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NEW TAX LEGISLATION IN THE BUDGET LAW FOR 2013 AND IN THE TAX MEASURES LAW

The Official State Gazette of December 28, 2012 saw the publication of Law 16/2012, of December 27, 2012, adopting various tax measures aimed at shoring up public finances and boosting economic activity (the "Tax Measures Law"), and Law 17/2012, of December 27, 2012, on the General State Budget for 2013.

The main new tax measures contained in both laws are described below.

1. LEGAL AND TAX TREATMENT OF SOCIMIS

One of the most important new pieces of legislation in the Tax Measures Law is the overhaul of the tax and legal regime for listed corporations for investment in the real estate market, known as SOCIMIs (*Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario)*, which seeks to simplify and add flexibility to their legal and tax regime and to bring it into line with that of Spain's neighboring countries. Readers may recall that the principal characteristic of SOCIMIs is their corporate purpose, consisting of the lease of urban properties and to make annual distributions of a certain percentage of their profits.

The new tax regime for SOCIMIs also applies to what are known as "unlisted SOCIMIs," which are resident entities that have the same corporate purpose and dividend distribution policy as SOCIMIs, and are wholly owned by other SOCIMIs or by its REIT counterparts in other countries.

Because of its importance, the new tax regime for SOCIMIs was the subject of a special tax bulletin (Commercial-Tax News 1/2012). Below is a summary of some of the key changes to the previous regime.

- The tax rate for SOCIMIs has been brought down from 19% to 0%, provided that the shareholders that own a 5% or greater share in the SOCIMI's capital stock are taxed on the distributed dividends at a rate of 10% or more. Otherwise, the SOCIMI will be subject to a special tax charge of 19% on the dividends distributed to the shareholders owning shares of at least 5% that do not meet that taxation requirement.

- If the requirements for applying the tax regime are not met, any income generated while those requirements were not met will be taxed at the standard corporate income tax rate (30%) in all the tax periods in which the special regime applied.

- In the case of unlisted SOCIMIs wholly owned by foreign REITs or by other SOCIMIs, the requirement to be taxed at 10% refers to the REITs themselves or to their shareholders.
- The required dividend distribution percentage has been reduced from 90% to 80% of the gains from lease income and from the dividends relating to shares forming part of the SOCIMI's corporate purpose, while the obligation to distribute 50% of the gains obtained on the transfer of real estate remains unchanged.
- The SOCIMI's shareholders are now taxed as follows:
  - Resident individuals: will include the dividends from the SOCIMI in the savings component of their personal income tax base without being entitled to the exemption on the first €1,500. Their capital gains will be taxed as required under the standard personal income tax rules.
  - Resident legal entities: will include the dividends and capital gains from SOCIMIs in their corporate income tax base, without taking a double taxation tax credit.
  - Nonresident investors: the dividends they receive will be subject to the general rules on withholdings, where the income from which the dividends are paid has been taxed at the special 19% rate, although the exemption established under the standard regime for the first €1,500 will not apply.

    Otherwise, the dividends will not be subject to withholdings. The capital gains on the transfer of shares in SOCIMIs will be taxed under the standard rules (i.e. 21% unless a tax treaty establishes otherwise), although the exemption provided for capital gains obtained on the sale of securities in secondary Spanish markets will not apply.
- The minimum capital stock figure has been lowered from €15 million to €5 million.
- A new requirement has been added for the shares in SOCIMIs to be registered.
- The requirement for the SOCIMI to be listed on a regulated market is made more flexible, to take in also the trading of the securities on multilateral trading systems (in Spain, the Alternative Stock Market or "MAB", for example).
- The requirement for diversification of the investment in at least three properties has been eliminated.
- The cap on debt, which was limited to 70% of the value of the assets, has been eliminated.

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2. TAX REGIME FOR RESIDENTIAL LEASING ENTITIES

The requirements to apply the special corporate income tax regime for entities engaged in residential leasing activities have been made more flexible for the fiscal years starting on or after January 1, 2013. Specifically:

- The minimum number of dwellings that must be leased or offered for lease in each period in order to apply the special rules has been lowered from 10 to 8.

- The requirement concerning the maximum built floor area per dwelling has been eliminated.

- The minimum number of years in which the dwellings must be leased or offered for lease has been lowered from 7 to 3.

- The conditions for applying the special tax regime to residential leasing entities that carry on ancillary activities to their primary residential lease business has been made more flexible.

  Thus, the special regime can be applied (i) both where 55% of the income for the period —excluding that derived from the transfer of the leased properties after the end of the holding period— can benefit from the reductions under the special tax regime (as has been the case up to now), (ii) and also, as a new requirement, where at least 55% of their asset value can generate income qualifying for the special regime.

3. BALANCE SHEET REVALUATION

The Tax Measures Law lays down a voluntary tax revaluation with a 5% charge on the revalued amount. The characteristics of this revaluation are described in detail below.

3.1 Taxpayers entitled to elect the revaluation option

This option is available to (i) corporate income taxpayers, (ii) personal income taxpayers that carry on economic activities who keep their accounting records in accordance with the Commercial Code or are required to keep record books of their economic activity, and (iii) nonresident income taxpayers that operate in Spain through a permanent establishment.

Corporate income taxpayers taxed as part of a consolidated tax group that elect this option must carry out the revaluation transactions on an individual basis.

3.2 Assets qualifying for revaluation

The following assets can be revalued:

- Items of property plant and equipment, and real estate investments, located in Spain and abroad.

- Items of property plant and equipment, and real estate investments, acquired under finance leases, subject to a condition subsequent that the purchase option must be exercised.

- The assets relating to concession agreements registered as intangible assets by the concession-holder which must apply the accounting principles established by Order EHA/3362/2010.

The assets qualifying for revaluation are those appearing on the first balance sheet drawn up after the entry into force of the Tax Measures Law, that is, December 28, 2012. Therefore, entities whose fiscal year coincides with the calendar year will have to base the revaluation on the balance sheet as of December 31, 2012. Personal income taxpayers required to keep record books will revalue the assets included in those record books as of December 31, 2012.

In relation to the assets qualifying for revaluation, the law clarifies that:

- The revaluation multipliers do not apply to assets that are fully depreciated/amortized at that date. For these purposes, the depreciation/amortization that should have been done will be taken as a minimum.

- The revaluation will necessarily refer to all the qualifying assets and to the relevant depreciation/amortization expenses. In the case of real estate, however, the option is provided to revalue each real estate asset separately. In this last case, a distinction must be made between the value of the land and the value of the built structure.

- In the case of personal income taxpayers, the assets qualifying for revaluation must be used in the economic activity, while in the case of nonresident income taxpayers, they must be used by the Spanish permanent establishment.

- The revaluation does not apply to transactions carried out to include assets not recorded in the accounts or in the relevant record books, or to eliminate non existing liabilities.

3.3 Calculation of the revaluation

The revaluation is calculated by (i) multiplying the assets and the related depreciation by a specific multiplier determined according to the year in which they were produced or acquired and in which the depreciation/amortization expense was deducted; (ii)

subtracting the difference between the foregoing values and the net value of the asset to which the multipliers were applied; and (iii) multiplying the resulting figure by a debt ratio. The amount thus obtained will be the balance of the “revaluation reserve” account.

The revaluation multipliers are as follows:

	REVALUATION MULTIPLIERS
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
Fiscal year 1993	1.4122
Fiscal year 1994	1.3867
Fiscal year 1995	1.3312
Fiscal year 1996	1.2679
Fiscal year 1997	1.2396
Fiscal year 1998	1.2235
Fiscal year 1999	1.2150
Fiscal year 2000	1.2089
Fiscal year 2001	1.1839
Fiscal year 2002	1.1696
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 following rules are expressly laid down:

- In the case of assets revalued under the previous revaluation (Royal Decree-Law 7/1996), the multipliers will be applied to the acquisition price and any tax-deductible depreciation of those assets, without taking into account the net increase in value resulting from the revaluation.

- In the case of credit institutions and insurance companies, any revaluation of real estate resulting from the first-time application of their industry accounting standards that does not have a tax impact will not be taken into account.

The asset's previous net value will be subtracted from the new value of the asset, obtained by applying the revaluation multipliers, and a debt ratio, determined using the following formula, will be applied to the result:

$$\frac{\text{Net equity}}{\text{Net equity} + \text{Total liabilities} - \text{Collection rights and cash}}$$

The parameters for the quotient will be determined by reference to the aggregates for the holding period of the asset or the five fiscal years preceding the date of the revaluation balance sheet, if shorter, at the taxpayer's discretion.

This multiplier will not be used if higher than 0.4, nor should personal income taxpayers take it into account.

The resulting sum will be reduced by the net increase in value derived from the revaluation transactions under Royal Decree-law 7/1996.

The positive difference determined as described above is the amount of inflation or the net increase in value of the revalued asset. That amount will be credited to the "Revaluation Reserve Law 16/2012, of December 27, 2012" account (to simplify here, we will call it the Revaluation Reserve) and, when added to the value before the revaluation transactions, will determine the new value of the revalued asset.

- The Revaluation Reserve cannot have a debit balance, with respect to the revaluation transactions as a whole or to the revaluation of any particular asset.
- The Revaluation Reserve will form part of equity. For personal income taxpayers required to keep record books of their economic activity, the revaluation surplus for accounting purposes must be reflected in the record book for capital goods.
- The revalued asset cannot have a value higher than its market value, taking into account the condition it is in following technical wear and tear and economic depreciation and the use made of it by the taxpayer.

The revaluation must be done (i) in case of legal entities, between the balance sheet date and the last day of the term for approval of the balance sheet (the revalued balance sheet must be approved by the competent corporate body); and (ii) in the case of personal income taxpayers, between December 31, 2012 and the last day of the term for filing the personal income tax return for 2012.

3.4 Tax effects of the revaluation

The tax consequences of the revaluation transactions are as follows:

- The positive balance of the Revaluation Reserve for legal entities, or the net increase in value of the revalued assets for personal income taxpayers required to keep record books of their economic activity will be subject to a single charge of 5%.

The single charge will not be treated as tax payable for corporate income tax, personal income tax or nonresident income tax purposes. Its amount will be charged to the Revaluation Reserve and will not be treated as a deductible expense for those taxes but rather as a tax debt.

- The Revaluation Reserve will not be included in the tax base for corporate income tax, personal income tax or nonresident income tax purposes.

- The net increase in value resulting from the revaluation transactions will be depreciated, starting from the first tax period commencing on or after January 1, 2015 and in the remaining tax periods in the useful life of the asset, on the same terms as for renovations, extensions or improvements.

- If the revalued assets are transferred at a loss or suffer impairment, that loss or impairment is included in the tax base by reducing the amount of the Revaluation Reserve that relates to those elements. This provision does not apply to personal income taxpayers.

3.5 Single 5% charge

The taxable event for the single charge is deemed to take place (i) in the case of legal entities, when the revalued balance sheet is approved by the competent body; and (ii) in the case of individuals, when the revalued balance sheet is prepared. For personal income taxpayers, required to keep record books of their economic activity, the taxable event will be deemed to take place on December 31, 2012.

It will fall due (i) on the filing date of the tax return for the tax period to which the balance sheet recording the revaluation transactions relates; and (ii) for personal income taxpayers, the filing date of the tax return relating to the 2012 tax period.

This charge will be self-assessed and paid over together with the corporate income tax or nonresident income tax return for the tax period to which the balance sheet recording the revaluation transactions relates, or the personal income tax return for the 2012 tax period. That tax return will include the revalued balance sheet along with any additional information that may be required by the regulations. The late filing of the return will render the revaluation transactions null and void.

3.6 Restrictions on and use of the Revaluation Reserve

The Revaluation Reserve cannot be used until it has been audited and accepted by the tax authorities; the audit will be carried out within the three years following the filing date of the tax return. For these purposes, it will not be deemed to have been used in cases of removal of shareholders or as a consequence of the performance of any restructuring transaction carried out under the tax neutrality rules, or when it was required to be used under a statutory obligation.

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If, after the audit by the tax authorities, the balance of the account is reduced, the difference in the amount of the single charge relating to the reduced balance will be automatically refunded. This same rule will apply in case of reduction in the net increase in value, in the case of individuals.

After the audit has been carried out or the term established for the audit has ended, the balance of the account may be allocated:

- To eliminate book losses.
- To increase the capital stock.
- To unrestricted reserves after the end of ten years from the date of the balance sheet reflecting the revaluation transactions. That balance may only be distributed, however, when the revalued assets have been fully depreciated, transferred or retired from the balance sheet.

These reserves will entitle the taxpayer to take the dividend tax credit under article 30 of the Revised Corporate Income Tax Law. They will also give entitlement to the €1,500 exemption under article 7.y) of the Personal Income Tax Law.

If the balance of the Revaluation Reserve is used for purposes other than those mentioned or before the audit has been carried out or the term to do so has elapsed, it will be included in the tax base for the tax period in which that use takes place. The balance of that reserve cannot be used either to offset prior years' tax losses.

These provisions on the restricted use of the Revaluation Reserve do not apply to personal income taxpayers.

3.7 Information on the Revaluation Reserve in the notes to the financial statements

The notes to the financial statements for the fiscal years in which the revalued assets are included in the entity's equity must contain information on those assets, the revaluation methods used, the revaluation surplus and its effect on depreciation, as well as any movements in the account.

Failure to comply with these obligations will be treated as a serious tax infringement and, if there has been a material breach of these obligations, the Revaluation Reserve balance will be included in the tax base for the first, earliest tax period from among those that are not statute-barred in the period in which that breach took place, and that balance cannot be used to offset prior years' tax losses.

4. TAX ON DEPOSITS AT CREDIT INSTITUTIONS

The law includes the creation of the so-called "tax on deposits at credit institutions" the purpose of which is to tax deposits of all types placed at credit institutions, in the whole of Spain. This tax will be payable in the periods starting on or after January 1, 2013:

- The tax period for the tax coincides with the calendar year and the taxpayer is the credit institution (defined in article 1 of Legislative Royal Decree 1298/1986, of June 28, 1986) and the Spanish branches of foreign credit institutions.

- The taxable event for the tax is the keeping of funds for third parties by these institutions and branches, where they have the obligation to repay those funds, with the exception of the funds kept at branches outside of Spain.

- The tax base is calculated by subtracting the amounts of the "Valuation Adjustments" accounting from the arithmetic median of the ending balances, for the calendar quarters of the tax period, in item 4 "Customer Deposits" under liabilities in the credit institutions' reserved balance sheets of the credit institutions.

- The amount of tax payable will be determined by applying a tax rate of 0%[1] to the tax base, less any prepayment made to determine the final tax payable.

- The self-assessment tax return will be filed in July of the year following the tax period, and there is an obligation to make an advance payment in July of each year equal to 50% of the tax payable figure resulting from applying the rate in force in that tax period to the tax base of the preceding tax period. In any case, there is no obligation to file a tax return or advance payment where the tax payable is equal to zero euros.

- The tax payable and the advance payment can be modified through the General State Budget Law.

- The following are exempt from liability for the tax: the Bank of Spain, the European Investment Bank, the European Central Bank and Instituto de Crédito Oficial.

Lastly, compensation is envisaged for any autonomous communities that have created the tax through a law approved before December 1, 2012.

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[1] Although the tax rate can be modified in later years through the Budget Law, the creation of the tax with a tax rate of 0% results from the lawmaker's intention to reserve the power to tax bank deposits for the central government.

5. TAXATION OF SEVERANCE PAY

As the government has been announcing, starting on January 1, 2013, there will be tougher taxation for “very high amounts” of severance pay. The changes affect the taxation of both the recipients and the payers of the severance that are corporate income taxpayers.

5.1 In the corporate income tax of the payer

The expenses derived from the termination of employment, under an ordinary or special employment contract, or of a contract for services (directors or board members), “or of both,” and exceeding €1,000,000 per recipient, or the sum that is exempt from personal income tax if higher, even where it is paid in more than one tax period, will be nondeductible.

In other words:

- If the exempt severance pay for a certain recipient exceeds €1,000,000, amounting, say, to €1,500,000, and the severance payment totals €2,000,000, the expense will only be deductible up to the exempt €1,500,000, and the remainder will not be deductible;

- If the exempt severance is lower than €1,000,000, but the severance payment is higher than that sum, by amounting, for example, to €2,000,000, the expense will be deductible up to €1,000,000, and the excess will not be deductible.

The amounts paid by other entities forming part of the same corporate group within the meaning of article 42 of the Commercial Code will be computed to determine the deductible limit.

The limit referred to above will not apply to expenses deriving from employment contracts or contracts for services that were terminated before January 1, 2013.

5.2 In the personal income tax of the recipient

The treatment has been changed for severance deemed multiyear income, and the law establishes that in the case of termination of the employment contract or contract for services (of directors or board members), the 40% reduction[2] will apply as follows:

- That reduction continues to apply, as a general rule, on a maximum of €300,000 annually.

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[2] Provided by personal income tax legislation for income that is deemed generated over more than two years and not obtained on a periodic or recurring basis or that is classified by regulations as obtained on a notably irregular basis over time.

- If the severance is between €700,000.01 and €1,000,000, the 40% reduction will apply to the amount resulting from subtracting €300,000 from the difference between the amount of the income and €700,000.

  Thus, if the amount of the severance is €1,000,000 or more, the reduction will not apply.

Although the Law does not clearly state this, the inclusion of this rule separately from the rules on exempt income indicates that these rules on multiyear income would only apply to the non-exempt portion of severance pay. In this regard, for a severance of, say, €900,000, with an exemption for €300,000, it should be considered that, because the nonexempt amount of the severance is less than €700,000 (i.e. €600,000), the reduction would apply by reference to the general limit of €300,000. However, if, in this example, the nonexempt amount were €800,000, the 40% reduction would apply to a maximum of €200,000.

These changes will not apply to salary income deriving from terminations taking place before January 1, 2013.

6. NEW TAX TREATMENT FOR GAINS FROM GAMING ACTIVITIES

Effective on January 1, 2013, the personal income tax exemption for the gains obtained from prizes and lotteries (ONCE, the Red Cross, the central government lottery agency (Loterías y Apuestas del Estado), etc.) has been eliminated, although these gains will not be included in the personal income tax base.

In tandem, a special charge has been created for those prizes, namely, for:

(i) The prizes from lotteries and bets organized by the central government lottery and betting agency, by the bodies or entities attached to the autonomous community governments and the prizes obtained from the draws organized by the Red Cross and from the authorized games organized by ONCE, the Spanish association for the blind; and

(ii) The prizes from lotteries, bets and draws organized by public agencies or entities from other EU states or within the European Economic Area that carry on not-for-profit outreach or welfare activities (with the same aims as those of the agencies mentioned in paragraph (i) above).

This charge is payable on each winning lottery ticket (*décimo*) or fraction of that lottery ticket (and not per co-owner) for prizes exceeding €2,500 and only on the portion exceeding that amount. However, if the amount of the lottery ticket, or fraction of the lottery ticket, or of the bet is less than €0.50, the maximum exemption will be reduced proportionally.

The base for the charge is formed by the nonexempt amount of the prize. In the case of prizes in kind, the base will be the market value of the prize, less the tax withholdings made and the exempt €2,500.

The liability will be calculated at 20% of the charge base, less any withholdings made. Withholdings from the prizes will be 20% (which will be applied to the tax base for the special charge). A self-assessment return will have to be filed for the special charge, unless the prize is lower than the exempt amount or withholdings have been made.

This charge, which falls due upon payment of the prize, will not apply to prizes awarded for games held before January 1, 2013.

The special charge will also apply to nonresident income taxpayers operating other than through a permanent establishment (for the prizes described in paragraph (i) above), on similar terms and conditions.

In this case, the 20% withholding will be made even if the prize is exempt under an applicable tax treaty. In this case, however, the payer can apply for application of the tax treaty and the resulting refund.

For these taxpayers, the prizes mentioned above can only be taxed in respect of the special charge.

The prizes referred to above will also be subject to corporate income tax, and 20% withholdings will be required in respect of the portion that is subject and not exempt.

Lastly, starting on January 1, 2012, the personal income tax rule establishing that gaming losses are not computed (as capital losses) has been modified. The new wording of the provision establishes that those losses, obtained in the tax period, will not be computed where they exceed the gains obtained on games in the same tax period. Under no circumstances, however, will the losses derived from participating in the games subject to the special charge be computed.

7. OTHER PERSONAL INCOME TAX CHANGES

7.1 Timing of recognition rules: change of residence

The law establishes that when a taxpayer forfeits his status as resident following a change of residence, he must include any unrecognized income in the tax base for the last tax period. This recognition will, in some cases, require a supplementary tax return to be filed for that period, but without any penalties, late-payment interest or surcharges.

This has changed and the law now establishes that if the taxpayer moves to another EU Member State, he can recognize that income as stated in the preceding paragraph, and he also can choose to report the income as and when it is obtained by filing supplementary tax returns for the last period of residence (also without penalty, late-payment interest or surcharges).

7.2 Valuation of the loan of dwellings

To date, the value of the loan of dwellings has been calculated, for the purpose of its treatment as compensation in kind, at 5% or 10% of the cadastral value of the dwellings (depending on whether or not that value was revised before January 1, 1994), capped at 10% of the remaining salary income.

Starting on January 1, 2013, this valuation rule will only apply to cases where the dwellings are owned by the payer.

Otherwise, the compensation in kind will be valued at the cost for the payer (including the taxes levied on the transaction), which value, moreover, cannot be lower than the value that would have resulted from applying the foregoing rule for dwellings owned by the payer.

Nonetheless, in 2013, the previous legislation can continue to be applied with respect to dwellings that are not owned by the payer but where the employer had been loaning them before October 4, 2012.

7.3 Obligation to report contributions in respect of pension obligations

The Personal Income Tax Law establishes that certain contributions made by employers to meet pension obligations may be reported voluntarily. Not reporting those contributions has been enabling employees not to be taxed on this type of income until they receive the related benefits.

In particular, reporting these contributions is voluntary in the case of group insurance policies other than employee welfare plans, the only requirement being that the adopted decision must be maintained with respect to all the other premiums paid until the insurance policy ends. By contrast, their reporting is compulsory, not voluntary, in the case of ordinary life insurance, unless it also covers retirement and death or disability.

The change that has just appeared, effective starting on January 1, 2013, is that reporting will always be compulsory for amounts exceeding €100,000 per year and taxpayer with respect to the same employer, except in the case of group insurance policies taken out in the context of collective layoffs.

This amendment will not come into play for group insurance policies taken out before December 1, 2012, where (i) the contract expressly stipulates premiums of a certain amount, and (ii) the annual total in respect of premiums exceeds a cap of €100,000. In these cases, it is not compulsory to report that excess.

7.4 Expenses and investments to familiarize employees with the use of new communication and information technology

The treatment of the expenses and investments to familiarize employees with the use of new communication and information technology has been extended into 2013, meaning that they will continue to be treated as training expenses and, as such, will generate income not subject to personal income tax.

Consequently, they will give entitlement to the corporate income tax credit for training expenses incurred in 2013.

7.5 Income from economic activities: reduction in net income as a result of creating or maintaining employment

The reduction in net income from economic activities as a result of creating or maintaining employment has been extended to apply in fiscal year 2013. You may recall that this reduction, by 20% of the reported net income minus certain reductions, applies to taxpayers whose net revenues from all of their activities are below €5 million and have an average workforce below 25 employees, where they maintain or create employment.

7.6 Indexation allowance for transfers of real estate

As every year, the Budget Law for 2013 provides the indexation allowance multipliers to be used to calculate the capital gain obtained on the transfer of real estate not used in economic activities (you may recall that since 1999, these rates apply only in the transfer of real estate).

The rates for 2013 are the following:

	INDEXATION ALLOWANCE MULTIPLIER
Up to 1994[(1)]	1.3167
1995	1.3911
1996	1.3435
1997	1.3167
1998	1.2912
1999	1.2680
2000	1.2436
2001	1.2192
2002	1.1952
2003	1.1719
2004	1.1489
2005	1.1263
2006	1.1042
2007	1.0826

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	INDEXATION ALLOWANCE MULTIPLIER
2008	1.0614
2009	1.0406
2010	1.0303
2011	1.0201
2012	1.0100
2013	1.0000

(1) The indexation allowance multiplier for real estate acquired on December 31, 1994 will be 1.3911.

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

7.7 Transfers of assets held for less than one year

The treatment of capital gains/losses has been modified making it very similar but not identical to that which applied before the reform of 2006.

Starting on January 1, 2013, capital gains/losses are once again classified into three categories:

(i) Those not deriving from asset transfers;

(ii) Those deriving from the transfer of assets acquired or from improvements carried out on those assets more than one year before the transfer, or from rights of subscription to securities also acquired more than one year earlier.

(iii) The same as above but generated in one year or less.

Only the gains mentioned in paragraph (ii) above will form part of the savings component of the tax base, that is, will be taxed at the fixed tax rates. The other capital gains will be included in the general component, and taxed at the marginal rate.

This modification is accompanied by a change in the rules for the inclusion and offset against income, which are now as follows:

- The capital gains/losses generated in a period of up to a year are now included with those not deriving from the transfer or improvement of assets.
- If the inclusion of those capital gains/losses results in a negative balance, that amount will be offset against the positive balance resulting from the inclusion and offset against actual and imputed income, up to 10% (previously it was 25%) of that positive balance.
- If the total balance is negative, it will be offset over the following four years, according to the general rules on offset.

As a transitional measure, the law allows:

- Any capital losses generated in a period not exceeding a year, not statute-barred and carried forward for offset at January 1, 2013 (i.e., generated from 2009 up to and including 2012), to continue to be offset against the capital gains included in the savings component of the tax base.

- Any losses not deriving from transfers of assets (or their improvement) relating to fiscal years 2009 through 2012 to be offset against the actual and imputed income in the general component of the tax base, subject to the previous limit of 25% (not the new limit of 10%) of the positive balance resulting from the inclusion and offset against the actual and imputed income. In any case, any such offset, together with any offset of the same kind of losses generated since January 1, 2013, cannot exceed 25% of that positive balance.

7.8 Tax credit for investment in the taxpayer's principal residence

The tax credit for investment in the taxpayer's principal residence has been eliminated, effective on January 1, 2013.

A set of transitional rules have been put in place, however, for those taxpayers who, before January 1, 2013, had (i) acquired their principal residence, (ii) paid sums for it to be built, (iii) paid sums for renovation work on or extension of the principal residence or, lastly, (iv) paid sums for works and facilities to adapt the principal residence of disabled persons. In these last two cases, the works must be finished before January 1, 2017.

In those circumstances, the tax credit for acquisition of the taxpayer's principal residence can be taken in accordance with the wording in force on December 31, 2012.

In all cases, the taxpayer must have taken the tax credit in relation to the sums paid in a tax period before January 1, 2013, unless he is subject to the restrictions in place for taxpayers that have (i) taken the tax credit for previous residences, (ii) applied the exemption for reinvestment for a previous residence, or (iii) both.

Lastly, taxpayers who, before January 1, 2013, have deposited sums in a homebuyers savings account intended to be used to buy their first home or renovate their principal residence can add to the net tax payable to the central government and autonomous community government in fiscal year 2012 the tax credits they have taken up to 2011, without late-payment interest, provided that the account was not opened more than four years before that date.

7.9 Compensation in 2012 for receipt of income from movable capital generated over more than two years

Law 35/2006 eliminated the 40% or 75% reduction, as applicable, for multiyear income from movable capital. In order to prevent this measure from having an adverse impact on taxpayers that acquired financial instruments before January 20, 2006, the Budget Law provides compensation each year, notably as follows:

- The compensation applies to the following income:

  - Income obtained for the assignment to third parties of own capital deriving from financial instruments acquired 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 due to having a generation period of more than two years.

  - Income from amounts received in the form of deferred capital deriving from life or disability insurance taken out before January 20, 2006, and to which the 40% or 75% reduction provided for in the Revised Personal Income Tax Law would have applied.

- The compensation will be equal to the positive difference between the sum resulting from applying the tax rates for savings income to the positive balance resulting from adding together and offsetting against each other the total for the net income referred to above, and the imputed gross tax payable.

  This imputed gross tax payable will be calculated as follows:

  - Where the balance resulting from adding together and offsetting the items of income referred to above against each other, and applying the relevant reduction percentages established in the legislation previously in force, is zero or negative, the imputed gross tax payable will be zero.

  - Where that balance is positive, the imputed gross tax payable will be the positive difference between (i) the tax payable resulting from applying the rate scale established in the current legislation to the sum of the general component of net taxable income and that positive balance, and (ii) the tax payable resulting from applying that scale of rates to the general component of net taxable income.

    In order to determine the balance, in the case of life and disability insurance benefits, the reductions will only apply to premiums paid up to January 19, 2006. However, they will also apply to those paid after that date in the case of ordinary premiums envisaged in the original insurance contract.

- To determine the portion of the total income obtained that relates to each premium under a deferred capital insurance contract, the total income will be multiplied by the weighting ratio calculated by dividing:

  - the premium multiplied by the number of years elapsed from the time it was paid until the benefits were collected; by

  - the sum of the figures resulting from multiplying each premium by the number of years elapsed from the time it was paid until the benefits were collected.

  The insurer must notify the taxpayer of the amount of net income from the benefits received in the form of deferred capital deriving from life and disability insurance relating to each premium, calculated as stated in the preceding paragraphs.

- The amount of this compensation, calculated according to the rules explained above, will be subtracted from the total net tax payable, after subtracting the allowance for obtaining salary income or performing economic activities, if applicable.

8. CORPORATE INCOME TAX CHANGES

8.1 Limit on tax deductible amortization/depreciation

Effective for the tax periods starting in 2013 and 2014, the book amortization/depreciation of property plant and equipment, and intangible assets and of real estate investments will only be deductible *up to 70% of the amount that would have been tax deductible in accordance with articles 11.1 and 11.4* of the Revised Corporate Income Tax Law.

This also affects any amortization/depreciation under the special rules for finance lease agreements.

Any book amortization/depreciation that is not tax deductible by application of this limit will not be treated as impairment and will be deducted starting in the first tax period commencing in 2015, on a straight-line basis over a period of 10 years or during the asset's useful life, whichever is chosen by the taxpayer.

This limit does not apply to:

- "Entities of a reduced size"; that is, entities whose net revenues in the preceding tax period were below €10 million. These entities will continue to be able to deduct their amortization/depreciation expenses without limitation, as they have been doing up to now.

  The limit will apply to any entities which, having failed to fulfill the requirements to qualify as "entities of a reduced size" continue applying this special regime during the following three tax periods. In these cases, the 70% limit will also apply to the unrestricted amortization/depreciation provided in this regime for investments in new items of property plant and equipment and real estate and in assets in which income has been reinvested.

- The assets that have been the subject-matter of a specific communication or authorization procedure by the tax authorities, in relation to their amortization/depreciation.

8.2 Extension of the reduced tax rate for creating or maintaining employment

The reduced tax rate for entities (i) whose revenues in the period are below €5 million, (ii) that have an average workforce in the period below 25 employees and (iii) that create or maintain jobs (on the terms set out in the legislation itself), has been extended to apply in the tax period commenced in 2013.

These entities can therefore also apply a 20% rate to the first €300,000 in the period commencing in 2013. The remainder of the tax base will be taxed at 25%.

8.3 Indexation allowance for 2013 for transfers of real estate

The Budget Law has approved, as it does every year, the indexation allowance multipliers 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 2013.

The new multipliers, to be applied to the cost price or production cost and to the depreciation expense recognized in the accounts, are as follows:

	INDEXATION ALLOWANCE MULTIPLIER
Prior to January 1, 1984	2.3130
Fiscal year 1984	2.1003
Fiscal year 1985	1.9397
Fiscal year 1986	1.8261
Fiscal year 1987	1.7396
Fiscal year 1988	1.6619
Fiscal year 1989	1.5894
Fiscal year 1990	1.5272
Fiscal year 1991	1.4750
Fiscal year 1992	1.4423
Fiscal year 1993	1.4235
Fiscal year 1994	1.3978
Fiscal year 1995	1.3418
Fiscal year 1996	1.2780
Fiscal year 1997	1.2495
Fiscal year 1998	1.2333
Fiscal year 1999	1.2247
Fiscal year 2000	1.2186
Fiscal year 2001	1.1934
Fiscal year 2002	1.1790
Fiscal year 2003	1.1591
Fiscal year 2004	1.1480
Fiscal year 2005	1.1328
Fiscal year 2006	1.1105
Fiscal year 2007	1.0867
Fiscal year 2008	1.0530
Fiscal year 2009	1.0303
Fiscal year 2010	1.0181
Fiscal year 2011	1.0181
Fiscal year 2012	1.0080
Fiscal year 2013	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).

8.4 Prepayments

Prepayments on account of corporate income tax for the tax periods commencing in 2013 must be made in the first 20 calendar days of the months of April, October and December of each year and calculated as follows:

- For prepayments based on gross tax payable (after deduction of credits and reductions and the related withholdings) 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%.

- For prepayments based on the tax base for the period consisting of the first 3, 9 or 11 months of each year, the rate will be as follows:

  - If the entity's net revenues in the twelve months of the previous year are below €10 million, the applicable rate will be calculated by multiplying the tax rate by 5/7 and rounding down.

    For entities that are taxed at the standard rate, the prepayment percentage will remain, therefore, at 21%. This is also the percentage that applies to entities whose turnover has not exceeded €6,010,121.04.

  - If the entity's net revenues in the twelve months of the previous year are at least €10 million, but lower than €20 million, the prepayment percentage will be calculated by multiplying the tax rate by 15/20 and rounding up.

    For entities taxed at the standard rate, the prepayment percentage will go up, therefore, to 23%.

  - If the entity's net revenues in the twelve months of the previous year are at least €20 million, but lower than €60 million, the prepayment percentage will be calculated by multiplying the tax rate by 17/20 and rounding up.

    For entities taxed at the standard rate, the prepayment percentage will go up, therefore, to 26%.

  - If the entity's net revenues in the twelve months of the previous year are €60 million or higher, the prepayment percentage will be calculated by multiplying the tax rate by 19/20 and rounding up.

    For entities taxed at the standard rate, the prepayment percentage will go up, therefore, to 29%.

Under this method, taxpayers can subtract from the resulting amount of tax payable the withholdings and prepayments deposited in 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.

This calculation method for the prepayment continues to be compulsory for taxpayers with revenues in excess of €6,010,121.04 in the 12 months preceding the first day of their tax periods in 2013.

Moreover, remember that, as a consequence of the amendments introduced by Royal Decree-laws 9/2011, 12/2012 and 20/2012 (to which the Budget Law refers), some issues to bear in mind are the following:

- The tax base for the period must include 25% of the amount of the accrued dividends and income to which article 21 of the Revised Corporate Income Tax applies.

- There is a minimum prepayment established for taxpayers whose revenues in the twelve months of the previous year are equal to or higher than €20 million.

  However, certain entities are excluded from the obligation to make this minimum prepayment. In particular, (i) the entities that are subject to the tax regime established in Law 49/2002, on the Tax Regime for Not-for-Profit Entities and Tax Incentives for Patronage, (ii) those referred to in Law 11/2009, regulating SOCIMIs, and (iii) open-end investment companies, mutual funds, real estate investment companies, the mortgage market regulation fund, and pension funds (entities that are taxed at the rates of 1% and 0%).

  These latter entities (those taxed at the rates of 1% and 0%) are released from the obligation to make prepayments and to file prepayment returns.

8.5 New tax regime for transactions for the restructuring and resolution of credit institutions

Effective starting on November 15, 2012, an Additional Provision has been added to the Revised Corporate Income Tax Law.

According to that provision, the special regime for mergers and divisions in Chapter VIII of Title VII of the Revised Corporate Income Tax Law, including its effects on the other taxes, applies to transfers of business or of assets or liabilities made by credit institutions (under plans for the restructuring or resolution of credit institutions) to another credit institution, under the legislation on bank restructuring and reinforcement of the equity of credit institutions, even where they do not match any of the transactions stipulated for that special mergers regime.

8.6 Finance lease regime

The law sets out a special regime for finance lease agreements. This regime basically allows unrestricted amortization/depreciation of the assets under a finance lease, and even early amortization/depreciation (that is, it allows companies to start their amortization/depreciation, not when the asset is brought into operation, but rather when it starts to be built) in certain cases, according to the specific characteristics of the contract or construction period of the asset or its uniqueness.

The combination of this regime with the tonnage system for shipping companies through certain *complex* structures (in the words of the European Commission) led to the initiation of State Aid proceeding no. SA. 21233 (2011/C) (ex 2011/NN).

Although that proceeding has not yet ended, Spain has submitted an amended version of article 115 of the Revised Corporate Income Tax Law, containing the provisions on the permitted early and unrestricted amortization/depreciation referred to above, and the European Commission has accepted the Spanish government's proposal. Accordingly, the tax regime of finance lease agreements is now modified as follows:

- The authorization procedure, whereby the ministry had to determine the time (before asset is brought into operating condition) when the company could start its amortization/depreciation, has been eliminated. It was considered that this power of decision has been used to date to authorize this early amortization/depreciation only for certain types of assets.

- That authorization procedure is replaced by an option whereby the lessee can elect (through a communication to the Ministry of Finance and Public Authorities) to establish that amortization/depreciation will start upon the commencement of the construction of the asset; for these purposes, various requirements must be met simultaneously:

  - The assets must be items of property plant and equipment under a finance lease agreement in which the installments are paid a considerable time before the end of their construction.

  - Their construction must last for at least 12 months.

  - The assets must meet unique technical and design requirements and not be mass produced.

- The requirement for the assets under the finance lease agreement to be leased out to third parties not related to the economic interest grouping that uses them in its activity, and for its investors (the investors in the economic interest grouping) to hold their ownership interest until the end of the tax period in which the lease ends, has been eliminated.

The assets for which the administrative authorization has been obtained in a tax period commencing before January 1, 2013, will be subject to the legislation in force on December 31, 2012.

In parallel to the above amendments, the Budget Law has repealed the articles (articles 49 and 50.3 of the Corporate Income Tax Regulations) establishing (i) the authorization procedure for early unrestricted amortization/depreciation and (ii) the provision that, when entering the tonnage system, the vessels acquired by exercising the purchase option under a finance lease agreement the tax effects of which had been subject to prior authorization by the tax authorities, would not be deemed used vessels.

8.7 Measures to foster the production of feature films

The tax credit for investment in cinematographic production has been extended to the tax periods commencing before January 1, 2015, after which date it will be considered repealed.

Any tax credits that have not been taken at the beginning of the first tax period commencing on or after January 1, 2015 may be taken in the term and subject to the requirements established in the legislation, according to the wording in force on December 31, 2014. Those requirements also apply in order for the tax credits taken in tax periods commencing before that date to vest.

9. VALUE ADDED TAX AND CANARY ISLAND GENERAL INDIRECT TAX

Numerous changes have been made to value added tax (“VAT”) and the Canary Islands general indirect tax (“IGIC”), in this latter case generally to adapt it to the changes already made to VAT by previous laws.

9.1 Definition of supply of goods (VAT/IGIC)

The definition of supply of goods has been extended to take in noncash contributions made by VAT and IGIC taxable persons of their business or professional assets, not only to companies or joint-property companies but also to any other type of entities.

Moreover the Budget Law clarifies that the award of real estate promoted by joint-property companies to their members in proportion to their ownership interest qualifies as a supply of goods (the case law of the Supreme Court, in the absence of a specific provision, held that this was not a taxable event).

9.2 Taxable event (IGIC)

In relation to the delimitation of the taxable event for IGIC purposes, as a consequence of the amendments to article 108 of the Securities Market Law made by Law 7/2012, the exception to the incompatibility between IGIC and transfer and stamp tax has been eliminated, just like it was eliminated from the VAT legislation, in cases of the transfers of securities to which that article applies.

9.3 Exemptions (VAT)

9.3.1 Exemption for services supplied by economic interest groupings and unions to their members

The exemption applicable to economic interest groupings and unions has been amended to extend to cases in which the members carry on an activity that is exempt or not subject to VAT without the right to the deduction, even where that activity is not the "essential" activity required by the wording in force up to now, provided that the services supplied by the grouping are used directly and exclusively in that activity.

In order to delimit the exempt activity, the law establishes a quantitative limit, in keeping with the previous rule, according to which, to be considered as such, the deductible proportion could not exceed 10%. The services supplied by the grouping cannot be used directly and exclusively in the transactions giving rise to the deduction right.

The Budget Law eliminates the requirement for prior recognition by the competent body of the tax authorities, and essentially retains the other requirements to qualify for the exemption.

It also establishes that social entities or establishments meeting certain requirements can apply to the tax authorities for characterization as such, which will be binding for the authorities. This characterization replaces the previous form of recognition (which disappears).

Regardless of whether the characterization mentioned in the preceding paragraph is obtained, however, the exemptions for the services supplied by social entities or establishments will continue to apply as long as the relevant conditions are met in each case.

9.3.2 Limit on non-exemption in finance lease agreements

The characterization as non-exempt of supplies of real estate as a result of the exercise of a purchase option under a finance lease agreement remains, but the Budget Law lays down a minimum term of 10 years for the agreements to be characterized as such. In this way, legal status is given to the interpretation that the early termination of the agreement for the purchase of the real estate would be characterized as a second supply of buildings.

9.4 Place-of-supply rules for supplies of goods (IGIC)

- The law establishes that supplies of items of property plant and equipment that must be dispatched or transported in order to be given over to the acquirer will be subject to IGIC where the dispatch or transport starts in the IGIC territory (previously, it was established that the supply would be deemed made in the place where the goods were located at the start of their dispatch or transport).

- The place-of-supply rule for supplies of goods to be installed or assembled has been modified to the effect that these supplies are deemed subject to IGIC only where the installation or assembly completed in the IGIC territory results in the supplied goods being fixed in the place where they are assembled or installed and their cost exceeds 15% of the total consideration for the supply of the installed goods.

- A new place-of-supply rule has been added in relation to supplies of goods to passengers made on board a vessel or airplane, according to which those supplies will be subject to IGIC where the journey starts and ends in the IGIC territory and the vessel or aircraft does not make a stop at ports or airports situated outside that territory. For these purposes, the Budget Law clarifies how to determine the starting place.

  It is also established that in the case of round trip transport services, the return journey will be deemed a separate transport service.

- A new place-of-supply rule has been established for supplies of natural gas on networks situated in the IGIC territory, of electricity and heating and cooling energy, according to which those supplies are deemed subject to IGIC when the reseller is a trader or professional whose place of business, fixed establishment or address is located in that territory, and the recipient of those supplies is that place of business, fixed establishment or domicile.

  For these purposes, the law clarifies that the reseller, trader or professional means the person whose primary activity, in relation to the purchase of gas, electricity, heating or cooling energy, consists of reselling it, and their own use of that energy is negligible.

9.5 Chargeable event

9.5.1 VAT

The law establishes that in intra-Community supplies or transfers of goods in which no price has been agreed, or where a price has been agreed but it has not been determined when the price becomes payable or it has been established that the price will be paid over a period longer than a calendar month, VAT will become chargeable on the last day of each month, in the proportional part relative to the period that has elapsed between the start of the transaction or the last time the tax became chargeable, and that date.

Additionally, in all intra-Community supplies or transfers of goods other than those mentioned in the preceding paragraph, VAT will become chargeable on the 15th day of the month following that in which the dispatch or transport of the goods to the acquirer commences. This excludes cases where an invoice has been issued before that date, when the VAT will become chargeable on the issue date of the invoice.

9.5.2 IGIC

- Supplies of goods: the law establishes that, for supplies of goods made under sale agreements with a reservation of title clause or other condition precedent, hire purchase agreements, or leases with a transfer of ownership clause binding on both parties, IGIC will become chargeable when the goods concerned are placed in the acquirer's possession.

- Supplies of services: as a new feature of the taxation of transactions in which the recipient is the taxable person that are carried out on a continuous basis over a period exceeding a year and do not give rise to advance payments in that period, the law establishes that the tax will become chargeable on December 31 of each year, in the proportional part relative to the period that has elapsed between the start of the transaction or the last time the tax became chargeable and that date, provided that those supplies of services have not been terminated.

  As an exception to the foregoing, in works of construction with supply of materials, the IGIC will become chargeable when the goods are given over to the owner of the work.

- Works of construction with or without supply of materials: in these transactions, where the recipients are the public authorities, the tax will become chargeable upon the acceptance of the works.

- Leases, supplies and, generally, ongoing or continuous transactions: as an exception to the general rule on the tax becoming chargeable when the price becomes payable, in cases where a price has not been agreed or a price has been agreed but it has not been determined when the price becomes payable, or it has been established that the price will be paid over a period longer than a calendar year, the IGIC will become chargeable on December 31 of each year, in the proportional part relative to the period that has elapsed between the start of the transaction, or the last time the tax became chargeable, and that date.

9.6 Taxable amount

The following changes have been made in relation to determining the taxable amount for IGIC purposes in supplies of goods and services:

- The general rule has been completed to establish that the taxable amount is the total consideration for the supplies subject to the tax paid by the recipient or third parties.

- In relation to subsidies linked to the price, a definition has been included, based on which the subsidies established according to the number of units supplied or to the volume of the services supplied are deemed to be directly linked to the price where they are determined before the transaction is performed.

- Two new items have been included which will form part of the consideration:
  - The value of containers and packaging, even where they are returnable, charged to the recipients of the transaction, regardless of the item for which that price is received.
  - The amount of the debts assumed by the recipient of chargeable transactions, as full or partial consideration for those transactions.
- The law establishes that if the amount of the consideration is not known when the tax becomes chargeable, the taxpayer must set a provisional amount by reference to well-founded criteria, which amount can be corrected when the consideration becomes known.
- Regarding the special rules on the IGIC taxable amount in supplies of goods and services, the following changes have been made:
  - In transactions in which the consideration is not in cash, the taxable amount will be the arm's length amount that would be agreed in the same phase of production or commercialization between independent parties.
  - Where, in the same transaction and for a single price, different kinds of goods or services are supplied, even in cases of transfers of all or some of the business assets, the taxable amount relating to each of them will be determined in proportion to the market value of the goods or services supplied.

    This rule will not apply where those goods or services are the subject-matter of the ancillary services of another principal service subject to the tax.
- Lastly, it has been added that the IGIC taxable amount for the transactions subject to special rules should, as applicable, include or exclude the expenses or components provided for in the general rule on determining the taxable amount.

In the context of the prevention of default in commercial transactions, both for VAT and for IGIC, and effective from the entry into force of the Tax Measures Law, specific measures concerning default in commercial transactions have been included, establishing that in installment transactions, where collection of one of the installments has been claimed (in a claim filed with the courts or through a letter sent by notary) this will be enough to be able to correct the taxable amount in proportion to the unpaid installment/s, clarifying that any recipients not acting as traders or professionals and whose invoices have been corrected due to default, will not become debtors for the tax where all or part of the debt is subsequently paid.

9.7 New case for the reverse charge mechanism (IGIC)

As did Law 7/2012 in relation to VAT, a new case for the reverse charge mechanism has now been established for IGIC for the performance of works, with or without the contribution of materials, and for loans of personnel to perform the work as a

consequence of contracts concluded directly between the developer and the contractor, regarding the urban development of land or the construction or renovation of buildings.

It has also been extended to apply to the rest of the chain, in particular where the recipient of the transaction is also the principal contractor or other subcontractors on the conditions mentioned.

9.8 Exercise of the deduction right (IGIC)

In cases where an insolvency order has been issued, by changing what was previously an obligation the law now establishes that the taxable person adjudged insolvent or the insolvency managers, as the case may be, can deduct the outstanding tax borne before the insolvency order, through the correction of the tax return for the tax period in which it was borne, provided that not more than four years have elapsed since the right to deduct those amounts arose.

9.9 VAT invoicing obligations

The reference to the document serving as an invoice contained in various articles of the VAT Law has been eliminated. Also, regarding the obligation to issue an invoice and invoicing by third parties, the following changes have been made:

- Where the invoicing obligation is met by a customer of the trader or professional, although a prior agreement between the parties to that effect is still required, the requirement that it must have been perfected in writing has been eliminated.

- The invoice issued by a customer or by a third party for and on behalf of the trader or professional can be issued on paper or in electronic format (in this latter case, the recipient must have given its consent). It must be ensured that the invoice, whether on paper or in electronic format, is legible from the issue date and throughout the period for which it must be kept.

This change has not been included in the IGIC legislation.

9.10 Canary Islands economic and tax regime

Canary Islands Autonomous Community Law 4/2012, of June 25, 2012, on administrative and tax measures, took effect on July 1, 2012, repealing the legislation in force up to that time in relation to exemptions for internal transactions and to tax rates, which are now governed by that Law 4/2012.

In particular, that law repeals articles 10 and 27, number 3 of article 58.b, additional provision number eight, and Exhibits I, I.b, II and VI of Law 20/1991, of June 7, 1991, modifying the tax elements of the Canary Islands economic and tax regime, and article 24 of Law 19/1994, of July 6, 1994, modifying the Canary Islands economic and tax regime.

10. OTHER CHANGES

10.1 Wealth tax

Royal Decree-law 13/2011 temporarily reinstated wealth tax for fiscal years 2011 and 2012, after it had been eliminated in practice since 2008, through the application of a 100% reduction introduced by Law 4/2008.

The regime has now been extended to apply in fiscal year 2013, meaning that the 100% reduction will not be reinstated, in principle, until 2014.

Remember that although this is a change at central government level, the autonomous communities have made use of their legislative powers in this respect, so potential taxpayers should consult the specific legislation for the autonomous community where they are resident.

10.2 Inheritance and gift tax

- In relation to the 95% reduction in the tax base of this tax, applicable in the case of gifts to the spouse, descendants or adopted children, of assets forming part of the Spanish historical heritage or to the historical or cultural heritage of the autonomous communities, the law establishes that the requirement to hold the acquired assets for ten years will not be deemed to be breached where those assets (in relation to which the reduction has been applied) are given in purely, simply and irrevocably to the central government or other territorial or institutional public authorities.

- The Valencia Autonomous Community is included amongst the autonomous communities which require self-assessment of the tax.

10.3 Special real estate tax

Starting on January 1, 2013, the special real estate tax has been eliminated generally, and will only be charged to entities resident in a country or territory classed as a tax haven that own or hold, by any means, real estate or rights in rem to enjoy or use real estate in Spain.

You are reminded that the tax base is the cadastral value for the real estate (or that determined in accordance with the wealth tax provisions, if there is no cadastral value) and that the tax rate is 3%.

The law provides for a lien on the assets in order to pay the tax in cases of transfers of real estate in Spain by entities subject to the special tax.

10.4 Transfer and stamp tax

Effective since the entry into force of the Tax Measures Law, administrative documents relating to the registration of attachments ordered *ex officio* not only by the judicial authorities but also by the competent administrative authorities are not subject to stamp duty.

Also, the Budget Law has revised to 1%, for fiscal year 2013, the scale of tax rates applicable to transfers and reinstatement of titles of nobility.

10.5 Local taxes

10.5.1 Real estate tax

In relation to the exemption for certain historical monuments and gardens of cultural interest, it now excludes those used in economic operations unless they are subject to any of the cases eligible for exemption provided in Patronage Law 49/2002, of December 23, 2002, or the liability for the tax falls on the central government, autonomous communities or local corporations (among others).

However, for real estate assets not eligible for the exemption and for those in which economic activities are performed that are declared to be of special interest or use to the municipality, city councils have been authorized to provide for a reduction of up to 95% of the gross tax payable.

10.5.2 Tax on economic activities

A 95% reduction in the tax payable has been established for taxpayers subject to the municipal tax that perform activities declared to be of special interest or use to the municipality due to the existence of social, cultural, or historical-artistic circumstances or reasons relating to job creation which justify that declaration.

Legislative Royal Decree 1175/1990 approving the tariffs and procedures for the tax on economic activities has also been amended. Specifically:

- A note has been added to caption 981.3 of section one “Amusement parks, including water parks and similar, of a stable nature” to reduce the tax payable to 70% of the amount mentioned in that caption for parks that remain open for at least eight months of the year.

- In the captions that provide for a reduction in the tax payable through the application of a percentage on it because the establishment remains open for less than a year, it is established that the percentage will also apply to the surface area of the premises.

- In seasonal activities or establishments that remain open to the public for less than a year, it is stated that filing the return to remove the activity from the register will be incompatible with the application of the reductions in the tax payable provided for the purposes of calculating the surface area of the premises.

10.5.3 2011 earthquake in Lorca

The tax benefits in connection with real estate tax and the tax on economic activities established by article 12 of Royal Decree-law 6/2011, adopting urgent measures to repair the damage caused by the earthquakes that occurred on May 11, 2011, in Lorca, Murcia, have been extended to apply in fiscal year 2013.

10.5.4 Tax on the increase in urban land value

Effective on January 1, 2013, the Property Registry will not register any document containing an act or contract giving rise to tax obligations relating to tax on the increase in urban land value, unless the taxpayer evidences that it has filed the self-assessment or, as appropriate, the tax return or the relevant communication to the buyer or to the person in whose favor the right in rem in question is created or transferred.

10.5.5 Taxes collected periodically

The law establishes that where there are general changes in the elements composing the taxes collected periodically through bills, individual notification of the settlements will not be necessary except in the cases of an increase in the tax base from the amount resulting from the returns.

10.6 Real estate cadaster

Different technical measures relating to the formation and maintenance of the real estate cadaster have been introduced. In this regard:

- The law establishes the option of carrying out an abbreviated cadastral inspection proceeding, in keeping with that established in the General Taxation Law, which precludes the need for the pre-appellate dossier review before the proposed decision where notices of assessments are signed on an uncontested basis or where the provisions governing the proceeding establish a submissions phase after that proposal.

- Additionally, greater flexibility has been given to the revaluation of the cadastral values by means of the general budget laws.

- A new cadastral regularization procedure has been established to prevent tax evasion in cases of breach of the obligation to completely and accurately report the circumstances determining a registration or modification, in order to ensure that the cadastral description of the real estate coincides with the actual characteristics of the property.

This procedure will exclude any penalties that might have been claimed for a breach of the obligation to report the required characteristics completely and accurately.

The law also creates the cadastral regularization tax, a central government tax levied on that regularization for which the taxpayer is the person or organization liable for real estate tax in the year in which the regularization is initiated. It will be chargeable upon commencement of the proceeding and amount to €60 per property affected by the proceeding.

10.7 Tax on production, services and imports in the cities of Ceuta and Melilla

Starting on January 1, 2013:

- For goods imported by travelers, the exemption will apply on the same terms and amounts as those provided for in the VAT legislation.

- Up to now, there was a special rule on when the tax becomes chargeable for imports of motor vehicles, boats or airplanes, in respect of which the tax was deemed to become chargeable at the time of their registration. This rule has now been eliminated and these imports will be subject to the general rule, according to which the tax is deemed to become chargeable when the import clearance declaration is accepted or, in the absence thereof, at the time of entry of the goods in the territory where the tax applies, after having fulfilled the conditions established in the applicable legislation.

  However, for any imports of goods of this type in respect of which the import formalities have already been fulfilled before January 1, 2013 and are pending registration in Ceuta or Melilla, the tax will become chargeable when they are registered.

10.8 Excise and special taxes

- Excise tax on oil and gas: the tax rate applicable to liquefied petroleum gas for uses other than as fuel has been changed from €0 to €15 per ton.

- Special tax on certain means of transportation: a new case of exemption from the tax has been added for the first definitive registration or, as the case may be, the driving or use in Spain of automobiles registered in another Member State, made available to an individual resident in Spain by persons or entities established in another member State, provided that the following requirements are met:

  - The vehicle is made available as a consequence of the employment relationship held with the resident individual, either as a salaried employee or otherwise.

- The vehicle is not intended to be used essentially in the territory where the tax applies on a permanent basis. This requirement is deemed met where the vehicle is made available to a Spanish resident whose workplace is in another bordering member state and he uses it to travel there and back every day that is not in a vacation period.

- Tax on retail sales of certain oil and gas products: the law establishes that the retail sales of the products included within the scope of application of the tax which on December 31, 2012 were at retail sales establishments, will be deemed performed on that date (unless those products are subject to the suspensive arrangements for the purposes of the tax on oil and gas).

  For this purpose, the retail sales will be deemed made in the autonomous community where the relevant establishment is located.

  It has been added that, in relation to these transactions, in the first 20 calendar days of the month of April 2013, the taxpayer must file a self-assessment and a list of the taxes chargeable and of exempt transactions, if any, which will be processed independently from the self-assessment filed for the last quarter of 2012.

- Tax on tobacco products: generally speaking, effective on January 1, 2013, the tax rates applicable to cigarettes, cigars and cigarillos, and rolling tobacco, provided in article 60 of Law 38/1992, have been increased, and a minimum amount has been established for each type (cigarettes, cigars and cigarillos, and rolling tobacco).

10.9 Charges

As it does every year, the Budget Law for 2013 has revised the flat rates for charges by the central government public finance authority, this time by 1%. This revision is done with the exception of charges that were specifically created or increased by provisions enacted in 2012. As usual, the Budget Law contains certain exceptions and specific features for certain charges.

It has also made changes and established rules on elements relating to certain charges, such as (i) telecommunications charges, (ii) the fee charged by the Accounting and Audit Institute for issuing auditor’s reports, (iii) takeoff and landing fees, (iv) the vessel, passenger and goods charges at ports of general interest, (v) the occupation, vessel, passenger and goods charges, (vi) the charges applicable to nationally significant ports, or (vii) the charges for reports and other proceedings provided for in Decree 140/1960.

The public funding for Aena Aeropuertos, S.A. has also been modified.

It is worth noting that the charge for the administrative management of gaming activities, in the case of regulatory proceedings by the National Gaming Commission on the gaming activities carried out by an authorized operator and subject to the supervision of that entity, is reduced from 1 per mil to 0.75% of gross operating revenues.

Lastly, in relation to the establishment of charges for the private or special use of the public domain or to finance new services, up to now the law has required the relevant agreements to be adopted on the basis of technical-economic reports on the market value or the expected coverage of the cost thereof, respectively. The Tax Measures Law now establishes that this report will not be necessary for agreements resulting from general revaluations or in cases of decreases in the amount of the charges, except in the event of a substantial reduction in the cost of the service (exceeding 15% of the cost of the service determined in the technical-economic report referred to above).

10.10 Changes in the organic law on the suppression of smuggling

The number of cigarettes eligible for exemptions from VAT and from special and excise taxes has been reduced from 200 to 80 for resident travelers and employees working in the border area with Gibraltar (the reference to the Andorra has been eliminated) and in relation to the tobacco products introduced into Spain, with the exceptions established in article 13.2 of Directive 2007/74/EC.

10.11 Not-for-profit entities and tax incentives for patronage

10.11.1 Events of exceptional public interest

The Budget Law for 2013 determines that the following events are events of exceptional public interest, for the purposes of Law 49/2002, of December 23, 2002, on the tax treatment of not-for-profit entities and tax incentives for patronage (set out below are the name of those events and the length of the related support programs):

- The holding of the “3rd Edition of the Barcelona World Race” (from January 1, 2013 to September 30, 2015).

- Program to prepare Spanish athletes for the Rio de Janeiro 2016 Olympic Games (from January 1, 2013, to December 31, 2016).

  In relation to this event, the amounts paid in respect of sponsorship to the consortium, publicly owned entities or the entities referred to in article 2 of Law 49/2002, are computed for purposes of the 90% limit on the tax credit provided for in article 27.3 of that law.

  In particular, this article refers to the tax credit (for corporate income taxpayers, personal income taxpayers who perform economic activities under the direct assessment method, and nonresident income taxpayers operating in Spain through a permanent establishment) amounting to 15% of the expenses which, under the plans and programs of activities established by the consortium or by the relevant administrative body, are incurred on advertising and publicity with effects over more than a year, which serve directly to promote the respective event.

  In relation to this tax credit, that article 27.3 establishes that its amount cannot exceed 90% of the gifts made to the bodies or entities referred to above.

The Budget Law also specifies that the amounts paid for sponsorship will not be deemed a tax deductible expense for corporate income tax purposes.

- Events for the celebration of the 8th Centenary of the Pilgrimage of Saint Francis of Asis to Santiago de Compostela (1214-2014) (from July 1, 2013 to June 30, 2015).
- “Celebration of the 5th Centenary of the Birth of Saint Teresa to be held in Ávila in 2015” (from January 1, 2013 to December 31, 2015).
- “Junípero Serra Year 2013” (from January 1, 2013 to December 31, 2013).
- Launching event for the round-the-world yacht race “Alicante 2014” (from January 1, 2013 to December 31, 2015).
- “Virgin Mary Jubilee Year 2013-2014 at the *Real Ilustre y Fervorosa Hermandad y Cofradía de Nazarenos de Nuestra Señora del Rosario, Nuestro Padre Jesús de la Sentencia y María Santísima de la Esperanza Macarena*, in Seville” (from June 1, 2013 to May 31, 2014).

This means that taxpayers can elect a set of tax incentives specifically for activities carried out to ensure the successful outcome of these events

The Budget Law specifically establishes that the maximum tax relief under Law 49/2002 will apply in relation to all of these events.

10.11.2 Priority patronage activities

As in prior years, the Budget Law for 2013 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 2012, the tax credit rates and limits established in Law 49/2002 will be raised by five percentage points.

10.12 Public Multi-purpose Income Indicator

The Public Multi-Purpose Income Indicator, which is referred to, among others, in the personal income tax legislation (for example, regarding the exemption for economic amounts received by reason of taking in minors, disabled persons and persons over 65 years of age, which is confined to cases where the person’s other income does not exceed that indicator) is set, for 2013, at the following figures:

- Daily indicator: 17.75 euros.
- Monthly indicator: 532.51 euros.
- Annual indicator: 6,390.13 euros.

In addition, where reference to the minimum wage has been replaced by a reference to the Public Multi-Purpose Income Indicator (as occurs in the exemption mentioned above), the annual amount of the indicator will be 7,455.14 euros, provided the reference to the minimum wage involves the annual figure (unless nonregular salary payments, meaning payments over and above 12 monthly payments, are expressly excluded; in this case, the amount would be 6,390.13 euros).

10.13 Legal interest rate for money and late-payment interest

For 2013, in accordance with the Budget Law, the legal interest rate for money is set at 4% and the late-payment interest rate, at 5%.

11. ENTRY INTO FORCE

Except in the cases expressly established, the new elements added and changes made to the tax legislation by these laws took effect on January 1, 2013.

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