January 2012

AVCONEWS

• BARCELONA • LISBON • MADRID • MILAN • TURKEY • VIGO •

SPANISH HOLDINGS: A KEY TOOL FOR FOREIGN INVESTMENT

1.- What is an ETVE?

The ETVE (Entidad de Tenencia de Valores Extranjeros) is a Spanish company subject to Spanish corporation tax (at a rate of 30%) on its Spanish trading income, but exempt from taxation on qualified foreign-source dividends and capital gains.

2.- Why are ETVEs attractive?

Tax benefits play a large part, but there are other reasons why ETVEs can be such an interesting tool:

a) Spain has entered into an array of tax treaties with more than 70 countries.

b) These include most countries in the American continent: Canada, USA, Mexico, Cuba, Jamaica, El Salvador, Colombia, Venezuela, Ecuador, Brazil, Bolivia, Argentina, Chile. (Treaties with Costa Rica, Peru and Uruguay have been signed but are not yet in force).

c) Spain has signed around 70 Bilateral Investment Promotion and Protection Agreements, many of them with Central and South American countries, which guarantee property rights, free transfer of yields, non-discrimination and dispute resolution mechanisms.

3.- Which are the main tax benefits?

a) No corporate income tax on dividend income received.

b) No capital gains tax on the sale of shares in qualifying non-resident subsidiaries.

c) No withholding tax on outgoing dividends subject to the following requirements:

SPANISH HOLDINGS: A KEY TOOL FOR FOREIGN INVESTMENT

3.- Which are the main tax benefits?

- Dividends are distributed out of exempt dividends or capital gains obtained by the ETVE from qualifying subsidiaries;

- Dividends are paid to a non-resident individual or entity;

- The recipient is not a resident of a tax haven jurisdiction.

d) Extension of no withholding on distribution of profits from permanent establishments. A recent binding ruling extended 0% withholding tax to distributions made out by an ETVE out of the profit generated by its US financing branch.

4.- Which are the main requirements?

a) Qualifying subsidiaries must be non-resident entities, outside of tax haven jurisdictions, subject to domestic tax and carry out business activities;

b) The ETVE must either:

i) hold, directly or indirectly, a 5% participation in the non-resident subsidiaries;

ii) or, if said participation does not reach the 5% quota, have a cost of 6 million euro. This participation must be held for an uninterrupted period of at least 12 months.

5.- Other features

a) Losses derived from the transfer of a participation in a non-resident subsidiary are tax deductible (limitations apply to participations acquired from a company of the same group).

b) Capital gains arising from a transfer of ETVE participations by a foreign shareholder are exempt if the gains derive from retained earnings which come from exempt dividends and capital gains obtained from qualifying subsidiaries (if the transferor is not resident in a tax haven jurisdiction).

c) Cash contributions are subject to Stamp duty at a rate of 1%; contributions in kind may not be subject to it.

6.- Further information

If you would like to discuss the setting up of an ETVE or request additional information, please contact our office in Madrid:

Telephone:
(34) 91 420 24 27

E-mail:
madrid@avinalabogados.com

The following presentation is for information purposes only and does not constitute legal advice. Please contact one of our offices should you wish to discuss any issue.