THE MADRID HIGH COURT ENDORSES TAXPAYERS AND EMPLOYEES UNDER THE BECKHAM REGIME TO CLAIM RELIEF FOR DOUBLE TAXATION

Does the treaty rate truly cap the foreign tax credit? The Madrid high court says no.

The Madrid High Court (Judgment nº 30/2026, 26 January 2026) examined a 2020 Personal Income Tax assessment issued to a Spanish resident individual who received dividend income from several foreign jurisdictions (United States, Germany, Switzerland, the Netherlands, France, among others) which had been subject to withholding tax at a rate higher than that established in the applicable Double Tax Treaties (DTT).

It should be recalled that, under the special Beckham regime, Personal Income Tax taxpayers cannot obtain a Spanish tax residence certificate for treaty application purposes and therefore cannot invoke the treaty limits.

The taxpayer claimed an international double tax credit for the full amount of foreign withholding tax actually paid abroad.

The Spanish Tax Authorities (STA) rejected the deduction, limiting the credit to the maximum withholding tax permitted under the applicable DTTs (generally 15% of the gross dividend). Any excess tax withheld abroad, in the STA’s view, must be reclaimed directly by the taxpayer from the foreign tax authority.

Article 80 of the Spanish Personal Income Tax Law (PIT Law 35/2006) governs the foreign tax credit, allowing a deduction for the lower of: (i) the effective foreign tax paid, or (ii) the Spanish average tax rate applied to the taxable base generated abroad.

Article 5 of the Spanish PIT Law clarifies that these rules operate without prejudice to international treaties.

The taxpayer argued that neither the domestic law nor the treaties require limiting the credit to the treaty ceiling where the actual withholding exceeds 15%, and therefore the full foreign tax paid should be creditable.

COURT CONCLUSIONS

The Madrid High Court emphasised that the purpose of the international double-tax credit is to prevent the economic double taxation of income obtained abroad by a Spanish resident taxpayer, and that Article 80 of the PIT Law only requires that the income has been obtained and taxed abroad, without imposing a treaty-based limit.

The Court stressed that disagreements between States regarding the correct interpretation or application of a Double Tax Treaty cannot be imposed on the taxpayer, who is not responsible for seeking refunds abroad. The expression “effective amount paid abroad” must be determined in accordance with the law of the source State, not Spanish law, and must be compared against the statutory limitations of Article 80, not against the treaty ceiling.

As a result, the Court found no conflict between the PIT Law and the Double Tax Treaties, holding that the taxpayer could credit the full foreign tax paid, and that the 15% treaty limit did not restrict the credit.

This development is particularly relevant where individuals under the Beckham regime receive employment income that has been subject to withholding in the source State despite the fact that such withholding should not have applied under the relevant DTT and the taxpayer seeks to claim the foreign tax credit in Spain.

Each case must be examined individually to determine whether the income category is one for which the treaty actually limits source State taxation.

Above all, it is important not to overlook a principle often forgotten in international practice: disputes between tax authorities over where income should be taxed cannot be shifted onto the individual taxpayer.

We will need to closely monitor how the Supreme Court ultimately rules on this matter, as well as whether other Regional High Courts adopt the same position.

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