

Anti-Avoidance Provisions in the Spanish Corporate Income Tax Act

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This article takes a look at the principal anti-avoidance provisions established by the Corporate Income Tax Act 43/1995, of December 27, 1995 (hereinafter "CITA"), which are intended to protect the Spanish treasury against the transfer of taxable income to foreign entities and to avoid deferral and decrease of taxes in Spain. Reference will mainly be made to the well-known provisions, such as CFC, thin-capitalisation and transfer pricing rules, as well as to other specific provisions such as anti-tax haven clauses, the anti-avoidance provision on dividends distributed to European Union parent companies controlled by non-residents in the European Union and, finally to the anti-avoidance provision relating to the income derived from foreign subsidiaries and foreign permanent establishments. In addition, certain Administrative decisions are analysed in order to illustrate how the Spanish Tax Authorities interpret these provisions.

I. CFC Rules

Spain¹ has established CFC rules, as is the case of most European countries, such as Denmark, Finland, the United Kingdom, France, Italy, Germany, Portugal, etc., in which CFC rules objectives are quite similar. The basic purpose of Spanish CFC rules are intended, first, to avoid the transfer of passive income in low-taxed foreign companies and, secondly, to avoid the erosion of Spanish companies' taxable bases.

CFC rules are regulated by 121 of CITA, whereby Spanish individuals and entities are subject to corporate income tax on certain positive passive income earned by non-resident entities, in which they own, individually or together with related persons, more than 50 percent of share capital, equity, profits or voting rights. Furthermore, the corporate income tax paid by the non-resident entity, must be less than 75 percent of the Spanish corporate income tax payable and is considered as passive income according to CITA. There are, therefore, three requirements in order to apply Spanish CFC rules: (i) control of the foreign company by one or more Spanish resident individuals or entities; (ii) the foreign company must be subject to a preferential tax regime; and (iii) the foreign company must obtain passive income.

According to the above-mentioned definition, control of a foreign company is determined not only by direct ownership by a resident individual or entity in Spain, but also by direct ownership by other related Spanish individuals or entities.² In addition, the partic-

ipation in a CFC company owned by a related entity that is non-resident in Spain is calculated as the extent of indirect participation in the Spanish entity. On this basis, the ownership issue may be determined according to the participation owned by: a sole individual; a sole entity; an individual together with related individuals or entities; an entity together with related individuals or entities.

Regarding the issue of the low taxation test, CFC rules are applicable when the corporate income tax paid by a foreign entity is less than 75 percent of the amount which would have been payable in accordance with CITA rules. A comparison, therefore, has to be made between the effective tax paid by a CFC company in a foreign country on passive income obtained and the hypothetical tax, which would have been payable in Spain, resulting from application of the provisions established by CITA. Given that the general tax rate applicable to Spanish entities is currently 35 percent, the low taxation test will be met whenever effective taxation of the foreign entity is less than 26.25 percent. As a result, CFC rules could be applicable to certain European Union resident companies (e.g., Irish companies). As in other jurisdictions, there is a "black list", in virtue of which entities resident in countries or territories listed therein are presumed to fall within tax transparency.

An important feature of Spanish CFC rules is that relating to the types of foreign income deemed to be passive income. Article 121 basically sets out three types of foreign income considered to be passive income under CFC rules, namely: a) capital income; b) business activity income derived from related Spanish entities; and c) capital gains derived from the disposal of assets producing capital income. Under this classification, it should be noted that, as explained below, certain activities traditionally considered to produce passive income under other jurisdictions, are not included as passive activities under Spanish legislation.

a) Positive income derived from the ownership of real estate, whatever the location, shall be considered as passive income, unless used for business activities,³ or the use of which has been transferred to non-resident entities belonging to the same group of companies as the owner. In accordance with Article 25 of the Personal Income Tax Act 40/1998, of December 9, 1998, the renting and purchasing of real estate is considered as a business activity when the company has an ex-

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clusive office and a full-time employee to carry out such activity.

Furthermore, CFC rules apply to any income derived from equity owned in whatever entity and to income derived from the assignment of capital to third parties. According to these rules, Spanish Law refers, first, to dividends and other participation in profits and, secondly, to interest and other financial income in general. It should be noted that income arising from certain financial assets does not fall within the fiscal transparency regime. Such assets include those held in order to comply with legal or statutory obligations, assets which incorporate credit rights originating from business activities, those held to carry out activities as an intermediary on an official stock exchange and those held by credit and insurance entities.

Therefore, in accordance with the definition of passive income provided by Spanish CFC rules, the exploitation of certain intangible assets, such as patents, copyrights, trademarks, service marks, as well as the management of commercial or scientific experiences, methods, systems and payments derived from technical assistance are not considered to be CFC activities. Nevertheless, when the activities outlined above are performed by a foreign entity as a "business activity" and produce deductible expenses for related Spanish entities, they may be included in the following type of income.

b) In addition to the type of income defined in section a), which has been traditionally considered as passive income, CITA also establishes that certain business activities may trigger CFC rules, given that by means of such activities, taxable income obtained by Spanish entities may be transferred abroad. It should be noted that this type of income only includes credit, financial, insurance and service activities. Therefore, all other business activities are not covered by this provision.

Business income obtained by foreign entities is attributed to their Spanish shareholders, provided that such income proceeds from related Spanish individuals or entities. In addition, foreign income must produce tax-deductible expenses in a related Spanish entity. This provision is aimed at protecting Spanish taxable income against transfer to controlled foreign entities. As an exception, the income obtained from service providing activities is not considered as CFC income, whenever such services are connected with export activities (*e.g.*, transport services, commissions, publicity, etc.).

A *de minimis* exemption applies, whenever more than 50 percent of the income obtained from credit, financial, insurance or service activities proceeds from operations carried out with unrelated individuals or entities.

c) The last type of income refers to capital gains obtained by means of the transfer of assets and rights, the ownership of which originates fis-

cal transparency (*e.g.*, real estate, shares, certain financial assets, etc.).

Notwithstanding the preceding rules, the income mentioned in sections a) and c) is not considered as passive income, provided it originates from or is derived from entities in which a participation of more than 5 percent is, directly or indirectly, held by a non-resident entity, when the latter controls and manages such participation by means of appropriate human and material resources, and at least 85 percent of the second tier subsidiary's income is obtained from non-CFC activities. Therefore, a foreign holding company will not fall within tax transparency, if the entities in which it holds shares are not considered as CFC companies. A recent ruling⁴ issued by the General Directorate for Taxes ("*Direction General de Tributes*", hereinafter "DGT") dated May 22, 2002, stated that "appropriate human and material resources" exist when a member of the company's board of directors personally assumes the management of shares owned in foreign entities. On the contrary, this condition is not fulfilled when such control and management is carried out by means of outsourcing. Finally, the Law foresees a general *de minimis* exemption, through which the income defined by preceding sections a) and c) shall not be attributed to a Spanish company in the event that the total of such income amounts to less than, 15 percent of the foreign entity's taxable base, or 4 percent of the total income obtained by the entity. These limits refer to the income obtained by non-resident entities in Spain belonging to a group of companies, as defined by Article 42 of the Commercial Code.⁵

II. Thin Capitalisation Rules

Under current regulation (Article 20 CITA), thin capitalisation⁶ applies to interest payments on loans granted by a non-resident entity in Spain (excluding banking and credit institutions), when such entity is related to the borrowing Spanish entity, and the "loan capital" exceeds three times the amount of "fiscal capital". Both the fiscal capital and loan capital amounts are calculated on an annual average basis.

"Fiscal capital" is understood as a company's equity, expressly excluding annual results. It therefore includes paid-up share capital, share premiums and reserves. With respect to certain hybrid assets, such as the amounts received from accounts in participation or participative loan agreements, the DGT has issued two rulings⁸ which establish both assets are considered as borrowing for these purposes.

According to the above mentioned definition, a loan granted to a Spanish company must fulfil several conditions in order for thin capitalisation rules to apply: (i) the lender must be a related foreign entity; (ii) the loan may be direct or indirect; (iii) the loan must be interest-bearing; and, (iv) financing must be calculated on a net basis.

This anti-avoidance provision applies exclusively to interest payments to foreign entities, since its purpose is to combat tax avoidance in cases where a subsidiary's

profits are transferred to its foreign parent company as interest. Regarding justification based on the risk of tax avoidance in applying thin capitalisation rules exclusively to foreign entities, the consequences arising from the European Court of Justice decision in case *Lankhorst-Hohorst GmbH*⁹ should be taken into account, in which the ECJ claimed that the freedom of establishment mentioned in Article 43 CE is contrary to thin capitalisation rules.

The issue relating to the definition of indirect borrowing has been widely discussed by the doctrine, given that there is no legislation on what is understood as "indirect borrowing". It seems clear that indirect borrowing refers to situations in which a foreign company uses a third non-related company to finance a Spanish related entity (back-to-back loans). It also applies when the financing entity is a bank or financial institution. However, it is not fully clear whether the provision is applicable when the related foreign company only provides a guarantee, such as a bank guarantee, or pledge, to the entity that finally lends to the Spanish company. Although the DGT ruled on March 30, 1998¹⁰ that thin capitalisation rules apply in this situation, the ruling makes a broad interpretation of the Law, since the literal wording of Article 20 clearly requires the existence of either, direct or indirect, financing by a related foreign entity.

With respect to the definition of "net borrowing", total loans granted and received between the Spanish company and the foreign related company must be offset. Furthermore, such offsetting refers exclusively to interest-bearing loans. According to the definition provided by Article 20 CITA,¹¹ it is not totally clear whether or not such offsetting should be made individually, between the Spanish company and each of the related foreign entities, or between all the related foreign entities. A literal interpretation of Article 20 suggests that offsetting should be made taking into account the aggregate sum of loans granted and received from all the related foreign entities. However the DGT ruled on the contrary, in a decision dated December 4, 2001.

The tax consequences resulting from thin capitalisation imply that interest paid in excess is not tax deductible by the Spanish company and that payments in excess shall be considered as dividends.

With regards to the debate on compliance of thin capitalisation rules with the non-discrimination principles outlined in paragraph 3, Article 24 of the OECD Model Tax Convention on Income and Capital, the Central Economic and Administrative Court ("*Tribunal Económico-Administrativo Central*", hereinafter "TEAC"), ruled that thin capitalisation rules are admissible on the basis of Article 9.1. of the Tax Treaty between Spain and The Netherlands. It should be noted, that the Tax Treaty between Spain and the United Kingdom¹³ is the only Tax Treaty undersigned by Spain that explicitly disallows this type of provision.

III. Transfer Pricing

As a result of increasing globalisation, as well as new technology and modern ways of conducting business, transfer pricing has become a sensitive topic for Tax

Authorities throughout Europe, many of which have reformed applicable legislation.

In Spain,¹⁴ Article 16 of CITA establishes that the Tax Authorities may value operations performed between related persons or entities at their fair market value when, considering related persons or entities overall, the agreed valuation would have lead either to lower taxation in Spain than that which would have arisen on applying the fair market value, or to deferral of such taxation. Under this definition, several features of Spanish transfer pricing rules can be highlighted.

Spanish Law does not authorise taxpayers to value their transactions at arm's length prices, whereas the Tax Authorities are exclusively authorised to do so. Pursuant to Article 10.3 of CITA, the taxable base of a resident Spanish company is calculated by means of a direct method of calculation based on the taxpayer's accounting records. Therefore, when a Spanish company performs an operation which is not based on the arm's length principle, and that will be most probably valued by the Tax Authorities in accordance with the transfer pricing provision, that company shall be obliged to maintain the previously recorded accounting value upon filing its corporate tax return.

As stated in Article 16, the Tax Authorities may value an operation when the terms and conditions of such differ from those to which independent parties would have agreed and, in addition, result in lower taxation or deferral in Spain. Within the framework of direct taxation, attention should obviously be given to the effects of the overall operation on Corporate Income Tax, Personal Income Tax, and on Non-Resident Income Tax. Regarding the concept of related parties, CITA provides a list of situations in which a relationship is deemed to exist between an individual and an entity, or between two entities, such as in operations performed between a company and its shareholders, a company and its directors, two companies that meet the requirements of Article 42 of the Commercial Code and therefore considered a single group of companies, two companies in which one indirectly owns at least 25 percent of share capital in the other, a company resident in Spain and its permanent establishments abroad, etc. Furthermore, the Law points out that in the case of a shareholder-company relationship, the participation held must be equal to, or higher than 5 percent, or 1 percent in the case of securities listed on an official stock exchange. It also establishes a general clause, pursuant to which, two companies are considered related parties when one exercises decision-making power over the other.

In order to determine fair market value, the methods used under Spanish Law are based on the OECD 1979 recommendations on "Transfer Pricing and Multinational Enterprises". Article 16 of CITA states that the principal method to be applied is that based on market price of goods or services or another of a similar nature (comparable uncontrolled price method); supplementary methods include acquisition price or production cost plus habitual margin (cost plus method), and reselling price plus habitual margin (re-

sale price method). In addition, it is possible to apply for advanced pricing agreements with the Tax Authorities, who are obliged to reply to the application within the six months of the date upon which it was submitted by the taxpayer.

Taking into account that taxpayers are not authorised to value their operations in accordance with the arm's length principle, the Tax Authorities are not entitled to levy penalties under this provision. Nevertheless, penalties could be levied, should a taxpayer be deemed to have acted in a deliberate attempt to avoid tax payment or negligently.

IV. Other Anti-Avoidance Provisions

Throughout CITA and the Non-Resident Income Tax Act, 41/1998, of December 9, 1998 (hereinafter "NRITA"), certain specific anti-avoidance rules can also be found. Such rules include anti-tax haven clauses, which appear in a wide range of articles, not only in CITA, but also in NRITA, and the specific clause on the unduly use of the exemption method for dividends and capital gains obtained from shares held in foreign companies, and on income obtained from permanent establishments abroad. Finally, we will deal with the provision established by NRITA, which disallows the exemption on dividends distributed to E.U. parent companies incorporated solely for tax purposes.

A. Anti-Tax Haven Provisions

In order to limit tax abuse and protect Spanish taxable income against tax havens, a number of anti-tax havens provisions have been introduced into Spanish Legislation, following recommendations of the OECD, for the purpose of strengthening domestic measures against harmful tax practices. In 1991, Royal Decree 1080/1991 established a list of 48 countries or territories considered to be tax havens. The list has not been modified since its approval.

The following is a summary of some of the provisions established by CITA against the use of tax havens:

- Non-deductibility of service expenses for operations, directly or indirectly, carried out with persons or entities resident in tax havens, or those paid through persons or entities that are residents therein. Taxpayers may deduct such expenses, provided they prove that are truly connected with the operation and that it was effectively carried out (Article 14.1.g CITA).
- Application of the arm's length principle to operations carried out with entities that are resident in tax havens, provided that lower taxation or deferral results from the operation (Article 17.2 CITA).
- Non-exemption on participation in profits and capital gains derived from securities owned in entities resident in tax havens - in accordance with Article 20 bis CITA - and non-exemption on income obtained from permanent establishments located in tax havens (Article 20 ter CITA). No limitation is applicable when a permanent establishment is not resident in a tax haven, although

its profits are derived from business carried out in territories or countries considered as tax havens.

- The tax credit for investment in foreign entities¹⁵ is not applicable when the foreign entities reside in a tax haven (Article 20 quarter).
- Article 34 of CITA¹⁶ establishes a tax credit of up to 25 percent of the investment made when purchasing a participation of at least 25 percent of a foreign company's share capital, and on the amounts paid for publicity and advertising products in foreign markets. This deduction will not be granted when the investment or expense is made or incurred in a tax haven.
- Taxpayers with a stake in a collective investment institution located in a tax haven must include the positive difference between the liquid stake value at the end of the tax period and the purchase value, in their annual taxable base (Article 74.1 of CITA).
- The special regime for holding companies¹⁷ (ETVE), establishes that income (participation in profits and capital gains) obtained by non-residents shareholders as a result of their participation in an ETVE company, shall not be subject to tax in Spain, provided several conditions are fulfilled and, in addition, the person or entity receiving the income is not resident in a tax haven.

In line with the anti-tax haven provisions of CITA, NRITA also provides certain limitations on the income obtained from Spanish sources by tax haven residents:

- Article 13 of NRITA establishes certain exemptions on income obtained by foreign persons or entities, such as (amongst others) interest payments and capital gains earned by residents of an other E.U. Member State; income derived from public debt; profits distributed to parent companies resident in an E.U. Member State and income derived from the transfer of securities and stakes in collective investment institutions operating on official secondary Spanish stock exchanges by residents of a country with a Tax Treaty in force with Spain, with an exchange of information clause.¹⁹ These tax benefits shall not apply to persons or entities resident in tax havens.
- Recent provisions²⁰ have been introduced to govern the tax treatment of income obtained through fiscal transparent entities (*e.g.*, partnerships) incorporated either in Spain or in a foreign country. Regarding the fiscal transparent entities incorporated in a foreign country and earning Spanish income, the partners of such shall be considered as the taxpayers in Spain. However, when the foreign entity is resident in a tax haven, the taxpayer will be the foreign entity and, in addition, such entity will not benefit from the exemptions listed in Article 13 of NRITA.

A new provision²¹ has been added to Royal Decree 1080/1991, pursuant to which, all countries or territories ratifying either, an exchange information agreement for tax purposes, or a Tax Treaty on the avoidance of the double taxation, with exchange of information provision with Spain, may never be considered as tax havens as of the date upon which such agreements or Tax Treaties come into force.

B. Anti-Avoidance Provisions: The Participation

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Exemption Regime

In 2000 it was established the exemption method²³ on participation in profits and capital gains derived from shares held in foreign entities,²⁴ as well as on the income obtained from permanent establishments located abroad.²⁵ Together with the exemption method, certain clauses were also introduced in order to avoid the undue use of these tax benefits. In particular, a provision was introduced by virtue of which, the exemption method shall not be applicable to income obtained from foreign entities carrying out their activities abroad when the main purpose of such is to benefit from the tax exemption in Spain. This is presumed to occur when another company belonging to the same group of companies as the subsidiary, has previously performed the activity carried out by the foreign subsidiary, except when a valid commercial reason for such a change exists. A provision in the same terms is contained in Article 20 ter, which refers to the exemption on income obtained through foreign permanent establishments-. The exception established to the anti-avoidance provision (valid commercial reasons) is analogous to the "general *bona fide* provision" contained in the OECD Commentaries on the Tax Model Convention (Article 1, paragraph 19.a.), which enable Tax Treaty provisions to apply to situations in which the shareholding or other ownership from which the income is obtained is based on valid business reasons and not primarily to obtain of Tax Treaty benefits.

It seems clear that at least two conditions have to be met in order to apply this anti-avoidance provision. On one hand, the foreign company must benefit from a preferential tax regime in the territory in which it is a tax resident. As the Law does not offer a definition of preferential tax regime, a study must therefore be made of other CITA articles in order to clarify the term, as it could be the criteria provided by international fiscal transparency or the participation exemption regime, which establishes that the subsidiary company must be resident in a country in which it is subject to a similar or analogous tax to Spanish Corporate Tax. On the other hand, the activities previously carried out in Spain must be either, partially, or totally, transferred to a foreign country with a preferential tax regime. In this regard, the provision should not apply to the income derived from either a purchased foreign subsidiary, or a foreign permanent establishment set up prior to the passing of the CITA anti-avoidance provision, since it would be difficult for the Tax Authorities to prove that taxpayers were unduly looking for tax benefits. In fact, a similar situation was subject to a TEAC ruling dated on February 8, 2002, in which a decision was made on the application of the anti-avoidance provision to dividends distributed to E.U. companies, stating that the exemption shall not apply to dividends distributed to E.U. parent companies controlled by non-E.U. residents (see Section C below). The TEAC ruled that, as the foreign shareholder purchased shares in the E.U. parent company receiving the dividends from Spain in 1987, and therefore before the approval of the Council Directive

90/435/EEC, the objective of obtaining tax benefits established in the Directive was not apparent.

C. Anti-Avoidance Provision on Dividends Distributed to E.U. Parent Companies

According to Article 13.1.g of NRITA,²⁶ profits distributed to parent companies resident in the European Union are exempted whether certain conditions are fulfilled. In addition, a look-through provision similar to that established in the OECD Commentaries (Article 1, paragraph 13) is established, by virtue of which the exemption shall not apply when the majority of voting rights in the parent company are, directly or indirectly, held by individuals or entities that do not reside in the European Union. This provision is intended to disallow dividends distribution exemption, to foreign entities that artificially incorporate E.U. companies acting as "conduit companies", between Spanish subsidiaries and final beneficial owners, the so called *Directive shopping*.

As the anti-avoidance provision is of a general nature, it is accompanied by certain specific exceptions to ensure that the exemption will be granted when real business reasons exist. Therefore, the exemption shall apply when the parent company effectively carries out a business activity which is directly related to the activity undertaken by the subsidiary, or when its purpose is the supervision and management of the subsidiary by means of the appropriate organisation of material and human resources, or when the parent company proves that it was incorporated for valid economic reasons and not to unduly benefit from the exemption on dividends obtained from the Spanish subsidiary. The central issue of the safe-harbour rules established therein, lies in the fact that the E.U. parent company must have substance in terms of its legal structure as proven by consistent documentation, human resources capabilities, place of effective management and control and the economic risks undertaken by such parent company.

The DGT issued a ruling²⁷ disallowing the exemption on dividends distributed from a Spanish subsidiary to its parent company resident in Luxembourg. The majority of voting rights in the parent company were indirectly quoted on the Dutch and Belgian Stock Exchange. This decision can be criticised, as it was quite obvious that the parent company was not a "conduit company", nor a company without substance and according to the facts established by the ruling, the parent company was performing the role of an effective holding company by owning shares in companies resident in many other jurisdictions (not only in Spain). Moreover, although Spanish Law does not contain a provision similar to "the stock exchange provision" (OECD Commentaries to the Tax Model Convention, Article 1, paragraph 19.d.), the fact that the shares in the parent company had been indirectly quoted on an official stock exchange could have been proof enough that there were not tax abuse intentions in the incorporation of the parent company.

1 CFC rules were first introduced in Spain by Law 42/1994, December 30, Article 2, on individuals resident in Spain, and Article 10, on Spanish corporate

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2 taxpayers. Article 10 was further substituted by Article 121 of CITA, with slight modifications. Article 16 of CITA, establishes a list of individuals and entities considered to be related parties, the relationship defined not only between entities, but also between individuals and entities (e.g., a company and its directors; a company and the spouses, parents or descendants of its members or directors, etc.)

3 Article 121 of CITA refers to the Personal Income Tax Law, 18/1991, later substituted by Law 40/1998, article 27, as to the definition of assets used for business activities. In this ruling, "appropriate human and material resources" is interpreted in the context of the Spanish holding company regime (so called "*Regimen de las entidades de tenencia de valores extranjeros*", hereinafter "ETVE") in which the Law also establishes this requirement in order to determine the control and management of securities owned in foreign entities.

4 Article 42 of the Commercial Code, states that a group of companies exists when a company meets any of the following conditions with respect to another or other companies: ownership of the majority of voting rights; entitlement to appoint or to dismiss the majority of corporate directors; possibility, together with other shareholders, of obtaining the majority of voting rights; appointment of the majority of corporate directors at the moment in which consolidated accounts are prepared and within the two preceding financial years. Thin capitalisation rules were introduced by Law 18/1991, being in force as of January 1, 1992. For the concept of related entity, see Section III below on "transfer pricing".

5 Decisions dated January 16, 1997 and October 9, 1997 ECJ, December 12, 2002, Case C-324/00, *Lankhorst-Hohorst GMBH and Finanzamt Steinfurt*, on thin capitalisation rules in Germany.

6 The Tax Authorities ruled that when the related foreign entity is not the borrower, however assumes the risk of non-payment (by means of any type of guarantee) by the related entity resident in Spain, "indirect borrowing" shall exist. Article 20 CITA establishes, "When the net interest-bearing direct or indirect borrowing of an entity from *other persons or entities* which are not resident in Spain (...)". TEAC resolution dated February 9, 2001. Article 11.6 of the Convention between the United Kingdom of Great Britain and Northern Ireland and Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, dated October 21, 1975, "Any provisions of the law of one of the Contracting States under which interest paid by one company to another would be treated as a dividend or distribution to be left out of account in computing the taxable profits of the paying company shall not operate where the interest is paid to and beneficially owned by a company which is

a resident of the other Contracting State. The preceding sentence shall not apply where more than 50 percent of the voting power in the last-mentioned company is controlled, directly or indirectly, by a person or persons resident in the first-mentioned State".

14 Rules governing the operations carried out between related persons or entities were introduced by the Corporate Income Tax Act 61/1978, dated December 27, 1978. Article 20 quater CITA, establishes an annual tax credit of up to 25 percent of the previous year's taxable base (with an annual limit up to EUR 30'050'605.22), of the investment made in foreign entity securities, when the acquisition enables majority of the voting rights in the foreign entity (further requirements should be met). The amounts credited shall be taxed within the four following years. This tax credit does not apply to investment made in E.U. companies.

16 Unlike the tax credit established by article 24 quater CITA (see footnote n° 15), this is a final tax credit, and taxpayers will therefore not be taxed later on the amounts previously credited.

17 Articles 129 to 132 CITA

18 Through Law 46/2002, December 18, 2002, (by which certain modifications have been introduced to Personal Income Tax Law, CITA and NRITA) the exemption on capital gains derived from the transfer of securities on an official secondary Spanish stock exchange has been extended to capital gains derived from the transfer of stakes owned in collective investment institutions.

19 All the Spanish Tax Treaties, except the Treaty signed with Switzerland, have an exchange of information clause.

20 Through articles 32 bis to 32 septies NRITA, introduced by Law 46/2002, December 18, 2002

21 Article 2 of Royal Decree 116/2003, in force as of February 2, 2003

22 For a detailed study of the participation exemption regime, see LOPEZ RIVAS, "Tributación en el Impuesto sobre Sociedades de las Rentas derivadas de la participación en los fondos propios de sociedades ex-tranjeras", *Quincena Fiscal n- 2/2001*, p. 9-23.

23 However, an imputation method is still in force, Articles 29 and 30 CITA.

24 Article 20 bis CITA

25 Article 20 ter CITA

26 As implemented in accordance with the Council Directive dated July 23, 1990, on the common system of taxation applicable in the case of parent companies and subsidiaries of different member States (90/435/EEC).

27 Ruling dated February 19, 2002