

SBSM Legal, Regulatory, and Fiscal Framework

Spain

1-Which is the legal framework for social enterprises in your country?

The current configuration of the Spanish Social Economy is marked by the adoption of Law 5/2011 of 29 March, on Social Economy, which undoubtedly marked a turning point for recognition, visibility and development of the sector, both within the State itself and the European Union. Recently, the approval of Law 31/2015, of 9 September, amending and updating the rules on self-employment and building measures and promotion of self-employment and social economy are adopted, it has come to complete this regulatory framework establishing measures for development and promotion of the Spanish social economy.

The principles that guide the Social Economy in Spain are:

- Primacy of persons and social order on capital, which turns into an autonomous and transparent, democratic and participatory management, leading to prioritize decision making more based on people and their contributions to work and services rendered to the entity or according to the social order, in relation to their capital contributions.
- Application of the results of economic activity mainly based on the work and service provided or activity undertaken by the members and partners or its members and, where applicable, the social purpose of the entity.
- Promotion of internal solidarity and solidarity with society that encourages commitment to local development, equal opportunities for men and women, social cohesion, employability of people in risk of social exclusion, generating stable and quality employment, the reconciliation of personal, family and working life and sustainability.
- Independence from public authorities.

2. How social enterprises are defined according to the country's legal framework?

The text of the law defines the Social Economy as a set of economic and business activities in the private sector carried out by those entities that, in accordance with the following principles, pursue the general economic or social interest, or both.

3. Which are the main types of social enterprises that exist in your country?

As defined by law, the range of entities belonging to the diverse group of Social Economy is the following:

Cooperatives: The cooperative is a form of business organization based on democratic structure and functioning. Its activity expanded on cooperative principles, accepted and regulated in the regional, national and international levels: voluntary and open membership partner, democratic management, economic participation of partners, education, training and information and interest in the community.

Labor societies: Labour societies have shown a high potential for generating companies. In these businesses, the capital mostly belongs to the workers. The fact that workers are owners-partners, promotes self-motivation to tackling the projects. The minimum number of members is three and constitution procedures are similar to those of any other corporation.

Mutuals: These are partnerships, non-profit, democratic structure and management, which have a complementary activity to the social security system based on a voluntary insurance activity.

The Special Employment Centres: These are companies who combine economic viability and its market share with its commitment to social groups with fewer opportunities in the labor market. Its workers are mainly people with disabilities (whose number can not be less than 70% of total workers). They develop a productive and competitive capability that allows them to introduce their products in the market.

Integration companies are defined as learning structures in the form of companies, whose purpose is to facilitate access to employment of disadvantaged groups through the development of a productive activity, for which an insertion process is designed, establishing during the same conventional employment relationship. In its staff they should have a percentage of workers in insertion, depending on the regulation of each Autonomous Community of Spain, it will range between 30% and 60%. 80% of income is reinvested in the company.

The Fishermen: are corporations of sectorial public law, non-profit, representing economic interests of owners of fishing vessels and workers in the fishing sector, which act as bodies for consultation and cooperation of the competent authorities on fisheries maritime and fisheries management, the management is developed in order to meet the needs and interests of its members, with the commitment to contribute to local development, social cohesion and sustainability.

Associations linked to the disability movement and the insertion of excluded people. The main features of this associative movement focuses on serving where the nonprofit sector fails to supply, which also often coincide with those areas in which fundamental rights are met, especially in their access to particularly vulnerable groups such as people with disparity. They are also hallmarks innovation capacity to meet the problems arising in society, and the defense of social, legal, administrative changes, or otherwise, always in defense of the rights and freedoms of persons with disabilities, based on respect for diversity, plurality and tolerance.

Foundations: are organizations established non-profit, by the will of its creators, have affected their heritage in a lasting way to achieving a goal of general interest. Foundations of Social Economy must comply restrictively the principles of the Social Economy mentioned, and that includes the Law 5/2011.

4. What is the process of registering a social enterprise in your country?

When trying to register a cooperative (one of the main types of social business in Spain), the full instructions are provided by the government in the following link. You will also find the templates for the documents that will apply.

http://www.empleo.gob.es/es/sec_trabajo/autonomos/economia-soc/Regsociedades/contenidos/ConstSocCooperativas.htm

The main steps to be taken are to start confirming that the chosen name is available, then to elaborate the document of constitution and submit it for a first confirmation, then to legally create the enterprise and to inscribe it in the registry.

5. How social enterprises are treated under tax law in your country? Are there any tax incentives for social enterprises? If yes, which?

The Law of 20/1990, of December 19, includes the tax benefits applicable to cooperatives, making a distinction between two types of cooperatives:

Protected cooperatives: are those that comply with what is established in the General Law of Cooperatives or in the laws of cooperatives of the Autonomous Communities that have competence in this matter.

Exemption from the Tax on Patrimonial Transmissions and Documented Legal Acts, in the acts of constitution, capital increase, merger, excision, constitution and cancellation of loans and in the acquisition of goods and rights that are integrated in the Education and Promotion Fund.

Corporate tax: Protected cooperatives pay corporation tax at the rate of 20% for their cooperative results and at the general rate for extra-cooperative results.

Freedom to amortize the new fixed assets acquired within 3 years from the date of their enrollment in the Cooperatives Regime.

Tax on Economic Activities: 95% bonus on the share of this tax.

In addition, they will enjoy the same bonus in the Tax of Real Property of the rustic properties for Agricultural Cooperatives and Community Exploitation of the Earth.

Especially protected cooperatives: cooperatives of associated work, agronomists, community exploitation of land, sea, consumers and users that meet certain requirements.

In addition to the above tax benefits (those for the “protected cooperatives”), specially protected cooperatives will enjoy the following:

- Exemption from the Tax on Patrimonial Transmissions and Documented Legal Acts for the operations of acquisition of goods and rights destined to the fulfillment of the social or tributary ends.
- Bonuses of 50% of the integral share of the Corporate Tax.

*Apart from the benefits for cooperatives, the labor companies can also get benefits on the taxes, corresponding to the Corporation Tax as shown in the table

6. Procurement: Any special provision for social enterprises? Please describe.

Nothing special for social enterprises

7. Links and References

Creation of SB: http://www.empleo.gob.es/es/sec_trabajo/autonomos/economia-soc/Regsociedades/contenidos/ConstSocCooperativas.htm

Tax benefits: <http://www.creacionempresas.com/obligaciones-e-incentivos-fiscales/incentivos/beneficios-fiscales-entidades-de-economia-social>