GARRIGUES

bulletin TAX

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TAX LEASE

The Commission's decision to initiate the formal state aid proceeding relating to what is known as the "Spanish tax lease" was published on September 21, 2011.

The tax lease raised doubts at the Commission, basically because of the combination of the early and accelerated depreciation of vessels (typical of the finance lease regime) and the tonnage regime, which between them made the capital gains on sales of vessels practically tax exempt.

The final decision on the Spanish tax lease was adopted on July 17, 2013, and although the wording of the decision has yet to be published, the Commission's press release reports that the Spanish tax lease is illegal and incompatible state aid, of which the beneficiaries are the EIGs (involved in the lease and sale of the vessels) and the shareholders and investors that invested through the EIGs. Accordingly, the aid granted or authorized after April 30, 2007 (the date on which the final decision on the French EIG regime was adopted) must be recovered.

Lastly, readers are reminded that as a consequence of the initiation of the formal state aid proceeding, the tax lease regime was repealed and new regulations were adopted, which were notified to the Commission and approved by it as compatible with state aid legislation on November 20, 2012. The new regime was introduced by Law 16/2012 of December 27, 2012.

1. JUDGMENTS

1.1 Nonresident income tax.- In order to receive a refund of withholding taxes paid incorrectly, the taxpayer need not prove that those taxes were paid over to the tax authorities by the withholding agent (Madrid High Court. Judgment of February 20, 2013)

The plaintiff, a non Spanish resident, had a subsidiary in Spain and nonresident income tax was mistakenly withheld from the dividends it received from that subsidiary. As a result, the nonresident entity applied to the tax authorities for a refund of the tax incorrectly withheld.

Although the Regional Economic-Administrative Tribunal (TEAR) held that the dividend income obtained by the taxpayer satisfied the requirements under Spanish law for application of the exemption established in the nonresident income tax legislation and in the Parent-Subsidiary Directive, it turned down the request for refund of the withheld tax, because in its view the plaintiff had not sufficiently substantiated that the tax had been paid over by producing tax return forms 216 (deposit of withholdings) and 296 (annual summary of withholdings) in which its subsidiary has reported them.

However, the Madrid High Court upheld the appeal lodged by the taxpayer, on the basis that the tax authorities already had the data on the withholdings made by the withholding agent and could easily verify that the tax had been deposited, without having to place the burden of proof in this case on the taxpayer.

The court also held nevertheless that the nonresident entity had already substantiated, through the relevant certificates from its subsidiary, that the tax withholdings mentioned above had been made to the gross sums distributed, without there being any need to require it to substantiate that they were actually paid over to the tax authorities by the withholding agent, as the obligation to pay over withholdings made is an independent obligation, separate from the taxpayer's main tax obligation.

1.2 Value added tax.- A partial spin-off is not subject to VAT (Supreme Court. Judgment of June 19, 2013)

The entity was spun off, and its real estate assets (including the real estate owned by it and the rights in finance lease agreements) were transferred en bloc to another company in the same consolidated group.

The lower court established that the transaction could not be classed as not subject to VAT because it was not a "line of business" that was transferred (in fact, the company had already been informed that it did not qualify for the special tax neutral regime because, without a line of business, the conditions for the transaction to be regarded as a partial spin-off for the purposes of that regime were not met).

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However, the Supreme Court recalled that in the scenario set out in Spanish VAT Law determining that a transaction is not subject (as compared to how Community law has evolved) no mention is made of the traditional concept of a line of business, but to a set of elements forming part of the taxpayer's professional or business assets which the acquiring entity can use to carry on a business activity.

Because the case at issue satisfied the above requirements, the transaction was not subject to VAT.

1.3 Tax collection procedure.- Determination of late-payment interest in partial assessments (Supreme Court. Judgment of June 6, 2013)

A supreme court judgment had overturned a penalty included in the same assessment as the tax liability and the late-payment interest. When enforcing the judgment, the tax authorities issued a new assessment, keeping the same tax liability but assessing late-payment interest from the last date of the voluntary payment period up to the date on which the new assessment was done. That interest was charged only on the tax liability according to the latest assessment, that is, no interest was charged on the interest calculated in the initial assessment.

In an ancillary enforcement proceeding the National Appellate Court found, in favor of the taxpayer, that the supreme court judgment being enforced only affected the penalty, which was rendered void, not the tax liability, and it did not grant the tax authorities the right to charge new interest.

In its new judgment, however, the Supreme Court held that interest *could* be charged up until the new assessment was issued. Thus, it is one thing for late-payment interest (calculated on the tax liability and the interest included in the original assessment) not to apply during the time the enforcement of the debt was stayed, and quite another for no indemnificatory interest to be charged, designed to soften the effect of the time the tax authorities have had to wait to receive the tax liability. Thus the Supreme Court validated the decision that interest may be calculated in the new assessment up to the date thereof and only on the tax liability.

2. DECISIONS AND RULINGS

2.1 Corporate income tax.- Tax treatment of conversion of loans to equity in a parent-subsidiary relationship (Directorate-General of Taxes. Ruling V2220-13 of July 5, 2013)

In its reply to a request for a ruling, the DGT analyzed the tax effects of the conversion into equity of a loan held by a parent company against a subsidiary of which it is the sole shareholder.

The DGT concluded that there is no tax effect in the case of conversion into equity or remission of loans between a lender and a borrower where one is a wholly-owned subsidiary of the other and the loan has the same value for tax purposes at both parties.

Indeed, as the DGT states, in these cases the market value at which the conversion into equity or remission is made matches the contractual obligation relating to the loan agreement between the parties concerned, with no need to take into account any impairment of the loan. Moreover, no income arises for tax purposes at the borrower, because the debt it owes to the lender matches the amount of the converted or remitted loan.

In cases where the lender's interest in the borrower is less than 100%, the tax treatment described above will match the proportional part relative to the percentage interest held in the borrower, irrespective of how the non-proportional part may be taxed.

2.2 Corporate income tax.- Restrictions on deduction of financial goodwill arising from intragroup acquisitions of shares (Central Economic-Administrative Tribunal. Decision of May 28, 2013)

The Central Economic-Administrative Tribunal (TEAC) has been finding that the goodwill arising on the acquisition of shares in nonresident entities from other group entities is deductible because the law does not place any restrictions or impediments for doing so. This criterion, as the TEAC itself mentions in this new decision, matches that upheld by the Supreme Court in relation to tax credits taken for investment in export activities in the case of intragroup acquisitions of shares.

Nevertheless, the TEAC warned that recently the Supreme Court's decisions on these tax credits have evolved towards a purpose-driven interpretation of the rules whereby it has been finding that intragroup investment transactions cannot be classed as genuine investments but rather as pure and simple business reorganizations, unless it can be substantiated or proven otherwise.

On the basis of these precedents, the TEAC has now held that financial goodwill is not deductible, without the need to base its decision on evasion, where the investments are made in companies that already belonged to the same corporate group, unless it can be proven (after providing particular evidence) that these are genuine investments in economic terms, which seek to increase the group's capacity to generate business, rather than pure and simple formal reorganization measures.

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2.3 Corporate income tax.- In order to apply the reinvestment tax credit, the transferred elements must be recognized as noncurrent assets, including noncurrent financial assets (Central Economic-Administrative Tribunal. Decision of May 28, 2013)

The reinvestment tax credit may be taken, among other cases, in transfers of securities (i) representing an interest in the capital or equity of entities of all kinds, (ii) that provide an interest in at least 5% of their capital, and (iii) that have been held for at least 12 months before the transfer, provided the transfers are not part of the dissolution or liquidation of the entities.

In this respect, the Central Economic-Administrative Tribunal (TEAC) noted in its decision that, similarly to the other assets (property, plant and equipment and intangible assets) qualifying for the tax credit, these securities must be recognized as noncurrent assets (noncurrent financial assets), because the rule seeks to encourage companies to reinvest extraordinary income in elements designed to make a long-lasting contribution to their business.

It concluded, therefore, that in accordance with a logical, systematic, historical and purpose-driven interpretation of the incentive, transferred equity securities (similarly to those in which the reinvestment is made) must form part of the entity's noncurrent financial assets and not of its inventories.

2.4 Corporate income tax / Inspection proceeding.- If a company incorrectly elected to move from reinvestment deferral relief to the reinvestment tax credit system, a tax adjustment should return the taxpayer to the deferral system (Central Economic-Administrative Tribunal. Decision of May 28, 2013)

In the case settled by the Central Economic-Administrative Tribunal (TEAC), the company had been applying the reinvestment deferral relief system. When that relief system was repealed and replaced by the reinvestment tax credit system, the rule (through a transitional system) allowed companies to elect to continue with the reinvestment deferral system or apply the new tax credit system, if they satisfied the related requirements. In this case, the company elected the second option.

In a tax inspection, it was identified that the company did not meet the requirements to change to the reinvestment tax credit system, as a result of which a tax assessment was issued, which did not take into account the company's right to return to the deferral system.

The TEAC corrected the inspectors' actions, because they had not made a complete tax adjustment. It held that if the company did indeed fail to satisfy the requirements to migrate from one system to the other, the consequence cannot be forfeiture of the original deferral relief, because that results in a hybrid situation that is detrimental to the taxpayer, and it cannot be argued that this was an option elected by the taxpayer.

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2.5 Corporate income tax.– Limit on deduction of depreciation in 2013 and 2014 (Directorate-General of Taxes. Ruling V1713-13 of May 27, 2013)

For fiscal years starting in 2013 and 2014, a limit has been placed on the deduction of depreciation of property, plant and equipment and investment property and of amortization of intangible assets at 70% of the tax deductible depreciation. This is a temporary measure, as any depreciation for accounting purposes that cannot be deducted as a result of this limit can be deducted on a straight line basis over a period of ten years or, alternatively, over the useful life of the asset (and in all cases from the first tax period commencing in 2015).

It was asked how this rule should be interpreted in cases where assets are either transferred or simply retired from the inventory, ceasing to form part of the company's asset base, in 2013 or 2014. The DGT ruled that in such cases any depreciation for accounting purposes that the company had been unable to deduct could be deducted all at once in the tax period in which the assets are transferred or retired.

The DGT also clarified that the limit does not affect either accelerated depreciation or the positive adjustment that should be made to the tax base if, following that accelerated depreciation, the depreciation expense is recognized for accounting purposes.

2.6 Corporate income tax.– Correction of errors in valuation of inventories (Directorate-General of Taxes. Ruling V1590-13 of May 14, 2013)

In this case the company had detected that its inventories were overvalued, because the amount of the environment tax, charged on the end price of assets sold to consumers, had been included in their cost. The company intended to correct this accounting error in 2013 by making the relevant adjustment against a reserve account. It asked the DGT whether the charge to the reserve account was deductible against corporate income tax.

The DGT recalled that for the charge to the reserve account to qualify as tax deductible it must not result in less tax than would have been due had the expense been recognized in the tax period in which it was incurred, for which purpose the statute of limitations will come into play.

In this respect, because Royal Decree 208/2005, of February 25, 2005, on electrical and electronic appliances and waste management (regulating the environment tax) came into force on February 27, 2005, a distinction must be drawn between:

a) the portion of the adjustment charged against reserves made in respect of expenses incurred between 2005 and 2008, inclusive, which will not be tax deductible because it relates to periods that are statute barred; and

b) the portion of the adjustment charged against reserves made in respect of expenses incurred between 2009 and 2010, which will be tax deductible in the corporate income tax return for fiscal year 2013 provided it does not result in a loss for the tax authorities.

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2.7 Corporate income tax and VAT.– Tax treatment of assumption of a charge on an asset after its acquisition and of the related damages received (Directorate-General of Taxes. Ruling V1589-13 of May 14, 2013)

A company acquired industrial premises, awarded by a court, and later learned of a mortgage on the premises. The company paid the mortgage debt, recognized it in its accounts as an increase in the value of the premises, and filed a claim for damages against the insurance policy of the lawyer who had advised it on the acquisition.

After analyzing Recognition and Measurement Standard 2 in the National Chart of Accounts, the DGT warned that, from an accounting standpoint, the acquisition cost cannot be increased after the acquisition due to the existence of a charge on the property that was not assumed when the initial acquisition was made. As a result, the fact of assuming the mortgage charge should not have given rise to an increase in the value of the acquired asset, but to the recognition of an extraordinary expense.

Likewise, the damages received should be recognized as an extraordinary revenue, to be included in the tax base for the tax period in which the right to receive the damages is recognized.

With respect to the impact of the damages for VAT purposes, the DGT concluded that, because they are not consideration, or compensation for supplies of goods or services, and as do not relate to any act of consumption, they will not be subject to VAT.

2.8 Personal income tax.- Mandatory attribution for tax purposes of group insurance contributions: interpretational guidelines (Directorate-General of Taxes. Ruling V2083-13, of June 21, 2013)

With effect from January 1, 2013 it is mandatory to attribute for tax purposes the premiums for insurance contracts that jointly cover the contingencies of retirement and of death or disability in an amount exceeding €100,000 per year per contributor with respect to the same employer, except in the case of group insurance policies arranged as a result of collective layoffs. Under the transitional system, group insurance policies arranged before December 1, 2012, in which premiums of an expressly determined amount appear and the annual amount of these premiums exceeds the above quantitative ceiling, the attribution of this excess amount will not be mandatory.

With regard to this new attribution rule, the DGT has clarified the following points:

a) To determine whether or not the €100,000 quantitative ceiling has been exceeded, neither the premiums for risk insurance contracts (because they must be attributed mandatorily) nor the single premiums paid to a new group insurance policy that arise from the exercise of the surrender right under other insurance policies (the new premiums retain the attribution for tax purposes and the start date of those paid under the original insurance contract) will be computed.

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b) The attribution rule will only apply where the payment of the premiums gives rise to a transfer of known financial values to the worker. The mere expectation of obtaining a benefit in the future (which is what will usually happen where the benefits are conditional on the worker retiring from the company) will not entail an obligation to attribute the premium in question for tax purposes.

c) In relation to the transitional system, the DGT affirmed that:

- It will not apply to any new insureds who are included in the policies, even if the policies were arranged before December 1, 2012.

- The transitional rules will only apply with respect to contributions made on or after January 1, 2013, provided that the amount of the premiums is determined in accordance with the terms established in the pension commitments in an express, objective and non-discretionary manner, whether in absolute terms or relative to any other variable such as, for example, salaries or changes in the CPI.

- In the case of group insurance policies that fund defined benefit pension commitments, these requirements must be met when it comes to setting the amount of the benefit, provided that the amount of the annual premium is the result of the actuarial calculations necessary to honor the commitment.

2.9 Personal income tax.- Leasing of real estate as an economic activity (Central Economic-Administrative Tribunal. Decision of May 28, 2013)

In light of recent supreme court judgments, the TEAC has changed its approach to the requirements for the leasing of real estate to be treated as an economic activity (focusing on the requirements known as "person and premises"). Accordingly, it concluded that:

a) The "person and premises" requirement, which is imposed to determine whether a given activity is an economic activity for personal income tax purposes, is only applicable to the leasing and to the sale and purchase of real estate. In other words, this rule will not apply to other activities, whether real estate in nature or not, such as construction and development activities.

b) Where the activity carried on is not exclusively the sale and purchase or rental of properties, the "person and premises" requirement does not decisively determine whether or not there is an economic activity. However, in these cases the presence or absence of a "person and premises" will be circumstances to be taken into account.

c) Where the activity carried on is strictly the sale and purchase or rental of properties, the "person and premises" requirement will apply in the sense that, if this requirement is not met, it will be deemed that there is no economic activity. However, it is a necessary requirement but not enough on its own, because even if it is met, it can be held that there is no activity if, for example, it is evidenced that the workload does not justify having an employee and premises.

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2.10 Value added tax.- Change in position regarding the definition of independent economic unit (Directorate-General of Taxes. Ruling V1693-12, of May 22, 2013)

The application of the case of non-liability to VAT envisaged for transfers of independent economic units has been controversial in cases where the ownership of the premises where the activity is carried on are not transferred, but rather a mere right of use to the premises (e.g., a lease) is transferred.

The DGT's traditional position has been contrary to finding that there is an independent economic unit in these cases, on the grounds that the assets used in the economic unit would not permit the transferee to carry on the economic activity in an independent and isolated manner if the premises where the activity is carried on are not transferred.

However, the Court of Justice of the European Union has been taking the view that, where the premises are essential to the economic unit in question, the transfer of the premises can be replaced by a mere assignment or right to use them under a lease agreement that permits the economic activity to continue on a lasting basis.

The DGT has concluded that, in light of this EU case law, its position should be modified, so that, if the assets used in the business are transferred, the case of non-liability to VAT applies even if the premises where the activity is carried on are not transferred but rather are assigned to the transferee under a lease, provided that, from the characteristics of the assignment or lease agreement, it follows that the transferee can use the premises on a lasting basis to carry on the economic activity.

2.11 Transfer and stamp tax.- The exemption from ad valorem stamp tax on deeds of novation and amendment applies to mortgage credit facilities (Central Economic-Administrative Tribunal. Decision of May 16, 2013)

Law 2/1994, of March 30, 1994, on the subrogation and amendment of mortgage loans establishes an exemption from ad valorem stamp tax in public deeds of novation and amendment of mortgage loans provided that the lender is a financial institution and the amendment refers to the interest rate terms as originally stipulated or in force, to a change in the term of the loan, or to both.

The DGT has been questioning the application of this exemption where the novation refers to a mortgage credit facility on the grounds that there are basic differences between the two concepts. However, the TEAC has taken the view in this decision that:

a) In the transfer and stamp tax legislation, the same treatment is given to loans and credit facilities.

b) There is no reason whatsoever to distinguish mortgage credit facilities from mortgage loans, especially when the characteristics of one and the other often appear in the different lending products offered by financial institutions.

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c) The conclusion drawn does not entail the application of the rules by analogy but rather an interpretative construction of the rules in accordance with *"the social reality of the times in which they are to be applied, having regard fundamentally to their spirit and purpose."*

2.12 Collection procedure.- The execution of fraudulent prenuptial agreements is a case that justifies enforcement of secondary liability against the other spouse (Central Economic-Administrative Tribunal. Decision of May 8, 2013)

The decision handed downed by the Directorate-General of Registries and of the Notarial Profession on May 3, 2003 establishes that the tax authorities do not have the jurisdiction to order liability against the property of a spouse (not community property) for the payment of tax debts of the other spouse. Accordingly, in theory, if when a tax debt is assessed against a taxpayer, that taxpayer has in place a prenuptial agreement, and the tax authorities contend that the prenuptial agreement is not enforceable, a judicial decision is needed.

Despite this, in this decision the TEAC reaffirmed its view (already described in its decision of April 16, 2012) that if the tax authorities consider that the prenuptial agreement was executed fraudulently, they can use the mechanism to enforce secondary liability (article 42.2 a) of the General Taxation Law) and claim payment of the debts against the property which, before the prenuptial agreement, was community property, provided that the requirements of (i) net debt (before the prenuptial agreement) and (ii) assistance in the concealment, are met.

2.13 Judgment enforcement proceeding.- The statute of limitations period is not tolled where the enforcement proceeding lasts longer than six months (Supreme Court. Judgment of June 12, 2013)

In the case under examination, the inspection proceedings (concerning personal income tax for the year 1989) had commenced while the 1963 General Taxation Law was in force. The assessment was challenged and following the relevant court proceeding the judgment with which the proceeding ended was enforced. The enforcement, which entailed a new assessment to replace the original assessment (set aside in the court proceeding), took place once the 2003 General Taxation Law entered into force.

The Supreme Court recalled that the new General Taxation Law establishes that where a court decision orders inspection proceedings to be rolled back, the enforcement proceedings must be classified as inspection proceedings rather than mere proceedings ordered to enforce the judgment in question, meaning that they are subject to the general time period established for inspection proceedings (and therefore if this time period is breached, the debt can become statute-barred).

This is the case even where the assessment set aside simply needs to be replaced by another assessment, given that this replacement in and of itself entails rolling back the proceedings.

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In conclusion, in this case, if the breach of the maximum time period for settling the case took place after the new General Taxation Law entered into force, regard must be had to the consequences and statute of limitations periods in force at the time of the breach. Accordingly, given that the enforcement proceeding took longer than six months, the statute of limitations periods are not deemed to have been tolled as a result of the inspection proceedings conducted.

3. LEGISLATION

3.1 Tax on economic activities. Change to voluntary payment period

The decision of June 10, 2013, of the Collection Department of the State Tax Agency, published in the Official State Gazette of June 24, 2013, among other aspects, establishes that the voluntary period for paying the tax on economic activities for 2013 relating to national and provincial tax charges will be from September 16 through November 20, 2013.

3.2 Increase in taxation of tobacco products and of alcoholic beverages

Royal Decree-Law 7/2013, of June 28, 2013, on urgent tax and budgetary measures and measures aimed at fostering research, development and innovation was published in the Official State Gazette of June 29, 2013.

Among other measures, it makes several changes to the taxation of the tobacco products that fall within the scope of the tax on intermediate products and the tax on spirits and alcoholic beverages, by raising the amount of tax on them by 10%. It has also pushed up the tax rates for the tax on tobacco products.

These increased tax rates took effect on June 30, 2013. As for the tax on tobacco products, some of the increases apply with effect from July 5, 2013.

4. OTHERS

4.1 The “tax lease” decision is adopted

July 17, 2013 saw the adoption of the final decision on the Spanish “tax lease” which seems to declare (although it has not been published) that:

- The Spanish “tax lease” constitutes illegal and incompatible state aid.
- The beneficiaries are the EIGs and the participants and investors that invested through them.

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- Any aid granted or authorized before April 2007 (date when the final decision was adopted on the French EIG scheme) cannot be recovered.

4.2 Bill on Support for Entrepreneurs and Bill adopting other tax measures

Two Bills were published on July 3, 2013 on the website of the Lower House of the Spanish Parliament. The measures of the Bills, mainly tax-related, will now be laid before parliament. Following is a description of the most notable tax measures that basically affect the following taxes:

a) Corporate income tax

The Bill on Support for Entrepreneurs envisages various measures in the area of corporate income tax. Specifically:

- For tax periods commencing on or after January 1, 2013, the tax credit for R&D activities is set to be significantly improved by removing to a degree the limit on the amount of gross tax payable against which it can be taken (subject to a 20% discount on its amount) and by allowing qualifying taxpayers to even apply to the tax authorities for payment of the tax credit, albeit with the need to meet certain requirements.

- The patent box tax relief is also set to change substantially for intangible assets licensed after the law takes effect.

- For tax periods commencing on or after January 1, 2013, new incentives are specified for enterprises of a reduced size, such as taxation at an effective rate of 15% (through the application of a tax credit) for income that is invested in new items of property, plant and equipment and of investment property, provided that certain requirements are met.

The Bill adopting other tax measures contains the following changes in the area of corporate income tax:

1. With respect to the application of the regime governing the special amortization of finance lease agreements, the Bill seeks to extend, with effect for tax periods commenced on or after January 1, 2012, for agreements with annual periods commencing in 2012 through 2015, the exception to the requirement that establishes that the portion of the financial lease installments that relates to the recovery of the cost of the asset must be constant or growing.

   Accordingly, in these cases, the failure to meet this requirement will not imply that this special amortization regime cannot be applied.

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2. The Bill seeks to eliminates article 12.3, which regulates the tax deductibility of impairment losses on investments in the capital or equity of entities, with effect for the tax periods commenced on or after January 1, 2013.

   The Bill also provides that tax losses incurred abroad through permanent establishments or joint ventures will not be deductible, except where their activity is transferred or ceased / extinguished.

   However, the Bill sets out transitional rules applicable to portfolio impairment losses and to tax losses incurred abroad through a permanent establishment that were incurred before January 1, 2013.

3. The Bill includes an extension for the 2014 and 2015 tax periods of some of the temporary measures that were introduced on an exceptional basis in 2012 as a result of the economic crisis. Specifically, those relating to:

   - Restrictions on the use of tax loss carryforwards for certain large companies;
   - Restrictions on tax deductible goodwill and on tax deductible intangible assets with an indefinite useful life;
   - The limit placed on the tax credits aimed at incentivizing certain activities that can be taken in each tax period;
   - The application of certain percentage limits on the accelerated depreciation of assets yet to be taken by the taxpayer before its repeal in March 2012.

   In relation to prepayments of corporate income tax, the following are intended to be kept in place:

   - The inclusion, in the prepayment base, of 25% of the dividends and gains that arise from the transfer of shares that are eligible for the exemption regime.
   - The establishment of a minimum prepayment determined according to the income/loss per books of the year for large companies.
   - The increase in the rates that apply when determining the amount of the prepayment.

4. The Bill seeks to establish an indefinite valid term, in the periods commencing in or after 2014, for the tax credit for investments in cinematographic productions and audiovisual series, and to increase the base for the tax credit to include the copies and advertising expenses that that are borne by the producer.

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5. The Bill seeks to amend, for periods commencing in or after 2014, the provisions governing the tax reduction for income and/or gains obtained in Ceuta and Melilla, in order to bring them into line with those existing in the personal income tax legislation and to lay down minimum objective rules to assist with their practical application.

b) Personal income tax

The Bill on Support for Entrepreneurs provides for the following measures in the area of personal income tax:

- The Bill seeks to create a new tax credit for investments in new or recently created enterprises and an exemption for the gain on subsequent divestiture, provided it is reinvested in another entity of the same type.

- In addition, it seeks to provide, subject to certain special requirements, a personal income tax credit for the investment of income that is used for certain investments, which the Bill also sets out as a corporate income tax credit.

The Bill adopting other tax measures envisages certain changes in keeping with others that are included in the Bill in the area of corporate income tax, as well as those that arise from the legislation that is established for the so-called "omnibus accounts".

c) Value added tax

The Bill on Support for Entrepreneurs includes a new special VAT scheme whereby, subject to certain requirements, enterprises with a turnover not exceeding €2 million can elect to apply the cash-basis accounting method. Under this scheme, the accrual of output VAT will be delayed until the enterprises are paid by their customers, although their right to deduct input VAT will also be delayed as well.

d) Changes to collective investment vehicle legislation

The Bill adopting other tax measures seeks to amend, with effect from January 1, 2014, Collective Investment Vehicle Law 35/2003, of November 4, 2003.

Notable among the main amendments proposed is a new disclosure obligation for managers or, as the case may be, marketers of collective investment vehicles. Under this amendment, these vehicles would have to disclose information to their unit holders on the tax effects of the simultaneous holding of units of the same fund on the registers of the unit holders of more than one entity; or in the case of the holding of units originating from one or more or successive transfers of other units or shares where any of the transfers have been made while the redeemed or transferred units or shares were in the same simultaneous holding scenario.

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This disclosure obligation will not apply with respect to unit holders that are corporate income taxpayers or nonresident income taxpayers with a permanent establishment in Spain.

The Bill determines that same information would have to be disclosed by marketers to the unit holders or shareholders of foreign collective investment vehicles on the tax effects that arise in the case of the simultaneous holding of units or shares of the same vehicle registered at more than one entity.

e) Tax regime for asset management companies arising from bank restructuring

The Bill adopting other tax measures introduces, with effect from January 1, 2013, certain tax measures aimed at treating the asset management companies arising from bank restructuring as credit institutions.

f) Tax on fluorinated greenhouse gases

The Bill adopting other tax measures provides for the creation of this tax with effect from January 1, 2014 with a view to fostering the protection of the environment by correcting the environmental externalities caused by the emission of greenhouse gases.

g) Other tax measures

These two Bills also include amendments that would affect the real estate tax, the tax on increase in urban land value and the tax on certain means of transport.