International Tax

Spain Tax Alert

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Requirements to benefit from WHT exemption for dividend distributions to EU parent companies relaxed

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As from 1 January 2015, the requirements for EU resident investors to receive a withholding tax exemption for dividend distributions from a Spanish subsidiary have been relaxed to include situations in which the EU investor holds less than 5% of the capital of the distributing company, as long as the acquisition cost of the participation exceeds EUR 20 million and certain other requirements are met.

Spain's nonresidents income tax (NRIT) law provides that dividend distributions paid by Spanish entities to their nonresident shareholders are subject to a 20% withholding tax rate (which reduced from 21% as from 1 January 2015 and will further reduce to 19% as from 2016). However, the NRIT law also provides a withholding tax exemption for dividend distributions made to EU-resident parent companies provided certain conditions are satisfied. This tax exemption is the result of Spain's implementation of the EU parent-subsidiary directive (Directive 2011/96/EU, as amended by the Council Directive 2014/86/EU of 8 July 2014).

Tax exemption requirements

Previously, one of the requirements for the withholding tax exemption to apply was that the EU shareholder had to hold directly or indirectly at least 5% of the capital of the Spanish subsidiary distributing the dividend. However, for dividend distributions occurring as from 1 January 2015, the 5% shareholding requirement need not be fulfilled if the acquisition cost of the shareholding in the Spanish subsidiary exceeds EUR 20 million and certain other requirements are satisfied.

The other requirements to benefit from the tax exemption are the following:

- The shareholding in the Spanish subsidiary has been held for at least one year before the dividend distribution, or will be held for the remaining time necessary to complete the one-year period. If dividends are distributed before the one-year holding period is met, the withholding tax exemption will not apply initially; however, the recipient EU parent company may apply for a refund of the tax withheld once it completes the one-year period. The holding periods of other group entities in the same shareholding will be taken into account in determining whether the one-year period is satisfied.

- The Spanish subsidiary and the EU parent company each have one of the legal forms in their country of residence that is listed in the annex to the parent-subsidiary directive.
- The Spanish subsidiary and the EU parent company are subject to one of the corporate taxes listed in the annex to the parent-subsidiary directive, and are not exempt (or potentially exempt) from tax in their country of residence.
- The EU parent is not resident in a country listed as a tax haven for Spanish tax purposes.
- The distributed amount does not derive from the liquidation of the Spanish subsidiary.

Even if the requirements above are satisfied, under a targeted anti-abuse provision in the NRIT law, the tax exemption will not apply if the majority of the voting rights of the EU parent company receiving the dividends are directly or indirectly held by individuals or entities that do not reside in a EU member state, unless the incorporation and operations of the EU parent company are carried out for valid economic motives and substantive business reasons.

Comments

EU investors that previously could not benefit from the tax exemption regime because their shareholdings in Spanish subsidiaries are less than 5% now may qualify for the exemption in respect of dividend distributions made as from 1 January 2015, provided the acquisition cost of their shareholdings exceeds EUR 20 million and the other exemption requirements set forth in the NRIT law are met.

Spanish entities usually can identify which of their shareholders hold at least 5%, as well as the period for which such shareholdings have been held. However, Spanish entities may not be in a position to verify which shareholders had acquisition costs exceeding EUR 20 million, which (unless the shareholder provides evidence of the acquisition cost) would result in the Spanish entity deducting withholding tax on the dividend distribution.

EU investors that suffer Spanish withholding tax on dividend distributions occurring as from 1 January 2015 despite fulfilling the requirements to benefit from the tax exemption may request a refund of the amounts withheld. To obtain the refund, the EU parent company must provide evidence that it fulfilled the requirements to benefit from the tax exemption regime to the Spanish tax authorities.