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NEW END-OF-YEAR TAX LEGISLATION (2017) AMENDMENTS TO THE IMPLEMENTING REGULATIONS FOR THE GENERAL TAXATION LAW

The Official State Gazette (BOE) of December 30 published four royal decrees amending the implementing regulations for the General Taxation Law (LGT):

- a. Royal Decree 1070/2017, of December 29, 2017 amending the General Regulations on tax management and audit work and procedures and implementing the common rules on procedures for applying taxes, approved by Royal Decree 1065/2007, of July 27, 2007 (“**the Audit Regulations**”), and Royal Decree 1676/2009, of November 13, 2009, on the Council for the Defense of the Taxpayer.
- b. Royal Decree 1071/2017, of December 29, 2017 amending the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, 2005 (“**the Collection Regulations**”).
- c. Royal Decree 1072/2017, of December 29, 2017, amending the General Regulations on the tax penalty regime, approved by Royal Decree 2063/2004, of October 15, 2005. (“**the Penalty Regime**”).
- d. Royal Decree 1073/2017, of December 29, 2017, amending the General Implementing Regulations for General Taxation Law 58/2003, of December 17, 2003, regarding administrative review, approved by Royal Decree 520/2005, of May 13, 2005 (“**the Review Regulations**”).

The stated objective of the amendments to these Regulations, which come into force (generally, with the exceptions described below) on January 1, 2018, is to combat tax fraud, simplify tax law relationships, increase the tax authorities’ efficiency, strengthen legal certainty, and reduce the number of legal disputes.

The main new items of legislation are described below:

1. In the Audit Regulations

- a. Within the scope of **taxpayer census management** it is required to disclose the successors in the statement of removal from the Census of Business Owners, Professionals and Withholding Agents, in the event of the death of individuals or extinguishment of entities.

This amendment will apply from July 1, 2018.

In Order HFP/1307/2017, of December 29, 2017, Form 036 is amended to add specific fields allowing that information to be included.

- b. In relation to **VAT taxable persons registered for the monthly refund system**, who must do their VAT recordkeeping on the tax agency’s website, it is specified that they do not have to file an information return for transactions included in the records (**form 340**).
- c. It lays down a **specific obligation for individuals or entities acting as intermediaries in the loan of dwellings for tourist use**. These intermediaries must identify the lenders and users of the loaned dwelling and the price for which it was lent.

This does not apply to parties engaged in leasing or subleasing dwellings (as they are defined in Urban Leasehold Law 29/1994) or to tourist accommodation establishments governed by their specific legislation such as hotel establishments, rural accommodation establishments, tourist hostels and camps, among others. It does not apply to timeshare arrangements either.

d. In relation to the rules on **consolidated tax groups** for corporate income tax purposes (in cases where the parent company does not reside in Spain and therefore a representative entity in Spain is required), it is provided that if the representative company changes, the power of the acting body will not be altered with respect to the procedures for applying taxes that have already commenced on the group.

The reference to the special rules on the VAT group of companies is included in the regulations in the same terms.

e. Regarding **tax ruling requests**, these requests are required to be filed electronically by the taxable persons who must interact with the tax authorities electronically.

f. The regulations are adjusted to the new statutory provisions on the **time period for audit procedures** which set out, instead of the justified interruptions and delays not attributable to the tax authorities, certain scenarios for stays and extensions of time periods, which must be appropriately documented so that the party with tax obligations may be aware of the time limit for the procedure.

g. Under the mandate in primary legislation, it is also required to **make publicly available the tax authorities' interpretation derived from reports** in which the existence of **conflict in the application of tax law** was found for the purposes of being able to penalize other cases that are substantially the same.

h. The Regulation is adapted to the new administrative procedure for the **criminal offense against public finance** which, as a general rule, allows the tax authorities' assessment to be made in the audit procedure (which must be adjusted to the outcome of the criminal proceeding on fraud).

All these amendments will apply to tax procedures that commenced on or after their date of entry into force (January 1, 2018), with the exception of certain specific provisions.

2. In the Royal Decree on the Council for the Defense of Taxpayers

a. The **term of office** of elected members is increased to a 5 year renewable term to secure diversity among the members (a renewable three-year term is provided for the chairperson).

b. Changes are introduced to the **rules on not admitting complaints and suggestions** to speed up the related procedures, and it is allowed for them not to be admitted if they are repeated.

3. In the Penalty Regime

The following amendments to these Regulations are notable:

a. Liability has been eliminated for a **formal infringement by reason of failure to file self-assessments, returns or other documents** with tax relevance **electronically or remotely** where they have been filed by other means and if they are filed electronically or remotely before any prior request made by the tax authorities or the commencement of a penalty proceeding.

b. Implementing provisions are given on the **penalties associated with the Immediate Supply of Information in relation to VAT**. Most notably:

- It is specified that the proportional fine amounting to 0.5% of the invoice amount as provided in article 200.3 of the LGT will only apply in the event of delays related to records of outgoing and incoming invoices.

For these purposes, the invoice amount will include the amounts of tax, any surcharges made and received, and the compensation, if any, received or paid in connection with the transaction.

- It is clarified that delays related to the VAT records for capital goods and for given intra-Community transactions will be subject to a fixed penalty amounting to €150 per record.

c. The rules on the penalty procedure are adapted to the new statutory provisions on the procedures for **criminal tax offenses** in the administrative jurisdiction.

4. In the Review Regulations

The main amendments to the Review Regulations are as follows:

a. **Mutual agreement procedures:** it is provided that internal review procedures will be stayed in accordance with the LGT as a result of the conduct of the mutual agreement procedures under international conventions and treaties.

A new change has been added that the competent Spanish authority must notify the reviewing body of any administrative or judicial appeals lodged by the applicant or by the other parties involved who appear in the application for commencement of the mutual agreement procedure or any other appeal of which they are aware.

b. **Revocation procedure:** it is provided that the report by the legal service will come after the proposed decision, which is consistent with the general rule for review procedures.

c. **Stay of tax debts:**

- It is provided that a stay of penalties will not include any challenges that may be made by the liable parties within the meaning of article 42.2 of the LGT, in other words:
 - Anyone who causes or cooperates with the concealment or transfer of property or rights of the party subject to the payment obligation for the purpose of preventing action by the tax authorities.
 - Anyone who, through fault or negligence, fails to observe the attachment orders
 - Anyone who, being aware of the attachment, the injunctive measure, or the provision of a security interest, cooperates with or consents to the removal of the attached property or rights, or of any property or rights to which the injunctive measure or security interest relates.
 - Any individuals or custodians holding the debtor's property, who, after receiving the attachment notice cooperate with, or consent to, the removal of that property.
- Related obligations: as provided in the LGT, it is stipulated that in the event of the upholding of an appeal or claim against an assessment of a debt which, in turn, determined the recognition of a refund to the party with tax obligations, the bond provided for a stay of that assessment comes to secure the payment of the related refund concerned.
- In relation to the bonds for a stay in the remedy for review of the challenged decision, it is provided that those bonds must cover, in addition to the amount of the challenged decision and the late-payment interest arising as a result of the stay, any surcharges that would fall due in the event of enforcement of the bond.

d. **Economic-administrative claimss**

- The provincial chamber for Alicante attached to the Regional Economic-Administrative Tribunal (TEAR) for the autonomous community of Valencia (Chamber for Alicante/Alacant, based in Alicante, with powers over that province) is eliminated, and it is envisaged that the President of the Central Economic-Administrative Tribunal (TEAC) may assign, in a decision, to the members of any economic administrative body the function of settling claims falling within the powers of another body, and from when that happens they may sit as a single person body or as a Chamber of this other body.
- Specific rules are provided regarding the quantum of economic-administrative claims:
 - Generally speaking, it will be the amount of the determination or step to which the claim relates. Any determinations not containing or not relating to a specific economic sum and non-monetary penalties will be deemed to be for an unspecified amount.
 - If a tax base or valuation determination is challenged and no assessment has been made, the quantum of the claim will be their amount.
 - In the following cases, the quantum of the claim will be:
 - (i) In claims against determinations reducing or refusing a refund or amount of compensation requested by the taxable person, the difference between the requested refund or amount of compensation

and that recognized by the tax authorities, plus the resulting amount to be paid over, if any.

- (ii) In claims against determinations lowering the net operating losses (NOLs) reported by the party with tax obligations, the NOL that has been recalculated by the tax authorities. Additionally:
 - If the administrative determination also requires a tax debt to be paid, regard will be had to the higher of the following two amounts: the reported NOL that has been recalculated or the tax debt to be paid.
 - If in addition to the reported NOL a refund was requested, regard will be had to the higher of the following two amounts: the NOL that was eliminated and the amount resulting from the method described in point (i) above.

If the compared amounts determine different appeal remedies or different proceedings, the higher amount will be the amount exceeding the necessary quantum for an administrative appeal to a superior body (*recurso de alzada*) and, failing that, the amount exceeding the quantum laid down for the “abbreviated” proceeding (*procedimiento abreviado*), even if they are lower in absolute terms.

- (iii) In claims against formal attachment procedures, the amount in respect of which the enforcement is implemented.
- (iv) In claims against agreements shifting liability, the amount in respect of which liability is shifted.
- (v) In claims against penalties, the amount of the penalty before any potential reductions.
- (vi) In claims against decisions in proceedings commenced by an application for a refund of incorrect payments, by an application for correction of a self-assessment or by an application for compensation, the difference between the amount requested and the amount acknowledged by the tax authorities. If the amount concerned may not be determined from the application, the claim will be for an unspecified sum.
- (vii) In claims related to certain components of the tax debt, the component or the sum of the components that are challenged. *deuda tributaria, el componente o la suma de los componentes que sean objeto de impugnación.*
- Where the administrative determination challenged in the claim includes more than one debt, base, valuations, or determinations of another type, the quantum of the lodged claim will be the amount of the debt, base, valuation or determination involving the largest challenged amount, although for these purposes it will not be allowed to add together all those included in the document. Claims against determinations containing more than one decision and not all of them contain or refer to an economic sum, will be for an unspecified sum.
- In claims related to acts or omissions by private parties, regard will be had to the sum sought by the claimant.
- Notification regime:
 - It expressly provided that the economic-administrative tribunals will notify their decisions to the interested parties. The notifications will be made using the means specified for this purpose by the interested party. Despite this, the notification will be made electronically where taxpayers are required to interact electronically with the tax authorities.

If the claimant notified of its wish for notifications to be made electronically and specified in the same document an address for notification purposes, the notification would have to be made electronically.

Where the claimant is not required to interact electronically with the tax authorities, if, after being informed that notifications will be made electronically, the claimant specified an address for notification purposes without adding that he wishes to remove the previous address, notifications will be sent to this previous address and the claimant will have ten days in which to express whether

or not he wants to remove that address, with a warning that, in the absence of any reply, it will be deemed that the electronic address will be kept as the means of communication.

If, following the specification of an address for notification purposes, the claimant communicated a wish for notifications to be made electronically, it will be deemed that the notification must be made electronically.

- If the notification has to be made at the address and the case file for the claim contains more than one address specified by the interested party for making notifications, regard will be had to the latest one to be specified.
- Where no address expressly specified for notification purposes appears in the case file, notifications may be made at the tax domicile of the interested party if the tribunal has written record of it.

Where no address may be ascertained, or where an attempt at notification in person proves unsuccessful, the notification must be made by appearance in accordance with the provisions in the LGT, on the terms mentioned in the general rules on standard economic-administrative procedure.

Notification on paper may be made by certified mail or by a public official who will write a note to confirm the facts for them to be included in the case file and leave a copy of it at the address where the step took place.

- Lastly, it is provided that the economic-administrative tribunals will notify the decision to the bodies authorized to lodge an ordinary administrative appeal to a superior body, a special administrative appeal to a superior body for a definitive ruling on interpretation (*recurso extraordinario de alzada para la unificación de criterio*) and a special administrative appeal to a superior body for a definitive ruling on a point of law (*recurso extraordinario para la unificación de doctrina*) as provided in the LGT.
- Quantification of costs: rules are provided on the quantification of costs in an economic-administrative claim:
 - Costs will be quantified at 2% of the quantum of the claim, subject to a lower limit of €150 for claims or appeals settled by a single-person tribunal and of €500 for a panel tribunal. In cases of claims for unspecified sums, costs will be quantified at the minimum quantum mentioned above. These quantum may be updated by ministerial order.
 - Where the payment of costs has been ordered, the competent economy and finance delegate will grant the party with a payment obligation the standard time period for collection provided in the LGT for that party to pay the costs. If those costs have not been paid within that period, the enforced collection procedure will be used to secure payment through.
 - There will be no order for payment of costs if the sought claims have been upheld in full or in part.
 - There will be no administrative appeal available against the order for payment of costs imposed in the economic-administrative decision, although it may be reviewed together with the administrative appeal to a superior body that might be lodged, if applicable.
 - In claims against the actions of private parties, it will be taken into account, in such cases, that it is not only the claimant that may be ordered to pay, but also the person against whom the claim is directed.
- In requests for a ruling on jurisdiction between economic-administrative tribunals, the procedure provided for a ruling on jurisdiction involving TEAC has been eliminated.
- Request for a preliminary ruling by the Court of Justice of the European Union. In relation to such requests, it is provided that:
 - Where the tribunal considers that a request for a preliminary ruling is required, it will grant the claimant and the administrative body that made the challenged determination 15 days in which to submit pleadings in relation to the appropriateness of filing the request. If claimant applied for the request for a preliminary ruling, it will grant the same time period to the competent body of the tax authorities that made the determination.

- If, after the request for a preliminary ruling has been submitted, the tribunal deems it necessary to file additional pleadings or to reformulate or discontinue the request, it will grant 10 days to the claimant and to the competent tax authority body to make the pleadings they see fit.
- After the request for a preliminary ruling has been submitted, the tribunal will notify the claimant and the competent tax authority body of this fact and of the stay of the economic-administrative proceeding. These circumstances will also be notified to the claimant and to the competent tax authority body in cases of economic-administrative proceedings other than the proceeding in which the request was submitted, which to be settled require the outcome of the request for a preliminary ruling to be known, and the stay may be ordered after the pleadings procedure for a 15-day period granted to the claimant and to the competent tax authority body that made the determination.
- The reply to the request will be deemed received at the competent economic-administrative body when the Spanish version of the judgment has been published in the Official Journal of the European Union (Spanish version). The lifting of the stay will be notified to the claimant and to the competent tax authority body for each proceeding that was stayed as a result of the submission of the request for a preliminary ruling
- For the purposes of the Spanish state tax agency (AEAT) competent bodies will be the department heads at AEAT in relation to the matters falling within their respective powers.
- Regarding the stay of enforcement of the economic-administrative decision challenged through the ordinary administrative appeal to a superior body lodged by the authorized tax authority bodies, it is explained that with the application for stay that may accompany the notice of appeal a report must be produced justifying the existence of reasonable prima facie evidence that collection may be unsuccessful or seriously hindered.
- In relation to the enforcement of any economic-administrative decisions having an effect on related obligations, it is clarified that the tax authorities must recalculate the related obligation on their own motion or at the request of a party.
- In cases where, by reason of the lodging of an administrative appeal to a superior body the authority lodging the appeal has applied for a stay of enforcement of the decision, an exception applies to the general rule allowing a proportional reduction of the bond provided at the lower instance.
- Enforcement of decisions: it is determined that the provisions on a specific appeal against enforcement makes the legal rules on the related ancillary proceeding unnecessary. As a result, the terms related to that ancillary proceeding have been removed from the wording of the Review Regulations.

The royal decree amending these regulations entered into force on January 1, 2018; although the rules on the proportional reduction to bonds provided for the stay will apply when the application for bonds is made by the tax authority bodies after the entry into force of the royal decree.

5. In the Collection Regulations

Set out below are the main amendments to the General Collection Regulations:

a. Scenarios in which **payments in kind** will not be accepted are provided. Among others:

- Where property is offered which by reason of its characteristics does not have and cannot ever have Spanish cultural heritage status.
- Where the debt must be reported by self-assessment and the self-assessment has not been filed earlier or with the application for payment in kind. It will not be possible to remedy this ground for non-acceptance if that self-assessment is not in the tax authorities' possession.
- Where the self-assessment has been filed after the commencement of an audit which had been stayed, if the application for payment in kind relates to items and periods with respect to which information has been sent to the competent jurisdiction or to the public prosecutor's office.

- Where the filed applications for payment in kind are repetitions of other earlier ones that were previously refused, unless they contain a material change with respect to the application refused earlier, and, in particular, where the aim of that repetition is to delay, hinder or prevent the course of collection management.

Non-acceptance of the application must be reasoned and will determine that the application will be deemed not filed for all purposes. Against this non-acceptance decision an economic-administrative appeal or claim may be filed.

b. In relation to **applications for deferred or split payment of tax debts**:

- New requirements are provided regarding the application procedure for applications made in insolvency proceedings. In particular, it will be required to report and produce documents evidencing that the tax debts do not qualify as post-insolvency order claims.
- It is provided that if an application for deferred or split payment co-exists with an application for a stay in a review procedure preference will be given to the latter application, causing the application for deferred or split payment not to be accepted and to be dismissed to avoid a delay in completion of the procedure.
- An application for deferred or split payment filed by the party with tax obligations will not be accepted if the administrative procedure for the criminal tax offense has been stayed.
- In cases of deferred or split payments in the enforcement period, the bond must cover the surcharges in the enforcement period and late-payment interest generated by the deferred payment plus 5% of the sum of both items.

c. It is provided that the tax authorities may offset **on their own motion amounts to be paid against amounts to be refunded in respect of related tax obligations** which might arise as a result of enforcement of the decision in an administrative appeal or in an economic-administrative claim proceeding, after which any surplus must be paid over or refunded. In this case, the related late-payment interest will be calculated, which will also be offset in the same decision.

d. A number of important new items of legislation are introduced in relation to **attachment procedures**:

- Where the tax authorities have evidence of the existence of an account or deposit at a credit institution, they must issue an attachment notice identifying the account or deposit. A new provision has been added, however, allowing the attachment to cover, without requiring prior identification, the other property and rights owned by the party with the payment obligation at the same credit institution (within the scope of the country as a whole, or the autonomous community or municipality that falls within the jurisdiction of each tax authority ordering the attachment), regardless of whether or not they are known by the tax authorities and to the extent of the outstanding debt, plus the surcharge in the enforcement period, interest, and, if applicable, any costs that have been incurred.
- An express legal prohibition is provided on the disposal of certain real estate assets by companies where certain of their shares have been attached, for which purposes a preventive noting of a prohibition on disposal is allowed at the property registry..
- A number of new items of legislation are introduced in relation to the procedures for disposal of attached property, basically in relation to auctions.

e. In relation to **declaration of liability procedures**:

- It is made obligatory, if applicable, to give express acceptance in the inspection of the case file procedure opened in the declaration of liability procedure to be able to benefit from the relevant reduction.
- Special provisions are included on the declaration of liability associated with the assessment related to a criminal tax offense.
 - Where in an audit in which an assessment needs to be issued related to a criminal offense the acting body has any knowledge of facts or circumstances that could determine the existence of any type of tax liability, this body will pass on those facts to the competent body to commence the declaration of liability procedure. If applicable, the commencement of that procedure will be notified by this latter

body to the party with tax obligations, stating the tax obligations that the declaration of liability covers and the legal article on which it is founded.

- The procedure for inspection of the case file by the liable party will be conducted, in all cases, after the official submission of the proposed assessment related to the criminal offense of the principal debtor. The liable party will have 15 days in which to make pleadings in relation to any matters determining liability and their scope, and which may be appealed in the administrative jurisdiction.

It is provided that the liable party will not have interested party status with respect to the audit in which the assessment related to the criminal offense is required to be made and any pleadings that party makes in that procedure will be deemed not filed.

- The declaration of liability decision will have to be rendered after admission of the report of a criminal offense or complaint regarding a criminal offense against public finance has been recorded in writing.

Additionally, where the liable party has caused, or actively cooperated with, the deeds that gave rise to the assessed tax debt and stands accused in a criminal proceeding commenced as a result of the reported criminal offense or has been convicted as a result of that proceeding, the summons to the liable party in the criminal proceeding to make a statement as the investigated party must also be recorded as having been made.

The notification of the decision declaring liability will include the request to make payment of the assessed tax debt in the relevant time periods.

- f. The provisions on claiming **civil liability for the criminal offense** against public finance have been amended to adapt them to the new administrative procedure for the criminal offense, and they expressly mention collection of the imposed fine.
- g. Lastly, it is provided that against the **decisions rendered by the collection bodies at AEAT in exercising capital gains investigation powers in proceedings related to a criminal offense** against the finance authority an appeal for reconsideration or economic-administrative claim may be lodged, unless the pleaded grounds for challenging relate to compliance of the challenged decisions with the subject-matter of the criminal proceeding regarding a criminal offense against public finance, in which case the action must be must brought with the competent criminal court.

The royal decree entered into force on January 1, 2018 (except for the provisions related to certain rules on the implementation of auctions, which will apply to the auctions commenced on or after September 1, 2018).

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