



The Spanish General Directorate of Taxes rules on the deductibility of the insurance technical reserves for Corporation Tax purposes

Tax Alert



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The Spanish General Directorate of Taxes (“DGT”) rules on the deductibility of the insurance technical reserves for Corporation Tax purposes

The recent criteria established by the DGT in two recent binding rulings (V1382-24 and V1383-24 of 11 June 2024), both yet to be published, will have a significant positive impact for insurance companies in Spain, particularly, for permanent establishments of foreign insurance companies. The rulings in question address how to compute the limits applicable to the deductibility of expenses relating to the insurance claims reserves for Corporation Income Tax (“CIT”) purposes and, more specifically, on how to factor into said limitations the income arising in connection with ceded reinsurance portfolios.

The binding rulings in a nutshell

In the above binding rulings, the DGT addresses three main issues, on which it concludes as follows:

1. First, the DGT indicates: If a non-resident insurer entity that operates in Spain through a Permanent Establishment (“PE”), is allowed, in accordance with the legislation of the jurisdiction of the head office, to calculate the claims reserves (“*Provisión por prestaciones*”) by using statistical/actuarial methods, the expense corresponding to such provisions recorded in any relevant fiscal year, will be tax deductible up to the minimum amounts established in Spanish sectorial legislation (paragraphs 2 and 3 of Additional Provision Sixth of Royal Decree 1060/2015 of 20 November 2015 on the Regulation, Supervision and Solvency of Insurance and Reinsurance Entities - the “**ROSSEAR**” per its Spanish acronym).

The rulings establish that, during the first three years of application of the statistical method, the minimum amount to determine the deductibility of the claims reserves will have to be calculated in accordance with paragraph 3 of Additional Provision Sixth of the ROSSEAR.

From the fourth year onwards, the minimum amount deductible will be calculated by applying the formulas foreseen in paragraph 2.b) of the above additional provision.

The key point here is that the DGT recognises the possibility for a PE of a foreign insurance entity to use the calculations foreseen in the referred Additional Provision Sixth for statistical methods, to calculate the CIT deductibility limits of the claims reserves, even though a PE of a foreign insurance entity cannot obtain an explicit authorization from the Spanish General-Directorate of Insurance and Pension Funds (“**DGSFP**”) for this purposes.

2. The DGT also notes that, to the extent that a portion of the expenses corresponding to the claims reserves is not tax deductible, as it exceeds the minimum amounts envisaged in additional provision six of the ROSSEAR, the income from the reversal of such expenses in the following year will not be included in the computation of the CIT base.

This means that a positive book-to-tax adjustment will be made in one period, and it will be reversed as a negative book-to-tax adjustment in the following year.

3. Last, the DGT rules that the income registered in the P&L that relates to ceded reinsurance, shall be factored in for the purposes of calculating the CIT tax limitation to the claims reserve, by using the same methods and formulas.

The relevant calculations must be performed separately: i) on one hand, looking at the claims reserve and calculating the minimum amounts; and ii) on the other hand, calculating the minimum amounts in the same way by only in respect of the portion of the ceded reinsurance portfolio.

Any income that exceeds said minimum amount will not be taxable and the relevant negative book-to-tax adjustment shall be made into the CIT computation.

Impact of the rulings

Statistical methods - Permanent establishments of foreign entities

Prior to these binding rulings, neither the DGT nor the courts had expressed a clear view on the method to be used by branches of non-resident insurance companies to determine the minimum amounts referred to in article 14.7 of the CIT Law.

3 The DGT rules on the deductibility of technical provisions at insurance companies

According to the DGT's recent binding rulings, provided that the Head Office of the Spanish PE, is allowed in the relevant jurisdiction to use statistical methods, the Spanish PE should be able to rely on said methods, but when assessing the minimum amounts that apply as a limit on the CIT deductibility, it should observe either section 2.b) (from year 4th onwards) or section 3 (during the first 3 years) of the Provision Additional Sixth.

Impact on the calculation of the minimum amounts with respect to income from ceded reinsurance.

Until these recent binding rulings, there was no clear tax criterion on how the factor the income registered corresponding to the ceded reinsurance portfolios into the tax deductibility limits applicable the insurance claims reserve.

However, in the wake of these binding rulings, insurance companies will be able to partially eliminate the income registered in the P&L that relates to ceded reinsurance by using the same methods and formulas foreseen for the claims reserve as explained above.

This will have a positive direct effect for insurance entities, particularly for those operating in Spain via a permanent establishment, when it comes to calculating their corporate income tax base.

The impact of these rulings will need to be analysed in detail on a case-by-case basis to minimise the off-balance sheet adjustments and, ultimately, to minimise the temporary differences that historically arise on this regard.

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