INFORME

ETVE Regime

SPANISH FOREIGN SHARES HOLDING ENTITIES

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1. Who we are

Miñana Beltrán Tax & Legal Sociedad Limitada Profesional initiated its activities in 2004 offering advanced tax advice to Family Businesses.

Since then, our firm has grown, expanding its team and activities, specializing in international tax, and adding labor and legal services to our portfolio. Nevertheless, Miñana Beltrán has not abandoned the initial idea that guided the first steps: to become a reliable partner who works side by side, offering personalized advice and tools with a short- and long-term vision.

Currently, our team of professionals is integrated by experts in national and international taxation and lawyers specialized in commercial and insolvency law with a clear mission: to offer simple solutions to complex problems.

Now we are 23 professionals, and in 2025 January we will achieve 40 professionals while we are integrating two other Spanish Tax & accounting firms of Valencia.

"We offer the deep know-how of a solid and motivated team."

1.1 Tomàs Miñana Beltrán

Bachelor's degree in economics from the University of Valencia (Spain) and Università La Sapienza di Roma (Italy)

Current Studying Law at UDIMA University

Tax and Corporate Law . Restructuring M&A Taxation and Law.

Bankruptcy Administrator at Spanish Courts (Juzgados de lo Mercantil)

- ✓ LLM Masters in Tax Law (LL.M) Vienna Wien University
  Institute for Austrian and International Tax Law of WU (Prof. Michael Lang, Prof. Jeffrey Owens, Prof. Pasquale Pistone, Prof. Robert Risse,

Prof. Alexander Rust, Prof. Josef Schuch, Prof. Claus Staringer, Prof. Alfred Storck

- ✓ LLM. Executive Program Taxation for Tax Professionals IE Madrid (Instituto de Empresa)
- ✓ LLM. Master in Tax Advisory and Taxation in Centro de Estudios Financieros.
- ✓ Masters in Financial management and accounting (IDEC - Pompeu Fabra University, Barcelona)
- ✓ LL.M. Masters in taxation and Fiscal Advisory (CEF, Centro de Estudios Financieros)
- ✓ Postgraduate Program in International Tax Law (University of Barcelona).
- ✓ Postgraduate Program in International Taxation ADEIT (University of Valencia)

Languages: Catalan, Spanish, Portuguese, Italian, … and a little bit of English

I began my professional career in the financial sector, working for various financial institutions and multinational companies. In 2003, I started my own practice as a tax and corporate advisor, founding the firm Miñana Beltrán Tax & Legal SLP, where I am a founding partner and director.

2. ETVE REGIME: A brief introduction

Foreign Securities Holding Entities (ETVE) are a special tax regime within the Spanish tax system. The regime was designed to make Spain an international investment hub, allowing companies domiciled in the country to manage and administer holdings in foreign entities with significant tax advantages, primarily the exemption of dividends and capital gains. These exemptions are regulated under the Corporate Income Tax Law (LIS), specifically in Articles 107 to 114.

The ETVE regime has been particularly useful for multinationals looking to centralize the management of their foreign holdings, offering a favorable tax framework that avoids double taxation on income earned abroad. This regime has allowed Spain to compete with other holding jurisdictions, such as Luxembourg and the Netherlands, attracting large companies seeking to optimize their tax structures.

The BEPS (Base Erosion and Profit Shifting) Plan promoted by the OECD and the G20, as well as the Anti-Tax Avoidance Directives (ATAD), have introduced significant changes in how the ETVE regime is regulated and supervised. These changes have tightened controls on abusive structures and reinforced the need for real economic substance for entities to benefit from the tax regime.

The primary objective of the ETVE regime is to avoid double taxation on foreign-source income, providing tax relief on profits repatriated to Spain. In this report, we will explore the key features of the regime, the requirements to qualify, tax treatment of both the entities and their shareholders, recent legal developments, and a comparison with holding regimes in Luxembourg, the Netherlands, Switzerland, Ireland, and Malta.

3. Requirements for Accessing the ETVE Regime

To benefit from the ETVE regime, companies must meet several key requirements outlined in the Spanish Corporate Income Tax Law (LIS), Articles 107 to 114. These requirements include:

1. Corporate purpose: The ETVE must has as one of its corporate purposes the holding shares in foreign entities. But ETVEs can also develop other commercial activities with no restriction.

2. Minimum shareholding: The ETVE must own at least 5% of the foreign entity's share capital or an investment exceeding 20 million euros. (for applying tax benefits).

3. Effective management in Spain: The management and control of the ETVE must take place in Spain. (no PO Box Co: employee labor contract full time and office: “house and dog”).

4. Minimum holding period: Shares in foreign entities must be held for at least one year. Or even less that 1 year but compromise to maintain the participation in the future at least a year + 1 day.

5. Foreign entities subject to equivalent taxation: The foreign subsidiary must be subject to a tax system equivalent to Spanish Corporate Income Tax. (DTC with Exchange of information clause or nominal corporate taxe rate minimum 10% in foreign country)

6. ETVE can have participations on other resident entities in Spain, with no restriction.

7. Interest paid by ETVE even if they are due to finance loans that have been used for buying the participations that it holds are deductible.

Requirement	**Description**
Corporate purpose	Holding shares in foreign companies
Minimum shareholding	5% of share capital or investment exceeding €20 million
Effective management	Located in Spain
Minimum holding period	At least one year
Foreign entities subject to equivalent tax	Subject to a tax system analogous to Spanish CIT

4. Taxation of ETVE Entities Under the Special Tax Regime

ETVE is a entity like the other commercial entities in Spain (SL, SA…) liable to Impuesto sobre Sociedades like any other company. With basically no difference. As we will see the main differences of the ETVE is taxation on Shareholders of the ETVE, not in the ETVE itself.

Entities covered by the ETVE regime enjoy a full exemption from Corporate Income Tax (CIT) on dividends and capital gains obtained from holdings in foreign entities, provided that the requirements mentioned earlier are met (like any other Spanish entity). This exemption allows foreign income to remain untaxed in Spain, making the regime a key tool for international tax planning.

Article 21 of the Corporate Income Tax Law regulates these exemptions and details the formal requirements for their application. It is also possible to choose **Art 31 and 32 LIS** and Instead of using Economic and Juridical Double Taxation Relief.

5. Taxation of ETVE Shareholders on Dividends

The taxation of shareholders who receive dividends from an ETVE depends on whether they are residents or non-residents of Spain. Resident shareholders are subject to taxation under the Personal Income Tax (IRPF) or Corporate Income Tax (IS), depending on the nature of the shareholder.

Non-resident shareholders: Under the Non-Resident Income Tax Law (LIRNR), dividends distributed by an may be suffer withholding tax in Spain.

For Resident shareholders: Dividends are taxed under the Personal Income Tax (IRPF) for individuals or Corporate Income Tax (IS) for legal entities.

Shareholder Type	**Taxation**	**Applicable Law**
Resident (individuals)	Taxed under Personal Income Tax (IRPF)	IRPF Law
Resident (companies)	Taxed under Corporate Income Tax (IS)	IS Law
Non-resident	withholding tax	LIRNR Law
Non-resident ETVE shareholder: individual or Entity	NO withholding tax, Presumption that the dividend distributed by the ETVE is not generated in Spain (no received in Spain)	IS – Etve regime.

Under ETVE regime, there is the assumption that de dividend received by the nonresident shareholder, being this an individual or a company, has not been generated or distributed in Spain. Therefore, neither the income nor the nonresident taxable person or entity is liable to tax for this income. And therefore, no withholding tax is applied in the distribution of the dividend.

6. Taxation of ETVE Shareholders on Capital Gains

When a shareholder decides to sell their shares in an ETVE, the capital gains resulting from the sale are taxed as follows:

- Resident Shareholders: The gains are taxed in the savings tax base under the Personal Income Tax (IRPF) or Corporate Income Tax (IS), as applicable.
- Non-Resident Shareholders: capital gains obtained from the sale of shares in an ETVE are exempt from taxation in Spain, unless the ETVE holds more than 50% of its assets in real estate located in Spanish territory.
- Same treatment and idea behind than Dividends: no taxation, now WHT.

7. Recent Developments and Case Law on Foreign Securities Holding Entities (ETVE)

Recent tax reforms, including the Base Erosion and Profit Shifting (BEPS) Plan and the Anti-Tax Avoidance Directives (ATAD), have brought substantial changes to Spain’s Entidad de Tenencia de Valores Extranjeros (ETVE) regime, aimed at curbing the misuse of these structures for tax avoidance. These reforms have introduced anti-abuse clauses, which are now incorporated into Spain's

double taxation treaties. The objective is to prevent entities from benefiting from tax advantages when they are set up primarily for that purpose, without engaging in substantial economic activity in Spain. These clauses enable authorities to deny tax benefits if the structure's sole purpose is to gain tax advantages rather than conducting genuine business operations.

Relevant Case 1: Supreme Court (TS) Ruling of 2015

A key ruling by the Spanish Supreme Court in 2015 served as a landmark case for addressing abuses of the ETVE regime. In this case, the Court disqualified an entity that had been established under the ETVE regime, citing **a lack of economic substance in Spain**. The entity was found to lack the necessary physical presence, including **material resources** and **personnel**, to operate as a legitimate business in Spain. The Court concluded that it was effectively a "paper" structure, created solely to take advantage of tax benefits without engaging in meaningful economic activities within the country. This ruling underscored the principle that simply meeting the formal, legal requirements of the ETVE regime is insufficient for receiving tax benefits. Entities must demonstrate real, substantive economic activity in Spain, such as maintaining offices, hiring employees, and conducting business operations that contribute to the economy.

Relevant Case 2: National Court (AN) Ruling of 2018

Similarly, the National Court's 2018 ruling further reinforced Spain's stance against the abuse of the ETVE regime. In this case, a company had used the ETVE structure to minimize its tax obligations by **routing dividends and capital gains through jurisdictions considered tax havens**. While the company fulfilled the formal legal requirements of the ETVE regime, the Court determined that its primary purpose was to obtain tax advantages, rather than to engage in substantive business activity. This was deemed an abuse of the law, and the company's use of the ETVE regime was disqualified. The ruling made it clear that merely adhering to the letter of the law is not enough if the entity's operations are

not in line with the spirit of the legislation, which aims to promote legitimate economic activities rather than tax avoidance schemes.

Implications of the above Rulings

Both cases have set important precedents for how the ETVE regime is applied in Spain. They illustrate that the courts are taking a strict approach when evaluating whether entities using the ETVE regime are genuinely engaged in economic activities. The rulings reinforce the message that Spain's tax authorities and courts are committed to preventing abuse of tax structures, even if companies technically comply with the formalities of the law. This has significant implications for multinational corporations and investors using the ETVE regime, as it places greater emphasis on demonstrating real economic substance, such as tangible business operations and investments within Spain, to qualify for tax benefits.

These developments align with broader international efforts to prevent base erosion and profit shifting, ensuring that tax structures like the ETVE are used for legitimate business purposes rather than simply as tools for tax avoidance. The increased scrutiny on substance over form means that companies must be able to show a genuine business presence in Spain, reflecting the global trend towards transparency and fairness in international taxation.

More recently, **Spanish Supreme Court Rulings (2023-2024):** Multiple cases have involved the disqualification of companies using the ETVE regime, particularly when they were deemed "shell companies" without sufficient economic substance in Spain. The courts emphasized that merely fulfilling formal requirements, such as registration and basic legal compliance, does not suffice. Companies must demonstrate real economic activity within Spain, such as having employees and physical resources. These cases are in line with the principles outlined in international agreements, including the Base Erosion and Profit Shifting (BEPS) initiative

These rulings show the increased judicial scrutiny on the abuse of the ETVE regime and further solidify Spain's commitment to align with broader international tax avoidance regulations.

8. Comparison with Other Holding Regimes

The ETVE regime is often compared with similar holding regimes in other European countries, such as Luxembourg, the Netherlands, Switzerland, Ireland, and Malta. These countries offer tax-efficient frameworks for managing foreign subsidiaries, and it is useful to understand how ETVE stands in comparison.

Country	**Tax Regime**	**Dividend Exemption**	**Capital Gains Exemption**	**Participation Requirement**
Spain (ETVE)	ETVE	Yes	Yes	5% or investment > €20M
Luxembourg	Société de Participations	Yes	Yes	10% or investment > €1.2M
Netherlands	Holding	Yes	Yes	5%
Switzerland	Holding	Yes	Yes	10% or investment > 1M CHF
Ireland	Section 110	Yes	Yes	5%
Malta	Participating Holding Regime	Yes	Yes	nd

The Spanish ETVE regime compares favorably with the holding regimes of Luxembourg and the Netherlands, as it allows a full exemption on dividends and capital gains obtained from foreign holdings, provided that regulatory requirements are met. Although Luxembourg and the Netherlands also offer attractive regimes, the Spanish regulatory framework provides also legal certainty and a **wider network of double taxation treaties (CDIs),** making it a competitive option for multinationals.

Comparison of ETVE Regime (Spain), **Luxembourg**, and **Netherlands** Holding Regimes

Aspect	**ETVE (Spain)**	**Holding (Luxembourg)**	**Holding (Netherlands)**
Dividend Exemption	100% (if requirements met) – 1,25%	100% (with restrictions)	100% (if requirements met)
Capital Gains Exemption	100% (if requirements met) – 1,25%	100% (with restrictions)	100% (if requirements met)
Minimum Corporate Tax Rate	25% (Corporate Income Tax)	Variable (1% in some holding cases)	25%

In Luxembourg, the holding regime (SOPARFI) allows for a full exemption on dividends and capital gains as long as the entity holds at least 10% of the share capital of the foreign entity and maintains the participation for at least 12 months. Additionally, SOPARFI entities are subject to a capital tax, which is a key difference from the Spanish ETVE regime, which does not impose such a tax.

In the Netherlands, the participation exemption regime allows for a full exemption on income from foreign holdings without imposing a minimum holding period. This

regime is known for its flexibility, although the Netherlands has recently tightened its anti-abuse clauses to prevent the use of purely instrumental entities.

Comparison: Holding Regimes in Switzerland, **Ireland**, and **Malta**

In addition to Luxembourg and the Netherlands, other jurisdictions such as Switzerland, Ireland, and Malta also offer competitive holding regimes that enable international tax optimization. Below is a comparison of the main aspects of the holding regimes in these countries, highlighting key differences in terms of requirements, exemptions, and taxation.

Swiss Holding Regime

Switzerland is an attractive jurisdiction for international companies, especially due to its economic and political stability, along with its favorable tax framework for holdings. The Swiss holding regime allows for a full exemption on dividends and capital gains obtained from holdings in foreign entities, provided that the holding company does not engage in significant commercial activities within Switzerland. However, entities must meet certain requirements, such as having more than 66% of their total assets invested in holdings and generating at least 66% of their total income from these holdings.

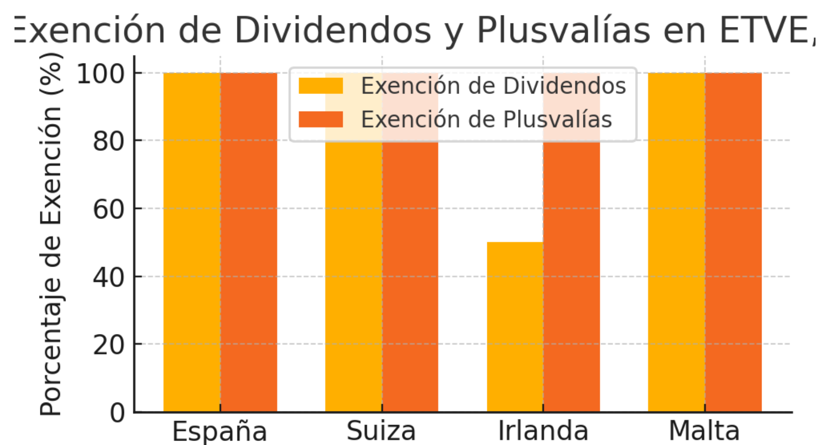
Irish Holding Regime

Ireland is known for its low corporate tax rate of 12.5% and its attractive participation exemption regime. Holding entities in Ireland can benefit from a full exemption on capital gains generated from the sale of shares in foreign subsidiaries, provided that the subsidiary meets certain conditions, such as being subject to a similar tax in its country of residence. However, Ireland does not offer a complete exemption on dividends, although it does allow the deduction of certain expenses related to the management of holdings.

Maltese Holding Regime

Malta offers a very attractive holding regime, allowing for the full exemption of dividends and capital gains generated from the sale of shares in foreign subsidiaries, provided that the subsidiary meets certain requirements. These include a minimum participation of 5% in the share capital of the subsidiary and holding the participation for at least 12 months. Additionally, holding companies in Malta can benefit from a **tax refund system**, which can effectively reduce the tax burden to nearly 0%, making it highly competitive compared to other European regimes.

Comparison of Dividend and Capital Gains Exemptions Between Spain, Switzerland, Ireland, and Malta



This comparison highlights the favorable conditions across these holding regimes, particularly in terms of exemptions on dividends and capital gains. Spain, Switzerland, Ireland, and Malta each have unique advantages, with varying levels of flexibility, requirements, and tax benefits, offering multiple options for multinationals to optimize their tax structures.

9. Conclusions and Comparative Advantages of ETVE related to other European holding regimes.

The ETVE tax regime offers significant competitive advantages in international tax planning, particularly through the exemption of dividends and capital gains from foreign holdings. Additionally, Spain benefits from an extensive network of double taxation treaties, which reduces the tax burden on foreign income and prevents double taxation. Compared to the holding regimes of other countries, such as Luxembourg and the Netherlands, the Spanish regime remains highly competitive, provided that ETVEs strictly comply with regulatory requirements and demonstrate real economic substance in Spain.

The Foreign Securities Holding Entities (ETVE) regime was introduced into Spanish legislation in the 1990s with the aim of attracting foreign investment. It allows companies domiciled in Spain to manage and administer holdings in foreign entities without being subject to tax on the dividends and capital gains obtained from those holdings. ETVEs are a special type of holding structure that differ from other European holding regimes by offering a complete tax exemption on foreign income, and **total exemption for outbound dividends and capital gains** for the ETVE non resident shareholders (with no WHT), making them an effective tool for international tax planning. Very used for LATAM investments.

Final Comparative Table: Use of the ETVE Regime in International Tax Planning: Luxemburg, Nederlands

Aspect	ETVE (Spain)	SOPARFI (Luxembourg)	Participation Exemption (Netherlands)
Dividend Exemption	100% (if requirements met)	100% (with restrictions)	100% (if requirements met)
Capital Gains Exemption	100% (if requirements met)	100% (with restrictions)	100% (if requirements met)
Capital Tax	No	Yes (0.5%)	No
Double Tax Treaty Network	Extensive (more than 95 treaties)	Broad	Broad

Final Comparative Table: Use of the ETVE and Other Holding Regimes in Europe: CH, IR, MA.

Aspect	ETVE (Spain)	Holding (Switzerland)	Holding (Ireland)	Holding (Malta)
Dividend Exemption	100% (if requirements met)	100% (if no commercial activity in CH)	50% (deductions available)	100% (if requirements met)
Capital Gains Exemption	100% (if requirements met)	100% (if requirements met)	100% (if requirements met)	100% (if requirements met)
Capital Tax	No	No	No	No
Double Tax Treaty Network	Extensive (more 93 treaties)	Moderate (80 treaties)	Extensive (more 70 treaties)	Moderate (70 treaties)

This comparison underscores the strengths of the ETVE regime in Spain relative to other European holding regimes, particularly with regard to dividend and capital gains exemptions, as well as the absence of a capital tax. The broad network of tax treaties further enhances Spain's competitiveness, though strict compliance with economic substance rules is essential to avoid scrutiny and potential disqualification

Convenios de doble imposición firmados por España

https://sede.agenciatributaria.gob.es/Sede/normativa-criterios-interpretativos/fiscalidad-internacional/convenios-doble-imposicion-firmados-espana.html

Listado alfabético de países

1. Albania
2. Alemania
3. Andorra
4. Arabia Saudí
5. Argelia
6. Argentina
7. Austria
8. Australia
9. Armenia
10. Azerbaiyán
11. Bielorrusia
12. Barbados
13. Bélgica
14. Bolivia
15. Bosnia y Herzegovina
16. Brasil
17. Bulgaria
18. Cabo Verde
19. Canadá
20. Catar
21. Chequia

22. Chile
23. China
24. Chipre
25. Colombia
26. Corea del Sur
27. Costa Rica
28. Croacia
29. Cuba
30. Dinamarca
31. Ecuador
32. Egipto
33. Emiratos Árabes Unidos
34. Eslovaquia
35. Eslovenia
36. Estados Unidos
37. Estonia
38. Filipinas
39. Finlandia
40. Francia
41. Georgia
42. Grecia
43. Holanda
44. Hungría
45. India
46. Indonesia

47. Irán
48. Irlanda
49. Islandia
50. Israel
51. Italia
52. Jamaica
53. Japón
54. Kazajstán
55. Kuwait
56. Letonia
57. Lituania
58. Luxemburgo
59. Macedonia
60. Malasia
61. Malta
62. Marruecos
63. México
64. Moldavia
65. Nigeria
66. Noruega
67. Nueva Zelanda
68. Omán
69. Pakistan
70. Panamá
71. Paraguay

72. Polonia
73. Portugal
74. Reino Unido
75. República Dominicana
76. Rumanía
77. Federación Rusa
78. El Salvador
79. Senegal
80. Serbia
81. Singapur
82. Sudáfrica
83. Suecia
84. Suiza
85. Tailandia
86. Trinidad y Tobago
87. Túnez
88. Turquía
89. Estados de la antigua URSS (excepto Rusia)
90. Uruguay
91. Uzbekistán
92. Venezuela
93. Vietnam

10. Impact of the BEPS Plan and ATAD Directives on the ETVE Regime.

The OECD's BEPS (Base Erosion and Profit Shifting) Plan and the Anti-Tax Avoidance Directives (ATAD) have had a significant impact on the ETVE regime, introducing new measures to prevent the abusive use of purely instrumental holding structures.

The BEPS Plan, specifically through Action 6 ("Preventing Treaty Abuse"), has incorporated clauses such as the Principal Purpose Test (PPT) in the double taxation treaties signed by Spain. This test allows tax authorities to deny tax benefits when the main purpose of a structure is to obtain tax advantages without real economic substance. As a result, companies using ETVE structures must ensure that they have genuine business reasons beyond tax savings to qualify for treaty benefits.

Moreover, the ATAD 1 and ATAD 2 Directives have strengthened Controlled Foreign Corporation (CFC) rules, which restrict the deductibility of certain payments between entities and tighten anti-abuse measures in international structures. These reforms aim to ensure that ETVE-type structures are not used to shift profits to low-tax jurisdictions without valid economic justification.