GARRIGUES
Newsletter

Tax

**January 2015**

Law 28/2014, of November 27, 2014, amending, among others, the Value Added Tax Law has brought about, among many other new elements, a significant change to how import VAT is assessed.

The procedure we are familiar with is that when goods are imported, the customs authorities assess any applicable customs duties and import VAT, both of which must be paid on the spot. It is later, when the ordinary VAT return is filed, that the taxable person can deduct the input VAT paid, with the financial effect that this entails.

With the new reform, the customs authorities will continue to assess import VAT, but starting January 1, 2015, the VAT will be collected and paid over (where the taxable person so chooses) in the VAT return for the period in which the assessment is received, which will prevent the financial effect described above, caused by paying the VAT over to the public treasury and later recovering it by making a deduction on the periodic VAT returns.

In this newsletter, we comment on the approval of the new census notification forms which, among other changes, include boxes added to make the above-mentioned election for fiscal year 2015, which may be made until January 31, 2015.

# Index

**I. Judgments** **4**

1. EU law.- Requiring the pension funds of other states and insurance companies operating in Spain to appoint a tax representative to fulfill their withholding obligations is contrary to EU law (Court of Justice of the European Union. Judgment of December 11, 2014. Case C-678/11) 4

2. EU law.- Granting tax advantages to protect national cultural and historical heritage is not contrary to EU law (Court of Justice of the European Union. Judgments of December 18, 2014. Cases C-87/13 and C-133/13) 4

3. Fees.- It is unlawful for a municipal council to charge a fee for a service that it does not actually provide, because the autonomous community government has adopted the power as a matter of law (Madrid Judicial Review Court No. 4. Judgment of January 9, 2015) 5

**II. Decisions and Rulings** **5**

1. Corporate income tax.– Application of the tax credit for creating jobs for disabled workers (Directorate-General of Taxes. Ruling V3167-14, of November 26, 2014). 5

2. Corporate income tax.- Several issues regarding article 30.6 of the TRLIS (Directorate-General of Taxes. Rulings V3118-14 and V3123-14, of November 19, 2014) 6

3. Personal income tax and VAT.- Tax treatment of the leasing of a dwelling through a digital platform (Directorate-General of Taxes. Ruling V3095-14, of November 14, 2014) 7

4. Inspection proceeding.- The tax authorities can issue a provisional assessment in relation to acts that do not constitute an offense and consider that other acts relating to the same period and tax constitute an offense and refer the case for criminal investigation (Central Economic-Administrative Tribunal. Decision of December 4, 2014) 8

**III. Legislation** **9**

1. Form 145, notification of particulars of recipient of salary income to his/her payer or of changes in previously notified particulars 9

2. Census of parties liable to the excise tax on electricity. Form 560 “Excise tax on electricity. Self-assessment” 9

3. Forms 650, 651 and 655, self-assessment of inheritance and gift tax 10

4. Nonresident income tax forms 210, 211 and 213 11

5. Form 143 for requesting the early payment of the tax credits large families and dependents with disabilities 12

6. Changes to customs legislation 12

7. Census notifications 036 and 037 13

8. Annual effective interest rate for the first calendar quarter of 2015 for the purposes of classifying certain financial assets for tax purposes 14

9. Spain-Senegal tax treaty 15

**IV. Others 15**

1. Report from the Directorate-General of Taxes on the validity of the current list of tax havens 15

# I. Judgments

## 1. *EU law.- Requiring the pension funds of other states and insurance companies operating in Spain to appoint a tax representative to fulfill their withholding obligations is contrary to EU law (Court of Justice of the European Union. Judgment of December 11, 2014. Case C-678/11)*

The Commission filed an action with the Court of Justice of the European Union (CJEU) against:

(a) Article 46.c) of Legislative Royal Decree 1/2002, of November 29, 2002, approving the revised Pension Plan and Fund (Regulation) Law; and

(b) Article 86.1 of Legislative Royal Decree 6/2004, of October 29, 2004, approving the revised Private Insurance (Regulation and Supervision) Law;

according to which (i) pension funds established in Member States other than Spain and which offer occupational pension schemes in Spain, as well as (ii) insurance companies operating in Spain under the freedom to provide services, are required to appoint a tax representative who is resident in Spain in order, among other functions, to act on their behalf to withhold and make advance payments of tax.

The court considered that Spain had not evidenced that there were no other less burdensome mechanisms to achieve effective fiscal supervision and to combat tax evasion. The court held that these objectives can be effectively accomplished by relying on the mutual assistance of the Member States, as provided for in various EU directives.

In the CJEU's opinion, the principle of the freedom to provide services is infringed insofar as the obligation to appoint a tax representative in Spain can entail additional costs to provide the services, thereby making it more difficult and less attractive to provide these services compared with those provided by entities established in Spain.

## 2. *EU law.- Granting tax advantages to protect national cultural and historical heritage is not contrary to EU law (Court of Justice of the European Union. Judgments of December 18, 2014. Cases C-87/13 and C-133/13)*

In the cases raised, the court analyzed the Netherlands personal income tax and inheritance and gift tax laws which allowed an expense to be deducted or an exemption to be taken, respectively, where the taxpayer owns property with cultural and historical significance for the Netherlands. In particular, the requests for preliminary rulings asked whether restricting the most beneficial tax treatment solely to properties located in the Netherlands, as the above-mentioned Dutch legislation does, is in accordance with EU law.

The court concluded that EU law did not preclude the legislation of a Member State under which, on the ground of protection of the national and cultural historical heritage, the most beneficial tax treatment is limited to the owners of properties situated in the territory of that Member State, provided that this possibility is also offered to the owners of properties that may form part of the cultural and historical heritage of that Member State despite being located in the territory of another State.

***3. Fees.- It is unlawful for a municipal council to charge a fee for a service that it does not actually provide, because the autonomous community government has adopted the power as a matter of law (Madrid Judicial Review Court No. 4. Judgment of January 9, 2015)***

At issue was the lawfulness of the fee charged by a municipal council for the fire-fighting and prevention maintenance service. Although falling within the local government's powers, this service, had been adopted by the autonomous community government pursuant to the statutory provision established for cases where the municipal council does not have the necessary resources or, as the case may be, does not adopt the power, in which case the autonomous community government provides the service, which must be guaranteed in all cases.

Madrid Judicial Review Court No. 4 upheld the appeal on the ground that only a municipal council that actually provides the fire-fighting and prevention maintenance service can charge a fee. In such a case, where the service was provided by the autonomous community government, the municipal council could not claim payment of a fee, which was simply a charge in respect of the fee that the municipal council had to pay the autonomous community, the authority that actually provided the services, and by doing so, released the municipal council from its obligation to provide the service.

In view of the above, the judgment set aside and rendered void the contested decision, which had confirmed the assessment, ordering the municipal council to refund the amount paid for the fee together with the related legal interest.

## II. Decisions and Rulings

***1. Corporate income tax.– Application of the tax credit for creating jobs for disabled workers (Directorate-General of Taxes. Ruling V3167-14, of November 26, 2014).***

Law 14/2013, of September 27, 2013, to support entrepreneurs and their internationalization, amended the wording of the tax credit for creating jobs for disabled workers, with effect for tax periods commencing on or after January 1, 2013.

The new wording eliminated the requirement for the disabled workers to be hired on a permanent basis, so the tax credit can now also be taken for disabled workers hired on a temporary basis. The tax credit continues to apply for each person/year increase in the average headcount of disabled workers over the previous tax period.

For the purposes of calculating the increase in the average headcount in fiscal year 2013 over fiscal year 2012 (in which the tax credit did not apply to temporary contracts), the Directorate-General of Taxes (DGT) considered that both the workers hired on a permanent basis and those hired on a temporary basis in both years should be counted, even though the tax credit could not have been taken for the temporary workers in the 2012 tax period.

## 2. *Corporate income tax.- Several issues regarding article 30.6 of the TRLIS (Directorate-General of Taxes. Rulings V3118-14 and V3123-14, of November 19, 2014)*

Article 30.6 of the Revised Corporate Income Tax Law (TRLIS) provides that if the entity evidences taxation in an amount equal to the dividend or the share in income received, that amount will not be included in the entity's tax base, thereby reducing the value of the holding for tax purposes and entitling the taxpayer to take the dividend tax credit provided for in subarticles 1 or 2 of that article, as appropriate.

In relation to this provision, the DGT established the following guidelines:

- The prior taxation requirement will be deemed met if the gain obtained by the transferor of the holding has been included in the tax base, even if the tax base has not resulted in taxable income because the gain on the transfer has been offset by other losses. It will also be irrelevant if, in a consolidated tax group scenario, individual tax losses from other companies in the tax group have been included.

- Any portion of the gain relating to the transfer of the holding by the previous owners who were entitled to the exemption contained in article 21 of the TRLIS will not be included in the tax base.

- The tax credit contained in article 30.6 cannot be taken where the gain obtained by the successive owners of the holding on its transfer has given entitlement to the tax credit for the domestic double taxation of gains (article 30.5). If this last-mentioned tax credit has been taken in part, the double taxation tax credit may be taken in part, in which case the proportion will be determined by the quotient between the gain included in the corporate income tax base on the previous transfer of the holding at the former shareholders (without the double taxation tax credit having been taken, if applicable) and the amount of the total gain obtained on the previous transfers.

  To take the tax credit provided for in article 30.5, the net increase in retained earnings during the period of ownership of the holding at the transferor must be calculated taking into account that to the retained earnings appearing on the last balance sheet closed before the transfer, reduced by the earnings distributed after that date and before the transfer, it will be necessary to add the earnings from the fiscal year in progress in proportion to the days that the holding has been owned relative to the total length of the fiscal year, unless they can be accurately determined some other way.

- Article 30.6 applies where dividends are distributed between entities forming part of the same tax group, in which case the dividend, since it is not included in the individual tax base, must not be eliminated, notwithstanding the right to take the tax credit against the tax group's gross tax payable subject to the requirements and conditions of that tax regime.

- If the companies transferring the holding (or the tax groups to which those companies belong) have allocated the entire gain on the transfer to the tax credit for the reinvestment of extraordinary income, the recipient of the dividend must apply a tax credit of 18% to the portion of the gross dividend received that relates to the portion of the gain obtained by the previous transferring shareholders, regardless of whether the transferring companies make the reinvestment (those companies or another company in the tax group) in a later year (within the reinvestment period) and, therefore, do not take the tax credit for reinvestment of extraordinary income in the actual year in which the dividend is received.

- If any of the transferring companies do not complete the ownership period required by article 42 of the TRLIS for the tax credit for reinvestment to vest and it becomes necessary to re-include a portion of the tax credit taken in the year in which the requirement is not fulfilled, in that year the double taxation tax credit may be increased by the relevant amount of the dividend received, with no need to file a supplementary return for the year in which the dividend was received.

- With respect to the type of proof that may be provided to evidence the prior taxation (if it is not possible to obtain the corporate income tax return of the transferring entity), it is the interested party who must, in each case, provide the proof which, in accordance with the law, serves to evidence the taxation. This proof will be assessed by the bodies of the tax agency that have jurisdiction over audit matters.

### 3. *Personal income tax and VAT.- Tax treatment of the leasing of a dwelling through a digital platform (Directorate-General of Taxes. Ruling V3095-14, of November 14, 2014)*

The requesting taxpayer leases a dwelling he owns on a seasonal basis, marketing it on a website, which charges the lessee the amount of the rent and transfers it to the lessor's account, receiving a fee for its intermediation. The lease does not include services specific to the hotel industry (only cleaning and a change of linens between each stay) and is always entered into with individuals.

Article 20.One.23 of the VAT Law establishes an exemption for leases of properties used exclusively as dwellings, although this exemption does not apply where the lessor provides services specific to the hotel industry.

For these purposes, the DGT ruled that hospitality services are characterized by the act of giving attention to customers beyond the mere making available of a property or part of a property, usually including the provision of a number of services such as reception, ongoing and continual attention to the customer in a space used for the purpose, periodic cleaning of the building and the accommodation, periodic changing of bed and bath linens, and the making available to the customer of other services (laundry, luggage storage, press, reservations, etc.) and, at times, the provision of food and restaurant services.

In particular, besides restaurant, cleaning and linen washing services, the services of cleaning the inside of the apartment provided periodically, as well as the services of changing linens in the apartment provided periodically, are deemed to be supplementary services specific to the hotel industry.

However, the services for cleaning the apartment at the beginning and end of the period leased by each lessee, changing linens in the apartment provided at the beginning and end of the period leased by each lessee, cleaning the common areas of the building (vestibule, stairwells and elevators) as well as the development where it is located (green areas, access doors, sidewalks and streets), technical assistance and maintenance for any plumbing, electricity, glass, blinds, lock and household appliance repairs are not deemed to be supplementary services specific to the hotel industry.

The DGT also clarified that the exemption will apply both if the owner signs the lease agreement and if a digital platform does so via a website, provided that the recipients of the transaction are individuals who use the property as a dwelling. However, if the properties are leased directly by the digital platform, this circumstance may in turn mean that the digital platform acts as a lessee in relation to the owners. In this case, it should be borne in mind that an initial lease agreement signed between owners and a digital platform will not meet the

requirement of its use as a dwelling by the recipient of the transaction (the digital platform), so the lease would constitute a supply of services that is subject to and not exempt from the tax.

Regarding personal income tax, the DGT analyzed the characterization of the income received in respect of the leasing activity as income from economic activities or income from immovable capital. In this respect, it concluded that if no supplementary service specific to the hotel industry is going to be provided, as described above, but rather the dwellings are simply leased with their furnishings, in their entirety or by room, and the requirements of article 27.2 of the Personal Income Tax Law (person and premises) are not met, the income from the lease will be characterized as income from immovable capital. Otherwise, it would have to be characterized as income from economic activities.

If it is characterized as income from immovable capital, because the lease is of a property whose primary intended use is not to satisfy the lessees' permanent need for a dwelling, the reduction in net income provided for in article 23.2 of the Personal Income Tax Law will not apply (a dubious conclusion because the law does not restrict the reduction to cases where the principal residence is leased).

### 4. *Inspection proceeding.- The tax authorities can issue a provisional assessment in relation to acts that do not constitute an offense and consider that other acts relating to the same period and tax constitute an offense and refer the case for criminal investigation (Central Economic-Administrative Tribunal. Decision of December 4, 2014)*

In an inspection proceeding concerning corporate income tax for fiscal year 2005, the tax inspector issued a provisional assessment correcting the treatment given by the taxpayer to certain expenses; and, with respect to other items to be adjusted, the inspector considered that the taxpayer had engaged in willful misconduct, so he referred the case for criminal investigation.

The Valencia Regional Economic-Administrative Tribunal (TEAR) upheld the taxpayer's appeal on the ground the adjustment could not be itemized in this way. However, the Central Economic-Administrative Tribunal (TEAC) resolved the appeal acknowledging that, if for the same period and tax period there are, in the inspectors' opinion, reasons for an adjustment which establish prima facie evidence of an offense against the public treasury, together with merely administrative irregularities, as a result of different events unconnected to the allegedly criminal events, the inspectors can issue a provisional assessment in respect of the part where no criminal elements are present.

This option for the tax authorities to issue separate assessments for taxes and amounts that are not linked to the possible offense has only been expressly provided for in the Criminal Code since 2013. However, the TEAC considered that it applied to a case such as the one analyzed (relating to a prior period) on the ground that it cannot be inferred, in its opinion, that the legislative change prevents the authorities from acting the same way for prior periods. In this respect, the tribunal stated that the legislative amendment should not be construed as an authorization to do something that used to be expressly prohibited.

## III. Legislation

### 1. *Form 145, notification of particulars of recipient of salary income to his/her payer or of changes in previously notified particulars*

The Official State Gazette of December 31, 2014 published the Decision of December 18, 2014, of the Tax Management Department of the State Tax Agency, amending the Decision of January 3, 2011, approving form 145, notification of particulars of recipient of salary income to his/her payer or of changes in previously notified particulars.

The reference to the prolongation of the labor activity has been removed in this new form given that the reduction for the prolongation of labor activity has been eliminated. In addition, with the aim of clarifying the contents of the form, the Decision states that in the case of taxpayers with children recognized as disabled by a court, the children must also be subject to extended or reinstated parental rights.

The decision entered into force on January 1, 2015 and takes effect for notifications of particulars to the payer, or changes in previously notified particulars, made or which must be made on or after January 1, 2015.

### 2. *Census of parties liable to the excise tax on electricity. Form 560 "Excise tax on electricity. Self-assessment"*

The Official State Gazette of December 31, 2014 published Order HAP/2489/2014, of December 29, 2014, establishing the structure and functioning of the census of persons subject to excise tax on electricity, approving form 560 "Excise tax on electricity. Self-assessment" and establishing the manner and procedure for filing it.

As a result of amendments to the excise tax on electricity ("IEE") introduced by the recent tax reform, which have entailed a significant conceptual change in the tax (since it has gone from being designed as an excise tax on production, to becoming a tax levied on the supply of electricity for consumption or the consumption by energy producers of the electricity they generate), the following new legislation has been introduced:

- Persons subject to IEE must apply for registration on the territorial register pertaining to the management office for excise taxes for the location of the establishment where it carries on its activity or, failing that, where it has its tax domicile. The competent management office will grant the registration and provide the interested party with a card evidencing the registration and stating its electricity identification code ("CIE").

- However, parties required to register on the territorial register who, on December 31, 2014, were holders of an activity and establishment code ("CAE") will not be required to apply for a CIE given the activity carried on under the CAE. The State Tax Agency will, as a general rule and of its own initiative, replace CAEs with an CIE.

- IEE taxpayers must file form 560 "Excise tax on electricity. Self-assessment" and, if applicable, pay over the tax charge, unless it is paid by direct debit, within the first twenty calendar days following the end date of the relevant assessment period or in April for annual tax periods. It will be filed by the person subject to the tax or by a representative by electronic means.

- The itemization of charges on form 560 will not be mandatory until July 1, 2015, whereupon this information will have to be submitted in each self-assessment. The self-assessments to be filed in July 2015 will include the itemization of charges relating to the charges self-assessed up to that date since January 1, 2015 in relation to earlier periods.

The order entered into force on January 1, 2015.

### *3. Forms 650, 651 and 655, self-assessment of inheritance and gift tax*

Law 26/2014, of November 27, 2014, has amended the Inheritance and Gift Tax Law to avoid the discriminatory situations indicated by the Court of Justice of the European Union in its judgment of September 3, 2014. The court considered that Spanish law infringed EU law by permitting differences in the treatment given to inheritances and gifts between Spanish resident and non resident successors in title and recipients, between Spanish resident and non resident predecessors and between gifts and similar dispositions of properties located in and outside Spain.

Following these amendments, the Official State Gazette of December 31, 2014 published Order HAP/2488/2014, of December 29, 2014, approving new forms 650, 651 and 655, self-assessment of inheritance and gift tax, and determining the place, manner and period for filing them. These forms must be used for self-assessment of the tax on or after January 1, 2015 regardless of the due date of the tax, in cases where taxpayers' obligations are to the central government (that is, cases where the tax has not been devolved to the autonomous community governments).

Specifically, the following forms are approved:

(i) Form 650 "Inheritance and gift tax. *Mortis causa* acquisitions" (the dual system of ordinary and simplified forms has now disappeared and form 652 "Inheritance and gift tax. *Mortis causa* acquisitions. Simplified return" no longer exists).

  This form will be filed within 6 months running from the day of death or after the date on which the declaration of death becomes final.

(ii) Form 651 "Inheritance and gift tax. *Inter vivos* acquisitions. Self-assessment".

  The form will be filed within 30 business days running from the day following that on which the act or contract takes effect.

(iii) Form 655 "Inheritance and gift tax. Vesting of ownership due to termination of usufruct. Self-assessment". This new self-assessment form will be used by taxpayers who are the naked owners of an asset or right and in whom full ownership vests at the end of the usufruct where the usufruct was created as a result of a transfer for no consideration by inheritance or gift or in another *inter vivos* legal transaction.

  The form must be filed within 6 months running from the date of the usufructuary's death where the usufructuary is the cause of the vesting of the ownership, or within one month in all other cases.

Each of the self-assessment forms approved in this order, together with the documentation required in each case, may be filed in hardcopy format, on the form obtained through the State Tax Agency's printing service, or electronically using recognized electronic certificates or the signature system with an access code in a prior user registration.

Filing these returns electronically online will be voluntary and may be done either by the maker of the return or by a third party acting on his/her behalf.

The order entered into force on January 1, 2015. However, the provisions concerning the filing of the forms using the hardcopy form obtained from the State Tax Agency's printing service will enter into force on January 1, 2016, while the provisions concerning the manner, general conditions and procedure for filing the forms electronically will take effect on June 1, 2015.

### *4. Nonresident income tax forms 210, 211 and 213*

The Official State Gazette of December 31, 2014 published Order HAP/2487/2014, of December 29, 2014, amending Order EHA/3316/2010, of December 17, 2010, approving nonresident income tax self-assessment forms 210, 211 and 213, which must be used to report income obtained other than through a permanent establishment, the withholding made on the acquisition of real estate from nonresidents without a permanent establishment and the special levy on the real estate of nonresident entities, and establishing the general conditions and the procedure for filing them and other provisions concerning the taxation of nonresidents, and other tax provisions.

In order to simplify the procedures and introduce certain technical improvements, the following changes are made:

- The self-assessment forms 210 to be filed with the National Tax Management Office, resulting in zero tax payable or a refund, will be confined to those filed by nonresident taxpayers themselves, where to be able to file it, an identification code must be used.

- In the case of collecting societies, the order includes the option of requesting the refund using a special reporting and substantiation procedure.

- The order creates two specific type of income codes for taxpayers who apply the exemption for reinvestment in the principal residence applicable to taxpayers resident in a country of the European Union or the European Economic Area with which there is an effective exchange of tax information.

- In addition, certain types of income are itemized in specific codes to enhance control over the income reported, specifically relating to the refund application for collecting societies.

- The order recasts in a single tax residence notification form the various existing forms to substantiate the nonresident status of the interested parties to financial institutions. Financial institutions will also have the option of using this form to comply with the obligation to identify residence and nationality, notwithstanding the provisions for the case of the United States.

The order entered into force on January 1, 2015. However, (i) the restriction on the self-assessments to be filed with the National Tax Management Office will apply to self-assessments filed after January 1, 2015 regardless of the due date of the tax, and (ii) the refund claim using a special procedure envisaged for collecting societies will apply to self-assessments filed after March 1, 2015 for taxes due on or after January 1, 2014.

### 5. *Form 143 for requesting the early payment of the tax credits large families and dependents with disabilities*

The recent personal income tax reform has introduced some new tax credits for large families or dependents with disabilities, which can be paid to taxpayers in advance at their request.

The Official State Gazette of December 31 published order HAP/2486/2014, of December 29, 2014, approving form 143 for applying for advance payment and determining the place, period and manner of filing.

The key features of the order are as follows:

(a) Taxpayers must file an application for each tax credit to which they are entitled and, in the case of the tax credit for dependent disabled ascendants or descendants, with respect to each ascendant or descendant who gives the right to the tax credit.

(b) The application does not have to be filed with any attached documents evidencing that the relevant requirements are met, as this will be verified by the State Tax Agency.

(c) The application may be filed individually or jointly by all taxpayers entitled to the tax credit with respect to the same descendant, ascendant or large family. In this last-mentioned case, a taxpayer who meets the relevant requirements at the time of filing the application must be appointed as the primary applicant. The advance payment will be made monthly, in an amount of €100 for each descendant, ascendant or large family. This amount will be €200 in the case of special category large families.

(d) Any change in circumstances that may affect the advance collection of the tax credits will trigger the obligation to notify the tax authorities of those changes within fifteen calendar days after that on which the change or the breach of the requirements occurred.

(e) Form 143 may be filed electronically online, by telephone by calling the State Tax Agency’s call center or in hardcopy format by using the printing service offered by the State Tax Agency on its website.

(f) In 2015, applications for advance payment may be filed on or after January 7, whereas applications for advance payment the right to which arose in January 2015 may be filed until February 28, 2015. However, where form 143 is filed in hardcopy format, it may be filed on or after February 3, 2015.

The order entered into force on January 1, 2015 and will take effect on January 7, 2015.

### 6. *Changes to customs legislation*

The Official State Gazette of December 31 published Order HAP/2485/2014, of December 29, 2014, amending Order EHA/1217/2011, of May 9, 2011, regulating the procedure for the entry and presentation of goods introduced in the Community customs territory and the temporary warehousing summary declaration, as well as the exit summary declaration and the re-export notification in the context of the procedure for the exit of goods from that territory, and Order of December 18, 2001, establishing the instructions for filing the cargo manifest for maritime traffic.

As a result of the agreements reached between the State Ports Authority and the State Tax Agency on the harmonization of the communication procedure between competent authorities for all existing customs formalities in the case of maritime traffic, Order EHA/1217/2011 is

amended to provide for the use, in the case of summary declarations other than entry, of the mechanism provided for in Royal Decree 1334/2012 on formalities required of merchant vessels which arrive at or leave Spanish ports, to avoid the existence of two channels of communication depending on the declaration to be filed.

In addition, when it comes to filing the cargo manifest for maritime traffic and considering that shipping companies required to file the manifest already necessarily fill in other declarations electronically, such as the temporary warehousing summary declaration, the order does away with the option of filing it in hardcopy format and removes the need for authorization to file it by electronic data interchange.

Lastly, taking into account the access control system for means of transportation and their cargo by the owners of maritime cargo terminals and terminals for cargo intended for private use, where the latter constitute or are part of a customs sub place, it is considered that, to facilitate and expedite compliance with reporting requirements, the notification to the customs office of the entry into those terminals of goods in containers for export should be provided by their owners. Their exit, whether by land or sea, must also be notified.

The order's provisions entered into force on January 1, 2015, except for the provisions on the reporting requirement incumbent on owners of the maritime cargo terminals, which will apply from June 1, 2015.

## *7. Census notifications 036 and 037*

December 31, 2014 saw the publication in the Official State Gazette of Order HAP/2484/2014, of December 29, 2014, amending Order EHA/1274/2007, of April 26, 2007, approving forms 036, notification of registration on, amendment to, or removal from the census of traders, professionals and withholding agents and 037, simplified census notification of registration on, amendment to, or removal from the census of traders, professionals and withholding agents.

The forms contain new features resulting mainly from the changes introduced in the field of VAT, excise and special taxes, and environmental taxes. Accordingly:

- Due to the new cases requiring the "reverse charge mechanism", it is now necessary to identify any traders of professionals who are customers for supplies of cell phones and videogame consoles, laptop computers and digital tablets, whether traders or professionals, and may be resellers of these kinds of goods. These traders or professionals must notify the State Tax Agency of their reseller status by filing the appropriate census notification when the activity is commenced, or in the November before the start of the calendar year in which it is to take effect. Loss of reseller status must also be communicated using the appropriate census notification form for modifications. However, **for fiscal year 2015, it may be done until March 31, 2015**, by traders or professionals who engaged in trader or professional activities in 2014.

- Following the adaptation of the special travel agency scheme to the case law of the CJEU, which eliminated the option of determining the taxable amount globally, the reference to the manner in which the taxable is determined is removed from form 036.

- The new option for any importers who are traders or professionals acting as such, are taxed by the central government and have an assessment period that coincides with the calendar month, to elect to include the tax assessed by the customs office in the VAT return for the period in which they receive the document containing the assessment must

be elected when the census notification of commencement of activity is filed, or in the November before the start of the calendar year in which it is to take effect. **To make this election for 2015, taxable persons will have until January 31, 2015**.

In turn, the waiver of this election must also be exercised by filing the appropriate census notification in the November before the start of the calendar year in which it is to take effect. In cases where the assessment period ceases to coincide with the calendar month, the option will cease to apply to the taxable person who has made the election from the date on which he is no longer required to file monthly VAT returns.

- The order eliminates from the "Other taxes"·section, the reference contained in the "A) Excise and special taxes" subsection to the "requirement to file the return for the tax on retail sales of certain oil and gas products", adds a reference to the requirement to file the self-assessment for the excise tax on electricity, and creates in this "Other taxes" section a new subsection called "C) Environmental taxes" to include a reference to the requirement to file the self-assessment for the tax on the value of electricity output.

In addition, the order introduces certain technical changes, including most notably the following:

- Two additional boxes are included in the individual and legal entity identification sections, and also in the one for permanent establishments of a nonresident legal entity; one for the "employer identification number of the State of residence / TIN-VAT (NVAT)" and another for the "cadastral reference" of the building where its tax domicile is located.

- The sections on tax domicile are eliminated from the "Representatives" section, as are the sections on the tax domicile in Spain from the "List of shareholders, members or participants" section. A new box is added for identifying the attribution share of each of the members or participants forming part, from time to time, of the entities referred to in article 35.4 of the General Taxation if it is different from their ownership share.

- A box for the "cadastral reference" of the building where the tax domicile is located is included in the identification section in form 037.

Lastly, the requirement to file form 036 electronically with an electronic certificate is extended to a certain group that is usually required to file practically all of its self-assessments and informative returns this way, and it allows forms 036 and 037 to be filed using with the signature system with an access code in a prior user registration as a user.

Starting January 31, 2015, all of the printouts and forms required to file returns and self-assessments that do not have to be filed electronically may be downloaded directly from the State Tax Agency's website or may be obtained from the provincial and local tax offices.

The provisions in this order entered into force on January 1, 2015.

### 8. *Annual effective interest rate for the first calendar quarter of 2015 for the purposes of classifying certain financial assets for tax purposes*

As is customary, the reference rates that apply for the first calendar quarter of 2015 have been published in the Decision of December 30, 2014, of the Office of the Secretary-General for the Treasury and Finance Policy. The rates are as follows:

- Financial assets with a term of four years or under: 0.467%.

- Assets with a term of between four and seven years: 0.700%.
- Assets with a term of ten years: 1.385%.
- Assets with a term of fifteen years: 2.274%.
- Assets with a term of thirty years: 2.764%.

In all other cases, the reference rate relating to the term that is closest to that of the issue made will apply.

### *9. Spain-Senegal tax treaty*

The Official State Gazette of December 29, 2014 published the Convention between the Kingdom of Spain and the Republic of Senegal for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done ad referendum at Dakar on December 5, 2006. Among the key features of the convention are the following:

(a) Dividends, interest and royalties will be taxed at 10%.

(b) Interest will be exempt if (i) the debtor of the interest is the government, a political subdivision or local authorities, or (ii) the interest is paid to the government, a political subdivision or local authorities, or to an institution or organization (including financial institutions) belonging wholly to the state, a political subdivision or a local authority.

(c) A taxation at source provision is introduced for gains derived from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property.

The Convention entered into force on October 22, 2012, and its provision will take effect: (i) in respect of taxes assessed periodically, for taxes for any taxable year beginning or ending on or after the date of entry into force of the Convention; (ii) in respect of other taxes on income, on the date of entry into force of the convention, October 22, 2012.

## IV. Others

### *1. Report from the Directorate-General of Taxes on the validity of the current list of tax havens*

Final provision two of Law 26/2014 has amended the definition of tax haven, zero taxation and effective exchange of tax information contained in additional provision one of Law 36/2006.

Among other changes, the list of tax havens will no longer be automatically revised where the countries included in it sign with Spain a tax information exchange agreement or a tax treaty with an exchange of information provision.

Starting January 1, 2015, the list must be revised in an express manner according to the standards contained in the new wording of additional provision one of Law 36/2006. These standards are as follows:

(a) The existence with the country or territory of an international tax treaty with an exchange of information provision, a tax information exchange agreement or the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the Council of Europe amended by the 2010 Protocol, as applicable.

(b) There is no effective exchange of tax information on the terms set out in subprovision 4 of additional provision one.

(c) The findings of the peer review performed by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Following this amendment, the DGT published its report of December 23, 2014 on the validity of the current list of tax havens (approved by Royal Decree 1080/1991 with the exclusions deriving from the application of the amendment introduced by Royal Decree 116/2003).

The report states that the list of territories currently in force will continue to apply until a new list is approved.

It should be noted that since February 2, 2003, the date of entry into force of Royal Decree 116/2003, the following territories have been removed from the original list: Andorra, Netherlands Antilles,[1] Aruba, Cyprus, United Arab Emirates, Hong Kong, Bahamas, Barbados, Jamaica, Malta, Trinidad and Tobago, Luxembourg, Panama, San Marino and Singapore.

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[1] Effective November 10, 2010, the Netherlands Antilles ceased to exist as such. As from that date, Saint Martin and Curaçao have the same status as Aruba (they form part of the Kingdom of the Netherlands, but are independent), whereas the other islands of the former Netherlands Antilles (Saba, Saint Eustatius and Bonaire) now form part of the Netherlands. The agreement signed with the Netherlands Antilles applies to Saint Martin and Curaçao, whereas the tax treaty with the Netherlands applies to the other three islands. Accordingly, none of the islands is currently considered a tax haven.