

# Your Company in Spain

as a subsidiary of a USA parent company



2018

Incorporation · Obligations · Tax Treaty Spain - USA

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Attachment: References & Contact

# 1. Introduction

## 1.1 Introduction

This document contains general and practical information about the incorporation, accounting obligations and relevant taxes of a legal company in Spain as a subsidiary of a **USA parent company**.

## 1.2 Euro Economics | Compliance in Spain

Euro Economics provides all necessary services to establish a company in Spain as a subsidiary of an enterprise with foreign residency. Euro Economics can also take care of your bookkeeping, payroll, tax returns and the preparation of your annual accounts.

## 1.3 Responsibility

This document is based on Spanish and European tax legislation and the tax treaty between Spain and the **USA**. It is based on the latest information available; however, no liability can be accepted for involuntary mistakes or omissions.

# 2. Types of Business Organizations

## 2.1 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.*).

## 2.2 Fiscal representation | *representación fiscal*

In the case where 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 work with 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 decisions will be made in Spain. If you would like to know whether this is an option in your specific situation, please contact us.

## 2.3 Branch | *Sucursal*

A Branch is a company representation where essential work is carried out for the parent company. One of the characteristics of the branch is that it is not legally independent. The foreign parent company is responsible for both its debts and assets.

The profits of a Branch are liable to Spanish corporate income tax. In practice, the Branch would only be an interesting option when high start-up losses are expected, which in most countries are tax deductible for the parent company.

## 2.4 Private Limited Company | S.L.

A ‘Sociedad de Responsabilidad Limitada’ (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 company capital, as stipulated by law, is 3.000 euro. An S.L. is an independent entity and has to pay its taxes in Spain. Profits can flow in the form of dividend to the foreign parent company.

Considering the costs, spread of financial risk, publication obligations and avoidance of international double taxation problems, it is generally preferable to structure the Spanish activities through a Private Limited Company.

## 2.5 Joint Stock Company | S.A.

A ‘Sociedad Anónima’ (S.A.) is the Spanish form of a Joint Stock Company. Compared to an S.L., an S.A. requires a higher minimum company capital. The minimum share capital, as stipulated by law, is 60.000 euro, although only 25% of this amount must be paid out at the time of formation.

In case of foreign investments, the S.A. is normally only used by large companies. In Spain, however, small- and medium-sized companies do still sometimes use the S.A. form, although mostly for image reasons.

## 2.6 Sole Shareholder companies | *Sociedad Unipersonal*

Since 1995 it has been possible to incorporate a company (S.L./S.A.) in Spain with a single shareholder. In order to make a clear distinction between the company and its shareholder, additional obligations exist in Spain for these types of companies.

Sole shareholder companies have to (1) register this fact at the Trade Register, (2) write ‘sociedad unipersonal’ in every company contract and document, (3) register all contracts between the company and the shareholder in an internal register book and (4) mention the existing contracts and give a summary of each of these contracts 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) contracts with regard to third parties will not be enforceable. Depending on the kind of activities, in some cases it is advisable to incorporate a company with at least two shareholders.

## 3. Incorporation of a Spanish Company

### 3.1 Requirements

For the foundation of a Spanish Private Company, an S.L., the following are required:

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 company capital of 3.000 euro.

For a S.A., the minimum share capital is 60.000 euro of which at least 25% has to be paid up (15.000 euro). For a Branch office the company capital is allowed to be zero.

**When a USA company is the shareholder**, a summary of the official registration of that company is required. This will have to be translated into Spanish by a sworn translator. Apostille stamps are required. The director, who will sign the deed of incorporation or who will authorize a third party to do so, has to be mentioned in this official summary.

### 3.2 Legal obligations

1. Acknowledgement of non-existence of the company's name by the Trade Register.
2. Draw up the articles of association.
3. Sign the deed of incorporation before notary.
4. Apply for a fiscal identification number (N.I.F.).
5. Official registration at the Trade Register.

For some specific activities additional obligations or licenses might be applicable. The same if staff will be contracted. If this will be the case of course we will inform you.

### 3.3 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. Euro Economics will provide you with a fixed cost proposal.

For a limited company with a (minimum) share capital of 3,000 euro, the total incorporation costs will be around 3,000 euro (all-inclusive).

### 3.4 Practical aspects

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

## 4. Accounting

### 4.1 General

The Spanish General Accounting Plan of 1990 has been updated in 2008. This plan is structured according to European Union Rules. The application of the Spanish accounting principles require that the annual accounts are clear and are a true reflection of the wealth, financial situation and profit and loss accounts of the company.

The chart of accounts, which is obligatory to use, consists of seven groups: basic financing, fixed assets, stock, trade creditors and debtors, financial accounts, purchases and expenses, and sales and income.

### 4.2 Legal 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. 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.

The following documents must be submitted yearly to the Commercial Register:

1. Balance Sheet
2. Profit & Loss statement
3. Memory

### 4.3 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.

## 5. Relevant Taxes

### 5.1 Corporate Income tax

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

## 5.2 Value added tax

For the Spanish VAT (IVA), it is necessary to declare the value added tax every three months (or monthly, depending on the turnover) and to draw up an overall declaration once a year. The value added tax is **21%**, with a low rate of 10% (for e.g. food, restaurants) and a reduced rate of 4% for some exceptions.

## 5.3 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 depends on (1) the objective of the company, (2) the establishment's address and (3) the square meters of the company's office. Since 2003 there is an exemption for companies with a turnover of less than one million euro.

## 5.4 Dividend tax

The Spanish company is obliged to pay a withholding tax in Spain, with a maximum rate of 19% of the dividend that is paid to a foreign shareholder. However, **Spain has a tax treaty with the USA**, which will be explained in the next chapter.

## 5.5 Import duty

Import duty is levied on goods imported from outside the European Union. Various rates are used, determined at EU level. This rate is usually a percentage of the value of the goods concerned. On almost all goods imported from members of the EU no import duty is levied.

# 6. Tax treaty USA - Spain

## 6.1 Four principal incomes

The **Spanish-USA tax treaty** covers the taxes on four principal kinds of income: interest, dividend, royalties and capital gains.

The normal situation is that the Spanish subsidiary would have to pay these concepts to the parent company in the **USA** (in the following we will assume that this is the case).

The reduction of the normal tax rates to the rates mentioned hereunder are only applicable if the **USA parent company** can provide a certificate of residence in the **USA**.

## 6.2 Interests (withholding tax 0-10-19%)

This income can be subject to taxation in the country in which it has been obtained, in this case Spain.

In general the Tax Treaty stipulates that the applicable tax cannot exceed 10% of the gross amount of the earned interests. The Treaty stipulates specific exemptions for particular cases.

However, without a residence certificate the applicable tax rate is 19%.

## 6.3 Dividends (withholding tax 10-15-19%)

The income obtained in the **United States** from the dividends of a Spanish subsidiary can be subject to a withholding tax in Spain.

The Tax Treaty provides a reduced withholding tax rate of 10%, if the beneficial owner is a company which owns at least 25% of the voting stock of the company paying the dividend; and a tax rate of 15% in all other cases.

Without a tax residence certificate the applicable tax rate is 19%.

## 6.4 Royalties (withholding tax 5-8-10-24%)

This income is subject to a withholding tax in Spain. The tax shall not exceed (a) 5% of the gross amount of royalties for the use of, or the right to use, any copyrights of literary, dramatic, musical, or artistic work; (b) 8% of the gross amount of royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, and for any copyright of scientific work; and (c) 10% of the gross amount of all other royalties.

However, without a residence certificate the tax rate is 24%

## 6.5 Capital Gains (withholding tax 0-19%)

Capital gains derived from the transfer of real property and from the disposal of stocks, participations in a company of which consists, directly or indirectly, mainly of real property situated in Spain can be taxed in Spain at the rate of 19%.

Capital gains derived from stock, participations, or other rights in the capital of a Spanish entity, other than the aforementioned, can be taxed at 19% in Spain, if 12 months before the transfer, **the US recipient** of the gain had a direct/indirect participation of at least 25% in the capital of the entity.



## 7. Practical Information

### 7.1 Barcelona & Madrid

Barcelona and Madrid are the most appealing locations to establish foreign business. At least 70% of all foreign investment takes place in these two cities.

Valencia and the Bask Country are upcoming regions.

### 7.2 Cultural aspects

Because of the modernization of the Spanish economy the Spanish lifestyle, business methods and (tax) legislation are rapidly approaching the standards of other European countries. Nevertheless, Spain still possesses many traditions that give the lifestyle and business methods a specific and very national or even regional character.

Taking this into account is undoubtedly an important success factor.

### 7.3 Euro Economics

See for more information about Euro Economics our website [EuroEconomics.com](http://EuroEconomics.com). Please feel free to contact us at any of our offices in Barcelona, Girona, Madrid or Marbella. Please see the attachment for addresses, email and phone numbers.

**Euro Economics would like to be your Quality Partner in Spain for your company incorporation, accounting, payroll, tax returns and legal advice**

[EuroEconomics.com](http://EuroEconomics.com)

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Real estate

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#### **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

#### **EuroEconomics Girona**

Rambla Vidal 15  
17222 St.Feliu | Girona  
+34 97 232 22 52  
girona@  
euroeconomics.com

#### **Euro Economics Madrid**

Principe 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