

ETVE, the Entidad de Tenencia de Valores Extranjeros. - Eleven years of the International Spanish Holding Company

29/01/07

Eleven years ago, the 1995 Corporation Tax Act (Ley 43/1995 del Impuesto de Sociedades), included a chapter devoted to the tax regime of the ETVE, Entidades de Tenencia de Valores Extranjeros, which most people know as the International Spanish Holding structure. Over the years the structure has proved to be robust enough to compete in the international tax planning market for holding companies.

Today, the Corporation Tax Act (RD 4/2004 de 5 de Marzo, TRLIS section 116-119) includes the current definition of the ETVE. This legal definition together with regulations, tax office opinions and Court Cases, have helped to complete a more mature structure ready to be used for international tax planning purposes under adequate Spanish tax supervision.

The ETVE (Entidad de Tenencia de Valores Extranjeros) is a regular Spanish company subject to Spanish Corporation Tax rules on its Spanish trading income, but exempt from taxation on qualified foreign-source dividends and capital gains. To benefit from this regime, the ETVE structure requires disclosure and notification to the Spanish tax authorities. Formal authorisation is not needed but communication is a formal requirement that must be complied with.

The ETVE structure complies meets all EU and OCDE criteria, including the benefit of being located in a double tax treaty jurisdiction and in the EU territory. As such, the ETVE is protected by EU Directives such as the Parent-Subsidiary Directive and the Merger Directive and is regarded as Spanish resident for tax purposes. The broad Spanish tax treaty network, specifically with Latin America, and the European character of the ETVE make it an interesting vehicle for channelling capital investments towards Latin America, as well as a tax-efficient exit route for EU capital investments by non-EU companies

The main Tax benefits according to Spanish Corporation Tax

The main tax benefits of the International Spanish Holding Company are:

1. *No Corporate Income Tax on Dividend Income Received.* - Income accruing to an ETVE is Corporation Tax exempted in Spain.
2. *No Capital Gains Tax on the Sale of Shares.* - Capital gains made by the ETVE on the sale of shares in qualifying non-resident subsidiaries are exempted from capital gains tax in Spain. In June 2000, the regime was amended in order to introduce significant new improvements, including a capital gains tax exemption on the transfer of shares in the Spanish holding company, according to certain criteria.
3. *No Withholding Taxes on Outgoing Dividends.* - Outgoing dividends paid by an ETVE to its non-resident parent company are free of withholding taxes in Spain (irrespective of the existence or non-existence of a double taxation treaty) unless the parent corporation is in a jurisdiction where it will not pay corporate taxes, or one of the jurisdictions classified as tax havens by the Spanish authorities. If these conditions are not satisfied then a standard withholding tax rate will apply.
4. *Withholding Taxes on Incoming Dividends.* - As a member of the EU, Spain is governed by the provisions of the EU's parent/subsidiary directive, which provide participation exemption in the EU according to certain rules. Where the provisions of the parent/subsidiary directive do not apply (or where anti-avoidance provisions are in place) Spanish holding companies can rely on a reasonably extensive network of double taxation treaties the effect of which is to obtain a reduction in withholding tax rates on dividends remitted to Spain from the subsidiary jurisdiction. Spanish tax authorities recently issued a binding ruling in relation to a double-tiered ETVE structure. They treated dividends received by the Spanish parent company from its Spanish subsidiary as foreign-source, to the extent the dividends originated from non-resident companies. As a result, no Spanish withholding taxes would apply to dividends paid by the Spanish parent company.

The requirements to form the ETVE in Spain

In order to qualify for the regime the following conditions must be satisfied:

1. The ETVE should have a minimum participation of 5 per cent in the capital of the foreign company or the participation should be higher than Euro 6 millions.
2. The non-resident company must be subject to, and not exempt from, a tax system that is similar to Spain's corporate tax system;
3. The non-resident entity must not reside in a country or territory identified by the Spanish tax authorities as a tax haven;
4. For capital gains tax purposes, the seller and the purchaser must be unrelated parties if the purchaser is a Spanish entity;
5. Income earned by the non-resident entity, from which dividends and capital gains are paid, is derived from business activities conducted outside Spain.
6. Materiality of the structure. The Spanish holding will need to show sufficient resources to administer the referred funds. According to Spanish Courts it's enough to hire a Director to administer the company.



Other Issues to be considered

- The financial costs associated with the acquisition of participations are in principle deductible for corporate tax purposes. For thin capitalisation purposes and for related entities, a debt to equity ratio of 3:1 exists but this could be increased subject to obtaining the advanced ruling of the authorities.
- Stamp Duty is usually 1%, payable on the issue of share capital on entities established in Spain, which is exempted in paper for paper operations.
- The ETVE can hold shares in other entities resident in Spain, with no limits in terms of participation. However, there is a limit of a 15% holding of assets located in Spain when selling the shares.
- If the participation by the ETVE in the non-resident entity was valued according to the rules applicable to the special tax regime for mergers, spin-offs, exchanges of shares and in kind contributions and payment of direct taxes in Spain was deferred, the exemption only applies to the difference between the transmission value and the market value when the participation was acquired by the ETVE.
- If foreign source dividends are exempt from tax in Spain, the ETVE cannot include in the taxable base the depreciation of the participation corresponding to those dividends.
- If the ETVE has losses in the transmission of a participation in a foreign company, such losses will be reduced by the amount of exempt gains obtained by an entity forming part of the same group of companies of the ETVE that transmitted the participation to the ETVE.

How can we help?

We can discuss your international holding company's needs and determine how the ETVE could be organised to server your aims. Our legal and tax team will take care of all the tax planning aspects, company formation as well as the accounting and compliance aspects of running the company annually. We can also provide directorship services.

León F Del Canto
l.delcanto@c-international.es
International Tax Partner
C International Tax Legal