

HOW TO SET UP AN OFFICE OF FOREIGN FOUNDATIONS IN SPAIN



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Foreign Foundations which must retain an office in Spain

The Foundation Act 50/2002 (LF) in Article 7 states that foreign foundations which seek to carry out their activities in Spain on a regular basis, must retain an office on Spanish territory which will represent their business address on the purpose of this Law and obtain the respective authorization for its registration in the Register of Foundations.

Under Article 4 of RD number 1337/2005 (Real Decreto-Order in Council), whereby the Regulations on Foundations under State Responsibility were approved, those activities which the foreign office in Spain seeks to carry out, according to its purposes, must not consist exclusively of fundraising. When foreign foundations' sole activity is fundraising, Spanish civil law does not allow formal registration.

The Spanish Register of Foundations in which may be registered the Foreign Office

The establishment of a foreign foundation office must be affected on the Register of Foundations, with competences on the specific territorial legal framework, within which the formal branch will mainly carry out its activities.

Thus, if the foreign foundation intends to implement its activities on the whole territory, or on more than one Autonomous Community, it may request its registration in the National Register of Foundations.

On the contrary, if the foreign office seeks to carry out its activities mainly over the territory of an Autonomous Community, it must proceed to register in the Regional Register of Foundations.

The State Supervisory Authorities for Foundations (the Protectorates) and applicable legal system

The Protectorate is the public authority which oversees the respect of Foundations Law and controls lawfulness in relation to foundations constitution and activities.

The Protectorate will survey those foreign offices set up in Spain, regarding their specific territorial area of activities.

Moreover, if the foreign foundation seeks to carry out its activities over the whole territory of Spain, or over more than one Autonomous Community, the office will be submitted to the

National Protectorate monitoring.

On the other hand, if the foreign foundation carries out its activities over a specific territory of an Autonomous Community, its office will be subjected to the respective Regional Protectorate.

The foreign office will be submitted to the legal framework on Spanish Foundations.

Registration Procedure in the Register of Foundations

Foreign offices must show they meet the requirements listed in their own national Law to be validly constituted, in order to initiate the registration procedure in the Register of Foundations.

Registration may be denied and rejected in the case an office does not show, before the Register, the fulfillment of the aforementioned requirements listed in the law of their country of origin, and when its purposes do not correspond to general interest purposes, according to Spanish Law.

The Protectorate shall assess, on a mandatory and binding basis, for the Register of Foundations, if the foreign foundation general interest purposes conforms to the Spanish Law.

Those offices which do not fulfill these purposes will not be publicly designated as a “Foundation”.

According to Article 4 of the Regulations on Foundations under State Responsibility, the constitution of an office shall prepare its founding document deed, specifying:

- a) Purposes of the Foundation.
- b) Documents showing if the foreign foundation is correctly constituted according to the law of its country of origin.
- c) A board certificate with the agreement relating the constitution of an office of the foreign foundation in Spain.
- d) Name of the office, including the terms “office of a foreign foundation”.
- e) Business address and territorial area of activity.
- f) Activities linked to the initial and basic purposes of the foundation to be carried out on a regular basis in Spain.
- g) Identification of foundation’s representatives and board members.
- h) Initial plan of action and activities in the Spanish territory.

Tax Regime

The office of a foreign foundation, as well as registered Spanish foundations, which are correctly registered in Spain, receive a privileged tax regime, upon request, if they meet the requirements listed in the Tax Act.

Income streams on Spanish territory of an office of a foreign foundation shall be taxed, as provided for in law as a non-resident income tax payer with permanent establishment (Article 13.1 of Non-resident Income Redrafted Tax Act, passed by a RDL number 5/2004 -Real Decreto Legislativo- Legislative Order in Council. The office of the foreign foundation shall be taxed as a permanent establishment for the entirety of the income attributable to it as such.

Notwithstanding, under the provisions of Article 2.d) of Law on Patronage 49/2002 (Tax system applying to non-profit-making organizations and tax incentives for patronage), those offices of foreign foundations registered in the Register of Foundations, shall be considered as non-profit-making organization.

Consequently, if they meet the requirements listed in Article 3 of the Law above-mentioned, they may opt for the special tax regime, as the Spanish foundations correctly registered.

According to both Article 6 and 7 of Law on Patronage, tax exemption on Corporate Tax is granted for certain income obtained by these organizations (inheritances, gifts, dividends, rents, capital gains, public grants) and economic activities as long as they are carried out in pursuit of the foundation's purpose, such as promoting and managing social welfare activities, scientific research and technological development, education and vocational training, notably.

By the same token, regarding Article 10, other income derived from non-tax-exempt economic activities shall be taxed at a special corporate tax rate of 10% (the general corporate tax rate is 25-30%).

Furthermore, according to Article 16 of Law on Patronage, the offices of foreign foundations correctly registered in the Register of Foundations and subjected to the special tax treatment, are also considered as organizations subjected to the Patronage rule system, whereupon tax exemptions and incentives envisaged in the Law regarding donations, gifts and contributions from individual and corporate donors (income taxation, corporation taxation and non-resident income tax payers).

Those offices of foreign foundations registered in the Register of Foundations subjected to the special tax treatment shall in fact be beneficiaries of those local exemptions (business taxation, property taxation and taxation on gains in the value of urban land), as provided to Article 15 of Law on Patronage for Spanish foundations validly constituted and registered.

Likewise, they are beneficiaries of exemption of Capital Transfer and Legal Document Tax Regime, as envisaged for foundations subjected to Article 45.1.A),b) Law 49/2002 of RDL 1/1993 (Real Decreto Legislativo-Legislative Order in Council), Capital Transfer and Legal Document Tax Drafted Act.

For those offices of foreign foundations which either fail to comply with the specific requirements listed in the Law for being subjected to the special tax treatment or simply decide not to opt for this submission, their tax regime will be that one applied for those organizations which are partially exempt as follows in Chapter XV, Heading VII of Corporate Tax Drafted Act, RDL 4/2004 (Real Decreto Legislativo-Legislative Order in Council).

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