

Spain; Ireland

Spanish Tax Authorities: Irish Entity's Warehouses Constitute Permanent Establishment in Spain

8 February 2023

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The General Directorate of Taxes has published a ruling clarifying that a set of warehouses of a non-resident entity can be taxed as a permanent establishment (PE) under the Non-Resident Income Tax Law and the [Ireland – Spain Income Tax Treaty \(1994\)](#).

The tax authorities based their decision on the facts of the case, as summarized below.

- The Irish entity performed all purchases of goods that were imported through Spain (as one of the three places through which it imported goods into Europe).
- The logistics of distribution and departure from the warehouses were contracted, organized and supervised directly from Ireland.
- All administrative, financial and IT support for the operations performed in Spain was provided from Ireland.
- The warehouses were rented to a distribution subsidiary in Spain.
- The subsidiary provided all of the services necessary to carry out the activities until the goods were delivered to other group companies whose stores are located in several EU countries, including Spain.

Given these facts, the tax authorities analysed whether the warehouses in Spain formed a fixed PE of the Irish entity under the [Ireland – Spain Income Tax Treaty \(1994\)](#) or, alternatively, whether the entity's operations could be considered preparatory or auxiliary activities thus preventing the constitution of a PE in Spain.

The reasoning was made based on the commentaries to article 5.4 of the OECD Model (in its 2014 version because of the dynamic interpretation of tax treaties) and their interpretation held by the Spanish tax authorities in previous tax rulings.

The tax authorities concluded that the entity's set of activities exceeded the threshold of a preparatory or auxiliary nature, and jointly used the warehouses, logistics offices and the personnel of the subsidiary, which were under the organization, control and supervision of the Irish entity.

Finally, the tax authorities stressed the need for auditing bodies to verify that the Irish entity had control and direction of the Spanish subsidiary's activities and the activity in Spain involved assets and personnel of sufficient importance to form, under the Spanish tax authorities' words, a "permanent establishment with economic and geographic coherence".

The ruling (V2612-22), issued on 23 December 2022, but published recently in the first week of February 2023, is available [here](#) (as a PDF in Spanish only).

Spain; Ireland - Spanish Tax Authorities: Irish Entity's Warehouses Constitute Permanent Establishment in Spain (08 Feb. 2023),
News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.