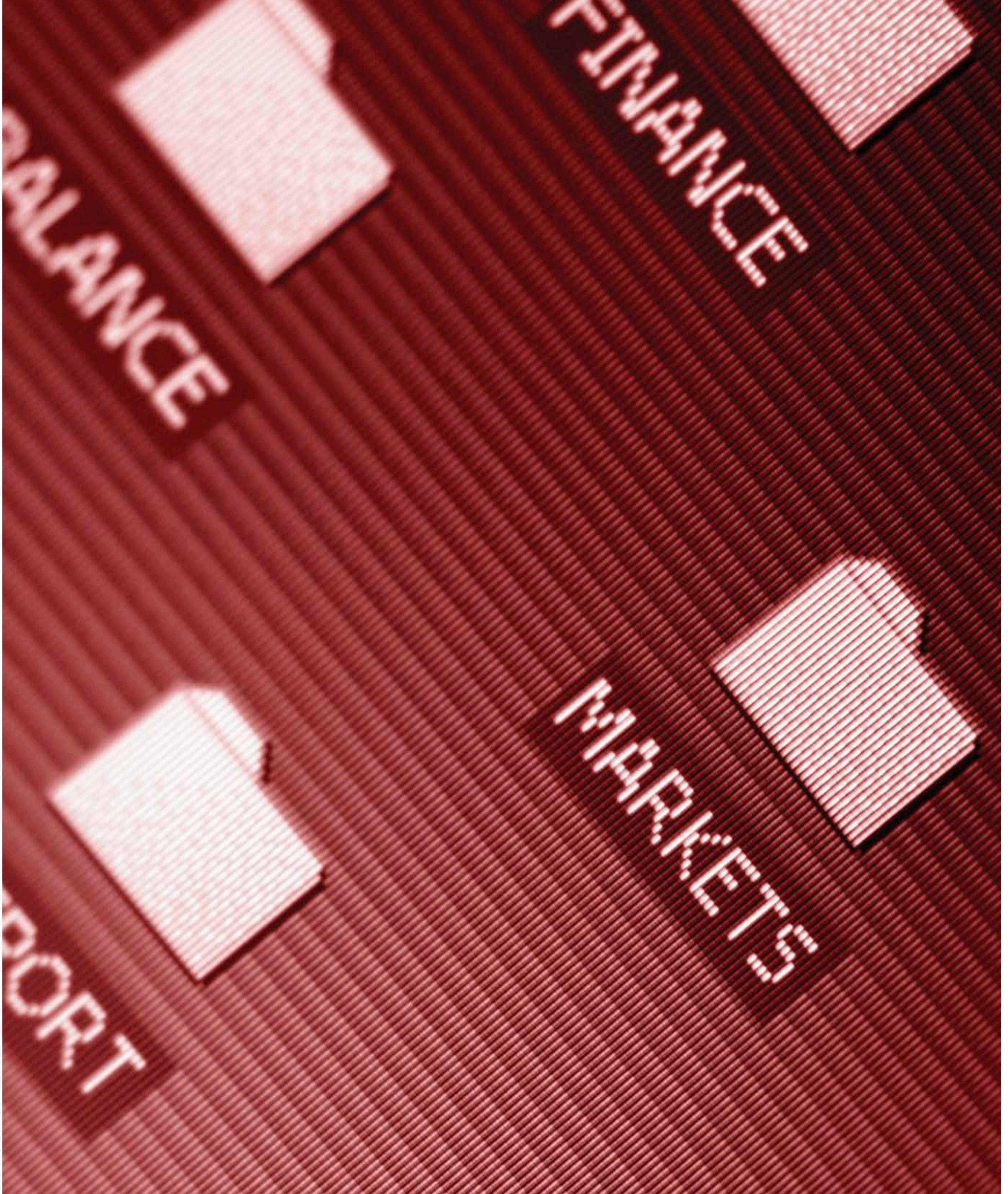
GARRIGUES

TAX

MAY 2016



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With the filing season is in full swing, now is a good time to recall some important changes in the reform of the Personal Income Tax Law which appeared at the end of 2014 and comes into effect for the first time in the 2015 returns now being filed:

1. The capital gains and losses derived from transfers of assets have all returned to being taxed at the fixed rates for savings. It is no longer necessary, therefore, to differentiate those generated in a period longer than a year (which used to be taxed at those rates) from all the others (which used to be taxed at the marginal rates).

2. A completely new system for including and offsetting income has also been brought in, under which, for the first time, savings income (interest, dividends, and the like) can be used to offset capital losses and vice versa, within given limits. So, for example, if a taxable person has income from savings and investments and has had capital losses, these losses may be offset to the extent of 10% of that income (this percentage will be increased in later years up to 25% in and after 2018). In keeping with this and with the previous amendment, a revision has taken place of the system for including and offsetting loss carryforwards.

3. The option to apply inflation-adjustment multipliers to cost prices in transfers of real estate has been removed. As has the option to apply abatement rates (the rates which used to reduce gains by reference to the holding period of assets acquired before December 31, 1994 in varying percentages according to whether the assets were real estate, listed shares or other types of assets), although transitional rules have been provided under which the rates can continue to be applied subject to a €400,000 overall transfer price threshold.

4. Generally, the foregoing measures, together with other changes to exemptions, reductions or deductible expenses (examples include removing the credit for unsupported expenses in work-related activities or the €1,500 exemption for dividends or lowering the reductions for contributions to pension plans), or to the objective assessment rules, will translate into an overall increase in taxable income, which will be partially offset with a change to the general tax table (the seven point rise added since 2012 has been removed).

01 JUDGMENTS

1.1 Corporate income tax.- Income from preferred shares in Australian subsidiaries is not eligible for the double taxation exemption (National Appellate Court. Judgment of January 7, 2016)

In this judgment the National Appellate Court repeated the reasoning it adopted in the Judgment of April 18, 2013 to the effect that the income from preferred shares in Australian companies is not regarded as dividends and therefore not eligible for the international double taxation exemption.

In the National Appellate Court's opinion, income from Australian preferred shares must be classed as interest, in that:

(i) The preferred shares were issued to make repayment on a loan.

(ii) From an analysis of the rights and obligations under the preferred share issuance agreement it may be inferred that none of the rights associated with shareholder status are present, because they have no share in the income of the issuing entity, or in the underlying gains associated with its assets, and therefore, do not benefit from either ordinary dividend rights or rights in the liquidation dividend.

(iii) Moreover, the Australian tax authorities have repeatedly characterized income of this type as "interest". Although the National Appellate Court recognized that this classification made by the Australian tax authorities is of secondary value, because this classification of the taxable event must be made under Spanish taw law, it is another relevant factor to be taken into account for the purposes under examination.

1.2 Value added tax.- Telephone services will be regarded as used in Spanish VAT territory if users use them in that territory (Supreme Court. Judgment of April 6, 2016)

The examined case involved the sale of top-up cards for cellphones and packages consisting of a cellphone plus credit for enterprises domiciled in Andorra where the general terms and conditions for the service only allow them to be used in Spain. At issue was whether the "use and enjoyment rule" under article 70.2 of the VAT Law comes into play, according to which these services (supplied to entities not established in the Spanish VAT territory) will be subject in Spain because their effective use takes place in Spain.

The core of the issue was that, despite the parties being in agreement that the telecommunications services were effectively used in the Spanish VAT territory, the claimant argued that this use was not carried out by the recipient of the service (the acquiring Andorran enterprise) but by third parties (the users of the cards to whom the Andorran companies sold them).

The Court concluded that the "use and enjoyment rule" does apply, pursuant to the CJEU Judgment of February 19, 2009 in case C-1/08, Athesia Druck S. R. L. According to the Court, it may be inferred from the terms of that judgment that to apply the use and enjoyment rule it is sufficient for the effective use or enjoyment to take place in the Spanish VAT territory, regardless of whether the use is made by a third party.

1.3 Inheritance and gift tax.- No restriction to the freedom of establishment if the credit institutions of one member state have to notify the assets held or managed at their branches in another member state in the event of the death of their owner (Court of Justice of the European Union. Judgment of 14 April 2016, case C-522/14)

German tax law requires credit institutions having their registered office in Germany to notify to the tax office the assets held or managed at their branches established in another member state on the death of the owner of those assets (if the owner was resident in Germany).

Austrian law, in turn, lays down banking secrecy for credit institutions established in Austria subject to criminal liability, and does not provide any comparable notification obligation to that provided under German law.

In this context, the question raised to the CJEU was whether the freedom of establishment precludes the German legislation or the combined effect of German and Austrian legislation. The CJEU concluded that the German legislation is not contrary to the freedom of establishment on the basis of the following points:

a) In the absence of any harmonizing measure in relation to the exchange of information for the requirements of fiscal supervision when the facts at issue occurred, the member states were free to impose on national credit institutions an obligation concerning their branches operating abroad such as the one we are examining, provided the transactions carried out by the branches resident in the other member state are not treated in a manner that is discriminatory in comparison with transactions carried out by their national branches.

b) The fact that a notification obligation such as that provided in German law is not prescribed by Austrian law cannot mean that Germany is precluded from imposing such an obligation. It follows from the CJEU's case law that freedom of establishment cannot be understood as meaning that a member state is required to draw up its tax rules on the basis of those in another member state in order to ensure, in all circumstances, that any disparities arising from national rules are removed.

1.4 Inspection procedure.- The complexity giving rise to an extension of the term for inspection work disappears if there is no activity by the tax authorities (Supreme Court. Judgment of March 17, 2016)

In the context of a general inspection, the field inspectors worked primarily on reviewing the correct application of the special tax regime in a spinoff involving the transfer of a large number of real estate assets. The inspectors requested an extension of the term for their work by reason of the complexity of the transaction they were examining, in view of the large number of real estate assets involved. The taxable person challenged this extension on the ground of the authorities' inactivity before and after the extension.

The Supreme Court found against the validity of the decision granting the extension for the following reasons:

a) Firstly, it underlined that the examination of a dispute of this kind is extraordinarily case-specific and requires consideration of the precise circumstances of each case as they appear in the case file.

b) That said, the Court held that the key factor in relation to an extension of the term for inspection work is the underlying reason, and that the underlying reason disappears if there is inactivity by the authorities before and after the decision granting the extension of the term and if the data are shown by the economic-administrative tribunals themselves to be insufficient for the sought assessment aims.

In relation to the examined case, the Court concluded that the ground founded on the complexity of the case is rendered invalid by the small number of steps documented in the case file, the long standstill periods and the low effectiveness and efficiency of the few steps that actually were performed.

1.5 Inspection procedure.- There is no delay attributable to the taxpayer where the taxpayer states that they do not possess documents, if the inspectors can request them from a third parties (Supreme Court. Judgment of March 16, 2016)

The taxpayer stated that they did not possess the requested documents and that those documents were in the possession of a third party (a financial institution, in this case) from whom the taxpayer had requested a copy of the documents without any success. The taxpayer therefore suggested that the inspectors themselves request those documents from the third party. The inspectors attributed a delay to the taxpayer for a period of time running from when they requested the documents from the third party.

The Supreme Court held that this practice infringed article 31 bis.2 of the Inspection Regulations, because:

a) Once the taxpayer has stated that it does not possess the documents and that they have been requested from the financial institution, there is neither "*delay expressly requested by the party with tax obligations*", nor "*any actual loss of time caused by the late provision of information and the judgment elements that are a necessary part of the inspection task*", all of which is regardless of the judgment or reprehension warranted by the conduct of the inspected taxpayer.

b) There is no nothing whatsoever preventing the authorities from continuing the proceeding as they see fit, and in particular, from contacting the financial institution to request the documents from it..

1.6 Review procedure.- The prohibition on correction for the worse (reformatio in peius), must be determined separately for each claim and year (National Appellate Court. Judgment of January 7, 2016)

From this judgment by the National Appellate Court a number of conclusions may be drawn regarding the prohibition on correction for the worse (*reformatio in peius*):

a) A decision based on the principle of prohibiting a correction for the worse (*reformatio in peius*) must be made separately for each claim and in relation to each fiscal year, independently from the others. The view adopted by the authorities in that case that the conclusion as to whether it was in a worse position must be drawn on an overall basis is therefore not correct.

b) The review of issues not raised by the taxable person cannot under any circumstances place the claimant in a worse position compared with their original position. In the examined case, a given fiscal year did not fall within the economic-administrative claim because the taxable person had accepted the assessment for that year. Therefore, to determine whether or not their position had worsened, the effect on that fiscal year cannot be taken into account.

c) The complete reassessment of the tax position can be done by starting a new audit by the inspectors or by enforcing a decision by the relevant reviewing body.

02 DECISIONS AND RULINGS

2.1 Corporate income tax and VAT.- Tax treatment of the indemnification paid by seller to buyer in the transfer of a business with a negative value (Directorate-General for Taxes. Ruling V1088-16, of March 17, 2016)

The requesting company, a business with a large workforce consisting of employees with long lengths of service, is going to sell the whole business to a third party. Due to the burden involved in subrogation to the employment contracts and the low value of the facilities and goodwill, the buyer will receive a sum in respect of the purchase because the company's value is a negative figure.

From a corporate income tax standpoint, the tax treatment applicable to the sum received by the buyer will be that determined under the accounting legislation. If the received sum is classed as goodwill, that sum will be deductible on the terms provided in article 13 of the Corporate Income Tax Law (LIS):

a) Until December 31, 2015, it will be deductible, capped by an annual limit of a twentieth of its amount, without needing to be recorded for accounting purposes in the income statement.

b) For the tax periods which began on or after January 1, 2016, the goodwill amortization will be deductible, capped by an annual limit of a twentieth of its amount.

From a VAT standpoint, the transfer will be not subject where at the transferring company the transferred elements form an independent economic unit capable of performing a business or professional activity by its own means.

A cash payment to the buyer will be a transaction subject to VAT where it is consideration for a service or for an affirmative covenant or a negative covenant entered into by that buyer. Otherwise, the transaction will not be subject to VAT.

2.2 Corporate income tax.- The costs of external consultants are not part of the production cost of the intangible for the purposes of the patent box regime (Directorate-General for Taxes. Ruling V1090-16, of March 16, 2016)

The patent box regime allows a 60% reduction to be taken on the income from the transfer of given intangibles. One of the requirements for the regime is that the transferring entity must have created the assets being transferred, at least, in 25% of their cost.

It was asked whether the calculation of 25% of the cost borne by the transferring entity could include the payments made to external consultants hired to perform the project (in addition to the employee costs and direct costs of the entity performing the project itself).

The DGT concluded that they could, insofar as the transferring entity assumes the risk and reward of the result of the production of the intangible.

2.3 Corporate income tax.- A restriction on the powers of directors for the management of shares will preclude the regime for foreign-securities holding entities (ETVE) from being used (Directorate-General for Taxes. Ruling V1065-16, of March 16, 2016)

To be able to use the special regime for foreign-securities holding companies (ETVE), it is laid down that the corporate purpose of the entity must include the activity of managing and administering the equity securities of non-Spanish resident entities and that this activity must be carried on through the relevant organization of material and human resources.

The DGT recalled in this ruling that the requirement refers to sufficient organizational resources, not to monitor the management of the investees, but to exercise the rights and perform the obligations associated with shareholder status, and to make decisions in relation to the investment itself.

The DGT added that:

a) It may be considered that there are adequate human resources where any member of the board of the ETVE takes charge also of the ordinary management of the entity, through the appropriate administration of the shares held, even though this management may not imply *per se* and for corporate income tax purposes the performance of a business activity.

b) By contrast, if the management and administration of the shares or the purely administrative activities derived from the performance of its corporate purpose are performed using resources outside the ETVE, this requirement will be considered not to be satisfied.

c) If the directors' powers are reduced in that any step related to the disposal and acquisition of assets must first be approved by the shareholders' meeting, that restriction implies that the entity does not administer and manage the shares it holds.

2.4 Corporate income tax.- In fiscal year 2015 net operating losses (NOLs) may be offset up to a minimum of €1 million in all cases (Directorate-General for Taxes. Ruling V1057-16, of March 16, 2016)

Under the new Corporate Income Tax Law, net operating losses (NOLs) may be offset within a limit of 70% (60%, in 2016) of the taxable income before using the capitalization reserve. It is provided also that, in all cases, NOLs up to €1 million may be offset in any tax period.

Under the transitional rules for fiscal year 2015 the foregoing limit does not apply, but rather, limits amounting to 25% or 50% according to the net revenues figure, and the law does not state clearly for these cases whether the minimum offset amount of €1 million applies. The DGT clarified that in 2015 that minimum offset amount also applies.

2.5 Corporate income tax.- Correction of the accounting treatment of a derivative instrument (Directorate-General for Taxes. Ruling V0931-16, of March 10, 2016)

The requesting companies, primarily engaged in the development, construction and operation of wind farms, executed in 2010 a specific project finance transaction. To protect against the risk of fluctuations in the interest rate used, the terms and conditions of the facilities provided required each of the companies to enter into financial derivatives contracts. The liability hedged with the derivative instruments increased with every year that passed from when they were signed, and therefore the fair value of the expense generated by the derivatives, as of December 31 of each year that had run since the contracts were signed, also increased.

Due to considering that these needed to be recognized for accounting purposes as cash flow hedges, changes in the fair value of the derivative instrument were recognized in the following years in shareholders' equity, not in the income statement, and therefore they had no impact for corporate income tax purposes.

On subsequent analysis, however, it was concluded that the hedges were never realized, and therefore should never have been recognized as hedges for accounting

purposes but rather in marketable securities, with the result that the changes in their fair value should have been recognized directly in the income statement for each year.

To correct the accounting treatment given to the derivatives since 2010, the companies recorded in 2014 (i) an adjustment to reserves in respect of the cumulative effect of the changes in fair value of the hedges in prior years, and (ii) an expense in the income statement in respect of the expense accrued as a result of the variation in the fair value of the derivative instrument since 2014.

In view of these circumstances, the DGT concluded that:

a) Under article 19.3 of the former Revised Corporate Income Tax Law, TRLIS (now article 11.3 of the current Corporate Income Tax Law, LIS), the expense recorded to correct the accounting error, insofar as it implies recording an expense in a later tax period than the period in which it should have been recognized (under the accrual basis principle), it will be deductible provided this does not give rise to lower taxation than would have been the case under the general timing of recognition rule.

b) To make this calculation, the potential effect of the statute of limitations period must be taken into account, in that only the deduction of expenses from non-statute barred years may be allowed.

c) In relation to whether the limit on the deduction of finance costs applies, there are a number of separate cases:

- The treatment of hedges for accounting purposes, because they are associated with company borrowing, must not be separated from the hedged exposure. Therefore, regardless of the accounting treatment that must be given to the component of the hedge, the revenues and expenses derived from that component must be taken into account to determine the net finance cost for the period..

- The revenues and expenses derived from financial derivative instruments which are not treated as hedges for accounting purposes do not have to be included for the purpose of determining the net finance cost incurred in the year, in that these revenues and expenses are not associated with company borrowing or with the provision of own capital to third parties.

- In the case of hedges for accounting purposes in which the hedged exposure is associated with a debt and which lose their status as hedges, the revenues and expenses derived from the loss of that status do not have to be included either in the net finance cost accrued in the period for the purposes of the limit mentioned.

2.6 Corporate income tax.- Depreciation of assets after their useful lives have ended, under the new tables (Directorate-General for Taxes. Ruling V0882-16, of March 9, 2016)

The new Corporate Income Tax Law (LIS) includes a new table of depreciation rates. Transitional provision number thirteen of this law provides that the assets acquired in earlier tax periods which had been depreciated at a different rate to that determined in the new depreciation table, must be depreciated in the remaining tax periods until the end of their useful lives according to the new depreciation table, but using the rates on the net tax value for the assets existing at the start of the first tax period that began on or after January 1, 2015.

This ruling examines the cases of assets for which the former depreciation table determines a higher maximum useful life than the new depreciation table, and the new maximum useful life ended on January 1, 2015.

The DGT ruled as follows:

a) Firstly, if the useful lives of the assets until the entry into force of the new Corporate Income Tax Law (which were associated with the straight-line depreciation rates that the company had been using until then) fall between the new minimum useful life (resulting from the maximum straight-line depreciation rate from the new depreciation table) and the new maximum useful life, the straight-line depreciation rate that was being used before can be retained.

b) Otherwise, the treatment will be as follows:

a. Any changes to the depreciation rates used by taxpayers which may originate from the entry into force of the new Corporate Income Tax Law will be recorded as a change in the book estimate.

b. Therefore, in fiscal year 2015 the entity should have recorded an expense in the income statement in respect of the net book value of the assets as of December 31, 2014, in other words, in respect of the depreciation relating to the remaining years in their original useful lives. This expense is tax deductible.

For the purposes of applying this transitional regime, if the entity has applied in prior years the time limit for the deduction of depreciation (70%), it will be considered that the net tax value takes this non-deductible book depreciation charge into account, in other words, for these purposes it will be calculated as if the depreciation charge had been deducted, with the result that the net tax value matches the net book value.

2.7 IRPF.- Deduction of the fees paid to an association granted public benefit organization status (Directorate-General for Taxes. Ruling V1026-16, of March 15, 2016)

As a general rule, the membership fees paid to associations are not deductible for personal income tax purposes in that they do not share the characteristics of a donation, meaning, (i) its voluntary nature and (ii) the intention to make a contribution for nothing in return with which they are made.

The DGT found, however, that in exceptional cases, the membership fees paid to associations granted public benefit status may be treated as donations where they do not relate to the right to receive a present or future benefit, i.e. where they are made with the intention to make a contribution for nothing in return.

Generally, it may be said that objective tests must be used to determine the existence or otherwise of this intention to make a contribution for nothing in return, and so the subjective reasons of the persons paying those fees will not be taken into account, but rather the rights granted to them (in return for the payment of those fees) in the bylaws of the association concerned.

2.8 Nonresident income tax.- Treatment of repayments of contributions (Directorate-General for Taxes. Ruling V1354-16, of March 31, 016)

In this ruling the taxpayer asked about the nonresident income tax treatment of repayments of capital contributions by a Spanish unlisted company to its Irish shareholders. The DGT made the following analysis:

a) It first consulted the Spain-Ireland tax treaty to determine whether they are dividends. The treaty provides that dividends are any income or distribution assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

b) This took it to the Nonresident Income Tax Law, in which article 13 provides that to characterize the various items of income according to their source, the provisions in that article must be applied, and otherwise, the rules provided in the personal income tax legislation. Under the personal income tax legislation, the following cases must be differentiated:

a. The amount of the repayment does not come from undistributed income: in this cases, and under the provisions in force for the years that began on or after January 1, 2015, because they are unlisted shares, the whole amount delivered to the shareholders will be income from movable capital (as if it were a dividend), to the extent of the positive difference between the value in shareholders' equity of the shares in the last tax period ended before the capital reduction and the cost value of the shares. Any excess over this limit will reduce the cost value of the shares down to zero.

b. The amount of the repayment of contributions relates to undistributed income: in this case, the whole of the amount received will be income from movable capital.

2.9 VAT.- The credit must be amended where the good is not used for its originally stated purpose (Central Economic-Administrative Tribunal. Decision of March 17, 2016)

In an acquisition of land lots, their expected use was later changed and the assets were ultimately used to carry out a transaction subject to and exempt from VAT on which input VAT could not be deducted.

On examining this case, TEAC concluded that in these cases article 99.2 of the VAT Law must be applied, according to which the entity must amend, on the self-assessment return for the period in which the subject and exempt transfer took place, the amounts of tax originally deducted.

It arrived at that conclusion by referring to the case-law of the CJEU in its judgment of October 10, 2013 in case C-622/11, in which it was held that the adjustment mechanism for deductions contained in the Directive is

intended to enhance the precision of deductions so as to ensure the neutrality of VAT, with the result that transactions effected at an earlier stage continue to give rise to the right to deduct only to the extent that they are used to make supplies themselves subject to VAT.

2.10 Value added tax.- The right to amend the self-assessment due to termination of the agreement does not expire within a year if there has been a dispute over how that right must be exercised (Central Economic-Administrative Tribunal. Decision of March 17, 2016)

It was asked whether the refund arising as a result of the amendment of a VAT self-assessment due to termination of a sale agreement is a refund of incorrect payments. The reply was negative. According to TEAC:

a) The VAT was originally charged by the claimant on a sale which was subsequently held to be terminated by a court.

b) Therefore, the charge originally made by the company was owed and the fact that the sale was later reversed did not change the nature of that charge, but did give the right to make an amendment to the taxable amount.

c) Because it was not an incorrect payment, the amendment to the output VAT could only be made by means of the mechanism provided in article 89.5.b) of the VAT Law, namely, by making the adjustment on the self-assessment return for the period in which the amendment had to be made or in later periods within a year running from when the amendment should have been made.

d) TEAC clarified here that in the claimant's case, the time limit granted to the interested party to reduce the VAT taxable amount had not expired even though longer than a year had run from when the termination of the transaction became final.

In particular, the absence of correct characterization by the tax authorities in the refund proceeding brought and the wording of art. 89.5 preclude transferring to the entity the detrimental effects that this would imply because there had been a dispute over how to make the amendment. This entitled the entity to make that amendment by issuing an amending invoice from when TEAC's decision was final.

2.11 Penalty decision.- A fresh penalty proceeding may be initiated if the assessment is reversed for procedural reasons (Central Economic-Administrative Tribunal. Decision of November 5, 2015)

In this decision, TEAC examined the *ne bis in idem* (double jeopardy) principle in procedural terms. That principle disallows a penalty proceeding from taking place if another has already been conducted against the same person, in relation to the same facts and on the same ground, which concluded with a definitive decision on the facts.

TEAC held that a violation of that principle would depend on the nature of the defect that caused the assessment to be set aside, and for these purposes explained that the following cases may arise:

(i) Assessment set aside completely on substantive grounds: this setting aside determines the reversal of the penalty, and, even if indirectly, a substantive decision on the authorities' right to punish (ius puniendi) which acquits the taxpayer.

If a new assessment is issued at a later date, the conduct of a new penalty proceeding will be barred by the *ne bis in idem* principle because any change to the characterization of the facts that might be made to that end by the authorities on performing their assessment will not alter in essence the three same elements (facts, person and ground) barring the authorities from exercising their right to punish (ius puniendi) a second time.

(ii) Assessment set aside partially for substantive reasons to replace it with another. There are two separate cases:

(a) If TEAC has examined the penalty imposed in respect of the portion of the adjustment that was not set aside and confirms it, in the enforcement of the decision an order will be rendered reducing the amount of the assessment and of the penalty without the need to carry out a fresh penalty

proceeding, and this will not violate the *ne bis in idem* principle.

(b) If TEAC reverses the penalty completely without entering into examining whether it is allowable in respect of the portion of the adjustment that was not set aside, the imposition of a fresh penalty after issuing an assessment in enforcement of its decision would violate the *ne bis in idem* principle.

(iii) Assessment set aside completely for procedural reasons: in this case the penalty would be reversed automatically and the facts leading to the penalty would remain unexamined. When the proceeding is conducted again, and a new assessment is issued, the conduct of a new penalty proceeding will not be barred by the ne bis in idem principle..

In the case settled in the decision, the reason for setting aside the assessment completely was a procedural defect, and reversion of the proceedings had been ordered. TEAC concluded –under the principle set out in point (iii) above- that the new penalty proceeding conducted against the taxpayer does not violate the *ne bis in idem* principle.

03 LEGISLATION

3.1 Reduction for 2015 of the net income indexes and the adjustment index for livestock feed applicable in the objective assessment method for personal income tax purposes for agricultural and livestock activities affected by exceptional circumstances

The Official State Gazette (BOE) of May 6, 2016 published Order HAP/663/2016, of May 4, reducing for the 2015 period the net income indexes and the adjustment index for livestock feed acquired from third parties applicable in the objective assessment method for personal income tax purposes for the agricultural and livestock activities affected by a number of exceptional circumstances, and amending Order HAP/572/2015, of April 1, 2015, setting the amounts of the subsidies in respect of the expenses incurred for election activities for the local elections of May 24, 2015.

The Order sets out in an exhibit all the reductions made, grouped according to autonomous communities, provinces, territorial areas and activities.

3.2 New Union Customs Code

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October laying down the Union Customs Code came into force on May 1, 2016.

The main implications of the entry into force of the Union Customs Code were analyzed in Commentary 1-2016, Vat and Customs – New Union Customs Code, which is available here:

http://www.garrigues.com/sites/default/files/documents/comentario-iva-aduanas-1-2016.pdf

3.3 The forms for notices of assessment by the tax inspectors have been amended

The Official State Gazette (BOE) of April 21, 2016 published the decision of April 12, 2016, by AEAT (Spanish tax agency), amending the decision of November 29, 2007, approving the forms for notices of assessment by the tax inspectors. This amendment stems from the entry into force on May 1, 2016 of the new Union Customs Code. The changes are as follows:

a) No circumstances are mentioned in relation to the length of procedures which do not affect the requirement for payment of the customs debt provided that it arises within three years following its incurrence.

b) It is specified that the procedures for making the case file available and for hearing the interested party in connection with the customs debt are not conducted before the proposed decision, but after it.

c) Specifically in relation to non-contested notices and to notices with agreement, it is clarified that, by expressing their agreement with the proposed decision, the person with tax obligations states that they have exercised the right to express their point of view under article 22.6 of the Union Customs Code.

d) A time limit is provided for hearing the interested party, amounting to 30 calendar days for all notices of assessment.

04 MISCELLANEOUS

4.1 2015 personal income tax and wealth tax filing season

We have already discussed some important new changes for this 2015 filing season in the introduction. Below are some of the other changes that need to be taken into account:

a) A notable change in relation to salary income is the limit on the exemption for severance (equal to €180,000) and a broad amendment to the rules on multiyear income. Among others, generally (with some exceptions for certain types of severance), these types of income may be split and the requirement for the income not to be received periodically or recurrently has been replaced with a bar on "repetition" of the reduction over a period spanning five tax periods, a repetition which must be examined by the taxpayer (not by the payer of the income).

b) For income from movable capital the 100% reduction applicable to certain leases has been removed.

c) Material changes have been made to the rules on distribution of additional paid-in capital (share premium) and on capital reductions with repayment of contributions (in both cases at unlisted companies) basically to bring forward the taxation if the company has recorded income.

d) The international fiscal transparency rules have also been amended, including the requirement for the attribution of any income derived from the assignment or transfer of assets or rights, or from the provision of services, where the nonresident company (or other group company) does not have the required organization of material and human resources for their performance, or valid economic reasons for the entity's formation and operations cannot be proven. Otherwise, where only some types of income are required to be attributed, new cases of obligatory attribution are provided, which relate to the income from (i) capitalization and insurance transactions of which the beneficiaries are legal entities; (ii) intellectual property, technical assistance, movable property or image rights (unless the attribution regime for image rights is applicable); and (iii) financial derivatives.

e) The so-called Long-Term Saving Plan (*Plan de Ahorro a Largo Plazo*) has been created, determining that the income derived from these plans is exempt subject to certain requirements.

f) Several tax credits have disappeared, such as the savings-business account credit or the rent credit (although a set of transitional rules applies to residential rentals arranged before 2015).

g) The reduction for membership fees and other contributions to political parties have been removed. Contributions of this type will be eligible for the credit for donations and other contributions (but subject to a combined limit for all these types of donations); at the same time the credit for donations has been increased in cases involving the creation of loyalty in relation to the beneficiary entity of those incentives.

h) An exit tax for cases of a change of residence abroad, where shares are held above certain thresholds (making the underlying gains on those shares taxable), although with the option to defer taxation if the (temporary) relocation occurs for work reasons to territories which are not tax havens, or for any reason where the assignment is to countries with a tax treaty; and a special regime for relocations within the EU or the EEA.

i) And also worth noting, before we finish, is the new taxation of partnerships with a commercial corporate purpose, which have become corporate income taxpayers since January 1, 2016.

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