

Spain proposes measures to facilitate proof of residence for certain EU funds for interest and capital gains exemption

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Executive summary

On 9 May 2019, the Spanish Ministry of Finance issued a draft Royal Decree to modify the Spanish Nonresident Income Tax (NRIT) Regulations in respect of the proof that European Union (EU) pension funds, Undertakings for the Collective Investment in Transferable Securities (UCITS) and EU Alternative Investment Funds (AIFs) can use to evidence entitlement to the interest withholding tax (WHT) and capital gains exemption available in Spain. This draft is now subject to public consultation until 31 May 2019.

Detailed discussion

Background

Under Spanish NRIT Law, Spanish-source interest and capital gains derived by EU residents without a permanent establishment in Spain are exempt from Spanish tax.

It is common that pension funds and collective investment vehicles (CIVs) lack legal or tax personality in their home jurisdiction and this often entails practical difficulties to obtain a certificate of tax residence to evidence tax residence in the EU. This proves even more complex when these entities are partnerships, since their members also need to evidence tax residence in the EU.

The proposal

The proposal is that the proof requirements for these entities to certify entitlement to the exemption be relaxed/standardized as follows:

- ▶ **Pension funds:** Written statement, with the content still to be determined, signed by the representative of the pension fund confirming the fulfillment of the relevant requirements. It is stated also that pension funds will not be considered as pass-through entities in any case.
- ▶ **UCITs and AIFs:** Through a certification issued by the relevant competent authority of the Member State where the entity is incorporated, containing the full name of the entity, the information regarding its authorization or registration, as well as, where applicable, the full name of the managing entity and whether the entity is a UCIT or an AIF.

This certification will be valid indefinitely unless there is any modification in the consigned data, in which case this circumstance will be communicated to the entity in charge of applying the exemption, and from that moment it will cease to be valid and a new certification will be needed.

Furthermore, a written statement of the entity's representative attesting that the entity is not a pass-through entity is also required.

If the abovementioned entities are considered pass-through entities the exemption can only be applied by the EU resident members. The exemption will apply depending on the participation in the corresponding entity as at 31 December of the prior year in which the income had been obtained.

The participation in the corresponding entity of the EU-resident members will be proved through a written statement made by the representative of the managing entity or by the entity with the content and in accordance with a tax form to be determined.

It should be noted that this manner of evidencing fulfillment of the requirements is similar to that provided for EU pension funds and UCITS for Spanish dividend WHT reclaims.

Impact

The public consultation presents a good opportunity for investment vehicles that consider that this proposal is not sufficient and should be complemented by other measures. Further, this new development may benefit other entities that are encountering the same practical difficulties and would support that the burden of proof to be provided is also relaxed or standardized considering their specific features (for instance, for non-EU CIVs located in jurisdictions where there is an effective tax information exchange agreement) with respect to this or other exemptions contained in the Spanish NRIT Law.

This bill is now subject to public consultation until 31 May 2019. EY Spain may assist with the preparation and submission of comments to the Spanish tax authorities.

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