

# BELLAVISTA

## INVESTING IN SPAIN

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### Legal options



## Executive Summary

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# INDEX

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|   |    |
|---|----|
| <b>Investing In Spain</b> .....                             | 3  |
| <b>Foreign Investment Procedures</b> .....                  | 4  |
| <b>Spanish identification number</b> .....                  | 5  |
| <b>Money Laundering Regulations</b> .....                   | 6  |
| <b>Direct Investment</b> .....                              | 7  |
| TAXATION .....  | 8  |
| <b>Direct Investment</b> .....                              | 8  |
| <b>Investment in Real Estate</b> .....                      | 9  |
| COMMERCIAL LAW ASPECTS .....                                | 10 |
| <b>Investment through a Spanish Company</b> .....           | 10 |
| TAX ASPECTS .....   | 11 |
| <b>Investment through a Spanish Company</b> .....           | 11 |
| <b>Main types of companies</b> .....                        | 12 |
| GENERAL ASPECTS .....                                       | 13 |
| <b>Entities Holding Foreign Securities (ETVE)</b> .....     | 13 |
| TAXATION .....  | 14 |
| <b>Entities Holding Foreign Securities (ETVE)</b> .....     | 14 |
| <b>Other legal forms of Business in collaboration</b> ..... | 15 |
| <b>Collective Investments Institutions</b> .....            | 16 |
| <b>Collective Investments Institutions</b> .....            | 17 |



## INVESTING IN SPAIN

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**T**he purpose of this presentation is to offer a brief outline on the different ways of investing in Spain, including aspects such as administrative procedures, legal forms and tax considerations.

This report does not cover all the questions that may arise when wishing to **invest in Spain**, therefore it is necessarily synthetic, so any decision addressed to **invest in Spain** can not just be taken on the basis of its content but taking into account other aspects not included in this report.

**BELLAVISTA** ([www.bellavistalegal.eu](http://www.bellavistalegal.eu)) is ready to assist you in any investment you or your clients are thinking of, either in Spain or through Spanish companies.



## FOREIGN INVESTMENT PROCEDURES

**Prior Notification** investments from tax havens (with some exceptions).

### General rules:

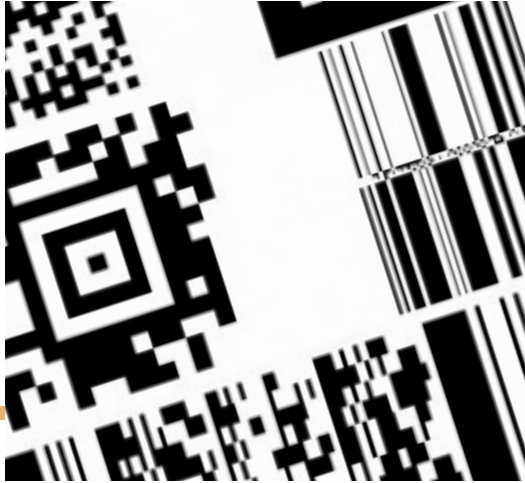
- Fully liberalised,
- Except some cases, no obligation to be legalized before a Spanish Public Notary.

### Prior administrative approval:

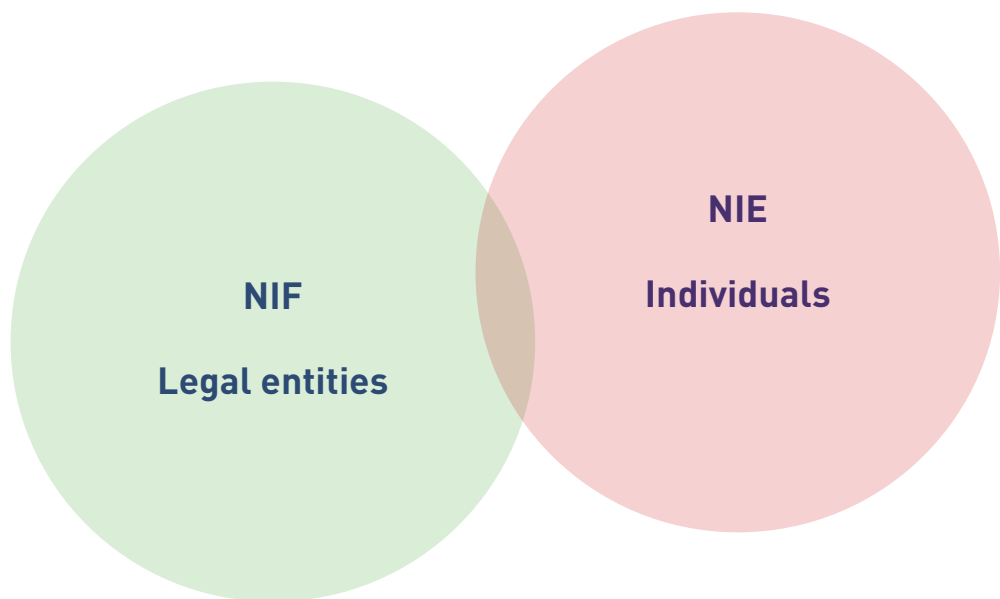
- National Defence,
- Diplomatic missions,
- Strategic sectors,
- etc.

### Ex-post notification:

- Investments in companies, branches and in some financial investments.
- Real Estate, entities (including Non-profit Organizations) other than companies, when:
  - the investment has its origin in a tax haven or
  - the amount to be invested is higher than 3.005.060,52 €



## SPANISH IDENTIFICATION NUMBER



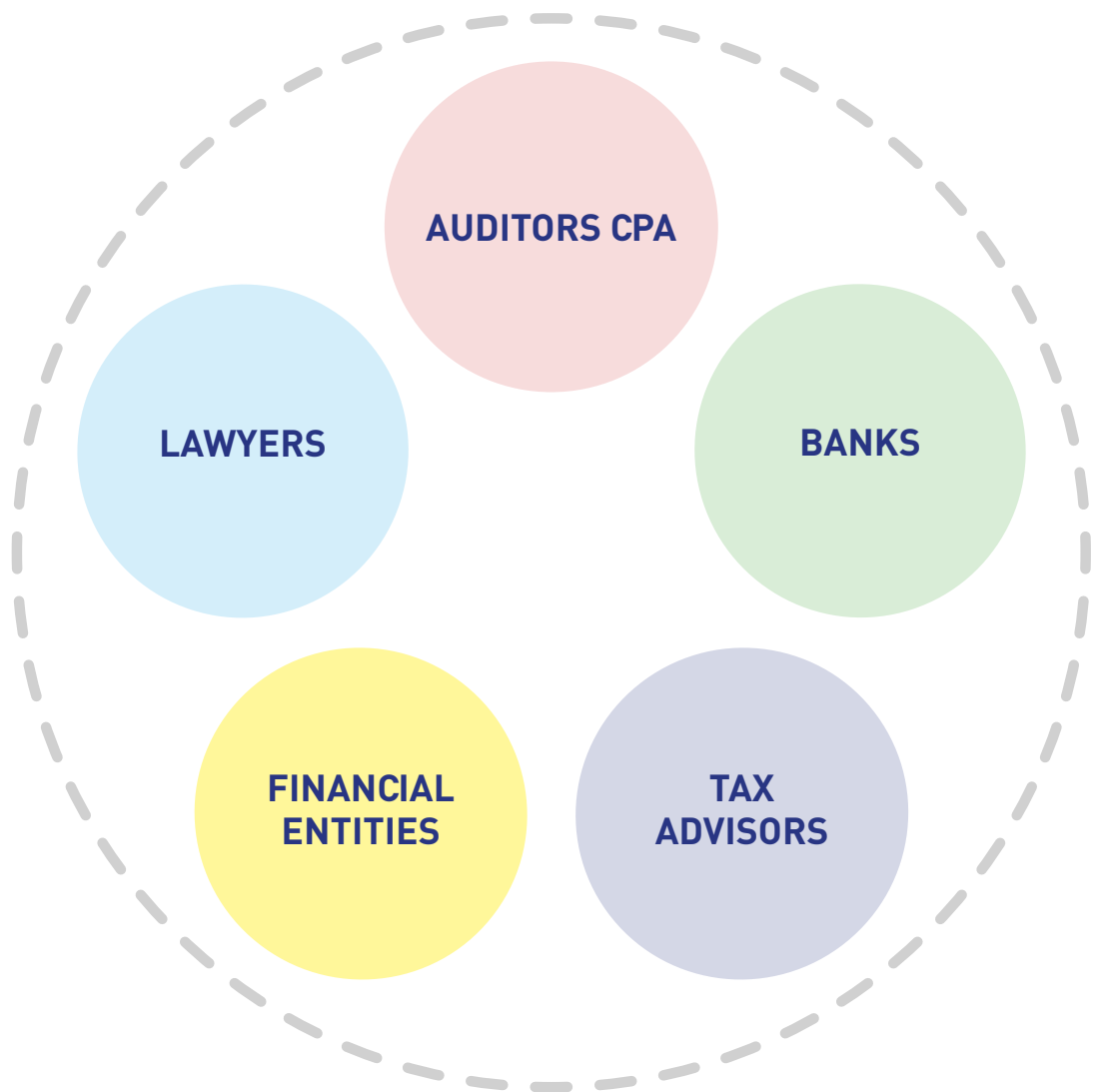
**R**equired for foreigners prior certain acts such as:

- Opening a bank account
- Setting up a company
- Buying Real Estate
- **To be appointed as a Director or representative** of a Spanish Company



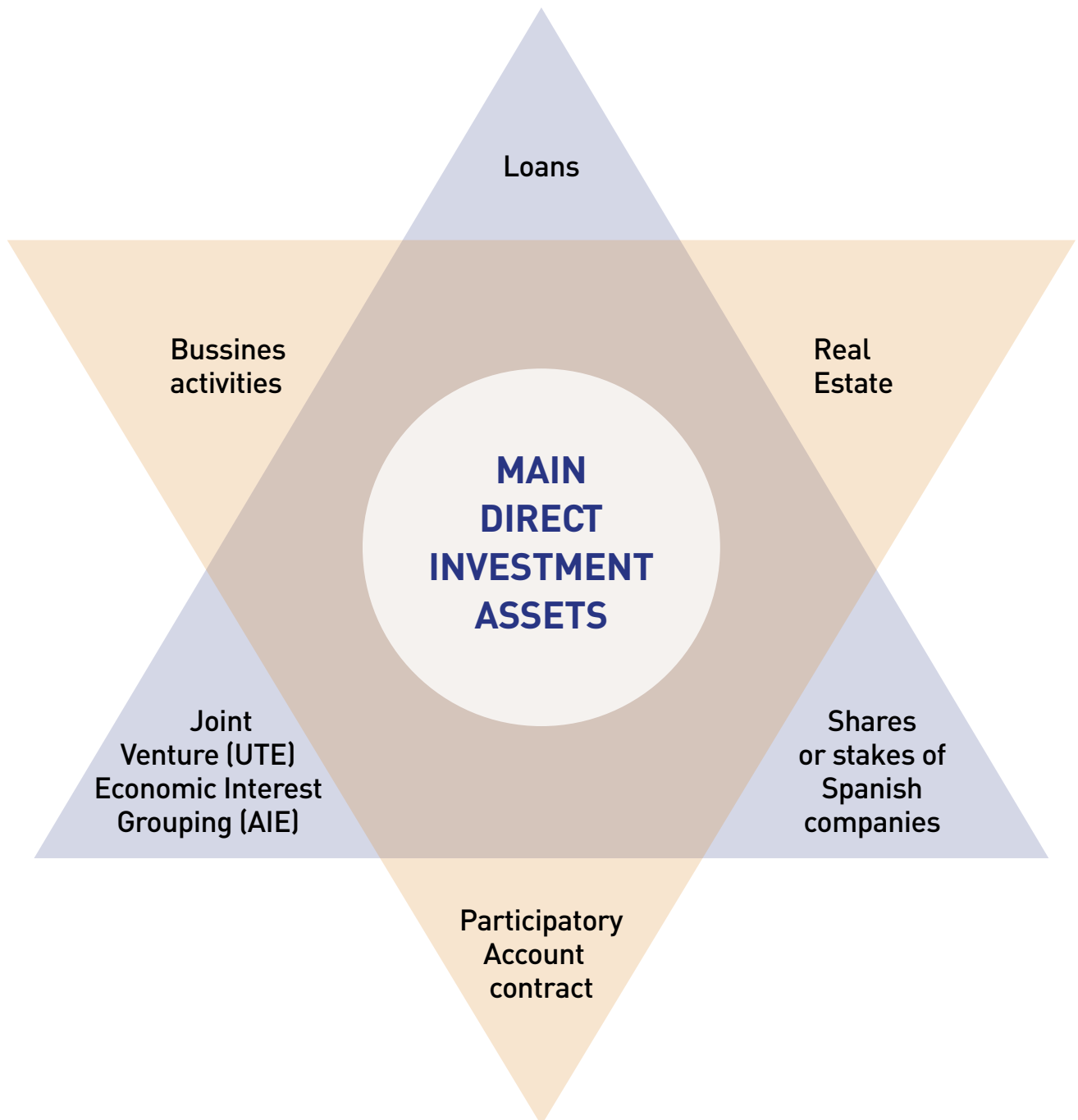
## MONEY LAUNDERING REGULATIONS

**S**trict Money Laundering Regulations to ensure the correct identification of the clients investors mainly concerning:





## DIRECT INVESTMENT





## DIRECT INVESTMENT

### TAXATION:

- Business activities carried out through a Permanent Establishment where the titleholder is an individual are subject to the Spanish Income Tax and to Corporate Tax in case of legal entity.
- Earnings generated by direct investment are subject to Non-resident Income Tax (IRNR), without prejudice to the application, where appropriate, of a Double Tax Treaty, Tax rates are:

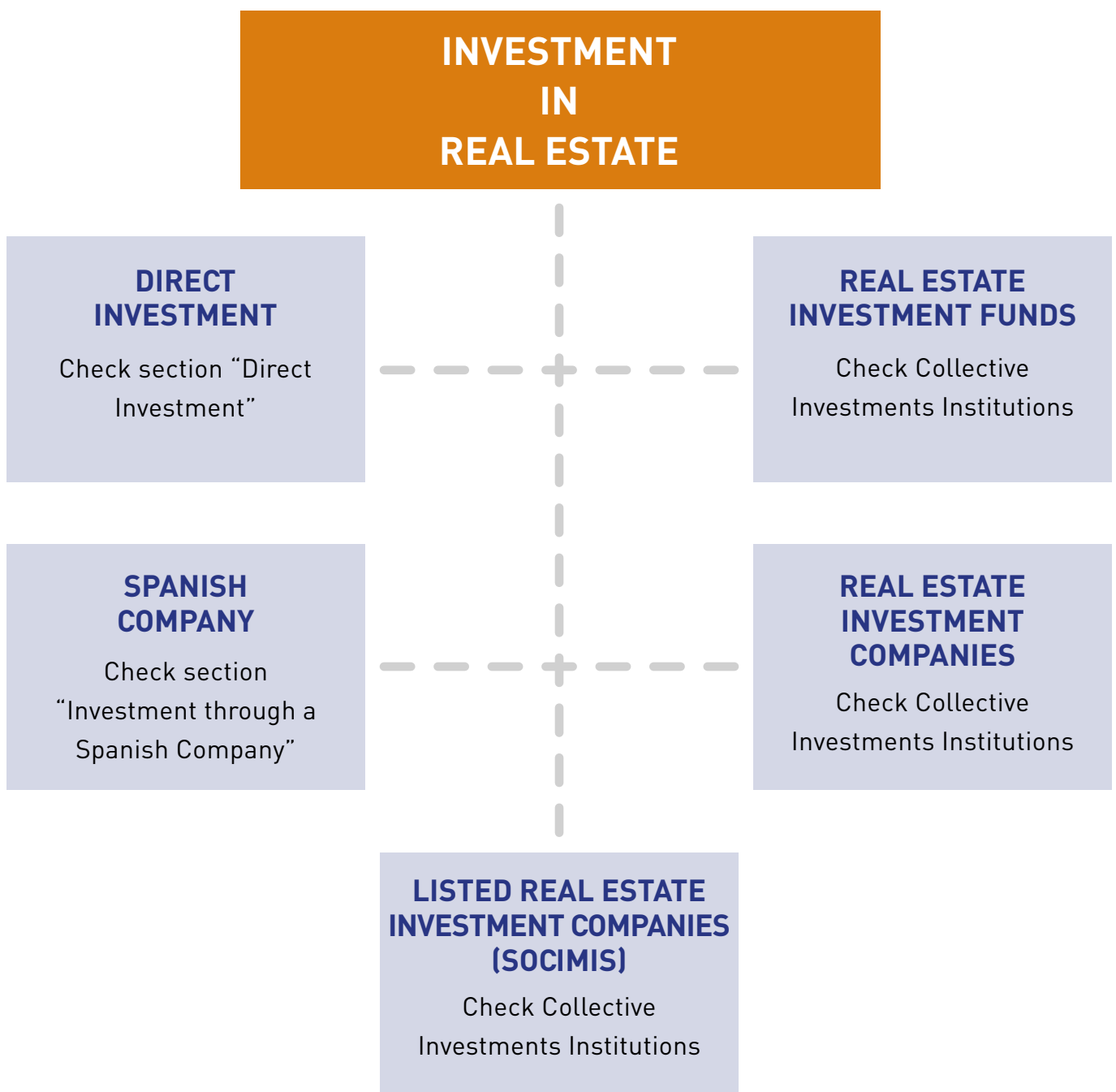
| 2017   |              |
|--|--------------|
| General  | 24% (19% EU) |
| Savings income (interests, dividends, capital gains) | 19%          |

- In general, these tax rates are applicable on the gross income except for the EU- Residents that may deduct some expenses made on properties, on labour compensations and on economic activities.
- In the event of several investors in the same asset, the income generated shall apply to each investor in proportion to their share.
- Spain has signed Double Taxation Convention (DTC) with **87** countries.





## INVESTMENT IN REAL ESTATE





## INVESTMENT THROUGH A SPANISH COMPANY

### COMMERCIAL LAW ASPECTS

- When carrying out business activities, it is possible to invest through a branch office, although most of the time a Spanish company is incorporated/purchased.
- Capital Companies (Public Limited Companies /S.A. and **the Private** Limited Companies/ S.L.) may have a sole shareholder but must observe certain obligations.
- Spanish companies can invest freely in any licit activity, taking into account that certain activities are subject to administrative authorization such as financial activities, collective investment institutions and Venture Capital funds.



## INVESTMENT THROUGH A SPANISH COMPANY

### TAX ASPECTS

- Companies are subject to Corporate Tax (IS) which common rate is (from FY 2016 included) 25%, (although there might be certain specific particularities with this regard).
- Newly created businesses (star-ups) will have their activity subject to a 15% tax rate for the first year with a positive tax base and the next one.
- Tax base is determined, in general, from the accounting results, existing though some tax adjustments (the impairment of some assets and goodwill, deductible interest...).
- Currently there is no tax transparency rules in Spain (except for UTE's and AIE, although not applicable in case of non resident shareholders).
- Strict Transfer pricing regulation concerning prices and documentation obligations.
- Tax losses can be carried forward without time limit but, with some anual restrictions.



## MAIN TYPES OF COMPANIES

| Type of company                             | Nº partners   | Capital   | Responsability   |
|---|---|---|--|
| Corporation / Public Limited Company (S.A.) | Mínimum 1   | Minimum 60.000  | Liability is limited to the contributed capital  |
| European Public Limited Company (S.E.)      | No limit  | Minimum 120.000   | Liability is limited to the contributed capital  |
| Private Limited Company (S.L)               | Mínimum 1   | Minimum 3.000   | Liability is limited to the contributed capital  |
| New Business Limited Company (S.LN.E.)      | Minimum 1 & maximum 5 at the incorporation. Only individuals. In the case of a sole partner, no way to be so again in another New Business Ltd Company. | Minimum 3.000<br>Maximum 120.000                          | Liability is limited to the contributed capital  |
| Collective Company (S.C.)                   | Minimum 2   | Legally there is no minimum                               | Collective partners have personal and unlimited liability. Non-collective partners with limited liability are admitted but those partners can't be entitled to act as Director/ Administrator. |
| Limited Partnership (S. en Comandita)       | Minimum 2   | Legally there is no minimum                               | Collective partners have personal and unlimited liability. Non-collective partners with limited liability are admitted but those partners can't be entitled to act as Director/ Administrator. |
| Limited Partnership by shares               | Minimum 2   | Minimum 60.000  | Similar to Limited Partnership, but the portion of capital represented by shares must be hold by the non-collective partner/s  |
| Professional Corporation (S.P.)             | Mínimum 2   | According to the legal form of corporation (SA, SL, etc.) | Liability is limited to the contributed capital without prejudice of the liability arising out of their professional activity.   |



## ENTITIES HOLDING FOREIGN SECURITIES (ETVE)

### GENERAL ASPECTS

- Its a voluntary scheme.
- Their (non exclusive) activity according to the bylaws is the management and administration in Spain of foreign shares issued by Non Resident companies, using the appropriate organization of personal and material means (minimum 1 Director).
- **Shares or stakes in the ETVE companies need to be registered**, (duly stated in the company's bylaws (in order to be able to identify the shareholders)).
- To qualify for the application of the ETVE regime, the company must be Spanish tax resident and communicate the commencement of its activity to the the Spanish Ministry of Economy.
- Entities that do not qualify for the ETVE tax regime:
  - The Economic Interest Grouping (AIE), either Spanish or European, and the Temporary Consortium (UTE).
  - Entities which main activity is to manage and administrate movable or immovable assets (patrimoniales).



## ENTITIES HOLDING FOREIGN SECURITIES (ETVE)

### TAXATION

**Foreign source dividends and capital gains realized by an ETVE will be tax exempt provided that the following requirements are met:**

- a) The direct or indirect stake of the ETVE in the capital or equity of the Non-Resident entity has to be minimum 5%., or their acquisition cost higher than 20M/€.
- b) The participation must be held at least for 1 entire year (the exact moment when this requirement is deemed to be met, depends on the income: dividends or capital gain).
- c) The Non Resident investee must have been taxed at a minimum 10% rate by a foreign tax of similar nature or akin to the Spanish Corporation Tax, with some particularities.
- d) The origin of the profits to be distributed must come from the business activities carried out by the investee abroad.
- e) From January 1st, 2017, capital losses coming from transfer of stakes are not tax deductible.

This exemption also applies to all Spanish companies and holdings. Therefore, the ETVE regime will just be of interest when the shareholder is a Non EU Resident or being EU resident, cannot benefit from the dividends exemption as set forth in the Parent- subsidiary Directive.

**Incomes obtained from the distribution of ETVE dividends to non resident shareholders are tax exempt as long as the shareholder is not tax haven based.**



## OTHER LEGAL FORMS OF BUSINESS IN COLLABORATION

### JOINT VENTURE



#### UTE

(Temporary Consortium)

Cooperation of different parties for a determined period of time, without legal personality- but that must be filed at the Special UTE Register of the Ministry of Economy and Finance in order to be entitled to opt for their special tax regime.

#### AIE

(European Economic Interest Grouping)

It has legal personality and its partners are jointly and severally liable for the debts. Its purpose is to facilitate the development or to improve the results of the activity of the partners and to provide ancillary activities that do not replace those carried out by the partners.

#### PARTICIPATORY ACCOUNT CONTRACT

It is a financial collaboration agreement between a company or individual (entrepreneur) and other parties interested in investing in a concrete project or activity, getting for such investment participation on the profit and losses of the business.



## COLLECTIVE INVESTMENTS INSTITUTIONS

### FINANCIAL NATURE

Entities that publicly accept from investors, funds, assets or rights to manage them, when the yield of the investor is established according to the collective results using legal ways others than company's agreements, and regulated by the LIIC.

#### INVESTMENT FUNDS (IF)

- Minimum share capital: 3M€.
- Minimum number of investors: 100.

#### INVESTMENT COMPANIES (SICAV)

- Minimum capital: 2,4M €
- Minimum number of investors: 100.
- May be listed or not

Special Tax regime (fulfilling all the requirements): Corporate Tax: 1%

### NON FINANCIAL NATURE

Investments in non financial assets

#### REAL ESTATE INVESTMENTS FUNDS (FII)

Exclusive purpose: investment in any kind of urban property to be subsequently leased.

- Minimum investment: 9M€.

#### REAL ESTATE INVESTMENT COMPANIES (SII)

- Minimum capital: 9M€.

#### LISTED REAL ESTATE INVESTMENT COMPANIES (SOCIMI)

- Minimum share capital: 5M€.
- Main activities:
  - The acquisition and development of urban real estate for rental purposes.
  - SOCIMIS can carry out other ancillary activities
  - The holding of shares of other SOCIMIs or other Spanish non resident qualifying Subsidiaries
- It must be listed in a regulated market (Stock Exchange) or alternative investment market in Spain (MAB).

Special Tax regime (fulfilling all the requirements): Corporate Tax: 1%





## COLLECTIVE INVESTMENTS INSTITUTIONS

### Venture Capital Fund (VCF)

### Venture Capital Companies (VCC)

Its **purpose** consists of the temporary investments in the capital of companies with no Real Estate or financial nature, that are not listed in the main regulated stock exchange market or other equivalent regulated market of the EU or of the OECD countries.

Ancillary activities: Granting of participating loans and other financial instruments (with restrictions) and provision of advice to the companies in which they invest.

Administrative authorization and registering in the CNMV is needed.

#### SPECIAL TAX REGIME: VCF & VCC:

- Total exemption on dividends and capital gains apply (art. 21 1. b) LIS) whatever the percentage of participation and the holding period.
- Partial exemption (up to 99%) applies to capital gains when the requirements set out in art. 21 1. b) bis are not met.
- **Non Resident investors:** The dividends and capital gains paid to the non resident investors of these vehicles are not taxable in Spain except when tax havens are involved.

**Legal form:** funds (assets belonging to a plurality of investors which rights are credited by a Units certificate).

**Legal form:** Public Limited company (S.A.)

**Minimum capital share:** 1.650.000€

**Minimum capital share:** 1.200.000€ (900.000€ SME-VCC) which should be paid up at least by 50%

#### There are also:

- The SME-VCF and SME- VCC which are allowed to invest up to 75% of their assets in other SME's stakes, participate in the management and provide advice, with the possibility of lending money throughout participating loans or other kind of debt.
- European Venture Capital Funds (EU Regulation 345/2013 ).
- Entrepreneur European Social Funds (EU Regulation 346 /2013).



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Intellectual property associations



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