

WORKING FROM HOME IN SPAIN

LEGAL AND TAX BASICS



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1. INTRODUCTION



The digitalisation of the working environment is advancing, and the COVID-19 pandemic crisis has recently accelerated this development considerably. More and more employees and self-employed persons have the opportunity to work from home or almost anywhere else.

DIGITALIZATION MAKES IT POSSIBLE: WORK FROM HOME IN SPAIN

Since in many cases it has become irrelevant from where the work is done, more and more employees are choosing to relocate to sunny climes. **Spain has been for some time a place from which many employees and entrepreneurs perform their work due to its excellent quality of life.**

Those interested in this step have to take into account various legal and tax aspects involved in relocating and working from home in Spain. The purpose of this information brochure is to inform you about the essential framework conditions and thus help you to realise your dream working from home in Spain.

In this brochure we focus on the most important topics and will give you an initial overview. The information is summarised and highly simplified, which is why this brochure cannot replace basic advice on specific individual cases. First of all, we give an overview of issues relating to residence under registration law, followed by an explanation of the main tax principles. In addition to a brief description of the framework conditions under labour law, individual aspects of commercial law are also taken into account.

2. ASPECTS OF ADMINISTRATIVE LAW

a) The Foreigner Identification Number NIE

Persons who are linked to Spain because of their economic, professional or social interests will need an NIE (Número de Identidad de Extranjero). **The NIE is a personal, unique and exclusive, identification number that also serves as a tax identification number (NIF)** once it is communicated to the Spanish tax office. In principle, it is assigned permanently (for life).

b) Register for Union citizens

If EU citizens and their family members move with you or join you, they do not need a residence or work visa in Spain thanks to the EU's free movement policy. **They only need to register as EU citizens** and receive a residence card (tarjeta de residencia comunitaria, community card). Failure to do so may result in fines being imposed on you. If you do not yet have an NIE, you will be issued one when you register.

c) Residence and work permits for non-EU citizens

The EU regulation also applies to citizens whose home country is a member of the European Economic Area or Switzerland. **All other foreigners require a residence permit and, if necessary, a work permit in Spain.** In this area, various special laws and international agreements must also be taken into account. For example, there are special conditions for highly qualified professionals, intra-company transferees, researchers and teachers recruited by universities, colleges and research institutes or business schools in Spain.

The permit is obtained, you can apply for a visa that will allow you to enter Spain. The stay in Spain can be temporary or permanent.

FROM THE N.I.E. TO
WORK PERMIT: VARIOUS
FORMALITIES MUST BE
TAKEN INTO ACCOUNT

It is issued by the General Directorate of Police in Spain, provided that you are a foreigner regularly residing in Spain. When applying, you must also declare the reasons why the number is being requested (e.g. because you want to register a business). The NIE can also be applied for by a representative with a notarial power of attorney. Abroad, Spanish embassies and consulates are also authorised to accept NIE applications. In any case, it is necessary to request an appointment to apply with some advance notice (sometimes the authorities have waiting periods of several weeks).

You must apply for **inscription within 3 months** of entering Spain at the immigration office of the Spanish province where you intend to reside or settle (if there is no office there, alternatively at the corresponding police station).

The residence card is valid for five years from the date of issue or for the period requested if it is less than five years. After the five years, an application for recognition of a permanent right of residence can be submitted.

Obtaining a work permit in Spain is complex. A detailed list would go beyond the scope of this brochure. At this point, it should only be pointed out that there are different permits depending on whether you want to work as an employee or as a self-employed person. Within these categories there are different subcategories of the required permit. Depending on the specific type, these can have a duration of up to 5 years.

3. BASICS OF TAX LAW

a) When is a natural person subject to income tax in Spain?

Under Spanish law, an individual is liable to pay tax in Spain if one of the following conditions is met:

> **A stay of more than 183 days in Spain during a calendar year.** Temporary stays abroad are generally not deducted, unless the taxpayer can prove that his tax domicile is in another country.

> If the centre or main focus of economic interests or activities is located directly or indirectly in Spain.

> The taxpayer is presumed to have his tax residence in Spain if his non-separated spouse or his minor and dependent children have their habitual residence there (according to the two criteria mentioned above).

According to Spanish law, an individual can only have his tax domicile in one country in a calendar year, -from 1 January to 31 December-. Should another country also consider the taxpayer to be liable to tax in its country, the so-called tie-breaker rules from the respective double taxation treaty apply.

IF YOU STAY MORE
THAN 183 DAYS, YOU
ARE A TAX RESIDENT
OF SPAIN

b) Tax obligations for persons subject to income tax in Spain

As a taxable person in Spain, you have to pay the following taxes:

aa) Income tax

The relevant reference for income tax is the income earned by the taxpayer. The following **sources of income are to be taken into account:**

- a) Income from work (including pensions and sums received as unemployment benefits)
- b) Income from capital (interests etc.)
- c) Income from economic activities
- d) Capital gains and losses; and
- e) Certain income to be added on account of property ownership.

Income tax can be assessed individually or jointly, the latter option only being possible if both spouses are tax residents in Spain (moreover, joint assessment is only of interest if one of the spouses has an income lower than 3,400 euro per year).

For the calculation of the tax, the taxpayer's income is divided into two parts:

> The **general part**, which consists of income from work and economic activity. A progressive tax rate is applied to this (which varies according to the autonomous community; in Valencia, for example, it starts at 19.5% for income up to 12,450 euros per year and goes up to 48% for income over 120,000 euros per year).

> The **savings part**, which is composed by movable capital and capital gains. A progressive tax rate is applied to this, starting at 19% for income up to 6,000 euros per year and rising up to 28% for income above 50,000 euros per year.

bb) Wealth tax

The wealth tax is a personal and direct tax on the wealth of natural persons. It was transferred from the Spanish state to the autonomous communities. **Wealth tax is payable on assets above a certain level** (e.g. 700,000 € in the Balearic Islands or 500,000 € in the Comunidad Valenciana). There is an allowance for the taxpayer's permanent residence (in the Comunidad Valenciana, for example, €300,000).

Asset-reducing burdens as well as obligations and personal debts of the taxpayer are deducted from the value of the assets. In addition, there are further exemptions for company participations under certain conditions. The wealth tax situation in the autonomous community of Madrid is currently particularly favourable: There, from assets of 2 million euros, only an informative declaration has to be submitted, but (due to a complete deduction) no wealth tax has to be paid.

cc) Tax form 720

The tax form 720 is a **purely informative declaration** (no tax is payable) of the taxpayer's foreign assets (i.e. assets not located in Spain). **It must be submitted if the value of one or more of the three categories of assets provided for (real estate, bank accounts and shares) exceeds €50,000.**

In subsequent years after the initial submission of the form (deadline: 31 March of the year after taking up tax residency in Spain or only when the obligation to present the form arises), the declaration only has to be submitted if the value of a category changes by more than €20,000 or in the event of transfer/deletion of the corresponding assets/accounts, etc.

Despite the purely informative character, it should be noted that the penalties for non-submission or absence of a declaration (or for providing false or incomplete information) can be very high.

dd) "Beckham Law"

For employees, self-employed persons, entrepreneurs and directors of companies posted to Spain for work purposes, there is a special tax regime (known as the "Beckham Law", because the former professional footballer David Beckham benefited from it at the time).

In order for this special regime to apply, **the following conditions must be met:**

> The employee must not have been resident in Spain for the last 5 tax years.

> The move to Spain must be for one of the following reasons:

- Commencement of an employment contract, with the exception of professional athletes.
- Acceptance of office as director of a Spanish company, regardless of whether the director himself holds shares in the company (except in the case of property companies. In such cases, the shareholding must be less than 25%).
- The exercise of an entrepreneurial activity; or
- The provision of services to newly established companies as well as highly skilled workers.

The latter two cases were introduced in 2023 and, although generally positive as they expand the group of potential beneficiaries of the special regime, are subject to considerable legal uncertainty as they are subject to compliance with strict requirements and administrative formalities, in particular obtaining a positive report from ENISA (Empresa Nacional de Innovación, S.A.).

> No income may be received that qualifies as income received through a permanent establishment.

If these requirements are met, **individuals may be taxed as non-residents upon application.** The special regime applies from the year of moving to Spain and for the five following tax years. The main tax advantage is the applicable tax rate on earned income, which is fixed at 24% for income up to €600,000 and 47% for income above €600,000. As a rule, this arrangement is attractive if earned income exceeds €60,000 per year and thus the effective income tax rate is higher than 24.

ee) Self-employment

α) Social security obligations

As a **self-employed entrepreneur or freelancer, social security contributions for sole traders (so-called “autónomos”) are payable**. The minimum fee is around EUR 3,500 per year. According to current law, the amount of the fee is independent of the turnover, i.e. the entrepreneur is allowed to determine the amount of the contributions within the given framework (the maximum contribution is just over € 14,500).

However, self-employed people who are just starting their business can apply to pay a greatly reduced flat-rate social security fee (“tarifa plana para autónomos”) for the first two years, provided they meet certain conditions (in particular that they have not been registered for tax purposes in Spain as self-employed people for the last five years). The contribution then increases progressively during this period from €60 in the first year to just under €200 in the second year. After the two years, the normal contribution must be paid.

β) Tax obligations

As an entrepreneur, **you must register with the tax office (form 036)** before starting your activity, indicating which activities you will carry out in Spain.

The **following tax returns must be filed on a quarterly basis:**

- > Advance notification VAT returns.
- > Payments on account of income tax, unless more than 70% of the income is subject to withholding tax (e.g. in the case of billing Spanish corporate clients). The tax rate of the payments on account is 20% of the declared quarterly profit.
- > If applicable, other declarations (e.g. in the case that the taxpayer is subject to withholding tax vis-à-vis other self-employed persons or a tenant).

An income tax return and, in addition to other informative returns (e.g. tax form 720), a summary turnover tax return must be filed annually.



4. LABOUR LAW ASPECTS

The fact that you will be working from Spain in the future may, of course, also have an impact on your labour law situation.

Each individual case must be considered carefully. If, for example, your company sends you to work in Spain, this could be considered a posting, which is subject to its own rules. In the context of a posting, you are still covered by health insurance in your home country and pay social security contributions there. As proof of insurance, **you must apply for the so-called „A1“ form from your health insurance before the posting and then always carry it with you in Spain.** The posting to Spain can last up to two years and must be reported to the Spanish authorities.

However, we assume here that your employer simply does not mind where you work from while working from home. In any case, you should inform your employer that you want to work from Spain in the future (as this has various implications that differ from working from home in your country).

Basically, two scenarios are conceivable: You simply continue to work with your existing employment contract (from Spain). This contract is neither adapted nor registered in Spain. This alternative is possible, but involves considerable risks. For example, the place of jurisdiction (where you must sue or can be sued in the event of a dispute) and the place of performance of the work must be clarified (especially if your employment contract regulates details in this regard). It is essential that you always have sufficient health insurance. You should in any case consult an expert who is familiar with both legal systems. After 24 months of uninterrupted work from Spain, you will in any case be integrated into the Spanish social security system; at this point at the latest, the labour law situation must be adjusted.

Alternatively, and more correctly, you can conclude a (bilingual, otherwise a translation into Spanish is necessary) **employment contract according to Spanish law with your foreign employer or modify your previous contract accordingly.** This contract must then be registered with the Spanish labour and social security authorities. In this case, your foreign employer pays into the Spanish social security system (you also pay via the employee's share), and Spanish wage tax (income tax) is withheld from the pay slips. The advantage of this scenario is that you participate in the public health system in Spain (and thus have health insurance) and also pay into the pension system in Spain. The prerequisite here is that your employer is officially registered beforehand with both the Spanish tax office and the social security (Seguridad Social).

If you are planning to work from home in Spain in the future, it is always advisable to involve your employer in your plans as early as possible and to seek appropriate advice.



EFFECTS OF LABOUR LAW: VARIOUS
FACTORS TO BE CONSIDERED
REGARDING HEALTH INSURANCE

5. COMMERCIAL LAW CONSIDERATIONS

A **professional activity in Spain can also be carried out through a company**, for example a company with limited liability under Spanish law (sociedad limitada, SL). The advantage is that the liability of the shareholder is limited to the contribution. Furthermore the shareholder is not liable with his private assets. In addition, working through a Spanish company can in practice make it easier for foreign companies to acquire Spanish customers due to the implied connection with the Spanish market.

Foreigners who are not resident in Spain can set up companies in Spain and take over the management without any restrictions, even if they do not have a residence or work permit in Spain. In addition, the establishment of a company for non-EU citizens can also be a way to obtain a residence permit for Spain, provided certain additional requirements are met.

If only one person establishes the company, it is called a single-person company (sociedad unipersonal, SLU).

First of all, **the setting-up of the company requires the reservation of the desired name at the Central Commercial Registry of Madrid**. If the desired name has not yet been reserved or if there is no other company whose name is similar, so that there is no risk of confusion, the Registry issues a certificate of reservation of the name.

Once the name has been successfully reserved, **a Spanish bank account for the company can be opened**. For this purpose, the certificate of the company name must be sent to the bank, stating the desired share capital, whereby the legally prescribed minimum share capital is currently € 3,000. As soon as the capital has been paid into the newly opened account, the bank will issue a certificate of payment, which must later be presented to the notary public when signing the deed of setting-up of the company. Alternatively, the founder of the company can, within the scope of the formation, also make a statement before the notary that the share capital has been paid into an existing company account and that he is liable for this fact vis-à-vis the company and third parties, without proving this to the notary. However, this does not release the shareholder from the obligation to make the contribution, so this option should only be used in exceptional cases.

Parallel to this, **the bylaws must be drawn up, which, in addition to the law**, regulate the legal basis of the company.

WORKING FROM
HOME OFFERS
INTERESTING
OPPORTUNITIES
IN TERMS OF
COMMERCIAL LAW

Once the certificate of the company name, the by-laws, the NIE of the shareholder and the future director and, if applicable, the confirmation of the bank are available, **the deed of setting-up can be signed before a Spanish notary**.

When the deed has been signed, **it must be filed with the commercial registry responsible** for the province within whose territory the chosen registered office is located.

It takes approximately 3 weeks from the filing of the deed to its registration. **After registration in the commercial register, the company must be registered with the tax office**. As part of this registration, the company's tax identification number is assigned, which must be stated on all invoices. If the directors of an SL (Limited Company LTD) are paid for their work as director, they are assessed as self-employed if their shareholding in the company exceeds 25%.



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