

Spanish Withholding Tax

Under Spanish law, dividends paid by Santander, a Spanish resident company, to a holder of ordinary shares not residing in Spain for tax purposes are subject to Spanish Non-Resident Income Tax (withholding tax) at a 21%* rate, since January 1, 2012.

Following the procedures set forth by Spanish legislation, Santander will levy an initial withholding tax on the gross amount of dividends at this 21% tax rate.

Notwithstanding the above, if you are resident in the United Kingdom then you may be eligible to apply for a lower rate of withholding tax of 15%, or for a refund of any withholding tax deducted in excess of 15%.

In addition, if you are resident for tax purposes in the United Kingdom, in general you will be subject to UK income tax or corporation tax on the dividends. This is charged on the gross amounts of dividend paid on the new shares rather than the net amount received after any Spanish withholding tax has been deducted.

As you may know, dividends received by individual shareholders are taxed at rates of 10%, 32.5% or 42.5% for basic rate and higher rate taxpayers respectively.

When dividends from UK-resident companies are charged to tax, shareholders are entitled to a non-payable tax credit of one ninth of the distribution under the provisions of section 397 (1) of the Income Tax (Trading and Other Income) Act 2005. Because tax is charged on the gross dividend received, including the tax credit, this lowers the effective rates of tax on these dividends at the personal level to 0% and 25% of the gross dividend (excluding the UK tax credit).

From 6 April 2008 this non-payable tax credit of one ninth of the distribution is **extended to individuals in receipt of dividends from non UK- resident companies**, subject to certain conditions. A person will qualify for the non-payable dividend tax credit if they own less than a 10% shareholding in the distributing non UK-resident company.

In consequence, with this tax credit, the **effective tax rate in the UK for dividends distributed by non UK-resident companies** will be reduced to 0%, for basic rate taxpayers, and **25%**, for higher rate taxpayers, of the gross dividend (excluding the UK tax credit).

However, Spanish withholding tax can generally be credited against a shareholder's UK tax liability, on that dividend, at a maximum rate of 15% of the gross dividend, but excluding any withholding tax which is eligible to be refunded.

At present there are two procedures for shareholders to recover the 6% excess withholding tax, only the first of which is currently a viable option for you:

The first option to obtain a refund of the 6% excess withholding directly from the Spanish tax authorities is by providing the following documentation:

- A Spanish 210 Form
- A certificate of residence issued by the competent tax authorities within the meaning of the relevant income tax treaty.

- Evidence that Spanish non-resident income tax of 21% rate was withheld with respect to the shareholder i.e. dividend statement.

The refund claim must be filed within four years of the date on which the withheld tax was collected by the Spanish tax authorities (first twenty days of the month following the dividend payment). All paperwork has to be submitted through a Spanish tax representative or "Gestoria". Below are the details of one such tax representative although you are of course free to select any of your choosing:

Gestoria Mingot
C/Principe de Vergara 56, 4 Derecha
28006 Madrid
Spain
E-Mail: gesmingot@gestores.net
Website: www.gesmingot.com

Please note that the costs of the above service may outweigh the benefits.

The second option, which is not currently practicable, is for shareholders to obtain a certificate of residence from their home country tax authority stating that to their knowledge, the shareholder is a resident of said country within the meaning of the relevant income tax treaty signed with Spain. The tax certificate is valid for a period of one year and can be renewed by the shareholder. This certificate must be provided to the depository (Euroclear) of the Santander shares, quarterly, before the tenth day following the end of the month in which the dividends were distributable. However, the reason that this is not a viable option is that Euroclear currently have no procedure in place for individuals to lodge their certificate.

In addition to the above, according to Spanish Non Resident Income Tax Law, you may also be eligible from 1 January 2007 to a refund of all the withholding tax deducted from dividends up to a maximum of €1,500 of gross dividends per annum. This limit applies in respect of all dividends received from any Spanish companies.

As yet, however, no specific procedure has been set out by the Spanish tax authorities to reclaim a full refund of the withholding tax deducted. Currently, therefore only the procedures described above can be used for individual claims.

*The Spanish Government increased the rate of withholding tax from 19% to 21% effective from 1st January 2012.

New Spain-UK double tax treaty

Spain and the United Kingdom agreed a new treaty for the avoidance of double taxation in March 2013. The treaty will take effect three months after confirmation that it has been approved under the parliamentary procedures required by both Spain and the United Kingdom.

For dividends paid after the treaty enters into force, the 15% lower rate of withholding tax referred to above shall be reduced to 10%. Accordingly, in relation to those dividends:

- UK residents may be eligible to apply for a lower rate of withholding tax of 10%, or for a refund of any withholding tax deducted in excess of 10%; and
- the maximum rate of Spanish withholding tax that can be credited against a shareholder's UK tax liability will be reduced to 10% of the gross dividend (excluding any withholding tax which is eligible to be refunded).