

MEMO

To: Public
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BUSINESS VENTURES IN SPAIN: FORMATION & TAX IMPLICATIONS

I. Available Organizational Forms

- a. Corporation - Sociedad Anónima (“S.A.”);
- b. European Public Limited-Liability Company - Sociedad Anónima Europea (“S.E.”);
- c. Limited Liability Company - Sociedad de Responsabilidad Limitada (“S.L.” or “S.R.L.”);
- d. New Limited Liability Company - Sociedad Limitada Nueva Empresa (“S.L.N.E.”);
- e. General Partnership - Sociedad Regular Colectiva (“S.R.C.”);
- f. Limited Partnership - Sociedad en Comandita (“S. en Com.” or “S. Com.”);
and
- g. Limited Partnership by Shares - Sociedad en Comandita por Acciones (“S.Com.p.A.”)

Analysis. Traditionally, the S.A. has been the most common, but today the S.L. is growing in popularity. Also, the recently created S.L.N.E. offers certain advantages.

Sociedad Anónima (“S.A.”)

- 1) Minimum capital stock: 60,102 Eur.
- 2) The capital must be fully subscribed and at least 25% of the par value of the shares must be paid in.
- 3) Five years is the maximum for full payment of contributions in kind.
- 4) No minimum number of shareholders required.
- 5) Shareholders may be individuals/companies of any nationality or residence.
- 6) Certain level of formality required: board of directors, meetings, voting procedures, bylaws, etc.
- 7) Minimum number of board members: 3.

Sociedades de Responsabilidad Limitada (“S.L.”)

- <http://www.jdsupra.com/post/documentViewer.aspx?fid=4e9a87da-8e4a-4f01-a97f-3151a5623526>
- 1) Minimum capital stock: 3,006 Eur., which must be fully paid in.
 - 2) Greater flexibility than an S.A.; intended to be used by more closely held entities.
 - 3) Company interests not so freely transferrable as with an S.A.
 - 4) Capital stock must be divided into participation units, but these need not all be the same (i.e. different voting rights allowed).
 - 5) Minimum number of board members: 3.

Sociedad Limitada Nueva Empresa (“S.L.N.E.”)

- 1) Minimum capital stock: 3,012 Eur., which must be fully paid in.
- 2) Maximum capital stock: 120,202 Eur.
- 3) Relatively quick and simple to establish – electronic registration available (48 hours), though there are a number of restrictions.
- 4) Corporate name must include the full name of one of the partners.
- 5) Only individuals can be partners (not companies), and there may be no more than five partners at the time of incorporation.

The bottom line is that S.A.s are good if you are looking to do something on a fairly large scale and want freely transferable shares. S.L.s are less cumbersome to operate and can still be used for large-scale operations as long as you do not intend to be a public company (i.e. freely traded shares). S.L.N.E’s are quick and easy to establish, but they have certain limitations that make them inflexible and, perhaps, inconvenient to operate in your case. The S.E would probably only interest you if you plan to operate in more than one EC country. Nowadays, legal practitioners do not normally recommend any kind of partnership arrangement since there really are no significant advantages and they offer less or no liability protection.

II. Tax Implications

Being aware of the complexities involved in international taxation makes it difficult to provide a general overview. Please do not rely on the following in lieu of consulting an international tax attorney or an international accountant. However, some general considerations are as follows.

Personal Tax Implications

Being an American citizen is a potential disadvantage since Americans are subject to US tax on *any* money earned regardless of the source. This may be something you want to discuss with your accountant¹ and/or tax lawyer, if you already have somebody you trust. Some relevant factors include (i) repatriation of income earned abroad and (ii) a personal exemption of up to 75K. I will be happy to discuss this with you further by phone.

Business Tax Implications

The basic rule is that your Spanish company will be subject to US taxation on income gained from an American source. However, the company will be given a credit for taxes paid to Spain on American-source income in order to avoid double-taxation.

- i. American-source gains. Essentially, 30% US tax.

¹ Beware there is no attorney-client privilege with an accountant.

- ii. Non-effectively connected gains. No US tax.
- iii. Portfolio Interest. No US tax unless it is a controlled foreign corporation.
- iv. Dividends paid by foreign company. No tax on foreign entity, but recipient may be liable.

~ Jeffrey Harrington, Esq.