Deduction of technical provisions and IRNR (Non-Resident Income Tax) refunds for non-resident insurance companies

Tax Alert

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The Spanish Supreme Court has confirmed that EU insurers with no permanent establishment in Spain may deduct technical provisions directly linked to Spanish-source dividends, provided the correlation is duly evidenced. This strengthens the legal basis for WHT refund claims and prevents discriminatory tax.

Before the recent holidays, the Spanish Supreme Court issued Judgment no. 1463/2025, dated 17th November 2025, dismissing the appeal filed by the State Attorney and confirming the National High Court's approach in a case involving a German insurance company which, without a permanent establishment in Spain, received dividends from Spanish listed companies and sought a refund of Spanish Withholding Tax (WHT) allegedly applied in excess.

The core issue was whether an insurance company resident in another EU Member State, which only carries out financial investments in Spain and earns dividend income subject to Spanish WHT, should be allowed to deduct certain expenses linked to technical provisions, as opposed to the approach historically followed by the Spanish tax authorities in this context, which has generally rejected the deductibility of those technical provisions.

In this case, the insurer's refund claims had been rejected mainly on the grounds that the activity performed in Spain amounted to a "mere placement of capital" rather than the carrying-out of insurance activity in Spain, and that the taxpayer had not evidenced a direct relationship between the dividends received from Spanish entities and the technical provisions it sought to deduct from such income.

In this regard, the Supreme Court sets a mandatory doctrine: *in order to avoid a discriminatory treatment contrary to the free movement of capital (Article 63 TFEU), EU insurance companies with no Spanish permanent establishment may treat as tax deductible, for the purposes of Article 24.6 of the Spanish Non-Resident Income Tax Law (NRIT Law), expenses relating to technical provisions that are comparable in nature to those referred to in Article 38 of the Spanish Regulation for the Management and Supervision of Private Insurance (ROSSP) and that are specific to the insurance business, provided that it can be understood and duly evidenced that such expenses are directly related to the income obtained in Spain and have a direct and inseparable economic link with the activity carried out in Spain*.

In that EU-law context, the Court also recalls that, under Spanish Corporate Income Tax (CIT) rules applicable to Spanish resident insurers, technical provisions are, in principle, treated as deductible expenses. Against that backdrop, a denial of comparable deductions to EU insurers investing in Spain could lead to a higher effective tax burden solely due to non-resident status.

The judgment makes it clear that it is not sufficient to rely on the principle in the abstract, meaning that the practical success of each claim will ultimately depend on the taxpayer's ability to substantiate the facts and demonstrate the correlation between the expense and the income. In this regard, the Spanish Supreme Court expressly notes that, in the case at hand, the taxpayer had made a "*serious and rigorous evidentiary effort*" to evidence the correlation between the expense and the income. Practically, this means that any claim should be supported by robust documentation evidencing both the nature and comparability of the relevant technical provision and a traceable and consistent allocation methodology demonstrating the required direct economic link with the relevant Spanish-source dividend income.

From a practical standpoint, this is positive news for the insurance sector, as it materially strengthens the legal basis for Spanish dividend WHT refund claims by EU-resident insurers. That said, it should not be read as an automatic refund position, this meaning that outcomes will remain highly fact-driven, and the evidentiary package and allocation approach will be critical, particularly where the provision is not directly linked to a clearly identified investment.

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The doctrine established by the Spanish Supreme Court in its November 2025 judgment has not remained isolated. On the contrary, it has been reiterated and applied in two subsequent judgments, both dated 11 December 2025, which further strengthen its practical relevance.

In the first of those judgments (appeal no. 5203/2023), the Supreme Court reaffirms the cassation doctrine previously established.

In the second judgment (appeal no. 7741/2023), concerning an insurance company established in the United Kingdom investing in Spanish listed entities, the Supreme Court applies the previously established cassation doctrine and allows, for Spanish NRIT calculation purposes, the deduction of expenses relating to technical provisions recorded by the foreign

insurer, provided that are comparable in nature to those required of Spanish insurers, on the grounds that such expenses are directly related to the Spanish-source dividend income obtained and have a direct and inseparable economic link with the activity carried out in Spain.

In light of these judgments, it would be appropriate to assess, on a case-by-case basis, the potential partial recovery of Spanish NRIT paid by EU-resident insurance companies with no permanent establishment in Spain that have received Spanish-source dividend income, taking into account the nature and comparability of the expenses actually incurred.

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