



Spain: a true alternative to doing business after Brexit

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Introduction

The British people's decision to leave the European Union ('EU') will drive many companies, currently operating in the United Kingdom ('UK'), to relocate to other European countries to continue enjoying the freedom of movement guaranteed by EU law. Some companies will decide to relocate only partially, keeping strategic business areas in the UK. Others will relocate entirely, moving their headquarters to other European countries with the means and resources to host the arrival of new highly qualified workers.

After the UK's departure, Spain will be the EU's fourth largest economy. In the wake of a difficult economic crisis, Spain has emerged as a leading player with a robust economy growing at 3%. It has a stable political landscape and highly attractive workforce, infrastructure, office space and living standards on offer. Companies in Spain enjoy free movement to provide services, and the freedoms of establishment and movement of goods, capital and persons. Spain is also an important Eurozone country with a highly competitive financial system that allows financial institutions to make full use of their passporting rights throughout the European market.

This dossier outlines the main features of the Spanish legal system, particularly in the areas of most interest to companies considering relocating, partly or entirely, from the UK to continue operating within the internal market.

With more than 70 years of experience, Uría Menéndez has consolidated its position as a leading law firm in the Iberian and European legal markets. The firm was founded in Spain in the 1940s by two university professors who instilled the firm's distinct values that attract the best legal talent in Spain. It has evolved to become the leading legal services provider in every field of law, with a top tier position in more practice areas than any other firm in Spain.



An international and harmonised financial system

The Spanish banking and financial system uniquely combines the discipline and stability brought about by EU financial legislation, particularly the EU banking union and the expertise and innovation of its players. It is a competitive and open market populated by national and international service providers who are driven by its harmonised regulations and the diversity of its demand.

- **It is both traditional and sophisticated**

- It is comprised of a wide variety of entities which provide the full spectrum of financial services to all consumer segments.
- Market participants include, among others, banks, investment firms, payment institutions, e-money issuers, asset managers, fund managers, depositaries, insurance companies, central clearing counterparties, central securities depositories and crowdfunding and crowdlending platforms.
- Services range from the traditional deposit-taking and lending to highly sophisticated and value-adding services in the areas of private banking, asset management, securities markets and corporate banking.

- **It is fully harmonised with EU standards**

- Spain is an EU Member State and as such is subject to EU financial legislation. As a result, market participants must abide by rules established by reference to the EU law applicable to their activity. This includes, the Basel III framework, the CRD, the BRRD, the MiFID package, the PD and the TD, UCITS, AIFMD, PSD, the SFD or EMIR.
- Spain is also a Eurozone Member State and as such is part of the EU banking union. Banking supervision is therefore performed in accordance with the rules of the Single Supervisory Mechanism and the Single Resolution Mechanism.

- **It is fully open to foreign players**

- The market is comprised of both domestic and international players, particularly EU entities operating under the passporting provisions established by the EU financial directives governing each type of regulated entity. For example, as at December 2016, approximately 40% of the credit entities operating in Spain through a permanent establishment were foreign entities, from within and outside the EU.¹

¹ Source: the Bank of Spain.



A competitive tax code

The Spanish tax code is competitive for entities incorporated or domiciled in Spain, for non-Spanish investors in Spanish-resident entities and for employees moving to Spain to provide services to Spanish-resident entities. The following section reviews the main advantages of the Spanish tax systems in terms of corporate taxation, investors' taxation, and employee and director taxation.

CORPORATE TAXATION

- 25% tax rate (30% for banks), lower than German and French corporate income tax rates.
- Under certain conditions, taxpayers are entitled to benefit from a 10% reduction in the taxable base on the increase in equity.
- General participation exemption on dividends and capital gains deriving from qualifying stakes.
- Net financial expenses are deductible up to the higher of EUR 1 million or 30% of earnings before interest tax and depreciation (EBITD).
 - Net financial expenses in excess of the cap can be carried forward indefinitely, but their use is limited to the cap.
 - The cap exceeding net financial expenses can be carried forward five years.
 - No limitations apply to credit institutions, insurance entities and securitisation funds.
- Net operating losses can be carried forward indefinitely. Their use is generally limited to 70% of the taxable base. Additional limitations may apply for large taxpayers.

INVESTORS' TAXATION

EU investors

- Dividends distributed are exempt from Spanish withholding tax under the Parent-Subsidiary Directive requirements. An anti-avoidance rule may apply when the majority of the parent company's voting rights are not held by EU investors.
- Interest due is exempt from Spanish withholding tax.
- Capital gains are exempt from Spanish taxation in the following cases: an stake of at least 5% has been held for more than a year; an exemption is set out in the relevant double taxation convention ('DTC'); or the entities are listed.

UK investors

- Dividends distributed are exempt from Spanish withholding tax under the relevant UK-Spain DTC when the stake is at least 10%.
- Interest and capital gains are exempt from Spanish taxation under the relevant UK-Spain DTC.

Other investors

- Dividends and gains deriving from qualifying stakes in foreign entities are exempt from Spanish withholding tax under the special regime for Spanish holdings of shares abroad (*Entidades de Tenencia de Valores Extranjeros*).
- Exemption on dividends, interest, and gains may be applicable under the relevant DTC. Spain has entered into DTCs with more than 93 countries, including a large number of countries in South America, and it is currently in negotiations to enter into nine more. The countries with which Spain has signed a DTC are listed in the [annex](#).

EMPLOYEE AND DIRECTOR TAXATION

Taxation under the so-called Beckham regime

- Available for individuals who
 - have not been resident in Spain for tax purposes during the ten tax years preceding their relocation to Spain;
 - have relocated to Spain as a consequence of either an employment relationship or of having become a director in a company in which they do not (directly or indirectly) hold a stake exceeding 25%;
 - do not obtain any business or professional income that could be characterised as having been obtained through a permanent Spanish establishment for tax purposes.
- The special regime only applies if the individual opts for it and for a maximum of six years, i.e. from the year when Spanish residence is acquired and for the following five years.
- This regime applies as follows:
 - Except for employment earnings, which are taxed world-wide, only Spanish-source income is taxed in Spain.;
 - Financial income (dividends, interest and capital gains derived from the alienation of assets) are taxed at a rate of between 19% and 23% (23% applies for tax bases exceeding EUR 50,000).
 - Other income (e.g. employment earnings or income derived from a professional or business activity) are generally taxed at a general rate of 24% except for amounts exceeding EUR 600,000, which are taxed at a rate of 45%.
 - Assets owned in Spain or rights that may be exercised within the Spanish territory are subject to Net Wealth Tax ('NWT'). The tax rates range from 0.2% to 2.5% but amounts under EUR 700,000 are exempt from taxation.
 - No exit tax applies when individuals leave Spain.



A flexible labour market

Companies that decide to settle in Spain will find a very competitive country in relation to the following: employment costs; increasingly flexible regulations; a fully professionalised judicial system; a reasonable role for employee representatives and trade unions in a context without industrial disputes. In addition, Spanish immigration regulations facilitate obtaining work and residence permits in a short time for highly qualified professionals, large companies and intragroup employee transfers. This makes the transition to Spain, as opposed to other European destinations, easier.

- Highly qualified workforce.
- Absence of industrial disputes, in contrast with the situation in other European countries.
- Increasingly flexible employment regulations.
- Competitive employment and social security costs: contained salaries and capped social security contributions (the maximum monthly social security contribution base was set at EUR 3,751.20 for 2017).
- A variety of employment contracts (permanent, fixed-term, training, full-time, part-time, etc.).
- Ease of obtaining work and residence permits, in a short time, for highly qualified professionals, large companies and intragroup employee transfers.
- Competitive and flexible annual working hours (this generally involves a 40-hour working week), a part of which (10%) can be distributed irregularly by companies on a unilateral basis.
- To terminate employment contracts legal causes must exist, as in the rest of continental Europe. However, legal termination costs, timings and procedures are very reasonable in comparison with other European countries' legal systems (e.g. severance payments range between 20 and 33 days of salary per year of service with certain caps).
- No co-determination system (i.e. employee representatives do not have a right to be part of companies' governing bodies), in contrast with other European countries' legal regimes.

- Reasonable role for employee representative bodies in collective procedures, as opposed to the interventionist approach in other European jurisdictions.
- Shorter and less tedious information and consultation obligations than those in other European jurisdictions (e.g. consultation periods of 15 to 30-days, depending on the concrete employment measures to be adopted and the size of the company).



Real estate: an attractive market for investment opportunities

Notwithstanding the shift in the paradigm caused by the economic crisis that hit Spain (and, especially, its real estate sector), the Spanish market continues to offer an appropriate balance between mechanisms that ensure security for investors and flexibility in commercial transactions.

In this regard, the following section highlights the initiatives that are underway, particularly in Madrid, to continue promoting Spain as an attractive destination for investors interested in transactions for underlying real estate.

LEASEHOLD

- One of the main advantages of the Spanish market for real estate investors is the flexibility of its leasing system, which significantly facilitates the negotiating processes. Therefore, although leases in Spain are regulated by the Urban Leases Law of 1998 (*Ley de Arrendamientos Urbanos*, 'ULL'), its rules are only mandatory for residential leases.
- Commercial leases are primarily governed by agreements between contracting parties; however, in the absence of an agreement, the ULL applies.

There are only two mandatory conditions under the ULL for commercial leases. The first is the tenant's obligation to provide the landlord with a legal bond, as a guarantee for compliance with its obligations under the lease, equivalent to two monthly rent instalments (notwithstanding any other warranties that the parties may agree to under the lease). The second is the landlord's obligation to deposit the legal bond with the relevant regional authority, in accordance with the specific regulations in the region (*comunidad autónoma*) where the leased property is located.

FREEHOLD

The Spanish legal system provides significant security and predictability in real estate transactions at two levels:

- At one level, the role of public notaries is very important, since they are public officials in charge of ensuring that the real estate transaction has been performed in compliance with all applicable regulations. This includes ensuring the following: the proper identification and capacity of the signatories; compliance with any anti money-laundering regulations; and the effectiveness of payments within the transaction.

However, this does not lessen the parties' freedom to determine and agree on the terms of the transaction.

The notary's involvement in the signature of a document establishes the presumption in favour of its legality. This favours legal security in real estate transactions, especially for foreign parties who are unfamiliar with the Spanish legal system.

- At another level, the role of land registries also provides certainty and security. This is because the transfer of ownership, whether it is in relation to real estate, a charge, or an encumbrance limiting such ownership, is not valid until properly registered with the relevant land registry. In other words, a right that has been validly registered with the land registry is immune from challenges from unregistered rights.

The information filed with land registries is considered part of the public domain and enforceable against third parties. Therefore, it provides certainty to the legal status of real estate, which renders elements customarily used in other jurisdictions (e.g. insurance policies securing title) as unnecessary in Spain.

SOME OBSERVATIONS ABOUT MADRID

Apart from Madrid's status as Spain's financial, economic and commercial centre, it has recently been moving towards becoming the most attractive destination for investments with underlying real estate in Spain. Apart from the benefits of the less restrictive tax system, there are other significant advantages, amongst which we highlight the following two:

- The city of Madrid, as well as other Spanish cities, has implemented an agile and flexible system for obtaining licences related to construction work and opening businesses. The procedure has been

simplified by 'sworn declarations' (*declaraciones responsables*). These are merely forms in which applicants explain the grounds for requesting the licence and enclose the necessary supporting documentation and information.

With regard to construction work permits, once the request complies with the applicable law, the applicant can start the activity for which the licence was requested, with one obligation: the applicant must communicate the completion of the construction work to initiate the verification process, which confirms whether the work has been executed in accordance with the declaration submitted.

To expedite the licensing process, the Madrid City Council has entrusted the management and verification of licence applications to private urban planning entities, and thus the procurement process is relatively short.

- Secondly, the Autonomous Region of Madrid has eliminated all special licences that were previously required to develop large commercial areas, and this has bolstered these types of investments in recent years.



Annex

COUNTRIES WITH WHICH SPAIN HAS SIGNED A DTC

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

In negotiations

Azerbaijan	Bahrain	Belarus	Cape Verde	Montenegro
Namibia	Peru	Qatar	Syria	



Useful links

- INVESTOR INFORMATION ABOUT SPAIN
<http://www.investinspain.org>
- INVESTOR INFORMATION ABOUT MADRID
<http://www.investinmadrid.com>
- MINISTRY OF ECONOMY, INDUSTRY AND COMPETITIVENESS OF SPAIN
<http://www.tesoro.es/en/welcome-programme-spanish-market>
- BANK OF SPAIN
<http://www.bde.es>
- SPANISH MARKETS AUTHORITY
<http://www.cmv.es>
- SPANISH TAX AUTHORITY
<http://www.agenciatributaria.es/>



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