Danish cases in Spain: Beneficial owner requirement not applicable to the non-resident income tax exemption of interest payments to EU residents

For the Valencia High Court of Justice, the exemption under the Non-Resident Income Tax of interest payments to European Union residents does not make its application conditional on the recipient being the beneficial owner or on other additional requirements of Directive 2003/49/EC. The State cannot invoke the direct effect of the Directive to require taxpayers to comply with requirements that have not been transposed into national law.

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In November 2024, we reported on the *Audiencia Nacional* (Judicial Review Division) Judgment of 17 October 2024 (app. 810/2019), which rejected the application, in which our firm acted as legal counsel, against the Central Tax Tribunal Decision of 8 October 2019 (RG 0185/2017) in which, as will be recalled, the Court of Justice of the European Union's 'Danish cases' doctrine — as set out in the judgment of 26 February 2019, *N Luxembourg* (C-115/16, C-118/16, C-119/16 and C-299/16) — was applied in a case involving the payment of financial interest by a Spanish company to its Dutch parent company, which

was in turn controlled by an Andorran company[1].

In the said decision, the Central Tax Tribunal, after referring to the aforementioned Court of Justice of the European Union ('CJEU') judgment on the concepts of 'beneficial owner' and 'abuse of rights', took the view that the Dutch company was merely a shell company, without any business activity, used solely to channel funds to the Andorran company. Consequently, the Tribunal concluded that the tax authority acted correctly in refusing to apply the exemption provided for in Article 14(1)(c) of the Non-Resident Income Tax (Recast) Act ('IRNR'), even though that provision does not contain the beneficial owner clause provided for in Council Directive 2003/49 of 3 June on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, and upheld the assessment decision relating to the concept of non-resident income tax withholdings for the years 2012, 2013 and 2014.

The *Audiencia Nacional* endorsed the Central Tax Tribunal's interpretation. In its view, the fact that the beneficial owner clause does not appear expressly in Article 14(1)(c) IRNR — unlike in Directive 2003/49/EC — is not an obstacle to its application in light of both CJEU case law on abuse of rights — classified as a general principle of EU law — and the obligation to interpret national law in accordance with Union law. Therefore, where there is a fraudulent or abusive practice, the taxpayer must be denied the benefit of the exemption of interest payments, even if there is no national provision providing for such denial. Furthermore, the *Audiencia Nacional* rejected the argument that, in order to regularise the situation and in the absence of a specific anti-abuse clause, the tax authority was obliged to resort to one of the general anti-abuse clauses provided for in the Spanish Taxation Act.

However, a recent judgment of the Valencia High Court of Justice, Judgment no. 690/2025 of 30 September, has reached a conclusion completely at odds with that of the *Audiencia Nacional* in response to an application for judicial review made by the same claimant and in a case similar to the previous one, but in relation to the settlement of non-resident income tax withholdings for the year 2015.

In this case, the Valencia Tax Tribunal had rejected an appeal against the aforementioned settlement, referring to the Central Tax Tribunal's decision of 8 October 2019 relating to the years 2012 to 2014. An application for judicial review, in which our firm acted as legal counsel, was made against this decision before the Valencia High Court of Justice, alleging, as substantive grounds, the failure of the tax authority to prove that the Dutch parent company was not the beneficial owner of the interest paid by the Spanish company, the fact that the exemption under Article 14(1)(c) is not conditional on the recipient of the interest being its beneficial owner, and the need to apply one of the general anti-abuse clauses provided for in the Taxation Act in the event of an abusive practice being found.

The response of the High Court of Justice's Judicial Review Division is based on the recognition that the national exemption of interest

[1] Danish_case_law_doctrine-2.pdf

earned by non-resident entities does not require the recipient to be the beneficial owner of the interest, a requirement that is included in Directive 2003/49/EC, which also differs in terms of other additional requirements for applying the exemption. Therefore, the High Court of Justice denies *ab initio* that a direct conceptual equivalency can be assumed between the concepts of recipient of the income and beneficial owner. Furthermore, the High Court of Justice refers to the Supreme Court Judgment of 23 September 2020 (app. 1996/2019) to recall that the principle of beneficial owner "is not a meta-legal rule that can be imposed on a rational and legal interpretation of the rules, nor on the sovereign will of countries".

On the basis of this premise, the High Court of Justice underscores that when Article 14(1)(c) establishes the exemption of interest paid to entities resident in the European Union, it does not make its application conditional on the recipient being the beneficial owner or on any other additional requirements. The aforementioned exemption was introduced into the national tax system in 1990 (by Royal Decree-law 5/1990 and Act 31/1990), long before the adoption of Directive 2003/49/EC, with which it differs substantially in terms of the requirements for its application. Thus, the national exemption does not require the recipient of the interest payment to have a specific legal form, does not require a minimum 25% shareholding in the capital of the payer company, does not require the recipient of the interest to be the beneficial owner, nor does it require that the recipient not be exempt from taxation. Similarly, the High Court of Justice finds it key that, following the adoption of the Directive, the Spanish legislator has incorporated specific anti-abuse mechanisms in relation to exemptions applicable to the payment of dividends (Art. 14(1)(h)) and royalties (Art. 14(1)(m)), but not so in relation to the payment of interest.

The absence of a beneficial owner clause means that the general anti-abuse clauses of the Taxation Act must be applied

In view of the national exemption's silence on the foregoing, "the possible legal basis for the beneficial owner requirement could only be invoked under Directive 2003/49/EC, but the direct effect of directives can only be invoked by individuals against the State, so taxpayers cannot be required to comply with requirements laid down exclusively in the Directive when those requirements have not been transposed into national law". Hence, the exemption in Article 14(1)(c) must be applied in the terms that the national legislator has chosen to keep without the additional requirements of the Directive. In support of this argument, the High Court of Justice again refers to the Supreme Court judgment of 23 September 2020, which established that tax authorities cannot apply the beneficial owner clause in relation to the taxation of royalties earned by a non-resident entity when the applicable double taxation agreement does not expressly provide for such a clause, ruling out a dynamic interpretation of the OECD Model Tax Convention Commentary to fill this gap.

The High Court of Justice notes that a separate issue is the possible application of the

general anti-abuse clauses contained in Articles 15 and 16 of the Taxation Act (conflict in the application of the rule or simulation) in the event that a tax authority finds evidence of abusive practices, but this did not happen in the present case, leading to the application being allowed and the Regional Tax Tribunal's decision being overturned.

As we have pointed out on previous occasions, in our opinion, it is highly debatable whether the CJEU case law established in the Danish cases allows us to infer that, in situations such as the one described here, the procedures established for this purpose in the Taxation Act can be disregarded, with significant effects on the distribution of the burden of proof and taxpayer rights and safeguards in tax proceedings.

Unlike the *Audiencia Nacional*, the Valencia High Court of Justice has agreed with the grounds and conclusions of the application in which our firm acted as legal counsel. Given the contradiction between the decisions of the two courts, a ruling by the Supreme Court establishing legal doctrine here would be welcome.