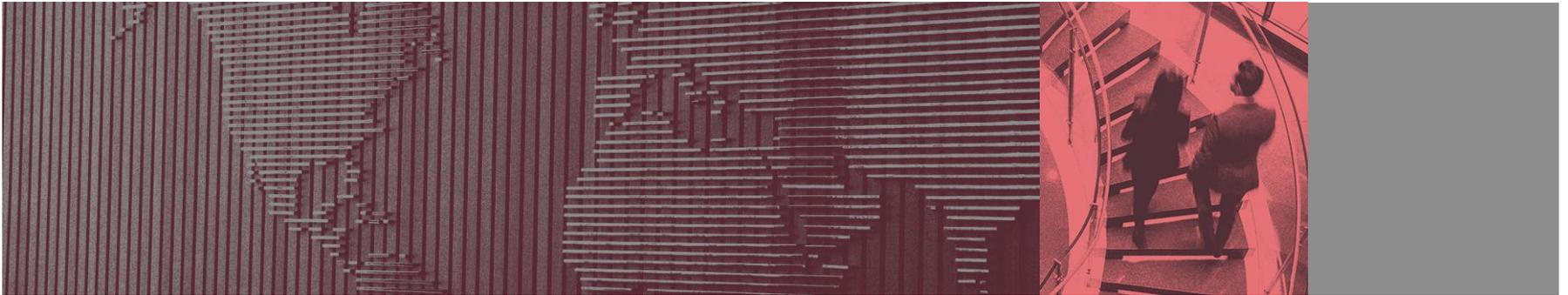




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# Substance requirements in ETVE companies in a post-BEPS world



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## IN A NUTSHELL:

- Spain offers a very attractive holding tax regime (ETVE) and is not a tax haven jurisdiction
- Spain is the jurisdiction with the most Tax Treaties and Bilateral Investment Treaties in force with Latin America

# SPANISH TREATY NETWORK

 Albania	 Croatia	 Iceland	 Moldova	 Slovenia
 Algeria	 Cuba	 India	 Morocco	 South Africa
 Andorra	 Cyprus	 Indonesia	 New Zealand	 South Korea
 Argentina	 Czech Republic	 Iran	 Nigeria	 Sweden
 Armenia	 Denmark	 Ireland	 Norway	 Switzerland
 Australia	 Dominican Republic	 Israel	 Oman	 Thailand
 Austria	 Ecuador	 Italy	 Pakistan	 The Netherlands
 Barbados	 Egypt	 Jamaica	 Panama	 Trinidad and Tobago
 Belgium	 El Salvador	 Japan	 Philippines	 Tunisia
 Bolivia	 Estonia	 Kazakhstan	 Poland	 Turkey
 Bosnia Herzegovina	 Ex URSS	 Kuwait	 Portugal	 United Arab Emirates
 Brazil	 Finland	 Latonia	 Romania	 United Kingdom
 Bulgaria	 France	 Lithuania	 Russia	 United States
 Canada	 Georgia	 Luxemburg	 Saudi Arabia	 Uruguay
 Chile	 Germany	 Macedonia	 Senegal	 Uzbekistan
 China	 Greece	 Malaysia	 Serbia	 Venezuela
 Colombia	 Hong Kong	 Malta	 Singapore	 Vietnam
 Costa Rica	 Hungary	 Mexico	 Slovakia	

## AGREEMENTS FOR EXCHANGE OF INFORMATION

 Andorra	 Curazao	 Monaco*
 Aruba	 EE.UU. (FATCA)	 Saint Lucia*
 Bahamas	 Guernsey*	 Saint Marino
 Bermudas*	 Isle of Man*	 Saint Martin
 Cayman Island*	 Jersey *	 Saint Vincent and the Grenadines
 Cook Island*	 Macao*	

*(\*) Agreements not in force.*



## BLACK-LISTED JURISDICTIONS

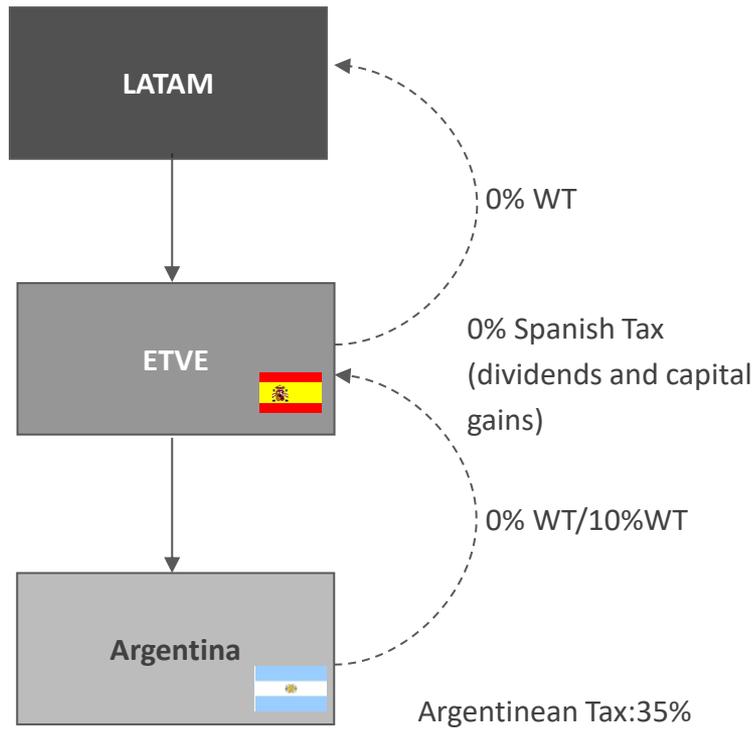
- Bahrain
- Brunei
- Cyprus
- Gibraltar
- Anguilla
- Antigua and Barbuda
- Bermuda
- Cayman Islands
- Cook Islands
- Republic of Dominica
- Grenada
- Fiji
- Channel Islands (Guernsey and Jersey)
- Islas Malvinas
- Isle of Man
- Mariana Islands
- Mauritius
- Montserrat
- Republic of Nauru
- Solomon Islands
- Saint Vincent and the Grenadines
- Saint Lucia
- Turks and Caicos Islands
- Republic of Vanuatu
- British Virgin Islands
- United States Virgin Islands
- Hashemite Kingdom of Jordan
- Republic of Lebanon
- Republic of Liberia
- Principality of Liechtenstein
- Macau
- Principality de Monaco
- Sultanate of Oman
- Republic of Seychelles

## THE IDEAL HOLDING REGIME

### ETVE

- No taxation on paid-in dividends
- No taxation on paid-in capital gains
- No taxation on paid-out dividends/gains
- No capital tax
- Financing expenses generally deductible
- Wide tax treaty network
- Stable and reliable regime
- Protection of the investment (Bilateral Investment Treaties)





Domestic legislation & treaty

- Dividends: 0% Withholding tax (WT)
- Capital gains on the sale of ARG subsidiaries: 13,5%/15% (10% treaty limits)

## COMPARISSON. LATAM

	Argentina 	Brazil 	Chile 	Colombia 	Mexico 
<b>Dividend</b>	€100	€100	€100	€100	€100
<b>DTT WT</b>	0% - 10% - 15%	0%-10% - 15%	5% - 10%	0% - 5%	0% - 10%
<b>ETVE Spanish CIT</b>	0%	0%	0%	0%	0%
<b>WT exit to shareholder</b>	0%	0%	0%	0%	0%
<b>Minimum net dividend</b>	€100 - €85 - €90	€85 - 90€	€90 - €95	€95 - €100	€90 - €100



## ETVE requirements

- **BUSINESS PURPOSE**: To manage the shareholdings in non-Spanish subsidiaries (other activities allowed).
- **SUBSTANCE**: Need of human and material resources to manage the shareholdings in non-Spanish subsidiaries.
- **FORM OF THE ETVE**: Sociedad Limitada, Sociedad Anónima (per ser corporation) or Sociedad Comanditaria. Need to have nominative shares.
- **FILINGS**: A notification must be filed before the Spanish Tax Authorities.

## Substance and BEPS/GAAR

- The “substance” requirement and the BEPS Project/MLI
- Action 6 BEPS (Treaty abuse)
- Preamble and Principal Purpose Test (PPT) in the MLI
- The substance requirements and the “effective management” (article 4 Tax Treaties)
- The substance requirements and the GAARs.
- The substance requirements and the “genuinity” of the structure.
- A safe harbor objective list? Facts and circumstances? Case by case approach?

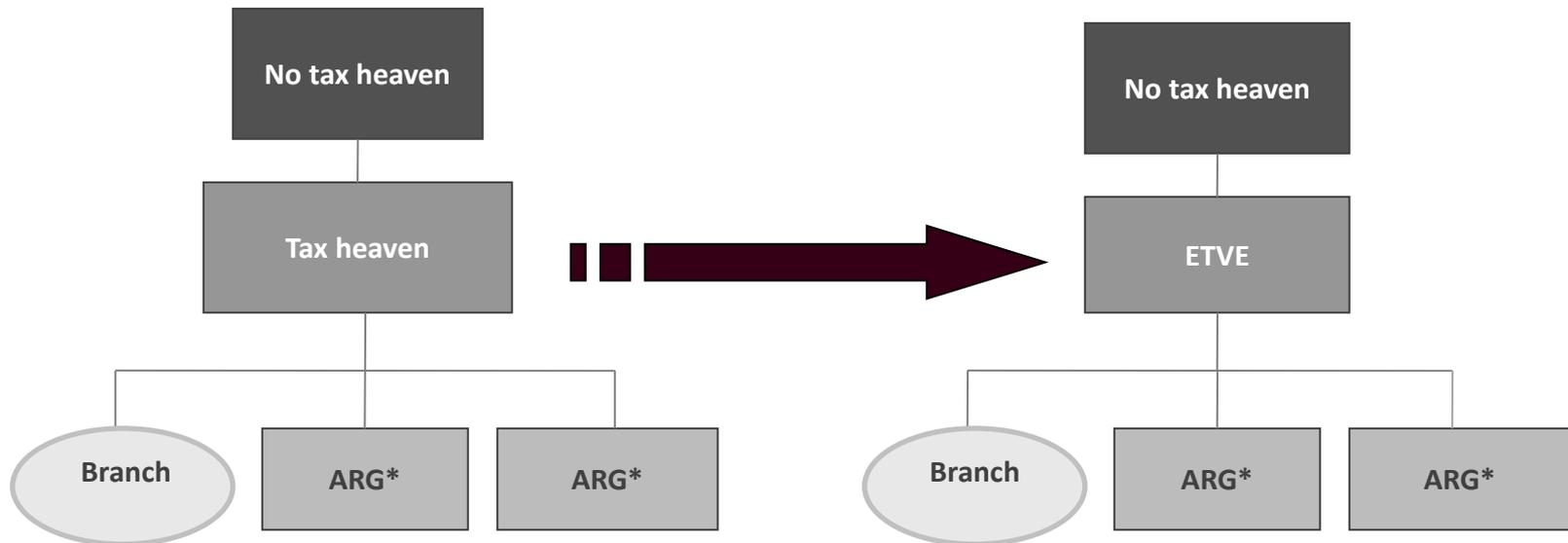


## Guidelines for good practices:

- > Directors
- > Decisions
- > Bank accounts
- > Administration
- > Dividends' policy
- > Personal means
- > Material means

Restructuring opportunities to achieve BEPS compliant structures: migrating holding companies from black-listed countries to Spain

- ✓ No capital tax
- ✓ No winding-up of the company: continuance of the legal personality.
- ✓ No taxable capital gain for the company or the shareholders.



\*Qualifying subsidiaries

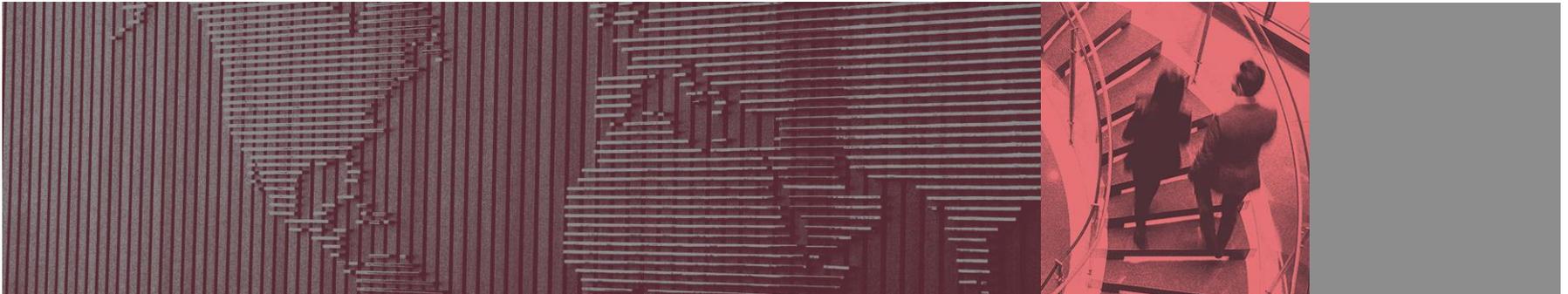


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