

Spain

Going Global with Baker Tilly

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INTERNATIONAL

Once the conditions of having a Permanent Establishment in a particular territory have been met, the following key points should usually be considered:

Key Requirements	Response
<p>Main types of entity</p>	<ul style="list-style-type: none"> • Limited liability company (Sociedad Limitada, SL) • Public limited company (Sociedad Anónima, SA)
<p>Any material advantages regarding having a branch or a company?</p> <p>(Excluding the liability of a company typically not extending to its parent company and losses of a branch potentially being available to an overseas parent)</p>	<p>Advantage Branch (examples)</p> <ol style="list-style-type: none"> 1. No capital contribution required but optional, no minimum capital required 2. Compulsory to appoint Legal Representative 3. More complex proceeding regarding the filing of the annual accounts (annually) <p>Advantage Company</p> <ol style="list-style-type: none"> 1. Liability limited to its capital 2. Less complexity regarding the filing of the annual accounts 3. Compulsory to appoint Director(s) or Board of Directors 4. No need of Spanish tax representative <p>Important considerations from the Tax point of view:</p> <p>PE, Branch and subsidiaries are, in general terms, taxed under the Spanish Corporate Income Tax on their net income (general tax rate of 25%); however, for a Branch and a Spanish PE there are some differences which should be taken into consideration when it comes to decide how to do business in Spain:</p> <ul style="list-style-type: none"> • There are some payments made by a branch or PE to its parent company or other PE which are not tax deductible: • Any payment made by the Branch or PE to the headquarter by way of royalties, interests or commissions by technical assistance or assets disposal will not be tax deductible. • The reasonable portion of management and general administration expenses charged to the Branch or PE can be deducted in case that a service agreement exists and the cost allocation is made according to rationality and continuity criteria. A specific memory about those expenses should be filed every year together with CIT return. • Equity costs (interests and any other financial expense) direct or indirectly assignable to the Branch or PE will not be deductible.

Key Requirements	Response
<p>Any material advantages regarding having a branch or a company?</p> <p>(Excluding the liability of a company typically not extending to its parent company and losses of a branch potentially being available to an overseas parent)</p>	<ul style="list-style-type: none"> • The headquarter will be responsible for any liabilities that the Branch or PE may incur (such as employment obligations or fines from the tax office), whereas a Limited Company is a separated legal entity that limits the liability to the local country in which it operates. • Under Spanish law, income obtained by a branch that is repatriated to its head office may be additionally taxed at source. That should be analyzed according to the applicable tax treaty. <p>Apart from the above, we must also mention that registering a Branch or PE of a foreign company in Spain requires the appointment of a Tax Representative (a Spanish-resident individual or company): this particular figure (only applicable in case of a Branch and PE but not for a Limited Company) has a special treatment by Spanish law, which considers the representative to be jointly and severally liable with of all tax liabilities</p>
<p>Can company and branch registrations be completed by Baker Tilly or must a third party, such as a law firm, be involved?</p>	<p>The incorporation and registration process can be completed by our lawyers in Baker Tilly Spain. No external law firm needs to be involved.</p>
<p>Once the company or branch has been set up, what other main registrations are typically required?</p>	<ul style="list-style-type: none"> • Tax registrations • Social security registrations • Commercial Registry registrations • Regulatory agency registration (if applicable)
<p>What information must typically be provided to set up a company or branch?</p>	<p>Information about:</p> <ul style="list-style-type: none"> • Shareholder(s) • Director(s)/legal representative(s) • bank account • number of employees, sales representatives, agents, etc. • expected sales and profit • description of activities and type of sales • article of association • excerpt from commercial register. • Powers of attorney • all foreign documents will require the Apostille of the Hague Convention

Key Requirements	Response
<p>Does a local company / branch require a local shareholder, local nominee director or local representative? If so, indicative typical costs.</p>	<p>Shareholders and Directors in the case of a company and legal representatives in the case of branches can be non-Spanish nationals/residents. The only requirement is to issue a Foreigners 'ID Number previously.</p> <p>However, the registration of a branch in Spain requires the appointment of a tax representative (natural or legal person domiciled in Spain): this specific figure (applicable only in the case of a branch, but not in the case of a limited liability company) has a special treatment under Spanish law, which holds the representative jointly and severally liable for all tax obligations.</p>
<p>Any other local requirements for a company or branch, such as a business licence?</p>	<p>Depending on the business, a business licence might be necessary.</p>
<p>Typical cost of registering a company including professional fees and authorities charges?</p>	<p>The third-party costs will very much depend on the capital of the branch/company. Assuming that it will have the minimum capital (3,000 Eur) the third-party costs (including notary, registry, translations) should be around 500-600 Euro.</p> <p>Baker Tilly fees are 3,400 Eur</p>
<p>Typical cost of registering a branch including professional fees and authorities charges?</p>	<p>The third-party costs will very much depend on the capital of the branch/company. Assuming that it will have the minimum capital (3,000 Eur) the third-party costs (including notary, registry, translations) should be around 500-600 Euro.</p> <p>Baker Tilly fees are 4,200 Eur</p>
<p>Typical timeframe for registering a company once all the information has been provided</p>	<p>From 1 to 2 months, It very much depends on how fast we gather the required information and duly legalized documents from the client. Only the registration process with the registry takes around three weeks,</p>
<p>Typical timeframe for registering a branch once all the information has been provided</p>	<p>Same as above.</p>
<p>Audit requirements / threshold</p>	<p>Companies are required to be audited if they comply for two of the three requirements set out below for two consecutive years at year-end:</p> <ul style="list-style-type: none"> • the net turnover exceeds 5,7000,000 euros. • the total of its assets exceeds 2,850,000 euros. • the average number of employees during the financial year exceeds 50.

Key Requirements	Response
Accounting regime / GAAP	Spanish GAAP (similar to IFRS)
Requirements around filing financial statements	Deadlines for the filing of the annual accounts (example for a financial year closing 31 December): <ul style="list-style-type: none"> • Until 31 March: Formulation of the annual accounts. • Until 30 June: Approval of the annual accounts. • Until 30 July: Filing of the annual accounts with the Commercial Registry

Key contact for establishing a company / branch



Fabio Delbosco
Corporate Tax

T: +34 93 317 60 61
fdelbosco@bakertilly.es



Marian Mariñas
Corporate Tax

T: +34 91 365 05 42
mmarinas@bakertilly.es



Jordi Mercadé
Legal

T: +34 93 317 60 61
m.jmercade@bakertilly.es

for general tax enquires please contact

Androulla Soteri

Tax Director at Baker Tilly

androulla.soteri@bakertilly.global



Global Office

6th Floor
2 London Wall Place
London, EC2Y 5AU, United Kingdom
info@bakertilly.global

[bakertilly.global](https://www.bakertilly.global)

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