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Our Guide on Excess Withholding Recovery

Tax

Guide on Excess Withholding Recovery

The Spanish tax system allows non-resident investors to recover excess withholdings applied on dividends received from Spanish companies. In this context, it is common for withholdings to be higher than those stipulated by Double Taxation Treaties (DTTs) between Spain and the investor's country of residence. This guide provides a detailed analysis of the process for recovering such excessive withholdings, a key opportunity to optimize the tax burden and ensure proper compliance with international regulations.

Why is this process relevant?

The process of recovering excess withholding can be financially significant, especially for institutional investors, family offices, and high-net-worth individuals who manage large amounts of capital. The difference between the withholding applied and the correct withholding under the DTT can translate into considerable amounts that can be claimed and refunded to the investor.
To determine whether excess withholding has occurred, it is necessary to conduct a detailed review of several key factors, including:

- **Withholding percentage** applied on dividends received.
- **Limits established in the DTT** between Spain and the investor's country of residence.
- **Additional withholding** applied in Spain on dividends.
- **Withholding certificates** issued by the paying entity in Spain.

The difference between what has been withheld and what corresponds according to the DTT is the amount that can be claimed.

How does the Double Taxation Treaty (DTT) work?

Double Taxation Treaties (DTTs) are bilateral agreements between countries aimed at preventing investors from being taxed twice on income generated in a foreign country. Each DTT establishes the maximum withholding percentage that can be applied to dividends, interest, or royalties an investor receives from a Spanish company.

If the applied withholding exceeds this limit, the investor has the right to request a refund of the difference. This refund can result in significant savings, especially when large amounts are involved.

[1] In accordance with Article 25.1(f) of Royal Legislative Decree 5/2004, of March 5, approving the revised text of the Non-Resident Income Tax Law ("IRNR Law"), the general withholding rate applicable to the payment of dividends by a Spanish company to a foreign company not belonging to the European Union is 19%.

Process to Recover Excess Withholding

The steps required to recover any excess withholding tax that has been applied are described below. The process may vary depending on whether the investor makes the investment directly or through a custodian.

1. Determination of Excess Withholding	The withholding applied must be compared with the limit set in the applicable DTT. The difference is the amount to be claimed.
2. Obtaining a Tax Residence Certificate	This certificate must be issued by the tax authority of the investor's country of residence to prove tax residency status.
3. Filing Form 210	This form must be submitted to the Spanish Tax Agency to request a refund of the excess withholding. It is essential to include all supporting documents, such as withholding certificates issued by the paying entity in Spain.
4. Submission of the Claim	Once the request has been filed in Spain, the next step is to send the claim to the tax authority of the investor's country of residence within the established term.
5. Receiving the Refund	The refund is made via bank transfer, either to a Spanish or foreign bank account, depending on the investor's preference.

Distinction in the Process: Direct Investors vs. Investors through Custodians

The process for claiming excess withholding may vary depending on whether the investor makes the investment directly or through a custodian. The key differences are detailed below:

Investors who invest directly:

- **Direct receipt of dividends:** The investor receives dividends directly from the Spanish company. These dividends are usually subject to withholding at source.
- **Documentation:** The investor has direct access to the withholding certificates issued by the paying company in Spain, which are required to file the claim.
- **Claim process:** The claim is filed directly with the Spanish Tax Agency through Form 210, without the need for intermediaries.

Investors who invest through custodians:

- **Custodian intermediation:** The custodian, which may be a financial institution, manages the investment on behalf of the investor. Dividends are not always distributed directly to the investor; instead, they first pass through the custodian, who withholds them before making the final payment.
- **Withholding certificates:** In this case, the custodian issues the withholding certificate, not the Spanish company distributing the dividends. The investor must request this withholding certificate from the custodian.
- **Claim process:** Although the process remains the same (filing Form 210 with the Spanish Tax Agency), there may be an additional step requiring coordination with the custodian to obtain the necessary documents and proof of the withholding applied.

Direct Investors

STEP 1

Receipt of dividends directly from the Spanish company.

STEP 2

Withholding certificate issued by the paying company.

STEP 3

Submission of Form 210 to the Spanish Tax Agency.

Investors through Custodians

STEP 1

The custodian receives the dividends on behalf of the investor.

STEP 2

The custodian issues the withholding certificate.

STEP 3

The investor submits Form 210 after coordinating with the custodian to obtain the necessary documentation.

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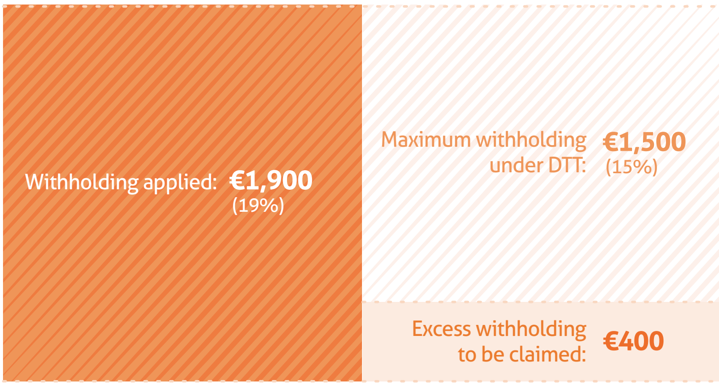
Practical Examples

Example 1: Investor resident in the U.S.

A U.S.-resident investor received 10,000 euros in dividends from a Spanish company in 2023. Spain applied a **19%** withholding (1,900 euros). However, the DTT between Spain and the U.S. sets the maximum withholding at **15%.**



The investor is entitled to recover 400 euros (€1,900 - €1,500).

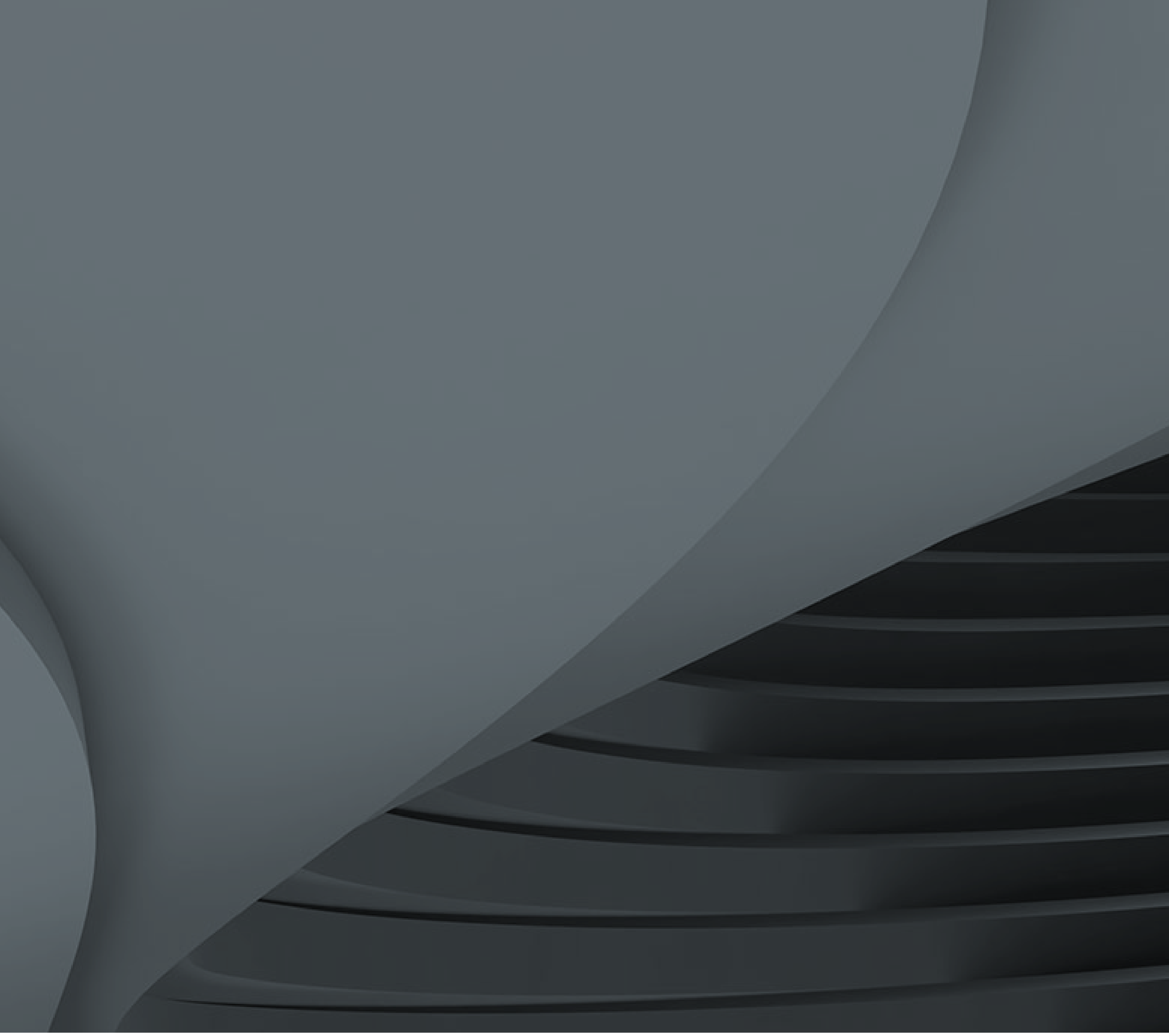
Example 2: Investor resident in Mexico.

An investor resident in Mexico received 15,000 euros in dividends from a Spanish company. Spain applied a **19%** withholding (2,850 euros). However, the DTT between Spain and Mexico sets the maximum withholding at **10%**.

The investor is entitled to recover 1,350 euros (€2,850 - €1,500).

Need help with the claim?

If you believe you have suffered excess withholding, our team of international tax experts are available to guide you through the process. It is advisable to contact a specialized advisor for detailed assistance.



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