Spanish Tax Alert

ETVEs
(Spanish Foreign-Securities Holding Companies)

Gómez-Acebo & Pombo Tax Department

A special scheme is provided for foreign-securities holding companies or **ETVEs** (*Entidades de Tenencia de Valores Extranjeros*) in the Corporate Income Tax ("CIT") Act 27/2014.

ETVEs are regular limited liability companies (S.L., S.A. or other company forms), subject to the normal CIT on its income, but **exempt from taxation on qualifying Spanish and foreign-source dividends and capital gains** (shareholding-exemption)[1].

ETVEs apply a **0% Spanish withholding tax (WHT) on dividends distributed to foreign shareholders** if paid out of foreign exempt capital gains/dividends (except if paid to shareholders resident in blacklisted jurisdictions)[2].

ETVEs are protected by Double Taxation Treaties to which Spain is a signatory and by EU Directives (such as the EU Parent-Subsidiary Directive and the Merger Directive). Spain has an excellent Tax Treaty network (especially with LATAM countries).

This advantageous tax treatment frequently leads to non-Spanish investors (especially US or Asian groups) to choose Spanish ETVEs as their platform for investing in LATAM countries.

Conditions to apply the ETVE scheme:

- Minimum 5% shareholding -either direct or indirect- (or 20 million euro investment) in the foreign company held during at least one year (in case of dividends, the holding period can be completed subsequently). In the event of holding an interest in intermediary (holding) companies whose income consists, in more than 70%, of dividends and capital gains, the mentioned 5% interest has to be indirectly met by the Spanish company in the lower subsidiaries or, otherwise, certain other requirements should be met.

- The subsidiary cannot be a resident in a Spanish-listed tax haven unless this jurisdiction is within the EU and the taxpayer proves that it has been incorporated for sound business reasons and it carries out active business.

- Foreign subsidiaries held by the Spanish holding company must have been subject to a tax identical or analogous to the Spanish CIT at a statutory rate of, at least, 10% (the

1 The exemption on Spanish-source dividends and capital gains came into force on 1 January 2015. Prior to that date, only qualifying foreign-source dividends and capital gains were exempt.

2 The Spanish black list is being reduced year by year, as jurisdictions are automatically excluded from the list if they sign a Tax Information Exchange Agreement (TIEA) or a Tax Treaty with Spain. Jurisdictions such as Bahamas, Barbados, Curaçao, Hong Kong, Panama and Singapore (or Belize, Nevis) are no longer included in the black list.

effective tax rate may be lower on account of the application of any reductions or allowances in the subsidiary). This test is deemed met by subsidiaries resident in a country which has concluded a double tax treaty with Spain. For capital gain purposes, the test has to be met during all years of the holding period.

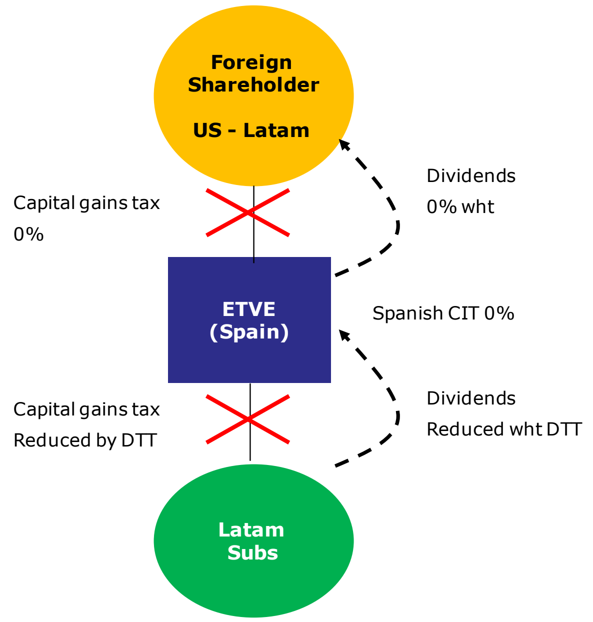
- The subsidiary's income in a relevant year cannot consist in more than 15% of income regarded as passive under Spanish CFC rules. Otherwise, the exemption will be proportionally applicable to the years in which this threshold is not reached.

- The ETVE must have human and material means to manage the shareholdings in subsidiaries. According to the Spanish Tax Authorities' interpretation, this requisite is met if a member of the ETVE's Board of Directors performs the task of managing the shareholdings in subsidiaries. Generally, a Spanish resident director is highly advisable, not only to meet this requisite, but also to show that the effective place of management of the ETVE is located in Spain.

- In case of leveraged investments, interest is generally tax deductible for CIT purposes against taxable income. Tax planning opportunities in the acquisition of foreign companies may exist, provided certain requirements are met and Earnings Stripping rules are met.

- The exemption will not apply if the profit distribution generates a deductible expense in the subsidiary.

ETVE Structure example



ETVE main features summary:	
Dividends Exemption	*Yes*
Minimum holding	5% or > 20 M€
In votes or in capital	*Capital*
Minimum Holding Period for Dividends	*1 year (can be completed subsequently)*
Capital Gains Exemption	*Yes*
Minimum Holding for Capital Gains	*1 year*
Deduction of expenses (interest)	*Yes*
Dept-Equity Ratio	*Yes (earnings stripping rules)*
Capital Infusion Tax	*No*
WHT on dividends distributed to foreign shareholder under Domestic Law	***0% (except for blacklisted jurisdictions)***
CFC Legislation	*Only for non-EU resident subsidiaries*

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