



**BDO Seidman, LLP**  
Accountants and Consultants

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## Subject:

### Recent Spain-U.S. Competent Authority Agreement May Present a Refund Opportunity

# International Tax Alert

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### Applies to:

U.S. corporations that have elected to be taxed as S corporations and LLCs taxed as partnerships or disregarded entities which have paid Spanish taxes.

### Details:

Competent authorities of Spain and the United States on March 1, 2006 concluded an agreement allowing treaty benefits to limited liability companies (LLCs) and S corporations. The agreement also covers other business entities treated as partnerships or disregarded entities for US tax purposes.

The agreement expands the definition of “any other body of persons” under Article 3(1)(d) of the US-Spain Tax Treaty “to include an LLC or any other entity, whether organized within or without the United States, that for US federal tax purposes is treated either as a partnership or is disregarded from its owners.”

The effective date of the agreement is retroactive to January 1, 1998. This may present opportunities for refund claims for prior tax years.

For US corporations that have elected to be taxed as S corporations and LLCs taxed as partnerships or disregarded entities desiring to take advantage of Treaty benefits, the entities and their owners must request certification of US residency for Treaty purposes.

The procedure to claim Treaty Benefits for an LLC by requesting a certificate of residence on Form 6166 in the same manner as a partnership.

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In the case of a tiered LLC structure, the certification rules for Form 6166 are similar to the current rules for a tiered partnership.

In the case of an LLC that is treated as a disregarded entity, the LLC may request certification on Form 6166 as a branch, division, or a business unit of a single member owner and such single member is a US resident.

In the case of an LLC or other entity organized outside the US, similar rules apply provided the LLC or other entity is treated as a partnership or disregarded entity for US tax purposes. The LLC can then request a Form 6166 that confirms it files Form 1065 in the US and an attached list of members then indicates the residence of the members of the LLC as either residents or nonresidents of the US (or if the LLC is a branch, division or business unit of a single member owner and the single member owner is resident of the US).

In the case of a US corporation that has elected to be treated as an S corporation for US tax purposes; the S corporation may request a Form 6166 in a manner similar to that of a partnership. The request will include a list of all shareholders whom are US residents for purposes of the Treaty.

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