
Approval of new regime for proving tax residence of certain EU Investment Funds and Pension Funds

Legal Flash Tax

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- › The Spanish Government has approved specific rules to prove tax residence of certain investment vehicles in order to be entitled to the domestic exemption on interest and capital gains obtained by taxpayers resident in the European Union.
- › This new regime aims to make it easier for certain foreign pension and investment funds (such as SICAV, SIF and RAIF established in Luxembourg) to prove their tax residence or the tax residence of their members in the European Union to take advantage of the exemption, not only for withholding purposes, but also when filing a tax return, by providing specific certificates or statements.
- › It entered into force on October 20.



Interest and capital gains on the transfer of movable assets are exempt for Non-Resident Income Tax (“NRIT”) purposes when they are derived by taxpayers who are resident in other European Union Member States and do not have a permanent establishment in Spain. The European Commission has already notified that Spanish tax authorities that this exemption should be extended to the European Economic Area.

The recipient of the income can give the withholding agent and the tax authorities proof of its tax residence in the European Union, so that it is entitled to the exemption, by submitting a certificate of tax residence. Since obtaining this certificate can be difficult for a tax transparent recipient, the new regime approved by [Decree 595/2019 of October 18](#) sets out rules to make it easier.

The new rules apply to two different sets of foreign pension funds (and their permanent establishments):

- Pension funds under [Directive 2016/2341](#) can prove their tax residence with a certificate issued by the regulatory authorities of the State where the pension fund is located. This certificate must identify the pension fund and is valid while the information on it does not change.
- Pension funds that are not regulated by the Directive, but are considered analogous to those covered by Spanish domestic legislation on pension funds because they meet certain requirements provided by the NRIT Act can prove their tax residence with a statement from the entity’s representative using the template that the Spanish tax authorities will publish. This statement will be valid for one year.

The regime also refers to foreign investment funds harmonized under [Directive 2009/65](#) (“UCITS Directive”) or under [Directive 2011/61](#) (“AIMFD”):

- First, it is necessary to identify whether the entity is subject to the Spanish special regime of income attribution that applies to foreign entities whose legal nature is identical or analogous to Spanish entities to which this regime applies.
- If the income attribution regime does not apply, investment funds under the UCITS Directive can prove their tax residence by submitting a certificate issued



by the regulatory authorities of the State where the fund is registered. Thus, the tax authorities of that State are not involved. Annex II of the [Commission Regulation \(EU\) 584/2010](#) provides the template for this certificate, and it is valid while the information on it does not change.

Investment funds under the AIMFD can also prove their tax residence by submitting a certificate issued by the regulatory authorities of the State where they are registered. This certificate must identify the fund and its management regime, and is valid while the information does not change. Alternatively, they can prove their tax residence through a statement from the representative of the fund or its management company using the template that the tax authorities will publish. This statement is valid for one year.

- If the income attribution regime applies to the investment fund and it has no physical presence in Spain, the taxpayer for NRIT purposes is not the fund but its members. In these cases the fund can identify where its members are resident under the regulations of [Directive 2011/16](#) (“Directive on Administration Cooperation”) on financial account information, so that the exemption applies proportionally to the members entitled to it (i.e., for those resident in the European Union) as of December 31 of the previous year. Whether the entity is subject to the income attribution regime, and the percentage of members entitled to the exemption, can be proved by a statement from the representatives of the entity or the management company, using the template that the tax authorities will publish. The investment fund must also prove its tax residence as discussed above.

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