7-2012
October 2012

TAX PREPAYMENTS: FORMS 202 AND 222

As a result of the major changes in the corporate income tax rules that have taken place in recent months and, in particular, with regard to the procedure for calculating corporate income tax prepayments, new forms for making such prepayments have now been approved.

Specifically, last Saturday, September 29, 2012 saw the publication of Order HAP/2055/2012, of September 28, 2012, Approving Form 202 for Making Prepayments on Account of Corporate Income Tax and Nonresident Income Tax (Permanent Establishments and Pass-Through Entities Formed Abroad and with a Presence in Spain) and Amending Order EHA/1721/2011, of June 16, 2011, Approving Form 222 for Making Prepayments on Account of Corporate Income Tax under the Consolidated Tax Regime.

The newly published Order makes a number of interesting changes:

- Form 202 is intended to be filed purely by electronic means, meaning that entities obliged to report tax prepayments and not having the legal form of a corporation (*sociedad anónima*) or limited liability company (*sociedad de responsabilidad limitada*) must also file the form electronically.

- The Order establishes an obligation to communicate additional data together with the relevant tax prepayment (Form 202 or Form 222 for tax groups) with details of net adjustments to income/loss per books, excluding the adjustment for corporate income tax, the limitation on the deductibility of net finance costs exceeding €1 million, etc.

  This obligation affects taxpayers whose net revenues in the 12 months before the start date of tax periods within 2012 or 2013 are at least €60 million.

As a reminder, the recent changes in corporate income tax legislation were introduced by Royal Decree-Laws 9/2011, of August 9, 2011, 12/2012, of March 30, 2012, and 20/2012, of July 13, 2012. We highlight the following changes (which will affect the October 2012 tax prepayment one way or another, depending on how the taxpayer's fiscal year falls):

- The applicable percentages for calculating tax prepayments under the taxable income method have been increased in the case of taxpayers whose net revenues in the 12 months before the start of the period are at least €10 million.

- A minimum amount for tax prepayments has been established.

- Limitations have been introduced on (i) the deductibility of finance costs, (ii) the offset of tax losses, or (iii) the annual deductibility for tax purposes of financial goodwill arising from business acquisitions or business restructuring transactions, and of intangible assets having an indefinite useful life.

- The treatment of the exemption for capital gains from the transfer of holdings in nonresident entities has been modified (article 21 of the Revised Corporate Income Tax Law).

For more details of these changes, please see our Newsletters (4-2011, 2-2012 and 5-2012).

The Order entered into force on September 29, 2012; taxpayers must begin to use the approved forms for the second 2012 tax prepayment, and the time period for filing them started on October 1.