



## The tax regime for direct investment in certain securities and financial assets

### Direct investment in Spain may result attractive to non-resident investors without permanent establishment due to certain exemptions set out in the Spanish tax legislation regarding earnings deriving from securities and financial assets

Spanish tax legislation, notwithstanding any applicable Double Taxation Treaty signed by Spain, establishes certain exemptions from tax in Spain for earnings deriving from securities and financial assets obtained by non-resident investors without permanent establishment which make direct investment in Spain attractive to them.

#### Earnings exempt from tax in Spain

The main earnings from Spanish sources obtained by non-residents without permanent establishment which Spanish legislation exempts from taxation in Spain are the following:

##### ◆ Interest obtained by residents in Member States of the European Union

Interest and other profits obtained from the sale of own capital to third parties will be exempt from tax if they are obtained by residents in another Member State of the European Union (EU) which is not classified as a tax haven or by permanent establishments of such residents located in those States.

In this respect, the following will be considered to constitute profits obtained by the sale to third parties of own capital in addition to interest: any other form of payment agreed for such sale, together with income deriving from the sale, redemption, amortisation, swap, or conversion into any class of assets representing the raising and use of third parties' capital.

##### ◆ Capital gains obtained by residents in Member States of the EU

Capital gains deriving from securities obtained by residents in any other Member State of the European Union which is not classified as a tax haven or by permanent establishments of such residents located in such States will be exempt from tax.

Nevertheless, such exemption will not be applicable when the assets of the shares or units sold consist principally of real property located in Spain or when at any time within the 12 months prior to such sale the taxpayer has held at least 25 % of the capital or equity of the entity.

##### ◆ Debt instruments

The earnings deriving from the following debt instruments will be exempt regardless of the country of residence of the investor, subject to the satisfaction of certain requirements:

- ✓ Government bonds
- ✓ Preference shares quoted in organised secondary markets:
  - Issued by a credit institution.
  - Issued by an entity the voting rights of which belong totally, whether directly or indirectly, to a credit institution which is the parent company of a consolidated group or subgroup of credit institutions, the exclusive business or company purpose of which is the issue of preference shares.
- ✓ Preference shares:
  - Issued by quoted companies which are not credit institutions
  - Issued by quoted companies the voting rights of which belong totally, whether directly or indirectly, to quoted companies which are not credit institutions.

✓ Debt instruments traded in organised secondary markets

- Issued by credit institutions
- Issued by an entity the voting rights of which belong totally, whether directly or indirectly, to a credit institution which is the parent company of a consolidated group or subgroup of credit institutions and the exclusive business or company purpose of which is the issue of preference shares or other financial instruments.

✓ Debt instruments:

- Issued by quoted companies which are not credit institutions.
- Issued by entities the voting rights of which belong totally, whether directly or indirectly to quoted companies which are not credit institutions.

✓ Traded securities in organised markets and issued against securitised mortgage funds and securitised funds of particular assets.

◆ **Securities issued in Spain by non-residents**

Earnings deriving from securities issued in Spain by non-resident natural persons or entities without the mediation of a permanent establishment, whatever the place of residence of the financial institutions acting as payment agents or mediating in the issue or sales of such securities.

◆ **Non-resident accounts**

The earnings of accounts belonging to non-residents which are paid to taxpayers subject to Non-Resident Income Tax, by the Bank of Spain or by resident entities and relating to the regulations on foreign financial transactions (deposit institutions entered on the Official Registers of the Bank of Spain: Banks, Savings Banks, Cooperative Banks, etc.)

◆ **Dividends from subsidiaries**

Profits distributed by a Spanish subsidiary to their parent company which is resident in any other Member State of the EU are exempt, provided that the following requirements are met:

- ✓ Both companies must be subject to and not exempt from any of the taxes which are applicable to the profits of corporate entities in the Member States of the EU indicated in Directive 90/435/EEC of the Council, of 23 July 1990.
- ✓ The profit distribution is not the consequence of the winding-up of the subsidiary.
- ✓ Both companies must have any of the legal forms provided in the Annex to the indicated Directive.

A parent company shall be considered to be an entity which has a direct holding of a least 15 % (10% before 2009) in the capital of another company, which must have been held without interruption for one year prior to the day upon which the profit being distributed becomes payable.

Nevertheless, the indicated exemption shall not be applicable when the majority of the voting rights of the parent company are held, whether directly or indirectly, by natural or corporate persons which are not resident within the EU, except when the company carries out in fact a business activity directly related to that carried out by the subsidiary company, or has the purpose of the management of the subsidiary by means of an appropriate organisation of material and human resources, or demonstrates that it has been established for valid financial reasons and not in order to take undue advantage of the indicated exemption.

◆ **Quoted securities and investment funds**

Earnings deriving from the sale of securities, or the redemption of units, in investment funds carried out in any of the official secondary Spanish securities markets obtained by residents in a State which has signed a Double Taxation Treaty with Spain with a clause for information exchange and which is not classified as a tax haven are exempt.

### Useful Contacts:

Tax Authority (Agencia Tributaria):

[www.agenciatributaria.es](http://www.agenciatributaria.es)

### Principal relevant legislation:

- ◆ Royal Legislative Decree 5/2004, of 5 March, Approving the Consolidated Text of the Law on Non-Resident Income Tax.
- ◆ Royal Decree 1776/2004, of 30 July, Approving the Non-Resident Income Tax Regulations.
- ◆ Royal Legislative Decree 1/1993, of 24 September, Approving the Consolidated Text of the Law on Transfer Tax and Stamp Duty.