

SPAIN HOLDING COMPANY REGIME
TAX & LEGAL SERVICES

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Spain holding company regime (“ETVE”)

Any Spanish entity subject to corporate taxation may opt for ETVE (“*Entidad de Tenencia de Valores Extranjeros*” or “Foreign Securities Holding Company”) tax status provided certain conditions are met. Typically, the Spanish entity is established as a limited liability company (“*Sociedad Limitada*” or “S.L.”). This legal form is checkable for US federal tax purposes, if required.

ETVE participation exemption requirements

Spain Corporate Income Tax Law (“CIT Law”) provides a participation exemption regime which allows, under certain conditions, to apply a full tax exemption on dividends and capital gains from qualifying Spanish and foreign subsidiaries. Likewise, it also provides for a full exemption on income derived from a foreign permanent establishment (for example, a low-taxed branch). CIT Law also provides a special tax regime for (ETVE) holding companies that meet certain conditions, under which a zero in-zero out tax treatment for qualifying dividends and capital gains applies.

In essence, a Spanish entity under the ETVE tax regime would allow distributing dividends free of Spanish withholding tax when derived from earnings generated out of foreign-sourced dividends and capital gains which have qualified for the full tax exemption regime on foreign subsidiaries (and income from permanent establishments). Likewise, capital gains derived from the transfer of shares of the Spanish entity would not be subject to Spanish tax if these are derived from (i) accumulated earnings in the ETVE out of income which has qualified for participation exemption from non-Spanish subsidiaries (or permanent establishments) or (ii) an increase in value attributable to non-Spanish subsidiaries (or permanent establishments) which qualify for participation exemption. For these purposes, the shareholder (actually, the recipient of the income) of ETVE must not be a resident of a Spanish listed tax haven.

Herein we summarize those requirements which are generally relevant for the participation exemption and ETVE regimes to apply:

- The company’s corporate purpose shall include the management and administration of foreign shareholdings through the appropriate human and material means.
- Minimum participation requirement: The Spanish entity must hold a minimum shareholding of at least 5% either directly or indirectly in the subsidiaries. This threshold may be replaced by an acquisition cost of the subsidiary’s shares greater than EUR 20 million. In case 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 entity in the lower-tier subsidiaries or, otherwise, certain other requirements be met.
- Minimum holding period: The shareholding in which the minimum participation requirement has been met must have been held for at least one year prior to the date on which dividends and capital gains eligible for the participation exemption regime are received.

In the case of dividends, this minimum holding period may be completed after the dividend distribution takes place.

The period of time during which other members of the group have held the subsidiaries is also taken into account to calculate the holding period.

- Subject to tax test: Foreign subsidiaries held by the Spanish holding company must have been subject to a tax identical or analogous to the Spanish Corporate Income Tax at a statutory rate of, at least, 10% (it is allowed that the effective tax rate is lower due to the application of any reductions or allowances in the subsidiary). This test is considered to be met for 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 exemption will not apply in case the profit distribution generates a deductible expense in the subsidiary.
- The subsidiary's income in a relevant year cannot consist in more than 15% of income regarded as passive under Spanish international fiscal transparency rules (a sort of "Subpart F" income under "CFC" rules). Otherwise, the exemption will be proportionally applicable to the years in which this threshold is not reached. There are many exceptions to regard income as passive for Spanish CFC rules purposes.
- The subsidiary cannot be 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 performs an active business.

If all of the above mentioned conditions are met, dividends and capital gains derived from the foreign subsidiaries held by the ETVE will not be included in the Spanish ETVE tax base. Likewise, outbound dividends and gains obtained by the non-Spanish shareholder would be free of Spanish withholding tax.

Foreign branch income

A Spanish entity may also perform operations through a foreign branch. Income functionally attributable to the permanent establishment abroad that meets the above-mentioned requirements will be exempt at the ETVE level. Further, earnings out of such tax-exempt income may also be distributed as a dividend by ETVE free of Spanish withholding tax.

International Tax and Legal Services at ALTALEX

Our dedicated team has implemented a large number of Spanish holding companies, including global holding structures for many of the Fortune 500.

Carlos Gabarró is a tax partner of our firm, leading the international tax services practice.

Carlos collaborated with us from 1994 to 1998. In that year he joins Garrigues (the largest tax and legal firm in Spain) to collaborate in the international tax and in the family business practices. In 2000 he joins the international tax services practice of Ernst & Young, where he has held several leading positions. He was responsible of their Spanish tax desk in the US during three years, based in New York. By the end of 2012 Carlos returns as a partner of our firm.

He advises on tax matters to Spanish and foreign groups (family-owned businesses and large multinationals) in their Spanish and foreign operations, in M&A transactions, holding structures, financing of international projects, intangible assets management and tax-efficient supply chain management structures.

He is a regular speaker at seminars in several countries, a professor of international tax in universities and private institutions and author in several Spanish and international publications. Carlos Gabarró is ready to help at your request at carlos.gabarro@altalex.es Tel. +34 93 414 67 76 and Cell. +34 650 374 643.

About ALTALEX

ALTALEX is a firm based in Barcelona (Spain) of tax and legal advisors. The Firm focuses exclusively on areas of specialty in which we can genuinely deliver value-added differentiation noting the shortcomings in the legal and tax practices of Spanish firms. In the major firms, the pressure on partners to meet revenue goals on priority accounts and, to a certain extent, the involvement of less qualified professionals in projects, high staff turnover and relatively high fees in order to cover structural costs. In the medium sized and smaller firms, environments more suited to generalist practice and relatively little experience in the international tax & legal practice and, on occasion, with excessive dependence on limited added value services.

In achieving that goal, our firm counts with highly experienced professionals, some of which have held leading positions in the tax departments of the Big Four accounting firms and the largest Spanish tax and law firms.

For more information, please visit our website: www.altalex.es/en

Thanks to the trust placed on us by our clients, international rankings recognize Altalex, SL as a leading tax practice in Spain.



Client testimonials



"...Carlos Gabarró has tremendous capabilities to serve US multinational groups with their Spanish cross-border tax implications."

Cynthia Gingrich - Ass. Vice President, Corp. Tax
ROYAL CARIBBEAN CRUISES LTD.



"...We are delighted with their outstanding help. We are not only a client; we are family..."

William E. Le Van - Vice Pres. & General Tax Counsel
FELD ENTERTAINMENT INC.



"...Our Group seeks out the most prestigious firms for advice in cross-border taxation in different countries, and without a doubt, Carlos Gabarró is the best professional we have dealt with."

Sven von der Heyden - Chief Executive Officer
VON DER HEYDEN GROUP



"Carlos Gabarró is a great resource in Spain and I recommend him to expatriates or HNWI relocating to the country..."

David Wetherall
Professor
UNIVERSITY OF WASHINGTON



"...Our group has established a regional holding company structure with the assistance of the team at ALTALEX. The level of their Spanish and cross-border tax and corporate law advisory services resembles that of the largest tax and legal Firms."

Chairman & CEO
William J. Kappaz
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