Managing a Foreign Business While Living in Spain

CASE A: creation of a mixed holding company resident in Spain that holds shares in companies abroad, with the objective of fiscally optimising dividend receipt, reducing the effective tax burden and maintaining strict compliance with the Agencia Tributaria rules.

OBJECTIVE OF THE STRUCTURE

Allow an individual tax resident in Spain to receive dividends from foreign companies, optimising the tax burden and avoiding double taxation, via a Spanish holding company that centralises ownership and benefit distribution.

PROPOSED STRUCTURE

| Individual person | (resident in Spain) |

▲

Dividends

Spanish holding company – Corporate Tax 25%, exemption 95%

▲

Participation ≥ 5%

Operating company(ies) (abroad) – Income: rentals

DESCRIPTION OF EACH LEVEL

1. **Individual resident in Spain**
   • Acquires tax residence in Spain (more than 183 days a year or centre of interests).
   • Does not carry out an economic activity in Spain.
   • Obtains income in the form of dividends through the holding

   Taxation:
   • Personal Income Tax (IRPF) in the savings base:
   o Up to €6,000: 19%
   o €6,000 – €50,000: 21%

o €50,000 – €200,000: 23%
o More than €200,000: 27–28% (note: verify current rates)

• Possibility to plan the timing of distributions to take advantage of lower brackets. That is, one doesn't need to withdraw large dividends every year.

• Obliged to file:
o IRPF
o Model 720 (if holding foreign participations directly)
o Model 100 (annual income tax return)

2. **<u>Mixed holding company resident in Spain</u>**

• Purpose: holding and managing shares in foreign companies.
• Subject to Corporate Tax (Impuesto sobre Sociedades – IS): 25%.
• Dividend and capital gains exemption regime:
o 95% exemption if:
♣ Minimum participation of 5%.
♣ Held for at least 1 year.
♣ The investee (abroad) is subject to a similar tax with a nominal rate of at least 10%.
o The exempt income does not incur tax, only the remaining 5% is taxable at 25% → effective rate: 1.25%.

Example:
• Dividends received: €100,000
• Exemption: €95,000
• Taxable base: €5,000
• IS at 25% on €5,000 = €1,250
• Effective rate: 1.25%

Advantages:
• Centralises the benefit flows.
• Allows reinvestment from the holding.
• Greater planning capacity (dividends to the individual when fiscally convenient).
• Possible succession or corporate reorganisation planning.

Obligations:
• Accounting in Spain.
• Filing of Corporate Tax (Model 200).
• Commercial Register registration.
• Official accounting books.
• Audit possible if thresholds are exceeded.

3. **Operating companies in Malta**
• Generate income (for example, from rentals).
• Pay taxes abroad on profits, but often benefit from refund or significant reductions under certain regimes.
• Distribute dividends to the Spanish holding company.
Tax considerations:
• In other countries applies a nominal rate of 35% but allows partial refunds to non-resident shareholders, which may reduce the effective burden to 5–10% or even less.
• The double taxation treaty allows credit for tax effectively paid abroad
• It is necessary that the foreign country is not considered a low-tax jurisdiction under Spanish criteria (if actual taxation is <10%, there may be issues of CFC or income attribution).
Essential documentation:
• Certificates of tax paid abroad.
• Tax residence certificates.
• Proof that the company carries on a real economic activity. (substance)

ADVANTAGES OF THE STRUCTURE

Benefit	**Detail**
Partial exemption in IS	95% of dividends and capital gains exempt in Spanish holding.
Control of dividend flow	Can distribute or retain as fiscally convenient.
Asset consolidation	Everything centralised in the holding company.
Double Tax Agreement	Avoids double taxation, with tax credit.

Benefit	Detail
Flexibility for reinvestment	Profits reinvested from the holding with minimal withholding.
Possible succession/asset planning	Holding company facilitates inheritance or donations planning.

RISKS AND CRITICAL REQUIREMENTS

Risk/Obstacle	Explanation
Effective taxation abroad <10%	May prevent Spanish exemption (anti-abuse rule).
Holding without real material means	AEAT may consider the company a “shell”.
Participation <5%	Exemption does not apply.
Not held for minimum of 1 year	Tax benefits are lost.
Foreign company without real activity	May trigger international tax transparency rules (CFC).
Poor timing or planning	Could lead to double taxation due to residence periods.

FORMAL OBLIGATIONS IN SPAIN

1. Incorporation of company (minimum capital €3,000 if SL).
2. Registration with AEAT (Model 036) and obtaining tax identity number (NIF).
3. Keeping official accounting and filing annual accounts.
4. Model 200: Annual Corporate Tax return.
5. Model 202: Instalment payments if applicable.

6. Model 232: Related-party transactions and country-by-country information, if applicable.
7. Obligations for the individual (IRPF) and informational returns (720, 100).

GENERAL CONCLUSION

The creation of a Spanish mixed holding owning companies abroad is a valid and legal strategy to optimise the tax burden on foreign-source dividends, provided that the Spanish tax regime's requirements are rigorously met. It is viable and fiscally efficient, but **it is not automatic nor free of risks**: it must be properly justified, structured and documented.

IMPORTANT

FUND FLOW DIAGRAM – APPROXIMATE TAXATION

Income in foreign company (rentals, profits): €100,000
↓
Dividends distributed to Spanish holding: €100,000
- Withholding in Malta (if any): €0 (or ~5%)
↓
Received by Spanish holding:
- 95% exemption in IS → taxable base: €5,000
- IS at 25% on €5,000 = €1,250
↓
Distribution of dividends to individual (Spain): €98,750
- IRPF: according to brackets (19%–27%)
- Withholding on account: 19%

5. FISCAL AND COMMERCIAL OBLIGATIONS OF THE HOLDING

Obligation	Model/Format	Periodicity
Registration at AEAT	Model 036	Once
Corporate Tax	Model 200	Annual
Instalment payments of IS	Model 202	Quarterly
Related-party transactions (if relevant)	Model 232	Annual

Obligation	Model/Format	Periodicity
Accounting books	Daily book, inventory & accounts	Annual
Filing of accounts	Commercial Register	Annual
Informative by individual (Model 720)	Model 720	Annual (if applicable)

CASE B. Fiscal structure optimised using a Spanish ETVE (Régimen ETVE – Entity for Holding Foreign Securities) in Spain, with a shareholder under the Beckham regime. This scheme is designed to maximise tax efficiency on dividends from abroad.

OBJECTIVE OF THE STRUCTURE

• Avoid double taxation and minimise tax burden on foreign dividends.
• Take advantage of the full exemption in IS (ETVE regime).
• Take advantage of non-taxation in IRPF of the Beckham regime shareholder for foreign dividends.
• Comply with Spanish law and avoid qualification as tax avoidance.

🔸 **PROPOSED FISCAL STRUCTURE**

Individual person (Beckham) |

| - Tax resident in Spain | - Under Regime 93 |

▲

Exempt dividends

|

| Spanish ETVE |

| - 100% IS exemption - Distribution exempt in IRPF|

▲

Exempt dividends

|

| Company(ies) in Malta |

| - Generate rentals |

| - Distribute dividends |

INCOME FLOW AND TAXATION

1. Foreign companies
   o Generate profits (e.g., rentals).
   o Distribute dividends to the Spanish ETVE.
   o Possible reduced or zero withholding abroad.

2. Spanish ETVE
   o Receives dividends from Malta → 100% exempt in Corporate Tax if ETVE requirements are met.
   o Doesn’t pay tax on these dividends.
   o Can accumulate profits or distribute to its shareholder.

3. Individual shareholder under the Beckham regime
   o Receives dividends from the ETVE.
   o Does not pay IRPF if it is considered that the dividends originate abroad.
   o Justification: the profits come from foreign entities, and the ETVE serves as an intermediate vehicle without altering the original source.

REQUIREMENTS FOR FUNCTIONALITY

ETVE – Regime requirements:

Requirement	**Details**
Public limited company (SA) or limited (SL)	Must be tax resident in Spain
Suitable corporate object	Holding securities, management of foreign participations
Participation ≥5% or acquisition value ≥€20m	In non-resident entities

Requirement	Details
Real activity in foreign participations	Operational companies, not shell companies
Separate accounting by ETVE	Mandatory to maintain exemption

Beckham Regime – Requirements:

Requirement	Details
Relocate to Spain to work	Must exist an employment contract or corporate appointment
Not tax resident in the 5 previous years	Mandatory
Application within 6 months of Social Security registration	Key to access regime
Duration of regime: 6 years	From the year of change of residence
No taxation for foreign-source income	Unless it is Spanish source

TOTAL TAX BENEFITS

Level	Tax	Result
Foreign company	Local corporate tax	Low or nil (depending on effective rate)
Spanish ETVE	Corporate Tax (IS)	100% exemption on dividends
Individual (Beckham)	IRPF	No taxation if foreign source (given compliance)
Withholding in source	Abroad → Spain	0–5% (by treaty)

The result can be a total tax burden close to 0%–5%, depending on foreign withholding.

RISKS AND PRECAUTIONS

Risk	Mitigation
AEAT questions tax residence	Prove actual presence, contract, family in Spain
Dividend source considered Spanish	Document that income comes from foreign entities
Misuse of Beckham regime	Ensure strict compliance with deadlines & requirements
ETVE requirements not met	Maintain separate accounting, register properly, have own substance

CONCLUSION

This structure maximises fiscal efficiency and is fully legal if requirements are met:
• The ETVE acts as a neutral fiscal entity in Spain.
• The Beckham regime shields the shareholder from IRPF on foreign dividends.
• Only tax is paid at the source (Malta), usually with low withholding.

1. **IMPLEMENTATION CHECKLIST – ETVE + BECKHAM**
   PHASE 1: Individual – Beckham Regime

Step	Action	Responsible
1	Actual relocation to Spain	Client
2	Employment contract or appointment as director in Spanish company	Employer/company
3	Registration with Spanish Social Security	Company / Agency

Step	Action	Responsible
4	Application for Beckham regime (Model 149) within 6 months	Client / Advisor
5	Confirmation of inclusion in Beckham Regime (AEAT – Model 151)	AEAT
6	Documentation: contract, Social Security registration, NIE, passport, registration (empadronamiento).	

2. **PHASE 2: Constitution of the ETVE**

Step	Action	Responsible
7	Drafting of statutes with object of holding foreign securities	Corporate lawyer
8	Constitution before notary	Notary / Shareholders
9	Obtaining provisional NIF	AEAT
10	Payment of ITP (Model 600 – exempt)	Management firm

Step	Action	Responsible
11	Registration in the Commercial Register	Commercial Register
12	Definitive registration at AEAT (Model 036) opting for ETVE regime	Management firm / Advisor
13	Application for inclusion as ETVE (CNAE code & specific declaration)	Management firm / Advisor
14	Minimum capital: €3,000 (SL) or €60,000 (SA). Suitable corporate object and separate accounting mandatory.	

3. **PHASE 3: Investment and international operations**

Step	Action
15	Purchase of ≥5% participations in Maltese companies
16	Ensure Maltese companies have real activity (substance)
17	Receive dividends from Malta (withholding 0–5%)
18	Maintain separate accounting for the ETVE

Step	Action
19	Prepare distribution of dividends to shareholder (Beckham)

4. **BASIC STATUTORY CLAUSES – ETVE**
   The company's object:

5. The acquisition, holding, administration and transfer of securities representing the equity of non-resident entities.

6. The direction, management and control of business activities developed by said foreign participations.

7. The provision of administrative, accounting, financial and support services to the participations.

8. The management of participation in the profits derived from such participations. Excluded are all activities requiring a special administrative authorisation.

FINAL CONCLUSION AND RECOMMENDATION
With this structure:
• Dividends from foreign companies reach the ETVE exempt in Corporate Tax.
• The Beckham shareholder does not pay IRPF on them (if foreign source is justified).
• The structure is legally and fiscally sound if implemented correctly.

<u>It is crucial to have real means, full formal documentation and clear accounting.</u>

Final Recommendation

Both structures are legal and efficient **if implemented correctly**:

- **Case A** is flexible and ideal for long-term planning.
- **Case B** offers maximum tax savings but depends on Beckham regime eligibility.

IMPORTANT

THE FOREIGN COMPANIES MUST HAVE STRUCTURE. A REAL ONE