

# Your Company in Spain

as a subsidiary of a Belgium parent company



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# Types of Business Organizations

## General

There are several types of business organizations possible in Spain. The most common ones are the fiscal representation (*representación fiscal*), the branch (*sucursal*), the private limited company (*S.L.*) and the joint stock company (*S.A.*).

### Fiscal representation | *representación fiscal*

In case a foreign company in Spain ‘only’ provides services, technical assistance, warehousing of own stock, or installation or assembly work arising from engineering contracts, it is possible to operate through a so-called ‘fiscal representation’. A fiscal representation is **not subject to corporate income tax**. The accounting can be done by the parent company. This is a relatively straightforward and **low cost** option if **no commercial activities** or decision-making procedures are carried out in Spain.

### Branch | *Sucursal*

A Branch is a permanent establishment where essential work for the parent company is carried out. One of the main characteristics is that the Branch is not legally independent. The foreign parent company is liable for both its debts and assets. The profits of a Branch are subject to Spanish corporate income tax. In practice, the Branch is the preferred option if the parent company does not want to incorporate private limited companies in different countries.

### Private Limited Company | *S.L.*

The *S.L.* is legally comparable to a Private Limited Company. The responsibility of the partners is limited to the amount of capital they contribute. The minimum share capital is 3,000 euro. The *S.L.* is an independent entity and has to pay its taxes in Spain. Profits can flow as dividend to the foreign parent company.

Due to the relatively low costs, the spread of financial and legal risks, the accounting alignment with the Belgian parent company, and avoidance of international double taxation problems, it is **generally preferable** to structure the Spanish activities through a private limited company.

## Joint Stock Company | S.A.

The S.A. is the Spanish equivalent of a Joint Stock Company. Compared to a S.L., a S.A. requires a higher minimum share capital. The legal minimum share capital is 60,000 euro, although only 25% of this amount must be paid at the moment of incorporation. In case of foreign investments, the S.A. is normally only used by **large companies**. In Spain, however, small- and medium-sized companies sometimes use the S.A. form, although mainly for **image reasons**.

## Sole Shareholder companies | *Sociedad Unipersonal*

In order to make a clear distinction between the company and its shareholder, **additional obligations** exist for the Sole Shareholder Companies. Sole shareholder companies have to (1) register as such at the Trade Register, (2) add 'sociedad unipersonal' (SLU) to every company contract and document, (3) register all contracts between the company and the shareholder in an internal register book, and (4) mention each contract in the annual accounts.

Non-compliance with one or more of these obligations is sanctioned with (1) the unlimited liability of the sole shareholder, and (2) the non-enforceability of the contracts with regard to third parties. Depending on the kind of activities, in some cases it is advisable to incorporate a company with at least two shareholders.

# Incorporation of a Spanish S.L.

## Requirements

1. one or more shareholders,
2. one or more directors or a board of directors (not obliged to be Spanish),
3. a company address in Spain, and
4. a minimum share capital of 3,000 euro (in a Spanish bank account).

**When the shareholder is a Belgian company**, a document that proves its existence is required. This document can be obtained from the regional offices of the KBO/BCE: Kruispuntbank van Ondernemingen/Banque-Carrefour des Entreprises. This document has to be translated into Spanish by a sworn translator and apostille stamps are required.

## Legal requirements

1. A certificate of non-existence of the company's name from the Spanish Trade Register.
2. Articles of association, in accordance with the Spanish law.
3. A notarial deed of incorporation.
4. A fiscal identification number (N.I.F.).
5. Official registration at the Spanish Trade Register.

For some specific activities additional obligations or licences might be applicable.

## Costs

The costs of the establishment of a Spanish company by a foreign company depend on (1) the amount of share capital, and (2) the quantity and the complexity of each individual case. For a limited company with a minimum capital of 3,000 euro, the incorporation costs will be normally **around 3,000 euro, all-inclusive**.

## Practical aspects

A Spanish company with limited liability can be **operational within two weeks**. The formal registration will take another three weeks. Individuals, as well as corporate bodies, both Spanish and foreign, can act as directors.

## Accounting

The Spanish General Accounting Plan is structured according to European Union Rules and it is very **similar to the Belgian GAP**. The application of the Spanish accounting principles require that the annual accounts are a true reflection of the assets, financial situation and profit and loss accounts of the company.

## Obligations

Bookkeeping entries should be posted in euros. For tax inspection purposes the bookkeeping and related documentation has to be available in the Spanish language. **Annual accounts** have to be deposited at the Spanish Trade Register.

The books, correspondence and supporting documents belonging to the company must be kept for six years starting from the date of the last entry in the accounts.

## Audit control

Companies that meet two of the following three conditions in two consecutive years are obliged to an audit:

1. Net annual sales exceed 5.700.000 euro.
2. Total assets exceed 2.850.000 euro.
3. The number of employees is more than 50.

## Relevant Taxes

### Corporate Income tax

The corporate income tax (*impuesto sociedades*) has been fixed at **25%** of the company's profits.

### Value added tax

The characteristics of the Spanish VAT (IVA) are comparable to the Belgian BTW. Depending on the turnover of the company, it is necessary to declare the value added tax monthly or every three months. Once a year, an overall declaration has to be drawn up. The value added tax is **21%**, with a low rate of 10% (for e.g. accommodation, restaurants) and a reduced rate of 4% for some exceptions.

### Economical tax

In Spain a local tax has to be paid to be able to undertake economic activities (Impuesto Actividades Económicas, IAE). This tax rate is calculated based on various factors (type of activity, surface of the premises, net revenues, etc.). Companies with a turnover of less than one million euro are **exempt**.

### Dividend tax

The Spanish company is obliged to pay a withholding tax in Spain, with a maximum rate of 18% of the dividend that is paid to a foreign shareholder. However, Spain has a **tax treaty** with Belgium, which will be explained in the next chapter.

# Tax treaty Belgium - Spain

## Four principal incomes

The Spanish-Belgian tax treaty covers the taxes on the following principal kinds of income: **interest, dividend and royalties**. The reduction of the normal tax rates to the rates mentioned hereunder is only applicable if the Belgian parent company can provide a **certificate of residence in Belgium**.

### Interests

In general the Tax Treaty stipulates that this income can be subject to taxation in the country in which it has been obtained, in this case Spain, and that the applicable tax cannot exceed 10% of the gross amount of the earned interests. However, without a residence certificate the applicable tax rate is 19%.

Nevertheless, by applying the Spanish law, interests paid an EU-resident are **exempt**.

### Dividends

The income obtained in Belgium from the dividends of a Spanish subsidiary can be subject to a withholding tax in Spain. The Tax Treaty provides a general reduced withholding tax rate of 15%.

The Treaty also includes a **withholding tax exemption** for dividends if (i) the beneficial owner of the dividends is a company which controls directly at least 25% of the capital in the company paying the dividends; and (ii) if the internal legislation permits such exemption.

The Spanish non-residents income tax law provides a withholding tax exemption for dividends paid to EU-resident parent companies if certain requirements are met.

### Royalties | Withholding tax

This income can be subject to a withholding tax in Spain. The tax shall not exceed 5% of the gross amount of royalties. Royalties paid by a Spanish entity to an associated EU-based entity **can be exempt** if certain requirements are met.

# Doing Business in Spain

More information or a clear budget?

Do you want more information on how to start your business in Spain? We provide you with customized information, a clear budget - with a fixed fee, not an hourly rate - and a step-by-step plan **in English**, so you can immediately start setting up a company in Spain and subsequently do business in the country.

We are the biggest independent office in Spain specialized in guiding parent companies from Benelux in Spain. We are pleased to advise and help you.



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**You will receive an answer within one business day.**

## Maaïke Sturtewagen, Belgium Desk

maaïke.sturtewagen@euroeconomics.com

Tel. 0034 93 215 12 23

Euro Economics | Quality Partner in Spain

### Euro Economics Alicante

Calle Benlliure 2  
03530 La Nucia | Alicante  
+34 96 502 07 76

alicante@  
euroeconomics.com

### Euro Economics Barcelona

Rambla de Catalunya 25  
08007 Barcelona  
+34 93 215 12 23

barcelona@  
euroeconomics.com

### Euro Economics Girona

Rambla Vidal 15  
17222 St.Feliu | Girona  
+34 97 232 22 52

girona@  
euroeconomics.com

### Euro Economics Madrid

Príncipe de Vergara 73  
28006 Madrid  
+34 91 521 73 48

madrid@  
euroeconomics.com

### Euro Economics Marbella

Jacinto Benavente 23  
29601 Marbella  
+34 95 285 93 80

marbella@  
euroeconomics.com

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