

The Spanish Golden Visa after the amendment by the second chance mechanism (financial burden and other employment-related measures) Act 25/2015 of 28 July

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The Golden Visa is a temporary residence permit that may be granted to individuals who are non-EU/EFTA citizens and who carry out in Spain certain types of investments, business or professional activities, or are transferred by their employer to Spain under certain circumstances.

The Golden Visa was introduced by the Entrepreneurs (Support and their Internationalisation) Act (**Act 14/2013**) and was recently amended by the Second Chance Mechanism (Financial Burden Reduction and other Employment-Related Measures) Act 25/2015 of 28 July ("**Act 25/2015**"), which came into force on 30 July 2015 with the objective of making it easier and faster to grant these permits.

We can distinguish four different types of Golden Visa:

1. Investor Visa
2. Entrepreneur Visa
3. Highly Qualified Professional Visa
4. Expat Visa

With respect to any of the above visas/permits, it is important to mention that:

1. General requirements for entry or residence provided in applicable EU Regulations continue

to apply (e.g. no criminal record, insurance cover, sufficient economic resources).

2. Following the enactment of Act 25/2015, residence permits may be granted to applicants who fulfil the required conditions as well as to all dependent family members, which are understood to be¹ the applicant's spouse or cohabitating partner, children under 18, children aged 18 years or over who remain dependent on the applicant's financial support and who have not formed an independent family unit, and dependent ascendants. All these individuals are eligible for reunification and may apply for their visa simultaneously with the applicant.

Investor Visa

The types of investments that qualify for the Investor Visa are the following:

1. Acquisition of real estate with a minimum value of € 500,000. The relevant real estate assets shall be free of liens, at least up to the minimum value of € 500,000. Co-ownership of real estate also qualifies, provided that the individual investment made by the applicant of the Golden Visa amounts to € 500,000 (free and clear).
2. Investment of € 2 million in Spanish government bonds; € 1 million in shares of Spanish companies; € 1 million euros in investment funds,

¹ Prior to this amendment, only the spouse, children under 18 and disabled children over 18 were eligible.

² Introduced by Act 25/2015.

closed-ended investment funds or private investment (venture capital/private equity) funds incorporated in Spain²; or deposit of € 1 million in a Spanish bank account.

3. Undertaking in Spain of a business project that, subject to supporting documentation, is regarded as being of general interest (i.e. creation of jobs, relevant socioeconomic impact in the region, scientific and/or technologic innovation).

Another change introduced by Act 25/2015 is the possibility for duly accredited representatives to obtain this type of visa when they have been appointed by an investor to manage a public-interest project, provided such project satisfies one of the conditions described in point 3 above.

The investments above may be made through a company and still qualify, provided such company is not domiciled in a tax haven and the Golden Visa applicant holds, directly or indirectly, a majority of the voting rights in such company and is entitled to appoint a majority of its board members.

Under the new Act 25/2015, when an investment is made by a married couple under a community property regime and the amount of such investment is not double the thresholds described in points 1 and 2 above, only one of the spouses shall be considered to be the resident investor and the other shall have to apply for a resident visa as a family member.

The Investor Visa is valid for one year. The foreign investor can then apply for a residence permit which is valid for 2 years and renewable for 5-year periods (another change introduced by Act 25/2015), provided the initial investment requirements that gave rise to the right continue to be met, the investment remains in the terms described above³ and the investor has complied with his/her tax and Social Security obligations. Under the new Act, investors need no longer travel to Spain at least once during the permitted period for a residence permit or renewal thereof.

Furthermore, Act 25/2015 allows Investor Visas with a maximum duration of six months to be

granted to foreigners who have not yet formalised a property purchase but have signed and executed as a public document a pre-contract agreement, tied to an earnest payment (*contrato de arras*) or other type of security admitted by law, together with a banking certificate stating that the applicant has non-withdrawable funds sufficient to acquire the property. Any investor who evidences the effective purchase of a property is entitled to a one-year resident permit or visa, allowing him/her to extend his or her stay in Spain as a tourist beyond the permitted 90 day-limit for the acquisition process and, once the purchase is completed, can also directly apply for residency from within Spain with no need to return to his/her country of origin.

Entrepreneur Visa

This category encompasses two types of visa/permit:

1. An entry visa for a maximum stay period of one year for the sole or main purpose of initiating the preliminary steps to undertake an entrepreneurial activity.
2. A residence permit to initiate, implement or manage an entrepreneurial activity. In order to apply for this residence permit, the entry visa under 1 above need not be held.

Entrepreneurial activity is defined as innovative activity of special economic interest to Spain, holding as evidence of the same a favourable report from the Spanish government⁴. For these purposes, in addition to the – in particular and as a matter of priority – creation of jobs in Spain, the following will be given consideration: *a)* the applicant's professional profile, training, professional experience and involvement in the project; *b)* the business plan together with a description of the project, product or service, market analysis and financing; and *c)* its added value for the Spanish economy, innovation or investment opportunities.

Highly Qualified Professional Visa

This visa is available to highly qualified professionals whose companies wish to engage in Spain in the following cases:

³ Any variation in investment value due to market fluctuations will not be taken into account.

⁴ Under Act 25/2015, such report is to be issued by the Economy & Trade Office in the relevant geographical jurisdiction or by the Directorate-General for Trade and Investment.

1. Engagement as part of management or highly qualified personnel when:

a) the employer or its group complies with certain size or volume requirements (number of employees in Spain, annual turnover in Spain, foreign annual investment or foreign equity investment) or belongs to a strategic sector; satisfaction of these requirements must be evidenced by way of a report from the Spanish Directorate-General for Trade and Investment (*Dirección General de Comercio Internacional e Inversiones*), with registration at the Large Enterprises and Strategic Professional Groups Unit (*Unidad de Grandes Empresas y Colectivos Estratégicos*)⁵; or

b) the employee forms part of a business project that, subject to supporting documentation, is regarded as being for the public interest (mainly, in terms of job creation, socioeconomic impact and innovation); this must also be evidenced by the Spanish Directorate-General for Trade and Investment.

2. The employee holds graduate and/or postgraduate degrees from prestigious universities and business schools.

A similar residence permit is available to foreigners who intend to undertake education, investigation or R&D activities in public or private entities in certain limited circumstances.

Expat Visa

This visa is available to those employees who are transferred to Spain under a working or professional relationship with a company or group of companies established in Spain or abroad, and who comply with certain requirements, including a higher education degree or minimum 3-years work experience and a prior and ongoing relationship with the relevant company or group of at least 3 months.

Act 25/2015 introduces two different types of Expat Visa:

1. EU ICT intra-company transfer residence permit: for cases of temporary transfers to work as a manager, specialist or trainee, from a company outside the EU to a Spanish branch of the same company or group

of companies. The maximum stay is three years for managers or specialists and one for trainees.

Permit holders who were granted the permit in Spain may enter, reside and work in one or more EU member States in the terms provided in the law. Similarly, companies with their registered offices in other EU member States may transfer ICT EU permit holders to Spain for the duration of their permit, subject to prior notification to the Large Enterprises and Strategic Professional Groups Unit (the Directorate-General for Migration [*Dirección General de Migraciones*] may object provided it has good reason).

2. National intra-company transfer residence permit: for cases not covered by point 1 above or when the maximum stay provided above has elapsed.

Companies or groups or companies with management or highly qualified staff may apply for collective visas, which shall be based on the planned management of a temporary permit quota applied for by the company or group of companies.

General rules for permits

Residence permit applications are processed electronically by the Large Enterprises and Strategic Professional Groups Unit and granted/rejected by the Directorate-General for Migration within a maximum time limit of twenty days from filing with the appropriate authority. If no decision is issued in such twenty-day period, the application shall be deemed approved by administrative silence. Decisions must state the reasons on which they are based and may be open to administrative review.

Residence permit and permit renewal applications shall extend the applicant's/holder's stay until issuance of a decision. Such stay shall also be extended in cases where the renewal application is filed during the ninety days following the expiration of the previous permit.

Any alteration in respect of the conditions for admission during the residence period must be notified by the interested party to the Large Enterprises and Strategic Professional Groups Unit within thirty days. The competent State administration authority may perform any checks it

⁵ Act 25/2015 includes the conditions for this registration and any modifications thereof in the Entrepreneurs Act.

deems appropriate to verify compliance with current legislation. The competent authority may revoke a visa or permit, with good reason and subject to

a hearing, if it becomes aware, pursuant to this provision, that the conditions provided by law are no longer being met.

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