GARRIGUES
Commentary

Tax

1-2013
November

Law 16/2013. Environmental taxation measures and other tax measures

Law 16/2013, of October 29, 2013, Establishing Certain Measures on Environmental Taxation and Taking other Tax and Financial Measures (**Law 16/2013** or the **Environmental Taxation Law**) was published on October 30, 2013 in the Official State Gazette.

This Law not only regulates environmental taxation-related aspects, such as the creation of a tax on fluorinated greenhouse gases or modifications to the excise tax on oil and gas in the case of natural gas supplies, or to the excise tax on electricity or the tax on nuclear fuel production, but also makes material changes to corporate income tax. Among these changes, the most widely reported is the elimination of the deductibility of impairment losses on investees and of losses incurred through unincorporated joint ventures or through permanent establishments abroad. Changes have also been made to the informational obligations imposed on entities managing and marketing collective investment undertakings. Lastly, Law 16/2013 also regulates certain specific aspects of the tax regime governing *Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria* (the company managing the assets of ailing Spanish banks).

We describe all of these measures below.

1. Corporate income tax

1.1 Elimination of the tax deductibility of impairment losses on portfolio investments

For tax periods beginning on or after January 1, 2013, the tax deductibility of impairment losses on holdings in the capital or equity of entities, whether or not resident in Spain, has been eliminated.

The transitional regime that has been established will work as follows:

(i) Any impairment losses that were tax deductible in periods beginning before January 1, 2013 must be included in the corporate income tax base.

However, impairment losses arising from the distribution of dividends or shares in income and which have not qualified for a domestic double taxation tax credit or been tax deductible within the scope of an international double taxation tax credit must not be included. This exception therefore recognizes the irreversible nature of the impairment where, together with the distributed dividend, it has not had a net negative impact on the corporate income tax base.

(ii) The above-mentioned impairment losses must be added back to the corporate income tax base, regardless of whether there have been any other value adjustments for impairment that have not been deductible. In fact, it is stated that the increase in the equity of the investee will be specifically deemed to relate, first of all, to impairment losses that have been deductible in the past.

Inclusion in the corporate income tax base must take place in the period in which the increase in the equity of the investee takes place, regardless of its accounting recognition in the income statement. The amount by which equity at year-end exceeds equity at the beginning of the year must be included in proportion to the holding.

The previously deducted impairment loss must also be included when dividends or shares in the income of investees are received, unless such income does not give rise to revenue for accounting purposes at the recipient entity. In other words, if the dividend is not recognized as revenue at the recipient, because it relates to reserves generated before the acquisition of the investee, no amount for reversal of the impairment will be included in the tax base.

In the case of entities listed on an organized market, the reversal of impairment losses recognized and deducted in periods that began before January 1, 2013 must be included in the corporate income tax base for the period in which the recovery for accounting purposes takes place.

1.2 Losses on the transfer of holdings

Losses incurred on the transfer of securities representing a holding in the capital or equity of entities can still be deducted, albeit subject to the following new restrictions:

- If the transfer is between entities forming part of the same group of companies, within the meaning of article 42 of the Commercial Code, the loss obtained will be recognized in the year in which (i) the securities are transferred to third parties outside the group; or (ii) the transferor or transferee cease to form part of the group.

There is therefore a deferral in the recognition for tax purposes of the loss incurred within the same group that will affect transfers to resident entities and nonresident entities alike.

- A new rule is introduced whereby the amount of losses incurred on the transfer of the holding must be reduced by the amount of any dividends received in or after the tax period beginning in 2009[1]. For these purposes, only dividends which have been recognized as revenues and have qualified for the exemption provided for in article 21 of the revised Corporate Income Tax Law (the "TRLIS") or for 100% of the domestic double taxation tax credit, or the international double taxation tax credit, as the case may be, must be taken into account.

- Lastly, where losses are incurred on the transfer of a holding of a company in a consolidated tax group which ceases to form part of that group, the amount must be reduced by any tax losses incurred within the tax group by the transferred entity and offset by the group.

These changes apply to fiscal years beginning on or after January 1, 2013.

1.3 Nondeductibility of losses incurred abroad by permanent establishments

Also for periods beginning on or after January 1, 2013, the possibility of deducting losses incurred abroad by permanent establishments ("**PEs**") has been eliminated.

In relation to the net losses incurred by a PE and deducted in periods that began before January 1, 2013:

(i) The exemption for income obtained abroad through a PE or the tax credit to avoid international double taxation on that income may only be claimed or taken by the Spanish company where the income obtained subsequently by the PE exceeds the losses that were deductible in the past.

(ii) If, by reason of a transaction carried out under the tax neutrality regime, a PE is transferred and the capital gain obtained can be deferred under the provisions of article 84.1.d) TRLIS, the transferor residing in Spain must include in its tax base the amount by which the losses exceed the gains recognized by the PE in periods before 2013, up to the limit of the gain obtained on the transfer and deferred under the tax neutrality regime.

By contrast, losses incurred on the transfer of the PE or by reason of the cessation of its business *are* deductible, subject to the following specific rules:

- Where the transfer is between entities belonging to the same group of companies, within the meaning of article 42 of the Commercial Code, the loss must be recognized in the year in which (i) the PE is transferred to third parties outside the group; or (ii) the transferor or transferee cease to form part of the group.

[1] It was previously stipulated that if the exemption were claimed for the dividends received, "the impairment of the holding" could not be included in the tax base "regardless of the manner or the tax period in which it occurs, up to the amount of those dividends."

- The amount of the losses derived from the transfer of the PE must be reduced by any net gains obtained previously (whether exempt pursuant to article 22 TRLIS or whether a tax credit pursuant to article 31 TRLIS was taken).

1.4 Nondeductibility of losses incurred by unincorporated joint ventures operating abroad

As in the case of the nondeductibility of losses incurred by PEs abroad, for fiscal years beginning on or after January 1, 2013, the deductibility of losses incurred by (i) members of unincorporated joint ventures (*uniones temporales de empresa* or "**UTEs**") operating abroad; or (ii) entities participating in works, services or supplies executed, provided or made abroad under collaboration arrangements akin to UTEs is eliminated, regardless of whether or not the exemption in article 50.2 TRLIS has been claimed.

As for losses already deducted, it is stipulated that where in the next few fiscal years the UTE obtains income which is tax exempt by reason of the exemption in article 50.2 TRLIS having been claimed, the members of the UTE must include in their tax bases the amount of the loss previously deducted, up to the limit of exempt gains.

Losses incurred on the transfer of the UTE or by reason of its dissolution *are* deductible, although in such cases, the amount of the losses must be reduced by any tax exempt net gains obtained previously.

1.5 Dividend double taxation tax credit

The rules on taking a tax credit for domestic or international double taxation of dividends provide that where a dividend is not included in the tax base by reason of its not having the status of a revenue item, the payee cannot take a double taxation tax credit unless it can evidence that an amount equal to the dividend or share in income has been taxed in Spain (corporate income tax, personal income tax, or nonresident income tax) as income obtained by the successive owners of the holding. These rules have not changed.

In keeping with the elimination of the deductibility of impairment losses on holdings, the reference to this in the subarticle that regulated the tax credit in the event that the dividend caused an impairment loss on the holding has been also eliminated. In addition, Law 16/2013 provides that:

- In the case of dividends received from nonresident entities that have incurred a loss per books due to the impairment of the holding, the amount of the dividend will not be included in the tax base although the right to take an international double taxation tax credit is maintained, provided that it is evidenced that an amount equal to the dividend has been taxed in Spain under any transfer of the holding.

  In such case, the amount of the dividend will reduce the value of the holding for tax purposes, and consequently receive a tax treatment equivalent to that received by the dividends not included in the tax base due to their nonrevenue status.

- In the case of dividends from resident entities, in a new development, it is now established that the dividend will not be included in the tax base, but instead will reduce the value of the holding for tax purposes, while the right to take a tax credit is maintained if it is shown that an amount equal to the dividend or the share in income has been included in the corporate income tax base or taxable income for personal income tax purposes as income obtained by the successive owners of the holding.

1.6 Tax neutrality regime for restructuring transactions: some modifications

In relation to the special tax regime regulated in Chapter VIII, Title VII of the TRLIS, the following changes have been introduced, effective for fiscal years beginning on or after January 1, 2013:

(i) In the case of exchanges of securities, mergers, or spin-offs in which the value of the holding received by the shareholder carrying out the transaction is the same as the value of the securities delivered by it, when the shareholder ceases to be resident in Spain, it must include in its tax base the difference between such value and the arm's-length value.

It is now possible for part of the tax debt relating to that gain to be deferred, on condition that its payment is secured, until the tax period in which the securities are transferred.

(ii) In a merger, any difference between the acquisition cost and the equity of the transferor that has not been allocated to the assets received is tax deductible as indicated in article 89.3 TRLIS. Law 16/2013 establishes that the deductible difference must be reduced by the amount of any tax loss carryforwards at the absorbed entity to which the absorbing entity is subrogated and which have been incurred during the ownership of the holding.

1.7 Effects on tax prepayments

The modifications described in the preceding sections that are effective in fiscal years beginning on or after January 1, 2013 do not apply to tax prepayments the period for reporting began before the entry into force of Law 16/2013, but they do apply to subsequent periods. Accordingly, the prepayment to be made within the first 20 days of December 2013 must be borne in mind.

1.8 Tax reduction for income obtained in Ceuta or Melilla

For periods beginning on or after January 1, 2014, the rules on the tax reduction for income obtained in Ceuta or Melilla are amended so as to place them on the same footing as the existing personal income tax rules and to make them easier to apply in practice.

The entities targeted by this change are those physically and actually operating in Ceuta or Melilla. The amount of the reduction remains 50% of the gross tax payable on income obtained in Ceuta or Melilla.

The concept of 'income obtained in Ceuta or Melilla' is defined as income relating to activities that determine in either of those territories the closing of a commercial cycle with economic results. The leasing of real estate in either of those territories will fall into this category, unlike isolated operations involving the extraction, manufacture, purchase, transportation, inflow or outflow of goods or merchandise in, into or from either of those territories and, in general, where the operations do not alone give rise to income.

For the purposes of applying the reduction, income will be deemed to be income obtained in Ceuta or Melilla if it relates to entities with a fixed place of business in either of those territories, up to €50,000 per person hired with a full-time employment contract and discharging their duties in Ceuta or Melilla, subject to a maximum total limit of €400,000, with

such thresholds being determined at corporate group level. If such threshold is exceeded, the taxpayer must produce evidence that a commercial cycle giving rise to economic results is closed in Ceuta or Melilla.

Income will also be deemed to obtained in Ceuta or Melilla if it comes from wholesale trade, where such activity is organized, managed, engaged and billed through a fixed place of business in either territory having the necessary human and material resources for such purpose.

The rules for determining income attributed to Ceuta or Melilla and obtained by fishing, shipping or aviation entities remain unchanged.

Spanish entities domiciled for tax purposes in Ceuta or Melilla and having their place of effective management there, and nonresident entities operating in either of the territories through a PE for not less than 3 years, may apply the reduction to income obtained outside either of those territories in periods ending after the 3-year period has passed where at least half of their assets are situated there. However, income from leasing real estate situated outside Ceuta or Melilla is excluded.

1.9 Tax credit for investment in cinematographic productions and audiovisual series

The tax credit for investment in cinematographic productions and audiovisual series will continue to exist indefinitely for periods beginning on or after January 1, 2014, although the tax credit rate is reduced from 20% to 18% while the tax credit base is widened to include not only production costs but also copying and advertising expenses borne by producers, up to a limit of 40% of the production cost in the case of both types of expense and at all times net of all costs and expenses relating to the portion financed by the financial co-producer.

1.10 Renewal of temporary corporate income tax measures for the 2014 and 2015 periods

The following temporary measures which were introduced exceptionally for 2012 are renewed for tax periods beginning in 2014 and 2015:

(i) The offset of tax loss carryforwards by certain large enterprises, which it will be recalled, is limited to:

- 50% of the tax base before such offset, when in the twelve months preceding the beginning of the tax period the entity's net revenues are at least €20 million, but less than €60 million.

- 25% of the tax base before such offset, when in that twelve-month period the entity's net revenues are at least €60 million.

These limitations will not apply to income/gains subject to debt compositions as a result of an arrangement with creditors not related to the taxpayer that is approved in a tax period beginning on or after January 1, 2013.

(ii) The limitations on the tax deductibility of goodwill (1% per year) and of intangible assets with an indefinite useful life (2% per year);

(iii) The limit on taking tax credits to encourage certain activities (also applying to the tax credit for reinvestment of extraordinary income), maintaining the following:

- The reduction from 35% to 25% of the gross tax payable, less domestic and international double taxation tax credits and tax reductions;

- The reduction to 50% of the increased limit of 60% in the case of the amount of the tax credit for research, development and technological innovation relating to expenditure and investment in the same tax period exceeding 10% of the gross tax payable less domestic and international double taxation tax credits and tax reductions.

(iv) The application of certain percentage limits on the use of unrestricted depreciation/amortization of assets not yet charged by the taxpayer before the repeal in March 2012.

(v) In relation to tax prepayments:

- The inclusion, in the tax prepayments base of 25% of the dividends and gains from the transfer of holdings qualifying for exemption.

- The establishment of a minimum tax prepayment determined according to the result per books for the year in the case of enterprises the net revenues of which in the twelve months preceding the date on which their tax periods begin during 2014 or 2015 are at least €20 million, and which may not be lower, under any circumstances, than 12% of positive income per the income statement for the year in the first 3, 9 or 11 months of each fiscal year.

  The applicable rate will be 6% in the case of entities at which at least 85% of the revenues in the first 3, 9 or 11 months of each calendar year relate to income/gains to which the exemption for avoiding the international double taxation of dividends or gains, whether foreign-source or obtained abroad through a PE, or the tax credit for avoiding the domestic double taxation of dividends, applies.

  Furthermore, specifically in the case of applying the minimum tax prepayment to partly-exempt entities, regard will only be had to nonexempt income/gains as positive income.

- The increase in the rates applicable for determining the amount of the tax prepayment is maintained:

  - Under the tax prepayment option that takes as its base the gross tax payable (less tax credits, tax reductions and relevant withholding taxes) for the most recent tax period the regulatory deadline for reporting which expired on the first day of April, October and December, the applicable rate will be 18%.

- Under the option of the "tax base" for the period of the first 3, 9 or 11 months of each fiscal year, the rate will be as follows:

  - Where net revenues in the 12 months preceding the date of commencement of the tax period are less than €10 million, the applicable rate will be the result of multiplying the tax rate rounded down by 5/7. Accordingly, if the entity is taxed at the general rate of 30%, the advance payment of tax will be 21%.

  - If net revenues in the 12 months preceding the date of commencement of tax period are at least €10 million but less than €20 million, the applicable rate will be the result of multiplying the tax rate rounded down by 15/20. If the entity is taxed at the general rate of 30%, the advance payment of tax will be 23%.

  - If net revenues in the 12 months preceding the date of commencement of the tax period are at least €20 million but less than €60 million, the applicable rate will be the result of multiplying the tax rate rounded down by 17/20. If the entity is taxed at the general rate of 30%, the advance payment of tax will be 26%.

  - Lastly, if net revenues in the 12 months preceding the date of commencement of the tax period are at least €60 million, the applicable rate will be the result of multiplying the tax rate rounded down by 19/20. If the entity is taxed at the general rate of 30%, the advance payment of tax will be 29%.

1.11 Special amortization of finance lease agreements

In the case of the fiscal years that began in 2009, 2010 and 2011, the requirement for applying the special amortization rules to certain finance lease agreements (i.e., the portion of the finance lease installments relating to the recovery of the cost of the asset had to be constant or growing) was eliminated.

Now, effective in tax periods that have commenced since January 1, 2012, that exception is extended to agreements the annual periods of which begin in 2012 until 2015, both inclusive.

2. Collective investment undertakings

Effective January 1, 2014, certain aspects of Collective Investment Undertakings Law 35/2003, of November 4, 2003 are amended.

2.1 New informational obligations

Noteworthy among the main changes ushered in by Law 16/2013 is the new informational obligation on management companies or, as the case may be, marketing entities. Such entities must now give information to their unit-holders on the tax effects in the event of their simultaneously holding units in the same fund on the registers of unit-holders of more than one entity at any time during their ownership and prior to a redemption of such units; or in the event of their holding units resulting from one, several or successive transfers of other units or shares, where any of those transfers has been made in the same situation of simultaneity in respect of the units or shares redeemed or transferred.

This informational obligation does not apply to unit-holders which are corporate income taxpayers or nonresident income taxpayers with a PE in Spain.

The tax effects of which unit-holders must now be informed are as follows:

(i) When units are redeemed, the capital gain or loss to be included for personal income tax or nonresident income tax purposes must be determined by the unit-holder, since the gain or loss may differ from the result calculated by the management company or marketing entity with which the transaction was performed.

(ii) The capital gain obtained cannot be taken into account as a capital gain subject to withholding tax for the purposes of the limits excluding the obligation to file a personal income tax return.

(iii) When units are redeemed under the deferral regime regulated in personal income tax legislation, the unit-holder must determine the dates and acquisition costs attributable to new units or shares acquired, and retain such information for the purposes of subsequent redemptions or transfers, irrespective of the tax information communicated between the entities involved in the transaction.

(iv) Unit-holders that pay nonresident income tax on gains obtained other than through a PE in Spain as a result of the redemption of units in the fund must report and pay over the tax debt relating to those gains where the tax withheld on them is lower than the net nonresident income tax payable.

The same information (except for that indicated in d) above) must be provided by marketing entities to unit-holders or shareholders of foreign collective investment undertakings as regards the tax effects arising in the event of their simultaneously holding units or shares in the same undertaking registered at more than one entity.

2.2 Keeping of the register of unit-holders

It is also worth noting that the system of keeping a single register of unit-holders of one investment fund by the management entity is substituted by a system in which, when it is agreed to market the fund using a financial intermediary established in Spain by means of a global account, that intermediary should be the party tasked with keeping a register of its client unit-holders.

Accordingly, since the management entity will no longer have all the information, changes are introduced into the Personal Income Tax Law, the Corporate Income Tax Law and the Nonresident Income Tax Law so that the marketing entities assume certain informational obligations in the tax area, subject to implementation by regulations.

3. Tax regime governing 'SAREB'

Effective January 1, 2013, the following changes affecting the tax treatment of *Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria* (the company managing the assets of ailing Spanish banks or 'SAREB') are introduced:

- For the purposes of limiting the deductibility of finance costs as provided for in article 20 TRLIS, SAREB is treated as a credit institution, thereby excluding it from the scope of application of the limitation.

It will also be treated as a credit institution for the purposes of the interest and fees on loans transferred to it in accordance with the provisions of the legal regime governing asset management companies, provided that they are recognized as revenues.

- An exemption from ad valorem stamp tax on notarial documents is established for the creation of security interests for financing the acquisition of real estate assets from SAREB, from an entity in which SAREB has a direct or indirect stake of 50% in the capital, equity, results or voting rights of the investee immediately before or as a result of the transfer, or from a bank asset fund (FAB), while the exposure of the Fund for the Orderly Restructuring of the Banking Sector (FROB) to such entity is maintained.

- The tax reliefs established in Law 2/1994, of March 30, 1994, on Subrogation to and Modification of Mortgage Loans (exemption from ad valorem stamp tax on public deeds) will apply to modifying novations of the loans mutually agreed between the creditor and the debtor, where the creditor is SAREB, or an entity in which SAREB has a direct or indirect stake of 50% in the capital, equity, results or voting rights of the investee, or an FAB, provided that the other requirements and conditions established in Law 2/1994 are met.

- Contributions or transfers of real estate by SAREB, and regulated in additional provision seven of Law 9/2012, of November 14, 2012, on Restructuring and Resolution of Credit Institutions, will not be taken into account when calculating the tax charge under headings 833.1 and 833.2 of section one of the scales of the tax on economic activities.

4. Tax on fluorinated greenhouse gases

This tax is created effective January 1, 2014 with the avowed aim of stimulating environmental protection.

The tax will apply throughout Spain and is defined as an indirect tax on the consumption of fluorinated greenhouse gases (hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), as well as preparations containing such substances, including reclaimed and recycled preparations) and levies, in a single phase, the placing of these products for consumption having regard to their global warming potential (GWP).

In keeping with this, the taxable event is defined by making taxable the first sale or delivery of gases after their production, import or intracommunity acquisition, including subsequent sales or deliveries made by traders who use fluorinated greenhouse gases, the acquisition of which was exempt, for resale, and the self-consumption of such gases.

By contrast, sales or deliveries that entail their direct dispatch to a destination outside the territory in which the tax applies, or sales, deliveries or self-consumption with a GWP equal to or less than 150 will not be taxable. Lastly, a rebuttable presumption is established that fluorinated greenhouse gases have been the subject of a taxable sale or delivery if justification for their use is not provided.

An extensive list of exemptions is regulated and includes deliveries with a view to (i) their resale within the territory in which the tax applies, (ii) the dispatch or use of fluorinated greenhouse gases outside the territory in which the tax applies (including those contained in products, equipment or apparatus), (iii) chemical transformation altering the composition of the gases, (iv) first-time inclusion in new equipment or apparatus, and (v) the manufacture of medicinal products presented in the form of aerosol dispensers for inhalation. A 90% exemption is also established on such

conditions as may be established by regulations for the first sale or delivery where gases with a GWP equal to or less than 3,500 are used in fixed firefighting systems or are imported into or acquired in such systems.

Without prejudice to the above, if fluorinated greenhouse gases are finally used for purposes other than those listed above, the first sale or delivery will be deemed to have been made when they are used for consumption or for such purposes.

The tax will become chargeable when the taxable products are placed at the disposal of acquirers or, as the case may be, at the time of their self-consumption, and manufacturers, importers, intracommunity acquirers and resale traders will be the taxpayers, notwithstanding the obligation to pass on the tax (itemized separately in the invoice) to those acquiring the products (who are the ones obliged to bear the tax). However, amounts of tax resulting from assessments issued by tax inspectors or the bases of which are estimated indirectly cannot be passed on.

The gross tax payable will be determined by applying the tax rate established according to different scales, depending on the GWP of the gases, and the weight of the taxable products (expressed in kilograms).

Taxpayers can credit against the tax payable any taxes paid on fluorinated greenhouse gases that they can show were delivered by them to waste managers recognized by the competent public authority for destruction, recycling or reclamation. The tax credit will reduce the tax payable in the self-assessment period in which the gases are destroyed. Any unused tax credit can be taken in self-assessments in the following four years.

End-users who have borne the tax and were entitled to claim any of the above-mentioned exemptions or can provide evidence of having delivered fluorinated greenhouse gases to waste managers recognized by the competent public authority for destruction, recycling or reclamation (provided that no tax credit has been taken previously on them) can apply to the tax authorities for a tax refund.

As for formal obligations, taxpayers must file a self-assessment every four months for the amounts of tax chargeable and pay the tax debt. Moreover, taxpayers that engage in activities triggering a taxable event must register their facilities on the territorial register of fluorinated greenhouse gases.

Law 16/2013 contains an enabling provision for modifications to be made through the General State Budget Law to tax rates, the thresholds for determining them, the cases in which the tax does not apply, exemptions, tax credits and tax refunds.

Lastly, a transitional regime is established for the 2014 and 2015 fiscal years entailing lower taxation as coefficients are applied to the tax rates.

5. Changes affecting other taxes

5.1 Excise tax on oil and gas

A new excise tax rate is introduced for supplies of natural gas to be used in a cogeneration (combined heat and power) plant subject to the requirement of evidencing compliance with the equivalent electric yield. The tax rate will be applied in such cases according to the percentage of natural gas that should be allocated to power generation (measured at alternator terminals) and to useful heat.

This change means that in the rules on charging the tax, taxpayers that have charged the amounts of tax payable pursuant to a provisional percentage notified by the operators of cogeneration plants must regularize the amounts of tax charged pursuant to the final percentage of use of the natural gas, once known.

The concept of "natural gas used for professional purposes" (which qualifies for a reduced rate of €0.15/GJ) is also specifically defined: gas used in agricultural crop growing and natural gas supplies for consumption in industrial plants and facilities are deemed to fall within the scope of this concept, unlike gas used to produce useful heat ultimately harnessed in establishments or premises that are not industrial plants or facilities.

A new heading 2.20 is also created in relation to waste oils classified under CN 2710.91.00 and 2710.99.00 and the products included under headings 2.8, 2.11 and 2.13 are modified, as are the applicable rates.

Lastly, certain changes are made to the enforcement/penalty regime. In particular, where false or inaccurate data on supplies of natural gas for use in a cogeneration plant are communicated and give rise to less tax being charged than should be the case, the basis for the penalty will now be the difference between the amounts of tax and the penalty rate 50%.

5.2 Excise tax on electricity

Effective January 1, 2014 an exemption is introduced for the manufacture, import or intracommunity acquisition of 85% of the electricity used, on terms to be established by regulations, for (i) chemical reduction and electrolytic processes, (ii) mineralogical processes, or (iii) metallurgical processes.

5.3 Special tax on certain means of transportation

The scope of the exemption from this special tax is widened to include recreational craft and boats and nautical sports vessels that are actually used solely for the charter business, regardless of their hull length. The previous legislation limited the exemption to boats and craft with a maximum hull length of fifteen meters.

The scope of the exemption now also includes recreational craft and boats and nautical sports vessels owned by nautical sports schools officially recognized by the Directorate General of the Merchant Navy and actually used solely for the purpose of teaching the navigability of such vessels. In addition, the right to the exemption will not be forfeited in the case of recreational craft and boats and nautical sports vessels used for teaching activities or for the charter business if certain requirements are met.

The claiming of the exemption will be conditional on prior recognition by the tax authorities.

5.4 Tax on the increase in urban land value

A new optional reduction[2] of up to 95% of the tax on the increase in urban land value is introduced in the case of transfers of land and the creation and assignment of real rights of use and enjoyment limiting the ownership of land, on which economic activities are engaged in

[2] This reduction already existed in the context of real estate tax, the tax on economic activities, and the tax on construction, installation projects and works.

and declared to be of special interest or municipal utility, due to the existence of circumstances of a social, cultural, historical and artistic nature or promoting job creation and justifying such a declaration.

The making of the declaration will fall to the municipal council sitting in plenary session and will be approved at the taxpayer's request by a simple majority of its members.

5.5 Real estate tax and Cadastral Law

Changes are made to articles 68 and 69 of the revised Local Finances Law ("TRLRHL") regulating the duration, amount and base value of the reduction provided for in cases where there is an increase in cadastral value as a result of general collective appraisal procedures. The changes, which are defined in the Preamble to Law 16/2013 as "technical adjustments," are intended to correct cases where, as a result of the application of index-linked adjustment coefficients, the tax base decreases.

Moreover, the increase in tax rates originally envisaged solely for 2012 and 2013 will now continue to apply in 2014 and 2015.

In relation to these modifications, the Real Estate Cadastre Law provides for the possibility of general budget laws updating the cadastral values of urban real estate in the same municipality by applying coefficients based on the year of entry into force of the relevant determination of cadastral values by comparison with local appraised values in the municipality. Municipal councils can request the application of the coefficients provided for in this connection where, inter alia, the request is notified to the Directorate General of the Cadastre before January 31 of the year preceding that in which the application of the coefficients is requested. The planned amendment extends this deadline to May 31 of that year.

5.6 Tax on production of spent nuclear fuel and radioactive waste resulting from nuclear power generation

Amendments are made to Law 15/2012, of December 27, 2012, on Tax Measures for Energy Sustainability, with a view to clarifying the rules and the application of that Law in practice.

The most significant changes are as following:

- As regards "spent nuclear fuel," it is specified that in regulating the taxable event, regard must be had to the production of fuel resulting from each nuclear reactor. It is also added that if the fuel extracted from the reactor is subsequently reinserted into the reactor, with the taxable event having been triggered by an earlier extraction, no new taxable event will be triggered by the later extraction.

  As for the tax base, it is specified that it must be determined in the case of each nuclear reactor from which the spent nuclear fuel is extracted, and the method of determining it is regulated in the event of the final cessation of operations.

  The tax period established is also modified so that it is in sync with the operating cycle of each reactor, that is, the time elapsed between two stoppages to recharge the spent nuclear fuel from the reactor core. It is also specified how the tax period is to be determined in the event of the cessation of operations.

Lastly, in relation to the assessment and payment of the tax, new rules are established for advance payments of tax. Thus, two prepayments are established for each tax period, instead of the three prepayments previously provided for, in June and December. The base for calculating the tax prepayment will be determined according to the number of kilograms of heavy metal that the spent nuclear fuel to be finally extracted from the reactor at the end of the tax period in progress is estimated to contain, adjusted by a quotient.

- As regards radioactive waste resulting from nuclear power generation, the previous rules remain unchanged, except with respect to the method of assessment and payment. Specifically, the time periods for tax prepayments are modified so that they are in step with those established for spent nuclear fuel.

Lastly, three new transitional provisions are inserted into Law 15/2012. First of all, a specific method for calculating the tax base and the base for tax prepayments is established for tax periods in which the fuel finally extracted from the reactor contains fuel elements introduced into the reactor core before January 1, 2013. Second, for the purposes of determining the first tax period, January 1, 2013 will be the start date for initiating the operating cycle of each reactor. Lastly, the period for filing tax returns in the case of taxpayers whose production cycle and tax period end in 2013 is established (in rather confusing terms) as the period running up to January 20, 2014.

5.7 Imports of fueling products for supply to certain vessels and aircraft

Relief from import duty on goods from third countries is established, provided that they are used for VAT-exempt transactions in the case of certain vessel and aircraft fueling operations.

The scope of the relief is also widened to include goods falling within the scope of application of excise taxes on production, provided they are used for transactions that are exempt from such excise taxes.

6. Entry into force

The provisions of Law 16/2013 entered into force on October 31, 2013, the day after the date of its publication in the Official State Gazette, although, as mentioned in the course of this Newsletter, some provisions became effective earlier.

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