

# New developments in the Spanish Tax Regime for Foreign-Securities Holding Companies (ETVE Regime)

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*Analysis of the rules governing foreign-securities holding companies or ETVEs, following the amendments introduced by the 2021 Spanish Government Budget Act.*

The Spanish Corporate Income Tax Act provides specific rules for those companies whose corporate purpose includes the management and administration of the equity securities of companies not resident in Spanish territory, i.e. for holding companies. This is known in Spain as the *régimen de entidades de tenencia de valores extranjeros* (ETVE).

This 'regime' (i.e. scheme), with the passage of the 2021 Spanish Government Budget Act, presents some amendments derived from the changes in the Spanish participation exemption rule on dividends and income earned from the transfer of equity securities as regulated in Art. 21 of the Corporate Income Tax Act.

Therefore, insofar as this regime is directly linked to the above exemption, its characteristic features are analysed below:

### 1. Definition and main advantages

As mentioned above, ETVEs are Spanish companies whose corporate purpose includes the management and administration of shareholdings in non-resident entities.

The main *advantages* of this regime are as follows:

- *Exemption applicable to dividends and capital gains earned by the ETVE* from its shareholdings in resident and non-resident companies, provided that they meet certain requirements. This exemption is reduced by 5% in respect of management fees derived from such shareholdings.
- *Non-taxation in Spain applicable to the non-resident shareholders of the ETVE*, provided that in general the income of the ETVE derives from its shareholdings in non-resident companies.

Additionally, it should be noted that:

- Although the corporate purpose of ETVEs must include the management and administration of shareholdings in non-resident entities, it may also include any other activity (it is possible for them to carry out other types of business in Spain or abroad).
- Companies under the ETVE Regime are Spanish tax resident companies and therefore, they may benefit from the Spanish wide network of Treaties for the avoidance of double taxation.
- ETVEs must be active companies, i.e. they must have its own and adequate resources for the management and administration of the shareholding. For these purposes, this requirement is not considered to be fulfilled if the management and administration of the shares is outsourced in return for payment.
- Securities or shares representing the stake in the capital of the ETVE need to be registered and that the company cannot qualify as an asset-holding entity.
- Finally, in order for the ETVE regime to apply, this option must be notified to the Ministry of Finance, and the regime will apply in the same year in which it is notified.

## 2. Taxation applicable to income - dividends and capital gains - earned by ETVEs from their holdings in non-resident companies

ETVEs are taxpayers of Spanish corporate income tax under the general regime and, therefore, income earned from their shareholdings in resident and non-resident companies - dividends and gains earned from the transfer of these shareholdings - may benefit from the Spanish participation exemption under certain conditions.

In relation to *dividends and capital gains* earned by an ETVE from its shareholding in non-resident companies, this *exemption* will apply when these requirements are met:

- a) Where the direct or indirect stake in the capital or equity capital of the non-resident company is at least 5%<sup>1</sup>.
- b) Where the holding has been held continuously for the year preceding the day on which the profit to be distributed becomes payable or, as the case may be, on which the transfer takes place (in the case of dividends, the holding may be held thereafter for as long as necessary to complete the one-year period).
- c) Where the non-resident investee has been subject to and not exempted from a foreign tax of a nature identical or similar to the Spanish corporate income tax at a nominal rate of at least 10% in the financial year in which the profits to be distributed or in which an interest is held were earned or, in the case of a transfer, in each and every financial year of holding the interest.

This requirement will be deemed to be met when the investee is resident in a country with which Spain has concluded a Treaty for the avoidance of double taxation, which is applicable to it and which contains an exchange of information clause. In no case shall this requirement be deemed to be met when the investee is resident in a country or territory classified as a tax haven.

The amount on which the exemption is applicable has been changed as a result of the passage of the 2021 Spanish Government Budget Act, so that 5% of the positive income earned will be included in the tax base as management fees relating to the shareholdings. For practical purposes, considering the general Spanish corporate income tax rate (25%), the ETVE will be taxed at an effective rate of 1.25% on dividends and gains earned from its investees that meet the above requirements.

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<sup>1</sup> In this way, the possibility of applying this regime is eliminated when the acquisition value of the shareholding exceeds twenty million euros. However, a transitional regime is established for five years, i.e. until 2025, which allows the application of this exemption, subject to compliance with the rest of the requirements, to dividends or positive income earned from holdings acquired before 1 January 2021 whose acquisition value was greater than 20 million euros (but which do not reach 5% of the share capital).

### **3. Taxation applicable to dividends received by the non-resident shareholders of ETVEs**

Dividends distributed to non-resident shareholders of an ETVE out of exempt income allocated to non-resident companies can be considered non-Spanish sourced income and, consequently, will not be taxable in Spain. This rule is not applicable when the non-resident shareholders act in Spain through a permanent establishment or are tax haven based.

For these purposes, dividends shall be deemed non-Spanish sourced income when the profits from which they accrue derive from dividends and gains earned by the ETVE that meet the requirements set out in section 2 above.

### **4. Taxation applicable to income earned from the transfer of shares in the ETVEs by non-resident shareholders**

Income earned from the transfer of shares in an ETVE by its non-resident shareholders, other than tax haven based or with a permanent establishment in Spain, will not be taxed in Spain provided that such income relates to *a)* reserves of that ETVE that are deemed non-Spanish sourced income or *b)* differences in the value attributable to the ETVE stake in non-resident investees that meet the requirements set out in section 2 above.