GARRIGUES

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R&D&I TAX CREDITS

Until recently it appeared to be accepted that R&D&I tax credits could be taken by the entities that physically carry out those activities, even if they are commissioned to do so by other parties, if they are not corporate income taxpayers. This has been common practice for pharmaceutical groups, in which the Spanish subsidiaries conduct clinical trials commissioned by nonresident entities in the context of international projects.

The Spanish tax inspectors seem to have changed their stance, however, in a large number of recent inspections. Although the inspectors have been acknowledging that the clinical trials are R&D and that the subsidiaries that physically conduct them can take the tax credit, they have been refusing to allow external expenses to be included in the amount on which the credit is computed, arguing that the credit has no other purpose than to reduce Spain's technological dependence on other countries, and that in these cases the patents are not Spanish.

It just so happens that most of these external expenses are in many cases required by law, such as expenses relating to the doctors and researchers attached to the healthcare institutions where the clinical trials have to be conducted.

Moreover, the taxpayers often have reports from the Ministry of Science and Innovation (regulated in Royal Decree 1432/2003) on the fulfillment of the scientific and technological requirements for the purposes of applying and interpreting the tax credit for R&D&I activities, in which the internal and external expenses are certified as part of the base for the deduction.

The Directorate-General of Taxes has just taken care of this issue, however, in a recent ruling (V1892-13 of June 7, 2013, which we discuss in this Bulletin) in which in these cases it allows the credit to be taken and the internal and external expenses to be included in the amount on which it is computed, if they are linked to the R&D&I activities and itemized by project.

1. JUDGMENTS

1.1 Corporate income tax.- Cost assumed by subsidiary for stock options awarded to its employees by parent company are not deductible (Supreme Court. Judgment of May 6, 2013)

This Supreme Court judgment has confirmed the National Appellate Court's judgment of November 4, 2010, which we discussed in our January 2011 Bulletin.

The judgment examined a case in which a non Spanish parent company awarded stock options to the employees of its Spanish subsidiary. It was the Spanish subsidiary that ultimately bore the cost of the options, although it was not under any contractual obligation to do so.

As the National Appellate Court had already done before it, the Supreme Court confirmed in this judgment that any expense in respect of payments to exercise the stock options is an expense that the subsidiary bears voluntarily, without being under any legal obligation of any kind and, consequently, it should be treated as a gratuity and as such as a non-deductible expense. The Supreme Court held in this regard that the fact that the options constitute salary income for personal income tax purposes was irrelevant for the purposes of characterizing the cost as deductible or non-deductible.

A point worth noting is that the absence of the legal obligation was built up on the fact that the company has not expressly assumed any obligation to its employees in relation to the compensation at issue.

1.2 Corporate income tax.- Reinvestment tax credit not allowed for subscribing to shares in entity having no economic activity (National Appellate Court. Judgment of March 21, 2013)

The court analyzed whether the requirements to take the reinvestment tax credit under article 42 of the Revised Corporate Income Tax Law (TRLIS), in its former wording, had been met in a specific case where the reinvestment was made in subscribing to shares in an entity through a capital increase. Both the tax inspectors and the Central Economic-Administrative Tribunal (TEAC) considered that it was an absolute sham transaction, because the entity that had made the capital increase was not carrying on any economic activity.

The court ratified the TEAC's conclusions, in light of the complete absence of any proof on the part of the plaintiff who, while claiming that the purpose of the capital increase was to give the company the necessary funds to carry out two investment projects, never proved this point. In fact, the entity kept the amount of the increase in its cash account and has no economic activity whatsoever. Therefore, the court found it had been evidenced that the only explanation for the corporate transaction was to obtain a tax benefit.

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The court thus held that just as a reinvestment in fixed assets requires the assets to be used in an economic activity for the reinvestment to be valid, investments in shares of other entities must be made for an economic reason for the tax credit to apply.

1.3 Principles of proportionality and non-confiscatory nature in personal taxes. (European Court of Human Rights. Judgment of May 14, 2013)

The Hungarian government had approved a new tax on certain items of compensation exceeding 3.5 million Hungarian forints received by public sector employees at the time of their termination, charged at a rate of 98%. The appellant considered that the 98% rate constituted a completely disproportionate deprivation of property.

The European Court of Human Rights held that the principle of proportionality between the means employed and the ends pursued must be respected. Although the government had broad leeway when regulating its tax system, the 98% rate was found to be confiscatory. In this respect, the court referred to other taxes of other EU member states that were considered unconstitutional because they had marginal tax rates of 50%.

1.4 Value added tax.- VAT not deductible for recipients of services that have incomplete invoices subsequently completed with information aimed at proving the services (Court of Justice of the European Union. Judgment of May 8, 2013 in case C-271/12)

The recipients of certain services had been refused the right to deduct input VAT because the invoices were not accurate and complete enough. In this specific case, after the tax authorities issued their decision refusing the right to deduct the VAT, the taxable persons in question provided the information needed to prove the occurrence, nature and amount of the transactions, but without correcting the invoices.

The court recalled that the VAT legislation does not prohibit the correction of incorrect invoices. Therefore, the right to deduct cannot be denied provided that, before the tax authorities adopt their decision, the taxable person in question has submitted a corrected invoice based on the initial invoice that included the error, which was not done in this specific case, in which the information needed to complete and correct the invoices was submitted after the tax authorities had adopted their decision to refuse the right to deduct.

Therefore, the court concluded that the provisions of the Sixth Directive must be interpreted as not precluding national legislation under which the right to deduct VAT may be refused to taxable persons who are recipients of services and are in possession of invoices which are incomplete, even if those invoices are completed after the refusal decision was adopted.

This does not preclude the tax authorities refusing to refund the VAT paid by a company providing services (even if the right to deduct the VAT levied on those services has been denied to the recipients of the services), given that it was confirmed in the proceedings that the services subject to VAT were in fact provided, meaning that the VAT relating to the transactions was due and was correctly paid to the tax authorities. Therefore, the principle of fiscal neutrality cannot be invoked to justify the refund of VAT in a situation such as that in the dispute in the main proceedings, as any other interpretation would be liable to encourage situations that may prevent the correct collection of VAT.

1.5 Value added tax.- The acquisition of properties used in a leasing business in a merger does not convert the absorbing entity into a taxable person for VAT purposes if it does not engage in leasing business activities after the merger (National Appellate Court. Judgment of February 27, 2013)

In the case analyzed by the National Appellate Court, a property was transferred with VAT and the transferee sought to deduct it. The tax inspectors disallowed the deduction on the ground that the transferor was not a taxable person for VAT purposes and therefore should not have charged the tax.

The transferor had acquired the properties as a result of a merger by absorption of an entity that was leasing them. The tax inspectors considered that the absorbing entity did not become a taxable person for VAT purposes simply because it had received the properties in a merger, despite the fact that mergers generally entail subrogation to the rights and obligations of the absorbed entity, given that:

- The lease agreements no longer existed when the merger took place.
- It was also shown in the inspection proceeding that the absorbing entity had no intention of leasing the properties, as evidenced by the fact that it transferred them one month after receiving them.

The court confirmed this conclusion.

1.6 Inspection procedure.- Delay cannot be attributed to the taxpayer where delay in the delivery of documentation has not hindered inspection proceedings (National Appellate Court. Judgment of April 18, 2013)

The inspectors had requested documentation in the notice commencing the proceedings. In view of the alleged failure on the part of the taxpayer to provide part of the documentation, the tax inspectors repeated the request, attributing the delay to the taxpayer. The taxpayer, however, contended that the documentation initially requested had been provided on time and that what was apparently being requested a second time were in fact not the same documents as those requested the first time. For that reason, the taxpayer asked that the days of delay be removed from the calculation of the length of the proceedings, which would cause one of the years to become statute-barred.

The court agreed with the taxpayer. The most interesting feature of the judgment, however, is the so-called theory of "dynamic interpretation" of the inspection procedure, whereby delays cannot be attributed to taxpayers if, where there is an alleged delay in the delivery of documentation, that delay does not prevent the tax inspectors from continuing with their inspection work in the normal fashion. The failure to deliver all the requested documentation is not tantamount to a delay attributable to the taxpayer, and the consequences of a delay in the supply of the documentation cannot automatically be attributed to the taxpayer . In short, a failure to deliver documentation can only affect the computation of the time period for the inspection proceedings where it prevents the inspectors from continuing with their inspection activities in the normal fashion.

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1.7 Inspection procedure.- An assessment issued without considering the submissions made by the appellant, even if they have been filed by government mail, is voidable (National Appellate Court. Judgment of April 25, 2013)

An assessment was contested on the ground that it had been issued without considering the submissions made by the taxpayer, where the submissions had been in the proper time and form, because they were filed by government mail on the last day of the granted time period.

The TEAC held there had been no irregularity because the submissions could not be taken into account by the assessing body because they had been stamped for receipt after the granted fifteen day time period had elapsed.

The National Appellate Court, however, after holding that filing submissions at the post office had the same effect as filing them directly with the body in question, analyzed the potential effects of the irregularity that had taken place to determine whether it could be classed as an absolute nullity as the plaintiff argued, as voidable, or as a non-invalidating irregularity. For these purposes, the court ruled as follows:

- Nullity as a matter of law did not apply to that case because, although the taxpayer's submissions were not duly taken into account in the proper time and form, it cannot be regarded as a total inobservance of the established procedure.

- It was not a non-invalidating irregularity either, because it is precisely the submissions procedure that allows the taxpayer to assert its claims against the authorities and to admit this hypothesis would be tantamount to treating this procedure as meaningless and irrelevant.

- What fits the case is the concept of voidability, which is the logical consequence of the actual denial of due process that had arisen, which is why the court partially upheld the appeal, ordering that the proceedings be rolled back to the moment in question.

2. DECISIONS AND RULINGS

2.1 Corporate income tax.- R&D tax credit for projects performed in Spain by Spanish subsidiary for foreign parent: inclusion of internal and external expenses (Directorate-General of Taxes. Ruling V1892-13 of June 7, 2013)

The requesting taxpayer is a Spanish subsidiary of a multinational group that performs clinical trials as part of the group's global R&D projects. It has an internal department for this purpose, but it also hires external persons or entities (health clinics, researchers) subject to its supervision and oversight.

The question asked was whether the (internal and external) expenses can be included in the amount on which the R&D tax credit is computed, bearing in mind that any intellectual property rights that might arise from the clinical trials belong to foreign parties (not to the Spanish subsidiary) and that all R&D expenses are rebilled to the group entities that commission the trials. The DGT replied as follows:

(a) In general, it is the entity that commissions the project that is entitled to take the R&D tax credit, as it acquires the ownership of or rights in the research findings.

(b) However, in the specific case examined, because the R&D activities were carried out by a corporate income taxpayer (the requesting taxpayer), and commissioned by entities that were not resident in Spain and did not operate through permanent establishments in Spain, the tax credit would be taken by the requesting taxpayer, which is the party that physically carried out the activity.

(c) The research and development expenses incurred by the requesting taxpayer in the year, whether internal or external expenses (and whether required by law or decided by the taxpayer) must be taken into account to determine the amount on which the tax credit is computed, provided that they are linked to R&D activities and are itemized by project.

2.2 Corporate income tax. – Regularization of R&D&I tax credits when reasoned report reclassifies activities (Directorate-General of Taxes. Ruling V1437-13 of April 25, 2013)

The requesting taxpayer provisionally took an R&D&I tax credit in 2010, so the tax return was filed before the reasoned report issued by the Ministry of Economy and Competitiveness on fulfillment of the scientific and technological requirements for the tax credit was issued.

That report, received in 2012, classifies the activity as technological innovation rather than research and development, which gave rise to doubts as to how to correct the surplus tax credit taken.

The DGT ruled out the possibility of applying the mechanisms provided in both the General Taxation Law and the Revised Corporate Income Tax Law for scenarios of forfeiture of the right to take tax relief. If that were the case, the tax relief would have to be included in the tax return for the period in which the requirements or conditions for that relief to be taken were not met, with the relevant late-payment interest.

This is because the reasoned report cannot be seen as a condition for obtaining the tax credit, but rather as optional and qualified evidence of the classification of the activity conducted as an R&D&I activity.

As a result, the tax credit taken should be corrected by filing the relevant supplementary return for the year in which the tax credit was first taken.

2.3 Corporate income tax.– Nonrecourse factoring expenses not included in calculation of limit on deductible finance costs (Directorate-General of Taxes. Ruling V1314-13 of April 18, 2013)

Article 20 of the Corporate Income Tax Law contains a rule that restricts the amount that can be deducted in respect of finance costs to a percentage of the operating income for the year. In the case analyzed, a factoring agreement had been signed with a group entity, transferring all the credit risk associated with the assigned assets, as well as the instruments, rights and interest relating to the assigned debts.

As a consequence of that assignment, the requesting taxpayer obtained a discount, and the question was whether the rule set out in article 20 of the Corporate Income Tax Law restricted the deductibility of the factoring expenses (finance costs, management expenses, discounting costs, and so on).

Based on the accounting treatment of the retirement of financial assets, the DGT concluded that, from the characteristics of the factoring agreement signed, it seemed that the assignment of the debts to the factoring company involved the transfer to the latter of a substantial portion of the risks and rewards inherent to the ownership of those financial assets, and therefore, in accordance with the accounting regulations, the transferor had to retire those financial assets without recognizing a financial liability.

Accordingly, it did not appear that the discount obtained as a result of the assignment of the debts could be identified as a finance cost linked to a business debt, because the limit seemed to relate exclusively to factoring transactions in which the transferor retained a substantial portion of the risks and rewards in relation to the debts. As a result, the discount and, where appropriate, the management expenses relating to the transfer of the debts to the factoring company, were not held to be finance costs for the purposes of the deduction limit established in article 20 of the Corporate Income Tax Law.

2.4 Corporate income tax.– Rules to calculate deductible merger goodwill (Directorate-General of Taxes. Ruling V1032-13 of April 1, 2013)

Article 89.3 of the Corporate Income Tax Law establishes that, subject to certain requirements, the difference between the acquisition cost of the holding and the equity not allocated to the assets and rights transferred by the absorbed company in a merger that is performed under the special tax regime may be deducted up to a limit of 5% (1% in fiscal years 2012 and 2013). For the calculation of that difference, the DGT establishes the following rules:

(a) If the absorbing company has recognized a provision for accounting purposes for its holding in the absorbed company that was not tax deductible, that impairment must not be taken into consideration for the purposes of determining the acquisition cost of the holding because it has had no tax effect.

The amount of that impairment, as it implies a larger difference, may be deducted up to an annual limit of 5% (1% in fiscal years 2012 and 2013) thereof.

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(b) The equity for tax purposes, that is, the equity resulting from the tax values of the assets and liabilities transferred in the merger, must be used to determine the equity of the absorbed company.

(c) The sum of the tax deductible difference, if any, must not be eliminated in order to determine the tax base of the tax group to which the merged entities belong, as that negative annual income is a definite loss at the group that is understood to have been incurred with respect to third parties.

2.5 Personal income tax.– Valuing compensation in kind deriving from use of dwelling in event of change of dwelling after October 4, 2012 (Directorate-General of Taxes. Rulings V1265-13, 1266-13 and 1268-13 of April 15, 2013)

Starting from January 1, 2013 the rule on compensation in kind deriving from the use of a dwelling has changed. Under the previous wording, this form of compensation was valued at 5% or 10% of the cadastral value of the dwelling, irrespective of whether or not the dwelling belonged to the payer, whereas the new wording establishes as follows:

(a) If the dwelling belongs to the payer, the compensation in kind will be valued on similar terms as before.

(b) If the dwelling does not belong to the payer, the compensation in kind will be valued at the cost for the payer, which value may not be lower than the value calculated by applying the previous rule.

However, on a provisional basis, compensation in kind deriving from the use of a dwelling in 2013 may be valued in accordance with the previous wording, provided that the employer was paying this kind of compensation on the same dwelling before October 4, 2012.

These rulings analyze the impact of a change of dwelling made after October 4, 2012, in cases where this kind of compensation was being paid before October 4, 2012.

The DGT said that the wording of the transitional provision makes it clear that the aim of the transitional regime is to secure continuity in 2013 of the valuation rule applicable up to December 31, 2012 in cases where there is continuity in the payment of this type of compensation. Accordingly, the DGT concluded that the valuation rule in force in 2012 could continue to be applied in 2013 even if it was a different dwelling that was assigned.

2.6 Personal income tax.– Converting preferred shares into ordinary shares generates investment income (Directorate-General of Taxes. Ruling V1051-13 of April 2, 2013)

The DGT confirmed that converting preferred shares into ordinary shares generates investment income, determined as the difference between the share price at the time of the conversion and the acquisition cost of the securities. The investment income must be recognized in the tax period in which it becomes payable to the recipient, which is when the conversion takes place.

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This income is separate from any capital gain or loss that might be obtained subsequently when the received shares are sold, and which will be based on the share price at the time of the conversion.

2.7 Tax collection procedure.- Construction progress certificates can be used to offset tax debts (Central Economic-Administrative Tribunal. Decision of April 2, 2013. RG 4031/2012)

It was asked whether a right to payment in the form of a construction progress certificate could be used to offset a tax debt. Up until this Decision, the Central Economic-Administrative Tribunal had been holding that in order for an offset to take place there had to be an administrative decision recognizing that right to payment, as it understood that the right to payment was not firm until it had been recognized by the body managing the expense, meaning that construction progress certificates were not valid for that purpose.

However, the TEAC has now acknowledged, in the case of construction progress certificates, and the Supreme Court has repeatedly upheld (and the Constitutional Court has also upheld) that the recognition of liabilities envisaged in budget legislation is simply an internal decision by the Treasury reflecting the book entry of rights to payment claimable against the State. Thus:

- Construction progress certificates are documents that genuinely represent a right to payment held by the contractor in respect of works actually performed in exchange for a price. In other words, they are genuine credit instruments. So much so that interest payments are established by law if the payment does not take place within a certain period.

- They are, in fact, public funds tied up in the works or services concerned. In addition, they cannot be attached, save for payment of salaries and social security contributions, and they can be transferred and pledged, in accordance with the law, simply upon giving notice to the authorities for them to have the obligation to issue the payment order to the pledgee or transferee.

- Moreover, recognition of the right to payment held by the authorities in the form of the construction progress certificate is included in the administrative decision that authorizes or approves the issue of that certificate.

Accordingly, the TEAC has changed its view to accept that offsets should be allowed, because it must be understood that the recognition of the right to payment is included in the decision that authorizes or approves the issue of that certificate.

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2.8 Economic-administrative procedure.- Periods for filing of claims and appeals in cases of presumed rejection only start to run when there is notice of the relevant appeals (Central Economic-Administrative Tribunal. Decision of April 18, 2013. RG 3351/2010)

In this case the claimant filed an appeal and subsequently, as no express decision was received, the appeal was regarded as dismissed and the claimant filed an economic-administrative claim. The Central Economic-Administrative Tribunal ("TEAC") analyzed whether or not that claim was filed on time. In this respect it indicated that:

(a) An appeal may be regarded as dismissed if one month has elapsed from the filing date.

(b) Following that period, the claimant has a further one month period in which to file an economic-administrative claim. In principle, if the claim is filed any later it must be regarded as late.

(c) Nevertheless, a different conclusion may be drawn from an analysis of the concept of dismissal by administrative silence:

- As indicated in other decisions by the TEAC, it is no longer correct to speak of presumed dismissals, but merely of a legal fiction that triggers the right to file an objection, to the benefit of the interested party.

  Thus, the only effect of dismissal by administrative silence is to allow the claimant to file the relevant appeal.

  There is no administrative decision as such, by contrast to approval by administrative silence, which is, to all intents and purposes, an administrative decision that brings the procedure to an end.

- If the only effect is to facilitate the filing of the allowed appeal, any limit on the period in which an appeal may be filed must be tempered by the requirement that the interested parties must have been informed of the maximum period established by law for a decision on and notification of procedures and of the effects of administrative silence, which mention must be included in the notice or publication of the decision concerned.

- In the case at hand there is no record of any notification whatsoever being given to the interested party, in accordance with the provisions of article 42.4.2 of Public Authorities and Common Administrative Procedure Law 30/1992, so it may be said that there is no record of it having been advised of the periods for filing the economic-administrative claim and of where that claim should be filed.

  Accordingly, on the basis of the case law analyzed above, dismissal by administrative silence would amount to defective notice, as the claimant had not been given the above information, and as a result, the period for filing the claim would only begin to run once the claim had been filed (article 58.3 of Law 30/1992, read in conjunction with article 112 of General Taxation Law 58/2003), so the claim should be held to be filed on time.

In the case analyzed, there was no mention in the appealed decision of the effects of dismissal by administrative silence, of the periods for filing of an appeal in the event of administrative silence, or of the bodies with which that appeal should be filed.

3. LEGISLATION

3.1 Protocol between Spain and Switzerland amending the tax treaty

The protocol between the Kingdom of Spain and the Swiss Confederation amending both the tax treaty and the former protocol was published in the Official State Gazette ("BOE") on June 11, 2013.

The amendment aims to update certain aspects of both the treaty and the protocol, including the following:

- The exchange of information clause (article 25 bis of the tax treaty and paragraph IV of the protocol) has been amended to adapt the tax treaty to article 26 of the OECD model tax treaty and, as a result, to the international standards on transparency and exchange of information.

- Dividends: adapted to the new wording of the Parent-Subsidiary Directive. The percentage holding that a company must have in another company in order for the dividends paid in the country of residence of the payer to be tax exempt has been reduced (from 25% to 10%).

  In addition, the clause that placed them on an equal footing with domestic dividends for the purposes of the double taxation tax credit has been eliminated, and in this respect it applies the mechanisms envisaged in domestic Spanish legislation.

- Capital gains: transfers of shares or similar rights, where 50% or more of their value comes, directly or indirectly, from real estate, may be taxed in the country in which the real estate is located, with two exceptions:

  - Listed shares.

  - Real estate used by the company for its own industrial activity.

- In addition, another series of technical changes have been made to the definition of "permanent establishment" (adapting it to article 5 of the OECD model tax treaty in respect of "auxiliary activities" and permanent establishments related to "dependent agents"), in relation to the correlative adjustment under article 9 of the OECD model tax treaty in the case of associated enterprises, and also in relation to article 4 of the tax treaty, on residence, which now expressly includes recognized pension funds or plans, established in a contracting state on the terms set out in article 10 of the new protocol.

- Lastly, changes have also been made to the provisions on the methods for elimination of double taxation in article 23 of the tax treaty and on the mutual agreement procedure established in article 25 of the tax treaty (to include an arbitration clause similar to that contained in article 25 of the OECD model tax treaty).

The tax treaty will enter into force on August 24, 2013 and will apply:

- To taxes withheld at source on amounts paid or owed, on or after August 24, 2013.
- In the case of other taxes, to fiscal years starting on or after August 24, 2013.
- As regards the new article 25 bis on exchange of information, and in respect of the taxes indicated in the tax treaty, to fiscal years starting on or after January 1, 2010, or to the taxes payable on amounts owing or payable on or after that date.

  In the case of other taxes, to fiscal years starting on or after January 1, 2014.
- To mutual agreement procedures started on or after August 24, 2013.

3.2 Recognition and measurement standards and information to be included in the notes on intangible fixed assets

As a consequence of the entry into force of the new Spanish National Chart of Accounts ("PGC"), the Spanish Accounting and Audit Institute ("ICAC") has issued various interpretations implementing the regulations contained in the PGC relating to intangible fixed assets and has issued express decisions interpreting the validity of certain issues that were regulated to implement the former 1990 PGC.

Specifically, in a Decision of May 28, 2013, besides reproducing certain standards contained in its immediate predecessor in this respect (Decision of January 21, 1992), it has systematized the administrative rulings and has addressed implementation of the recognition and measurement standards in the PGC relating to intangible fixed assets.

3.3 Spain-Kuwait tax treaty

The Spain-Kuwait tax treaty was signed in Kuwait on May 26, 2008.

The tax treaty will apply to persons resident in one or both contracting states with respect to income and wealth taxes levied by each of the contracting states. In the tax treaty it is established that the withholding rates applicable according to the type of income obtained will be as follows:

- Dividends: 0% of the gross dividends paid to a company whose capital is fully or partly divided into shares and which is resident in the other contracting state, provided that it directly holds at least 10% of the capital of the company paying the dividends; and 5% of the gross dividends paid in all other cases.

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- Interest: 0% of gross interest.
- Royalties: 5% of gross royalties.

The tax treaty will enter into force on July 19, 2013. In the case of taxes withheld at source, it will apply to amounts paid or owed on or after that date, and in respect of all other taxes, to fiscal years starting on or after that date.

4. OTHERS

4.1 Preliminary bill on support for entrepreneurs and their internationalization

The final version of the preliminary bill on support for entrepreneurs and their internationalization has now been published. The preliminary bill seeks to boost entrepreneurial and business activity in Spain and, with this aim in mind, introduces a number of key changes in the different areas involved in the creation and start-up of new ventures.

Specifically in relation to tax matters, the following proposals are worth mentioning (note that the preliminary bill still has to be passed through parliament):

(a) **Corporate income tax:**

A significant improvement in the research and development tax credit, which would remove the limit on the amount of gross tax payable against which it can be taken (subject to a 20% discount on its amount), and allow taxpayers even to apply to the tax authorities for payment of the tax credit (subject to a limit). However it would also be conditional upon certain requirements, essentially linked to maintaining employment and investing an amount equivalent to the tax credit taken or obtained in the same activity.

Substantial changes to the patent box benefit. It is proposed to reduce the calculation base, by restricting relief to income/gains obtained (not revenues), of which 40% will be included in the tax base, and to allow the patent box benefit to apply (subject to certain requirements and limits) where the licensor has not created the licensed assets. The limits on the amount of the incentive (currently six times the development cost) would disappear, and it would be possible to ask the tax authorities for a prior agreement classifying the assets and valuing the income/gains generated.

Lastly, the preliminary bill contains other incentives for enterprises of a reduced size, such as an effective tax rate of 15% for profits that are reinvested for certain purposes.

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(b) **Personal income tax:**

A new tax credit for investments in new or recently-created companies, along with an exemption for the gains obtained on their subsequent divestment, provided in all cases that they are reinvested in another entity of the same kind.

(c) **VAT:**

A new special regime that would allow companies with a turnover not exceeding €2 million to apply the cash-basis accounting method, subject to fulfillment of certain other requirements. This would allow them to defer output VAT by making it fall due when the VAT is collected from their clients (subject to a time limit), although it would also defer the deduction of input VAT.

4.2 Preliminary bill on private equity and other investment firms and their managers

The aim of the new preliminary bill on private equity and other investment firms is to transpose the Alternative Investment Fund Managers Directive into Spanish legislation.

Specifically, as far as tax matters are concerned, the preliminary bill envisages that the formation of private equity firms, and capital increases and reductions at those firms, will be exempt from capital duty.

The preliminary bill also aims to amend the Corporate Income Tax Law concerning the following elements of the rules on private equity firms:

- The scope of application of the tax credit for domestic double taxation of dividends, and of the exemption to avoid double international economic taxation of dividends, is extended to include income/gains obtained on the distribution of profit of private equity funds.
- The cases where the exemption for private equity firms applies are extended, for cases where it can be proven that acquisitions are made at normal market value.
- A new article 55 bis is added, determining the specific regime applicable to small and medium-sized private equity firms.