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Royal Decree-Law 12/2012, of March 30, 2012, gave taxpayers the chance to make voluntary disclosures of assets or rights that were not reported for personal income tax, corporate income tax and nonresident income tax purposes, by filing a special tax return. It was later amended by **Royal Decree-Law 19/2012**, of May 25, 2012, in order to (a) allow taxpayers to report assets or rights that had been partially reported, (b) determine the effects of a future transfer of the disclosed assets and rights, and (iii) include cases where the beneficial owner of these assets or rights is not the same as the legal owner. Lastly, **Order HAP/1182/2012**, of May 31, 2012, approved Form 750 on which to file the special tax return, clarified some of the doubts created by the new legislation and added further changes such as the chance to make voluntary disclosures of cash.

The key features of the special return were discussed in our Tax News Bulletin 4/2012.

To recap, basically this legislation allows taxpayers to report assets and rights acquired in whole or in part with unreported income, by paying 10% of the acquisition cost of those assets or rights. In the case of bank accounts, the taxpayer may report the full balance of the account at December 31, 2010 (or at the taxpayer's fiscal year-end date) or the balance on an earlier date if higher provided that the difference between the two balances has not been reinvested in another asset or right included on the return. Lastly, in the case of cash, the taxable amount will be the amount placed, before filing the return, in a bank account in Spain, in the European Union or in the European Economic Area subject to the satisfaction of certain requirements.

The return must be filed by the legal owner of the assets or rights. However, if the legal owner is not resident in Spain and is not the same as the beneficial owner, the beneficial owner may file the return on condition that it becomes the legal owner before December 31, 2013.

The assets or rights to be reported must have been acquired before December 31, 2010, unless the tax year is not the same as the calendar year, in which case they must have been acquired before the end of the last tax period for which the filing deadline ended before March 31, 2012 (cash will be deemed to be acquired before these dates if the taxpayer so states on the return and places the cash in an account, as described above). However, assets or rights transferred before these dates cannot be reported where the proceeds obtained from them have been used to acquire other assets or rights that are being reported using this procedure.

By filing the return, income not reported the purposes of the taxes indicated (not for the purposes of other taxes such as wealth tax) is deemed to have been disclosed to the extent of the sum reported for the assets and rights included on the return. These are the basic ingredients of the so-called "tax amnesty." Looking forward, the array of cases that could spring up in this respect will undoubtedly trigger a host of new practical issues which will need to be resolved with as much legal certainty as possible.

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Hermosilla, 3 - 28001 Madrid - Spain Telephone +34 91 514 52 00 - Fax +34 91 399 24 08

1. JUDGMENTS

1.1 Corporate income tax. The double taxation tax credit is applicable where the taxpayer makes the required efforts to evidence that the former shareholders were taxed (Supreme Court. January 12, 2012)

Under Spanish tax legislation, in some cases taxpayers wishing to apply certain tax benefits must evidence that other taxpayers were taxed on previous transactions. In this specific case, a recently acquired affiliate wishing to take the tax credit for the double taxation of dividends was required to prove that the former shareholders had been taxed when they transferred their shares.

The National Appellate Court had concluded that (i) by identifying the shareholders according to the data from the shareholders' meetings of the listed company whose shares were transferred and (ii) by supplying this information to the tax inspectors so that they could confirm they were actually taxed, the taxpayer had done enough to comply with article 105 of the General Taxation Law which provides that *taxpayers shall comply with their duty to provide proof if they specifically designate the items of proof in the possession of the tax authorities.*

The Supreme Court confirmed this view and concluded that, although it was true that the onus of providing the proof needed to be able to take the double taxation tax credit lay with the taxpayer, the taxpayer could not be placed in the position without absolutely any defense, where, having made every effort within its reach to evidence what the law required of it to exercise its right, it was not able to do so because of inaction by the managing bodies that had the necessary data in their possession.

1.2 Nonresident income tax. Rules for applying the anti-abuse clause to the dividend exemption in the parent-subsidiary relationship (Supreme Court. Judgments of March 22, 2012 and April 4, 2012)

Since the supreme court judgment of March 21, 2012, summarized in our April Tax Bulletin, two new supreme court judgments, dated March 22 and April 4, 2012, have been published in which the court has again confirmed the application of the anti-abuse clause that disallows the parent-subsidiary dividend exemption.

You might remember that the law disallows the exemption provided for dividends where the entity distributing them is ultimately (and majority) owned by non-EU-resident persons or entities, unless it can be proved that the European parent company (i) carries on an activity directly related to the activity of the subsidiary, or (ii) administers and manages the subsidiary with sufficient human and material means or, lastly, (iii) was formed for reasons other than to take the exemption.

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The Supreme Court held that:

- To be able to consider that the parent company's business activities are directly related to those of the subsidiary, the links between the parent and the subsidiary (organizational or economic) must be precise, ongoing and tangible; not vague, ethereal and cyclical (judgment of April 4, 2012).

- The subsidiary cannot be held to be managed and administered by an appropriate structure of human and material resources simply because certain members of staff work at the parent company, even more so where the subsidiary has other administration expenses and its management-related documents are stored at the subsidiary's premises (judgment of March 21, 2012).

- To be able to prove that the holding is managed or administered (judgment of March 22, 2012):

  - There must be actual control over administrative or management matters at the subsidiary, for which purposes the mere existence of employees at the parent company is not sufficient.

  - It must be evidenced that there is some dependence by the subsidiary on the parent company which proves that, given its volume, the parent company exerts control over the subsidiary's finances; proof of this could be the existence of parent-subsidiary billing for the relevant services.

- Regarding proof of the existence of valid economic reasons, the Supreme Court (in its judgment of March **21, 2012 for instance) stressed that the taxpayer cannot simply refute the tax authorities' arguments, but rather must provide clear proof of the reason for the formation of the parent company. This ground will be considered not to exist if the circumstances described (in that judgment, location in central Europe, close to the group's most significant manufacturing plants) already existed before the parent company was formed.**

1.3 Inspection proceeding. The tax authorities must have proof of the existence of a specific simulated translation as theoretical considerations are not sufficient (National Appellate Court. Judgment of March 26, 2012)

The tax authorities considered that there had been simulation, in this case for VAT purposes, in the supply of professional services to a law firm by a professional services company, on the ground that the latter was an interposed company and that the true supplier of the services was its individual shareholder.

Against this, the National Appellate concluded as follows:

- The burden of proving the existence of simulation lies with the tax authorities.

- For simulation to exist, a tax advantage contrary to the objective and aim of the law (the VAT Law in this case) must have been sought through the interposition of the company and the overall circumstances of the case must point to the conclusion that that tax advantage was the essential aim of the transactions.

- To conclude on the existence of simulation, the tax authorities cannot base themselves on theoretical considerations without proving the specific simulation they have identified.

1.4 Inspection proceeding. The tax authorities cannot link expenses to a certain sector of business for VAT purposes simply on the basis of assumptions (National Appellate Court. Judgment of March 27, 2012)

This case centered on the ability to deduct the input VAT paid by a university that operated under the sector of business rules for VAT purposes, since it engaged in the businesses of (i) applied research (entitled to a 100% deduction) and (ii) higher education (not entitled to any deduction). The university paid input VAT on certain basic research expenses which it included in the applied research sector of business and treated as fully deductible.

The tax inspectors, however, considered that the input VAT paid on the acquisition of goods and services for the basic research business should be considered linked, at least in part, to the education sector of business (and, therefore, partially non-deductible for VAT purposes) given that the teaching personnel and the research personnel were *often* one and the same.

The court held that the assumptions made by the inspectors were not sufficient to prove that the basic research business was linked to the education business and therefore were not sufficient to disallow the deductibility of the input VAT paid. Nothing indicated, added the judgment, that there was an automatic link between basic research and education, or that the expenses incurred in the course of the basic research were therefore linked to both education and research. Accordingly, the court held that the appellant was entitled to deduct the whole of the input VAT paid in the basic research business.

1.5 Tax on erection and installation projects and construction work (“ICIO”). Amounts of the tax paid upfront must be refunded if the taxable event does not take place (Andalucía High Court. Judgment of December 19, 2011)

The taxpayer had made a provision payment of ICIO before commencing construction, as required by the applicable legislation. As the construction work did not ultimately take place, the taxpayer applied for a refund of the amount of tax paid over provisionally, but the application was rejected.

The court concluded that:

- The payment of tax before construction commences is provisional and a prepayment of the final amount of tax and, accordingly, it is only after construction takes place and its final cost is known that the final amount of tax falls due.

- For this reason, the legislation even provides for the refund of amounts of tax initially paid in excess.

- Accordingly, in the case analyzed there is even more reason to refund the entire amount of tax initially paid, given that since the construction did not ultimately commence, the taxable event had not even taken place.

With respect to when the statute of limitations period for applying for the refund should start running, the court held that it should be the date on which the company was considered to have withdrawn its application for a municipal construction permit and not when it made the provisional tax payment (as the Municipal Council had contended).

1.6 Penalty proceeding. Failure to withhold cannot be penalized if no tax was due (National Appellate Court. Judgment of May 3, 2012)

In the case analyzed, no tax was withheld on income that had been reported by the payee before the tax inspectors audited the withholding agent. In accordance with the unjust enrichment test applied by the tax authorities in relation to withholdings, the Central Economic-Administrative Tribunal (the "TEAC") concluded that the withholding agent could not be made to pay over the withholding tax but upheld the administrative penalty on the ground that it had committed an infringement by failing to withhold tax.

Against this, the National Appellate found that, because the TEAC had dismissed the main assessment (which required the payment of the withholdings), it cannot impose a penalty because there is no infringement. In addition, the National Appellate Court held that the penalty was inappropriate in any case because it had been imposed with no specific proof that the taxpayer was at fault.

1.7 Criminal proceeding. The commencement of criminal proceedings in relation to a tax does not stay the time periods and proceedings commenced in relation to other taxes (National Appellate Court. Judgment of March 1, 2012)

In a case before the National Appellate Court criminal proceedings were commenced in relation to a tax, which caused the stay of an inspection proceeding. The tax inspectors considered that the stay also applied in relation to the other taxes audited in the same proceeding. When assessments were later issued for the other taxes, the taxpayer considered that the tax authorities' right to issue them had become statute-barred, on the ground that those taxes should have been unaffected by the stay.

In this judgment the National Appellate Court agreed with the taxpayer and held that the commencement of a criminal proceeding in relation to one tax did not stay the audit by the tax authorities of other taxes, even if all of the taxes were being audited in the same inspection proceeding.

Hermosilla, 3 - 28001 Madrid - Spain Telephone +34 91 514 52 00 - Fax +34 91 399 24 08

2. DECISIONS AND RULINGS

2.1 Corporate income tax. The special tax treatment for enterprises of a reduced size does not apply where the enterprise does not carry on a business activity (Central Economic-Administrative Tribunal. Decision of May 30, 2012)

The Director General of Taxes lodged a special appeal to a higher administrative body against the decision of a Regional Economic-Administrative Tribunal ("TEAR") which had allowed the special tax treatment for enterprises of a reduced size to be taken for property leasing companies that did not have premises or a full-time employee. The TEAR had taken the view that eligibility for the treatment depended on the net revenues figure, regardless of whether or not the enterprises carried on a business activity.

The Central Economic-Administrative Tribunal ("TEAC"), referring to its decision of January 29, 2009, gave a definitive ruling on a point of law and concluded that pure holding companies could not take the special treatment for enterprises of a reduced size, on the ground that the holding companies could not be considered to be "enterprises" because they did not carry on business activities. In support of its view, the TEAC cited the National Appellate Court judgments of December 23, 2010 and May 26, 2011.

2.2 Corporate income tax. The exemption to avoid international double taxation cannot be applied to Brazilian *juros* (TEAC. Decision of April 26, 2012)

With respect to an amount received by a Spanish entity in respect of Brazilian *juros*, the tax inspectors and the TEAC held as follows:

- From a corporate law standpoint, they are dividends, given that they are shares in accumulated income to be received by the shareholders.
- From a tax standpoint, however, they are treated as interest for the company distributing them, given that they are deductible for the purposes of calculating its income tax and are subject to withholding tax as such.
- Articles 10 and 11 (dividends and interest) of the Spain-Brazil tax treaty apply the legislation of the source state for the characterization of the income.
- Since *juros* are characterized as interest in Brazil, from a tax standpoint, in Spain it would be inappropriate to apply an exemption provided for foreign-source dividends. This conclusion is bolstered by the fact that there is no economic double taxation of the *juros*, which is the whole point of the exemption.
- It will be possible, however, to take the double taxation tax credit for tax borne abroad (as interest) in accordance with the domestic legislation and the tax treaty signed with Brazil.

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2.3 Corporate income tax. Provision recorded for tax indemnity clause is deductible (Directorate-General of Taxes. Ruling V0846-12, of April 23)

In transfers of companies, it is common practice for the seller to undertake to hold the buyer harmless from any tax contingencies that might arise at a later date but which relate to events that occurred before the transfer.

In the case analyzed in this ruling, the transferor was subject to a tax audit (for corporate income tax and VAT) which concluded with assessments signed by the transferor on a contested basis. After filing an appeal against the assessments and applying for a stay of the tax debt, the transferor recorded a provision for the amount of the liability it might incur as a result of the tax indemnity clause.

The Directorate-General of Taxes concluded that, insofar as the provision for contingencies is treated as such in accordance with the accounting standards, it will be treated as tax-deductible because it is not included in the list of non-deductible provisions contained in article 13 of the Revised Corporate Income Tax Law.

2.4 Corporate income tax. Accelerated depreciation in the case of concession-holders that follow the financial model (Directorate-General of Taxes. Ruling V0690-12, of April 3, 2012)

As a result of the industry-specific adaptation of the Spanish National Chart of Accounts to companies that are concession-holders of public infrastructure, approved by Order EHA/3362/2010, these concession-holders must reclassify their investments as intangible assets or financial assets. For this reason, it was asked whether this affects the accelerated depreciation taken on reclassified tangible fixed assets, given that this benefit does not apply to intangible or financial assets.

The Directorate-General of Taxes affirmed that, as a general rule, since the benefit applied when the assets were classified as tangible fixed assets, their reclassification will not imply the automatic reversal of the deprecation taken; this reversal will take place gradually, however, as and when depreciation or impairment is taken for the asset or when it is retired.

This view was expressed in Ruling V0690-12 of April 3, 2012 for assets reclassified as financial assets, and in Ruling V2179-11, of September 21, 2011, already discussed in one of our previous Tax Bulletins, for assets reclassified as intangible assets.

2.5 Personal income tax. Means of proof other than a certificate of tax residence may be used to evidence tax residence in another state (TEAC. Decision of December 20, 2010)

The Spanish tax authorities had refused to treat a taxpayer as tax-resident in France because he had not provided the appropriate certificate evidencing tax residence there. The taxpayer had, however, furnished other types of documentation showing that he had lived in France in the year in question, namely, his employment contract, invoices from his children's school, invoices for the connection of basic household utilities such as telephone, security, etc.

The TEAC ruled in favor of the taxpayer, affirming that the certificate of residence is not the only or preferred means of proof for evidencing tax residence and, therefore, other means of proof may be furnished insofar as they are sufficient. In this case, based on the documentation provided by the appealing taxpayer, the TEAC concluded that, in effect, the tax authorities should have considered that the taxpayer was not tax resident in Spain, especially if he had no other means of proof that would serve to refute the evidence provided to the contrary.

2.6 Nonresident income tax. Where capital repayments are higher than acquisition cost, the difference must be treated as a dividend (Directorate-General of Taxes. Rulings V0837-12 and 0838-12, of April 23, 2012)

In these two rulings, the Directorate-General of Taxes ("DGT") analyzed the tax treatment applicable to the amounts distributed by a Spanish company that reduced capital by returning to the shareholders sums in excess of the cost of their shares.

The DGT recalled that the tax treaties (with Mexico and Luxembourg in these cases) do not lay down a finite definition of dividends, but rather provide that any income which, under the domestic legislation, receives the same tax treatment as income from shares will be treated as dividends. The Spanish Personal Income Tax Law, which the Nonresident Income Tax Law applies for these purposes, treats this type of income in the same manner as dividends or distributions of share premiums or additional paid-in capital.

Accordingly, the DGT found that those amounts should be treated as dividends for withholding tax purposes, although they will qualify in any event for the reduced withholding rates set forth in the tax treaties.

2.7 Nonresident income tax. Products sold in Spain through a commission agent acting in his own name can be treated as sold through a permanent establishment (TEAC. Decision of March 15, 2012)

This decision addressed the case of a group that designed, developed and manufactured computer products that it sold through its own group companies, which also handled the after-sale service. Specifically, the decision referred to an Irish-resident group company that sold the products in a specific area, including Spain. According to the description of the case:

- The Irish company had no personnel or facilities in any of the countries in the area (or in Ireland, where it had its registered office).

- To sell the products, the Irish company engaged the services, in each country, of a commission agent of the group (acting in his own name) and of companies (also from the group) that provided certain outsourced services such as logistics, call centers, etc.

- The Irish company had started to engage in this selling activity following a corporate restructuring given that, until then, in Spain this activity had been handled by the Spanish subsidiary which, as part of the restructuring, assigned its customer roster to the Irish company and formally took on the risks of inventories, customers and warranties.

- Dealings with Spanish customers were handled through the Spanish commission agent in some cases, and by telephone or via the website in others. In these last-mentioned cases, it was not the Spanish commission agent but rather a subsidiary from another country that dealt with the customers.

The tax inspectors concluded that the Irish company was operating through a permanent establishment (PE) in Spain because it had a fixed place of business and had a dependent agent:

- Fixed place of business. This place consisted of the business structure of the Spanish company, through which the Irish company engaged in Spain in a set of activities that were more than just preparatory or auxiliary in nature. This was even the case where products were sold in Spain via the website, because the domain belonged to the Spanish company and the local web stores were administered in Spain.

- Dependent agent. The local subsidiary sold in its own name, but the products it sold were always the products of the Irish company, which were delivered directly to customers by the Irish company. According to the tax inspectors, the relationship of "dependence" was borne out by the fact that (i) instructions from the Irish company had to be followed, (ii) the Irish company authorized prices and commissions, (iii) the Irish company accepted or rejected delivery requests; (iv) periodic reports were submitted to the Irish company, which was entitled to inspect the Spanish company's records and premises, etc.

The income attributable to the PE was calculated on the basis of the sales made in Spain (both through the local commission agent and via the website), less any expenses for outsourced services from the Irish company (direct or allocated in proportion to local sales).

The TEAC upheld the inspectors' conclusion following the path set by the well-known supreme court judgment of January 12, 2012 (discussed in our Tax News Bulletin of February 2012), as well as that of the National Appellate Court which the supreme court judgment confirmed.

In short, based on the tax treaty with Ireland, the TEAC confirmed the existence of a PE in the case of a commission agent that distributed computer products both in relation to the products included in the commission agreement and in relation to the other different products that were distributed through a different channel linked to a website.

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2.8 Nonresident income tax. Special corporate income tax treatment may be applied for nonresident income tax purposes (Directorate-General of Taxes. Ruling V0714-12, of April 9, 2012)

The taxpayer asked the DGT whether a nonresident company operating in Spain through a permanent establishment could apply the special tax treatment provided in the corporate income tax legislation for shipping companies according to tonnage.

In its decision on the issue, the DGT recalled that, although article 18 of the Revised Nonresident Income Tax Law applies the standard corporate income tax rules for determining the tax base, the single repealing Provision of Nonresident Income Tax Law 41/1998, of December 9, 1998, states that the Title of the corporate income tax legislation setting out the special treatments will remain in force *including in relation to non-Spanish-resident persons or entities*, with this legislation remaining in force after the publication of the Revised Nonresident Income Tax Law.

Consequently, the special treatments (including the treatment of tonnage) currently provided for in Title VII of the Revised Corporate Income Tax Law will apply to nonresident income taxpayers insofar as they meet the necessary requirements.

2.9 Transfer and stamp tax. Where a unilateral mortgage is arranged in favor of the Tax Agency, the taxpayer is the tax authorities (Directorate-General of Taxes. Ruling V0773-12, of April 12, 2012)

The determination of the taxpayer where a unilateral mortgage is arranged in favor of the tax authorities is the subject of conflicting opinions.

Traditionally, the DGT has taken the view that the taxable person is the person who asked for the notarial documents to be issued, that is, the taxpayer (a view expressed, among others, in ruling V2304-10, of October 6, 2010). However, various high courts have been taking the view that the taxable person is the holder of the mortgage, in this case, the tax authorities.

In this ruling, the DGT modified its traditional view, to bring it into line with the court decisions, and concluded that the taxable person is the public authorities, as the recipient of the mortgage arranged in their favor, notwithstanding the exemption provided for the authorities for these cases.

2.10 Review proceeding. Notice declaring modification to vatable amount is late is appealable, as it affects the tax position of the VAT payer (TEAC. Decision of April 24, 2012)

The VAT payer modified the vatable amount in relation to invoices issued to a debtor in an insolvency proceeding, but it did so late. The tax authorities informed the VAT payer that the modification did not apply because it was late and that therefore the VAT payer was not entitled to a refund of the unpaid VAT. The tax authorities also pointed out that it was a case of a "notice" which, as such, could not be appealed.

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However, the TEAC concluded that the notice was not merely informing the taxpayer of the applicable rules and administrative and court rulings, but was also restricting the taxpayer's right to recover a tax and that it was therefore appealable.

3. LEGISLATION

3.1 Payment period for economic activities tax for fiscal year 2012

According to the Decision of June 8, 2012 (Official State Gazette of June 15, 2012), the national and provincial economic activities taxes payable for fiscal year 2012 must be paid from September 17 through November 22, 2012.

3.2 Special levy on foreign-source dividends and gains. Form 250

Royal Decree-Law 12/2012 brought in, effective from March 31, 2012 to November 30, 2012, a special levy (of 8%) on dividends and gains on transfers of holdings relating to entities which, although they engage in business activities, are located in zero-taxation territories or tax havens, which precludes the exemption for this type of income regulated in article 21 of the Revised Corporate Income Tax Law.

Order HAP/1181/2012, of May 31, 2012 (Official State Gazette of June 4, 2012) approves Form 250 (return for the special tax). It must be filed online (by the reporting taxpayer or by a third party acting on his or her behalf) within 25 calendar days after the date on which the income in question was paid or arose, which will be:

- in the case of distributions of dividends or shares, the date of the distribution resolution adopted by the shareholders' meeting or equivalent body; or

- in the case of transfers of securities, the date on which the transfer takes place.

In the case of dividends or gains paid or arisen before the publication of this Order, the return must be filed and the related levy paid within 25 calendar days after the date of its entry into force (i.e. June 4, 2012).

3.3 Special tax return. Form 750

Royal Decree-Law 12/2012 gave taxpayers the chance to make voluntary disclosures of assets and rights acquired with unreported income (by paying over 10% of the acquisition cost of those assets) and Royal Decree-Law 19/2012 subsequently supplemented it.

Now, Order HAP/1182/2012, of May 31, 2012, has approved Form 750 (special tax return) and issued various instructions regarding this return, including most notably the chance to report cash. It is presumed that the cash was owned before December 31, 2010 (or the taxpayer's fiscal year-end date) if the taxpayers so states on the return and has placed the cash in a bank account in Spain, in the European Union or in the European Economic Area (in this last case, if it has signed a tax treaty with Spain with an exchange

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of information provision or an exchange of tax information agreement, and provided that it does not involve a jurisdiction classed as high risk, having deficiencies, or uncooperative).

For more details on these two pieces of legislation, readers are invited to take a look at our Tax News Bulletin 4-2012 at the following link:

http://www.garrigues.com/es/Publicaciones/Newsletters/Documents/Novedades-Fiscal-4-2012.pdf

3.4 Royal Decree-Law 19/2012

Royal Decree-Law 19/2012, of May 25, 2012 on urgent measures to deregulate trade and certain services (Official State Gazette of May 26, 2012), besides regulating certain aspects of the special tax return, has introduced certain measures aimed at boosting retail trade activities and certain services by eliminating administrative burdens and restrictions that constrain companies when starting and carrying on retail activities and, in particular, by doing away with municipal permits linked to retail establishments, their premises and certain prior construction work.

Specifically, the application procedure for prior municipal permits has been replaced by a system for submitting solemn declarations or notices prior to the activity.

From a tax standpoint, in order to bring these measures into line with the tax rules governing local entities, certain provisions of the Revised Local Finances Law have been amended in connection with charges and the tax on erection and installation projects and construction work.

3.5 Corporate income tax and nonresident income tax return forms approved

May 17, 2012 saw the publication in the Official State Gazette of Order HAP of May 11, 2012, approving the corporate income tax and nonresident income tax return forms for permanent establishments and pass-through entities formed abroad with a presence in Spain, for tax periods commencing between January 1 and December 31, 2011.

The format of the return form is essentially unchanged. However, it should be recalled that, before filing the return, it may be necessary to provide certain additional information by completing specific forms for the purpose. Specifically:

- Where income for accounting purposes falls by €50,000 or more in the section for “other adjustments to the earnings figure of the income statement” (box 414 on page 13 of the return form);

- Where the amount of the tax credits for reinvestment of extraordinary income, for environmental investments or for research and development and technological innovation generated in the year (regardless of whether or not they are claimed or remain outstanding for future years) is equal to or greater than €50,000.

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In addition, this Order phases out pre-printed forms as a way to file returns on Form 200. Online filing will be mandatory where the reporting taxpayer is assigned to the Large Taxpayers Central Office or to the Large Companies Management Units of the Tax Agency, as well as for all taxable persons having the legal form of a corporation or limited liability company, or for entities that must submit the additional information described above.

For other taxpayers, besides filing online, the only alternative would be to file a hard copy of the return, namely the completed version of the approved form on the State Tax Agency's website.

4. OTHERS

4.1 Financial transactions tax

In our VAT Bulletin 3-2011 we commented on the proposed directive for the creation of a financial transactions tax, which is set to apply to all financial transactions provided that at least one of the parties is established in a member state and that a financial institution, also established in a member state, is a party to the transaction.

The European Parliament has recently voted, by a solid majority, in favor of creating this tax and has proposed various amendments to expand its scope of application.

4.2 Spain and the United States initial new protocol to tax treaty

After two years of negotiations, a new protocol between the Kingdom of Spain and the United States of America was initialed on May 25, 2012. The new protocol will amend the current convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which dates from February 1990.

The new protocol updates certain articles of the convention to adapt it both to the needs of the current economic and commercial relations between Spain and the US and to the successive changes that have been made to the OECD Model Convention for the avoidance of double taxation.

The protocol, which amends fourteen articles, seeks to foster Spanish investment in the US and US investment in Spain.

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