

Doing Business in Spain

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Spain.



Background

Geography

A state of the European Union located in south-western Europe on the Iberian Peninsula, Spanish territory (505,370 sq. km) also includes the Balearic Islands in the Mediterranean, which are located more than 1,000 km south of the Peninsula, just off the coast of Africa. The cities of Ceuta (18sq. km) and Melilla (14sq. km) in northern Africa are also part of Spain.

Population

The population of Spain is around 47 million, which averages to a density of 92 inhabitants per square kilometre. This is one of the lowest density rates in the European Union (EU).

Political system

Spain is a parliamentary monarchy. The Constitution provides separation between legislative, executive and judiciary powers.

Languages

Spanish is the official language of the State. However, Catalan, Euskera and Gallego are also official languages in some areas.

Currency

In Spain, as in many other countries of the EU, the official currency since January 2002 has been the euro.

Choice of Legal Form



Business in Spain may be conducted by incorporated companies, partnerships, individuals and branches of foreign constituted enterprises.

Companies

Corporation - sociedad anónima (S.A.)

The minimum capital is € 60,000.00 - divided into shares. It is possible to make a partial disbursement, of at least one quarter of the share capital, and the rest will be disbursed by the deadline set by the General Meeting.

Capital contributions may be monetary or non-monetary, in the latter case with the contribution of movable or immovable property. In the case of non-monetary contribution, a special report issued by

an expert (appointed by the Registrar) is required.

Limited liability company - sociedad limitada

The minimum capital amount is € 3,000.00.

Capital contributions can be either monetary or non-monetary. The latter does not require expert's special report.

The corporate capital is not distributed in stock shares but in quotas ("participations") which are always registered.

Sole proprietorships

The law permits that companies (Corporation, Limited Liability Company and Limited Liability Company New Company) could have a sole shareholder.

This fact should be declared to the Commercial Register in a period of six months, to avoid transfers of liabilities from the company to the sole shareholder or partner. This circumstance should be declared in all commercial and trading documents with the phrase “Sociedad unipersonal”.

Branches

A branch is not a legal entity, but a part of the foreign company to which it belongs.

To set up a branch, a public deed must be prepared and filed with the Mercantile

Registry. The legal and tax requirements for a branch are very similar to those required for a subsidiary.

The difference between a branch and a subsidiary is the personality and the corresponding responsibility. The liability of the shareholders of a subsidiary incorporated as an SA (or SL) for the debts of the subsidiary is limited to the amount of the capital contributions they make or intend to make. In the case of a branch, there is no limit to the responsibility of the parent company, since they are the same legal entity.



Audit Requirements



Accounting is regulated in Spain by the General Accounting Plan of 2008.

It is required to keep the necessary accounting records which must include at least the following statutory accounting books:

- Journal (“Libro Diario”)
- Trial balances book (“Libro de Inventario y Cuentas Anuales”)
- Annual accounts.

The statutory books must be duly stamped in the Commercial Register and the company must keep these records together with related business documents for at least six years from the date of the last entry.

Auditing is obligatory for all companies which for two consecutive years fulfil at least two of the following conditions:

- Net Annual sales above €5,700,000.00

- Total assets above €2,850,000.00
- Average number of employees above 50

Auditing is also obligatory for companies which, although not exceeding the above-mentioned figures, fulfil certain conditions: for example, companies quoted on the Stock Exchange, finance and credit companies; recipients of official subsidies; life insurance companies, etc.

Filing requirements

All commercial firms must deposit in the Commercial Register their annual accounts once a year, and the Directors’ Report. In this way, information about the accounts of all companies is at the disposal of the public.

The auditors’ report must be deposited in the Mercantile Registry together with the annual accounts.

Taxation



Direct taxation

Companies

Spanish resident companies must pay Corporate Income Tax on their worldwide profits.

The standard rate of Spanish corporate income tax for 2016 is 25%. However, small companies (turnover less than 10 million Euro as a whole group) benefit from some tax relief mainly in accelerated depreciation and other expenses.

Taxable profits

Taxable income is defined as the amount of income obtained in the tax period. This taxable income is determined from the accounting records, as the difference between computable revenues and deductible expenses.

The thin-capitalisation rules are no longer applicable when the parent company is resident in another EU Member State, so the repayments in respect of a loan capital will not be considered as a covert distribution of profits.

Calculation of liability

The tax period is the economic period, or a fiscal year. The tax period cannot exceed twelve months, but can be shorter.

Due Dates for payment of corporate tax

There are three payments: the first for until the 20th April, the second for until the 20th October and the third for until the 20th December. The Corporate tax should be paid within 25 days of 6 months after the end of the financial year. For example, if the financial year finishes on

31st December, the Tax return should be filed during the 25 first days of July of the next year.

Relief for losses

The Spanish corporate income tax law permits companies to carry forward the losses from prior years with no limit in time, but there is a limit of negative bases that can be compensated each year as a percentage of the tax profit for the year. While negative basis is pending, the prescription period is still open. Tax losses below €1 million can be fully compensated.

Administration

The system which operates in Spain is the self-assessment system. If it is not presented on time or if there are some irregularities, there will be a penalty.

Individuals

Individuals who are tax residents of Spain must pay income tax on their worldwide income and capital gains.

An individual is understood to be a tax resident in Spain when any of the following circumstances arise:

- Living in Spain for more than 183 days during the calendar year.
- Basing the core business or base for activities or economic interests in Spain, directly or indirectly.

Nonetheless, individuals who become Spanish residents because they have moved to Spain for work with a labour contract since the 1st of January 2004, have the possibility to choose between these two tax regimes:

- Tax system for Spanish residents (tax rate calculated from the application of progressive scales ranging from 24.75% to 52%)
- Tax system for non-residents (fixed tax rate of 24.75% just applicable for income obtained in Spain)

The tax period coincides with the calendar year: from January 1st to December 31st of each year.

The tax return must be presented to the Spanish Tax Administration between April 1st and June 30th of the year following that in which it was accrued.

Sole traders

Those self-employed pay Personal Income Tax on their worldwide income.

The Law refers to this income as income obtained from “economic activities”, whereby production means or human resources (or both) are used for the production or distribution of goods or services.

Partnerships

Partnerships are taxed in the same way as corporations. Moreover, they also can be on the top of a holding structure.

Taxation of employees

Employees must pay Spanish Personal Income Tax. Their taxable liability is determined according to their salary.

Employer

The employer has two main obligations:

- To pay the social security each month.
- To present the tax return and to realize the payment regarding the withholding tax applied over the salary of its employees. This must be done each quarter (for small companies) or each month (big companies).

Strict sanctions are applicable if these duties are not attended to.

Taxation of saving income

Savings income is taxed at the fixed tax rate of 21%. For savings income derived from the participation in a company (e.g. dividends), the same tax rate is applicable.

Capital gains

Capital gains are taxed at a fixed tax rate of 21%. However, goods acquired before the 31st of December 1994 have a reduction when calculating the capital gain derived from their selling, and up to 100% of the capital gain could be exempt of taxation. This reduction rule does not apply for goods related to business activities or sale amounts higher than Euro 400.000.

Non-Residents

Non-Residents Corporation Tax

Non-resident companies in Spain are subject to Company Income Tax for the revenues and capital increases generated in Spain, and the revenues paid to them by residents.

Taxation of non-residents in Spain varies considerably according to the existence or not of a permanent establishment in Spanish territory.

When the non-resident has facilities or places of work in Spain, in which all or part of his activity is performed, or when acting in Spain through an agent authorised to enter into contracts in name and on behalf of the non-resident, they are considered to act in Spain through a permanent establishment.

Corporations with a Permanent Establishment

Non-residents who obtain revenue through a permanent establishment in Spain shall be taxed on all the revenue that may be imputed to that establishment, whatever the source from which it is obtained.

Taxable Basis

The taxable basis of the permanent establishment is determined according to the provisions of the general regime of the Corporate Income Tax and the tax losses regime, with the following features:

- Application of the linking rules for transactions between the permanent establishment and parent firm, or with another permanent establishment of the same parent firm.
- No deduction of the payments the permanent establishments makes to the main firm of fees, interests, commissions, technical assistance services and for use or cession of goods or rights.
- Deduction of part of the management and general administration expenses imputed by the main firm to the permanent establishment, as long as these are recorded in the accounting record of the permanent establishment and imputed in a continued, rational manner.

Profits are taxable at the same rate of Spanish resident companies. Moreover, permanent establishments may apply the deductions and rebates with a tax

quota on the same terms established for Corporate Income Tax.

The presentation period is the same as for Spanish resident companies.

The permanent establishments are obliged to fulfil the same obligations of an accounting, registry or formal nature as required of resident firms.

Complementary Taxation

When a permanent establishment of non-resident firms transfer revenue abroad, they shall be required to pay complementary taxation of 21% of the amounts drafted. However, this tax shall not be applicable to permanent establishments which have their tax residence in another State of the EU.

Complementary tax must be declared within one month from the date of drafting the revenue abroad.



Other Taxes

The permanent establishments are subject to the same regime of withholdings as firms subject to Corporate Income Tax on the revenue they receive. The permanent establishments are also obliged to pay this tax on the same terms as Spanish firms.

Corporations without a Permanent Establishment

The income obtained when not acting through a permanent establishment must be taxed separately for each partial accrual.

Taxation must be operation by operation, so there may be no compensation between capital gains and losses.

In general terms, the taxable base is formed by the full sum accrued without deduction of any expense.

The most common taxation rates for income obtained by non-residents without a permanent establishment are:

- 1) Income earned through work performed in Spain by non-residents shall be taxed at the general tax rate of 24,75%.
- 2) Income from economic activities (rendering services, technical assistance, installation or assembly works, etc.), the taxable base shall be determined by the difference between full income and the following expenses:
 - a) personnel expenses;
 - b) procurement expenses;
 - c) supplies.
- 3) The general taxation rate of 24.75% will be applied to the taxable base obtained.
- 4) Income from real estate: the taxable base is calculated from the annual



amount received from the tenant, without deducting expenses. If the real estate is not leased, the non-resident company would not be subject to any Spanish tax. However, if the company's shareholders or directors use the real estate, income will be subject to tax. In that case, the taxable income is calculated from the rent amounts, which would be paid as if the real estate was leased (at its market value). The tax rate is then 24.75%.

- 5) Income received from dividends or interests: a non-resident of Spain who receives dividends or interests paid by a person or public or private entity in Spanish territory must pay taxes in Spain. The taxable base is the full amount received. The tax rate is 21%.
- 6) Capital gains are determined by valuing the contribution or initial cost at the rate of exchange prevailing at the time of the transaction. The tax rate is 21%.

In all cases there are Double Tax Treaties with certain countries, which detail if the tax rate could be reduced, or if they are exempt of taxation in Spain.

Corporations without a permanent establishment must have a representative in Spain before the Ministry of Finance.

Non-Residents Individual Tax

Income Tax

Non-resident individuals who obtain profits in Spain, from properties or any activity, must present an Income Tax Declaration. The tax rate is 24.75%.

These rates may be reduced or eliminated under an existing tax treaty.

Net Worth

Non-resident individuals who have properties in Spain, whatever their value, must present a Net Worth Tax Return. There are no deductions for non-residents.

Again, there are Double Tax Treaties with certain countries.

Indirect taxes

Value added tax (vat)

VAT is chargeable on all sales of goods in Spain, all services given by businesses in Spain, acquisitions of goods in the EU, and imports.

It is chargeable at three positive rates, the lower rate of 4%, the reduced rate of 10% and the standard rate of 21%.

Companies owing VAT to the authorities must submit returns as follows:

- Businesses with less than €6,010,121.04 turnover must file returns within 20 days of the end of the calendar quarter.

- Other businesses must file monthly returns, submitted within 20 days of the end of the month.

Customs duty

Imports are subject to VAT and customs duties. However, 'import' only refers to merchandise coming from non-EU Member Countries, as within the EU the principle of free circulation of goods prevails, and there is a uniform system for taxing imports on the Community Customs Code.

Taxable base in both cases is different, and the custom duty must be added to determine the taxable base for import VAT.

Economic activities tax

An annual tax, at fixed amounts in the tax code, is levied on the practice of professional and industrial activities by companies, and considers the floor area of the premises occupied for the performance of the activity. Companies with annual turnover under €1,000,000 are exempt from this tax.

Allowances

Capital Allowances

Capital allowances are not deductible from profits.



Employment



Work permits

Legislation

Thanks to the free movement of labour in the treaty of the EU, citizens of the EU do not need a work permit.

Non-EU-passport holders

To enter the Spanish territory, foreigners should

- carry their passport and the corresponding visa
- have sufficient economic resources for the time that they wish to remain in Spain.

Those who would like to live and work in the Spanish territory must obtain two permissions:

- 1) A temporary residence permit, which authorizes one to stay in Spain for a period between 90 days and 5 years.
- 2) A work permit which lasts at most 5 years.

Both permits are valid for the same period of time and are issued as a sole document. For any labour activity under six months a special stay visa should be obtained.

Engagement and dismissal

Dismissal compensation depends on the circumstances of the discharge.

- **Proper or duly decided:** not compensated

- **Unfounded dismissal:** the compensation totals 33 days per year in service (up to a maximum of 24 monthly payments)
- **Objective dismissal:** the compensation totals 20 days per year in service (up to a maximum of 12 monthly payments).

To stimulate the labour market, the Government approved a Labour Reform Bill in February 2012 with several measures including a reduction in compensation for unfounded dismissal from the previous 45 days per year in service (up to a maximum of 42th monthly payments) to the current figures detailed above.

In cases where the seniority of the employee is before 12th February 2012, the unfounded dismissal will have to be calculated in two parts:

Seniority before 12th February 2012: The compensation totals 45 days per year in service (up to a maximum of 42 monthly payments).

Seniority after 12th February 2012: The compensation totals 33 days per year in service (up to a maximum of 24 monthly payments).

Trade unions and worker council

The participation of the employees in the Company is considered a basic labour right, which can be exercised through their "unionist representation" and/or council.

Depending on the size of the company it is possible there could be a "joint committee" or a "European works committee".

Social security contributions

First, the Company should be registered at the Spanish Social Security System. Once the Company obtains its own quotation number it will be able to insure its employees.

The company and the employees have to pay a National Insurance contribution. Contributions to be paid to Spanish Social Security are determined by the monthly wage received by the employee.

For 2017, the estimated contribution to Social Security is the following:

- Employer 29,9 %
- Employee 6,35 %

The following thresholds apply to these percentages:

- The minimum level is € 825,60
- The maximum level is € 3.751,20

Salaries

Although the salary can be agreed by both the employee and the employer, there are two conditions: the salary must be higher than the figure settled in the collective agreement, and it always must be higher than the Official Minimum Annual Wage which, for 2017, is € 9.907,80

In Spain, the annual salary is usually paid in 12 monthly payments and two extra payments. The employee receives one of the extra payments at December and the other in June (or in some cases in July).

Holidays

There is a minimum of 30 calendar days per year, although the number of days can be increased by the company if they have other policies.

Working day duration

This issue is normally settled by the applicable Collective bargaining agreement. Nevertheless, the annual average must be a maximum of 40 hours per week.



Withholding Taxes



Interest payments

Interest payments are deductible from profits for tax purposes for the payer unless they exceeded the amount of payments which would have been agreed between independent parties.

Moreover, the Treaties to avoid double taxation signed between Spain and the residence country of the payee will have to be taken into consideration when applicable.

The amount of interest that can be deducted is limited to a percentage of the operative income and never can be higher than 1 million euros.

Royalty payments

Payments of royalties are also deductible. Moreover, the rules for associated companies are also applicable when royalties are paid between associated companies.

If the payee is a non-resident, the payment will also be withheld as a general rule at 24.75% of the Spanish non-residents income, but treaties to avoid double taxation include special provisions for royalties and usually establish lower tax rates.

Dividend payments

Dividend payments are not deductible from profits. Dividends paid to a Spanish resident company or individual are subject to a withholding tax, with some exceptions. Dividends paid to non-Spanish resident companies or individuals also must be withheld.

Treaties to avoid double taxation should be consulted, as they usually establish special rules for dividends.

Miscellaneous

Exchange control

Spanish regulations regarding foreign exchange control have been liberalised. In general, authorisation is not necessary for the majority of foreign transactions.

Although authorisation may not be required, some transactions must be notified to the Bank of Spain. Taking more than €10,000 (or the equivalent in a foreign currency) per person, per trip into or out of Spain must be reported. Only Spanish non-residents have to notify the Bank of Spain when they are bringing over €10,000 into Spain.

For payments between residents and non-residents and bank transfers which the amount exceeds €3,000 the bank will ask for information on the bank account and for data relating to the transaction.

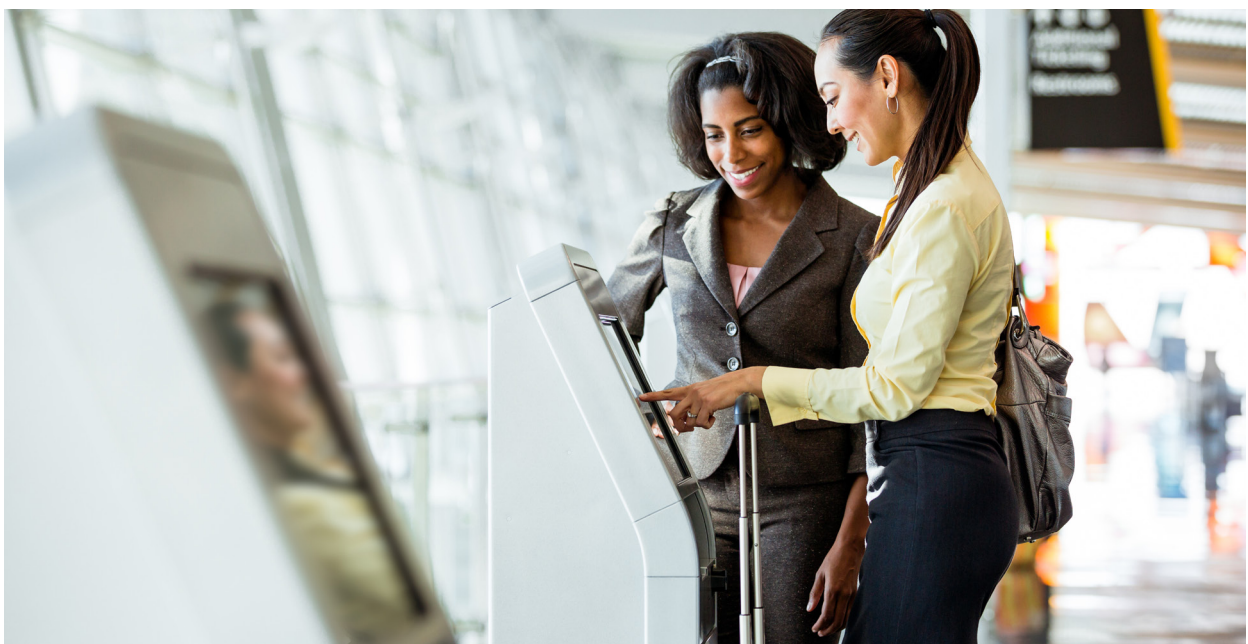
Sources of finance

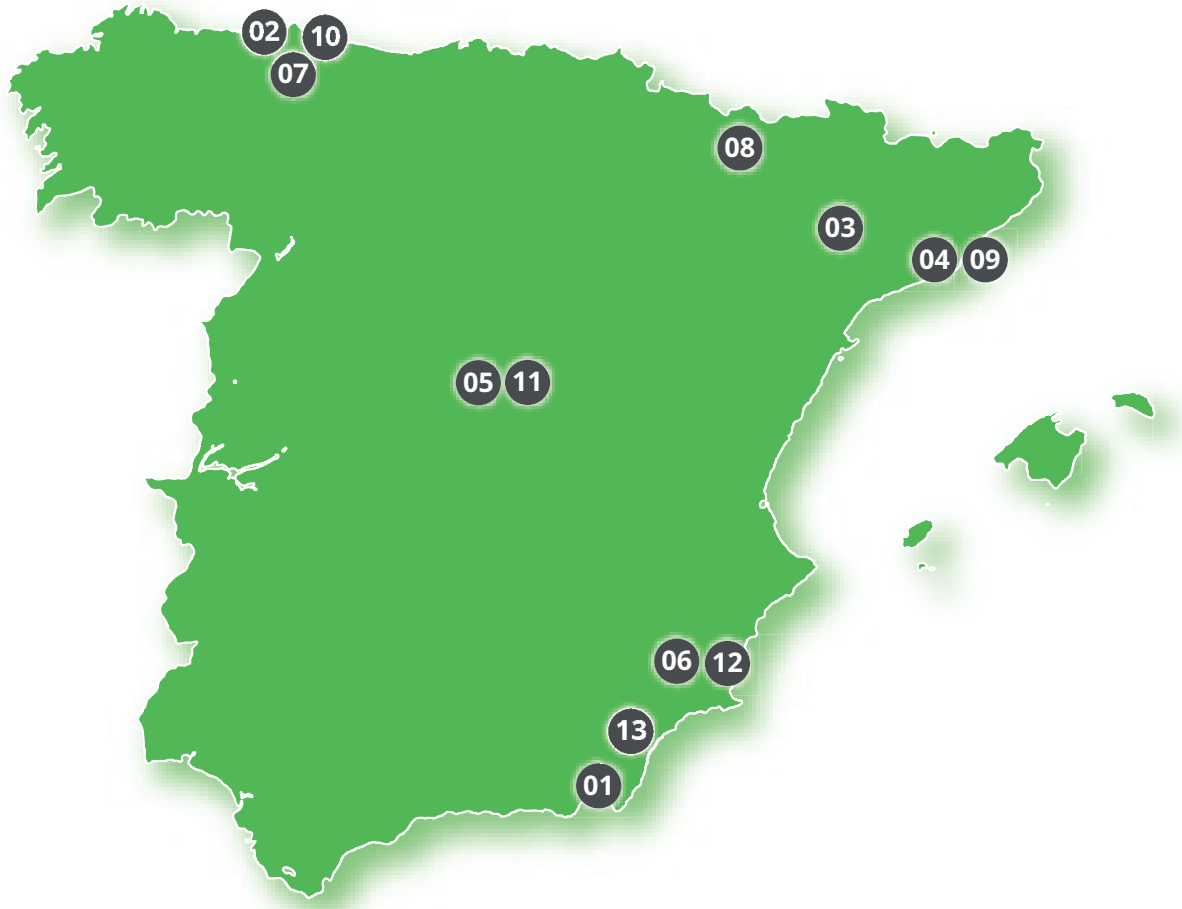
Spain has a diversified and modern financial system, which is completely integrated within international financial markets.

The law and money laundering

Spanish laws on money laundering have been recently modified to align with the European regulation.

Among other innovations, the new law extends the number of professionals under obligation to collaborate with the authorities when there is a suspicion of money laundering, from only casinos, estate agencies and finance companies, to now also include auditors, advisers, consultants and in some cases notaries, lawyers (although lawyers' rights to client confidentiality prevail over laws on money laundering) and solicitors.





This document is provided by Pleta Auditors, S.L. and BNFIX as a general overview of matters to be considered when setting up an overseas business in Spain. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in Spain, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in Spain please contact:

Almeria 01

BNFIX Auditores
Antonio Alonso Alarcón
 antonio.alonso@bnfix.com
 +34 (0)9502 64344
 www.bnfix.com

Avilés 02

BNFIX Auditores
Luis Menéndez
 luis.menendez@bnfix.com
 +34 (0)9855 67140
 www.bnfix.com

Barcelona, Lerida 03

Pleta Auditors
Dolors Poch
 mdpoch@pleta.es
 +34 (0)9349 47470
 www.bnfix.com

Barcelona 04

BNFIX Auditores
Joan Claret
 joan.claret@pich.bnfix.com
 +34 (0)9330 11122
 www.bnfix.com

Madrid 05

BNFIX Auditores
Jose M. Hinojal
 madrid@abanteauditores.com
 +34 (0)9027 34200
 www.bnfix.com

Murcia 06

BNFIX Auditores
Ramón Madrid
 ramon.madrid@bnfix.com
 +34 (0)9682 45753
 www.bnfix.com

Oviedo 07

BNFIX Auditores
Luis Menéndez
 luis.menendez@bnfix.com
 +34 (0)9852 20538
 www.bnfix.com

Vitoria-Gasteiz 08

BNFIX Auditores
Txema Valdecantos
 txema.valdecantos@bnfix.com
 +34 (0)9451 54420
 www.bnfix.com

Barcelona 09

BNFIX Consultores
M^a José Moragas
moragas@pich.bnfix.com
+34 (0)9330 12022
www.bnfix.com

Gijón 10

BNFIX Consultores
Andrés Alvarez Rodríguez de Scott
andres.alvarez@bnfix.com
+34 (0)9851 76157
www.bnfix.com

Madrid 11

BNFIX Consultores
Pedro Avila Lainez
pedro.avila@bnfix.com
+34 (0)9154 22046
www.bnfix.com

Murcia 12

BNFIX Consultores
Francisco Alcaraz
francisco.alcaraz@bnfix.com
+34 (0)9682 40404
www.bnfix.com

Vera (Almería) 13

BNFIX Consultores
Antonio Alonso Alarcón
antonio.alonso@bnfix.com
+34 (0)9503 90151
www.bnfix.com