

TAX RESIDENCE FOR EXEMPTION OF WITHHOLDINGS ON PAYMENTS TO NON-RESIDENTS IN SPAIN

Article 14.1 c) of the Spanish Non-Resident Income Tax Law regulates the exemption of interest and other income obtained from the transfer of capital to third parties, as well as capital gains derived from personal property, with certain exceptions, provided that such income is obtained without the intermediation of a permanent establishment by residents of another Member State of the European Union (EU) or by permanent establishments of such residents located in another Member State of the EU.

Therefore, in order to apply the exemption of withholdings on interest, dividends and royalties paid to non-residents in Spain, it must be proved that the recipient's tax residence is in a Member State of the EU. For this purpose, it is required a certificate of residence issued by the relevant tax authority from the country of origin certifying that the tax residence of the entity is in a Member State of the EU.

In the case of income obtained by pension funds and collective investment institutions resident in the EU, it might be difficult to prove their tax residence due to the fact that they frequently do not have legal-tax status in their jurisdictions of origin.

To avoid such difficulties, in October 2019, a special residence certification regime was approved for pension funds and collective investment institutions for the purposes of the application of certain exemptions, including the exemption of withholdings on interest, dividends and royalties paid to non-residents in Spain provided in Article 14.1 c) of the Spanish Non-Resident Income Tax Law.

Depending on the recipient's legal structure, the certificate of residence should be as follows:

1. Collective investment institutions according to Directive 2009/65/EC of July 13th, 2009 must justify their tax residence through a certificate issued by the relevant tax authority from the country of origin, which shall have the same content, except for the reason for its issue, as the under-takings for collective investment in transferable securities (UCITS) model certificate provided for in Annex II of Commission Regulation EU No. 584/2010 of July 1st, 2010 laying down implementing measures for Directive 2009/65/EC.

2. Collective investment institutions under the management of alternative investment fund managers according to Directive 2011/61/EU of June 8th, 2011 must justify their tax residence through a certificate issued by the relevant tax authority from the country of origin, stating the full name of the institution, its domicile, the State in which it is established, its legal form, and, if applicable, the date of its authorization or its administrative registration number, as well as the fact that it is managed by a management entity, or self-managed, authorized in accordance with Directive 2011/61/EU, and the name and domicile of such management entity.

3. Rest of entities must justify their tax residence through a certificate issued by the relevant tax authority from the country of origin certifying that their tax residence is in a Member State of the UE.