The Spanish Tax Regime for Foreign-Securities Holding Companies (Etve Regime)

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The Spanish tax regime for Foreign-Securities Holding Companies, known in Spain as "*entidades de tenencia de valores extranjeros"* ("**ETVE**") is considered as one of the most competitive holding regimes in the European Union.

1. Definition and main benefits of this Regime

Companies under the ETVE Regime are Spanish resident companies whose corporate purpose includes "the management and administration of shareholdings in non-resident entities using the appropriate organization of material and personal resources". The tax regime applicable to these entities is governed by articles 116-119 of the Spanish Consolidated Text of the Corporate Income Tax Act (*Texto Refundido de la Ley del Impuesto sobre Sociedades*), as approved by Royal Legislative Decree (Delegated Act) 4/2004, of 5 March ("**TRLIS**").

The main benefits of this Regime are:

— the **full exemption** applicable to **dividends and capital gains** obtained by the ETVE from its shareholding in non-resident companies, and

— the **non-Spanish taxation applicable to the ETVE non-resident shareholders**.

Additionally, it should be noted that:

— Although the corporate purpose of the companies under the ETVE Regime must include "management and administration of shareholdings in non-resident entities", they may also include any other activity (i.e. carrying on business activities in Spain or overseas).

— Companies under the ETVE Regime are Spanish resident companies and therefore, they may benefit from the Spanish wide network of Treaties for the avoidance of double taxation.

— In order to benefit from the ETVE Regime, the company needs to be considered an "active entity", developing its activity by means of the organization of material and personal resources. In practice, if the "management and administration of shareholdings in non-resident entities" is outsourced in exchange for the payment of a fee or remuneration, this requirement will not be fulfilled.

— In addition, Spanish TRLIS states that shares in the ETVE companies need to be registered.

— Finally, the application of the ETVE Regime requires that the ETVE company communicates the commencement of its operations and applicability of the ETVE Regime to the Spanish tax authorities.

2. Dividends and capital gains obtained by the ETVE from its participation in non-resident entities

Although ETVE companies are considered to be normal taxable entities, dividends and capital gains derived from its shareholding in

non-resident entities may benefit from a full exemption when the following conditions are met.

Regarding **dividends**, the full exemption applies when:

a) The direct or indirect stake in the capital or equity of the non-resident entity is at least 5%. This stake must be held by the Spanish entity for one continuous year prior to the date on which the distributed profit can be claimed. However, this condition will be considered met if the purchase price of the shareholding in the non-resident entity is above € 6,000,000.

b) The non-resident entity is subject to a tax whose nature is similar or akin to the Spanish Corporate Income Tax in the fiscal year in which the profit that is distributed has been obtained. It is assumed that, unless otherwise proven, the non-resident entity complies with this condition if it is resident in a country with which Spain has signed a Treaty for the avoidance of double taxation with an exchange of information clause. The exemption does not apply when the non-resident entity is resident in a tax haven jurisdiction.

c) The investee foreign entity carries on business activities abroad. In this regard, at least 85% of the profits of non-resident companies must be derived from the performance of business activities in a foreign country other than a tax haven.

In the event of **capital gains**, the tax exemption applies when the conditions stated above are met in each and every year during the shareholding period.

However, for the tax periods 2012 onwards this tax exemption may also be applicable on a pro rata basis, even though conditions b) or c) are not met during each year of the shareholding period.

Finally, if losses are incurred when transferring the shares in non-resident entities, these losses will be tax deductible. Nevertheless, for the tax periods 2013 onwards, losses derived from the transfer of shares in investee non-resident entities will be reduced by the amount of dividends received since the 2009 tax period, provided that those dividends did not reduce the purchase price of the shares and were exempt under the ETVE regime.

3. Dividends obtained by the ETVE non-resident shareholders

Dividends obtained by the ETVE non-resident shareholders, other than tax haven based or with a permanent establishment in Spain, will not be taxable in Spain as long as they are considered non-Spanish source income.

In this regard, these dividends will be considered non-Spanish source income if the amount distributed derives from dividends and capital gains obtained by the ETVE, which comply with the conditions stated in paragraph 2 above.

4. Capital gains derived from the transfer of shares in the ETVE by non-resident shareholders

Capital gains obtained by the ETVE non-resident shareholders, other than tax haven based or with a permanent establishment in Spain, will not be taxable in Spain as long as the gain is derived from non-Spanish source income.

Therefore, the above is subject to the condition that such capital gain is derived from the ETVE exempted non-distributed profits or to differences in the value attributable to the ETVE stake in non-resident companies, which comply with the requirements referred to in paragraph 2.

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