



## DOING BUSINESS IN SPAIN AFTER BREXIT: PERMANENT ESTABLISHMENT: FAQ

### What is a Permanent Establishment (PE)?

The concept of PE will depend on whether the country of residence of the taxpayer, has a double tax agreement (DTA) entered with Spain (SP), as we explain below:

- If the country of residence of the taxpayer has no DTA in place with SP, the definition of PE under Spanish legislation<sup>1</sup> will apply.
- If there is a DTA between the country of residence of the taxpayer and SP, the definition contained in the said DTA will apply.

SP and United Kingdom (UK) have entered into a DTA, therefore the definition therein provided will apply. Accordingly, pursuant to Article 5<sup>2</sup> of the said DTA, a British company has a PE in SP, when it has, within the Spanish's territory, a fixed place of business or an operational site through which habitually performs a business activity. Also, a PE exists when a dependant agent executes a contract on behalf of the British company (principal). It is important to bear in mind that if the agent works independently from the principal, for example, with a self-employed status, a PE will not exist<sup>3</sup>.

Accordingly, a PE includes, but is not limited to:

- Places of management;
- Offices and workshops;
- Natural resources exploitation: petroleum or gas wells mines or quarries;
- Factories;
- Construction or installation sites;
- Branches.

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<sup>1</sup><https://www.boe.es/buscar/act.php?id=BOE-A-2004-4527>

The concept of PE under the Spanish law is in line with the [OECD Model Tax Convention](#)

<sup>2</sup> <https://www.gov.uk/government/publications/spain-tax-treaties>

<sup>3</sup> In this regard, we recommend our following article: [Appointing a commercial agent in Spain after Brexit.](#)

Let's see some examples:

Example 1:

Debbie is running a shoe company in the UK and she has rented a factory in SP from which she will employ workers and apply for the necessary licences to manufacture shoes. Also, Debbie will export shoes directly from the factory to the UK and EU countries. Has Debbie a PE in SP?

Yes, Debbie has an EP in SP because it meets the requirements set out at Article 5 of the DTA.

Example 2:

Lucy, British resident, owns a property<sup>4</sup> in Mallorca (SP) and she is receiving income from renting it out . Has Lucy a PE in SP?

No. However, if Lucy had a British company that owns properties in Spain for the purposes of renting them out, Lucy will have a PE in SP.

What are the differences between a branch and a PE?

PE is a concept which does not appear in the commercial law field, it has been created by the tax authorities to tax income obtained in SP by certain non-resident companies.

Since PE is only identified by its physical nature, as an installation or a place in which a non-Spanish resident company, carries out business operations, we can say that the concept of a branch will always include the one of PE, but not the other way around.

Moreover, while the incorporation of a branch requires a series of legal formalities<sup>5</sup> which end with its registration at the Spanish Mercantile Register (*registro mercantil*), to set up a PE is simpler, being necessary, among other requirements, applying for a Tax

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<sup>4</sup> In this regard we recommend our following article: [Buying a property in Spain after Brexit: FAQ](#)

<sup>5</sup> In this regard we recommend our following article: [Brexit: operate in Europe through a subsidiary or branch](#)

Identification Number (NIF), but since it does not possess legal personality, it is not required for the PE to gain registration at the Spanish Mercantile Register (*registro mercantil*).

Which activities can perform a British company through a PE in SP?

The business activities performed by a British company, in SP through a PE must be stick to those set out in its statutes. For example, a British company that runs an English course business, cannot set up an EP in SP to produce shoes.

Will British companies operating in SP through a PE pay more taxes due to Brexit?

No, as we mentioned before SP and UK has a DTA in place which prevents paying tax in both countries on the same income and it still applies after Brexit.

Once my British company has a PE in SP which profits will be taxed?

Non Spanish residents that obtain income through a permanent PE within SP will be taxed on the total income attributable to said establishment, which are the following:

- Income from economic activities or operations carried out by the PE.
- Income, profits or capital gains derived from the assets of the PE.

Generally speaking, the income attributed to an EP will be taxed following the Spanish corporate income tax rules,<sup>6</sup> being the general corporate income tax rate currently at 25%.<sup>7</sup>

How the income is taxed when the non-resident company has more than one PE within Spain?

When a taxpayer has more than one PE within the Spanish territory, whose activities and management are clearly differentiated, they will be taxed separately.

Accordingly, each PE must keep its own accountancy records separately from the other PEs.

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<sup>6</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2014-12328>

<sup>7</sup> You can find details about special tax rates in the following link:  
[https://www.agenciatributaria.es/AEAT.internet/en\\_gb/Inicio/Ayuda/Manuales\\_Folleto\\_y\\_Videos/M anuales\\_practicos/ Ayuda\\_Folleto\\_Actividades\\_economicas/4 Impuesto\\_sobre\\_Sociedades/4\\_3\\_Tipo\\_de\\_gravamen\\_y\\_cuota\\_integra/4\\_3\\_Tipo\\_de\\_gravamen\\_y\\_cuota\\_integra.html](https://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio/Ayuda/Manuales_Folleto_y_Videos/M anuales_practicos/ Ayuda_Folleto_Actividades_economicas/4 Impuesto_sobre_Sociedades/4_3_Tipo_de_gravamen_y_cuota_integra/4_3_Tipo_de_gravamen_y_cuota_integra.html)

Laura Gallego Herráez.

# **The Brexit Law**

Operated by Scornik Gerstein LLP - [london@scornik.com](mailto:london@scornik.com) - (0) 207 831 7070