



The Spanish Perspective on Shell Companies

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Shell companies within the European fight against tax avoidance and evasion

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Basic premises on shell entities in Spain

- No ATAD 3 equivalent regulations.
- Issue of shell entities, relevant both at a cross-border and at a domestic level.
- Substance requisites in case law:
 1. Substance is sometimes relevant, but not determinative
 2. Asymmetric relevance, practically on a per-case basis

Basic premises on shell entities in Spain

- Topic of shell entities in a cross-border context, relevant in a number of scenarios:
 1. Deductibility of cross-border payments (domestic GAAR, TP)
 2. Applicability of full domestic WHT (domestic GAAR, BO)
 3. Inbound/outbound: holding regime (ETVE), mergers neutrality regime



Outbound: beneficial ownership

- Issues at the tax treaty level / at the level of transposed EU Directives (e.g. Colgate, ES:TS:2020:3062; no BO requirement in the exemption of interest payments)
- Substance of the conduit entity, not always reviewed. When reviewed, it is less relevant than the transfer of the payments



Outbound: Spanish GAAR

- The Spanish GAAR may apply in tax treaty scenarios
- At a cross-border level, mainly used to deny the deductibility of financial expenses on loans to purchase intra-group participations (e.g. Metaldyne Engine Holdings, ECLI:ES:AN:2016:3389; Insulation Spain Holdings, ECLI:ES:AN:2021:5387)
- In Dec. 2021, a report was published on the applicability of the GAAR to EU conduits (NL) of non-EU parents (US). Markers:
 - Accounting kept in the US
 - Domicile shared with other 4.255 entities
 - 4 NL directors also directors in other entities
 - No employees
 - No functions other than channelling payments (dividends/interest)



Inbound: holding regime (ETVE)

- Three features:
 - Access to the Spanish tax treaty network
 - 95% participation exemption
 - No WHT in Spain on the payment of ETVE dividends
- Requirement: enough means (personal and material) to manage the participations, interpreted very lightly (e.g. Frutos y Zumos SA, ECLI:ES:AN:2021:752)



Thank you

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