

TAXATION ABOUT SACYR FLEXIBLE DIVIDEND (SCRIP DIVIDEND)

The main tax implications arising from the various options available to SACYR S.A. shareholders for remuneration, after the capital increase charged to reserves by the company, will be diverse in application of the Spanish legislation in force at this time and, in any event, taking into account the particular circumstances of each shareholder or holder of free assignment rights.

In relation with the applicable Legislation, it should be noted that, on Monday 11, March 2019 a Resolution of 5 March 2019 was published in the *BOE*, by the Accounting and Auditing Institute, defining the criteria for the presentation of financial instruments and other accounting aspects related to the commercial regulation of corporate enterprises (“ICAC Resolution” hereinafter). This Resolution implies modification of the accounting regulation criteria that had been applied to this type of remuneration, with respect to the Corporate Income Taxpayers and Nonresident Income Taxpayers that not operate in Spain through permanent establishment. After its entry into force, on the date of delivery of the free allocation, in any case, the shareholder will account a collection right and the related financial income (Article 35.4 of the Resolution), unlike in the past, when the subscription of the capital increase charged to reserves did not determine the inclusion of any income in the shareholders’ tax base. This means that the income obtained will be subject to the corresponding withholding or income on account, as well as to the tax regulation in force.

In the case of the individual shareholder or non-resident shareholders without a permanent establishment, the tax treatment has not been modified by the Resolution mentioned above, so, the mechanism will be the same as in previous years.

Having set out the main new features introduced by the ICAC resolution of 5 March 2019, the tax implications of the options contemplated by SACYR S.A. to remunerate its shareholders are set out below:

- **Full or partial transfer of free allocation rights to the issuer under the Commitment to Buy at the Purchase Price**

The entity will pay its shareholders the gross amount per share, by virtue of the commitment to purchase the rights assumed by the company. This option is very similar to the payment of a traditional dividend, so the amount paid in cash, which corresponds to the shareholder, will be subject to withholding and the corresponding taxation. It should be noted that, the withholding should be applied for the exercise of this option and not for the delivery of the initial rights.

- **Receipt of new shares under the Capital Increase framework:**

The shareholders, who choose to subscribe new shares as a result of the capital increase charge to reserves, should know that the receipt of new shares does not constitute income for the purposes of personal income taxes (“IRPF”), or non-resident income taxes (“IRNR”) if the non-resident taxpayer does not operate in Spain through permanent establishment. The delivery of new shares is not subject to withholding or advanced payments.

The acquisition value of the new shares and the shares from which they derive is calculated by dividing the total cost by the number of both old and new shares. The seniority of the released shares will correspond to the shares from which they derive. For that reason, in the event of a subsequent transfer, the income obtained will be calculated with reference to this new value.

The Corporate Income Taxpayers and Nonresident Income Taxpayers that not operate in Spain through permanent establishment, should take into consideration the aspects established in the Resolution issued by the Accounting and Auditing Institute on 5 March 2019, defining the criteria for the presentation of financial instruments and other accounting aspects related to the commercial regulation of corporate enterprises, for fiscal years beginning on or after 1 January 2020, they will account a collection right and the related financial income (Article 35.4 of the Resolution). Consequently, this withholding must be performed by the issuing company.

It should be note, Sacyr S.A. has submitted a query to DGT requesting clarification about any tax implications that the ICAC Resolution may have on Sacyr's Flexible Dividend, specifically as regards withholding and advanced payments.

- **Full or partial transfer of free allocation rights on the market:**

The shareholders who choose to transfer of free allocation rights on the market, the amount obtained in such transfer shall be subject to a tax regime determined on the basis of:

- The Personal Income Taxpayers, the amount obtained from transferring these free allocation rights on the market is subject to the same scheme established by the tax regulations for pre-emptive rights of purchase. That is, such income will be considered as capital gain and must be allocated in the tax period in which the transfer took place. In turn, the amount obtained from the transfer of the free assignment rights will be subject to withholding tax (19%) by the issuer.

In the case of the non-resident Income Taxpayers that not operate in Spain through permanent establishment, the treatment is the same as for Personal Income Taxpayers but being able to apply the agreements to avoid double taxation signed by Spain to which they may be entitled, as well as the exemptions established by IRNR regulations.

- The Corporate Income Taxpayers and Nonresident Income Taxpayers that not operate in Spain through permanent establishment, should take into consideration the aspects established in the Resolution issued by the Accounting and Auditing Institute on 5 March 2019, defining the criteria for the presentation of financial instruments and other accounting aspects related to the commercial regulation of corporate enterprises, for fiscal years beginning on or after 1 January 2020, they will account a collection right and the related financial income (Article 35.4 of the Resolution). Consequently, this withholding must be performed by the issuing company.

The above tax treatment will always be subject to **possible exemptions that may arise in accordance with the provisions of Article 21 of the Corporate Income Tax Law**, which establishes an exemption for dividends when the shareholder holds a percentage of ownership, directly or indirectly, of more than 5% or a value of acquisition of holdings of more than 20 million, and has maintained such ownership uninterruptedly during the previous year.