

Urgent measures for growth, competitiveness and efficiency

Royal Decree-Law 8/2014, of July 4, 2014, on the approval of urgent measures for growth, competitiveness and efficiency was published in the Official State Gazette on July 5, 2014 and contains a range of new tax provisions which are summarized in this Commentary.

1. Objectives of Royal Decree 8/2014

The new legislation was approved with a three-fold objective in general terms: (i) promote competitiveness and the efficient working of the markets, (ii) improve access to finance, (iii) promote employability and employment. The tax measures introduced are intended to drive economic activity and soften the effects of the crisis.

2. Key new legislation and tax amendments

A number of important tax amendments have been brought in, some announced in the preliminary bill amending the Personal Income Tax Law (among other laws), approved by the Cabinet of Ministers on June 20, 2014.

They are described below:

2.1 *Tax on transactions for giving a principal residence in payment*

It establishes, to come into effect **from January 1, 2014**, an exemption for the capital gains arising on:

- (i) Transactions in which the debtor or the debtor's guarantor give their principal residence to discharge debts secured by a mortgage on that residence, taken out with a credit institution (or any other lending or mortgage institution).
- (ii) The transfer of a residence meeting the foregoing requirements, in the context of foreclosures under a judicial or notarial mortgage foreclosure proceeding.

This exemption regime will not apply if the owner of the residence has sufficient other assets or rights to satisfy the whole debt and avoid disposal of the residence. It would be desirable that the exact scope of this "sufficiency" requirement was specified.

It is also determined that those transactions will be exempt from the tax on increase in urban land value.

2.2 Personal income tax on subordinated debt or preferred shares

Subordinated debt securities or preferred shares trigger income or losses from movable capital, where, among other circumstances, they are exchanged for shares in the issuer of those securities or shares. A subsequent transfer of the shares received triggers capital gains or losses, however.

The current regime on the inclusion and offset of income or losses for personal income tax purposes does not allow the losses from movable capital to be offset against capital gains (or vice versa) and as a result, taxpayers who incur significant losses on the exchange of preferred shares (losses from movable capital) are later taxed on the capital gains on the sale of the shares received in exchange.

To soften the effects of this scenario, a new regime has now been put in place, **to come into effect on January 1, 2014**, as follows:

- (i) The portion of any loss balances resulting from (i) the inclusion and offset of income and losses from movable capital and from (ii) the inclusion and offset of gains and losses resulting from the transfer of elements acquired more than a year before, which originate from:
 - (a) losses from movable capital arising on subordinated debt or preferred shares (issued subject to the conditions in additional provision two of Law 13/1985, of May 25, 1985, on investment ratios, equity and disclosure obligations of financial intermediaries) **triggered before January 1, 2015** may be offset against the positive balance of income from movable capital or capital gains and from the transfer of securities received in a repurchase, subscription or exchange involving those securities, also triggered before that date,
 - (b) and vice versa.

If there is a loss balance after performing the offset, that loss balance may be offset in the following four years in the same way.

- (ii) The same offset regime may be applied in relation to the loss balances in 2010, 2011, 2012 and 2013 that originate from the same type of income and losses, which are available for offset as of January 1, 2014, which may be offset against any income balance arising in or after 2014 provided that the four years period established in the legislation for the offset of losses has not been exceeded.

Since in those years the loss balances mentioned may include amounts originating from other types of income, and a portion of those balances may already have been offset, it is established that the offset will be considered to be made first against the portion of the balance originating from the other types of income.

However, in 2014, if there is a loss balance after the offset, that loss balance may be offset against the capital gains balance in the general component of taxable income that arose on the transfer of assets (in other words those resulting from transfers of the assets acquired up to one year earlier). If there is still a loss balance after that offset, it may be offset in the following four years.

Lastly, it must be recalled that the preliminary bill amending personal income tax provides that in or after 2015, the balances arising from the inclusion of income and losses from movable capital and capital income and losses resulting from transfers of asset can also be offset, subject to a ceiling: 10% in 2015, 15% in 2016, 20% in 2017 and 25% in 2018 and thereafter.

2.3 Personal income tax withholdings for professionals

Income from professional activities is currently subject to a 21% general withholding rate (9% in the year the activities start and the following two years). The preliminary bill amending personal income tax brings the general rate down from 21% to 19% from 2016 (20% in 2015). That preliminary bill also sets out a reduced 15% withholding rate where a person's gross annual income is lower than 12,000 euros.

This reduced 15% withholding rate has now been brought in with this royal decree law, although it establishes that the maximum gross income from professional activities in the immediately preceding year must be lower than 15,000 euros and must account for more than 75% of the sum total of the gross income from the taxpayer's economic activities and work in that year, coming into effect on **July 6, 2014**. The percentage will be reduced by half where the person is entitled to the tax credit for income obtained in Ceuta and Melilla.

To apply this reduced rate, the taxpayer must notify the payer that he/she meets the requirements specified, and the payer must keep the signed notification.

2.4 Tax on the deposits of credit institutions

In addition to a few technical improvements, the following amendments have been introduced to take effect **from January 1, 2014**:

- (a) The tax base will be the average of the closing balances for each month in the calendar year (before each quarter of the tax period), regardless of the length of the tax period, relating to entry 4 "Customer deposits" under liabilities on the reserved balance sheet of credit institutions, included in the separate financial statements.
- (b) The gross tax payable has gone from 0% to 0.03%.
- (c) In relation to the self-assessment for the tax, currently envisaged for July of the year following that of the tax period, taxpayers are required to separate out the resulting amount for each autonomous community that is the location of their headquarters or the branches where the taxed third-party funds are held, and also the amount relating to funds held that came through distance marketing systems.
- (d) In relation to advance payments, an advance payment continues to be required in July of each year, relating to the tax period in that fiscal year, amounting to 50% of the sum calculated by applying the tax rate to the tax base for the previous tax period. It has now been added that the payment relating to 2014 will be filed in December 2014 and its amount will be 50% of the sum calculated by applying the tax rate to the tax base with respect to the separate financial statements for 2013. The same information must be separated out for the advance payment as in the self-assessment.

3. Entry into force

The amendments to Royal Decree 8/2014 come into force generally on the date it is published in the Official Gazette (as provided in final provision five), namely, on July 5, 2014, although some measures (including tax measures) will have retroactive effects, as we have pointed out in the above sections of this Commentary.