

## LEGISLATION ON FOREIGN INVESTMENT IN SPAIN

**Royal Decree 664/1999** of 23 April governs **foreign investments in Spain**. According to this law, foreign investment is **fully liberalized**.

Foreign investors are only subject to **reporting obligations** in some specific cases. These actions include:

- **Notification after the investment has been made.**
- **Prior notification (in certain cases).**
- **Annual Report (in certain cases).**

### Foreign investors

- a) Non-resident individuals, i.e. Spaniards and foreigners resident abroad or whose main place of residence is outside Spanish territory.
- b) Legal entities whose registered offices are located abroad.

### Foreign investments

- a) Participation in Spanish companies;
- b) Establishment of, and increase of capital allocated to branches;
- c) The subscription for and acquisition of marketable debt securities issued by residents;
- d) Participation in mutual funds recorded in the Registers of the Spanish National Securities Market Commission (CNMV).
- e) Acquisition by non residents of real estate located in Spain valued at more than €3,005,060.52, (or regardless the value if the investment is originated in a tax haven<sup>1</sup>).
- f) The formation or participation in joint ventures, foundations, economic interest groupings, and cooperatives if the total value of the investment exceeds €3,005,060.52 (or regardless the value if the investment is originated in a tax haven).

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<sup>1</sup> Tax-haven territories as they are defined in Royal Decree 1080/1991 of 5 July.

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## Notification after the investment has been made

All direct foreign investment is subject to a notification after the investment has been made. The form and deadline of the declaration is determined by the **1st July 2010** Resolution.

Foreign investments in Spain and their liquidations have to present a notification to the Investment Register of the Ministry of Industry, Tourism and Trade for administrative, statistical and financial purposes. The document can be downloaded at:

<https://subsede.comercio.mityc.gob.es/SubsedeComercio/Procedimientos+y+Servicios+Electr%C3%B3nicos/Descarga+de+programas+de+ayuda/RequisitosCumplimentacionAforix.htm>

The **time limit** for submitting a declaration and investment settlement form is **one month from the date on which the investment is made or paid**, respectively.

Typically, non-resident investors are required to report the investment once it has been made. Additionally, where an investment operation has been certified by a Spanish Notary Public, the latter must pass on the information relating to the investment to the Directorate General for Trade.

In special cases, the following rules shall apply in accordance with RD 664/1999:

- Regarding investments in **marketable securities**, the investment service company or financial institution which is engaged in the custody or management of securities, will be required to report the investment.
- Regarding investments in **non-marketable securities** on secondary markets, which have been deposited or registered on the parties' initiative, the entity in charge of the custody or management of the assets will be required to report the investment, save where the transaction has been completed by a company, a stockbroker or a credit institution, in which case they will be required to report the investment.

In the case of registered shares, the Spanish company in which the investment is made will be required to report the foreign investment.

- Regarding investments in Spanish **investment funds**, these must be reported by the fund management company.

## Prior reporting requirements

The general deregulation rules may be suspended in exceptional cases by decision of the Council of Ministers, so a prior authorization is required in the following circumstances:

- a) Investments from **tax-haven jurisdictions**.

Exceptions:

- Investments in marketable securities, whether they are issued or offered publicly, and whether or not they are traded on a secondary market, and investments in investment funds registered at the National Securities Market Commission (CNMV); or
- Where the foreign investment does not exceed 50% of the capital of the Spanish recipient company.

- b) Foreign investments in Spain in activities **directly related to national security**, such as those intended for the production or sale of arms, munitions, explosives and other materials.

Exceptions:

- When the investment made by a non-resident does not exceed 5% of the share capital of the Spanish company and if it doesn't allow the investor to be a member of the management board of the company, directly or indirectly.
- c) Foreign investments in Spain that affect or might affect activities related to the **enforcement of public order** or which affect or might **affect public security and health**.
- d) Direct or indirect investments in Spain **by non EU member states for the acquisition of property** intended **to be used as diplomatic and consular offices**.

Once the deregulation rules have been suspended, the investor concerned may request **prior administrative authorization** with regard to investment operations which are planned to be carried out from the time of notification of suspension.

It should be pointed out that once **the prior declaration has been made** investors can make their investment **without having to wait for prior notification from the government**, even though they are still subject to the notification after the investment has been made.

### Annual Report

Spanish companies participated by non-residents must file an Annual Report on investments to the Administration in the following cases:

- a) Branches in Spain, in all cases.
- b) Spanish companies with capital or shareholder's equity of over 3,005,060.52 euro and in which 50%<sup>2</sup> or more of the equity capital is held by non-resident investors.
- c) Spanish companies with capital or shareholder's equity of over 3,005,060.52 euro and in which a single non-resident investor holds 10% or more of the company's equity capital or of the total voting rights.
- d) Spanish companies that belong to a company group or in which 50% or more of the equity capital is held by a non-resident investor or in which a single non-resident investor holds 10% or more of the company's equity capital or of the total voting rights. In such cases, neither the capital nor the shareholder's equity are taken into account.

The report must be presented within **9 months from closing the accounting period**. Form D4, to which a copy of the Business Tax or the annual accounts must be attached, is to be used for this purpose.

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<sup>2</sup> In the case of companies that are listed on the Stock Exchange, only the shares that are held by non-residents who individually have 5% of the equity capital will be taken into consideration for calculating the 50% quota.

Sources used for this document: RD 664/1999 of 23 April on Foreign Investments .// Decision of 21 February 2002 by Directorate General for Trade and Investments. Decree of 28 May 2001 of the Finance Ministry setting out the procedures applicable to foreign investment declarations and the settlement thereof, as well as the procedures for submitting annual reports and administrative enquiries.