Doing Business in Spain
Foreword

The purpose of this document is to provide an overview of the most important aspects of how to do business in Spain. This is not definitive advice but simply an introduction to the most important facets of business in Spain.

PKF’s mission is to effectively and efficiently provide clients with advisory and management services through its highly qualified staff who have extensive experience in business (in the public and private sectors) by working closely with its clients and analyzing their objectives in order to help them achieve them.

PKF International is a global network of legally independent firms in 125 countries, with 240 members in 440 locations. Our clients are individuals, family businesses and multinational companies.

We are at a delicate moment for the global economy and Spain has been affected by this. Nevertheless, Spain is still an attractive place for doing business with prestigious international companies and it is easy to set up a business here.

PKF aims to help its clients to rapidly and efficiently enter the Spanish market and to ensure that it provides a quality service and greater security for its clients when they conduct their business.

PKF encourages its clients to continue to grow and helps them to achieve their goals.

As a result of the undertakings of the new government and the European Union, changes are anticipated in all areas of the economy in the coming months which should improve the current economic situation and facilitate the entry of foreign investors.

From this firm we would like to convey the belief that Spain is a country with a commitment and a highly skilled population, where the quality of work and the search for long-term goals prevail over short-term benefits for the individual.

FÉLIX PEDROSA
Partner

SANTIAGO GONZÁLEZ
Partner
About PKF Spain

Quality, experience and meticulous service are the keys to PKF’s strategy in Spain.

PKF in Spain is an organization made up of independent professionals whose work strives towards excellence and quality of service, while strictly respecting the confidential nature of its assignments.

We have the necessary technical capacity and experience to help respond to an organization’s needs.

PKF in Spain is a member of PKF International. PKF International is a global network of legally independent firms that provide quality accounting and business advisory services around the world.

We offer the advantage of working in the same market as you, and we are always ready to help you identify and solve any problems that may arise, with up-to-date information and top quality service.

We specialize in:

- Auditing
- Consulting
- Corporate services
- Business and tax advice
- Outsourcing
- Human resources

PKF International is a global network of legally independent firms
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A PROFILE OF SPAIN

Spain is one of the largest economies in the world, with great appeal for foreign investment.

The attraction for foreign investment is evidenced by Spain’s geostrategic position within the European Union, a position which provides access to the markets of Europe, Middle East and Africa. Moreover, Spain has a strong relationship with South America, due to the close economic relations between the Spanish state and the companies and states in the region, thanks in part to the history we have shared and to our cultural similarities.

OFFICIAL COUNTRY NAME

Kingdom of Spain

MONARCH

King Juan Carlos I (1975)

GEOGRAPHY

Land area: 499,542 sq km; total area: 504,782 sq km (Including the Balearic and Canary Islands).

Spain occupies 85% of the Iberian Peninsula, which it shares with Portugal, in southwest Europe. Africa is less than 16 km south across the Strait of Gibraltar. A large central plateau slopes to the south and east, crossed by a series of mountain ranges and river valleys. Off Spain’s east coast in the Mediterranean are the Balearic Islands (5,014 sq km), the largest of which is Majorca. 97 km west of Africa are the Canary Islands (7,273 sq km).

CLIMATE

Spain is extremely hot in July and August. The rest of the year the climate is generally temperate in the north, but warm in the south. The best time to visit is in spring or autumn, except for the Atlantic coast, which has heavy rainfall in October and November. August is the busiest month, while May and October are the best times because the weather is ideal and the country is less crowded. Madrid and the high central area can be very cold in winter.

<table>
<thead>
<tr>
<th></th>
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<th>Feb</th>
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<td>44</td>
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<td>24</td>
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<td>Max Temp (°C)</td>
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</tbody>
</table>
GEOGRAPHICAL AND POLITICAL CONTEXT

Spain is one of the largest economies in the world, and is made up of 19 autonomous communities, each with its corresponding government. Certain differences may consequently be observed in the legislation which falls within the competence of one autonomous community or another.

GOVERNMENT

Parliamentary monarchy.

POPULATION

- Population (January 1, 2012): 46,158,351
- Birth rate: 10.66/1000
- Infant mortality rate: 3.39/1000
- Life expectancy: 82
- Capital and largest city: Madrid, population: 3,273,049
- Other large cities:
  - Barcelona, population: 1,619,337
  - Valencia, population: 809,267
  - Seville, population: 704,198

CURRENCY

- Euro

LANGUAGES

- Spanish (Castilian Spanish) in the entire territory
- Catalan, in Catalonia;
- Galician, in Galicia;
- Basque, in the Basque Country

ETHNICITY/RACE

- Composite of Mediterranean and Nordic types

RELIGIONS

- Roman Catholic 94%, other 6%

LITERACY RATE

- 97.9% (United Nations 2011)
ECONOMIC SUMMARY

- Gross Domestic Product / Purchasing Power Parity: €1,409,946 million; per capita €23,063 (International Monetary Fund, 2011).
- Real growth rate: 0.574% (2011).
- Unemployment: 23% (2011).
- Agriculture: grain, vegetables, olives, grapes, sugar beet, citrus fruits; beef, pork, poultry, dairy products; fish.
- Labour force: 22.96 million (2011); agriculture: 2.54%, industry: 15.44%, construction 10.11%, and services 71.91%.
- Industries: textiles and apparel (including footwear), food and beverages, metals and metal manufactures, chemicals, shipbuilding, automobiles, machine tools, tourism, ceramics and refractory products, pharmaceuticals, medical equipment.
- Natural resources: coal, lignite, iron ore, uranium, mercury, pyrites, fluorspar, gypsum, zinc, lead, tungsten, copper, kaolin, potash, hydropower, arable land.
- Exports: €188,274 million (2011 est.): machinery, motor vehicles; food stuffs, pharmaceuticals, medicines, other consumer goods.
- Imports: €286,800 million (2011 est.): machinery and equipment, fuels, chemicals, semi-finished goods, consumer goods, measuring and medical control instruments.

COMMUNICATIONS


TRANSPORTATION

- Waterways: 1,045 km (2011).
- Ports and harbours: Avilés, Algeciras, Alicante, Almería Barcelona, Bilbao, Cádiz, Cartagena, Castellón de la Plana, Ceuta, Gijón, Huelva, La Coruña, Las Palmas (Canary Islands), Málaga, Melilla, Pasajes, Palma de Mallorca (Balearic Islands), Santa Cruz de Tenerife (Canary Islands), Santander, Tarragona, Valencia, Vigo.
Spain today

Spain has a highly developed service sector, followed by industry. The service sector is the biggest contributor to the GDP, while the two sectors together represent approximately 87% of GDP. The contribution of agriculture has fallen significantly due to economic growth, and now represents 2.5% of the total GDP.

In terms of the annual rate, the real GDP registered an increase of 0.2% in 2011.

The international crisis has become more acute and has affected all the regions in the world, including Spain. Nevertheless, structural changes have led to an economic model based on new growth sectors, such as renewable energy, biotechnology and information technology and telecommunications.

Inflation in Spain has been falling slowly since the eighties. Average inflation between 1987 and 1992 was 5.8% and has been declining gradually. The annual inflation rate was 2.9% in December 2012.

The market growth of the Spanish economy over the past two decades has been the result of a sharp increase in demand and the strong expansion of production, all in the current context of globalization of the economy.

Today, the Spanish domestic market is composed of 47 million people with a per capita income of €23,063 (2011), and there is also significant additional demand from the 52.7 million tourists who visit the country every year.

The relations with Latin America and North Africa and the advantages of using Spain as a gateway to these countries are worth mentioning.

The strong growth of international trade and foreign investment in recent years have made Spain one of the most internationalized countries in the world. In goods, Spain ranks sixteenth in imports and thirteenth in exports worldwide, while in services it ranks seventh in imports and ninth in exports.

Export and import quotas for Spanish goods were 1.70% and 2.30% respectively.

Export and import quotas for Spanish services are at 3.60% and 2.80% on the global figure.

As is to be expected, EU countries are Spain’s first trade partners. In 2011, Spain exported 67.8% of total exports to the EU and 55.7% of sales were to the Eurozone. Of total imports, 54.8% came from the EU and 44.1% originated in the Eurozone.

In particular, France and Germany are Spain’s main trading partners. Outside the EU, Asia and Africa have replaced Latin America and North America as Spain’s main trade partners.

In terms of foreign direct investment, Spain is one of the largest recipients worldwide. Specifically, according to UNCTAD, Spain was the seventh country in the world to receive the most FDI, with USD 670,550 million, and ranked fifth in the EU in 2009. Moreover, Spain is also one of the major issuers of FDI with USD 645.918 million (tenth global investor).

Finally, in order to continue to support the internationalization of Spanish companies, the International Company Fund (MSIF) was created in 2010 to promote Spanish companies’ exports and Spanish direct investment abroad.
CHAPTER 2

LEGAL FRAMEWORK
FOR BUSINESS
LEGAL FRAMEWORK FOR BUSINESS


Many laws and provisions then followed to make up a body of company and accounting regulations which was completely independent and separate from other regulations (such as tax regulations and legislation governing the supervision and control of public institutions).

The main laws and regulations that make up Spain's current company, accounting and auditing legislation are as follows:

- Commercial Code
- Act 44 of 22 November 2002 which approves the Reform of the Financial System.
- Royal Decree 1/2011, of 1 of July, 2011, which approves the Amended Text of Accounts Auditing.
- Act 1 of 2 July 2010 on Spanish capital companies.
- General Accounting Charter.
- Regulations governing the Act on Accounts Auditing.
- Company Register Regulations.
ACCOUNTING REGULATIONS IN SPAIN

The legal regulations governing the obligation to keep accounts books in Spain and the compulsory principles and evaluation rules are set out in the General Accounting Charter and other company legislation in force. As the General Accounting Charter states:

Accounts books should be kept in accordance with the rules and principles stipulated in Royal Decree 1514/2007 of 16 November which states that the generally accepted accounting principles and rules shall be those set out in:

- Commercial Code, Articles 25-49
- Capital Company Act
- General Accounting Charter
- The regulations which develop legislation as provided for by the accounting and Auditing Institute
- Any other specifically applicable legislation

ACCOUNTS CONTROLS IN SPAIN.

STATUTORY AUDITS

The auditing profession in Spain is regulated by Act 1 of 1 July 2011 and the regulations which develop it in Royal Decree 1517 of 31 October 2011.

Additional Provision 1 to the Act stipulates that it is compulsory for annual accounts to be audited in the following cases:

- Companies which are listed on an organized secondary market.
- Companies which issue debentures for sale to the public.
- Companies which usually act as financial intermediaries.
- Companies whose object includes activities regulated by the Insurance Act.

CONTENT OF FINANCIAL DATA TO BE PUBLISHED. ANNUAL ACCOUNTS

The economic and financial data which companies have to make public every year are called the Annual Accounts.

The Annual Accounts consist of the following financial statements:

- Balance Sheet.
- Profit and Loss Account.
- Annual Report.
- Cash Flow Statement.
- Statement of Income and Expenses against Equity.
- Statement of Changes in Equity.

LEGAL AUDIT LIMITS

Audit is mandatory if:

- Assets items > 2,850,000.00 €
- Net amount of turnover > 5,700,000 €
- Average number of employees > 50

(2 of 3 during two consecutive years or in the year of constitution)
CHAPTER 3

DOING BUSINESS IN SPAIN
Doing business in Spain

Setting up a Spanish company or opening a branch or permanent establishment

Spanish legislation offers investors a variety of business formats in which to invest. Traditionally, the most frequently adopted forms of companies are the public limited company (Sociedad Anónima – SA) and the limited liability company (Sociedad de Responsabilidad Limitada – SL).

Joint ventures with other companies established in Spain

Joint ventures are one of the most attractive and ideal ways of doing business in Spain, given that they provide for sharing risks and combining resources and experience.

Spanish regulations distinguish between different types of joint ventures:

- Economic Interest Grouping (EIG) or European Economic Interest Grouping (EEIG).
- Temporary Business Associations (UTEs).
- “Participation Account”: a form of collaboration with one or more Spanish entrepreneurs contemplated in Spanish law.
- Joint ventures through SAs or SLs.

Other ways of investing

- Entering into a distribution agreement.
- Operating through a representative.
- Operating through a commission agent.
- Setting up a franchise.
- Purchasing shares in an existing company.
- Purchasing real estate property in Spain.

Setting up a company

The formalities and expenses involved in setting up a company are practically the same for public limited companies (SAs) as for limited liability companies (SLs). The following formalities are necessary for setting up an SA.

It usually takes between six and seven weeks to constitute an SA.

Setting up an SA through capital contribution:

- The formal act of constitution is executed before a public notary, who drafts the corresponding public deed: the Memorandum and Articles of Association.
- The share capital should be fully subscribed and at least 25% should be disbursed when the company is constituted. The remaining 75% should be disbursed within the period stipulated in the Articles of Association (in the case of an SL, the full share capital is payable upon constitution).
- The minimum share capital required is € 60,000 for SAs and € 3,000 for SLs.
In terms of formalities, it is necessary to:

- Obtain a name clearance certificate for the new company from the Central Company Register. This should be the first step of all to ensure that the proposed name can be used.
- Provide credentials for the identity of the founding partners.
- Provide supporting document as proof of having disbursed the share capital and (where applicable) the means of payment.
- Obtain a form for filing the subsequent declaration of the foreign investment at the Foreign Investments Registry at the Directorate General for Trade and Investments (DGCIn).
- Draw up the Memorandum and Articles of Association.
- Obtain a Fiscal Identification Number (NIF) for the new company.
- Obtain a Non-Resident Fiscal Identification Number (NIE) for any Administrators who are not resident in Spain.
- Declare the Capital Transfer Tax (exempt).
- Record the company in the Company Register.
- File the subsequent declaration of the foreign investment at the Ministry of Industry, Tourism and Trade’s Directorate General for Trade and Investments (DGCIn).
- Register the company on the business tax roll.
- Register the company on the VAT roll.
- Obtain an opening license.
- Register the company with the Social Security and obtain insurance cover for occupational accidents. Register the employees with the Social Security.
- Complete certain formalities with the Provincial Delegation of the Ministry of Employment and Social Affairs’.

Expenses:

- Capital transfer tax: 0%.
- Public notary’s fees for drafting the deed.
- Fees for recording the company in the Company Register.
- Opening license.
- Other expenses (e.g. professionals’ fees).

**Opening a branch**

On the whole, in terms of requirements, formalities and expenses, opening a branch is very similar to setting up a company. The main differences are as follows:

Legal formalities and expenses:

- The deed of establishment of a branch must be executed before a public notary.

This procedure consists of publicly formalizing the resolution to open a branch previously adopted by the parent company’s competent board of directors.

**Purchasing shares in an existing company**

Transfers of shares in SA and SL should always be formalized before by a public notary.

Expenses:

- The fees of the public notary who certifies the operation.
Purchasing real estate property in Spain

- Purchases of real estate property must be formalized before a Spanish public notary or Spanish consul abroad. The documents to be presented are: proof of identity of the parties and, where applicable, the corresponding powers of attorney; the selling party’s title deed; the form (for signature) for the declaration of investment to be filed at the Foreign Investments Registry at the General Directorate for Trade and Investments (DGCi); and payment of the purchase price.

- Payment of capital transfer tax or VAT and stamp duty. Capital transfer tax is applicable at the standard rate of 6% (see each Autonomous Government’s rates) if the selling party is an individual who is not a property developer.

- The following taxes will be payable if the selling party is a company or an individual working as a property developer:
  - Transfers of development land and first deliveries of buildings: 21% VAT (10% if the building is for housing), plus stamp duty at the standard rate of 1%.
  - Transfers of rural, non-building land and second or subsequent deliveries of buildings: capital transfer tax or VAT. VAT is applicable if the acquiring party is an entrepreneur or a professional who has the right to deduct the full amount of input VAT and the selling party waives its exemption to charge this tax (provided certain requirements are fulfilled).
  - If the property is located in the Canary Islands (where VAT is not applicable), the situation is as follows:

- If the selling party is a property developer (whether an individual or body corporate), either of the following may apply:
  - Transfers of development land and first deliveries of buildings: 5% Canary Islands general indirect tax (IGIC), plus stamp duty at the standard rate of 0.75% (or 0.5% for buildings to be used as the owner’s permanent home).
  - Transfers of rural, non-building land and second or subsequent deliveries of buildings: capital transfer tax (6.5%) or IGIC (applicable if the acquiring party is an entrepreneur or a professional and the selling party waives its exemption to charge this tax), provided certain requirements are fulfilled.

- If the selling party is an individual who is not a property developer: capital transfer tax.
  - Recording in the Land Register.
  - Subsequent declaration to the DGCi when the total amount exceeds €3,005,060.

Expenses:

- Public notary’s fees.
- Capital transfer tax or VAT and stamp duty (see above).
- Fees for recording in the Land Register.
- Capital gains tax (municipal tax on the increase in the value of urban land).
- Property tax (IBI). A yearly tax calculated on the cadastral value of the property.
CHAPTER 4

SPANISH TAX SYSTEM
SPANISH TAX SYSTEM

The Spanish tax system is modern and competitive, as evidenced by the small number of existing taxes and by the fact that the tax burden is four points below that of surrounding countries.

The Tax Authority (AEAT) has distinguished itself for its leadership in the Spanish Administration. Also compared with other tax agencies, it occupies a truly outstanding place in Europe in terms of modernization and the incorporation of new technologies to provide public services, highlighting, among others, the opportunity to submit different tax returns and obtain different certificates electronically.

The Spanish tax system comprises three types of levy: taxes, duties and special contributions. Duties and special contributions are quantitatively much lower than taxes and are required in return for the provision of goods or services in which the administration is involved and from which a specific person obtains a profit.

Moreover, although at the territorial level in Spain there are three levels of taxation (national, regional and local), this chapter focuses on the taxes levied by the State, including those managed and collected by regional and local authorities. In addition, given their importance, it also refers to the special arrangements existing in the Canary Islands, the Basque Country and Navarre.

PKF publishes a Tax Guide every year, which provides summarized, updated information on Spanish tax regulations.

NATIONAL TAXES

Spanish national taxes are divided into direct and indirect taxes, as shown in the following table:

<table>
<thead>
<tr>
<th>Direct taxes</th>
<th>Indirect taxes</th>
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<tr>
<td>Corporate tax (IS)</td>
<td>Value-added tax (VAT)</td>
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<tr>
<td>Personal income tax (IRPF)</td>
<td>Capital transfer tax (ITP) and stamp duty (AJD)</td>
</tr>
<tr>
<td>Non-resident income tax (IRNR)</td>
<td>Special taxes (IIIEE)</td>
</tr>
<tr>
<td>Wealth tax (IP)</td>
<td>Customs import duties</td>
</tr>
<tr>
<td>Inheritance and gift tax (ISD)</td>
<td>Taxes on insurance premiums</td>
</tr>
</tbody>
</table>
CORPORATE TAX (IS)

Income tax is levied on income obtained worldwide by companies resident in Spain, and on income obtained in Spain by non-resident corporate permanent establishments.

When we analyze whether a permanent establishment exists or not, we have to analyze the tax treaties between the Kingdom of Spain and other countries. However, if there is no double taxation agreement we follow the internal standard.

Regulatory standards for Corporate Tax are Legislative Royal Decree 4/2004 of March 5, which approves the amended text of the Corporate Tax Act, and Royal Decree 1777/2004 of July 30, which approves the Income Tax Regulation.

The tax period coincides with the entity’s fiscal year, which may not exceed 12 months, and settlement takes place on the last day of the tax period. The return must be submitted within the 25 calendar days following the six months after the end of the tax period.

The basic regulations are governed by Royal Legislative Decree 4 of 5 March 2004.

All resident companies in Spain are obliged to pay Corporate Tax (IS), which is levied on a company’s total earnings for the year.

Taxation of non-resident companies is governed by Royal Legislative Decree 5 of 5 March 2004 and by the agreements to avoid double taxation between the Kingdom of Spain and other countries.

An organization is considered to be resident in Spain when it complies with any of the following criteria:

- It was incorporated according to Spanish Law.
- It has its registered address in Spanish territory.
- Its effective head office is in Spanish territory. An organization is considered to have its effective head office in Spanish territory when the management and control of the sum of its activities are exercised from said territory.

If an organization is considered to be resident both in Spain and in another country with which Spain has concluded a Double Tax Agreement, the Agreement will normally provide for it to be tax resident only in the State where its effective headquarters is located.

Appraisal rules

As a rule, assets are appraised at acquisition price or production cost. Assets appraised at market value include: assets transferred or acquired at a profit, assets distributed to partners as a result of a company wind-up, share capital reductions involving the return of invested capital, assets transferred as a result of a merger, takeover or total or partial spin-off, assets acquired through swaps, etc.

It should be borne in mind that the legislation in force establishes a special system of tax neutrality for transactions that form part of a process of company restructuring.

Special appraisal rules are also established for operations between associated companies.
Undercapitalization rule

This rule is applicable when a company’s net interest-bearing liability to non-resident companies with which it is associated exceeds the result of multiplying its equity by the coefficient 3. In this case, any interest on the corresponding excess is considered to be dividends. This is not applicable between EU Member States.

Valuation changes

Depreciation: Only tax deductible if it is actually charged and entered into the accounts.

Official depreciation coefficients:

<table>
<thead>
<tr>
<th></th>
<th>Maximum</th>
<th>Minimum</th>
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</thead>
<tbody>
<tr>
<td>Industrial buildings</td>
<td>3%</td>
<td>1.47%</td>
</tr>
<tr>
<td>Commercial buildings</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Furniture</td>
<td>10%</td>
<td>5%</td>
</tr>
<tr>
<td>IT hardware</td>
<td>25%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Software</td>
<td>33%</td>
<td>16.7%</td>
</tr>
<tr>
<td>Vehicles</td>
<td>16%</td>
<td>7.14%</td>
</tr>
<tr>
<td>Machinery</td>
<td>12%</td>
<td>5.55%</td>
</tr>
</tbody>
</table>

Provision for bad debts: A provision to cover the risk of insolvent debtors. At least six months must have elapsed since the due date, or the debtor must have been declared bankrupt.

Provisions for bad debts from associated companies are not deductible unless the debtor has been declared insolvent.

Provision for impairment in portfolio value: The provision may not exceed the difference between the theoretical book value at the beginning and close of the financial year.

Provision for risks and contingencies: On the whole, these provisions are not deductible unless they are allocated to cover liabilities deriving from monetary obligations or warranties for repairs and revisions.

Non-deductible expenses

The following are some examples of expenses that are not tax deductible:

- Expenses that entail payment from the company’s own capital.
- Expenses incurred in recording Corporate Tax (IS) on the accounts.
- Fines and penalties.
- Donations and gifts.
- Expenses incurred for services carried out with individuals or bodies corporate residing in tax havens.
- Transfers to internal provisions and pension funds.
Increases and decreases in net worth

These are deemed to be income. In property transfers, the depreciation of money should also be borne in mind and the acquisition cost and corresponding amortizations should be adjusted.

Offsetting of tax losses

During the subsequent eighteen years. For newly formed companies, this period may be counted from the first tax period that has a positive tax base.

Tax rate

The standard tax rate is 30%. There are other kind of special rates for specific companies.

Deductions from the tax liability

Among others, the main deductions are:

Deduction for the reinvestment of extraordinary profit. The final rate, after deduction, is 18%.

Under current Spanish legislation, there are a number of tax incentives for specific activities by means of which a plan is established to reduce deduction rates as from 2007 until they are entirely phased out in 2013.

(See PKF’s annual Tax Guide for further details.)

Deduction to avoid double taxation in Spain: Dividends and surpluses acquired from internal sources. Provided certain requirements are complied with, this deduction entirely eliminates double taxation.

Deduction to avoid international double taxation: Provided certain requirements are complied with, tax paid abroad can be deducted; however, it may not exceed the total tax liability that would have been payable in Spain on the corresponding income.

Withholding tax and advance payments

Certain kinds of income are subject to withholding tax at source and interim payments are payable on account of the final tax due.

Spanish companies make three interim payments on account during the financial year: in April, October and December.

Tax consolidation of company groups

Certain company groups may be taxed on their consolidated tax base. This is an optional system and the parent company must own at least 75% of the capital of its subsidiaries.

Other special systems

These depend on the particular characteristics of the taxpayer and the activities carried out. They include:

- Spanish and European Economic Interest Groupings
- Temporary Joint Ventures (UTEs)
- Venture-capital firms and funds
- Investment funds
- Foreign-securities holding companies (ETVEs)
- System of tax neutrality for company restructuring operations: mergers, spin-offs, transfers of assets and share swaps.

Tax incentives for small companies

These measures affect companies with annual net turnover of less than €10 million. If the company forms part of a group, this amount refers to the joint turnover of the whole group.

Tax incentives are applicable in terms of depreciation, provisions, deductions and even the tax rate.

Such companies may be taxed at the rate of 25% on the first €300,000 of taxable income and, above this amount, at the general rate of 30%.
Formal obligations

The tax period coincides with a company’s financial year. Tax returns are presented within 25 calendar days from the end of the six-month period following the relevant tax period.

PERSONAL INCOME TAX (IRPF)

Current regulations are set out in Act 35 of 28 November 2006.

As with Corporate Tax (IS), taxation of non-resident individuals is governed by the provisions of Royal Legislative Decree 5 of 5 March 2004.

Individuals are considered to have their usual place of residence in Spain when any of the following circumstances apply:

- They remain in Spain for more then 183 days during a calendar year.
- The main base or their general or economic activities is directly or indirectly in Spain.

If an individual is considered to be resident both in Spain and in another country with which Spain has a Double Tax Agreement, the Agreement will normally provide for him to be resident in one country or the other, based on the following criteria, in descending order of priority: permanent home available; closest personal and economic relations; the State where he usually lives: the State of which he is a national. If these criteria fail to determine the country of residence, the two tax authorities will try to resolve the issue by mutual agreement.

Tax payable on

Spanish income tax is applicable to individuals’ worldwide income.

Tax system

Individual or joint (family unit) tax returns may be filed. A single tax scale is applicable and tax paid is shared between the Spanish government and the corresponding autonomous community.

Tax base

Made up of:

- Income from employment (in money and kind)
- Income from real estate
- Income from investments
- Income from economic activities
- Income from property leases
- Income from image rights
- Capital gains and losses

Exemptions

Earnings from work carried out abroad: up to €60,100 per year.

Capital gains and losses

Tax is applicable to the difference between the transfer value and the acquisition value.

Updating coefficients are applicable exclusively to acquisitions of real estate.

Reducing coefficients are applicable to capital gains obtained from assets acquired before 31 December 1994.

Net tax base

This is the gross tax base after certain deductions have been made. A general net tax base is calculated, together with a tax base exclusively applicable to savings.
Total tax liability

The official tax scale by means of which the corresponding tax liability can be determined (national and autonomous community) may be consulted in the PKF Tax Guide.

Deductions

Deductions are mainly applicable to the following: investment in the permanent home, income earned in Ceuta and Melilla, economic activities, donations, action taken to protect and promote Spanish and World Heritage.

Withholdings

Income subject to withholding tax is as follows:

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<thead>
<tr>
<th>Income from employment</th>
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<tr>
<td>General</td>
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<tr>
<td>Employment contracts of less than 1 year</td>
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<td>Special dependent employment relations</td>
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<td>Members of Boards of Directors</td>
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<td>Courses and conferences</td>
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<tr>
<th>Income from investments</th>
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<tr>
<td>Professional activities</td>
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<tr>
<td>Capital gains:</td>
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<tr>
<td>Transfers and reimbursement of equity shares and shares in investment funds</td>
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<tr>
<th>Other income:</th>
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<tr>
<td>Leases/subleases of urban real estate</td>
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<tr>
<td>Income from intellectual property rights</td>
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<tr>
<td>Income from authorization to use image rights</td>
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NON-RESIDENT INCOME TAX (IRNR)

Taxation of non-resident bodies corporate and individuals is governed by Legislative Royal Decree 5 of 5 March 2004.

Distinction between:

- Income from activities carried out by a permanent establishment in Spain.
- Income from activities not carried out by a permanent establishment in Spain.

Income obtained by a permanent establishment

On the whole, the general tax rate is applicable to the net tax base. In these cases, non-resident companies have the same rights to deductions and rebates as companies resident in Spain.

Income obtained without a permanent establishment

Each total or partial sum is taxed, each operation being completely separate from all the others.

Parties paying income to non-residents are obliged to withhold tax or pay in tax amounts on account for all income paid.

Exemptions in Spain include: interest and other revenues obtained from capital loans to third parties; certain capital gains, earnings distributed by resident subsidiaries in Spain to their parent companies which are residents of other EU Member States.

Bodies corporate/individuals who acquire real estate located in Spain from a non-resident without a permanent establishment in Spain are obliged to make the corresponding withholding as payment on account.

Income obtained from activities carried out without a permanent establishment in Spain is usually taxed at a lower general rate than the general rate applicable to resident bodies corporate and individuals.

Spain has signed agreements with several countries whereby taxation in Spain of income obtained by companies operating without a permanent establishment in Spain is reduced or eliminated altogether (see PKF Tax Guide).

A special tax rate is applicable to real estate belonging to non-resident bodies corporate.
Tax representative

Certain non-resident taxpayers are required by law to appoint an individual or body corporate with residence in Spain to represent them before the Spanish tax authorities with respect to their obligations to pay non-resident income tax (IRNR).

This obligation corresponds to non-resident taxpayers that:

a) Operate in Spain through a permanent establishment.
b) Do not have a permanent establishment in Spain but obtain revenue from services, technical assistance, installation or assembly work deriving from engineering contracts, and economic activities in general.
c) Are required to do so by the Spanish tax authorities, owing to the amount and characteristics of the income obtained.
d) Are foreign companies affected by the income attribution system.
e) Are individuals or bodies corporate that own assets or rights located in Spanish territory (except in the case of securities traded on official secondary markets) but have their place of residence in countries or regions which do not effectively exchange tax data with Spain.

c) The tax administration may take direct action when non-residents have their place of residence in a tax haven.
d) Representatives of permanent establishments. A prior administrative deed of secondary liability is required.

Wealth tax (IP)

The regulations governing wealth tax are set out in Act 19 of 6 June 1991. This tax is administered and collected by the autonomous communities.

There was a 100% exemption from this tax in the years 2007 to 2011 but the exemption was withdrawn with effect from 2012.

Tax payable by

All individuals who are residents in Spain are subject to pay wealth tax (IP) on all their assets on 31 December of each year. Non-residents are subject to pay this tax on any assets and rights located in Spain.

The Act allows for the exemption of certain assets.

Net tax base

This is obtained by subtracting the minimum exempted amount from the tax base.

Total tax liability

Spanish national legislation establishes the relevant tax scale if the corresponding autonomous community does not regulate it.

Due to political changes in the recent past, some Autonomous Governments may make changes to this tax.
INHERITANCE AND GIFT TAX (ISD)

The regulations governing inheritance and gift tax are set out in Act 29 of 18 December 1987.

This tax is applicable to all resident heirs, beneficiaries and transferees of gifts for the total of the assets received. Non-residents are subject to pay this tax on any such assets and rights located in Spain.

This tax is administered and collected by the autonomous communities.

VALUE-ADDED TAX (VAT)

The regulations governing VAT are set out in Act 37 of 28 December 1992, which implements the EU directives on the tax.

Tax payable on

VAT is an indirect tax on supplies of goods and services, intra-Community acquisitions and imports of goods by entrepreneurs/professionals within the scope of their business.

Rates

The standard tax rate is 21%. There is a reduced rate of 10% and an extra-low rate of 4% applicable to a restricted list of specific operations.

Exemptions

Certain operations are VAT exempt, in which case the right to deduct input tax is limited. Other operations, such as supplies and exports of goods to another Member State, are defined as exempt, but allow for the right to deduct input VAT.

Location

Operations are taxed when they are understood to be carried out in the territory where the tax is applicable. Generally speaking, supplies of goods are understood to be carried out in Spain when they are made available to the purchasing party within Spanish territory. In the case of services provided, as a rule it is the country where the provider of the services has its business headquarters or permanent establishment for B2C operations and the country where the recipient of the services has its business headquarters or permanent establishment for B2B operations. There are certain exceptions to both of these rules.

Taxpayer

The taxpayer is the party obliged to charge VAT and pay it to the tax authorities. In certain exceptional cases, the taxpayer is the recipient of the operation.

Deducting input tax

Input VAT may be deducted when certain formal requirements are met. It may be deducted within a period of four years.

VAT returns

VAT returns are filed every month or every quarter, depending on the taxpayer’s annual turnover.

Reimbursement of VAT to entrepreneurs without a permanent establishment in Spain is governed by specific provisions and is subject to the fulfillment of certain requirements.

Tax representative

Non-residents without a permanent establishment in the EU that carry out operations subject to Spanish VAT are obliged to appoint an individual or body corporate with residence in Spain to represent them with respect to their obligations set out in the Spanish VAT Act.

Exceptions to this rule are:

- Non-resident taxpayers that only carry out VAT-exempt operations involving tax-free zones, bonded warehouses and duty- and tax-suspension systems.
- Non-resident taxpayers without a permanent establishment in Spain but with an establishment in the EU, the Canary Islands, Ceuta or Melilla.

However, the aforementioned excluded non-resident taxpayers may also appoint a tax representative if they so wish.

The Spanish tax authorities should be notified of the appointment before any operations are carried out by the party without a permanent establishment in Spain. This notice should be given by means of a tax-roll statement, together with a public or private deed of appointment and a photocopy of the appointed representative’s Fiscal Identification Card (NIF).
CAPITAL TRANSFER TAX AND STAMP DUTY (ITP AND AJD)

The regulations governing this tax are set out in Royal Legislative Decree 1 of 24 September 1993.

**Tax payable on**

There are three modalities:

- Gainful capital transfers (ITP): Payable on transfers of assets, goods and rights.
- Corporate transactions (OS): Payable on operations involving company financing.
- Stamp duty (AJD): A duty affecting the formal nature of a document, rather than the actual deed.

The tax is payable by the acquiring party and is not recoverable.

**Tax rates**

<table>
<thead>
<tr>
<th>Tax Type</th>
<th>Rate %</th>
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<tbody>
<tr>
<td>Corporate transactions</td>
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<tr>
<td>Transfers of real estate property</td>
<td>6%</td>
</tr>
<tr>
<td>Transfers of movable assets and government concessions</td>
<td>4%</td>
</tr>
<tr>
<td>Certain in rem rights</td>
<td>1%</td>
</tr>
<tr>
<td>Public deeds</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

These rates may be modified by the autonomous communities.

**SPECIAL TAXES AND DUTIES (IIIE)**

Special taxes and duties are payable on consumer goods such as alcohol and alcoholic drinks, beer, hydrocarbons and the manufacture, transformation and imports of tobacco products.

A special tax is also payable on the production, imports and intra-Community purchases of electricity.

**IMPORT DUTIES**

Duties paid on imports when goods are cleared through customs. There is a harmonized international coding system for goods and the EU tariff (TARIC).

**TAX ON INSURANCE PREMIUMS**

The tax is payable on insurance and capitalization operations based on actuarial techniques.

**LOCAL TAXES**

The most common local taxes are as follows:

**Property tax (IBI)**
Payable on ownership of real estate property and in real rights.

**Business tax (IAE)**
Payable on business activities.

**Road tax (IVTM)**
Payable on ownership of vehicles, calculated on the basis of horsepower.

**Tax on building, installation and construction work (ICIO)**
Payable on the actual cost of any building or construction work that requires a municipal permit.

**Tax on the increase in value of urban land (IIVT)**
Payable on the increase in the value of urban land calculated when ownership is transferred.
CHAPTER 5

LABOUR LAW
LABOUR LAW

The fundamental law governing this area is the Workers' Statute (Royal Legislative Decree 1 of 24 March 1995), which sets out the respective rights of workers and employers, the general terms and conditions of employment contracts, the procedures to be followed when dismissing personnel and the rules for collective bargaining, among others.

Furthermore, specific regulations are applicable to different industries and certain worker groups and special labour relations groups.

Further important aspects of labour law are collective wage agreements, which may be negotiated at the individual company or at the nationwide industry level, and employment contracts that set out individual relationships between the parties.

HIRING PERSONNEL

Employment contracts may be entered into indefinitely or for a specific length of time:

- Contracts for a specific period of time, or temporary contracts (entered into to meet specific production circumstances, a construction project or service).
- Contracts to encourage companies to hire personnel indefinitely (special incentives offered by the government).
- Part-time contract (shorter hours than the workday stipulated in the collective agreement).
- Training contracts: (training and in-house training sessions).

STANDARD REGULATIONS FOR EMPLOYMENT CONTRACTS

Trial period

Any of the foregoing contracts may establish a trial period, during which either party may terminate the contract without being required to justify the decision. This subject is regulated by collective agreements.

Working hours

As a rule, the maximum working hours are 40 hours/week. Agreements may be reached as to how the working hours are distributed throughout the year, which may follow an irregular pattern.

Overtime is permitted, but only up to 80 hours/year.

It is obligatory to allow workers at least one and a half days off per week.

Wages and salaries

Wages and salaries are regulated by the corresponding collective agreements and are also agreed upon between the parties.

Terminating employment contracts

A foreign company that hires personnel to provide services on the Spanish market is not obliged to set up a permanent establishment in Spain, with all the expenses this entails. However, in this case, companies are required to register at the Spanish Ministry of Economy and Finance and the Social Security. They must also grant power of attorney to someone in Spain to represent them in their dealings with the public administrations, present any required documents, etc.

Objective dismissal

The following are causes for objective dismissal: worker's incompetence, failure to adapt, absenteeism; the company's need to cut back on jobs for financial, technical, organizational or production reasons or owing to insufficient budget allocation. Compensation amounting to 20 days' salary per year worked, with a maximum of 12 months' salary, has to be paid.

Disciplinary action

A worker's failure to meet disciplinary requirements.
Dismissal ruling

When a worker is dismissed for any objective or disciplinary cause, he or she may challenge the employer’s action by lodging an appeal with the Employment Appeal Court. The court will rule on the dismissal as follows:

• Fair: In this case, no compensation is due because dismissal has been carried out in accordance with law.
• Unfair: Compensation amounting to 33 days’ salary per year worked, with a maximum of 24 months’ salary has to be paid. These amounts came into force on 11 February 2012 and are lower than the previous amounts. For earlier contracts, acquired rights must be respected.
• Null and void: The worker is readmitted to the company and full salary is paid from the dismissal date to the date of readmission.

HIRING MEMBERS OF SENIOR MANAGEMENT

A member of senior management is an employee who has broad powers to administer and manage issues relating to the company’s overall objectives, exercises authority with full independence and responsibility and is answerable only to the company’s governing body. These employment relations are regulated by Royal Decree 1382 of 1 August 1985.

HIRING PERSONNEL FROM TEMPORARY EMPLOYMENT AGENCIES

The Workers’ Statute expressly prohibits the temporary assignment of workers unless it is through temporary employment agencies, which provide their corporate clients with workers to meet their temporary requirements.

WORKERS’ REPRESENTATIVES

Workers may participate in a company’s activities through individual representatives and/or trade unions. In the first case, whether staff have individual representatives or a workers’ committee depends on the number of employees in the company. In the second case, workers who belong to a trade union have the right to participate in the company or work centre through the trade union section.

The functions of workers’ committees and personnel representatives are the same and include, among others, the right to information on personnel hiring and the company’s financial situation.

VISAS AND WORK AND RESIDENCE PERMITS

According to Spanish regulations on foreigners, anyone who does not have Spanish nationality is deemed to be a foreigner. Foreigners’ fundamental rights and freedoms in Spain are regulated in Organic Act 4 of 11 January 2000 and Royal Decree 557/2011 of 20 of April, which approved the regulation of the Organic Act.

While the rights of nationals of EU Member States to work in Spain are not limited in any way, nationals of non-EU countries have to apply to the Spanish authorities for a permit.

SOCIAL SECURITY

The Spanish Social Security system covers all Spaniards and foreigners who reside or are legally in Spain, regardless of sex, marital status or profession, provided they live in Spanish territory and work as employees, are self-employed or belong to associated work cooperatives.

The Social Security system is structured into a number of systems, with a General System covering all employees who do not fall within any of the special systems applicable to certain activities (workers at sea, etc.).
Under the General Social Security System, contributions are shared between the employer and employee. Employees are classified into professional categories to determine the corresponding contribution. There are maximum and minimum bases for each category that are usually revised every year.

There are 11 contribution groups into which employees are classified, depending on their professional categories.

D.A. 27th Real Decree Legislative 1/1994 of 20th of June establishes the framework of both the general and special regime for self-employed, partners and employees or directors or corporations.

**PREVENTION OF OCCUPATIONAL HAZARDS**

In accordance with Act 54 of 12 December 2003 on the prevention of occupational hazards, employers must protect the health and safety of their employees and, without limitation, are obliged to comply with the law and remedy any situations of risk. Furthermore, they must design preventive action from the start of their business activity and take permanent action to improve existing levels of protection. This involves an obligation to perform risk evaluations, adopt measures to be put into practice in emergencies, organize resources for protection activities and guarantee the health of workers and pregnant and breastfeeding women.
CHAPTER 6

E- BUSINESS LEGAL FRAMEWORK
E-BUSINESS LEGAL FRAMEWORK

The different aspects of e-business are now subject to specific regulations in Spain.

Consequently, any e-business transactions also involve legislation on distance sales and advertising, as well as regulations governing the general terms and conditions of contracts, electronic signatures, personal data protection, intellectual and industrial property rights, and the information society and e-business.

A fundamental aspect to be borne in mind with respect to electronic transactions is that the applicable regulations vary depending on who the recipient is. Thus, a transaction carried out between companies ("business to business" or B2B) is not the same as a transaction where the end customer is an individual ("business to consumer" or B2C), because in the latter case legislation on the protection of personal data and consumer regulations, among others, must also be taken into account.

CIVIL AND COMMERCIAL REGULATIONS

a) Civil Code and Commercial Code
Both codes have recently been modified by the Act on Information Society Services and e-Business, which stipulates that consent to a contract entered into by automatic means is understood to exist from the moment acceptance is given.

b) Distance sales
All operators who carry out distance sales, such as those made on data transmission systems, should obtain the corresponding authorization and register on the Register of Distance Sales Enterprises.

The Act stipulates that the following data must be included in all distance sales quotes:

• The supplier’s identity.
• The product’s special features and price and any transport charges.
• The form of payment, means of delivery or execution, and the quote’s period of validity.

It also sets out a series of consumers’ rights:

• The need for consumers to give their express consent.
• The prohibition of sending consumers goods they have not requested.
• Consumers’ right to cancel a purchase within seven days after receiving the product.

c) Consumer protection
Any e-business activities designed for consumers must comply with consumer protection regulations. The Royal Decree that regulates contracts entered into by telephone and electronic means includes the following obligations:

• Consumers must be provided with information on all clauses of the agreement, and the general terms and conditions and documentary support of the sales contract must be sent to them.
• Consumers have the right to terminate a contract within a period of seven working days.

Likewise, the Act on Guarantees in the Sale of Consumer Goods includes a free-of-charge warranty covering all consumer goods for a period of two years.

ACT ON INFORMATION SOCIETY SERVICES AND E-COMMERCE (LSSI)

The Act on Information Society Services and e-commerce (LSSI) defines an information society service as being any distance service rendered for payment by electronic means at the recipient’s individual request. This also includes services not paid for by recipients, given that such services still constitute economic activities for the providing party.

The obligations contemplated in this Act are applicable to all service providers established in other Member States of the European Union and the European Economic Area when the recipients of the services are located in Spain and the services involve:
• Intellectual and industrial property rights.
• Advertising by investment funds.
• Direct insurance business.
• Obligations deriving from contracts with consumers.
• The lawfulness of unrequested business communications by e-mail

The Act covers certain important new aspects, including:

• Specific obligations of providers of information-society services
  – To notify the register, within one month, of the domain name they use to identify themselves on the Internet.
  – To provide means whereby the recipients of services and the competent bodies can have easy, direct access free of charge to information about the provider and the product price.
• A specific system for e-mail business communications, without prejudice to the regulations in force on marketing, advertising and protection of personal data.

Regulation of contracts entered into by e-mail, whereby contracts are recognized when the parties give their consent and other requirements in terms of validity are met, while the parties’ prior agreement on the use of electronic means is not required.

PROTECTION OF PERSONAL DATA

The Personal Data Protection Act regulates the way in which individuals’ personal data should be processed when obtained by public and private bodies in the course of their activities, in order to prevent indiscriminate use of these data. The Act does not regulate data referring to bodies corporate.

The main aspects to be taken into consideration are as follows:

• Processing specially protected data requires the express consent of the interested party.
• Except in exceptional cases, communicating personal data to third parties requires the prior consent of the interested party. The interested party’s consent is not required before communicating personal data to a third party that provides a service which involves access to the said data.
• Interested parties’ rights to access, modify, cancel and oppose the processing of their personal data are recognized.
• The Spanish Data Protection Agency (www.agpd.es) must be notified before files of personal data are created.

INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS AND DOMAIN NAMES

a) Intellectual property
The Intellectual Property Act establishes that intellectual property is any original literary, artistic or scientific creation expressed in any tangible or intangible means or media, whether currently known or which may be invented in the future. Consequently, all creations that meet the originality requirement may be protected as intellectual property, including the content, source codes and graphic design of websites.

b) Industrial property
Inventions are patentable and, in the area of e-business, patents can be taken out on compression and coding algorithms. However, drawings, rules and methods for doing business and computer programs cannot be patented.

c) Domain names
The public corporation Red.es performs the function of public authority for assigning domain names with the “dot.es” suffix. In accordance with the Spanish Master Plan, an accreditation or link between the requested domain and the party requesting its registration is required, and the following requirements must also be fulfilled: the domain name may not be previously assigned, it must fit in with syntax guidelines, comply with the derivation regulations and not be included within the established prohibitions. Furthermore, there are a good many new third level domains: “com.es”, “nom.es”, “org.es”, “gob.es” and “edu.es”.

d) **Electronic invoicing**
Electronic invoicing is based on the use of advanced electronic signatures or any other system of electronic data interchange that provides for guaranteeing the authenticity of invoices sent by e-mail and the reliability of their content.

e) **Electronic signatures**
An "electronic signature" is a set of data in electronic form that is consigned or associated with other data and can be used as a means of identifying the signing party.

f) **E-money**
Electronic money is a monetary value represented by a credit payable by its issuer that is stored on electronic media and accepted as a means of payment by other companies. Before issuing electronic money, a number of specific management procedures and controls are required to ensure operations are carried out properly and to guarantee the stability of the financial system.
APPENDIX
LINKS OF INTEREST

Data Protection Agency www.agpd.es
Tax Authority www.aeat.es
Spanish Association of Accounting and Business Administration www.aeca.es
Spanish Association for Standardization and Certification www.aenor.es
Bank of Spain www.bde.es
Barcelona Stock Exchange www.borsabcn.es
Madrid Stock Exchange www.bolsamadrid.es
Barcelona Chamber of Commerce www.cambrabcn.es
Securities and Investments Board www.cnmv.es
Spanish Congress of Deputies www.congreso.es
General Council of Judicial Power www.poderjudicial.es
Ombudsman www.defensordelpueblo.es
Spanish Government Headquarters www.la-moncloa.es
Institute of Chartered Accountants www.icjce.es
Accounting and Auditing Institute www.icac.meh.es
Spanish Institute for Foreign Trade www.icex.es
National Statistics Institute www.ine.es
Ministry of Public Administration www.map.es
Ministry of Agriculture, Fisheries and Food www.mapya.es
Ministry of Foreign Affairs and Cooperation www.mae.es
Ministry of Culture www.mcu.es
Ministry of Defense www.mde.es
## LINKS OF INTEREST

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<td><a href="http://www.pkf.com">www.pkf.com</a></td>
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<td>Registry of Accounts Auditors</td>
<td><a href="http://www.rea.es">www.rea.es</a></td>
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<td><a href="http://www.mrc.es">www.mrc.es</a></td>
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<td>Spanish Senate</td>
<td><a href="http://www.senado.es">www.senado.es</a></td>
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<td><a href="http://www.tribunalconstitucional.es">www.tribunalconstitucional.es</a></td>
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<td>Audit Office</td>
<td><a href="http://www.tcu.es">www.tcu.es</a></td>
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<td>Supreme Court</td>
<td><a href="http://www.poderjudicial.es">www.poderjudicial.es</a></td>
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PKF in Spain

BARCELONA
PKF-Audiec SA
Av. Diagonal 612, 7-11
08021 Barcelona
Spain
Tel: +34 93 414 59 28
Fax: +34 93 414 02 48
Email: audiec@pkf.es
http://www.pkf.es
International Liaison Partner:
Félix Pedrosa
fpedrosa@pkf.es
(full member firm)

BILBAO
PKF ATTEST SL
C/ Henao 18 (48009)
C/ Alameda Mazarredo 69 (48009)
C/ Alameda Recalde 36 (48009)
Bilbao
Spain
Tel: +34 94 424 30 24
Fax: +34 94 424 37 15
Email: bilbao@pkf-attestes.es
http://www.pkf-attestes.es
International Liaison Partner:
Alfonso Santamaría
asantamaria@pkf-attestes.es
(full member firm)

CANARY ISLANDS
Javier Martín Consultores y Asociados, SL
C/ Triana 4, 1ª planta
35002 Las Palmas de Gran Canaria
Canary Islands
Spain
Tel: +34 92 836 00 45
Fax: +34 92 838 15 52
Email: auditoria@imasociados.com
http://www.pkf.es
International Liaison Partner:
Javier Martín González
javiermg@imasociados.com
(exclusive correspondent firm)

MADRID
PKF ATTEST SL
C/ Orense 81
28020 Madrid
Spain
Tel: +34 91 556 11 99
Fax: +34 91 556 96 22
Email: madrid@pkf-attest.es
http://www.pkf-attest.es
International Liaison Partner:
Santiago González
sgonzalez@pkf-attestes.es
(full member firm)

MALAGA
AB Integro, S.R.L.
C/ Sancho de Lara, 13, 1st floor, D
29015 Málaga
Spain
Tel: +34 95 260 03 29
Fax: +34 95 221 26 19
Email: ifon@ab-integro.com
http://www.pkf.es
International Liaison Partner:
Félix Pedrosa
fpedrosa@pkf.es
Local contact Partners:
José Queipo de Llano
Juristo Fonollá Díaz
(exclusive correspondent firm)
PKF in Spain

PALMA DE MALLORCA
PKF Checkaudit Baleares, SL
Avenida Juan March Ordinas, 9 2º D
07004 Palma de Mallorca
Spain
Tel: +34 97 171 22 79
Fax: +34 97 171 36 47
Email: checkaudit@pkfcheckaudit.es
http://www.pkf.es
International Liaison Partner:
Pedro Quintana
checkaudit@pkfcheckaudit.es
(exclusive correspondent firm)

SORIA
PKF ATTEST SL
C/ Cortes 1
42003 Soria
Spain
Tel: +34 97 523 34 87
Email: soria@pkf-attest.es
http://www.pkf-attest.es
International Liaison Partner:
José Miguel Calleja
jmcalleja@pkf-attest.es
(full member firm)

PAMPLONA
PKF ATTEST SL
C/ Arrieta, 18 – 1º
31002 Pamplona
Spain
Tel: +34 94 822 03 35
Fax: +34 94 822 16 60
Email: pamplona@pkf-attest.es
http://www.pkf-attest.es
International Liaison Partner:
Alvaro Beñarán
abenaran@pkf-attest.es
(full member firm)

SEVILLE
PKF ATTEST SL
Glorieta Fernandez de Quiñones s/n
Edificio Centris mod 1-6º
41940 Sevilla
Spain
Tel: +34 95 415 62 24
Fax: +34 95 415 62 89
Email: sevilla@pkf-attest.es
http://www.pkf-attest.es
International Liaison Partner:
Luis Palomares
lpalomares@pkf-attest.es
(full member firm)

SAN SEBASTIÁN
PKF ATTEST SL
Paseo de Miraflores 25, bajo
20007 San Sebastián
Spain
Tel: +34 94 342 97 95
Fax: +34 94 342 67 34
Email: sansebastian@pkf-attest.es
http://www.pkf-attest.es
International Liaison Partner:
Ramón Madariaga
rmadariaga@pkf-attest.es
(full member firm)
PKF in Spain

VITORIA
PKF ATTEST SL
C/ Eduardo Dato 2
01005 Vitoria - Gasteiz
Spain
Tel: +34 94 513 74 26
Fax: +34 94 514 82 13
Email: vitoria@pkf-attest.es
http://www.pkf-attest.es
International Liaison Partner:
Alberto Rodriguez
aro@david@pkf-attest.es
(full member firm)

ZARAGOZA
CB Auditores y Asesores, SL
C/ Antonio Candil 8
50003 Zaragoza
Spain
Tel: +34 97 639 15 18
Email: cb@cbauditores.com
http://www.pkf-attest.es
International Liaison Partner:
Félix Pedrosa
fpedrosa@pkf.es
Local contact Partner:
Francisco Cervera
(exclusive correspondent firm)
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