



ESCURA

INVESTMENTS & TRADE
IN SPAIN

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“Our mission: Bufete Escura bases its activity on the social commitment and corporate responsibility”

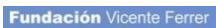
I. INTRODUCTION

Bufete Escura is one of the most well known and respected law firms in Barcelona. A service thought for the client, coupled with high quality ethical standards form the basis of the firm’s mission. Its longstanding service ethic has resulted in the firm becoming the reference law firm for a wide range of business associations who trust **Bufete Escura** as the law firm they recommend to their associates. **Bufete Escura** delivers legal services to a great number of global companies, who trust in us to supervise and advise their subsidiaries due to the firm’s specialist knowledge of the regulatory and business framework both in Catalonia and throughout Spain. The firm must emphasize its special relationship with Italian companies based or willing to be based in the Barcelona area, given that the firm has several collaboration agreements signed with different Italian Chambers of Commerce.

“The nine-strong team at this Barcelona firm enjoys a loyal client following, thanks to its proactive, personalised approach. The firm can advise on a range of matters, from corporate and commercial concerns to labour and tax. Clients highlight the flexibility and accessibility the team maintains at all times, as well as a determination to exhaust every avenue of investigation. (Chambers and Partners)”

Bufete Escura. Areas of practice

- Commercial and Corporate Law
- Employment Law
- New Technologies – Data Protection
- Litigation and Arbitration
- Criminal Law
- Civil Law
- Real Estate
- Insolvency proceedings
- Administrative Law
- Tax Law
- Management / Tax Outsourcing
- Management / Outsourcing Humans Resources.
- Foreign Investments
- Anti-money laundering



II. GENERAL DATA

Geography:

- **Territory:** 504.645 km²
- Spain occupies most of the Iberian Peninsula and, outside of it, two important archipelagos (the Canary Islands in the Atlantic Ocean and the Balearic Islands in the Mediterranean Sea) and two cities in the north of Africa: Ceuta and Melilla.
- **Population:** 47.265.321
- **Capital:** Madrid

Political institutions:

- In Spain the form of government is a parliamentary monarchy with a hereditary monarch, the King of Spain, acting as a head of state, and a bicameral parliament, the General Courts.
- The King is the Head of the State, arbitrates and moderates the regular functioning of the institutions and assumes the highest representation of the Spanish State in the international relations.
- The General Courts are formed by the Congress of Deputies and the Senate, and in them resides the legislative power of the State.
- The executive branch is formed by a Council of Ministers headed by the President of the Government who serves as head of Government. The Government directs domestic and foreign policy, the civil and military administration and the defense of the State. It exercises executive and regulatory power.

Territorial divisions:

- Municipalities
- Provinces (formed by municipalities)
- 17 regions (formed by provinces)
- The Autonomous Communities may assume competences in certain areas

Languages:

- Official language: Spanish
- Other official languages:
 - Catalan
 - Basque
 - Valencian
 - Galician



“Different ways to invest in Spain”

III. LEGAL SYSTEM

Establishment in Spain by foreign company:

- Constitution of Company/Subsidiary.
- Branch Office.

Legal Forms:

- Public Limited Companies and Limited Liability Companies.
- Personal-Based Companies.

A) Public Limited Company (“Sociedad Anónima”)

Main features:

- **Minimum capital:** € 60.000. Initial outlay of at least 25%.
- **Capital divided into shares.**
- **Transfer of shares:** freedom to transfer the shares.
- **Limited liability** of shareholders to their own contribution.
- **Types of contributions:** money and assets (with a previous expert opinion).
- **Corporate bodies:** General Meeting and Administrative Board.
- **Administrative Board forms:** a sole director, two directors (solidarity or joint), a Board of Directors (Chief Executive Officers).
- **Term of office:** six years, renewable. May be revoked at any time.
- **Session without a call:** Universal General Meeting.



B) Limited Liability Companies (“Sociedad Limitada”)

Main features:

- **Minimum capital:** € 3.000. Full initial outlay.
- **Capital divided into shares.**
- **Transfer of shares:** free transmission to own spouse, ascendants and descendants relatives, partners and companies of the Group except statutory provision.
- **Limited liability** of shareholders to their own contribution.
- **Types of contributions:** money and assets (optional previous expert opinion). Solidarity responsibility of the person providing and his own successors.
- **Corporate bodies:** General Meeting and Administrative Board.
- **Administrative Board forms:** a sole director, two or more directors (solidarity or joint), a Board of Directors (Chief Executive Officers).
- **Term of office:** Indefinite except by-laws provisions. May be revoked at any time.
- **Session without a call:** Universal General Meeting.



“Legal requirements for setting up a company”

Formalities for the setting up of a company

- Certification of the Corporate name.
- Bank deposit for the social capital amount.
- Obtaining individual NIE by the partner natural person or by the director of the company.
- Public deed before a Notary.
- Obtaining provisional VAT number and communication of the Company tax base and the Spanish VAT number to the Tax Office.
- Liquidation of the Constitution tax in the Region’s Tax Office: 1% (currently exempt).
- Registration of the notarial deed in the Commercial Registry.
- Statement of Investment in the Foreign Investments General Directorate: 1 month from the notarial deed.
- Obtaining the definitive VAT number.

Formalities for the establishing of a branch office

- General Meeting Minutes and Statutes of the parent Company with a certified translation into Spain and The Hague Apostille.
- Constitution of bank deposit for the amount decided by the parent company.
- Notarial deed agreement of constitution of the branch.
- Obtaining provisional VAT number and communicate the tax base to the Tax Agency.
- Registration of the public deed in the Commercial Registry. No certification of the Corporate name request.
- Statement of Investment in the Foreign Investments General Directorate: 1 month from the notarial deed.

IV. TAX SYSTEM

Establishment in Spain by foreign company

- Subsidiary.
- Branch.

Taxation

- Subsidiary: Corporate Tax (IS).
- Branch (Permanent establishment): Income Tax Non-Resident (IRNR).

Procedure

- Obtaining provisional Tax Identification Number (VAT number).
- Payment of the Corporate Transactions (OOSS): 1% of capital (currently exempt).
- Obtaining the definitive VAT number.

Investment Statement

- Established the Subsidiary or Branch, it must be declared in the Register of Foreign Investment of the Ministry of Economy and Finance.
- It should be declared also any further investment or liquidation of the investment.
- A report of the development on investment in Subsidiary or Branch should be submitted annually.



Subsidiaries

- Corporate Tax rate:
 - General rate:
 - 30%.¹
 - Entities of small size (turnover less than 10 million Euros):
 - 25% for the first 300.000 Euros.
 - 30% from 300.000 Euros.
 - Reduced Tax Rate: it is provided for 2014 a reduced rate in case of maintenance or creation of employment by entities whose net turnover is less than 5 million Euros and the average workforce is less than 25 employees.
 - 20% for the first 300.000 Euros.
 - 25% from 300.000 Euros.
- Offset taxable income: effective for periods beginning on or after 1-1-12, the tax losses can be offset within a term of 18 years. (before 1-1-12 the term was 15 years).²
- Tax Credits:
 - Deductions to avoid double taxation: Tax credit results from applying 50% of the tax rate applicable to the gross dividend or profit distribution received.
A 100% can be applied if the company holds a stake of at least 5% and participates for at least one year prior to the date when they are payable.
 - Deduction for Profit Investment.
 - Deduction for activities in Research & Development and also for Technological Innovation Investments.
 - Below we detail the main percentages of the current tax credits:

% Tax Credits	
Research & Development (R&D)	25-42%
Technological Innovation (TI)	12%
Film production	18%
Financial Coproducer	5%
Environmental Production	8%
Professional Training	0,5%
Re-investment of Extraordinary Profits	12%
Deduction for profit investment	10%

¹ The Legislative Bill for 2015 tax year foresees a reduction on the general rate from 30% to 25%.

² The Legislative Bill for 2015 tax year foresees an unlimited Compensation of Negative Tax Basis (financial compensation).

International Conventions for the avoidance of double taxation

- Spain has subscribed bilateral Conventions with the following Countries in order to avoid double taxation.

Albania	Croatia	Israel	United Kingdom
Germany	Cuba	Italy	Dominican Republic
Saudi Arabia	Denmark	Jamaica	Romania
Argelia	Ecuador	Japan	Russia
Argentina	United States	Kazakhstan	Serbia
Armenia	Egypt	Kuwait	Singapore
Australia	El Salvador	Latvia	South Africa
Austria	Arab Emirates	Lithuania	Sweden
Barbados	Slovakia	Luxembourg	Switzerland
Belgium	Slovenia	Macedonia	Thailand
Bolivia	Estonia	Malaysia	Trinidad and Tobago
Bosnia Herzegovina	Philippines	Malta	Tunisia
Brazil	Finland	Morocco	Turkey
Bulgaria	France	Mexico	U.R.S.S.
Canada	Georgia	Moldavia	Uruguay
Czech Republic	Greece	Norway	Venezuela
Chile	Hungary	New Zealand	Vietnam
China	India	Netherlands	
Cyprus	Indonesia	Pakistan	
Colombia	Iran	Panama	
Korea	Ireland	Poland	
Costa Rica	Iceland	Portugal	

Branches

- Due to the wide range of different agreements, the Estates’ signed text should be studied carefully.
- We detail below the most significant incomes:
 - Royalties
 - Under the OCDE Agreement Model: Exclusive taxation in the residence Estate.
 - Limited taxation in the source Estate, liable to specific requirements.
 - Interests
 - Interests coming from a contractor Estate and paid off to a resident from other contractor Estate will be liable to the sharing taxation principle, although it is allowed to renounce to the tax power and tribute for the interests’ totality in the country receiving the income.
 - In the event of countries with a Double Taxation Agreement with Spain, the maximum interest rate to be taxed in the source country is 10%.

- Dividends
 - Agreements to reduce the general tax rate: usually each agreement holds different reduced rates depending on the participation.
 - In the event that a Estate receiving dividends would apply to receive the whole income in its Estate, what means, without the dividend payer making any withholding, we should ask for the residence certificate accreditation to the preceptor.
- Company Profit
 - With Permanent Establishment:
 - The tax rate for Non Resident Income Tax for incomes through permanent establishment addresses us to the Spanish Corporate Tax, being the taxation rate 30%.
 - Whenever the Double Taxation Treaty/Agreement is applied, the deduction of interests and general expenses charged by the parent company is allowed.
 - Without Permanent Establishment:
 - It will not be taxable in Spain the company profit obtained in Spain, only in the residence Estate of the non resident.

VAT and Local Taxes

- Value Added Tax (IVA in Spain):
 - Tax rates:
 - General: 21%.
 - Reduced: 10%.
 - Super-reduced 4%.
- Activities Tax (IAE):
 - Exemptions for:
 - The first two exercises when activity starts
 - Turnover less than € 1,000,000.
- Property tax (IBI).

V. LABOUR REGULATION

Self-employment

Single Relationship

- Self-employed workers.
- Communication to the Tax Office (Hacienda).
- Registration in the RETA (Special Regime for Self-Employed).
- Newsletter Payment Quote.
- Self-declaration of Tax: VAT, personal income tax (IRPF).

Subordinate work

Worker-employer relationship: obligations of the employer:

- Enroll workers in the Social Security (INPS).
- Employment Agreement (which sets out the conditions of employment).
- Payment (Minimum required - Minimum professional wage – Collective agreement).
- Social Security Monthly/Quarterly Payment IRPF - Public Finance.
- Social Security Monthly/Quarterly Payment.

Worker-employer relationship: employees obligations':

- Meet and agreed to the conditions contained in the contract.
- Comply with employment legislation.



Types of contracts

- Depending on the duration:
 - Fixed term contract (set the start and end of employment).
 - For work and service
 - Eventual production circumstances
 - From interim
 - Indefinite Contract Time (permanent and indefinite).
- According to the schedule:
 - Full time Contract.
 - Part time Contract.

Termination of the employment relationship

- Dismissal for objective reasons:
 - Organizational, Technical, Economic and Production.
 - Compensation 20 days / year of service, up to 12 monthly installments.
- Disciplinary Dismissal:
 - Justify and demonstrate the violation.
 - Lawful Dismissal (No compensation).
 - Unlawful Dismissal (Compensation 33 days per year worked, maximum 24 months).
 - Null dismissal (reinstate the worker).
- Withdrawal of the worker.
- Extinction by the will of the worker based on a breach of the employer.
- Mutual agreement of the parties.

Spanish Workers Statute

Minimum legislative framework which regulates generic paid work and contractual relationship between employer and employee.

Collective agreements

Specific legislative framework which regulates the contractual relationship between employer and employee in each sector, specific activity, and acts as a minimum standard within it.



VI. CIVIL PROCEEDINGS SYSTEM: KINDS OF PROCEEDINGS

Verbal proceedings

- **Description:** this is the simplest proceedings, provided by the Spanish legal system for amounts not exceeding € 6,000.
- **Duration:** about 6-8 months (depending on the competent Court).
- **Appeals:** the judgment is appealable if the provided amount exceeds € 3,000.

Ordinary proceedings

- **Description:** this is the most common proceedings, provided by the Spanish legal system for amounts above € 6,000.
- **Duration:** approximately 8-12 months (depending on the competent Court).
- **Appeals:** the judgment is appealable.

Negotiable instruments proceedings

- **Description:** it is the proceedings in case of unpaid cheques, bills of exchange and promissory notes.
- **Duration:** if the debtor does not present opposition and does not pay within 10 days, it is paid directly to the execution and the goods are seized. In case of opposition a verbal proceedings starts.
- **Appeals:** In case of opposition, the appeals are the same as in the verbal proceedings.

Monitory proceedings

- **Description:** it is the fastest credit recovery only when the creditor has documents that prove his credit (invoices, delivery notes, etc.).
- **Duration:** if the debtor does not object and does not pay within 20 days, it is passed directly to the execution and seizure of property. In case of opposition (to oppose is not necessary to present evidence and legal reasoning), the verbal procedure (if the amount is less than € 6,000) or ordinary proceedings (if the amount is more than € 6,000) start.
- **Appeals:** in case of opposition, the appeal system is the same as in the verbal or ordinary proceedings.

Enforcement proceedings

- **Description:** when the creditor has an enforceable title (e.g. a sentence), it is possible to order the seizure of property of the debtor for the recovery of the credit plus 30% for interest and legal expenses.
- **Duration:** if the debtor pays within 10 days, the proceedings is finished, otherwise the creditor can request the seizure of property: about 5-6 months.
- **Appeals:** the opposition is possible only in case of formal defects.

Enforcement of foreign judgments

- **Description:** under the European Regulation 44/2001, the procedure begins with an executive demand, which must accompany the Court orders to be executed and a form provided by European Regulation, both translated into Spanish.
- **Duration:** the proceedings are the same as in the execution.
- **Appeals:** the opposition is possible only in case of procedural defects and breach of the rules contained in Regulation 44/2001.

Appeal proceedings

- **Description:** the proceedings which are established before the Provincial Courts, that is territorially competent, as a result of appeals against court orders in a verbal or ordinary proceedings.
- **Duration:** about 6-12 months.
- **Appeals:** the judgment can be contested before the Supreme Tribunal only for a breach of procedural rules.

Supreme Court proceedings

- **Description:** this is the proceeding started before the Supreme Court as a result of the action against the Court judgments in the appeal proceedings.
- **Duration:** approximately 2 years for admission and, if it is admitted, another 2 years for resolution.
- **Appeals:** the judgment is final and therefore is not actionable.



“The
accounting
principles are
close to IFRS”

VII. ACCOUNTING LEGISLATION

Spanish Accounting Regulations

- Basic Spanish accounting principles are contained in the General Accounting Plan (Plan General de Contabilidad “PGC”) that was changed in 2008. This text contains five parts:
 - conceptual framework,
 - accounting principles,
 - financial statements standards,
 - chart of accounts
 - and accounts definition,

of which the first three are mandatory and the last two are optative, but massively adopted.
- There are several sets of specific rules to adapt the general principles to specific types of companies or industries, like cooperative societies or non-profit organizations.
- Consolidation rules are contained in the Consolidated Financial Statements Preparation Rules (Normas de Formulación de las Cuentas Anuales Consolidadas or NOFCAC), that were changed in 2010, to be in line with the standards approved in 2008 with regard to the “PGC”. All the conditions are mandatory.
- Both sets of regulations, together with their adaptations, were changed in order to be in line with the EU Fourth Directive and to be adapted to the IFRS standards in 2008.
- The accounting principles are close to IFRS but some differences still exist.
- In addition, the “ICAC” (Instituto de Contabilidad y Auditoría de Cuentas) issues clarifications and specific rules, which are mandatory.

Accounting Obligations

The main accounting related obligations for companies in Spain are:

- Keep detailed accounting records, following the mandatory sections of the PGC.
- Statutory annual accounts have to be prepared during a maximum period of three months after the closing date.
- Statutory annual accounts have to be approved at the Shareholders General Meeting during a maximum period of six months after the closing date.
- Statutory annual accounts have to be filed in the Public Register during the subsequent month of their approval.

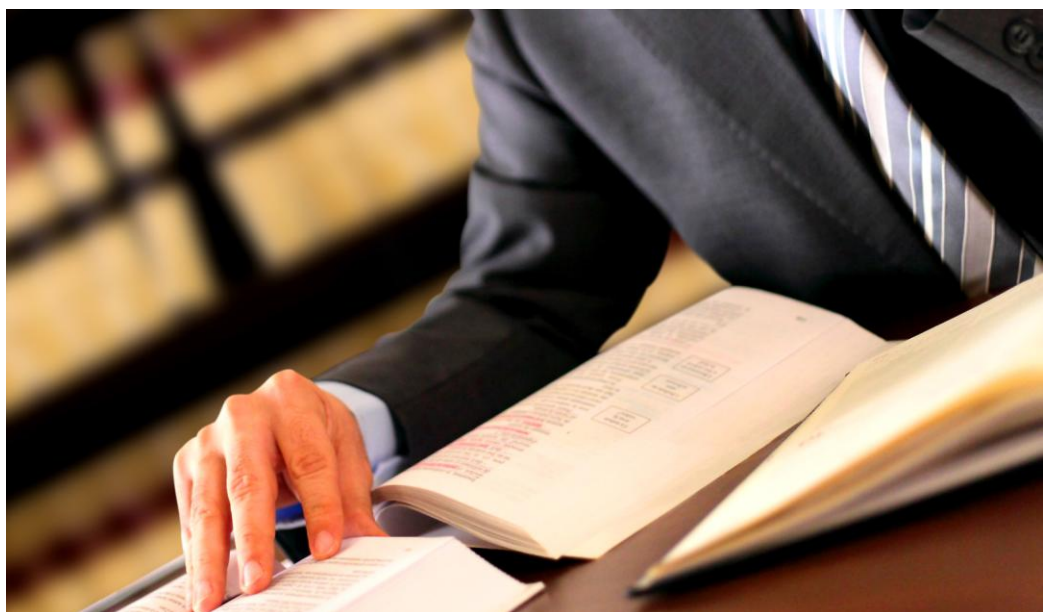
Financial Statements

- Financial statements are the main source of financial information from a company for the different stakeholders: shareholders, banks, suppliers, etc. Based on the Spanish accounting regulations, a set of financial statements can be composed by up to six documents:
 - Balance Sheet.
 - Statement of Profit and Loss Account.
 - Statement of Changes in Net Equity.
 - Cash-flow Statement.
 - Notes to the financial statements: they include the necessary information to understand and support the above set of financial documents.
 - In some cases, management's report.

- The accounting regulations provide mandatory templates for each one of the financial statements, depending on the size of the company, three forms are provided, a full form and a short form for normal companies, a special ones for SME.

Consolidated Financial Statements

- The parent company of a group has to prepare consolidated financial statements if the parent company and all the controlled companies exceed two of the following thresholds: 250 employees, 11.4 million € of total assets or 22.8 million € of income, during two consecutive periods.
- The consolidated financial statements have to include the parent company and all its controlling interests subsidiaries, following the IFRS requirements if they are quoted in an European market.
- The consolidation regulations, as well as the regular accounting ones, provide similar forms for the preparation of the "consolidated financial statements" prepared under the Spanish Accounting Principles.



“The auditor has to be appointed by the shareholders, for a minimum of 3 years and a maximum of 9 years”

Audit

- Audit regulations have been in continuous change in the past years in order to adapt them to the international ones and to the EU directives, making the transnational collaboration between Spanish and foreign auditors easier when a group has companies in different jurisdictions.
- In Spain, any entity that individually exceeds two of the following thresholds, 50 employees, 2.85 million € of total assets and 5.7 million € of total income, during two consecutive periods, must submit its financial statements for auditing, not only companies of all kinds, but also non-profit organizations.
- When a group of companies reaches two of the following thresholds: 250 employees, 11.4 million € of total assets or 22.8 million € of income, during two consecutive periods, its consolidation is mandatory and the audit of the consolidated financial statements is compulsory.
- The audit activity can only be performed in Spain by registered auditors, who are accountants that have passed a specific exam. In order to practice, they must register with the Registro Oficial de Auditores de Cuentas (ROAC). The auditor has to be appointed by the shareholders, for a minimum of three years and a maximum of nine years. Once this first period has ended, the auditor has to be renewed yearly or in a three year period.
- Auditors are financially responsible if they don't comply with the technical rules applicable, when under contract. There are no significant differences in force today between the International Standards on Auditing (ISAs) and the Spanish Auditing Standards.



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