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THE SPANISH SUPREME COURT'S STANCE ON EU CONDUIT STRUCTURES IS A CLEAR WARNING

SPANISH SUPREME COURT JUDGEMENT (Nº 7/2026, 12 JAN 2026): CLEAR SUBSTANCE CRITERIA FOR EU HOLDINGS, AND NO TREATY FALLBACK IF THE EU EXEMPTION FAILS.

The case concerns royalty payments made by the Spanish VELCRO subsidiary, to VELCRO HOLDING BV (Dutch Sub-holding) resident in the Netherlands, while the ultimate owner of the IP was based in Curaçao (Curaçao holding).

The group's licensing setup channeled royalties through the Dutch entity: first under a structure where the Curaçao holding licensed directly to Spain with the Dutch sub-holding company managing European rights. Based on this framework, the Spanish subsidiary initially applied the 6% reduced withholding rate under Article 12 of the Spain–Netherlands DTT, arguing that the Treaty should govern the payments.

Later (from 1 March 2014), under a new licence–sublicence chain in which the Dutch company formally sublicensed the IP to the Spanish subsidiary, and a letter of understanding requiring the Spanish subsidiary to centralize the group's royalty payments, no withholding tax applied under the EU Interest & Royalties Directive.

However, the Spanish Tax Administration denied the relief concluding that the Dutch entity lacked genuine economic substance and acted merely as a conduit. The funds were immediately transferred to the non-EU parent company (Curaçao holding), showing that the Dutch Sub-holding was not the beneficial owner. Consequently, the exemption was rejected, and the full domestic withholding tax was applied (24,75%).

Key Reasons Behind the Rejection of the exemption and the reduced rate of the DTT

» The exemption was rejected because the Dutch holding lacked genuine substance, operating without its own staff, assets, or decision-making capacity.

» The Dutch entity could not qualify as the beneficial owner, as the income was automatically upstreamed to the non-EU parent and the holding had no capacity to manage, retain, or control the funds.

» With no decision-making functions, economic activity, or risk assumption, its presence in the Netherlands was purely instrumental.

Spanish Supreme Court Conclusions

» The Supreme Court concludes that the Dutch sub-holding company lacked genuine substance, fully aligning with the standards set by the CJEU Danish Cases

- had no employees or its own operational resources,
- assumed no economic risks and had no decision making power over the funds received,
- carried out no relevant functions, and
- operated solely as a conduit, passing income to entities located in third countries.

On this basis, it could not be regarded as the beneficial owner, a material requirement for applying the Interest & Royalties Directive.

» Once the UE Directive's exemption failed, the Supreme Court held that the taxpayer cannot rely on the Tax Treaty to obtain a reduced withholding rate.

The reasoning is clear: EU law prevails, and allowing the DTT to grant a reduced rate where the Directive denies relief would undermine the primacy and effectiveness of EU law.

Best practice calls for a review of international structures, the assurance of genuine substance, and the verification of beneficial-ownership requirements; the consequences are, in practical terms, "no half measures." If the EU exemption does not apply, the tax cost can escalate materially—not only is the 0% rate unavailable, but the group also cannot rely on the Tax Treaty to limit withholding.

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