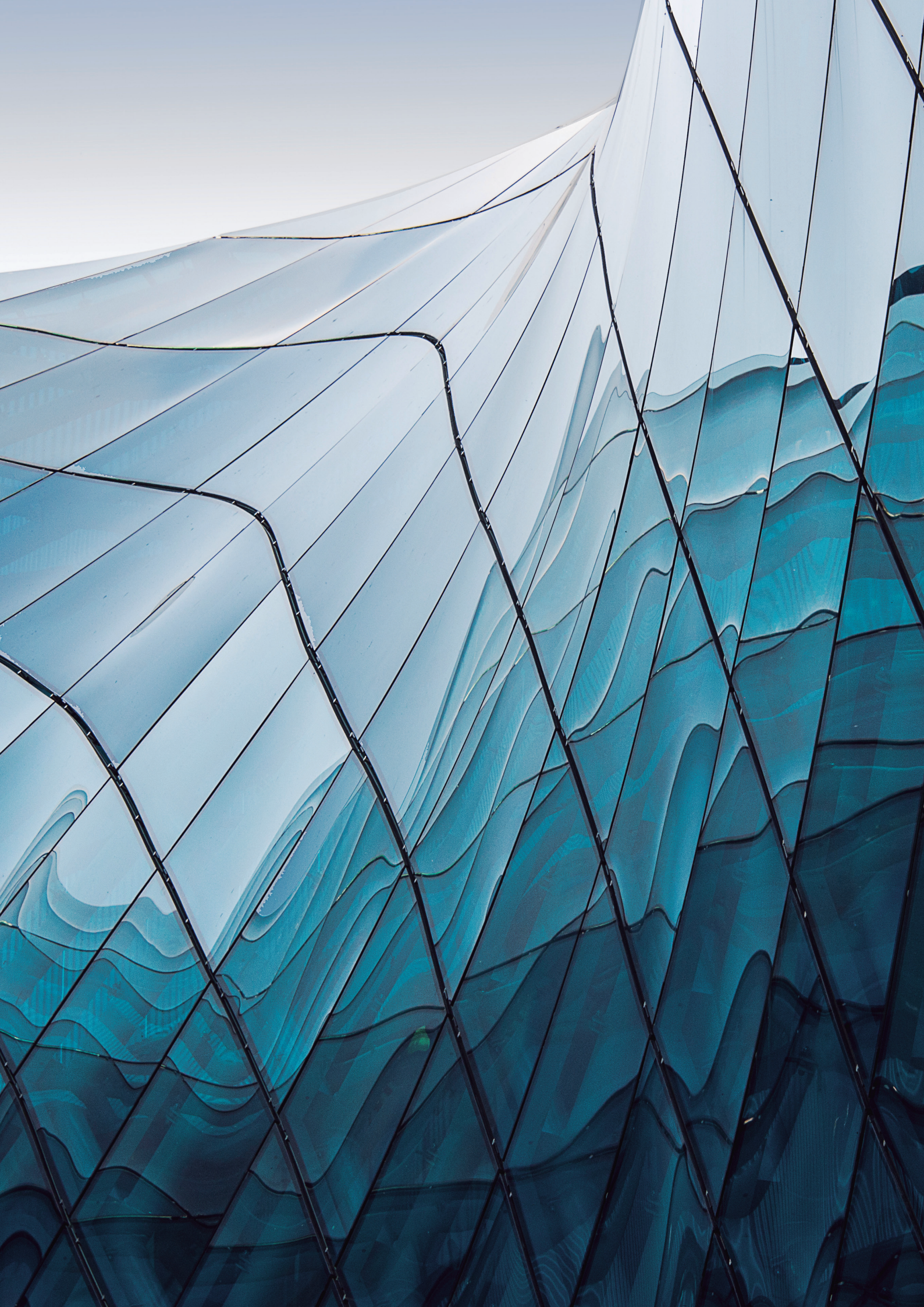




Doing business in Spain

2024

forv/s
mazars



Index of contents

- 01.** Knowing Spain

- 02.** How to set up a Business in Spain
 - 2.1** Typical legal structures
 - 2.2** Subsidiaries
 - 2.3** Set-Up Phase
 - 2.4** Build-Up Process
 - 2.5** Subsidiary's main corporate obligations

- 03.** Shedding light upon Spanish taxes
 - 3.1** Corporate Income Tax
 - 3.2** VAT
 - 3.3** International Taxation
 - 3.4** Tax treatment of assigned employees (Mobility)

- 04.** How to employ Staff

- 05.** About Forvis Mazars



Knowing Spain

A competitive economy in a global market

Spain is the fourth largest economy in the Eurozone, with a leading position in areas such as tourism, international trade and the financial sector. Its strategic location in Europe and its strong links with Latin America, North African countries and the Middle East make it a key access point for investors seeking access to a global market, as well.

The Spanish market is made up of more than 48.5 million inhabitants and, in 2023, it surpassed 85 million tourists, for the first time since statistical records have been kept, managing to recover pre-pandemic levels. Further, as a member of the European Union, it provides access to more than half a million European consumers and its ties with Latin America allow it to reach a potential population of more than 600 million people.

Spain's business fabric is notable for the combination of world-leading companies in sectors such as finance, energy, construction, technology, consumer and industrial manufacturing, with a large number of small and medium-sized companies (SMEs) that play a crucial role in the country's economy.

In recent years, there has been remarkable growth in the technology sector, with the emergence of new start-ups and technology companies that have contributed to the Spanish business landscape.

In addition, our country has become a unique logistics hub for international trade and passenger traffic. Some of its basic pillars are its network of 50 airports, the largest of which have connections with international flights. In addition, Spain stands out for its network of more than 17,000 km of highways and motorways, as well as its 3,400 km high-speed rail network and 46 ports.

Spain's highly qualified workforce, incentives for investment in innovation and quality of life make it the perfect gateway to a global market. Furthermore, the country is a world leader in fiber connections, according by data from the FTTH Council Europe.

How to set up a business in Spain

Legal aspects to consider when starting a business in Spain

Typical legal structures

Under Spanish Law, various types of companies are envisaged, the most significant:

Main Characteristics	Permanent Establishment	Branch	Subsidiary
Separate legal personality from the headquarters.	✗	✗	✓
Activity responsibility lies with the headquarters.	✓	✓	✗
Mercantile regulation. Incorporation in a public deed and registered in the Mercantile Registry.	✗	✓	✓
Activity must align with the headquarters.	✓	✓	✗
Obligation to formulate, approve, or deposit annual accounts	✗ *Accounting control for taxation purposes is needed	✓ ⁽¹⁾	✓
Directors	✗	✓ *not director, but legal and tax representative with full power of attorney	✓
Registered with tax authorities and social security.	✓	✓	✓

(1) There are two possible scenarios for filing of the annual accounts of branches whose parent company is a foreign company. (a) filling the annual accounts of branches whose foreign parent company, by virtue of the domestic legislation of its country, is obliged to file the annual accounts in its country of residence. In these cases, the branch must only deposit in the Commercial Registry where it is registered, the annual accounts that have been duly deposited in the Registry of the foreign company together with the documents necessary to comply with the requirements established in the legislation in force; and (b) filing of the annual accounts by branches of foreign parent companies whose internal regulations do not provide for the preparation of the annual accounts or do so in a manner not equivalent to Spanish legislation. In these cases, the company will have to prepare the accounts in relation to the activity of the branch and deposit them in the Commercial Registry where the branch is registered.

Subsidiaries

The primary forms of capital companies in Spain are public limited companies (SA) and limited liability companies (SL). The distinctive features of each typology are as follows:

	Sociedad Limitada	Sociedad Anónima
Abbreviated company name	SL / SRL	SA
Minimum capital stock requirements	€ (1.00 - 3,000.00) ⁽¹⁾	€ (15,000.00 - 60,000.00) ⁽²⁾
Shareholders' liability is generally limited to the amount of capital contributed by each.	Yes	Yes
Directors' mandate	Indefinite	Maximum of 6 years

(1) The minimum capital requirements for an SL is €1.00. However, the shareholders are liable for a minimum amount of €3,000.00, reason why we recommend incorporating the Newco with a minimum share capital of €3,000.00.

(2) The minimum subscribed capital for an SA is €60,000.00; at least 25% of the par value of all shares must be paid upon incorporation.

Both types of companies can have different types of governing bodies.

	Sole Director	Joint Directors	Joint and several Directors	Board of Directors
Minimum of members	1	2	2	3
Maximum of members	1	S.L.: No limit - S.A: 2 ⁽¹⁾	No limit	No limit
Empowered to act individually?	Yes	No	Yes	No ⁽²⁾
Periodic meeting obligations	-	-	-	quarterly

(1) In S.A. companies when three or more directors are appointed a Board of Directors must be formed.

(2) The Board of Directors may designate from among its members, one or more Delegated Directors (Managing Director) establishing the content, limitations and duties of said delegation. The Managing Director has full powers (except the non-delegable powers) and could act individually



Set-up phase

Common steps to incorporate a subsidiary in Spain:

- Reservation of a subsidiary's name before the Central Commercial Registry. It normally takes 4-5 working days to receive it from the Central Registry of Companies. 5 different names could be requested, in order of preference.
- Opening of a bank account on behalf of the subsidiary under formation, to which the share capital must be transferred. As a consequence of the money laundering regulations in force, the Director/representative of the NewCo must personally appear in front of the bank entity, unless the Spanish bank entity collaborates with a bank entity located in the country where the Director/representative of the NewCo resides and the signing of the documentation can be carried out abroad.
- Subsidiary's Bylaws: content:
 - Amount of the corporate capital, in the case of an S.L. must be fully paid in.
 - Closing of the Financial year.
 - Description of the Company's activities and CNAE (code of activity).
 - Company's registered office.
 - Management Body.
 - Remuneration of Directors.
- Shareholder Non-Resident Tax Number: Any foreign company interested in becoming a Shareholder of a Spanish company must be identified before the Spanish Authorities by requesting a Non-Resident Tax Identification Number for foreign companies (NIF). In case the Shareholder is a natural person, he/she must be identified before the Spanish Authorities by requesting a Non-Resident Identification Number for Foreigners (NIE).
- Directors Tax Number: Any foreign director who wants to become a member of the Management Body of a Spanish Company must be identified before the Spanish Authorities by requesting a Non-Resident Identification Number for Foreigners (NIE). Companies could be appointed as Directors, but in any case, a representative natural person must be appointed, as well. If a company is appointed as Director, it must be identified before the Spanish Authorities by requesting a Non-Resident Tax Identification Number for foreign companies (NIF).

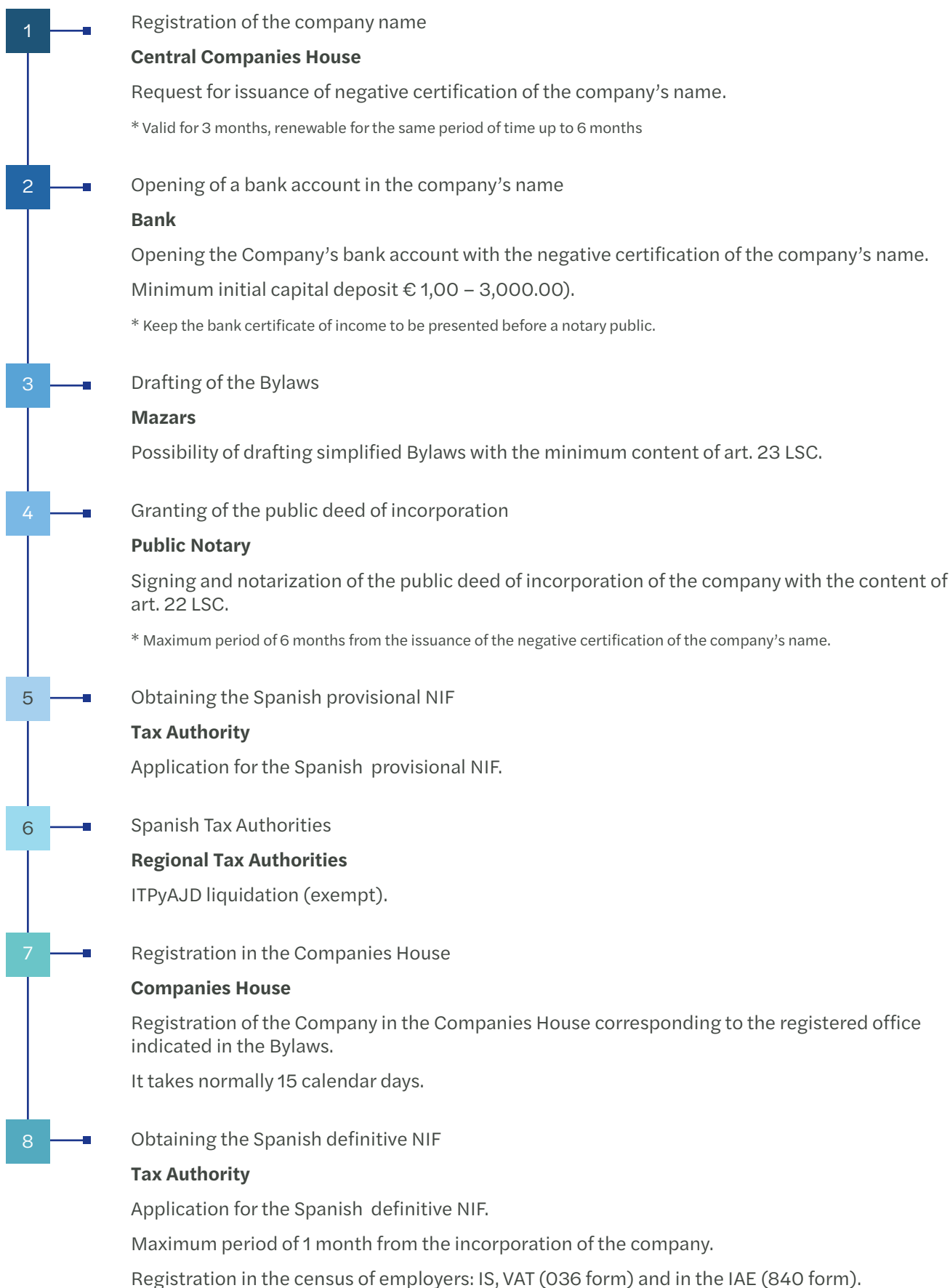
- Granting of the subsidiary's incorporation deed before the Public Notary. This deed must be granted by the person empowered to do so by the Shareholder.

There is no need for the natural person/company who intends to incorporate a Spanish NewCo in Spain nor for the natural person/company that is going to be appointed as Director of the Spanish NewCo to travel to Spain for the incorporation process.

In this sense, there is the possibility that they appear in front of a Public Notary of the country where he/she resides to grant powers of attorney in favor of Mazar's lawyers to:

- Obtain the Non-Resident Tax Identification Number/Non-Resident Identification Number for Foreigner for the Shareholder.
- Obtain the Non-Resident Tax Identification Number/Non-Resident Identification Number for Foreigner for the Director.
- Appear in front of a Public Notary in Spain to grant the incorporation public deed.
- All the documents obtained or granted in the Foreign Country must be apostilled.
- Request of a provisional Tax Identification Number for the subsidiary before the Spanish Tax Administration.
- Registration of the incorporation deed before the Commercial Registry (the one corresponding to the address). It normally takes 15/20 working days.
- Request of the subsidiary's definitive Tax Identification Number.
- Declaration of starting of business before Spanish Tax Administration.
- Foreign Investment Statement (D1A Form), where applicable.
- Obtaining of personal digital certificate: If the NewCo's management body consists of a Sole Director (natural person) or Individual Directors (at least one of them is a natural person), then the personal digital certificate of the Director shall be requested before the digital certificate of the Company request. Such digital certificate of the natural person will be necessary to obtain, once the incorporation public deed is registered in the Registry of Companies, the digital certificate for the NewCo.

Process of incorporation of a limited liability company - Timeline



Build-up process

In cases of build-up acquisitions of companies in Spain by foreign entities, Spain follows the international standard of M&A operations. In this regard, the process typically begins with the signing of an LOI or term sheet, followed by the due diligence process and the signing of the corresponding SPA, which sometimes remains conditional until the corresponding notarization (closing).

Subsidiary's main corporate obligations



Financial Statements.

Every year, the company must formulate, approve, and deposit its Financial Statements in the Companies House.



Auditors. Companies shall be obliged to audit their annual accounts under certain scenarios. The subsidiary may decide on a voluntary audit of its annual accounts.



Company Books. The company must keep its corporate books updated (minutes' books, shareholders' books, book of contracts with the Sole Shareholder...).



Legal cause for dissolution.

If net equity is below half of the share capital, the company will incur legal cause for dissolution. In this sense, unless this cause is eliminated, the company shall be wound up (art. 363.1.e of Spanish Corporate Law).



Beneficial Owner. According to Spanish Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing, the company must declare and identify the natural person or persons who ultimately own or control, directly or indirectly, a percentage above 25% of the company's capital or voting rights, or who by other means exercise direct or indirect control of it, by means of Notarial Public deed.



Sole Shareholder. If the company is owned by only one shareholder (100% of the share capital), the Sole Shareholder must be identified before the Companies House, by means of Notarial Public deed.



Shedding light upon Spanish taxes

A Corporate Income Tax (CIT)

CIT- general features

- The P&L account is the starting point for calculating the taxable base for Spanish CIT purposes. On the P&L account tax adjustments must be made to obtain the final taxable base.
- The general CIT rate is 25% (however, newly incorporated companies, with certain exceptions, will apply 15% in the first period with positive gross tax base and the following period).
- If there are other Spanish entities that are held directly or indirectly for 75% or more by the same ultimate parent entity, a Spanish tax consolidated group could be formed (optional). In case that this option is exercised, all the companies that meet the requirements must be included in the group (it is not possible to choose what companies form part of the CIT group, and which not). The tax group will be regarded as the taxpayer for CIT purposes and all the entities will be jointly liable before the Spanish tax authorities regarding the payment of the CIT debt (excluding penalties).
- Tax losses can be carried forward indefinitely. The tax authorities will be granted to review the legitimacy of the carryforward tax losses for a period of 10 years after tax losses were generated. After this period, the company should prove the legitimacy of the tax losses showing the CIT return, the company's accounting and the Annual Accounts registered in the Commercial Register. The amount of tax losses that may be offset is limited, depending on the turnover of the taxpayer (70%-50%-25% on the previous taxable base). However, the amount of EUR 1M may be offset without limitation. In the case of acquisition of entities with tax losses, these losses could not be offset unless certain requirements are met.
- The CIT return must be submitted within the 25 calendar days following the 6 months after the end of the fiscal year.
- In the first 20 calendar days of the months of April, October and December, taxpayers must make an interim partial payment for the settlement corresponding to the tax period in progress on the first day of each of the aforementioned months.

Participation exemption

- The Spanish CIT law establishes a general 95% exemption method for dividends and capital gains derived from the participation in resident and non-resident entities, provided that certain requirements are met. In particular: (i) the shareholding in the entity must be at least 5%; and (ii) this shareholding must be held uninterrupted for at least one year, although any period during which the shareholding was owned by a different group company as defined in Article 42 of the Code of Commerce can be taken into account.
- In case of subsidiaries not resident in Spain, in addition to fulfilling the above-mentioned requirements, the subsidiary must have been subject to and not exempt from a tax that was identical or analogous to the Spanish CIT at a nominal rate of at least 10%, irrespective of the application of any kind of exemption, allowance, reduction or tax credit (the "identical or analogous tax" requirement will be deemed to be fulfilled when the subsidiary is resident in a country with which Spain has concluded an international double taxation treaty that is applicable to the subsidiary and contains an information exchange clause).

There are special rules in the event that the subsidiary obtains dividends, shares of profits or income from the transfer of shares or equity interests in other entities, representing over 70% of its income, which should be analyzed further if necessary.

This participation exemption scheme is subject to some special rules and limitations, for example in case of participations valued in accordance with the rules of the special tax neutral regime for restructuring transactions ruled by the European Merger Directive.

Interest deduction exclusion and limitation rules

- Interest paid on participating loans granted by entities forming part of the same group of companies are not tax deductible (they are considered as dividends).
- Financial expenses accrued during the tax period arising from debts with group entities in accordance with the criteria established in article 42 of the Spanish Commercial Code, regardless of their residence and the obligation to prepare consolidated annual accounts, intended for the acquisition, from other group entities, of holdings in the capital or equity of any type of entity, or for the making of contributions to the capital or equity of other group entities will not be tax deductible, unless the taxpayer proves that there are valid economic reasons for carrying out such transactions.
- Net financial expenses are deductible with a limit of 30% on the operating profit for the year (however, this rule does not apply for credit & insurance entities, or in general terms in the fiscal year in which the company is liquidated). In any case, net financial expenses of the tax period will be deductible up to the limit of EUR 1M. To this respect, the following definitions must be taken into consideration:
 - Net financial expenses: it is the excess of financial expenses in relation to financial income accrued in the tax period (excluding some non-deductible financial expenses, such as the financial expenses accrued in the tax period, derived from debts with group entities, aimed to the acquisition, from other group entities, of shares in the capital or equity of all types of entities, or to the performance of contributions in the capital or equity of other group entities, unless the taxpayer evidences that there are valid economic reasons to carry out such operations).

- Operating profit: From the operating result of the profit and loss account, it must be eliminated the following: the amortization of fixed assets, the imputation of subsidies for non-financial fixed assets and others, and the impairment and results from disposals of fixed assets; and it must be added the financial income from shares in equity instruments as long as they correspond to dividends or participation in the profit of entities invested by, at least, 5%, or when the share's acquisition value is higher than EUR 20M (except if they correspond to the acquisition of shares with debts with group entities whose financial expenses are not deductible by virtue of what we have explained before.

Two additional questions should be borne in mind:

- The non-deducted net financial expenses by application of the limit shall be deducted in following tax periods, with no time limitation, together with those of the corresponding tax period and with the same limits.
- The “unconsumed” limit of 30% will be added to the limit applicable on the tax periods concluding on the 5 immediate and successive years.
- LBO transactions: an additional limitation of 30% of operating profits applies in relation to financial expenses associated to the acquisition of shares in entities when, subsequently, the acquired entity is incorporated to the tax consolidated group to which the acquirer belongs, or when it is subject to a restructuring operation, so that the activity of the acquired entity or of any other which is subject to incorporation to the tax group or restructuring operation with the acquirer in the 4 subsequent years, does not bear the financial expense derived from its acquisition. Nevertheless, this limitation will not be applicable when the debt associated to the acquisition of shares reaches a maximum of 70% and is reduced, at least proportionally, during a term of 8 years, until it reaches a level of 30% on the acquisition price.

International double taxation relief under the Spanish CIT legislation

- In relation to the application of the international double taxation relief under the Spanish CIT legislation, where a taxpayer receives income which is subject to taxation overseas, the lowest of the following two amounts shall be deducted from the total tax liability:
 - The amount paid abroad by reason of a tax of an identical or analogous nature to Spanish CIT. Taxes not paid by virtue of exemption, rebate or any other tax benefit shall not be treated as deductible. If a DTT is applicable, the deduction cannot exceed the relevant tax applicable according to that treaty;
 - The amount that would correspond to the tax paid in Spain if such positive income had been obtained in Spanish territory.
- The portion of the tax paid abroad that is not capable of relief against the tax liability as a result of the application of the preceding paragraphs shall be treated as a deductible expense in the calculating the taxable base, provided that it corresponds to the performance of economic activities abroad (not a clear-cut question in case of financing activities).



VAT rules in Spain

- Upon incorporation of Spanish companies, a VAT number is assigned by the Spanish tax authorities. In case that the company performs Intra-community transactions (goods and/or services), it must request for an EU-VAT number (registered in the VIES register) before the Spanish tax authorities (which normally implies a limited review for confirming that all the conditions are met). Except the exempted activities, companies collect the output VAT on their own sales and services and are allowed to deduct the amount of input VAT borne on the purchases of goods and services made in the framework of their VAT taxable activities.
- For all companies operating in Spain, online VAT returns filing is mandatory, and they must be filed before the Spanish tax authorities' website, through a digital signature.
- Spanish VAT requires the filing of monthly or quarterly VAT returns (the frequency depends on the level of sales during the previous year: companies with a volume of sales higher than 6 million EUR are obliged to file monthly VAT returns). Companies that submit their VAT returns quarterly are also obliged to file an annual summary VAT return, and a recapitulative statement of transactions with third parties higher than 3 thousand EUR. Companies that submit their VAT returns monthly are obliged to provide their invoicing records to the Spanish tax authorities by electronic means ("*Suministro Inmediato de Información*"): the deadline to provide the invoicing records is, as a general rule, four natural days (excluding weekends and bank holidays) for each registry. It is also relevant to bear in mind that the Spanish legislator has recently approved the mandatory e-invoicing for all the Spanish entrepreneurs and companies (applicable for Spanish B2B transactions), being the implementing regulation pending of approval. This e-invoicing for Spanish B2B transactions will be mandatory for all the entrepreneurs and companies with an annual turnover higher than 8 million EUR after one year from the approval of the implementing regulation, and after two years for the rest.
- In addition to the above, all the companies that perform Intra-community transactions (sales and/or purchases of goods and/or services) must file recapitulative statements of Intra-community transactions, which must be submitted monthly or quarterly (where neither during the reference quarter, nor in each of the four preceding calendar quarters, the total amount of supplies of goods and services to be declared in the recapitulative return exceeds 50,000 euros, VAT excluded).
- Intra-EU sales and purchases of goods made by a Spanish operator must be reported by filing an Intrastat return monthly for statistical purposes only. The form provides information about product categories, countries of origin and destination, values and weights. These returns must be filed also electronically.
- If companies have generated more input VAT than output VAT on their sales and/or services, a VAT credit would be recognized. The refund of such VAT credit can be claimed to the Spanish tax authorities in the last VAT return of the natural year. However, under certain conditions, companies may opt for applying the special monthly VAT refund scheme, which allows to claim this credit monthly.
- Exports (outside of the EU) and intra-EU business-to-business (B2B) sales of goods and services are fully exempt from VAT, subject to certain formal conditions (specific mentions on the invoices, proof of transportation, etc.).
- Spanish standard VAT rate on sales of goods and services is currently of 21%. Several reduced rates are foreseen such as e.g. a 10% tax rate on food products, restaurants, hotels, public transport, etc.; and a 4% tax rate for basic food products, medicines, books etc.
- A reverse charge mechanism may apply for importation (from outside of the EU) of goods under certain condition avoiding cash advances when clearing customs. Also, some transactions are also obliged to apply the reverse charge mechanism (some real estate transactions, transactions performed by non-established companies, etc).

International taxation

Parent-Subsidiary Directive on dividends

Regarding the dividends distributed by the Spanish entity to its European Union shareholder, the Spanish Non-Residents Income Tax (SNRIT) legislation has adopted the provisions of the Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

According to the above, generally, a distribution of profits by a Spanish entity to its EU shareholder who is the beneficial owner of the dividends would be exempt of SNRIT, and exempt of any WHT, insofar all the requirements are met, and compliance forms are completed. These conditions include:

- Both companies are subject to and not exempt from profit taxes in their respective jurisdictions;
- The parent company should hold at least 5% in the capital of the subsidiary; and
- An uninterrupted holding period applies of a year before profits are distributed.
- However, it is important to highlight that when adopting the PSD, the SNRIT legislation also provides an anti-avoidance clause: the exemption would not apply where the majority of the voting rights of the parent company are held, directly or indirectly, by natural or legal persons not resident in Member States of the European Union or in States which are members of the European Economic Area with which there is an effective exchange of information, except where the incorporation and operation of the parent company is for valid economic reasons and substantive business reasons. Therefore, this requirement must be analyzed in the case at hands.

Withholding tax (WHT) on interest payments

- Generally speaking, a WHT of a 19% is levied on interest payments by Spanish companies.
- In relation to the eventual interests paid to European Union entities, the WHT exemption for interest obtained by EU lenders is applicable, provided that all the legal requirements are met. In particular, according to Spanish domestic legislation, interest payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State. A company of a Member State shall be treated as the beneficial owner of interest or royalties only if it receives those payments for its own benefit and not as an intermediary, such as an agent, trustee or authorized signatory, for some other person.

Global mobility (tax treatment of internationally-assigned employees)

Spanish taxation of assigned employees

Tax residence status

The tax residence of employees is the main element in determining their taxation in Spain.

Thus, according to Spanish regulations, a natural person will be considered a tax resident in Spain when any of the following circumstances are met:



Permanence in Spain for more than 183 days during the calendar year.



A person is presumed to be a resident for tax purposes in Spain when in accordance with the above criteria, the spouse and/or dependent minor children reside in Spain, although evidence to the contrary is admissible.



The main core or basis of their activities or economic interests, directly or indirectly, is based in Spain.

It should be noted that, in Spain, the fiscal year coincides with the calendar year (from January 1 to December 31), being resident throughout the year, and thus it is not possible to be resident only for part of the year.

Personal Income Tax (employees tax residents in Spain)

Spanish tax residents will be taxed in Spain for their worldwide income, regardless of the place where it is perceived at a progressive tax rate.

Notwithstanding, employees who arrive in Spain as a consequence of a labour contract with a Spanish Company, a letter of assignment, or an appointment as Director of a Spanish company or because they are working remotely in Spain (digital nomad) and met some legal requirements, they are able to apply for a special tax regime (“Beckham Law”).

Ordinary Tax Regime:

This is the regime applicable by default to Spanish tax residents. Under this regime, taxpayers are taxed in Spain on their worldwide income at a progressive tax rate, which may vary depending on the Region where the employee resides. The tax rate will be the sum of the applicable rate approved by the State and the rate approved by each Region.

All earned income, in cash or in kind, satisfied by the employer will be subject to taxation at its gross amount unless an exemption or reduction is applicable.

Income classified as irregular by Spanish regulations, or generated over a period of two years (for instance, long-term incentives), is eligible for a 30% reduction.

It is important to highlight that there is an exemption on the employment income earned from work effectively performed abroad when some legal requirements are met. This exemption has an annual limit of 60.100€.

Likewise, when there is income obtained and taxed outside Spain, the taxpayer may apply for an international tax credit provided that some requirements are met.

In addition, savings income and capital gains are subject to a reduced progressive tax rate ranging from 19% to 23%.

Special tax regime:

Under this regime, taxpayers are taxed in Spain on their worldwide employment income at a 24% flat tax rate for the first 600.000 euros (47% flat tax rate over the excess). This regime is applicable for 6 years.

For the rest of the income obtained only their Spanish source income will be subject to taxation in Spain at a progressive tax rate (from 19% to 28%)

Non-Resident Income Tax (employees non-tax residents in Spain)

in the event that an employee is not considered a tax resident in Spain in a tax year (calendar year), and provided that there is an international tax treaty to avoid double taxation signed between Spain and the employee's country of tax residence, it must be analysed whether, by virtue of the provisions of the corresponding treaty, Spain has the power to tax the income from work derived from work carried out for tax purposes in Spanish territory.

In the absence of such an agreement and in accordance with the NRIT Law, Spain may tax the earned income obtained by a worker in Spain.

Generally, the taxable base consists of the gross income without any deductions or reductions.

The standard tax rate for employment income is 24%. However, for taxpayers who are residents in a European Union or European Economic Area member country, the tax rate is reduced to 19%, and they may deduct certain tax expenses.

Withholding tax obligation for the employer

In general, employment income is subject to withholding taxes (WTH). The income payer must practice withholding when the income is paid.

This obligation lays both on payers that are natural persons, legal entities or entities resident in Spain or non-residents who operate in the Spanish territory with or without Permanent Establishment (PE) with regard to the satisfied earned income.

Applicable WHT rates vary based on whether they are taxpayers of the PIT (tax residents) or of the NRIT (non-tax residents).

Employee tax resident in Spain: the WHT tax rate will depend on the employee's personal, family and economic circumstances as well as those exemptions or reductions that may be applicable and are obtained in the application of tax scale (maximum WHT tax rate is 47%).

Employee non-tax resident in Spain: the WHT tax rate will be 24% or 19%. WHT will be reported and paid through Form 111. This form should be filed on a quarterly basis or monthly if the entity is classed as a large company, before the 20th of the month following the reporting period.



How to employ Staff

Introduction: The Spanish labor market

In the area of labor relations, there is no doubt that important regulatory changes have taken place in recent years.

In this regard, it is worth highlighting the labor law reform, carried out by RD-Law 32/2021, of December 28 (“Labor Reform of 2021”), after a long negotiation process between the labor unions and employers’ organizations and the Spanish Government, which has introduced important changes in the Spanish labor market. Having, among its main objectives, the fight against temporary employment and giving back to the labor unions a greater role, reinforcing the role of collective bargaining in the determination of working conditions.

Incorporation into the labor market: Contracting formulas

The labor reform introduced by RD-Law 32/2021, of February 28, has made important modifications in the area of hiring, being of note the presumption in favor of all contracts being indefinite-term contracts, with temporary contracts being limited to a series of very specific cases whose non-observance will determine not only that the employment relationship will be considered indefinite-term, but also that the company may be subject to the imposition of high administrative sanctions.

Contractual modalities

The labor contracting map in Spain is divided into three main types of contracts:

(i) Indefinite-term contracts

In addition to the ordinary indefinite-term contract (made from the outset to cover a fixed position), in Spain there is also the indefinite-term fixed-discontinuous contract.

This type of fixed-discontinuous contract has gained much prominence after the labor reform of 2021, which expanded its casuistry and gave it a new regulation, in response to the legislator’s desire to limit temporary contracts.

It will be necessary to resort to fixed-discontinuous indefinite hiring:

- When the work is not continuous during the year due to its seasonal nature or linked to seasonal activities (the only situation that, prior to the Labor Reform of 2021, determined a permanent-discontinuous contract).
- In the case of intermittent works with certain periods of execution.
- And for the performance of labor work resulting from the execution of commercial or administrative contracts (contracts for the provision of services between the company and its customer) which, being foreseeable, are part of the ordinary activity of the company.

(ii) Training contracts

The labor reform of 2021 relaunches this type of contract, although its duration has been shortened, thus maintaining two possibilities of employment contracts for training or practical purposes:

- Aimed at those people who are obtaining a degree, for the purpose of making their studies compatible with a job in line with the same and absolutely linked to the training program taken: Contract for training in alternation. Maximum duration 2 years.

And the one addressed to those people who already have a degree, so that they can acquire practical experience in the same: Professional internship contract. Maximum duration of 1 year.

(iii) Temporary contracts

After the labor reform of 2021, there are only two types of temporary employment contracts:

■ **Substitution contracts:**

To cover the absence of workers with job reservations (for example, due to medical leave, leave of absence for child or family care) or to complete reductions in working hours.

For temporary coverage of a position in the process of promotion replacement until its definitive coverage (maximum 3 months).

■ **Contracts due to circumstances of production:**

To cover an occasional unforeseeable increase or fluctuations in activity, and for a maximum duration of 6 months.

To cover foreseeable situations of limited and limited duration, in which case the company may enter into such contracts for a maximum number of 90 non-consecutive days per year, without any limitation on the number of contracts that may be entered into for such reasons on each of those days.

■ We must keep in mind that the conclusion of a temporary contract that does not comply with the alleged cause of temporality or exceeds the maximum limits allowed, determines the consideration of such contract as fraudulent, and therefore the conversion of the same into an indefinite-term contract and the imposition of administrative sanctions (ranging from 1,000 € to 10,000 € per affected worker).

It is also interesting to note that it is possible for a temporary worker to become permanent (indefinite-term) without his employment contract being considered fraudulent. This is the mechanism commonly known as “acquisition of permanent status by concatenation of lawful temporary contracts”, established for the purpose of encouraging permanent employment.

According to this rule, a temporary worker would acquire the status of permanent worker if in a reference period of 24 months it is found that such worker has been linked to the company for 18 months through 2 or more temporary contracts due to production circumstances (with or without interruption of continuity between them) for the same or different jobs, in the same company or in another company of the Group, through direct hiring or through a Temporary Employment Agency (ETT) or as a result of a business succession. Moreover, it is also possible that a worker with a single temporary contract due to circumstances of production may acquire permanent status if the position he/she occupies has been occupied during those 18 months (during the reference period of 24 months) with two or more temporary contracts (performed by other workers directly or through a temporary employment agency).

(iv) Remote service delivery (remote work)

■ It is not possible to impose telework to a worker or require the Company to provide services remotely. This modality of provision of services is governed by the principle of voluntariness of the parties.

When the Company agrees or allows its personnel to provide services (totally or partially) remotely, it must observe whether such possibility implies that its employees perform 30% of their working day in a remote or teleworking manner during a reference period of 3 months.

If this were the case, it would be considered that we are dealing with a regular provision of remote services and it will be necessary to sign a written agreement between the company and the employee in which it is contemplated, among other matters, how the employee will be compensated for the expenses derived from teleworking, respecting the provisions, if any, of the applicable collective bargaining agreements.



About Forvis Mazars

Forvis Mazars is a leading global professional services network operating under a single brand with just two members: Forvis Mazars, LLP in the United States and Forvis Mazars Group SC, an internationally integrated partnership operating in over 100 countries and territories.

With a legacy spanning more than 100 years, Forvis Mazars is a natural extension of both firms' heritage. At our core is our commitment to providing a different perspective and an unrivaled client experience that feels right, personal, and natural. As a network of just two, allied organisations, we act fast, to deliver consistent and agile audit, tax, and advisory services worldwide.

We nurture a deep understanding of our clients' industries, delivering greater insight, deeper specialism and tailored solutions. Together, our combined teams of 40,000+ professionals have the experience and skills to best serve organisations of all sizes, both locally and globally, now and into the future.



Forvis Mazars in Spain - Offices

ALICANTE

Pintor Cabrera, 22
03003 Alicante
Tel: 965 926 253

BILBAO

Rodríguez Arias, 23
48011 Bilbao
Tel: 944 702 571

MÁLAGA

Pirandello, 6
29010 Málaga
Tel: 952 070 889

VIGO

República Argentina, 25
36201 Vigo
Tel: 986 441 920

BARCELONA

Diputació, 260
08007 Barcelona
Tel: 934 050 855

MADRID

Alcalá, 63
28014 Madrid
Tel: 915 624 030

OVIEDO

Plaza América, 2
33005 Oviedo

VALENCIA

Felix Pizcueta, 4
46004 Valencia
Tel: 963 509 212

About Forvis Mazars

Forvis Mazars Group SC is an independent member of Forvis Mazars Global, a leading professional services network. Forvis Mazars Group SC is a cooperative company based in Belgium and organised as one internationally integrated partnership. Forvis Mazars Group SC does not provide any services to clients. Visit forvismazars.com to learn more.

The contents of this document are confidential and not for distribution to anyone other than the recipients. Disclosure to third parties cannot be made without the prior written consent of Forvis Mazars Group SC.

Contacts:

Anne-Laure Viard

Partner - Head of French Desk in Spain
915 624 030
Anne.Viard@mazars.es

Clementina Barreda

Partner - Tax & Legal
915 624 030
Clementina.Barreda@mazars.es