

## **Non-residents taxation: debt or equity investments in Spain**

The tax residence of an investor is key to determining the taxation applicable to its income obtained in Spain. Thus, while investors residing in Spain must pay taxes on the income obtained worldwide - either by personal income tax or by Corporation Tax, depending on whether they are individuals or entities; Non-residents, both individuals and entities, must pay another tax, the Non-Resident Income Tax (IRNR) and only for the income obtained in Spain.

In this sense, taxation of Non-residents, who make direct investments in Spain without having any permanent establishment in Spain, will be determined, fundamentally, depending on the legal form in which the investment has been channelled, existing, basically, two possibilities:

- a) Investments in the form of loans (lending investments), that is, investors formalize loan contracts and therefore receive their return in the form of interest, either with a fixed or variable interest rate or a combination of the two.
- b) Investments in the form of company shares (equity investments). Here the investment is materialized through the purchase of company shares or the subscription of shares issued on the occasion of the constitution of a new Spanish company or of a capital increase of an existing company, with which the investor becomes a shareholder of the company. In this way, the investors will receive their income in the form of dividends or on occasion of the sale of the shares or with the dissolution and liquidation of the company, or in a combination of both.

### **Taxation on interests**

In general, the interests paid by Spanish companies to Non-resident investors are subject to a 19% withholding tax. However, in practice, taxation may be much lower or even non-existent, depending on the tax residence of the investor: If he is a resident of the EU, interest is exempt from withholding tax (and therefore from taxation in Spain); Likewise, if the investor is a resident of a State with which Spain has an Agreement to Avoid Double Taxation (hereinafter, DTA), it will be necessary to attend to the provisions of the DTA itself to see which State has the right to tax the interest and at what maximum tax rate. DTAs signed by Spain usually establish the principle of shared taxation (between the State in which the interest originates and the State of residence of the investor), so that Spain can tax the interest obtained by non-residents, normally establishing a lower withholding rate (between 5% and 15%).

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## Taxation on dividends

In general, dividends paid by Spanish companies to Non-resident investors are taxed in the same way as interest: they are subject to a 19% withholding tax. Likewise, if the investor comes from a country that signed a DTA with Spain, the investor may qualify for the benefits of the DTA (that is, the lowest tax rate that the DTA usually provides for dividends or, even without withholding tax, in the event that the DTA assigns exclusive taxation to the state of residence). As a particularity, dividends distributed by Spanish subsidiaries to their parent companies resident in the EU or the EEA are exempt from tax in Spain upon fulfilment of certain requirements.

## Taxation on Capital Gains derived from the sale of shares

The capital gain obtained by a Non-resident, either an individual or a legal entity, from the sale of the shares in Spanish companies is subject to tax at the rate of 19%. However, in practice, if the investor comes from the EU or from a country that has signed a DTA with Spain, there will be no taxation in Spain since in the majority of DTAs signed by Spain grant the investor's state of residence the exclusive power to tax the capital gains derived from the sale of shares. As an exception, there will be taxation in Spain only in two cases: a) either, when the investor has a substantial participation in the Spanish company (greater than 25% of the share capital) or b) when the shares transferred are from companies with real estate substratum.

In order to access tax benefits (lower withholding or non-withholding), the Non-resident investors must prove tax residence in their country, normally through a certificate of tax residence valid for DTA purposes and also be the effective beneficiary of the income paid by the Spanish company.

For cases in which effective taxation occurs in Spain, the Non-resident investors may, in general, deduct in their country of residence the taxes paid in Spain, where they must also declare the returns obtained worldwide (among them, those obtained in Spain).

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