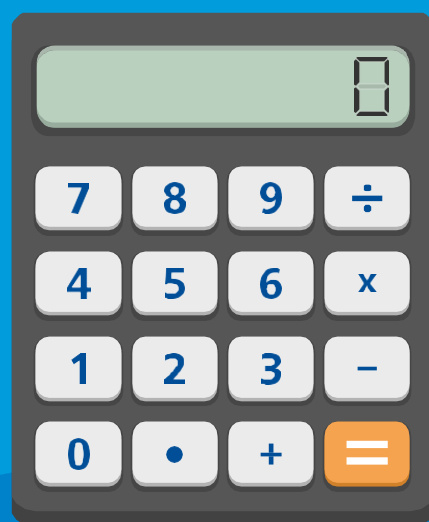




New special regime governing the evidence of residence to be provided by pension funds and CIs in order to apply certain exemptions

Tax Alert



November 2019

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19 October saw the publication in the Official State Gazette of [Royal Decree 595/2019 of 18 October 2019, modifying the Non-Resident Income Tax Regulations, approved by Royal Decree 1776/2004 of 30 July 2004](#), entering into force on 20 October 2019 (RD 595/2019).

RD 595/2019 amends the Non-Resident Income Tax Regulations (NRITR) as regards the manner in which **pension funds and collective investment vehicles (CIVs) must provide evidence of residence** for the purposes of applying the exemption on certain income and capital gains on securities envisaged in article 14.1. c) of [Royal Legislative Decree 5/2004 of 5 March 2004, approving the Revised Non-Resident Income Tax Law](#) (RNRITL).

The above provision regulates the exemption on interest and other income earned from the assignment of own capital to third parties, as well as on capital gains deriving from moveable property, subject to certain exceptions, provided such income is earned without the mediation of a permanent establishment by residents in another European Union (EU) member state or by permanent establishments of such residents located in another EU member state.

In the **case of income earned by EU-resident pension funds or collective investment vehicles**, the effective application of this exemption tends to run into certain obstacles given **the difficulties that such entities or their members have in evidencing their tax residence**, since they often enjoy a preferential tax regime **in their jurisdictions of origin**, which may mean that the tax authorities in such jurisdictions refuse to grant the relevant tax residence certificates.

In order to overcome such obstacles, RD 595/2019 **provides for a special regime governing the manner in which pension funds and CIVs may evidence residence for the sole purposes of applying the above exemption**, in order to effectively evidence such residence in dealings with persons or entities obliged to make withholdings or, where applicable, with the tax authorities, and the regime is thus set to benefit pension funds and CIVs receiving interest or realising gains on shares (among other income) in Spain.

To this end, the following Additional Provision Three has been added to the above Regulations:

Pension Funds

- a. In the case of **pension funds equivalent** to those regulated in the [Revised Pension Plans and Funds Law](#) (approved by Royal Legislative Decree 1/2002 of 29 November 2002) or permanent establishments of such pension funds, by means of a **declaration issued by their representative stating that the statutory requirements have been met, with the content and in line with the form established by the Ministry of Finance**. This declaration will be **valid for one year** as from the date on which it has been issued.

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Specifically, this method of evidencing residence applies to “equivalent pension funds”, meaning the social welfare institutions that meet the requirements set forth in article **14.1.k) of the RNRITL**, which provides as follows:

(...)

“Social welfare institutions meeting the following requirements are deemed to constitute equivalent pension funds:

- *Their sole purpose must be to provide supplementary benefits at the moment of retirement, death, disability or dependency on the terms provided for in article 8.6 of the Revised Pension Plans and Funds Law.*
- *The employer contributions that may be made must be attributed for tax purposes to the member to whom the benefit is linked, irrevocably assigning the right to receive the future benefit to such member.*
- *They must enjoy a preferred deferral tax regime with respect to both the member and the employer contributions made in such connection. The above regime must entail the effective taxation of all member and employer contributions, as well as of any profit earned from the management thereof on the date on which the benefit is received.*

The provisions of this section shall also apply to equivalent pension funds resident in European Economic Area member states, provided such states have entered into a convention for the avoidance of double taxation with Spain with an exchange of information clause or an undertaking to exchange tax-related information.”

- b. In the case of “**equivalent pension funds” taking the form of the social welfare institutions regulated under [Directive 2016/23 on the activities and supervision of institutions for occupational retirement provision](#)**, by means of a **certificate issued by the competent authority of the State in which the vehicle is established**, detailing, together with the nature of the occupational pension fund authorised or registered in line with the above Directive, the full name of the institution, the State in which it is established and the date on which it was

authorised or its administrative registration number. The task of authorising, registering and supervising the institution lies with the competent authority.

Such certificates are valid on an **indefinite basis**, unless any of the particulars recorded are modified, in which case the entity tasked with applying the exemption must be notified of such circumstance, whereupon they cease to become valid and a new certificate is required.

Collective Investment Vehicles

- a. In the case of **collective investment vehicles regulated under [Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\)](#)** that are not deemed to constitute a pass-through entity, **by means of a certificate issued by the competent authority of the vehicle’s member state of origin**, which must have the same content, save as regards the reason for which it was issued, as the model UCITS certificate provided for in Annex II to Commission Regulation (EU) 584/2010 of 1 July 2010, implementing Directive 2009/65/EC. The competent authority will be that designated per the provisions of article 97 of the above Directive.
- b. In the case of an **alternative collective investment vehicle subject to an administrative authorisation, registration or supervision regime and managed by an alternative investment fund manager regulated under [Directive 2011/61/EU](#) that is not deemed to constitute a pass-through entity**, residence may be evidenced by any of the following methods:
- **A certificate issued by the competent authority of the State in which the vehicle is established**, detailing the full name of the undertaking, its domicile, the State in which it is established, its legal form and, where applicable, the date on which it was authorised or its administrative registration number, as well as the fact that it is managed by a management entity, or is self-managed, authorised in line with Directive 2011/61/EU, together with the name and domicile of the above management entity. The task of authorising, registering and supervising the undertaking lies with the competent authority.

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- **A declaration prepared by the representatives of the vehicle or its management entity**, detailing, together with the information referred to in the preceding section, the company name and domicile of the depositary, in line with the model established by the Ministry of Finance. This declaration will be valid for one year as from the date on which it is issued.

In both cases, the certificates for this type of CIV are valid on an **indefinite basis**, unless any of the particulars recorded are modified, in which case the entity tasked with applying the exemption must be notified of such circumstance, whereupon they cease to become valid and a new certificate is required.

- c. In the case of CIVs regulated under [Directive 2009/65/EC](#) or alternative CIVs subject to an administrative authorisation, registration or supervision regime and managed by an alternative investment fund manager regulated under Directive 2011/61/EU, **which are deemed to constitute pass-through entities**, evidence of

residence for the purpose of applying the exemption must refer not to the CIUV itself, but rather to its members, and must be provided per the following terms:

- The CIV may determine its members' residence in line with the provisions of Annexes I and II of [Council Directive 2011/16/EU of 15 February 2011](#).
- The exemption will be applied based on the percentage stake in the CIV held by the relevant members, as determined on 31 December of the year prior to the year in which the income is obtained.
- **Evidence** of both a vehicle's status as a pass-through entity and the percentage stake held by the members entitled to the exemption must be provided **by means of a declaration** issued by the representative of the vehicle or its management entity, with the content and in line with the form approved by the Ministry of Finance.

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