



The tax regime of Foreign Securities Holding Companies

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Tax regimes for ETVEs

◆ Application of the special regime for ETVEs

Entities the company purpose of which includes the business of the management and administration of registered securities representing shareholders' funds of companies which are not resident on Spanish territory by means of the appropriate organisation of materials and human resources may opt for the special tax regime for Foreign Securities Holding Companies (ETVEs).

◆ Taxation at the headquarters of the entity

The main characteristic of the tax regime for ETVEs is the special application of the exemption to avoid international economic double taxation of dividends and capital gains from foreign sources established in the Corporation Tax regulations.

In this respect, dividends or profit shares in entities not resident on Spanish territory which ETVEs may obtain, together with the income deriving from the sale of the corresponding shares, may enjoy an exemption in order to avoid international economic double taxation under the terms and conditions established under the Corporation Tax legislation after first meeting the requirements of this law.

The main requirements set out under the indicated legislation for the exemption to be applied are as follows:

- ✓ Percentage holding in the capital or shareholders' funds of the non-resident entity, whether direct or indirect, to be equal or greater than 5 %, held for one year.
- ✓ The income must have been taxed under an identical or analogous tax to that in Spain, and the investee should not be established in a country or territory classified under the legislation as a tax haven.
- ✓ The non-resident entity should carry out business activities abroad.

The main differentiation of the tax regime for ETVEs not included in the general regime for exemption described above is the option to apply the exemption when the price of acquisition of the holding in the non-resident entity was greater than 6 million Euros, without being required to reach the level of 5 % of the capital or shareholders' funds of the entity in question.

With regard to Transfer Tax and Stamp Duty (*ITP* and *AJD*) upon incorporation, ETVEs are subject to the company operations regime, and this tax amounts to 1 % of the nominal value of the capital including share premium.

Nevertheless, non-financial contributions of securities representing the shareholders' funds of entities not resident on Spanish territory will be exempt from this regime whatever the percentage of the holding of the ETVE conferred by such contributions, provided that the income deriving from such securities is able to enjoy the exemption of income from foreign sources under Corporation Tax discussed above.

◆ **Taxation of shareholders**

✓ **Resident natural persons**

Profits distributed by ETVEs chargeable to exempt earnings are to be included in the general tax base of the tax payer, although the international double taxation deduction in respect of taxation paid abroad by the ETVE may be applicable, and they relate to exempt income which has contributed to the creation of the profits earned.

With respect to earnings obtained from the sale of the holdings of the ETVE, the special regime does not establish any special conditions in this respect, and therefore a shareholder who is a resident natural person would obtain a capital gain or loss which should be included in the savings tax basis and will be subject to tax at a rate of 18 %. With effect from 1 January 2010, the first €6,000 are subject to tax at a rate of 19% and the remainder at 21%.

✓ **Corporate persons which are resident or non-resident with a permanent establishment in Spain**

Profits distributed by ETVEs are included in the taxpayer's assessment base. In this respect, the earner shall have the right to apply the deduction for internal double taxation on dividends which is established under the Corporation Tax provisions.

With respect to earnings obtained from the sale of the holdings of ETVEs, that part of the earnings or capital gain which corresponds to differences in value attributable to holdings in non-resident companies which meet the requirements set out in the legislation on Corporation Tax for applying the exemption to avoid international economic double taxation will be exempt.

Furthermore, such a shareholder may apply the deduction for double taxation of capital gains obtained from an internal source on that part of the earnings which corresponds to the net increase in non-distributed profits of the ETVE generated over the period of holding the shares.

✓ **Non-residents without a permanent establishment**

In the case of non-resident investors without a permanent establishment, provided that they are not resident in countries or territories which are classified in the legislation as tax havens, the

profits distributed by the ETVE from exempt earnings will not be subject to tax in Spain.

Furthermore, earnings deriving from the sale of the holdings of ETVEs will not be taxable in Spain, provided that they relate to reserves provisioned as a charge to exempt earnings through application of the exemption to avoid international economic double taxation, or to differences in value attributable to holdings in non-resident entities which meet the requirements for the cited exemption.

Useful Contacts:

Tax Authority (Agencia Tributaria):

www.agenciatributaria.es

Principal relevant legislation:

- ◆ Royal Legislative Decree 4/2004, of 5 March, Approving the Consolidated Text of the Law on Corporation Tax.
- ◆ Royal Decree 1777/2004, of 30 July, Approving the Corporation Tax Regulations.
- ◆ Royal Legislative Decree 1/1993, of 24 September, Approving the Consolidated Text of the Law on Transfer Tax and Stamp Duty