NEWSLETTER

TAX

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MINIMUM REVERSAL OF IMPAIRMENT EXPENSE MUST BE DONE ON THE LAST DAY OF THE TAX PERIOD (DIRECTORATE-GENERAL OF TAXES

SUMMARY

Judgments

- "IIVTNU" The tax is unconstitutional if there is no increase in value (Constitutional Court. Judgment of February 16, 2017)
- Special reasoning required for the penalty imposed for incorrect application of the neutrality regime (Supreme Court. Judgment of January 31, 2017)

Decisions and rulings

- Minimum reversal of impairment expense must be done on the last day of the tax period (Directorate-General of Taxes. Ruling V0155-17, of January 24, 2017)

Legislation

Annual Tax and Customs Control Plan for 2017

Others

OTHER PUBLICATIONS

EVENTS

BLOG

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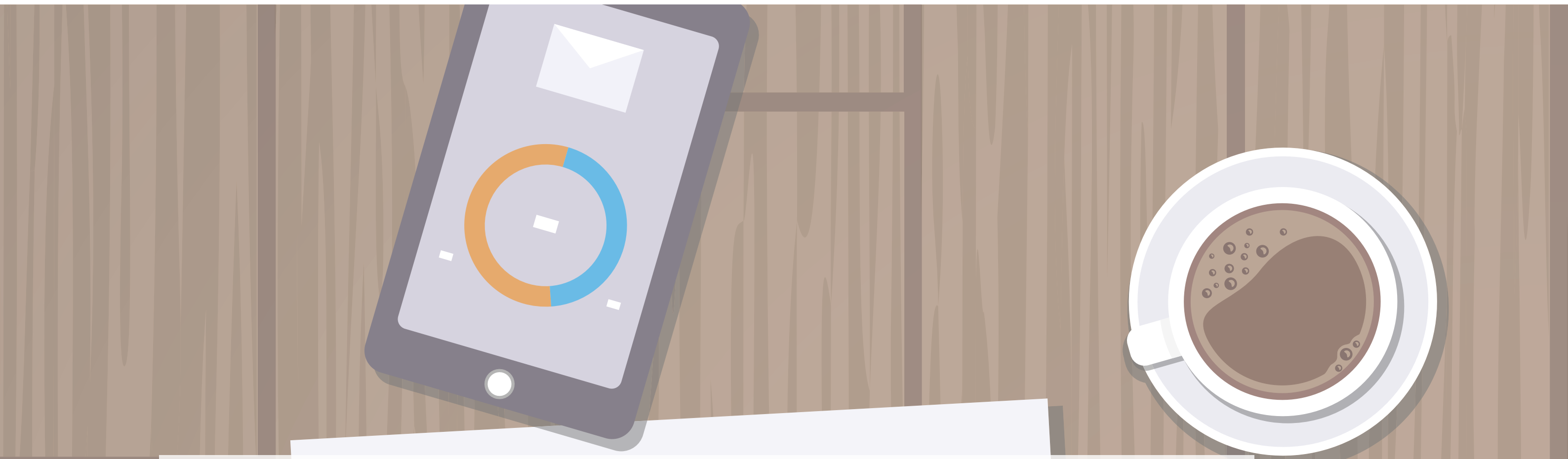
CONTENTS



1. Judments 6

1 Corporate income tax and penalty proceeding.- Special reasoning required for the penalty imposed for incorrect application of the neutrality regime (Supreme Court. Judgment of January 31, 2017) 6

2 Corporate income tax.- If the intention to use some buildings in a business activity is proven, they can be classified as property, plant and equipment (National Appellate Court. Judgment of September 29, 2016) 6

3 Personal income tax.- To take the reinvestment exemption, possession of the new residence need not take place during the reinvestment period (Madrid High Court. Judgment of December 5, 2016) 6

4 Tax on the increase in the value of urban land ("IIVTNU").- The tax is unconstitutional if there is no increase in value (Constitutional Court. Judgment of February 16, 2017) 6

5 Penalty proceeding.- No culpability exists solely because the taxpayer has signed the assessment on an uncontested basis or because it has means to be well advised (Supreme Court. Judgment of December 22, 2016) 7

2. Decisions and rulings 7

1 Corporate income tax.- Minimum reversal of impairment expense must be done on the last day of the tax period (Directorate-General of Taxes. Ruling V0155-17, of January 24, 2017) 7

2 Corporate income tax.- Brazilian dividends and interest on net equity gives entitlement to exemption to avoid double taxation (Central Economic-Administrative Tribunal. Decision of January 12, 2017) 8

3 Corporate income tax.- Impact of restructuring transactions on capitalization reserve (Directorate-General of Taxes. Rulings V5233-16, of December 12, 2016 and V5470-16, of December 28, 2016) 8

4 Corporate income tax.- The remission of collection rights recorded at less than face value generates a gain t the donee subsidiary that is not eliminated in consolidation (Directorate-General of Taxes. Ruling V5469-16, of December 28, 2016) 8

5 Corporate income tax.- The tax group's net revenue does not include that of the entities excluded from the tax group in the fiscal year (Directorate-General of Taxes. Ruling V5286-16, of December 14, 2016) 9

6 Corporate income tax.- The one million euro minimum deduction is not affected by the tax losses offset due to reversal of impairment losses (Directorate-General of Taxes. Ruling V5226-16, of December 9, 2016) 9

7 Personal income tax.- The acquisition value cannot be "0" for the purpose of determining the capital gain on the subsequent transfer of assets if it has not been reported by the taxpayer (Central Economic-Administrative Tribunal. Decision of January 12, 2017) 10

8 Personal income tax.- The economic compensation agreed in a voluntary leave of absence generates salary income that does not qualify as exempt or multi-year income (Directorate-General of Taxes. Ruling V5253-16, of December 13, 2016) 10

9 Personal income tax.- Vehicle adaptation expenses of a disabled employee constitute salary income in kind (Directorate-General of Taxes. Ruling V5247-16, of December 13, 2016) 10

10 Wealth tax.- Unlisted shares must be valued according to the "last approved balance sheet" (Directorate-General of Taxes. Ruling V5434-16, of December 23, 2016) 11

11 Inheritance and gift tax.- Reduction not affected by change of person performing executive functions after the gift of the family business (Directorate-General of Taxes. Ruling V5212-16, of December 5, 2016) 11

12 Administrative proceeding.- Notification attempt is deemed proven if taxpayer is provided with content of the decision in the authorized e-mail address (Central Economic-Administrative Tribunal. Decision of January 12, 2017) 11

13 Management proceeding.- "Interest on interest" must be paid where the tax authorities do not include late-payment interest in their refund (Central Economic-Administrative Tribunal. Decisions of January 12, 2017) 12

14 Inspection proceeding.- Reasoning and documentation of value verification procedure based on comparable samples (Central Economic-Administrative Tribunal. Decision of January 19, 2017) 12

15 Penalty proceeding.- Even if the first penalty proceeding is replaced by another because the assessment is modified, the maximum period for completion of the penalty proceeding is computed from the first proceeding (Central Economic-Administrative Tribunal. Decision of January 12, 2017) 12

3. Legislation 13

1 Forms 121 and 122 for personal income tax credits for large families or dependent disabled persons 13

2 Regulation of certain aspects of tax on the extraction value of gas, oil and condensates 13

3 Tax benefits to mitigate the damage caused by the latest storms 13

4 Annual Tax and Customs Control Plan for 2017 14

4. Others 15

1 Report by the CNMV on the accounting impact of the new rules on inclusion of impairment losses on investments, approved by Royal Decree-law 3/2016 15

TAXES

• TAX

TAX NEWSLETTER

Royal Decree-law 3/2016, of December 2, 2016, introduced various changes in the tax treatment of impairment losses in respect of securities representing holdings in the capital or equity of entities. With effect from 2016, the Royal Decree-law modified the transitional regime applicable to impairment losses deducted in tax periods starting before January 2, 2013, requiring a minimum annual reversal of one-fifth of those impairment expenses, without this being conditional on the investees recovering their value.

This provision has been supplemented (with effect from 2017) by the impossibility of deducting the impairment losses in respect of securities representing holdings in the capital or equity of entities which either (i) meet the requirements for the exemption of dividends and gains on the transfer of the holdings, or (ii) in the case of nonresident entities, do not meet the minimum taxation requirement established in article 21.1.b) of the Corporate Income Tax Law. In short, the combination of the two provisions means that the obligatory reversal of the losses already deducted will become final in most cases.

In view of these new rules, the question arises as to whether a liability must be recognized immediately for the total amount of the impairment deducted before January 1, 2013 (given that the impairment will have to be included in the tax base in fifths over the next five years) or whether that recognition can be done by fifths as and when the deducted impairment is reversed.

In order to resolve this question, in the "Report on the Supervision by the Spanish National Securities Market Commission ("CNMV") of the annual financial reports and main areas of review of the accounts of the following fiscal year", the CNMV has concluded that:

a) Generally, the accounting treatment to be applied is the straight-line recognition of the tax expense at the rate of one-fifth per annum, with a credit to the liability Taxes payable.

b) However, in cases where the entities owning the holdings have no possibility in practice to transfer the securities before the end of the 5-year period, due to the existence of very severe restrictions on their transfer, whether of a legal, contractual or other kind, the issuers must use their expert judgment to determine whether, in those cases and according to the scope of those restrictions, a liability should be recognized for the total amount to be reversed in five years, with a charge to the income statement for the year.

In this Newsletter, we also comment on ruling V0155/17, answering other questions related to that minimum reversal. That ruling clarifies that the minimum reversal is to be made on the last day of each tax period, and that if the holding is transferred, no additional reversals need to be made in relation to the transferred holding.

01 JUDGMENTS

1 Corporate income tax and penalty proceeding.- Special reasoning required for the penalty imposed for incorrect application of the neutrality regime (Supreme Court. Judgment of January 31, 2017)

The Supreme Court analyzed a new appeal in relation to penalties imposed due to the incorrect application of the tax neutrality regime. The National Appellate Court had rejected the imposition of a penalty, following the traditional interpretation by the Supreme Court itself, according to which it is not possible to impose penalties when the neutrality regime is denied pursuant to the anti-fraud clause of the regime (which requires there to be valid economic reasons for applying that regime).

The Supreme Court recalled that in its recent judgment of December 13, 2016 (discussed in our last bulletin) it accepted the possibility of imposing penalties in these cases. But it underlined that on that occasion, the inspectors had correctly reasoned the penalty, basing the proceeding on the existence of relative simulation.

In contrast, the Supreme Court denied that a penalty could be imposed when culpability is sustained by general arguments not adapted to the specific case under analysis.

2 Corporate income tax.- If the intention to use some buildings in a business activity is proven, they can be classified as property, plant and equipment (National Appellate Court. Judgment of September 29, 2016)

The case related to a company that acquired some lots with the intention of building its new headquarters on them. However, for reasons beyond its control, the construction could not be executed. Consequently, it decided to sell the lots, taking the reinvestment tax credit. The inspectors considered that at the time of the sale, the lots were not classified as property, plant and equipment, given that they had never been used in the company's activity, and so they disallowed the tax credit.

The National Appellate Court supported the taxpayer's position, basing its decision on Supreme Court interpretation, according to which the preparation of the asset for its business use in the future qualifies it as being used in the activity and, thus, as property, plant and equipment.

3 Personal income tax.- To take the reinvestment exemption, possession of the new residence need not take place during the reinvestment period (Madrid High Court. Judgment of December 5, 2016)

One of the requirements to be able to take the exemption for investment in the principal residence is that the price obtained on the transfer of that residence must be reinvested in a new principal residence in a period of two years.

In the case adjudged, the construction of the new residence had not ended before that two-year period elapsed, but the total price of the residence had been paid within that period.

After recognizing that the courts have issued diverse decisions on this issue, the Madrid High Court held that the "legal acquisition" of the property and, thus, the delivery of possession of the habitual residence, did not have to take place within the two-year period. It suffices for the cost of the residence to have been paid within that period, using the price obtained from the sale of the previous residence..

4 Tax on the increase in the value of urban land ("IIVTNU").-The tax is unconstitutional if there is no increase in value (Constitutional Court. Judgment of February 16, 2017)

The IIVTNU base is calculated according to an objective formula. Specifically, the cadastral value of the land at the time of transfer of the real estate is multiplied by the real estate ownership period of the transferor (capped at 20 years) and by some coefficients which, theoretically, measure how much the value of the land has increased in that period. As a consequence, the tax base and, thus, the tax payable are always positive, even though the land value might not have increased in that period or even if that value has gone down. Also, the taxpayer does not have the possibility of correcting that value or providing proof to the contrary.

In this judgment, the Constitutional Court analyzed the compliance of the provisions of the Guipúzcoa provincial legislation regulating the tax (identical to the provisions applicable in the common territory, pursuant to the Revised Local Finances Law) with the ability-to-pay principle recognized by the Spanish Constitution.

The Court held that the articles relating to the system of calculating the tax base and to the possibility for the taxpayer to prove a different value are unconstitutional and null, albeit only to the extent that they levy tax in scenarios where there is no increase in value.

For more information, please see our Commentary on this judgment, at the following **link**..

5 Penalty proceeding.- No culpability exists solely because the taxpayer has signed the assessment on an uncontested basis or because it has means to be well advised (Supreme Court. Judgment of December 22, 2016)

The Supreme Court handed down a decision on a cassation appeal for a ruling on a point of law in relation to a penalty proceeding, of which the following reasoning is worth highlighting:

a) Intentionality in the conduct or culpability due to negligence cannot be deduced from the fact of signing the assessment on an uncontested basis:

- Not contesting the assessment relates solely to the facts, while the question of culpability entails evaluating the conduct.
- One cannot rule out the existence of cases in which the taxpayer accepts an assessment with the sole aim of avoiding pointless litigation.

b) It is settled case law that the simple fact that the taxpayer has "experience" and "sufficient means," and that it is "assisted by legal professionals," does not permit the presumption of willful misconduct.

c) It is not possible to reverse the burden of proof derived from the presumption of innocence, even where the taxpayer has not made submissions against its culpability, or they are considered insufficient.

d) The reference to the absence of grounds for exoneration of culpability does not suffice to meet the requirement of reasoning of the subjective element of the infringement.

02 DECISIONS AND RULINGS

1 Corporate income tax.- Minimum reversal of impairment expense must be done on the last day of the tax period (Directorate-General of Taxes. Ruling V0155-17, of January 24, 2017)

As indicated in the introduction of this Newsletter, Royal Decree-law 3/2016, of December 2, 2016, introduced various changes in the tax treatment of impairment losses in respect of securities representing holdings in the capital or equity of entities, modifying (with effects from fiscal year 2016) the transitional regime applicable to the impairment losses deducted in tax periods starting before January 1, 2013, and requiring a minimum annual reversal of one-fifth of those impairment expenses.

The Directorate-General of Taxes ("DGT") has clarified a number of questions in relation to this minimum reversal. Specifically, it has affirmed that:

a) The reversal is not done proportionally during the tax period but rather at the end of the period.

b) For this reason, if the holding is transferred (a case for which the Law establishes that the amounts pending reversal will be included in the tax base, up to the limit of the gain obtained on the transfer), additional amounts shall not be reversed after that transfer.

2 Corporate income tax.- Brazilian dividends and interest on net equity gives entitlement to exemption to avoid double taxation (Central Economic-Administrative Tribunal. Decision of January 12, 2017)

This decision addressed several issues, including most notably that of the legal nature of Brazilian dividends and interest on net equity ("*juros sobre o capital próprio*" or "JSCP"), which arise when Brazilian subsidiaries distribute income to their shareholders.

The TEAC changed the view it had taken in previous decisions and adopted the view which the Supreme Court had taken in its judgments of March 16 and December 15, 2016 (as discussed in previous newsletters), concluding that JSCP are equivalent to a distribution of income rather than a payment of interest because they do not remunerate amounts given as a loan, nor are they calculated on the basis of the outstanding principal of a debt.

In short, JSCP qualify for the application of the dividend exemption where they arise from the existence of income at the Brazilian subsidiary, and the instrument that entitles the shareholder to receive them is the shareholder's stake in the share capital of the subsidiary through the ownership of shares.

3 Corporate income tax.- Impact of restructuring transactions on capitalization reserve (Directorate-General of Taxes. Rulings V5233-16, of December 12, 2016 and V5470-16, of December 28, 2016)

Under the Corporate Income Tax Law (the "LIS"), companies may take a reduction in their tax base equal to 10% of the amount of the increase in their equity in the tax period, provided they set up a restricted reserve (capitalization reserve).

When it comes to determining the increase, the LIS establishes that increases in equity from transactions with treasury stock or restructuring transactions will not be taken into account as equity at the beginning and end of the tax period. The DGT held as follows:

a) Reserves generated for accounting purposes as a result of mergers of a subsidiary whether or not performed under the special tax neutrality regime should not be included as equity (V5470-16).

b) The increase in equity that the subsidiary would have obtained had the merger not taken place (which will be determined by the applicable accounting legislation) must be taken into account when determining the increase in equity, since that increase is unrelated to the merger transaction itself, provided that the other requirements laid down in article 25 are met (V5470-16).

c) In the context of a financial spin-off, based on a systematic and extensive interpretation of the law, reductions in equity from restructuring transactions should not be computed when it comes to determining the increase in equity and meeting the requirement to maintain the increase in such equity. The requirement to maintain the restricted reserve, in turn, will not be deemed met if the special tax neutrality regime applies to the transaction (V5233-16).

4 Corporate income tax.- The remission of collection rights recorded at less than face value generates a gain at the donee subsidiary that is not eliminated in consolidation (Directorate-General of Taxes. Ruling V5469-16, of December 28, 2016)

Under a carve-out, an entity acquired shares in its current subsidiaries and certain collection rights against them. The carve-out was not performed under the tax neutrality regime, so the assets and liabilities acquired were valued by the transferee, for tax purposes, at their market value. Specifically, the collection rights against the subsidiaries were recorded at less than face value because they had been impaired since the moment they had been granted by the transferor. The transferee and the subsidiaries acquired formed a tax group.

Regarding the possibility of remitting the collection rights against the subsidiaries, the DGT held as follows:

a) The LIS does not establish any specific provisions on remissions of debt, so they will follow the treatment established from the accounting standpoint.

b) In this connection, the tax treatment provided for in articles 17.2 and 17.5 of the LIS does not apply to the remission of collection rights, since that treatment is reserved solely for debt capitalization transactions.

c) The remission of the collection right by a parent company for a wholly-owned subsidiary will be treated as a contribution to the subsidiary's equity.

d) However, the cancellation of the debts triggers a gain at the donee entity, for the difference between the fair value of the collection rights acquired and the amortized cost of the liabilities, which will form part of the tax base when the loan/debt is cancelled, as provided for in articles 10.3 and 11 of the LIS. This gain will form part of the consolidated revenue of the tax group and will not be eliminated.

5 Corporate income tax.- The tax group's net revenue does not include that of the entities excluded from the tax group in the fiscal year (Directorate-General of Taxes. Ruling V5286-16, of December 14, 2016)

In 2016, two companies left a tax group due to the transfer of their shares to third parties not related to the group.

The DGT was asked how to calculate the net revenue of the tax group for the purpose of applying the special rules for calculating tax prepayments (increased tax rate and minimum payment) where the net revenue in the twelve months prior to the first day of the tax period is over €10 million.

The DGT ruled that as from the moment when the transferred companies forfeit their status as subsidiaries, their net revenue must not be included in the calculation of the group's net revenues.

The DGT added that if, in the twelve months prior to the first day of the tax period, any group company (or all of them) had not been taxed on a consolidated basis, the net revenue of the tax group will be the sum of transactions performed by each company, individually, in that previous period.

6 Corporate income tax.- The one million euro minimum deduction is not affected by the tax losses offset due to reversal of impairment losses (Directorate-General of Taxes. Ruling V5226-16, of December 9, 2016)

Since 2013, impairment losses in respect of shares or holdings in unlisted entities are not deductible. According to the transitional regime, impairment losses deducted in fiscal years prior to 2013 must be included in the tax base of the period in which the value of equity at fiscal year-end exceeds the value at the start of the year (without prejudice to the minimum already established for fiscal years commencing in 2016, pursuant to which those deducted impairment losses must be included in the tax base within at least five years).

Moreover, at present, the Law establishes restrictions on the offset of tax losses, according to which the offset of these tax losses is subject to a limit calculated on the tax base prior to that offset.

To mitigate the joint effect of both rules, that transitional regime establishes that the percentage limit on the offset of tax losses does not apply in the amount of income relating to the aforementioned reversals of impairment losses, provided that the impairment losses deducted in the tax period in which the tax losses to be offset were generated represented at least 90% of the deductible expenses of that period.

With respect to the application of these provisions, the DGT clarified that the tax losses which are offset without limit should not be taken into account to determine the minimum one million euros to be offset.

7 Personal income tax.- The acquisition value cannot be "0" for the purpose of determining the capital gain on the subsequent transfer of assets if it has not been reported by the taxpayer (Central Economic-Administrative Tribunal. Decision of January 12, 2017)

The issue under dispute centered on determining what acquisition value must be taken into account to calculate a capital gain in cases where the taxpayer has not filed a return or otherwise has filed one without specifying any capital gain. The TEAC held as follows:

(i) If the acquisition of the transferred asset was made for no consideration, the tax authorities must use as acquisition value the actual value of the asset when the acquisition was made, but never the value of 0 euros. In these cases, the tax authorities are entitled to use the means of verification of values regulated in article 57 of the General Taxation Law ("LGT").

(ii) On the contrary, if the acquisition was made for consideration, regard shall be had to the amount paid or to the cost of the asset. Although as a general rule, the burden of proof falls on the taxpayer, the tax authorities must use the means of proof which are or can reasonably be in their possession.

In this regard, it should be borne in mind that, in the case of assets acquired for consideration, the acquisition value can only be the amount effectively paid to a third party (plus actual additional expenses and minus depreciation/amortization) or the disbursements made in case of construction of the asset, and the value must be determined in accordance with the general rules on proof, without carrying out the value verification procedures established in the LGT.

8 Personal income tax.- The economic compensation agreed in a voluntary leave of absence generates salary income that does not qualify as exempt or multi-year income (Directorate-General of Taxes. Ruling V5253-16, of December 13, 2016)

The DGT was asked about the treatment to be given to the economic compensation agreed with an employee for his voluntary leave of absence. According to the DGT:

a) That compensation is salary income which is not exempt, because a voluntary leave of absence entails the holding in abeyance, not the termination, of an employment relationship.

b) This income cannot be classified as notably multi-year income or as income generated over more than two years, so the 30% reduction cannot be applied.

The DGT adds that the amounts, if any, paid directly by the entity when signing the employee's Special Social Security Agreement constitute salary income in kind for the employee, subject to personal income tax and, thus, to payments on account, without prejudice to its consideration as a deductible expense by the employee when he determines his net salary income.

9 Personal income tax.- Vehicle adaptation expenses of a disabled employee constitute salary income in kind (Directorate-General of Taxes. Ruling V5247-16, of December 13, 2016)

An employee with reduced mobility and who uses a wheelchair was obliged to make numerous trips for work reasons, so the company had borne the expenses for adaptation of the vehicle acquired by the employee to meet his physical needs.

The DGT ruled that those expenses will be deemed non-exempt salary income in kind. Moreover, as they derive from the adaptation of the employee's private vehicle to meet his needs, it is not feasible to establish a method of apportionment of private and professional use.

10 Wealth tax.- Unlisted shares must be valued according to the "last approved balance sheet" (Directorate-General of Taxes. Ruling V5434-16, of December 23, 2016)

The Wealth Tax Law establishes that shares and holdings not listed on organized markets must be valued at the net asset value per share specified in the last approved balance sheet, and if the balance sheet has not been audited or the auditor's report is not unqualified, at the larger of that net asset value per share, the par value or the value resulting from capitalizing at 20% the average profits from the three fiscal years closed prior to the date on which the tax becomes chargeable.

The DGT has been ruling, on the understanding that it is consistent with the nature of wealth tax, that the "approved balance sheet" must be the last one approved before the tax becomes chargeable (December 31).

However, the Supreme Court, in judgments of February 12 and February 14, 2013, taking a view that is "favorable to bringing the tax base as close as possible to the actual economic circumstances", interpreted that the reference point must be the balance sheet approved within the legal period for filing the tax self-assessment, even if it is approved after the tax became chargeable. In this ruling, the DGT echoed the view expressed by the Supreme Court.

11 Inheritance and gift tax.- Reduction not affected by change of person performing executive functions after the gift of the family business (Directorate-General of Taxes. Ruling V5212-16, of December 5, 2016)

After the shares in a family business were given as a gift, to which the inheritance and gift tax reduction was applied, the entity considered changing the person performing executive functions in the family group.

The DGT recalled that in order to apply the reduction, the donee is required to keep the assets for ten years following execution of the public deed of donation and, moreover, to retain the right to the wealth tax exemption. For that exemption, at least one person belonging to the family group must perform executive functions and receive the level of remuneration established by the Law itself, but who that person must be is not regulated.

Consequently, the DGT concluded that there was no problem from the standpoint of the inheritance and gift tax reduction (given that there is no problem from the standpoint of the wealth tax exemption) if the person who performs those functions changes before and after the donation, provided that the family group meets the relevant requirements.

12 Administrative proceeding.- Notification attempt is deemed proven if taxpayer is provided with content of the decision in the authorized e-mail address (Central Economic-Administrative Tribunal. Decision of January 12, 2017)

According to the LGT, after its amendment by Law 34/2015, for the purpose of fulfilling the maximum duration of tax proceedings, the attempted notification of an administrative decision is evidenced if the taxpayer has been provided with the content of that decision at the authorized e-mail address. The TEAC was asked whether this was also the case before that legislative amendment.

The TEAC concluded that it was, due to the following:

a) The tax authorities' compliance with a period cannot depend on the will of the interested party to access or not the content of the administrative decision.

b) This interpretation is also valid for periods before the entry into force of that amendment of the LGT, because this is consistent with the spirit of the law. In other words, the fact that the law establishes equivalence between "making available to the taxpayer" and "notification attempt" is merely a technical adaptation of the wording of the law to reflect the new mandatory electronic notification system, which did not exist previously.

13 Management proceeding.- "Interest on interest" must be paid where the tax authorities do not include late-payment interest in their refund (Central Economic-Administrative Tribunal. Decisions of January 12, 2017)

A taxpayer requested the correction of a corporate income tax return and the refund of the amounts incorrectly paid over. The tax authorities accepted the request but stated that late-payment interest was not owed to the taxpayer. The taxpayer filed an appeal with the TEAC and the TEAC ruled that the taxpayer had a right to receive late-payment interest on the refund of the amounts incorrectly paid.

In enforcing the TEAC decision, the tax authorities issued a decision recognizing the taxpayer's right to receive late-payment interest from the date on which the amounts were incorrectly paid until the date on which the payment of the refund was ordered. Disagreeing with that enforcement decision, the taxpayer filed a motion against it with the TEAC requesting, among other petitions, recognition of the payment of interest on the late-payment interest for which its right to payment had already been recognized.

The TEAC held in favor of the taxpayer (changing the interpretation it made in previous decisions and applying the view of the Supreme Court, set forth in its judgments of June 18, 2009, and of June 30, 2014), holding that the taxpayer must be paid late-payment interest on the interest accrued and not paid, because of the delay in refunding the amounts incorrectly paid over as granted in enforcement of a decision.

14 Inspection proceeding.- Reasoning and documentation of value verification procedure based on comparable samples (Central Economic-Administrative Tribunal. Decision of January 19, 2017)

In the assessment resulting from an inspection proceeding, the inspectors proposed increasing the tax base reported for a real estate transfer, based on an appraisal by an expert from the tax authorities using what is known as the comparison method (which compares the analyzed transaction with others deemed similar).

In the appeal before the TEAC (filed by the tax authorities against the decision of the Aragon Regional Economic-Administrative Tribunal), the Tribunal set forth the following view:

a) In order for an expert appraisal of real estate based on the comparison method to be sufficiently reasoned, it must identify the witnesses or samples used and detail the characteristics of the properties used to make the comparison.

b) Moreover, the case file must include a copy of the documents which reflect the transactions used as samples, if those documents consist of public deeds.

15 Penalty proceeding.- Even if the first penalty proceeding is replaced by another because the assessment is modified, the maximum period for completion of the penalty proceeding is computed from the first proceeding (Central Economic-Administrative Tribunal. Decision of January 12, 2017)

The TEAC analyzed the case of a penalty proceeding initiated simultaneously with the issuance of an assessment signed on a contested basis. The chief inspector ordered the completion of the proceedings which led to the issuance of a new contested assessment and a new penalty proceeding. This second proceeding ended more than six months after the start of the first one.

The TEAC ruled in favor of the taxpayer and held that the penalty proceeding had lapsed. For these purposes, the Tribunal held that:

a) The date to be taken into account as the start date of the penalty proceeding is the date on which the initiation of that proceeding was notified for the first time, not the date when the new penalty proposal was notified after the end of the inspection proceedings and the issuance of the new assessment.

b) As the tax authorities exceeded the six-month period for completing the penalty proceeding, it must be considered to have lapsed, and that lapse prevents initiating a new penalty proceeding.

03 LEGISLATION

1 Forms 121 and 122 for personal income tax credits for large families or dependent disabled persons

Order HFP/105/2017, of February 6, 2017, was published in the Official State Gazette of February 10, 2017, approving:

a) Form 121 "Personal Income Tax. Tax credits for large families or for dependent disabled persons. Communication of assignment of the right to the tax credit by taxpayers not obliged to file a return".

This form must be filed to formalize the assignment of the right to the tax credits for large families or dependent disabled persons.

The form may be filed on printed paper obtained from the printing service provided by the State Tax Agency or in electronic format via the Internet, within the period established in each fiscal year for filing the personal income tax return.

b) Form 122 "Personal Income Tax. Tax credits for large families, dependent disabled persons or ascendants with two children, legally separated or without marital relationship. Regularization of the right to the tax credit for taxpayers not obliged to file a return".

This form shall be filed by taxpayers not obliged to file a personal income tax return to regularize their tax situation where the advance payment received for each of the tax credits for large families, dependent disabled persons or ascendants with two children, legally separated or without marital ties, exceeds the amount of the tax credit to which they are entitled.

The form may be filed on printed paper obtained from the printing service provided by the State Tax Agency or in electronic format via the Internet, in the period running between the date on which the advance payments have been received until the end of the period for filing the tax return for the fiscal year in which the excess advance payment has been received (except for the form regularizing amounts received in 2016, which shall be filed in the 2016 personal income tax filing period).

This Order took effect on February 11, 2017.

2 Regulation of certain aspects of tax on the extraction value of gas, oil and condensates

The Official State Gazette of February 6, 2017, published Order ETU/78/2017, of January 31, 2017, regulating certain aspects related to tax on the extraction value of gas, oil and condensates, and establishing the aspects of reference for determining the payments to owners of land superjacent to concessions for the exploitation of oil and gas deposits.

The Order, which took effect on February 7, 2017, approves the provisions necessary to assess the tax and make the payments to the owners of the aforementioned superjacent lands.

3 Tax benefits to mitigate the damage caused by the latest storms

The Official State Gazette of January 28, 2017, included Royal Decree-law 2/2017, of January 27, 2017, adopting urgent measures in relation to real estate tax, business activities tax, value added tax and personal income tax, to mitigate the damage caused by the latest storms.

4 Annual Tax and Customs Control Plan for 2017

The Tax Control Plan for 2017 has been published through a decision of January 19, 2017 by the Directorate-General of the State Tax Agency (Official State Gazette of January 27, 2017).

With the fundamental aim of preventing and combating tax fraud, the Plan is structured around three main areas, (i) prevention, investigation and control of tax and customs fraud, (ii) control of fraud in the collection phase, and (iii) collaboration between the State Tax Agency and the tax authorities of the autonomous communities.

For each of these areas, and in keeping with the Plans published in past fiscal years, several types of control measures and procedures are defined according to the aims sought. The main new aspects included in that Plan are as follows:

a) In relation to prevention, investigation and control of tax and customs fraud:

a. In the context of the actions included in the BEPS Project, the cooperation between the State Tax Agency and taxpayers, currently implemented through the Code of Good Tax Practices, will be reinforced and work will be done to make progress in the design of a new mechanism with associations and organizations of tax professionals.

b. The focus will be placed on the types of fraud related to (i) the black economy (exploiting the information compiled from the new Immediate Supply of Information System – SII – and boosting collaboration with the labor and social security inspectors), and (ii) the ownership or management of large fortunes and situations of dual non-residency. For this last area, it will be essential to apply the different systems and international commitments assumed, including most notably the Foreign Account Tax Compliance Act (FATCA) agreed with the United States, the Common Reporting Standard (CRS) in the context of the OECD, and the automatic exchange of tax information in the European Union.

The tax authorities will also use the asset information related to activities carried out abroad obtained through forms 720 (Informational return on assets and rights situated abroad) and 750 (Special tax return).

c. A detailed analysis will be made of the tax avoidance practices of multinationals and companies with cross-border operations and, mainly, (i) leveraged acquisitions of securities with the aim of deducting finance costs, (ii) the abusive use of transfer pricing policies, (iii) the possible existence of permanent establishments not reported in Spain of nonresident entities, and (iv) transactions with tax havens.

d. In relation to the digital economy and new business models, the tax authorities will (i) step up the control of entities operating internationally in this sector, (ii) control import operations related to e-commerce transactions, and (iii) analyze new means of payment (cryptocurrency, payment processing platforms, payments from mobile devices, etc.).

e. In the area of the fight against fraudulent VAT schemes, the tax authorities will boost (i) preventive control measures of the Intra-Community Operators Registry, (ii) the control of fraud in intra-Community operations, (iii) the verification and inspection of imports of consumer products, textiles and others coming from Asia, and (iv) active schemes in the oil and gas sector, to prevent the abuse of the tax warehouse regime for VAT purposes.

f. With regard to control of tax groups, the following will be priorities: (i) verification of the refund requests by groups subject to the special VAT grouping scheme, and (ii) in the area of corporate income tax, verification of the adjustments to book income and adjustments for consolidation which reduce the tax base.

b) In the context of tax collection, measures will be stepped up to effectively collect debts, both in the voluntary period and in the enforcement period. In this regard, measures will be taken to evaluate the risk of nonpayment in the inspection phase, claim secondary liability and adopt injunctive measures.

The tax authorities will also reinforce the control of debtors who systematically breach their tax obligations, monitor apparent cases of insolvency, review debtors previously declared to be bad debtors, control debtors undergoing insolvency proceedings, implement control procedures in relation to crimes against the Public Finance Authorities, monitor outstanding debts in enforcement period and debts stayed and suspended, and control guarantees offered.

04 OTHERS

1 Report by the CNMV on the accounting impact of the new rules on inclusion of impairment losses on investments, approved by Royal Decree-law 3/2016

As stated in the introduction of this Newsletter, the CNMV, in its "Report on the supervision by the CNMV of the annual financial reports and main areas of review of the accounts of the following fiscal year", has clarified the criteria for accounting recognition of the liabilities derived from the new obligation to reverse, at a rate of one-fifth per annum, the impairment expense deducted in respect of holdings in the capital or equity of entities before January 1, 2013.

The CNMV's solution entails recording the relevant liability in fifths, unless there is no possibility in practice to transfer the securities before the end of the 5-year period.

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