A review of the new Spain - UK tax Treaty

The new tax Treaty signed between Spain and the United Kingdom on 14 March 2013 came into force on 12 June 2014. This Convention replaces the former tax Treaty, signed in 1975.

The new Treaty establishes different changes in relation to the current situation, we will underline following the most relevant in our view:

- ***Trusts*** **(articles 3):** Article 3 includes the trusts within the definition of "person". It has to be noted that there is no equivalent to this kind of entity in Spain. Consequently, these trusts have to be defined in accordance with their domestic law. The inclusion of this concept in the wording of the Treaty implies that trusts will benefit from the provisions therein.

- ***Income from immovable property*** **(article 6):** Establishes that in the event of indirect ownership of immovable property through shares or other rights that entitle the owner to the enjoyment of the property, the income derived from the direct use, letting or any other form may be taxed in the contracting State where the property is located.

- ***Dividends, interests, dividends*** **(articles 10, 11, 12):** These articles establish that, provided that the recipient of the income is the beneficial owner, no withholding tax applies to royalties, interest payments and to dividend distributions in favour of participators that represent at least 10% in the equity of the distributing entity made by Spanish or UK companies to residents in the other State.

  Dividends received by participations that represent less than 10% in the equity of the distributing entity made by Spanish or UK companies to residents in the other State may benefit from a reduced 10% withholding tax, instead of the 15% withholding tax established in the current Treaty.

  15% withholding tax will just be applied for dividends paid out of income derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax. As a consequence, the Spanish SOCIMIs and REITs will not benefit from the general reduction in withholding tax.

- ***Capital gains from immovable property*** **(article 13):** According to this article, gains derived by a resident of a contracting State from the alienation of shares (not negotiated in the Stock Exchange) or similar interest deriving more than 50% of their value directly or indirectly from immovable property situated in the other contracting State may be taxed in that other State.

  This provision will not present a significant problem for most shareholders, due to the fact that the capital gains arising from the transfer of these shares would be subject to either UK Capital Gains Tax or Spanish Capital Gains Tax, depending on the fiscal residence. In these cases the tax paid in the State where the properties are located could be credited against the CGT to be paid in the State of residency. However, the possibility of transferring immovable properties to UK Companies will have to be carefully analysed from now onwards.

The Convention will take effect as follows:

a) In the United Kingdom

i. In respect of withholding taxes, on income derived on or after 12 June 2014

ii. In respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 2015

iii. in respect of corporation tax, for any financial year beginning on or after 1 April 2015

b) In Spain

i. In respect of withholding taxes, on income derived on or after 12 June 2014

ii. In respect of income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after 1 January 2015

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