



JONES DAY
COMMENTARY

TAX BENEFITS OF SPANISH HOLDING COMPANIES

On January 1, 1996, a special regime governing Spanish holding companies came into force. This regime provides an efficient mechanism to structure multinational groups with investments in Latin America, since Spain has the most extensive network of tax treaties with countries in Latin America.

The effectiveness of this tax regime, which is known in Spanish legislation as “*Entidades de Tenencia de Valores Extranjeros*” (“ETVE”), is based on the following:

- ETVEs may carry out other business activities in addition to those of a pure holding nature.
- ETVEs may be fully exempt from the payment of tax on dividends and capital gains obtained from their shareholding in nonresident companies.
- The shares of ETVEs must be nominative so that the shareholders are easily identifiable at all times. Consequently, shares issued to the bearer are not allowed.
- Authorization by the tax authorities is not required in order to benefit from the ETVE regime.

CORPORATE TAXATION IN SPAIN

Corporate Tax Rates. Limited and limited liability companies that (i) have been incorporated in Spain, (ii) have their legal headquarters/registered offices in Spain, or (iii) have their place of effective management located in Spain are considered resident in Spain for corporate tax purposes. The general corporate tax rate is currently 30 percent.

Dividends Received and Capital Gains. A Spanish ETVE shall not include in its taxable income any capital gains and dividends obtained from nonresident entities, as long as the following requirements are met:

The nonresident company carries out business activities, i.e., it is not inactive and has paid in its country of residence a tax similar or identical to Spanish corporate income tax. This requirement will be considered to have been complied with when the subsidiary is a resident of a country with which Spain has signed a double taxation treaty containing a clause on the exchange of information.

- A nonresident entity is considered to carry out business activities when at least 85 percent of its income is derived from business activities. To this purpose, real estate activities will be considered business activities if the foreign subsidiaries have, at least, (i) an employee who exclusively carries out the real estate activity and (ii) premises where the real estate activity is carried out.
- Either (i) the ETVE's shareholding in the nonresident company, whether direct or indirect, amounts to at least 5 percent of the latter's net worth, or (ii) the acquisition value of the holding exceeds €6 million, as long as the ETVE has kept that holding for one entire year prior to the date on which dividends are distributed or continues to keep the holding after that date until a period of one year has elapsed.
- In the case of capital gains, the requirements mentioned in point 2 above have to be met, but the period of one year must be complied with at the time the shareholding is transferred. Under no circumstances will the exemptions apply if the subsidiary resides in a tax haven.

Income (including interest, dividends, and capital gains) obtained by the ETVE from any other activity, or from the holding activity when the aforementioned requirements have not been met, will be taxed in accordance with the general rules governing corporate income tax at the general rate of 30 percent.

Capital Losses. Capital losses incurred by ETVEs upon the transfer of shareholdings in nonresident companies will be integrated into the tax base of the ETVE and may be offset during the same tax year and the following 18 years, against any profits obtained by the ETVE from other business activities.

WITHHOLDING TAXES

Distribution of Dividends by an ETVE. The distribution of dividends by an ETVE to nonresident shareholders will not be subject to withholding tax in Spain. The only condition is that the nonresident shareholder must not reside in a tax haven.

Transfer of the Shareholding in the ETVE. Generally speaking, capital gains obtained by nonresident shareholders of an ETVE will be taxed in Spain, unless their country of residence has signed a double taxation treaty with Spain. Capital gains are taxed in Spain at the rate of 21 percent.

If the capital gains obtained by the shareholders upon the transfer of their shareholding in the ETVE correspond to (i) nondistributed profits of the ETVE, which are deemed to be exempt income, or (ii) a greater value of the nonresident entities in which the ETVE has a stake, capital gains will not be subject to taxation in Spain.

TAX TREATIES

Double taxation treaties signed by Spain apply to ETVEs, as in the case of any other Spanish resident company. Consequently, ETVEs may benefit from any exemptions and reduced rates established therein, i.e., for dividends, capital gains, or interest. Below is a list of the countries with which Spain has signed a double taxation treaty.

COUNTRIES WITH A DOUBLE TAXATION TREATY WITH SPAIN

Albania	Cuba	Japan	Serbia
Algeria	Denmark	Kazakhstan	Singapore
Argentina	Ecuador	Kuwait	Slovakia
Armenia	Egypt	Latvia	Slovenia
Australia	El Salvador	Lithuania	South Africa
Austria	Estonia	Luxembourg	South Korea
Barbados	Finland	Macedonia	Sweden
Belgium	France	Malaysia	Switzerland
Bolivia	Georgia	Malta	Thailand
Bosnia Herzegovina	Germany	Mexico	The Philippines
Brazil	Greece	Moldavia	Trinidad & Tobago
Bulgaria	Holland	Morocco	Tunisia
Canada	Hungary	New Zealand	Turkey
Chile	Iceland	Norway	United Arab Emirates
China	India	Pakistan	United Kingdom
Colombia	Indonesia	Panama	United States of America
Costa Rica	Iran	Poland	Uruguay
Czech Republic	Ireland	Portugal	Venezuela
Former USSR states (excluding Russia)	Israel	Romania	Vietnam
Croatia	Italy	Russian Federation	
	Jamaica	Saudi Arabia	

LAWYER CONTACT

For further information, please contact your principal Firm representative or the lawyer listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Pablo Baschwitz

Madrid

+34.91.520.3921

pbaschwitz@jonesday.com

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