

# General State Budget Law

1-2012  
July, 2012

## GENERAL STATE BUDGET FOR 2012

(Law published in the “B.O.E.” of June 30, 2012)

The General State Budget Law for 2012 was published in the Official State Gazette on June 30, 2012 (Law 2/2012, of June 29, 2012). We summarize below the main new changes contained in that law, in particular those made in the areas of tax, labor, social security, and administrative law.

### 1. TAX MEASURES

Law 2/2012 contains the tax measures traditionally included in the budget laws. Readers are reminded that the main new tax legislation has appeared in the royal decree-laws published in recent months.

#### 1.1 Corporate income tax

##### 1.1.1 Indexation allowance rates for 2012

Approval has been given to the new indexation allowance rates to be used to calculate the gain to be included in the tax base in respect of transfers of real estate taking place in the tax periods commencing in 2012.

The new allowance rates applicable to the acquisition cost or production cost and to the depreciation recognized in the accounts are as follows:

	INDEXATION ALLOWANCE
Prior to January 1, 1984	2.2946
Fiscal year 1984	2.0836
Fiscal year 1985	1.9243
Fiscal year 1986	1.8116
Fiscal year 1987	1.7258
Fiscal year 1988	1.6487
Fiscal year 1989	1.5768
Fiscal year 1990	1.5151
Fiscal year 1991	1.4633
Fiscal year 1992	1.4309

	INDEXATION ALLOWANCE
Fiscal year 1993	1.4122
Fiscal year 1994	1.3867
Fiscal year 1995	1.3312
Fiscal year 1996	1.2679
Fiscal year 2003	1.1499
Fiscal year 2004	1.1389
Fiscal year 2005	1.1238
Fiscal year 2006	1.1017
Fiscal year 2007	1.0781
Fiscal year 2008	1.0446
Fiscal year 2009	1.0221
Fiscal year 2010	1.0100
Fiscal year 2011	1.0100
Fiscal year 2012	1.0000

The new Budget Law reproduces the rules contained in previous laws for calculating taxable capital gains in cases of transfers of assets that were revalued under Royal Decree-Law 7/1996, of June 7, 1996 (which basically involve not taking into account the net increase in value resulting from the revaluation).

### 1.1.2 Interim tax payments

Interim payments on account of corporate income tax for the tax periods commencing in 2012 must be made in the first 20 calendar days of the months of April, October and December of each year and calculated as follows:

- (a) For interim payments based on gross tax payable (minus deductions and allowances and the related withholdings and prepaid tax) in the previous tax period for which returns had to be filed before the first business day of April, October and December, the rate to be applied to the base is 18%.
- (b) For interim payments based on the tax base for the period consisting of the 3, 9 or 11 first months of each year, the rate will be as follows:
  - If the net revenues of the entity in those twelve months of the previous year are less than €20 million, the applicable rate will be calculated by multiplying the tax rate by 5/7 and rounding down, which results in a tax rate of 21%.
  - If the net revenues of the entity in those twelve months of the previous year are at least €20 million, but lower than €60 million, the percentage for the interim payment will be calculated by multiplying the tax rate by 8/10 and rounding down, that is, a rate of 24%.

- Lastly, if the net revenues are at least €60 million, the applicable rate will be calculated by multiplying the tax rate by 9/10 and rounding down, that is, a rate of 27%.

The increased 24% and 27% rates are those approved on a temporary basis (for fiscal years 2011, 2012 and 2013) in Royal Decree-Law 9/2011, of August 19, 2011, on measures to enhance the quality and cohesion of the Spanish national health service, to foment fiscal consolidation and to raise the ceiling on the government's guarantees for 2011.

You are reminded that this calculation method for the interim payment continues to be compulsory for taxpayers with turnovers in excess of €6,010,121.04 in the 12 months preceding the first day of their tax periods in 2012.

Under this method, taxpayers can subtract from the resulting amount of tax payable the withholdings, prepayments and interim payments relating to the tax period together with any applicable reductions (reductions for income obtained in Ceuta and Melilla, for export activities involving cinema or audiovisual productions, books, publications in installments, etc., and others) but not any tax credits to which the taxpayer may be entitled.

The Budget Law does not say anything about the minimum interim payment equal to 8% of the figure recorded in the income statement (for the period consisting of the first 3, 9 or 11 months of each calendar year or, in the case of taxpayers whose fiscal year is not the same as the calendar year, for the period running from the start of the fiscal year to the day preceding the start of each interim payment period) minus any tax loss carryforwards, available for periods commencing in 2012 or 2013 in the case of taxpayers with net revenues (in the twelve months preceding the start date of those periods) of at least €20 million. This minimum payment was introduced by Royal Decree-Law 12/2012, of March 30, 2012.

#### 1.1.3 Withholding or prepayment rate

As had already appeared in Royal Decree-Law 20/2011, of December 30, 2011, the standard withholding or prepayment rate will be 21% (compared with the previous 19%) from January 1, 2012 through December 31, 2013.

#### 1.1.4 Measures to foster the production of feature films

The tax credit for cinematographic productions is extended to tax periods commencing before January 1, 2014, after which date it will be considered repealed.

## 1.2 Personal income tax

### 1.2.1 Index allowance rates for acquisition price

The law sets the indexation allowance rates for 2012 to be used to update the acquisition cost when calculating the capital gain or loss on transfers of real estate not used in economic activities (readers are reminded that since 1999, these rates only applied to transfers of real estate). The allowance rates for 2012 are as follows:

	ALLOWANCE RATE
Up to 1994 <sup>(1)</sup>	1.3037
1995	1.3773
1996	1.3302
1997	1.3037
1998	1.2784
1999	1.2554
2000	1.2313
2001	1.2071
2002	1.1834
2003	1.1603
2004	1.1375
2005	1.1151
2006	1.0933
2007	1.0719
2008	1.0509
2009	1.0303
2010	1.0201
2011	1.0100
2012	1.0000

<sup>(1)</sup> The allowance rate for real estate acquired on December 31, 1994 will be 1.3773.

The allowance rates applying to real estate used in economic activities are those established for corporate income tax purposes, set out in the relevant section of this Bulletin.

1.2.2 Surtax for fiscal years 2012 and 2013

The Budget reproduces the change introduced by Law 20/2011, of December 30, 2011, with respect to the surtax on top of the gross tax liability payable to the central government applicable in the 2012 and 2013 tax periods. As a reminder, this royal decree-law introduced a surtax, determined by applying the following scale to the general component of net taxable income:

<b>GENERAL COMPONENT OF NET TAXABLE INCOME</b>	<b>INCREASE IN GROSS TAX PAYABLE TO THE CENTRAL GOVERNMENT</b>	<b>REMAINDER OF GENERAL COMPONENT OF NET TAXABLE INCOME</b>	<b>APPLICABLE RATE</b>
<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>UP TO (IN EUROS)</b>	<b>EUROS</b>	<b>UP TO (IN EUROS)</b>	<b>PERCENTAGE</b>
0.00	0.00	17,707.20	0.75
17,707.20	132.80	15,300.00	2.00
33,007.20	438.80	20,400.00	3.00
53,407.20	1,050.80	66,593.00	4.00
120,000.20	3,714.52	55,000.00	5.00
175,000.20	6,464.52	125,000.00	6.00
300,00.20	13,964.52	Thereafter	7.00

The resulting amount will be reduced by the result of applying this same scale to the portion of net taxable income relating to the personal and family-related allowance.

In addition, the following scale will apply to the savings component of net taxable income, in the portion above the personal and family-related allowance:

<b>SAVINGS COMPONENT OF NET TAXABLE INCOME</b>	<b>INCREASE IN GROSS TAX PAYABLE TO THE CENTRAL GOVERNMENT</b>	<b>REMAINDER OF SAVINGS COMPONENT OF NET TAXABLE INCOME</b>	<b>APPLICABLE RATE</b>
<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>UP TO (IN EUROS)</b>	<b>EUROS</b>	<b>UP TO (IN EUROS)</b>	<b>PERCENTAGE</b>
0	0	6,000.00	2.00
6,000.00	120.00	18,000.00	4.00
24,000.00	840.00	Thereafter	6.00

### 1.2.3 Change to the applicable withholding rates

The Budget Law also reproduces the change introduced by Royal Decree-Law 20/2011, of December 30, 2011, with respect to the procedure for calculating, in the 2012 and 2013 periods, the withholding tax on salary income, which will be calculated by adding to the tax scale set out in the personal income tax regulations, the scale for the surtax on top of the general component of net taxable income.

Also reproduced are the increases introduced by the royal decree-law, for the 2012 and 2013 periods, in the applicable withholding tax rates. Thus, for these periods:

- The percentage for calculating payments and prepayments is increased from 19% to 21%<sup>1</sup>.
- The withholding tax rate applicable to salary income received by directors and members of boards of directors, or of the meetings that substitute them, and by other members of representative bodies is increased from 35% to 42%.

### 1.2.4 Tax credit in 2011 for acquisition of the taxpayer's principal residence

Law 35/2006, of November 28, 2006, changed the tax credit for investment in the taxpayer's principal residence, basically by eliminating the increased tax credit rates triggered where the residence is purchased with borrowed funds.

Following this change, the overall tax credit rate (central government and autonomous region, in the absence of autonomous region legislation in this respect) stood at 15% (the former legislation allowed this rate to be increased up to 25% for the first €4,507.59, in the first two years after the investment, and up to 20% in subsequent years).

For this reason, the Budget Law sets out a system of tax relief (applicable in 2011 and already applicable in prior years) for taxpayers that meet the following requirements:

- They must have acquired their principal residence before January 20, 2006 (you are reminded that the Preliminary Bill of Law 35/2006 was published on January 19, 2006).

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<sup>1</sup> Income from movable capital, capital gains from transfers of mutual funds and from forestry activities, prizes, leasing and subleasing of real estate, income from intellectual property, from the provision of technical assistance, from leasing personal property, businesses or mines, from subleasing the above property, and image rights.

- They must have used borrowed funds to finance the purchase and be able to take in 2011 the tax credit for investment in the taxpayer's principal residence under Law 35/2006, of November 28, 2006.

The amount of the tax credit that these taxpayers may take in 2011 will be as follows:

- First of all, the so-called "theoretical incentive" will be calculated. The amount of this incentive will be the result of applying to the amounts spent in 2011 on purchasing the principal residence the tax credit rates provided for in Legislative Royal Decree 3/2004, where borrowed funds are used to purchase the principal residence.

The autonomous region bracket may not be lower than the result of applying the autonomous region or supplementary bracket of the tax credit for investment in the principal residence where the purchase is not financed with borrowed funds in the autonomous region in question, in force in the former legislation.

- Once the theoretical incentive has been calculated, it will be deducted from the total net tax payable, after the tax credit for obtaining salary income or income from economic activities referred to in article 80 bis of Law 35/2006.
- In short, the total tax credit that may be taken by these taxpayers will be the sum of the amount permitted under the current Personal Income Tax Law plus the "theoretical incentive."

#### 1.2.5 Tax relief in 2011 for receiving income from movable capital generated over more than two years

Law 35/2006 also eliminated the 40% or 75% reduction (as appropriate) for "multi-year" income from movable capital. To prevent the adverse effect of this measure on taxpayers with financial instruments acquired before January 20, 2006, the Budget Law provides tax relief (applicable in 2011 and already applied in previous years), with the following the key features:

- The tax relief applies to the following types of income:
  - Income obtained from taxpayers lending to third parties funds originating from financial instruments arranged before January 20, 2006, to which the 40% reduction provided for in the Revised Personal Income Tax Law, approved by Legislative Royal Decree 3/2004, would have applied because it was generated over more than two years, or because they would have been classed by regulations as obtained on a notably multi-year basis.

- Income from receipts in the form of deferred sums from life or disability insurance policies arranged before January 20, 2006 and to which the reduction rates of 40% or 75% provided in the Revised Personal Income Tax Law would have applied.
- The amount of the tax relief will be the positive difference between the amount resulting from applying the applicable tax rates to the savings component of the taxable income to the positive balance resulting from including and setting off against each other the total amount of the net income mentioned above and the “theoretical amount of the gross tax payable”.

This “theoretical amount of the gross tax payable” will be calculated as follows:

- Where the balance resulting from including and setting off the above-mentioned income items against each other, by applying the relevant reduction rates under the current legislation, is zero or negative, the theoretical amount of the gross tax payable will be zero.
- Where the above balance is positive, the theoretical amount of the gross tax payable will be the positive difference between (i) the tax payable resulting from applying to the sum of the general component of the taxable income and of the positive balance indicated, the tax scale provided in the current legislation and (ii) the tax payable resulting from applying that tax scale to the general component of the taxable income.

To determine the balance indicated (in the case of benefits from life and disability insurance policies), the applicable reductions will only apply to premiums paid up to January 19, 2006; however, they will also apply to subsequent premiums in the case of ordinary premiums provided for in the original insurance policy.

For the purposes of determining the portion of the total income obtained that relates to each premium under the deferred sum insurance policy, the total income will be multiplied by the weighting coefficient which results from the following coefficient:

- In the numerator, the result of multiplying the premium in question by the number of years elapsed from when it was paid to when the receipt was collected.
- In the denominator, the sum of the products resulting from multiplying each premium by the number of years elapsed from when it was paid to when the receipt was collected.

The insurer must notify the taxpayer of the amount of the net income derived from receipts in the form of a deferred sum originating from life and disability insurance relating to each premium, calculated according to the above rules.

### 1.3 Nonresident income tax

#### 1.3.1 Extension of parent-subsidiary exemption to member states of the European Economic Area

The exemption applicable to income distributed by subsidiaries resident in Spain to their parent companies resident in another EU member state is extended to member states of the European Economic Area where in addition to the other general requirements to take the exemption, the following requirements are met:

- The member states of the European Economic Area must have signed a tax treaty with Spain with an information exchange provision or a tax information exchange agreement.
- The companies must be subject to and not exempt from a tax equivalent to those levied on the income of legal entities in the EU member states, as listed in article 2(c) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, and the permanent establishments must be subject to and not exempt from taxation in the state where they are located.
- The parent companies resident in member states of the European Economic Area must have a legal form equivalent to those set out in the annex to Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003.

#### 1.3.2 Tax rate for 2012 and 2013

Just as with corporate income tax and personal income tax, the Budget Law reproduces the changes introduced by Royal Decree-Law 20/2011, of December 30, 2011, to the applicable nonresident income tax rates for 2012 and 2013. Accordingly, for these periods:

- The standard rate applicable to income obtained by nonresidents without a permanent establishment is pushed up from 24% to 24.75%.

- There is an increase from 19% to 21% in (i) the surtax rate applicable to transfers abroad of income obtained by permanent establishments of nonresident entities, and in (ii) the tax rate applicable to dividends, interest and capital gains obtained by taxpayers not established in Spain.

#### 1.4 Value added tax

The following technical changes are made to the value added tax legislation to bring it into line with EU legislation:

##### 1.4.1 Intra-Community acquisitions of gas, electricity, heat and cooling energy

A new case of a transaction that will not be treated as an intra-Community supply of goods has been included, namely, acquisitions that relate to supplies of gas on a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity, or the supply of heat or cooling energy through heating or cooling networks, which will be deemed supplied in Spanish VAT territory.

For these purposes, these supplies are deemed made in Spanish VAT territory where (i) they are made to a taxable dealer that has its place of business or a permanent establishment (or, failing that, its address) in that territory, provided that the recipient is that place of business, establishment or address; or (ii) otherwise, where the purchaser actually uses or consumes the goods in Spanish VAT territory (which is presumed to be the case where the meter used to measure the supply is located in that territory).

##### 1.4.2 Restaurant and catering services

With regard to the place of supply for these services, the term “*restaurante*” (restaurant) is replaced by the term “*restauración*” (catering).

#### 1.5 Other matters

##### 1.5.1 Transfer and stamp tax

The tax scale applicable to transfers and reinstatements of nobility titles has been increased by 1% for 2012.

##### 1.5.2 Excise and special taxes: Oil and gas tax and the tax on the retail sale of certain oil and gas products

The Budget Law makes certain technical changes to the oil and gas tax legislation in order to bring it into line with EU legislation and adds to the oil and gas legislation the terms for the tax on the retail sale of certain oil and gas.

### 1.5.3 Charges

According to the Budget Law for 2012, the flat rates for the charges of the State Finance Authority have been increased generally by 1%, with the exception of charges that were specifically created or increased by provisions enacted in 2011, or were created in 2011.

The following exceptions are to be noted:

- The flat rates and amounts set for charges on games of chance, betting and gambling are generally kept at the same levels in 2012 as in 2011.
- The basic amounts of port charges set in the revised State Ports and Merchant Navy Law remain the same, subject to the separate review rules established for the occupation charge and the activity charge.
- Increases have been made to the charge of the Accounting and Audit Institute for the issuance of auditor's reports and the charge for the registration of insurance and reinsurance brokers.
- The general operators charge remains unchanged at the amount of 1 per mil of the operator's gross operating revenues.
- The quantification of the necessary parameters for determining the amount of the charge for reserving the public radio spectrum and the amounts of the approach charge levied in 2011 are kept the same as a general rule.

### 1.5.4 Nonprofit entities and tax incentives for patronage

#### (a) Events of exceptional public interest

The Budget Law for 2012 determines that the events on the following list will be events of exceptional public interest, for the purposes of the provisions of Law 49/2002, of December 23, 2002, on the tax regime for nonprofit entities and for tax incentives for patronage (the list shows the names of the events and the length of the related support programs):

- Holding of "Vitoria-Gasteiz European Green Capital 2012" (from January 1, 2012 to December 31, 2014).
- Santander 2014 ISAF Sailing World Championship (from July 1, 2012 to December 31, 2014).
- "Trees are Life" program (from July 1, 2012 to June 30, 2015).
- Celebration of the 4<sup>th</sup> Centenary of Spain-Japan relations through the "Year of Spain in Japan" program (from July 1, 2012 through September 1, 2014).
- "Master Plan for the recovery of the Cultural Heritage of Lorca" (from January 1, 2012 through December 31, 2014).

- Youth Heritage Program and the 4<sup>th</sup> Ibero-American World Heritage Youth Forum (from January 1, 2012 to December 31, 2012).
- “Granada 2015 Winter University” program (from July 1, 2012 to June 30, 2015).
- 2014 Poferrada Cycling Road World Championship (from October 1, 2012 to September 30, 2014).
- Celebration of the “Establishment of the UNESCO Category 2 Centre in Spain, for Rock Art and World Heritage” (from January 1, 2012 to December 31, 2012).
- Holding of the “Barcelona World Jumping Challenge” (from November 1, 2012 to October 31, 2015).
- Barcelona 2013 World Swimming Championship (from July 1, 2012 to December 31, 2013).
- Holding of “Barcelona Mobile World Capital” (from January 1, 2012 to December 31, 2014).
- Holding of the “3<sup>rd</sup> edition of the Barcelona World Race” (from January 1, 2012 to December 31, 2012).
- Celebration of the 40<sup>th</sup> anniversary of the World Heritage Convention (Paris, 1972) (from January 1, 2012 to December 31, 2012).
- World Olympic Shooting Championship “Las Gabias 2014” (from July 1, 2012 to December 31, 2014).
- Celebration of the “8<sup>th</sup> Centenary of the Cathedral of Santiago de Compostela” (from January 1, 2011 to June 30, 2012).
- Commemoration of “500 years of Papal Bull” (from July 1, 2012 to December 31, 2012).
- Program “2012 Year of Cultures, Peace and Freedom” (from January 1, 2012 to December 31, 2012).
- Celebration of the “Year of Neuroscience” (from January 1, 2012 to December 31, 2012).
- Program for the commemoration of the 8<sup>th</sup> Centenary of the battle of Navas de Tolosa (1212) and of the 5<sup>th</sup> Centenary of the conquest, annexation and incorporation of Navarre into the kingdom of Castile (1512) (from January 1, 2012 to December 31, 2012).
- Celebration of “Marian Holy Jubilee Year 2012-2013 in Almonte (Huelva)” (from January 1, 2012 to December 31, 2013).

- Celebration of “2014 International Year of the Mediterranean Diet” (from January 1, 2012 to December 31, 2014).

This means the availability of a set of tax incentives specifically for activities carried out to ensure the successful outcome of these events. The Budget Law specifically determines that the maximum tax relief under Law 49/2002 will apply in relation to all of these events.

(b) Priority patronage activities

As in prior years, the Budget Law for 2012 includes a list of priority patronage activities and programs for the purposes of applying the tax incentives established for them in Law 49/2002.

For these activities, as in 2011, the tax credit rates and limits established in Law 49/2002, of December 23, 2002, will be raised by five percentage points.

1.5.5 Percentage of income from the radio spectrum reserve charge to be received by Corporación RTVE

For 2012, the percentage of income from the radio spectrum reserve charge to be received by Corporación RTVE is set at 100%, subject to a ceiling of €30 million.

## 2. LABOR LAW AND SOCIAL SECURITY MEASURES

### 2.1 Social security

2.1.1 Contribution bases and rates

The Budget Law sets the contribution bases and rates for 2012.

These had already been published in Order ESS/184/2012, of February 2, 2012, implementing the statutory rules on social security contributions, unemployment, protection for the shutdown of operations, Wage Guarantee Fund and occupational training for 2012 (Official State Gazette of February 7, 2012).

2.1.2 Reduction in contributions for keeping up employment levels

Additional provision number six of the Budget Law provides, as in prior years, that the indefinite-term employment contracts of workers aged fifty-nine or older, with a length of service at the company of four years or more, will give entitlement to a 40% reduction in the employer’s portion of social security contributions for nonoccupational contingencies, except in cases of temporary

incapacity of the worker as a result of a nonoccupational contingency. If on turning 59, the worker’s length of service is not four years, the reduction will apply from the date on which he or she attains that length of service.

The reduction can be taken for one year, unless before the end of the year the parties concerned meet the requirements to be beneficiaries of the reduction in employer social security contributions under article 4 of Law 43/2006 to promote job creation. In this case those reductions will apply from that date.

The provisions contained in Law 43/2006 will apply regarding the requirements beneficiaries must meet, the cases not eligible for the reduction, the maximum amount, incompatible scenarios or the repayment of benefits.

**2.1.3 Reduction in social security contributions in cases of changes to the employee’s job due to risk during pregnancy or breastfeeding, and in cases of occupational disease.**

Additional provision number seven of the Budget Law keeps in place the reduction in social security contributions for cases where, due to risk during pregnancy or breastfeeding, the employee’s job or duties are changed to be better-suited to her circumstances. Insofar as the employee remains in the new job or holds her new duties, a 50% reduction will be applied to the employer’s portion of social security contributions for nonoccupational contingencies.

This same reduction will apply, on the terms and conditions determined by regulations, in cases where, due to occupational disease, the employee’s job at the same company is changed or the employee takes on a job compatible with their physical condition at another different company.

**2.2 Other labor-related provisions**

**2.2.1 Funding for vocational training**

As in prior years, the Budget Law sets out social security relief for companies to assist with the performance of ongoing training initiatives for their employees in accordance with chapter II of Royal Decree 395/2007. The relief will be calculated by applying the following percentages to the contribution to be paid out by the company in respect of occupational training:

NO. OF EMPLOYEES	PERCENTAGE
1 to 5	Will receive a reduction of €120 €
6 to 9	100%
10 to 49	75%
50 to 249	60%
250 or more	50%

In addition, relief for training will be made available, on the terms established in the above-mentioned legislation, to companies that open new workplaces in 2012, as well as newly created companies that hire new workers. In these cases, the companies will be entitled to relief in the form of reductions in employer social security contributions calculated by applying the amount of €65 to the number of newly hired workers.

Companies that grant individual training leave to their workers in 2012 will be entitled to relief in the form of reductions in employer social security contribution for training on top of the annual relief to which they would be entitled from applying the rules determined by the Order of the Ministry of Employment and Social Security. The aggregate amount in respect of this additional relief provided to all companies that grant leave may not exceed 5% of the relief established in the Budget of the State Employment Public Service to fund employer reductions in social security contributions for occupational training.

#### 2.2.2 Amendment to Law 9/2009, of October 6, 2009, on the extension to paternity leave

The entry into force of the Law that extended the length of paternity leave to four weeks in cases of birth, adoption and fostering has been deferred until January 1, 2013.

#### 2.2.3 Extension of the retraining program for persons who use up their unemployment benefit entitlement

The retraining program for persons who use up their unemployment benefit entitlement provided for in article 2 of Royal Decree-Law 1/2011, of February 11, 2011, on urgent measures to promote the transition to stable employment and the retraining of unemployed persons has been extended.

This assistance will be available to anyone registered as unemployed at the Employment Offices following the termination of their employment contract, who, within the period between February 16, 2012 and August 15, 2012, use up their contributory unemployment benefit entitlement and are not entitled to any of the unemployment subsidies provided for in the law, or who have used up any of these subsidies, including the related extensions.

### 2.3 Provisions concerning public sector personnel

#### 2.3.1 Compensation

Article 22 of the Budget Law establishes that the compensation of public sector personnel cannot be increased in 2012 with respect to the compensation in force at December 31, 2011, all things being equal in the two periods being compared, as regards both personnel and their length of service. In addition, in

2012 the public authorities, entities and companies referred to in article 22 may not make any contributions to pension plans or group insurance policies that include coverage of the contingency of retirement.

The wage bill of civil service employees that cannot be increased in 2012 consists of the overall salary and non-salary compensation and the employee welfare expenses accrued by those employees in 2011, all things being equal for the two periods being compared; except for social security benefits and indemnification, employee welfare contributions borne by the employer, indemnification relating to transfers, suspensions and dismissals and indemnities or reimbursed expenses.

Any agreements, collective labor agreements or company agreements entailing increases in compensation must be properly adjusted, and any clauses establishing any type of increase will become non-applicable.

In turn, article 24 of the Budget Law provides that the compensation of, among others, the Chairmen and Deputy Chairmen of state-owned business enterprises and other public entities or, as the case may be, of the directors-general and of the directors of those bodies who perform senior executive duties will not receive any increase in 2012 with respect to the compensation in force at December 31, 2011. It falls to the Ministry of Finance and Public Authorities to set this compensation, with observance at all times of the ceilings established in Royal Decree 451/2012, of March 5, 2012, on the compensation system for senior managers and executives in the state-owned business sector and other entities and on the orders issued in applying the system.

### 2.3.2 Determination or modification of compensation

In 2012, a favorable report from the Ministry of Finance and Public Authorities will be required to determine or modify the compensation of civil service and non-civil service employees.

For the purposes of the legislation, “determination” and “modification” mean:

- Determination of the compensation of newly created posts.
- Signature of collective labor agreements, reviews and adhesions or extensions to them.
- Application of the single collective labor agreement for civil service employees of the central government and of the industry-specific collective labor agreements, as well as their reviews and adhesions or extensions to them.
- Setting of compensation through individual contracts, whether permanent or temporary personnel, where not regulated in whole or in part by a collective labor agreement. This does not include the special relationships

of entertainers in public shows and the setting of compensation in the case of senior managers and executives in the state-owned business sector, which will be governed by the provisions of Royal Decree 451/2012.

- Grant of unilateral salary improvements, whether individual or collective in nature.
- Determination of compensation for personnel hired abroad.

Any agreements adopted with the omission of the step of the report or against an unfavorable report will be null and void *ab initio*, as will any agreements entailing salary increases for successive years contrary to future budget laws.

### 2.3.3 Hiring of personnel

In accordance with article 23 of the Budget Law, throughout 2012, no new personnel will be hired in the public sector, except for any personnel hired in recruitment processes for offers of employment in the public sector from previous years. This restriction covers posts included in employment consolidation processes.

However, and subject at all times of the availability of budgetary funds, there are certain sectors and authorities to which this restriction will not apply and for which the replacement rate is 10 percent: education; health; state security forces and corps; tax and labor fraud prevention; fire prevention and extinguishment services; investigative personnel.

In 2012 it will not be allowed either to hire temporary personnel or appoint temporary “statute-governed” personnel or untenured civil servants except in special cases to cover urgent needs that cannot be postponed which will be restricted to the sectors, functions and professional categories considered to be a priority and which affect essential public services. This provision will also apply to manpower supply contracts with temporary employment agencies.

During the same period, no calls for applications for posts or vacancies of civil service employees of state-owned business enterprises and entities in the public sector will be authorized, except in special cases to cover urgent needs that cannot be postponed, which will require the express prior authorization of the Ministry of Finance and Public Authorities through the Offices of the Secretary of State of Budgets and Expenses and of the Public Authorities.

The authorization of the Ministry of Finance and Public Authorities will also be necessary for any temporary hiring or appointments of temporary “statute-governed” personnel or untenured civil servants.

State-owned commercial companies will not be allowed to hire any new personnel, except for those hired under calls for applications initiated in prior years or personnel that have to be hired within the framework of multi-year programs or plans that are being implemented. Temporary contracts will only be entered into in exceptional cases to cover urgent needs that cannot be

postponed. In the case of state-owned companies, these temporary contracts will be made in line with the guidelines and instructions which are issued by the majority shareholder of the respective companies following a favorable report from the Ministry of Finance and Public Authorities.

Foundations and consortiums in which state-owned entities have a majority holding may not hire new personnel either; except in special cases, to cover urgent needs that cannot be postponed, they may hire temporary employees. In the case of state-owned foundations and consortiums, any contracts must strictly comply with the guidelines and instructions issued by the departments or oversight bodies or with a majority holding in them, following a favorable report from the Ministry of Finance and Public Authorities.

#### 2.3.4 Standard working hours in the public sector

The standard working hours of personnel in the public sector may not be fewer than an average of thirty-seven and half hours per week of actual work on an annualized basis. In this respect, any existing special working hours must be adapted to the standard working hours, without this entailing any increase in compensation.

In keeping with the above, the provisions on working hours and timetables contained in the agreements, collective labor agreements and company agreements in force at entities and bodies in the public sector that contradict the above rule have been temporarily overridden.

#### 2.3.5 Compensation of executives and personnel of occupational accident and disease mutual insurance companies

Additional provision number twelve provides that the compensation received by executives at occupational accident and disease mutual insurance companies in the social security system, and at their joint entities and centers in the central government public sector cannot exceed the pay ceiling applicable to senior officials, in the government, in its consultative bodies, in the central government civil service, among the members of the General Council of the Judiciary, at the Constitutional Court and at the Court of Auditors.

However, these executives may receive supplementary compensation above the aforementioned pay ceiling, in which case they will be considered as working on a full-time basis which is therefore incompatible with any other remunerated activity. Under no circumstances may these executives receive any increase in 2012 with respect to the amounts received in 2011.

It is also specified that where executives started to work on or after January 1, 2010, their basic compensation may not exceed the amounts established for that year in the compensation rules for directors-general of management entities and of the common services of the social security system.

The compensation of other personnel working at mutual insurance companies and their joint entities and centers will be subject to the rules laid down for the central government public sector in article 27 of the Budget Law.

### 3. ADMINISTRATIVE LAW MEASURES

#### 3.1 Economic and financial support in specific industries

##### 3.1.1 Repayable aid in the area of R&D + I policies

With a view to boosting the active participation of the public authorities in the development of R&D + I policies, article 33.1.b) of Science, Technology and Innovation Law 14/2011 (“Law 14/2011”) anticipated the need to adopt a number of measures to (i) foster investment in research, development and innovation activities and (ii) stimulate cooperation among enterprises and between enterprises and research bodies, through legal cooperation mechanisms, such as economic interest groupings and joint ventures, in which the partners share the investment, the performance of projects and/or the use of the findings of the research.

Along these lines, the public aid granted to enterprises for the financing of the initiatives provided in article 33.1.b) can now be set out as repayable in full or in part. If the aid is set out as partially repayable, the rights to the findings will be assigned to the central government, depending on what was attained with the performance of the actions and on the terms stipulated in the respective specifications.

##### 3.1.2 Financial support

The financial support established in these measures is aimed, respectively, at technology-based enterprises, young entrepreneurs and SMEs and at the developers of Science and Technology Parks.

These measures consist of the following:

- A total of up to €20,000,000 has been set aside for transactions carried out using the financing facility set up under section 2 of additional provision number two of Law 6/2000, approving urgent tax measures to stimulate household savings and the small and medium-sized enterprise, with a view to supporting technology-based business projects through participating loans.

In turn, the support facility for the capitalization of technology-based enterprises referred to in section 1 of additional provision number two of Law 6/2000 will have a maximum of €18,579.760.

- The amount of the central government's contribution to the financing facility for young entrepreneurs set up under additional provision number twenty-three of General State Budget Law 39/2010 for 2011 will be €20,000,000.
- In the case of small and medium-sized enterprises, the amount of the central government's contribution to the financing facility set up in additional provision twenty-five of General State Budget Law 2/2004 for 2005 will be €6,105,490.
- Lastly, the developers of Science and Technology Parks will be able to apply for a deferral of the repayments maturing in 2012 on loans or advances provided since 2000, where they evidence that they are in a financial position which prevents them from meeting the related payment obligations. No tests have been specified, however, to determine which factors are to be taken into account when deciding whether the enterprise is actually in such a position. The law simply stipulates the conditions on which the deferral will be granted by the Ministry of Economy and Competitiveness, subject to a favorable report from the Ministry of Finance and Public Authorities:
  - The aid intensity limits permitted by Community legislation on state aid must be respected.
  - The maximum repayment date of the loans cannot vary, although the deferred payments can be split into installments.
  - The additional guarantees specified in each case must be provided.
  - Interest will accrue on the deferred payments at the Euribor rate published by the Bank of Spain in January 2012, increased by 26 basis points.

In the case of public sector entities, the transaction must be authorized by the public authority to which the entity belongs and, additionally, that public authority must agree to be secondarily liable for the payment of the debt which is to be deferred. Deferred payments can be offset against any payment to be made by the central government to that public authority.

### 3.1.3 Funding to foster Spanish investments abroad

The Fund for Investments Abroad was set up with a view to contributing to the equity needs of investment projects carried out by Spanish companies abroad. This is a fiduciary fund set up with government funding whose beneficiaries are enterprises incorporated abroad, producers of goods and services or concession holders for infrastructure or public services projects.

The Fund for Investments Abroad will be endowed with €25,000,000 in 2012. In 2012 the Executive Committee of the Fund for Investments Abroad will be able to approve transactions for a maximum total of €300,000,000.

In the case of the Fund for Investments Abroad by Small and Medium-sized Enterprises (also aimed at enabling the international expansion of Spanish SMEs and, generally, at supporting investment projects on foreign markets), the Budget Law authorized its Executive Committee to approve in 2012 transactions for a maximum total of €35,000,000.

#### 3.1.4 Aid for urban or metropolitan public transportation

Article 102 of Sustainable Economy Law 2/2011 has been amended, and now provides that, from January 1, 2014 the grant of any aid or subsidy to autonomous region governments or local governments, included in the General State Budget Law and earmarked for urban or metropolitan public transport, will be conditional on the beneficiary having the related Sustainable Mobility Plan and on its compliance with the Spanish Strategy for Sustainable Mobility. The aid for 2012 is regulated under article 105 of the Budget Law.

### 3.2 Control of the public sector

Various provisions are introduced which could be classed as measures to control the public sector, including most notably the following:

- (a) A ban has been put in place on creating the state agencies under Law 28/2006 throughout 2012. Nonetheless, an exception to this general ban is the State Agency for Research, authorized by Science, Technology and Innovation Law 14/2011. In any case, the viability of its creation must be examined by the government, by reference to available funds, and it cannot entail an increase in public spending or a net increase in structure or personnel.
- (b) From the time the Budget Law comes into force and through December 31, 2012, the authorization of any agreement between the central government and the government of an autonomous region which is in breach of its budgetary stability objective for 2010 and 2011, or with entities dependent on and related to it, and which involves a transfer of any funds for the central government to the autonomous region in breach and/or entails a commitment by the latter to incur expenses, will require a favorable, mandatory and binding report from the Secretary of State for Budgets and Expenses at the Ministry of Finance and Public Authorities.

This report will also be required where the central government has issued a warning to an autonomous region due to observing a risk of breach of the budgetary stability objective, pursuant to article 7 of Organic Law 5/2001, of December 13, 2001, supplementary to the General Budgetary Stability Law and in cases of extension or modification of agreements previously executed and already being performed.

The report must assess, inter alia, the extent of the variance from the stability objective, the grounds for the variance, the measures taken to correct it and the potential effect of the agreement on the public deficit or debt of the autonomous region.

- (c) Measures have been introduced to monitor the investments entered into by the state-owned business enterprises and commercial companies listed in Annex XI of the Budget Law: (i) ADIF (manager of railway infrastructures); (ii) Aguas de la Cuenca del Ebro, S.A. (water management); (iii) Aguas de las Cuencas Mediterráneas, S.A. (water management); (iv) La Coruña Port Authority; (v) Gijón Port Authority; (vi) FEVE (narrow-gauge railway company); (vii) Sociedad de Infraestructuras y Equipamientos Penitenciarios, S.A. (penitentiary facilities); (viii) Sociedad Estatal de Infraestructuras Agrarias, S.A. (agricultural infrastructure); Sociedad Estatal de Infraestructuras de Transporte Terrestre, S.A. (land transport infrastructure).

The building blocks of these measures are as follows:

- Obligation to obtain a prior favorable report from the Ministry of Finance and Public Authorities for investments which are to be recognized in the accounts in years after the year in progress, where the combined sum of those investments exceeds 180% of the amount stated in the Annex with investments by territory, attached to the law.
- Obligation to inform the Ministry of Finance and Public Authorities on a quarterly basis, within one month after the quarter in question, of the volume and percentages of the combined sum of investments, stating the main projects.
- In any case, it is forbidden to enter into investments of more than 70%, 60% and 50% in the first, second and third years after the year in progress, respectively, regardless of the legal instrument to which they relate, save for legislation ranked as law.
- If these entities have exceeded the foregoing limits by June 30, 2012, they must submit to the Ministry of Finance and Public Authorities for approval, prior to September 30, 2012, a restructuring proposal which permits the deferral of the committed limits, as provided under transitional provision three of the Budget Law.

### 3.3 Legislative amendments

#### 3.3.1 State Property Law

The following basic provisions of the State Property Law 33/2003 have been amended:

- (a) An amendment has been made to the reporting rewards to be given to persons who, despite not being required to do so, instigate the investigation of assets and rights presumed to be publicly owned,

provided that the investigation results in their being included as part of state property, without subsequent revocation. The reward will be 10% of the value of the asset or right, i.e., of the net proceeds from its subsequent sale or, where it is not sold within five years after becoming part of state property, of its value on the cadaster. Accordingly, unlike what occurred under the previous provisions, the reward will become payable, and may therefore be claimed, after the investigated assets have been sold or after the end of the stipulated five-year period.

- (b) Assets connected with a public use or service may now be released from state property after the procedures for their disposal, swap or transfer for no consideration have been conducted. Nonetheless, the release must take place, in all cases, before the ruling or certificate approving the related transaction has been issued.
- (c) A new tender procedure is introduced (known as “restricted tender”) for the acquisition and lease of real estate. This procedure will be based on the formation of a permanent pool of bids comprising the non-binding bids for properties, or parts of properties able to be used independently, submitted by parties intending to join the system and those who have properties available, as well as sufficient legal capacity to conclude the transaction in question.

Each acquisition or lease to be awarded will be put out to tender in a specific process within the system. For this purpose, an invitation to tender will be issued for each specific contract to all interested parties admitted to the system and whose non-binding bids meet the requirements defined for the tender.

The State Property Law has therefore been amended to provide for the “restricted tender” procedure described above as an ordinary procedure, together with the merit-based tender, for the acquisition of property or property rights and the lease of properties, respectively. In these procedures the fixed cases in which direct acquisition or arrangement is possible have been maintained.

- (d) An amendment has been made to the rules on the ways to dispose of real estate set forth in article 137 of the State Property Law. Although merit-based tenders, price-based tenders and direct awards have been maintained as ways to dispose of properties, the merit-based tender is no longer set out as the ordinary disposal procedure; its use is now confined to assets for which the Council of Ministers, at the proposal of the department in charge of the public policy in question, has held this to be a suitable procedure for their disposal. The Council of Ministers will also stipulate the criteria to be considered in the tender and how they are to be weighted.

Consequently, the provision restricting the use of the price-based tender to certain cases stipulated by regulations has been eliminated, and that procedure is now configured as an ordinary procedure.

- (e) Lastly, rulings of the Subsecretary of Finance approving specific rates payable for jobs, services, studies, projects and other initiatives carried out through the state real estate management company Sociedad Estatal de Gestión Inmobiliaria de Patrimonio, S.A. (SEGIPSA) and regulated in additional provision number ten of the State Property Law must now be published in the Official State Gazette, where the SEGIPSA deems this to be necessary given their significance or where they could apply to commissions made by other bodies, organizations or entities of the public sector.

### 3.3.2 General Budget Law

Various amendments are made to General Budget Law 47/2003, including most notably, from an administrative law standpoint, those contained in final provisions numbers nineteen and twenty, by virtue of which, respectively:

- (a) new wording is given to article 175 of the General Budget Law, pursuant to which the State Auditing Agency will audit all transfers of property of state-owned commercial companies, shares or units or branches of activities which represent a significant interest in their equity and all transactions which entail the forfeiture of political control over those enterprises. This notably increases the cases in which transactions must be audited, which were previously confined to the second type of transaction described above;
- (b) a new paragraph is added to additional provision number nine of the General Budget Law, pursuant to which the commercial companies and consortiums mentioned in the provision are now required to submit their financial statements to the State Audit Court if the ownership interest held by the central government is equal to or greater than that of each of the other public authorities, subject to what is stipulated in this connection in the legislation of each Autonomous Region.

### 3.3.3 Gaming Law

The amendments made to Gaming Law 13/2011 (“Law 13/2011”) may be summarized as follows:

- (a) New wording of additional provision number three on matters of state sports betting aimed mainly at:
  - stipulating that the Ministry of Education, Culture and Sports (instead of the Ministry of Economy and Finance through the State Lottery and Betting Organization) will, through the Spanish National Sports Board, take on the obligations imposed by Royal Decree 419/1991 regulating the distribution of the takings and prizes of government sports betting;

- regulating transitionally for 2012 and until specified by regulations, the beneficiaries of the allocations, the financial allocation percentages for each beneficiary and their use.

In this way the amount allocated in the General State Budget for 2012 will be the result of applying the following percentages to the amount expected to be collected as gaming tax in connection with sports pari-mutuel betting on soccer:

- 49.95% for provincial governments, through the respective autonomous regions;
- 45.50% for the National Professional Soccer League;
- 4.55% for the Spanish Royal Soccer Federation earmarked for non-professional soccer.

The foregoing amounts (i) may be used to finance current transactions as well as investment initiatives and (ii) will be treated as prepayments of the amount of gaming tax finally obtained each budgetary year.

- (b) New wording of additional provision number six in connection with the scheme regulating shares in the takings from sports and horse-racing betting:

The main change in the new wording lies in the reference to a regulatory provision (rather than to a statutory provision, as in the wording in force until now) for stipulating (i) the percentage or its equivalent, applicable to the amounts obtained from the betting in order to determine the amount to be returned to sport and to the sports competitions organized in Spain in the case of sports betting and the amount to be returned to the organizers of horse races in Spain in the case of horse-racing betting; (ii) the appropriate shares and allocation scheme for the obligations to furnish official data and results of sports competitions and to guarantee the integrity of their performance; as well as, in the case of horse races, for the organization of the races and their contribution to maintaining the production industry.

- (c) New additional provision (number seven) relating to the authorization of horse-racing bookies to share in the pooled funds for the organizers of horse races in Spain, which refers to a regulatory provision determining the terms on which holders of the singular horse-racing betting license may execute agreements with the organizers of horse races authorized by the autonomous regions.

- (d) New wording of transitional provision number one in connection with the exercise of administrative powers prior to the commencement of operations of the National Gaming Commission. Emphasis is given to the

fact that the powers conferred by Law 13/2011 on the National Gaming Commission are to be exercised by the Directorate-General of Gaming of the Ministry of Finance and Public Authorities, including those relating to the management and collection of the charges for the administrative management of gaming referred to in article 49 of that law.

### **3.4 Toll motorway concession holders**

The government is authorized to take the following measures, within three months, if the economic circumstances of the concession holders so require and by Royal Decree, for the toll motorway concession holders dependent on the central government:

- (a) to extend the scope of application of the clearing account provided for under additional provision number eight of Universal Postal Service Law 43/2010, on the rights of users and of the postal market;
- (b) to extend the term of the clearing account through 2021;
- (c) to amend the statutory conditions on the term for the toll motorway concessions dependent on the central government.

## **4. OTHER MATTERS**

### **4.1 Maximum limit for government guarantees**

In relation to the maximum limit for government guarantees set out in Royal Decree Law 20/2011, of December 30, 2011 for the 2011 budget extended for fiscal year 2012, in the Budget Law for 2012 the maximum limit for government guarantees in 2012 has been set at 217,043,560,000 euros (compared with the 194,043,506,000 euros set in Royal Decree Law 20/2011), setting aside the following amounts:

- (a) The same sum of 92,543,560,000 euros has been set aside to secure the financial obligations claimable from the EFSF (European Financial Stability Fund), under the European Financial Stabilisation Mechanism for member state in the euro zone.
- (b) A sum of 55,000 million euros (compared with 100,000 million euros) to secure bond issues by credit institutions resident in Spain with a significant volume of operations on the national lending market.
- (c) The same sum of 3,000 million euros for guarantees aimed at securing fixed-income securities issued by securitization funds.
- (d) As a new addition, a sum of 66,000 million euros to secure the financial obligations that may be required of the FROB (the Spanish Bank Restructuring Fund), in attracting its funds.

Within the 500 million euros that are left, a maximum amount of 40 million euros has been set aside for guarantees for the obligations of shipping companies for the renewal and modernization of the Spanish merchant fleet by purchasing, outright or under finance leases with a purchase option, new merchant ships, under construction or with a previous owner which are not older than five years, on the terms that were already in force in previous budget laws.

#### **4.2 Public Multi-Purpose Income Indicator**

Set up to replace the minimum wage as the yardstick for determining the amount of certain benefits or the terms for access to certain public benefits or services, and used, among others, in the personal income tax legislation (in the provisions, for example, on the exemption for financial benefits received for fostering minors, the disabled or persons over 65, which can only be taken where other income does not exceed that indicator), the Public Multi-Purpose Income Indicator is set, for 2012, at the following amounts:

- The daily indicator: 17.75 euros.
- The monthly indicator: 532.51 euros.
- The annual indicator: 6,390.13 euros.

In addition, it is established that, where reference to the minimum wage has been replaced with reference to the Public Multi-Purpose Income Indicator (as occurs in the exemption mentioned above), the annual amount for the indicator will be 7,455.14 euros, provided the reference to the minimum wage involved the annual figure (unless nonregular salary payments were expressly excluded; in this case, the amount would be 6,390.13 euros).

#### **4.3 Legal interest rate for money and late-payment interest**

For 2012, the legal interest rate for money is set at 4% and the late-payment interest rate, at 5%.

#### **4.4 Entry into force**

The law came into force on July 1, 2012.

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