September 2014

Article 11 of Royal Decree 1382/1995 which governs senior management employment relationships allows a senior management employment contract to be terminated on the ground of withdrawal by the employer, following the required amount of notice, and in these cases the senior manager will be entitled to the severance pay agreed in his contract and, in the absence of such an agreement, seven days' salary in cash per year worked, capped at six months' pay. In the case of a dismissal based on a serious and culpable breach by the senior manager, if the dismissal is held unjustified, the manager will be entitled to the severance agreed in his contract or, if none was agreed, to twenty days' salary in cash per year worked, capped at twelve months' pay.

On the basis that this article allows severance terms to be agreed to prevent the seven or twenty days' salary terms being applied, the courts have been determining that senior managers' severance pay is not exempt from personal income tax (except in the case of dismissals on objective grounds) because the option to reach an agreement on the amount of severance rules out that there is a minimum mandatory amount of severance that must be paid. This case law arose from the well-known judgment of the Third Chamber (judicial review) of the Supreme Court of December 21, 1995, which in turn refers to another judgment of the same court (but of its Fourth Chamber, i.e. the Labor Chamber).

The Supreme Court itself, however, (Fourth Chamber), in a recent judgment handed down on April 22, 2014 (which we comment on in this bulletin) on an appeal for a definitive ruling on a point of law, revisited article 11 and concluded that it must be interpreted to mean that the seven-day severance, capped at six months (understood also to include the twenty-day severance mentioned above) is the minimum mandatory severance pay under the labor law and any agreements to the contrary that reduce or eliminate that severance are not allowed. The agreement mentioned in the article can modify that severance pay but only to increase it from this minimum and non-waivable amount.

This judgment (which, as mentioned, is by the Fourth Chamber) has turned the traditional case law on its head and must necessarily affect the judicial review case law on the subject, given that it is labor, rather than tax, law that establishes the severance to be paid in cases of dismissal or removal of senior managers.

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I. Judgments

1. *Corporate income tax. - Preferential application of the rules on acquisitions of treasury stock for its subsequent retirement over the rules on exchange transactions (Supreme Court. Judgment of June 25, 2014)*

The dispute brought before the Supreme Court had to do with a disagreement over the taxation of a transfer of a rural property performed as consideration for a purchase of treasury stock for its subsequent retirement:

(a) Both the tax inspectors and the Central Economic-Administrative Tribunal (the "TEAC") considered that it involved an exchange and that, as such, although the gain that would have arisen on the acquisition and retirement of the treasury stock by the shareholder was not taxable, the gain that would have arisen at the company on the delivery of the land was taxable, on the difference between the carrying amount of the land and its market value.

The inspectors and the TEAC insisted that there had been two transactions (the acquisition of treasury stock and the delivery of the property) which the tax legislation treats differently. They ultimately argued that to consider otherwise was to allow a set of transactions in which no tax would ever be paid on the gain generated on the transfer of assets in exchange for treasury stock for its subsequent retirement.

(b) The National Appellate Court and the Supreme Court held, however, that because article 15.10 of Law 43/1995—in force at that time—lays down a special rule on acquisitions of treasury stock, that rule must be applied to the valuation of the exchanged assets. They specifically emphasized that in their view the case at hand did not involve a set of sham transactions whose only purpose was to avoid tax and were used by the parties to achieve the (indirect) transfer of the property, but rather a genuine transaction, which was intended by the parties and finally took place.

The court therefore took the view that the acquisition and retirement of treasury stock qualifies as a single event ("an indivisible unitary transaction") and that, from a tax standpoint, because the facts fell within a specific case envisaged in the legislation on the tax, the rules on that case must take precedence over the rules on exchanges.

Despite the dismissal of the cassation appeal filed by the government lawyer, one of the judges issued a dissenting opinion in which he disagreed with the decision in the judgment.

2. *Personal income tax. - Senior managers are legally entitled to minimum severance pay for dismissal or removal (Supreme Court. Labor Chamber. Judgment of April 22, 2014)*

Article 11 of Royal Decree 1382/1985 governing the special senior management employment relationship, provides that a senior management employment contract may be terminated on the ground of withdrawal by the employer, in which case the senior manager will be entitled to severance pay equal to seven days' salary in cash per year worked, capped at six months' pay, unless another amount has been agreed to.

The Labor Chamber of the Supreme Court held in this judgment (going against its earlier doctrine) that any agreement changing this severance payment can never be lower than those seven days (capped at six months) and that therefore, there is a minimum and mandatory severance pay which is non-waivable.

The effect of this new case law (which presumably will also apply in cases where article 11 establishes severance pay of twenty days' salary in cash per year worked, capped at twelve months' pay) should automatically be reflected in the personal income tax treatment of this type of severance pay, given that the tax legislation stipulates that the amounts established as mandatory by the labor legislation will be exempt.

3. *Inheritance and gift tax. - Inheritance and gift tax is contrary to the free movement of capital in cases where there is a nonresident element (Court of Justice of the European Union. Judgment of September 3, 2014 in Case C-127/12)*

When it comes to Spanish inheritance and gift tax, the autonomous communities have certain taxing powers. Some autonomous communities have issued legislation providing major reductions to the inheritance and gift tax liability, lowering it very considerably. However, the connecting factor that determines the law that applies in each case prevents these tax reductions from applying, for example, where the heir is not resident in Spain (even if the deceased was resident in the autonomous community establishing the tax reduction) or where the recipient of a gift, who is resident in the autonomous community providing the tax reduction, receives a property located outside Spain.

The European Commission asked the Court of Justice of the European Union (CJEU) to declare that Spain had breached its obligations by including differences in the tax treatment given to inheritances and gifts, between Spanish residents and non-Spanish residents and between gifts of properties located in and outside of Spain.

The CJEU agreed with the European Commission's position and held that these rules restrict the movement of capital by decreasing the value of the inheritance or of the gift of a resident of a state other than that in which the inheritance or gift is taxed, or of a resident of a state other than that in which the affected assets are located and which taxes the inheritance or gift of those assets.

4. *Inspection proceeding. - There is an administrative res judicata if a prior review was performed which ended with no formal assessment being issued (National Appellate Court. Judgment of May 28, 2014)*

In this case, the tax authorities reviewed a spin-off transaction and their proceedings ended without any formal decision being issued. Three years later, a second inspection was commenced which concluded that the spin-off did not qualify for the special tax neutrality regime.

The National Appellate Court held that the tax authorities cannot commence a second inspection proceeding where they have notified of an inspection proceeding that has ended without any formal decision being issued. It therefore appears that the court acknowledges the possibility that an administrative res judicata can be found to exist not only in relation to express and formal decisions, but also to tacit and still presumed but unambiguous decisions, especially, says the court, where decisions on taxation are concerned.

5. Penalty proceeding. - Option to obtain the 25% reduction in the enforcement of a judgment if the taxpayer states his agreement with the declaration of liability (National Appellate Court. Judgment of April 28, 2014)

A taxpayer was found to be secondarily liable for a tax debt and filed an appeal against the decision declaring liability. It turned out that when that decision was issued, the taxpayer had not been asked to state his agreement with the declaration of liability, which could have given rise to a 25% reduction in the penalty if the other requirements had been met. The legal provision establishing this option (in article 41.4 of the General Taxation Law) had not entered into force until October 31, 2012, which fell after the decision.

The court held in this judgment that the new wording of article 41.4 of the General Taxation Law should have retroactive effect given that it is a more favorable provision in relation to penalties, and concluded that, therefore, when a judgment is enforced the taxpayer must be given the opportunity to state his agreement with the declaration of liability and to consequently obtain the tax reduction.

6. Review proceeding. - The tax authorities can and must review in any administrative phase whether there has been a dual payment and proceed to rectify it (National Appellate Court. Judgment of June 23, 2014)

The TEAC had dismissed a claim for a refund of incorrectly paid tax because the documentary proof that evidenced the existence of the dual payment of the debt had not been provided to the tax authorities in the prior phase.

Contrary to the TEAC's decision, the National Appellate Court reiterated its view that the tax authorities are required to perform a complete rectification of the taxpayer's position, which means that they must examine the possible existence of double taxation even if the appellant has not produced the documentation of his own initiative.

In addition, the court noted that the procedure for refunding incorrectly paid taxes may be initiated without being requested by the taxpayer, and, accordingly, the tax authorities could and should have checked to see whether there had been any double taxation.

II. Decisions and rulings

1. Corporate income tax. - Clarification of various doubts regarding the DTA regime (Directorate-General of Taxes. Ruling V2212-14 of August 8, 2014)

Royal Decree-Law 14/2013 introduced a new timing of recognition rule (article 19.13) for including in taxable income any impairment losses on receivables and expenses in respect of contributions to employee welfare systems that have not met the requirements for their deduction and have given rise to a deferred tax asset. This new rule allows these deferred tax assets to be converted into receivables claimable from the tax authorities in certain cases.

For these cases, the law establishes that these items must be included in the taxable income to the extent of the amount of taxable income before their inclusion and before the offset of tax losses, and any amounts over and above this limit may be included in the following tax periods subject to the same limit.

With respect to this new regime, the Directorate-General of Taxes (the "DGT") has clarified the following issues:

(a) The requirement that the expenses that have been deferred must have generated a deferred tax asset refers both to expenses in respect of impairment losses on bad debts and to expenses in respect of contributions to employee welfare systems.

(b) This regime does not apply to allowances for bad debts that are reversed simply because the 6-month period has lapsed, although it does apply to other allowances that are reversed as a result of other circumstances, including the loan loss allowance that can be recorded by financial institutions.

(c) The regime applies in the case of unrelated debtors, and the relatedness or otherwise of the debtor must be measured at the time the loan is provided, regardless of whether or not new circumstances subsequently arise triggering relatedness.

(d) The regime applies in cases where the inclusion in taxable income of the allowance (its reversal, in other words) occurs on or after January 1, 2011, regardless of whether or not the deferred tax asset was recognized for accounting purposes before that date.

Despite this retroactive effect, it is not necessary to file supplementary returns for fiscal years 2011 and 2012. In the return for 2013, the taxpayer may directly include the reduction in tax assets in respect of tax losses and the increase in tax assets in respect of allowances for bad debts or contributions to employee welfare systems. Nor will it be necessary to file supplementary returns as a result of the effects that this new regime may have by applying retroactively to 2011 and 2012 in relation to the calculations of the impairment loss on securities (article 12.3), since that article was repealed when Royal Decree-Law 14/2013 entered into force.

(e) The limit on inclusion in the prior amount of taxable income set out in article 19.13 is deemed to refer to the entity or tax group that was considered the party liable for the tax in the respective tax period, regardless of whether or not corporate restructuring transactions were performed subsequently.

(f) The description "allowances for impairment losses on other assets arising from potential bad debts" refers both to real estate assets and to non-real estate assets also acquired as a result of defaulted debt payments.

(g) Lastly, it is clarified that any deferred tax assets that are converted cannot generate tax-deductible items after the relevant conversion or exchange.

2. *Corporate income tax. - The existence of consideration invalidates the nature of a donation as a free gift (Directorate-General of Taxes. Ruling V1503-14 of June 9, 2014)*

A nonprofit association that applied the tax regime for patronage asked whether parties in the role of "partnering friend" or "benefactor friend" qualify for the tax incentives envisaged for donations. In both cases, the status of "friend" confers a number of rights of little economic value and always much lower than the contribution made.

In its ruling V2073-13, of June 20, 2013, the DGT had concluded that, given that the contributions made both by "partnering friends" and by "benefactor friends" are merely consideration for the rights to receive certain benefits (such as free access to certain facilities, certain discounts or advertising of "benefactor friend" status), these contributions would not entitle them to take the tax credits provided for in title III of Law 49/2002, since the benefits to be received by the associates invalidated the nature of a donation as a free gift.

In this new ruling, the DGT has reiterated this view, adding that the fact that the value of the benefits received is lower than the contributions made is not relevant for these purposes.

3. *Personal income tax. - The 40% reduction for surrenders of pension plans in the form of a lump sum may be applied only if the payment is a one-time payment (Directorate-General of Taxes. Ruling V1626-14 of June 24, 2014)*

The party requesting the ruling, the holder of an occupational pension plan to which the first contribution was made before 2007, asked about the possibility of recovering the contributions in several payments in a single year rather than collecting them in a one-time payment.

The transitional regime introduced by Law 35/2006 gives the option to apply a 40% reduction to the amount of contributions made before January 1, 2007 if they are received in a lump sum.

In defining what was understood by lump sum, the DGT referred to the financial legislation, according to which a benefit in the form of a lump sum consists of the receipt of an amount in the form of a one-time payment. In light of this legislation, and applying an arguable view that does not seem to take into account that the tax falls due annually, the DGT considered that only one lump sum (a "one-time payment") could be received from each pension plan, either for all of the economic rights or combined with annuities and, accordingly, where there is only one pension plan, the 40% reduction will apply to one payment, but not to several payments even if they are all received over the course of a single year.

4. *Personal income tax. - In the transfer of a dwelling inherited and not reported for inheritance and gift tax purposes, the acquisition value is the market value on the date of death (Directorate-General of Taxes. Ruling V1522-14 of June 10, 2014)*

A taxpayer who inherited a dwelling, but did not file an inheritance and gift tax return for it, asked what the acquisition value would be to calculate the capital gain if the dwelling were sold.

The DGT concluded that, since the inheritance and gift tax return was not filed, the acquisition value would be the market value on the date of death of the deceased, which can be evidenced using any lawful means of proof.

5. *Various taxes. - Treatment of participating loans (Directorate-General of Taxes. Ruling V1511-14 of June 9, 2014)*

This ruling analyzed the tax treatment given to the provision of a participating loan by a related person from the standpoint of various taxes:

(a) Corporate income tax: the participating loan constitutes external financing and must have all the hallmarks of a loan agreement (delivery of an amount of money, obligation to repay it within a given term and existence of a variable interest rate, which may or

may not be accompanied by a fixed rate). If the lender and the borrower are related parties, the transaction must be valued at arm's length. The interest, moreover, will be subject to the restriction on the deductibility of finance costs.

(b) Value added tax: if the lender is a taxable person for VAT purposes, the provision of the loan will be subject to, but exempt from, VAT.

(c) Transfer and stamp tax: if the lender is a taxable person for VAT purposes, the provision of the loan will not be subject to transfer tax (in this case, if there is a mortgage, it would be subject to stamp tax). If the lender is not a taxable person for VAT purposes, the provision of the loan will be subject to, but exempt from, transfer and stamp tax (in this case, if there is a mortgage, it would not be subject to stamp tax).

(d) Personal income tax: the interest would be considered income from movable capital and, since it comes from a related entity, would be included in the general component of taxable income in respect of the portion that relates to the amount by which the loaned principal exceeds the result of multiplying equity by three. The rest would be included in the savings component of taxable income.

(e) Nonresident income tax: The interest on the participating loan may be exempt from tax if it is received by a resident of another EU member state that is not considered a tax haven (the only possible case being Cyprus, a territory with which there is still no tax treaty).

6. *Inheritance and gift tax. - Kinship by affinity subsists even if the person who gives rise to this relationship dies (Central Economic-Administrative Tribunal. Decision of July 8, 2014)*

The stepdaughter of the deceased, a widower at the time of death, intended to apply the reduction established in the inheritance and gift tax regulations for children of the deceased. The tax authorities, however, issued an assessment in which the reduction for kinship was not applied because the relationship existing between the taxpayer and the deceased was classified as a relationship between unrelated persons, for the reason that because the person who was the connection (mother of the claimant and wife of the deceased) had died, the relationship had vanished.

The tribunal upheld the stepdaughter's claim, confirming that kinship by affinity is not terminated by the death of the person who provided the link to the rest of the family group.

7. *Inheritance and gift tax. - In the case of companies with a negative value, the minimum value will be considered to be zero (Directorate-General of Taxes. Ruling V1588-14 of June 20, 2014)*

The requesting taxpayer, who had accepted an inheritance with the benefit of inventory, which included companies with negative net worth, inquired as to the possibility of subtracting this negative net worth from the positive value of the other inherited assets when calculating inheritance and gift tax.

The DGT recalled that, in the case of limited liability companies, the shareholders' liability is limited to the capital they have contributed and the shareholders are not liable with their personal assets for the debts of the company. Therefore, the shares of limited liability companies with negative net worth will be considered to have a minimum value of zero and can never have a negative value.

8. Collection proceeding. - The late-filing surcharge is not a penalty in nature and can only be avoided in the case of unforeseeable circumstances or force majeure (Central Economic-Administrative Tribunal. Decision of July 17, 2014)

In this case, a VAT return was filed one day late, and as a result, the tax authorities assessed a 5% surcharge for late filing. The taxable person contested the assessment, citing an absence of proportionality and reasoning.

In its decision, the tribunal held as follows:

(a) As the Constitutional Court says, unlike tax penalties, surcharges for late filing constitute ancillary tax obligations that taxpayers must pay when they file self-assessments or returns late without any prior demand from the tax authorities.

(b) Ancillary obligations arise by operation of law from the mere fact of filing the return or self-assessment late, and their enforceability is not conditional on demonstrating the fault or negligence of the taxpayer.

(c) Only the occurrence of unforeseeable circumstances or force majeure prevent this ancillary obligation from arising.

9. Collection proceeding. - Where incorrectly paid taxes are used to offset other debts, late-payment interest is calculated from between when the incorrect payment was made and when the offset is ordered (Central Economic-Administrative Tribunal. Decision of July 3, 2014)

The tax authorities recognized a taxpayer's right to a refund of tax paid incorrectly, but at the same time ordered the refund to be used to offset another debt owed by the taxpayer in a lower amount. Accordingly, part of the refund was kept to discharge the debt and the rest was refunded in cash.

The taxpayer appealed the enforcement decision on the ground that the late-payment interest had not been calculated correctly. Taking the view already expressed in its decision of October 25, 2012 (RG 3614/11), the TEAC held as follows:

(a) For the amount used to offset the debt, the interest payable to the taxpayer will be calculated between the date the incorrect tax was paid and the date on which the offset was ordered, given that, just like payment, offset is a form of discharging a debt.

(b) For the remaining amount, the interest will be calculated between the date the incorrect tax was paid and the date on which the payment was ordered.

10. Economic-administrative proceeding.- The non-admission of testimonial and eye-witness evidence and other parties' statements does not constitute a denial of due process in an economic-administrative proceeding (Central Economic-Administrative Tribunal. Decision of July 17, 2014)

The law states that diesel fuel at the reduced rate can only be supplied to certain persons authorized to receive it. It also states that the supplier must make sure that the recipient has the relevant authorization.

In this proceeding, the supplier did not have documentary proof that the recipients of the reduced rate diesel fuel qualified for it. For this reason, the supplier asked the Andalucía Regional Economic-Administrative Tribunal (the "TEAR") to take evidence from witnesses, so that the individuals and legal entities (through their legal representatives) who had received the diesel fuel could state that they were authorized to do so. The TEAR held that this evidence was not pertinent or necessary in its decision, so the taxpayer filed an appeal.

The TEAC dismissed the appeal on the grounds that:

(a) In tax proceedings, testimonial and eyewitness evidence and evidence consisting of statements by other parties are of little practical value for clarifying taxpayers' circumstances.

(b) Although the interested party is not denied the right to propose whatever type of evidence he sees fit, the tribunal has broad discretion to decide whether the proposed evidence is pertinent for the purpose of substantiating the facts.

(c) In this case, the law is clear on how to evidence the destination of the product; given that the taxpayer does not have documentary proof of this destination (thereby breaching not simply a procedural, but a substantive, legal requirement), this defect cannot be rectified with the requested evidence.

11. Enforcement proceeding. - The maximum period for completing proceedings if they have been reverted does not apply to penalty proceedings (Central Economic-Administrative Tribunal. Decision of July 17, 2014)

In its provisions on the length of inspection proceedings, article 150.5 of the General Taxation Law (the "LGT") establishes that "where a judicial or economic-administrative decision orders the reversion of inspection proceedings, the inspection proceedings must be completed in the period remaining between the time to which they are reverted and the completion of the maximum period" set out in the law for these proceedings (generally 12 months) "or in six months, if that period is shorter."

In the case analyzed in this decision, the tribunal examined the lawfulness of an enforcement decision in a National Appellate Court judgment that partially set aside a penalty. The taxpayer considered that the enforcement decision was unlawful on the understanding that the penalty proceeding had become statute-barred, since the enforcement decision had been issued after the maximum period of 6 months established for completing a penalty proceeding had elapsed, in relation to the rule stipulated in article 150.5 for cases where proceedings are reverted.

Based on the facts described, the TEAC dismissed the appeal because the judgment being enforced did not order the proceedings to be reverted in the context of an inspection proceeding (which is the scope of application of article 150.5 of the LGT). Therefore, according to the TEAC, the scope of article 150 of the LGT is clearly limited, since it refers to inspection proceedings in which a judicial or economic-administrative decision orders inspection proceedings to be reverted, and therefore does not apply to a case of enforcement of a penalty-related decision.

III. Legislation

1. *Form 347 for transactions with third parties; and form 180 for "Withholdings from payments in cash and in kind. Income from the leasing of urban properties. Annual summary"*

Order HAP/1732/2014, of September 24, 2014, amending Order EHA/3012/2008, of October 20, 2014 (form 347 for transactions with third parties) and the Order of November 20, 2000 (form 180 for the annual summary of withholdings on income from the leasing of urban properties, among others) was published in the Official State Gazette of September 26.

The main new features of this new form 347 are as follows:

- The form will be mandatory for (i) entities to which the Condominium Property Law applies and (ii) the private entities or establishments of a social nature referred to in article 20.Three of the VAT Law for acquisitions in general of goods or services made outside the scope of their business or professional activities, even if they do not engage in activities of this nature.

- Taxable persons applying the simplified VAT scheme must include on the form any acquisitions of goods and services made by them that must be recorded in the book of received invoices.

- The obligation to report on this form has been broadened to entities included in the various public authorities referred to in article 3.2 of Legislative Royal Decree 3/2011, approving the revised Public Sector Contracts Law, which must list all the persons or entities to whom they have paid subsidies, assistance or aid, regardless of the amount. It is also specified that any non-returnable subsidies, assistance or aid received are considered transactions to be reported on form 347.

- Taxable persons performing transactions under the special cash-basis accounting scheme, as well as the recipients of the transactions included in it, must report any amounts chargeable in the calendar year in accordance with the rule on the charging of VAT set out in articles 75 and 163 terdecies of the VAT Law.

- An exception to the obligation to supply information broken down by quarters is established for taxable persons performing transactions under the special cash-basis accounting scheme and entities to which Condominium Property Law 49/1960 applies, who must supply all the information calculated on an annual basis. In addition, the taxable persons who are recipients of the transactions included in the special cash-basis accounting scheme must supply the information relating to those transactions also calculated on an annual basis.

- The following transactions must be stated separately from any other transactions performed between the same parties: (i) transactions in which the taxable person is the recipient in accordance with article 84.One.2 of the VAT Law, (ii) transactions exempt from VAT because they refer to goods placed or intended to be placed under non-customs warehousing arrangements, and (iii) transactions to which the special cash-basis accounting scheme applies.

Turning to form 180, new physical and logical designs are approved for including information relating to cadastral reference numbers and to the data necessary to locate leased urban properties. With this change in the annual summary of withholdings, lease operations involving properties that are business premises and are subject to withholdings will be excluded from the lessor's duty to report on form 347.

This order entered into force on September 27 and will apply for the first time for the information returns relating to fiscal year 2014.

2. Single Public Notice Board through the Official State Gazette

September 17, 2014 saw the publication in the Official State Gazette (the "BOE") of Law 15/2014, of September 16, 2014, streamlining the public sector and other administrative reform measures in which, in order to facilitate relations between the authorities and citizens, a Single Public Notice Board is established through the BOE, as an official journal of the entire state organization and not only of the central government. In this way, citizens will know that, by accessing a single place and with the guarantee and security offered by the BOE, they can learn of all the notices that may affect them, regardless of the body issuing them or the matter to which they relate.

This measure has entailed amendments to the General Taxation Law and to the Revised Property Cadastre Law concerning the notices intended to be included among the notices published in the Single Public Notice Board, namely, notices in tax proceedings and notices in cadastral proceedings for collective valuation:

(a) With respect to notices in tax proceedings, where it is not possible to send the notice to the interested party or to his or her representative for reasons not attributable to the tax authorities and an attempt has been made at least twice at the tax domicile, or at the address indicated by the interested party in the case of a proceeding commenced at his request, the circumstances of the notification attempts will be stated in the case file (a single attempt will be sufficient, however, where the recipient appears as unknown at the domicile or place in question).

In these circumstances, the interested party or his representative will be summoned to be notified by appearance by means of notices that will be published, one time for each interested party, in the BOE that is published on Mondays, Wednesdays and Fridays every week.

Notification on the website of the body in question and the publication by the State Tax Agency on its website of the notices that it must issue have been eliminated.

(b) With respect to cadastral notices in collective valuation proceedings of a general and partial nature, where it is not possible to deliver the notice to the interested party or his representative for reasons not attributable to the tax authorities, the publications of all the cadastral notices are brought together in the BOE.

Both amendments will apply from June 1, 2015 onward to all notices that must be sent, even if the proceedings from which they arise commenced before that date.

3. *Electronic identification in dealings with authorized entities for the payment of debts*

September 17, 2014 saw the publication in the BOE of Decision of September 11, 2014, of the Directorate-General of the State Tax Agency, amending the Decision of June 3, 2009, on assistance to taxpayers and citizens in their electronic identification in dealings with authorized entities in the conduct of tax proceedings for the payment of debts by the direct debit system or through the use of credit or debit cards.

The new changes mainly consists of (i) adapting to the technical specifications set out in the 2009 Decision, as a result of the entry into force of Law 16/2009 under which bank accounts must be identified by the IBAN code from February 2014—rather than by the traditional Customer Account Code (C.A.C.)—and (ii) modifying other aspects of the 2009 Decision relating to electronic signature procedures for operations, in order to reduce the technical requirements needed to complete electronic formalities with the State Tax Agency as well as to access its website.

The modifications introduced by the Decision will apply from October 1, 2014.

4. *Form 187 for the information return for shares or units representing the capital or the assets of collective investment undertakings and for the annual summary of withholdings on payments in cash and in kind*

On September 10, 2014, the BOE published Order HAP/1608/2014, of September 4, 2014, approving form 187, for the information return for shares or units representing the capital or assets of collective investment undertakings and for the annual summary of personal income tax, corporate income tax and nonresident income tax withholdings on payments in cash and in kind, in relation to income or capital gains obtained on transfers or redemptions of those shares or units and establishing the conditions and procedures for their filing.

The Order entered into force on September 11, 2003 but will apply, for the first time, for the filing of the information return and of the annual summary of withholdings for fiscal year 2014, the filing period for which will be from January 1 to 31, 2015.

5. *Changes to the standard forms used for guarantees provided by credit institutions and by mutual guarantee societies for the tax authorities*

On July 23, 2014, the BOE published the Decision of July 15, 2014, of the Directorate-General of the State Tax Agency, amending the Decision of February 28, 2006, establishing the general conditions and the procedure for validation using the NRC code for the guarantees provided by credit institutions and by mutual guarantee societies and submitted by interested parties to the tax authorities.

The changes to the standard guarantee forms relate mainly to:

(a) eliminating the reservation of the direct representation option to a single group which existed before the change to the customs representation regulations;

(b) expressly introducing the "first demand" clause in all of the standard guarantee forms in order to clarify doubts of interpretation in cases where guarantees are enforced.

The changes introduced by this Decision will apply from July 24, 2014, with the exception of the pro forma standard form for guarantee code 9 (to secure customs and tax debts arising from returns filed by a customs representative regardless of the representative capacity in which he acts), which will apply from November 24, 2014.

6. "Ponferrada 2014" World Road Cycling Championship

Law 13/2014, of July 14, 2014, transforming the fund for financing payments to suppliers which, through its final provision two, amends additional provision fifty-eight of General State Budget Law 2/2012 for the year 2012, was published in the BOE of July 15, 2014.

Specifically, the length of the "Ponferrada 2014" World Road Cycling Championship, already declared an event of exceptional public interest, is extended to September 30, 2015 (its conclusion was initially set for September 30, 2014).

IV. Others

1. Spain-US tax treaty: technical explanation of the Protocol

It is common practice in the United States for the negotiators of a tax treaty to prepare, after signing it, a "technical explanation" document on the provisions of the tax treaty, which the US Internal Revenue Service adopts and publishes on its website to serve as a guide for interpreting the treaty.

Although the 2013 Protocol to the Spain-US tax treaty has not been ratified by the United States, the technical explanation was published on June 19, 2014.

2. Tax reform bills – main changes compared with prior preliminary bills

On June 20, 2014, the Cabinet of Ministers approved four preliminary bills in which an overhaul of various taxes was proposed.

On August 6, 2014, the following bills were published in the Official Parliamentary Gazette: (i) the Bill amending Personal Income Tax Law 35/2006 and the revised Nonresident Income Tax Law (approved by Legislative Royal Decree 5/2004); (ii) the Corporate Income Tax Bill; (iii) the Bill amending VAT Law 37/1992, Canary Islands Economic and Tax Regime Law 20/1991, Excise and Special Taxes Law 38/1992, and Environmental Taxation Law 16/2013. However, the Bill partially amending General Taxation Law 58/2003 was not published, even though the related preliminary bill had been published on June 20, 2014.

The main differences between the bills and the preliminary bills have been summarized in our Garrigues Tax Commentary entitled *Tax reform bills – main new changes with respect to preliminary bills*, which can be found at the following link.

3. 2014 Update to OECD Model Tax Convention

On July 15, 2014, the OECD Council approved the 2014 Update to the Model Tax Convention. This update represents the culmination of the work done between 2010 and the end of 2013 and introduces changes in article 26 and its commentary (exchange of information), in the definition of "beneficial owner", in article 17 (artistes and sportsmen), in the treatment of payments that may be made following the termination of an employment and other technical issues.

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