried out, as well as for specific cases when it is necessary to identify groups of workers that are subject to special rules regarding contributions.

- **National Public Employment Service: Registration of contracts of employment.**
  This procedure consists of legalising or registering the contracts of employment of any employees. The contract must be drafted in Spanish using the standardised models for this purpose.
Types of contract of employment

In terms of their duration, contracts of employment can be signed for an undefined period or for a set duration.

As a general rule, contracts of employment are permanent and, therefore, their unjustified termination entitles the employee to the compensation established by law.

Hence, temporary contracts must respond to circumstances that justify their use, according to the causes established by law.

Main characteristics:

- **Applicable employees**
  - Legal adults.
  - Emancipated minors (aged 16).
  - Minors with parents’ consent.
  - Foreigners, according to immigration law (provided they have a Foreign Resident’s Permit - NIE).

- **Method of formalisation**
  
  Orally or in writing, except cases in which the Law specifically establishes their formalisation in writing.

- **Duration and working hours**
  
  The contract of employment may be permanent or temporary.

  The working hours stipulated may be full time or part time. The maximum number of working hours will be 40 a week.

- **Trial period**
  
  A period may be stipulated during which either party may terminate the contract at their own free will without indicating any cause or giving prior notice.

  Its duration must be in line with the provisions of the Collective Bargaining Agreement or, in its absence, may not be in excess of six months for qualified specialists or two months for all other employees.

What is considered a salary?

A salary is considered all financial income received by employees in cash or in kind for the professional services provided as salaried workers, including the work itself and any rest periods that can be calculated as working periods for this purpose.
The salary is freely set but may not be below the minimum established by law or by collective bargaining agreements.

**How are Social Security contributions made in Spain?**

All employers, their employees, the self-employed, members of production cooperatives, domestic employees, military personnel and civil servants residing and/or performing their duties in Spain must be registered with and make contributions to the Spanish Social Security system.

There are two main schemes:

- General Social Security Scheme, which includes all employees and situations given special treatment, such as that of artists, professional football players, trade representatives, railway workers or bullfighting professionals and domestic employees.
- Special Social Security schemes for farmers, seafarers, the self-employed, civil servants, coal miners and students.

Social Security contributions are made partially by the employer and partially by the employee, depending on the labour-related and professional category: the percentage is applied to certain maximum and minimum bases (depending on the salary) and the social security contribution must be paid each month.

**4. Residence visa for investors and entrepreneurs**

Non-resident foreign nationals intending to enter Spain for the purpose of making a significant capital investment or establish a company may apply for a residence visa for investors, as long as their investment fulfills one of the following scenarios:

a) An initial investment with a value equal to or greater than EUR 2 million in Spanish government debt securities, or a value equal to or greater than EUR 1 million in stocks or shares of Spanish companies, or bank deposits in Spanish financial institutions.

b) The acquisition of real estate in Spain with an investment value equal to or greater than EUR 500,000 per each applicant.

c) A business project intended to be carried out in Spain that is deemed and proved to be of general interest, being necessary to be considered as such the fulfilment of one of the following conditions:

- The creation of jobs.
- The investment will have a relevant socio-economic impact in the geographical area in which the activity will be carried out.
- A significant contribution to scientific and/or technological innovation.
A foreign national applying for a visa will likewise be understood to have made a significant capital investment when the investment is made by a legal person established in a territory that is not considered a tax haven under Spanish law, and in which the foreign national directly or indirectly holds a majority of the voting rights and has the powers to appoint or remove a majority of the members of the board.

The issuance of a residence visa for investors is legally sufficient to allow residence in Spain for, at least, one year. This visa will be converted into a Residence Authorization, valid for two years and indefinitely renewable, as long as the holder keeps the investment or, in case of entrepreneurs, the company establishment is accomplished.

This document contains a selection of the regulations considered relevant regarding the issues of reference and does not claim to be a thorough compilation thereof. The information or comments it contains cannot under any circumstances be considered judicial or legal advice.
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