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1. The concepts of “classification”, “conflict in the application of tax provisions” and “simulation” are not interchangeable

Supreme Court concludes that all these concepts must be used for their intended purposes when they were created, observing the procedures specifically defined for each.

Article 13 of the General Taxation Law or LGT (“classification”) states that tax obligations must be sought by reference to the legal nature of the facts, actions or transactions that have taken place, regardless of the form or name that taxpayers have given to them and without regard to any defects affecting their validity. Article 15 and article 16 of the same law define the specific concepts of “conflict in the application of tax provisions” and “simulation”, respectively. The procedures for finding the existence of conflict and simulation also show significant differences.

In a judgment delivered on July 2, 2020 (appeal 1429/2018), the Supreme Court ruled on the concepts defined in those articles and concluded that they are not interchangeable.

In the case at the heart of the judgment, the auditors had concluded, under the rules on classification (article 13), that the activities carried out by a company and by three individuals (who had been registered under the same caption for the tax on economic activities as the company, billed the company, and used the objective assessment method on their personal income returns) qualified as a single activity that was really only carried out by the company. At that company, according to the auditors, the individuals’ activities were simply those of employees, even though they acted under the appearance of being self-employed. The adjustment made to the company's corporate income tax and VAT involved attributing to the company all the revenues of the individuals and all the VAT incurred on activities; and treating the sums received by the individuals as income from personal work for these purposes. A penalty was also imposed on the company.

The judgment is interesting because it contains a very detailed analysis of the three concepts and their scope of application. It notably makes the following affirmations:

a) **Classification** is aimed at determining the legal nature of the taxable event that actually took place, regardless of the form given to it by the parties. **Conflict in the application of tax provisions** requires an instance of avoiding the occurrence of a taxable event including through artificial transactions, wherever the legal or economic results (other than the amount of tax saved) are not significant. And, lastly, in **simulation**, the taxable event on which tax is charged must be that actually carried out by the parties. The tax authorities must state the existence of such simulation in the assessment decision, and may impose penalties.

b) **Case law makes a distinction between simulation and conflict in the application of tax provisions**: in conflict in the application of tax provisions (as opposed to simulation), a real transaction is performed; it is not a case of concealing one type of action behind the appearance of another, but instead of finding protection for an action in a provision that is not rightly the one that should be applied.

c) To **apply these concepts** it first needs to be determined whether it is required to correct the **classification** given by the taxpayers to the actions or transactions that have taken place. Only if transaction's name reflects its legal nature can it be analyzed whether there is **simulation** (article 16); and the anti-avoidance catch-all clause (article 15 LGT - **conflict in**

the application of tax provisions -) applies only in relation to correctly classified actions or transactions that are not considered to be simulated.

d) Therefore, **it cannot be sought to obtain in relation to classification alone the consequences associated with conflict in the application of provisions or simulation**. On this subject, the judgment states that “the concepts were not created by the lawmakers on a whim and (…) have not been made available to public servants to be used freely or at their discretion (…). They are not, in other words, interchangeable”.

The court concluded from those arguments that it is not possible, on the basis of article 13 LGT (classification), for the auditors to ignore the activities reported by individuals, attribute their income and input VAT to a company that carried out the same activity; or reclassify the sums received by the individuals as income from personal work. As a result, it rendered void the assessments and the imposed penalties.

2. JUDGMENTS

2.1 State aid.- The European Commission may review correct application of transfer pricing rules and therefore identify the existence of types of tax aid, although within the limits of those assessment powers.

General Court of the European Union. Judgment of July 15, 2020. Cases T-778/16 and T-892/16

As we discussed in our **Alert dated July 16, 2019**, the General Court of the European Union supports the Commission using the prohibition on granting State aid to combat certain tax planning arrangements. In particular, it sees it as a valid tool for this task of reviewing correct application by taxpayers of the arm´s length principle (explicitly or implicitly recognized in their laws). The GCEU also acknowledges that the application of those rules is complex and subject to different though equally valid interpretations, so the Commission must be extremely diligent in providing evidence of the unlawfulness of the measure.

2.2 International taxation.- The commentaries accompanying the OECD Model Tax Convention cannot be applied retroactively

National Appellate Court. Judgment of March 13, 2020

The National Appellate Court concluded that it is not correct to interpret a tax treaty in light of an edition of the OECD Model Convention and the commentaries explaining it, which was issued later than the audited years. The interpretation of tax treaties must be evolving and dynamic, but a distinction is needed “between commentaries that simply seek to clarify interpretation issues, and those entailing a major change”.

In short, dynamic interpretation has an uncrossable boundary: it is not possible to apply the commentaries to the model convention retroactively where those commentaries are substantively different from those that were in force in the audited years.

This ruling by the National Appellate Court is in line with the view adopted by the Supreme Court on March 3, 2020, which is discussed in our alert dated June 2, 2020 **(view here)**.

2.3 Corporate income tax.- Different timing of recognition rules cannot be applied to revenues and expenses from the same activity

Supreme Court. Judgment of June 17, 2020

The standard timing of recognition rule for revenues and expenses for corporate income tax purposes is based on the accrual method of accounting. Where revenues and expenses are recognized for accounting purposes in a different year from when they occur, (i) if in the accounts a revenue is recorded later or an expense is recorded earlier than the year in which they occurred, they must be reported for tax purposes in the period they occurred; and (ii) if an item of revenue is recorded earlier or an expense later, they must be reported for tax purposes in the period in which they are recorded in the accounts, unless this gives rise to less tax than would have been due by applying the rules for the accrual method.

In the case considered in this judgment, the taxpayer had recorded the revenues obtained from its real estate development activity in its accounts before they occurred; but had recognized expenses under the accrual method. According to rule (ii) above, the auditors concluded that both revenues and expenses had to be recognized for corporate income tax purposes in line with how they were recorded in the accounts, even if that meant revenues would be taxed before they occurred, and costs, when they occurred.

The Supreme Court concluded that, where the taxpayer only recognizes revenues wrongly (by doing so in a period before they occurred), the principle of following the accounting treatment cannot be accepted in relation to those revenues, while retaining the accrual method in relation to expenses. Acting in this way distorts the result to benefit the public purse and harms the ability-to-pay principle and the principle of objectivity that must prevail in all the tax authorities' actions.

2.4 Corporate income tax.- Interest on loans provided for capital reduction to redeem own shares is not deductible, although it is deductible on loans obtained to pay dividends

National Appellate Court. Judgment of March 13, 2020

The National Appellate Court concluded in this judgment that finance costs in respect of a loan provided to repurchase own shares is not deductible because they are not associated with the company's revenues. Whereas interest on loans to pay dividends is deductible, because in this case the cost is associated with revenues.

2.5 Corporate income tax.- Late-filing of self-assessment does not prevent offset of net operating losses

Cantabria High Court and Valencia High Court. Judgments of May 11, 2020 and May 25, 2020

A company filed its corporate income tax return after the time limit. In that return it offset net operating losses carried forward from prior years. According to the auditors, the offset of net operating loses is an election that must be made in the voluntary period.

The Cantabria and Valencia high courts held in these judgments that the spontaneous late filing of a return already has the penalty consequences laid down in tax law, which do not include being prevented from offsetting net operating loss carryforwards, so their offset cannot be disallowed.

2.6 Personal income tax.- Senior managers are entitled to apply the exemption in cases of dismissal as well as for resignation. They do not forfeit their right to this exemption, even if they become members of the company's managing body after their dismissal.

Valencia High Court, in a judgment delivered on June 30, 2020. Supreme Court, in a judgment delivered on July 23, 2020

The senior management royal decree states that senior managers are entitled to severance equal to twenty days' pay per year capped at twelve monthly payments where their employment contract is terminated following unjustified dismissal (seven days' pay per year capped at six monthly payments where termination is by unilateral decision of the employer). An agreement to the contrary is allowed in both cases, however.

The Supreme Court (Labor Chamber) in a judgment delivered on April 22, 2014 (appeal 1197/2013) held that it was not logical for the lawmakers to allow agreements that exclude any severance payments. On the basis of this principle the National Appellate Court (Judicial Review Chamber), in a judgment rendered on March 8, 2017 (appeal 242/2015), concluded in a case of termination by unilateral decision of the employer that the severance payment equal to seven days per year capped at six monthly payments amounted to a mandatory lower limit exempt from personal income tax. Later, in judgments delivered on November 5, 2019 (cassation appeal 2727/2017), July 23, 2020 (cassation appeal 910/2019), and September 4, 2020 (cassation appeal 3278/2019), the Supreme Court confirmed the National Appellate Court's view.

Although in these judgments the Supreme Court refers to cases involving a unilateral decision, the view explained in them is transferable to cases involving unjustified dismissal, in light of the reasoning provided by the court. The same conclusion was reached again recently by Valencia High Court in a decision delivered on June 30, 2020, although referring to the judgment by the Supreme Court (Labor Chamber) on April 22, 2014 rather than to subsequent ones by the Judicial Review Chamber.

Moreover, article 1 of the Personal Income Tax Regulations states that the right to the relief for dismissal is forfeited if the employee does not actually sever ties with the employer. This failure to sever ties is presumed to exist (unless proof to the contrary is provided) if in the three years following dismissal the employee provides services to the company or a company related to it. In its judgment, Valencia High Court concluded that it cannot be presumed that the employee did not sever ties by reason of the fact that, following dismissal, the employee is appointed director at the company if, as may be inferred from the proven facts, (i) membership of the managing body does not coexist with an employment contract and (ii) the individual receives a retirement pension compatible with membership of the managing body.

2.7 Personal income tax.- A dismissal cannot be reclassified by mutual agreement without solid proof

National Appellate Court. Judgment of July 22, 2020

Tax auditors reclassified a few dismissals as employment contract terminations by mutual agreement on the basis of a number of items of proof. The reviewed period was before the 2012 labor law reform, in other words, when the so-called *express dismissal* still existed, which allowed employers to acknowledge unjustified dismissal without using a conciliation hearing.

The National Appellate Court examined each of those items of proof in turn and concluded as follows:

a) Although the items of proof are valid, the link between every item of proof and the conclusion obtained needs to be adequately supported.

b) Some of the items of proof used in the case examined by the auditors did not lead to the conclusion that there had been an agreement instead of a dismissal. Specifically, the court mentioned the following circumstances:

- The absence of an administrative conciliation hearing and the resulting immediate payment of severance, after unjustified dismissal had been acknowledged by the employer. According to the court, the goal of *express dismissal* is precisely to speed up procedure, so these facts are not indicative of mutual agreement.

- Dismissal letters drafted according to a standard form. The National Appellate Court underlined that it is usual practice, especially at large companies, for internal procedures to exist for reducing paperwork, even more so for dismissals where the employer is willing to acknowledge that they are unjustified.

- Insufficient support for the cause of dismissal. As the court recalled, unjustified dismissal is, in fact, dismissal without cause.

c) Other items of proof could in theory indicate mutual agreement, but adequate support needs to be provided for the reasons that lead to that conclusion. In the examined case, either the link between the item of proof and the conclusion obtained was not adequately supported, or the taxpayer gave sufficient reason to believe that there was a dismissal. The court affirmed the following:

- It is normal practice if an employer is willing to acknowledge unjustified dismissal for that employer to decide to pay more than is required under the legislation, to reduce the risk of the dismissal going to court or the risk to its reputation caused by employees taking action.

- It is also normal for the employee to accept the severance and not go to court to seek a decision rendering the dismissal null and void, because the likelihood of obtaining confirmation of a null and void dismissal is very low in most cases.

- It is reasonable to expect severance agreements to be signed when senior managers are hired, as a mechanism to attract talent, even though it might be seen as contrary to the business logic of keeping costs down.

2.8 Personal income tax.- A taxpayer being taxed in the UK as a non-domiciled resident does not prevent the inbound expatriates regime applying when they return to Spain

National Appellate Court. **Judgment of June 15, 2020**

The UK income tax legislation allows a special scheme for resident taxpayers not having their permanent residence there (non-domiciled residents) if they meet certain requirements. Under this scheme, only income generated in or sent to the UK is taxed there.

In Spain, the inbound expatriates regime allows workers sent to Spain who acquire residence there to continue being taxed as nonresidents for several years if specific requirements are met. In particular, taxpayers cannot claim this regime if they have been resident in Spain in the ten years before the new period spent in Spain.

The question at issue in this judgment related to determining whether a taxpayer that had traveled to Spain for work reasons could claim the inbound expatriates regime, even though in the previous ten years they had been a non-domiciled resident in the United Kingdom and, therefore, had had to be taxed as a resident in Spain to report certain types of income that were not taxed in the United Kingdom; to which the National Appellate Court replied that they could.

2.9 Inheritance and transfer and stamp tax.- The attribution to a spouse of property under absolute ownership in respect of payment for a usufruct right in a testate succession implies an exchange subject to transfer and stamp tax (Catalonia)

Supreme Court. Judgments of July 23, 2020 (appeals numbers 3947/2018, 7380/2018 and 2391/2019)

In his will the deceased had bequeathed to his wife a universal and lifelong usufruct right and the offspring were named as universal heirs. In the deed of statement and acceptance of the inheritance absolute ownership of certain items was conveyed to the spouse in respect of payment for the usufruct right, and to the heirs, absolute ownership of the other items of property.

The Supreme Court recalled that, for the purposes of inheritance and gift tax, acquisition of the inheritance takes place at the time of death of the deceased. This means that the lifelong usufruct right bequeathed to the spouse on a universal basis in all the items of property in the inheritance takes place at the time of death, which is when the coheirs obtain naked ownership of all the items of property in the inheritance. In other words, it is in the later deed of statement and acceptance of inheritance that it is decided to exchange the lifelong usufruct right in all the items of property for absolute ownership of certain items, which causes the existence of a new conveyance that must be taxed separately.

Although article 57 of the Inheritance and Gift Tax Regulations state that, for tax purposes, the exchange of a lifelong usufruct right for absolute ownership of items of property is not treated as a separate legal transaction from the inheritance itself, the Civil Code only allows the exchange of a universal usufruct right in intestate successions. Therefore, because the case involved testate succession, the exchange of the usufruct right by decision of the parties implies that, (i) for the widow, there is an exchange subject to transfer and stamp tax and, (ii) for the coheirs, there is a consolidation of legal title subject to inheritance and gift tax (all of which is separate from the inheritance and gift tax associated with the inheritance that took place when the death occurred).

2.10 Inheritance and gift tax.- The rectification of a return filed in voluntary period does not interrupt the statute of limitations if tax authorities fail to review that correction within time limit

Supreme Court. Judgment of June 18, 2020

The deceased from whom the property had been inherited had died in May 2007. The person liable for inheritance and gift tax filed their tax return within the time limit and later (in 2008 and 2009) filed two supplementary returns. In November 2012 the tax authorities initiated a limited review procedure which ended with the relevant assessment.

The tax authorities found that the two supplementary returns tolled the statute of limitations and that therefore the period had not ended when the assessment decision was issued.

The Supreme Court concluded, however, that those returns each gave rise to the commencement of a separate tax management procedure which the tax authorities had not settled within the six month period and therefore they expired. As a result, the actions performed within those procedures, including the returns that had initiated them did not toll the statue of limitations for the tax authorities' right to make an assessment.

The court underlined that, otherwise, (i) a breach by the tax authorities of their obligation to complete within a specific time period the procedure initiated by the return would have no consequences, and (ii) would allow the tax authorities to keep the statute of limitations tolled indefinitely.

2.11 Inheritance and gift tax.- Only income from directly held investments is taken into account for the purposes of the family business reduction

Supreme Court. Judgment of June 18, 2020

In share transfers, the family business reduction to inheritance and gift tax requires certain requirements to be met, including that one of the members of the family group must carry out management activities at the company and receive in respect of those activities compensation representing more than 50% of all their income from business or professional activities and from personal work.

The Supreme Court concluded that, to be able to claim the reduction, only income from directly held investments may be taken into account (which clashes with the view taken by the DGT in various resolutions).

2.12 Cadastral valuations.- Taxes calculated by reference to value in the cadaster that the tax authorities have acknowledged to be incorrect must be refunded

Supreme Court. Judgment of June 3, 2020

The legislation on the cadaster states that, where the cadaster corrects discrepancies between a property description in the cadaster and the property's actual characteristics, any new appraisal will be effective from the date following that of the decision to correct it. The Supreme Court concluded in this judgment, however, that the time limit for the effects of the correction is only valid with respect to the cadaster; because a tax assessment calculated by reference to a value in the cadaster that has been acknowledged to be incorrect by the authorities themselves cannot be accepted. This means the taxpayer can recover any amounts paid incorrectly in the past.

2.13 Real estate tax.- Tax authorities must provide proper reasoning for separate tax rates

Seville Judicial Review Court no 3. Judgment of May 18, 2020

The real estate tax law recognizes the authorities' power to establish separate tax rates for urban properties with the highest values in the cadaster, in light of the uses determined in the legislation on the cadaster. These separate rates could be applied to up to 10% of the properties in a municipality with the highest values in the cadaster for each use, not including residential.

In this judgment, the Seville court concluded that, in all cases, reasoning must be provided for setting these separate rates and they must have economic support; otherwise, any real estate tax assessments using these rates will be null and void.

2.14 Tax on construction, installation projects and works.- The statute of limitations for the right to audit the taxable amount starts on physical completion of the work

Supreme Court. Judgment of June 22, 2020

The Supreme Court clarified that the four-year statute of limitations that the tax authorities have to audit the taxable amount for the tax on installation projects and works self-assessed by the taxpayer starts to run on the date of completion of the work. And this is regardless of the validation date of the certificate for the completion of building work and of whether the authorities have received formal notification of that completion.

2.15 Expiry of the statute of limitations and *actio nata*.- Where an incorrect revenue is found as a result of an adjustment made to another taxpayer, the right to apply for a refund arises when the taxpayer has notice of that adjustment

Supreme Court. Judgment of June 11, 2020

In an audit it was found that items of commission paid by one company to another were not deductible because they really related to return on equity. This classification means that the recipient company should not have been taxed on the items of commission (if they were dividends, they would have been exempt). Therefore, when this company became aware of the adjustment to the payer, it applied for a refund of incorrect payments (four years after it had reported the items of commission).

The Supreme Court held that, under the *actio nata* theory, together with the principles of good management and of prohibition of unfair enrichment, the recipient company is entitled to a refund. In these cases, the time limit for applying for a refund starts when the individual has knowledge of the adjustment made to the payer because it is this adjustment that discloses the incorrect nature of the payments made. Besides, the tax authorities themselves could have adjusted both items at the same time.

2.16 Collection procedure.- Denial by silence does not allow the tax authorities to initiate enforced collection proceedings

Supreme Court. **Judgment of May 28, 2020**

A taxpayer appealed against a tax assessment without requesting a stay. After the maximum time limit for settling the appeal had ended the tax authorities deemed that the appeal had been dismissed and initiated enforced collection proceedings for the debt. Despite the taxpayer having been able to request a stay of the debt and not doing so, the court concluded as follows:

a) The order initiating enforced collection proceedings was issued after the period for settling the appeal had expired and, therefore, when the presumed action (denial by silence) had taken place.

b) The action presumed as a result of denial by silence is not an action in the strict sense, instead a fiction that allows the party concerned to challenge, so as to prevent an impasse caused by the creation of indefinite situations and absences of replies. This challenge option is precarious, however, because it makes it necessary to appeal against “non action”, in other words, a dismissal which, among other characteristics, is not reasoned.

c) As a result, it cannot be allowed for an order initiating enforced collection proceedings to be issued when the period for a decision has ended. What the tax authorities must do is expressly decide and not attempt to obtain an advantage (the right to enforce collection) due to the absence of a decision. Otherwise, an appeal for reconsideration becomes an instrument devoid of any use.

The court underlined that it is reprehensible to enforce collection of a tax debt before expressly deciding on the appeal lodged against that debt, which, if the taxpayer’s claims are upheld, could lead to the assessment being overturned; since the same amount of effort needed to issue the order initiating enforced collection proceedings could have been employed to decide on the appeal in the proper time and form.

2.17 Shifting of liability.- A “double shot” is allowed in decisions determining tax liability

Supreme Court. **Judgment of June 03, 2020**

The authorities held the director secondarily liable for a company's debts. The director appealed against that decision by arguing that the tax debts assessed for the company (principal debtor), and for which liability had been shifted, had been calculated incorrectly. The Valencia Regional Economic-Administrative Tribunal (TEAR) upheld the claim, overturned the decision determining liability and ordered the tax authorities to issue another decision shifting liability changing the amount of the tax debts of the principal debtor. The appellant, however, objected to that second shifting of liability by arguing that the decision by Valencia TEAR rendered the principal debtor ‘s debt null and void. Therefore there was no debt for which to shift liability.

The Supreme Court concluded that the liable person's debt is separate (distinct from that of the principal debtor) and only arises if the legal requirements for shifting liability are met. Therefore, the effects of an appeal lodged by the liable person cannot be extended to the principal debtor. Under that reasoning, if an economic-administrative body partially upholds the claim against the decision determining liability, in enforcement of that decision a new decision determining liability may be delivered which changes the original decision (as long as the right to demand payment of the debt has not expired and the *reformatio in peius* principle is observed).

2.18 Audit procedure.- If certain elements have been audited in a management procedure they cannot be audited again by the tax authorities in a later procedure

Supreme Court. Judgments of July 23, 2020 (appeals numbers 1216/2018, 877/2018 and 158/2018)

The Supreme Court examined whether the auditors may issue a separate assessment from that made earlier by a management office, where the examined facts are the same and the only difference is their legal classification.

The court concluded that, where the management body has all the information needed to issue the assessment, that assessment cannot be modified in a later audit, unless in this later audit new facts or circumstances are discovered which require different activities from those performed to make the first assessment.

2.19 Audit procedure.- The tax activity program appearing in the specifications does not necessarily restrict the scope of audit and examination work

Supreme Court. Judgment of July 23, 2020

A general personal income tax audit was carried out on a taxpayer who carried on a professional activity and conducted a real estate development business. The audit program's specifications stated that the program for auditing taxpayers was on "professionals", whereas the revenues of the individual's real estate business were also adjusted.

The Supreme Court held that the program behind the selection of taxpayers to be audited and which appears in the audit program's specifications does not predetermine the scope of the audit work, which must be decided by the competent bodies of the tax authorities and appear in the notice of commencement of audit activities.

2.20 Penalty procedure.- A penalty procedure may be commenced before the assessment is issued

Supreme Court. Judgment of July 23, 2020

It was raised whether the legal system generally and article 209.2.2 LGT in particular authorize the tax authorities to initiate a tax penalty procedure before issuing and notifying the assessment decision, determining the event legally defined as a tax infringement.

The court concluded that infringements causing a loss of tax revenue are governed by the "no assessment no penalty" principle, although this does not prevent a tax penalty procedure being commenced before an assessment exists.

2.21 Penalty procedure.- The 25% reduction is allowed for penalties imposed to replace others that have been voided

Supreme Court. Judgment of July 8, 2020

Article 188.3 LGT states that the penalty amount may be reduced by 25% where the taxpayer does not appeal against the assessment or the penalty and pays in the voluntary payment period.

In the case examined in this judgment, the taxpayer appealed against the assessment and the penalty issued by the authorities. The court partly upheld the appeal on the penalty, and ordered for a new penalty to be imposed to replace the one that had been voided. The Supreme Court confirmed that, in these cases, the taxpayer must be granted a new voluntary payment period and the 25% reduction must be allowed if they do not appeal against the new penalty and pay it in that period.

2.22 Penalty procedure.- A penalty lapses if the infringer dies before it becomes final

Supreme Court. Judgment of June 03, 2020

This judgment stemmed from a penalty decision which was appealed by the person held responsible for the tax infringement. The taxpayer died before the penalty became final.

The Supreme Court ruled that, under article 190.1 LGT, the death of the infringer after the imposition of a penalty, but before it has become final, causes it to lapse, so it cannot be sought from the heirs.

2.23 Review procedure.- A final and consented assessment may be held null and void

Supreme Court. Judgment of July 16, 2020

A nonresident taxable person for inheritance and gift tax purposes was taxed under the central government legislation instead of the autonomous community legislation that would have applied to them if they had been resident in Spain. The Court of Justice of the European Union (CJEU) later concluded in a judgment delivered on September 3, 2014 (case C-127/12), that Spanish law was discriminatory and precluded the principle of the free movement of capital by establishing differences between residents and nonresidents in Spain. The assessment on the taxable person had already become final when this judgment was delivered, although it was issued after the appeal had been lodged with the CJEU, a fact that the authorities did not notify to the taxpayer.

The Supreme Court concluded that the CJEU's case law contained in that judgment does not *per se* provide sufficient reason for holding all the authorities' actions null and void, although it does require, even in the presence of final actions, the petition to be considered without the need to invoke for this purpose a ground for them being null and void as a matter of law, the only option for satisfying the principle of effectiveness.

In this case the requirements for rendering an action null and void as a matter of law under article 127.1 LGT were met (actions *"a) harming rights and freedoms protected by the Constitution"*), and therefore it involved an assessment issued under a law that was held not to be in conformity with EU law due to being discriminatory, with a breach of article 14 of the Constitution. The fact of it being a final assessment is not an obstacle to this.

2.24 Enforcement procedure.- It is not necessary to complete the administrative jurisdiction to apply for extension of the effects of a final judgment

Supreme Court. Judgment of June 18, 2020

The Supreme Court held in a judgment on October 3, 2018 that social security maternity benefits were exempt from personal income tax. A taxpayer applied to Madrid High Court for the effects of that final judgment to be extended, an application that the court rejected because it considered that the interested party should first have completed the administrative jurisdiction (starting with an application for correction of their personal income tax self-assessment).

Against this, the Supreme Court concluded that requiring the interested party to submit their request first to the authorities means making a useless step, causing unnecessary delays and contradicting the purpose of the law allowing the option of requesting extension of the effects of final judgments.

3. DECISIONS

3.1 Corporate income tax - Directors' compensation that goes against corporate law does not qualify for deduction

Central Economic-Administrative Tribunal Decision of July 17, 2020

Under article 15.e) of the current Corporate Income Tax Law (Law 27/2014 of November 27, 2014), compensation paid to directors for the performance of senior management functions or other functions deriving from an employment contract with the entity is not classed as a gratuity. The understanding had been, based on this article, that the new Corporate Income Tax Law had brought to an end the long-running dispute regarding the deductibility of remuneration of this nature.

In this decision, however, the Central Economic-Administrative Tribunal insists that the corporate law requirements must be met for such compensation to qualify for deduction. Therefore, in a case where the bylaws provide that the directors are not compensated for their services, the compensation paid to the director is not deductible. This conclusion is applicable both to listed and unlisted companies.

This compensation, under the principle of the binding relationship, could include any compensation received for the performance of executive and management functions by persons forming part of the managing body.

3.2 Corporate income tax.- Withholding tax made on unpaid rents cannot be deducted

Central Economic-Administrative Tribunal Decision of June 29, 2020

A few regional economic-administrative tribunals have held that withholding tax due on payable income may be treated as if it had actually been paid, and may be deducted and refunded (if it is higher than the amount of tax payable). Others, however, have taken the opposite view, by arguing that in these cases no actual withholding has taken place.

TEAC concluded that the obligation to withhold is triggered, in relation to corporate income tax, when the income from which the tax is to be withheld becomes payable. The withholding of tax is necessarily associated with payment, however, so for the withheld tax to be deducted (and, if applicable, any amounts refunded), it is not enough for the obligation to have been triggered, it is also necessary for the tax to have been able to be withheld due to payment of the income.

3.3 Corporate Income Tax. - If a company declares itself bankrupt and is removed from the Companies Index, the procedure must contain essential documents relative to the declaration of bankruptcy

Central Economic-Administrative Tribunal **Decision of June 11, 2020**

The authorities declared a company bankrupt and, as a result, gave notice that it would be removed from the Companies Index.

TEAC observed that in the removal procedure sufficient information had not been made available on the debts or the enforcement actions taken for the declaration of bankruptcy. Because that state of bankruptcy must be actual rather than apparent to allow the corporate income tax legislation to be applied and decide on removal from the Companies Index, the removal decision was null and void due to the absence of reasoning.

3.4 Personal income tax.- The penalty for failing to report residential rental income must be calculated by reference to the reduction applicable to that rent

Andalusian Regional Economic-Administrative Tribunal. **Decision of October 25, 2019**

In the examined facts, the taxpayer had not reported in their personal income tax returns income from the rental of a residential property, due to considering that it could benefit from the 100% reduction allowed for cases where the renter is aged between 18 and 35. However, it did not have the notification from the renter stating that this was the case. The auditors adjusted the taxpayer's position without applying any reduction. On the resulting debt, they calculated and imposed a penalty for failure to pay the required tax debt (article 191 LGT).

The Andalusian TEAR confirmed the assessment, but rendered the penalty void. The tribunal found that the infringement under article 191 LGT consists of failing to pay the tax debt that should have resulted from correct self-assessment of the tax. Because the taxpayer did not have that notification from the renter, they were not entitled to the 100% reduction, but they were entitled to the standard 60% reduction for residential rentals. The penalty, therefore, should have been calculated on the amount that should have been paid over if this 60% reduction had been made.

It needs to be mentioned that a decision by the Supreme Court is expected on a cassation appeal (decision of July 18, 2019, in appeal 1434/2019) in which the court will examine the meaning and scope of the expression "income reported by the taxpayer" as contained in article 23.2 of the Personal Income Tax Law for the purpose of applying the 60% reduction.

3.5 Value added tax.- If amounts of VAT for offset were generated in a year held statute-barred, their offset cannot be denied in a later year

Central Economic-Administrative Tribunal Decision of June 9, 2020

The company had amounts of VAT to be carried forward for offset. In separate audits, the authorities (i) reviewed the year in which those amounts of VAT to be carried forward had been generated, and found that they were not correct; and (ii) revised the subsequent year in which those amounts had been offset and, on the basis of the previous adjustment, disallowed the right to offset them. The adjustment made in the first audit, however, was voided due to becoming statute-barred.

TEAC held that, following the entry into force of Law 34/2015, of September 21, 2015, partially amending the LGT (in force since October 12, 2015), the authorities may audit amounts carried forward for offset from statute-barred periods, to adjust later non-statute barred periods. This option cannot apply, however, in cases where the adjustment for the period to which the amount for offset relates has been voided by a reviewing body due to being statute-barred, in view of the disappearance from the scope of the law of the voided assessments.

3.6 Value added tax.- Revenues obtained by purchasing derivative hedging instruments are not added to denominator for deductible proportion

Central Economic-Administrative Tribunal Decision of June 9, 2020 (reiterated principle)

The auditors changed the denominator in the fraction used to calculate an entity's deductible proportion, because it had not included amounts relating to the income actually assessed on certain financial transactions; mainly, cash currency exchanges and forward exchange contracts, interest rate swaps and cross currency swaps.

In line with the supreme court judgments of May 18, 2020, TEAC concluded that these cannot be treated as transactions for VAT purposes. By purchasing those financial products, the entity simply hedges certain risks that could threaten the success of its specific activities. In other words, it is the financial institution offering those products that provides services in relation to them. Any revenues from the financial derivatives, therefore, do not have to be included for calculating the deductible proportion.

3.7 Value added tax.- Taxable amount cannot be changed if collection of the debt has been requested in a mailed document certified by a notary

Central Economic-Administrative Tribunal Decision of June 03, 2020 (reiterated principle)

Under article 80.4 of the VAT Law, the taxable amount may be reduced where the debts relating to amounts levied on chargeable transactions are fully or partially uncollectible. For these purposes, the taxable person is required to have requested collection of the debt through a court claim or demand for payment sent through a notary.

In the case examined by TEAC, the creditor had requested collection of the debt in a mailed document certified by a notary, so they were denied the option of changing the taxable amount. The TEAC held as follows:

a) Mailed documents certified by a notary only evidence that the document was sent, the contents of the document and the date of delivery or sending through a technical procedure, but do not confer the right to reply on the same document.

b) The purpose of demand for payment documents, however, is to convey information or a decision to a person, inviting the recipient of the demand to adopt a certain type of behavior. These letters are sent by appearing before a notary in the place where the notice is sent (or by mail, if there is no legal rule against it) and contain a note stating the attempt to serve the petition through a notary, the means used and its result, in addition to the recipient's reply.

The tribunal underlined also that the requirement relating to collection having to be requested through a court claim or demand for payment sent through a notary does not infringe the principle of neutrality of the tax, in that it contributes to ensuring exact receipt of VAT, to preventing fraud and to eliminating the risk of loss of tax revenue.

3.8 Penalty procedure.- Penalties for not paying a personal income tax debt must be calculated by taking into account the withholding tax sought from the payer

Central Economic-Administrative Tribunal Decision of June 11, 2020

The tax authorities considered that payments made by a club to the agent of one of its players were salary income for the player himself. The assessment issued to the club required payment of the tax not withheld. These withholdings were deducted in the assessment decision issued later to the player, so the amount due on this assessment was zero. In the penalty imposed on the player, however, the base for calculating the penalty was the amount of tax due, before deducting withholding tax.

TEAC recalled that in an infringement consisting of "failing to pay", the base for calculating the penalty matches the unpaid amount on the self-assessment as the result of commission of the infringement (article 191.1 LGT). Article 8.1 of the General Regulations on the Tax Penalty Regime, however, states that, if all adjustments made by the auditors are subject to a penalty (as occurred in the disputed case), the base for calculating the penalty is equal to the amount due as a result of adjustment made.

Therefore, it rendered void the challenged penalty decision, by finding that, if the omitted withholdings are sought from the withholding agent in a earlier procedure (and, therefore, in the personal income tax audit adjustment procedure on the recipient their deduction was allowed), the base for calculating the penalty must match the amount not paid over as a result of the assessment, in other words the relevant amount after deducting the withholding tax.

4. RESOLUTIONS

4.1 Corporate income tax.- Costs incurred in the buying and selling of properties as a business have to be reported when they occur, even if the revenues occur in later years

Directorate General for Taxes. Resolution V2090-20 of June 23, 2020

The issue concerned a company that had elected the special regime for companies engaged in property leasing, which intended to carry on a second activity of buying and selling properties. In conducting this new activity, the company incurred overheads (directors' compensation, office rental, interest on finance to buy real estate assets, etc.) and incurred expenses and steps performed to achieve sales of the assets (research and determining when and how to put the assets up for sale, marketing activities for sales, etc.). Expenses may be incurred in years before the years when the revenues occurred.

The DGT requested a report from the Spanish Accounting and Audit Institute (ICAC) on the accounting treatment of such expenses. The ICAC concluded that those expenses cannot form part of the price paid to buy the inventories or be recorded as prepaid expenses, and that they must be recognized in the income statement in the year they occur, as stated in the accrual principle. This principle must also be followed, therefore, in relation to the ability to deduct the expenses.

4.2 Corporate income tax.- Preparatory activities for a real estate development activity are not treated as an economic activity

Directorate General for Taxes. Resolution V2100-20 of June 23, 2020

A company had transferred its investment in another company. The transferred company owns various plots of land. One of them was intended to be leased for use as a parking lot; the others, plots of non-developable land, were bought with the aim of amending the General Urban Zoning Plan for residential and commercial development. In relation to these plots, steps were taken at the council that originally approved the amendment to the urban zoning plan, although it later gave notification that it was discontinuing the amendment process. An application for judicial review was filed against the decision to discontinue. For the conduct of these activities, the company does not have an employee with an employment contract; although the transferring shareholder provides real estate management services to it, and has staff hired on a full time basis.

It was asked whether the transferred company qualifies as a holding company, for the purposes of the relief under article 21 of the Corporate Income Tax Law. The DGT concluded as follows:

a) Because the company does not have any individuals hired under employment contracts, it does not meet the requirements for considering that a property leasing economic activity is carried on in relation to the leased land.

b) Moreover, it has not carried on a real estate development business either because only administrative tasks have been performed (the intention or wish to conduct it does not mean that it actually started).

On that basis, it must be concluded that the company is a holding company.

4.3 Corporate income tax.- A company created outside Spain whose only shareholder and director is resident in Spain may be treated as tax resident in Spain

Directorate General for Taxes. Resolution V1964-20 of June 16, 2020

The submitter is an individual resident in Spain who was considering setting up a company in Estonia, and would be the only shareholder and director of that company. They would continue residing in Spain and working from their home in Spain as a self-employed worker for their own company, for which they would receive monthly payments.

The DGT recalled that, even if the company is set up under Estonian law and is domiciled in that country, it could be treated as tax resident in Spain if the management and control of its activities were carried out from Spain, which could occur because its only shareholder and director resides in Spain.

If, under Estonian domestic law, the company is also treated as resident there, the tax treaty between both countries would have to be applied, which states that the competent authorities in the contracting States must make every effort to resolve the case through a mutual agreement procedure, taking into account the place of effective management, the place of formation, and that of any other relevant economic and physical factors.

4.4 Corporate income tax.- There is no obligation to withhold tax on a capital increase out of reserves or additional paid-in capital

Directorate General for Taxes. Resolution V1809-20 of June 8, 2020

A company's shareholders' meeting resolved to increase capital (by issuing new shares), out of voluntary reserves or additional paid-in capital. The resolution took place in the context of its shareholder compensation policy, which allows shareholders to choose to receive shares issued at no charge, by selling their preemptive subscription rights at the company (at a predetermined price), or by selling those rights at the market price from time to time.

After a report was requested from the ICAC on the accounting treatment of the transaction, it concluded that the sums or assets received by the shareholders must be treated as dividends, regardless of whether they receive (i) shares issued at no charge, (ii) cash in respect of the sale of subscription rights at the company, or (iii) rights that they can transfer on the market; whether these awards are made out of reserves or additional paid-in capital

The dividends may be exempt (article 21) in every case, if the relevant requirements are met. In the particular case of a payment out of additional paid-in capital, the tax value of the shareholder's interest must be reduced; the excess over that value must be included in the shareholder's tax base as a dividend, with entitlement, if applicable, to that relief.

Under the applicable legislation, none of these cases will trigger the obligation to make a withholding or advance payment of corporate income tax.

4.5 Corporate income tax.- The special property leasing regime cannot be applied for properties leased to commercial companies

Directorate General for Taxes. Resolution V1699-20 of May 29, 2020

A company that elected the special property leasing regime plans to lease a residential property to a commercial company, which will use it for temporary accommodation for individuals (the tenant's workers) identified in the contract, and the tenant has agreed not to alter that use.

The DGT stated that leases are only allowed to benefit from this regime if their primary purpose is to satisfy the tenant's permanent accommodation needs, which does not occur where the residential properties are leased to commercial companies, even if they then supply them for use by individuals. This circumstance also affects fulfillment of the minimum three year period in which the residential properties must be leased (with a potential obligation to adjust previous years) and affects calculation of the minimum income to asset ratios.

4.6 Corporate income tax.- A real estate tax expense charged by the lessor under a finance lease is not affected by the limit on deduction of finance costs

Directorate General for Taxes. Resolution V1601-20 of May 26, 2020

A Spanish company carries on its business activity at a building it leases from a financial institution under a real estate lease finance lease agreement. The finance lease agreement stipulates that all taxes and costs incurred in respect of the building would be at the expense of the lessee. As a result of this clause, the financial institution has been charging the lessor for real estate tax on the building, an expense that the lessee company recorded in account 6310, defined as "Other taxes".

It was asked whether that expense may be affected by the limit on the deduction of finance costs, due to the real estate tax charge being related to a debt or whether, by contrast, that limit does not apply because it is a tax charged on ownership of the building.

The DGT recalled that, in line with the resolution issued on July 16, 2012, the finance costs that must be included for calculating the limit are those in respect of the company's debts, recognized in accounts 661, 662, 664 and 665. Therefore, if the accounting rules applicable to the agreement concerned do not require the mentioned accounts to be used for their correct recognition, that agreement does not have to be taken into account for determining the net finance expense in the year affected by the limit.

4.7 Corporate income tax and nonresident income tax.- Traveling and accommodation costs of a nonresident director are not subject to withholding tax and are deductible under the standard rules

Directorate General for Taxes. Resolution V1396-20 of May 13, 2020

The submitter pays certain traveling and accommodation expenses in relation to the activities carried out by its chief executive officer resident in Italy. These expenses are incurred to provide the officer with the funds he needs to travel to Spain and stay there temporarily, for the sole purpose of carrying out his work and performing his duties.

In relation to this case, the DGT set the following guidelines:

a) Under the tax treaty signed with Italy, if the expenses are paid directly by the company and no private gain is obtained by the chief executive officer, it may be concluded that these payments do not determine the existence of income for the officer for nonresident income tax purposes, so the company is not required to withhold any tax on those payments.

b) In relation to corporate income tax, the DGT mentioned the following:

- The standard rules on the deduction of an expense (article 10.3 and article 11.3 of the law).
- The inability to deduct gifts or gratuities and the fact of these not including compensation paid to directors for the performance of senior management functions, or other functions under an employment contract with the entity.
- The inability to deduct expenses incurred to carry out activities that are against the law.

On the basis of that legislation, it concluded that the amounts paid by the company qualified as tax deductible expenses, provided that the statutory requirements are met in terms of their accounting treatment, occurrence, having matching revenues and expenses and being supported.

4.8 Corporate income tax.- Nonmonetary contributions of ownership interests in joint-property entities may benefit from the neutrality regime

Directorate General for Taxes. Resolutions V1326-20 of May 8, 2020 and V1670-20 of May 28, 2020)

The issues analyzed in these resolutions concerned whether the neutrality regime may be applicable for the contribution (to newly created or existing entities) of ownership interests in joint-property entities engaged in property leasing.

The DGT concluded that these are special nonmonetary contributions eligible for the neutrality regime, if they are made for valid economic reasons and additionally the following requirements are met:

a) The transaction must imply the contribution of assets used for economic activities.

b) The joint-property entities must keep their accounts in line with the Commercial Code.

c) The entities receiving the contributions must be resident in Spain.

d) Following the contribution, each of the joint owners must have an interest equal at least to 5% of the capital of the beneficiary of the contribution.

4.9 Corporate income tax.- Residential properties that can be used under a usufruct right or lease are not eligible for the special property leasing regime

Directorate General for Taxes. Ruling V1354-20 of May 12, 2020

A company that had elected the special regime for companies engaged in residential property leasing was going to acquire an undivided half of the temporary usufruct right in an apartment that was leased for a 10-year term. It was asked whether the rental income attributable to the company could benefit from the special property leasing regime.

The DGT noted that the rules governing this special regime require the residential properties to have been built, developed or acquired by the company. As a result, residential properties that are used under any other legal instrument, such as a usufruct right, temporary exploitation right, lease, etc., do not qualify for the purposes of claiming this special regime.

4.10 Personal income tax.- The number of days spent in Spain during the state of emergency counts for the purpose of the 183 day limit determining tax residence

Directorate General for Taxes. Resolution V1983-20 of June 17, 2020

A couple who are tax resident in Lebanon arrived in Spain in January 2020 for a three month trip, but, due to the state of emergency, were unable to return to their country. They do not receive any income in Spain and ordinarily spend less than 6 months a year in Spain. It was asked whether the days spent in Spain during the state of emergency count for determining tax residence in Spain.

As we reported in our **alert dated July 28, 2020**, the DGT concluded that the days spent in Spain during the state of emergency count for the purpose of determining the number of days spent in Spain in 2020.

4.11 Personal income tax.- The amounts received by a director from a legal expenses policy taken out by the company are taxable as a capital gain

Directorate General for Taxes. Resolution V1936-20 of June 15, 2020

The submitter is a director of a company that has taken out a legal expenses policy for its directors. As a result of a legal proceeding brought against the directors, the insurance company refunded the incurred legal expenses to the submitter.

According to the DGT, this refund qualifies as a capital gain which, due to not coming from a transfer, is included as a general taxable income. This gain cannot be reduced by the amount of legal expenses, because the legislation only allows to be treated as such those resulting directly from lawsuits arising in the taxpayer's relationship with the person receiving their salary income (within a limit of €300 a year).

If, under the policy, the requesting party is held liable and has to refund to the insurance company any amounts already received, they may request correction of their tax return to remove that capital gain.

4.12 Personal income tax.- The existence of a short period of unemployment does not prevent the ability to apply the inbound expatriates regime

Directorate General for Taxes. Resolution V1482-20 of May 20, 2020

The submitter gave notification of their election of the special regime for workers sent to Spain for the 2016-2021 period. On November 6, 2019 the worker voluntarily resigned from his employment relationship. At that time he was involved in negotiations with another employer, although the employer ultimately chose another candidate. On December 12, 2019, the submitter registered as an unemployed worker with the State Public Employment Service. He has now been in a new job since March 3, 2020.

The DGT concluded that the described circumstances do not result in his exclusion from the special expatriates regime, in that his resignation from his employment relationship took place for the purpose of commencing a new employment relationship with another employer, even though that relationship did not finally occur, which meant that the taxpayer was unemployed for the described period.

4.13 Nonresident income tax.- A French entity owning a property in Spain used by its partners is taxable in Spain

Directorate General for Taxes. Resolution V1888-20 of June 10, 2020

A French partnership-type entity whose partners and directors acting severally are two individuals who are also French resident purchased a property in Spain, as an investment in real estate for its future sale. Until the sale takes place, the partners intend to spend around one month at the house in one continuous period or several intermittent periods.

Under the assumption that a partnership-type entity has its own legal personality and is not subject to the legal regime for partnerships, but has elected to be taxed as a taxable person for French corporate income tax purposes; and in light of the nonresident income tax law and the tax treaty between France and Spain, the DGT stated as follows:

a) Until the sale of the property takes place, the company will not have to appoint a representative in Spain because it is not engaged in any activity there.

b) The permission to use the property given by the company to its partners is presumed to be in exchange for payment. The presumed income must be valued at its market value because the permission to use it is arranged between related parties; and may be taxed in Spain.

c) In the hands of the owners, the right to use the properties must be treated as a dividend or as directors' compensation, according to whether they use the property as owners or directors, respectively. Otherwise, it must be classed in the "other income" category. In the three cases, France is the only country with the power to tax that income, because both the company and the owners reside in France.

4.14 Municipal capital gain.- Irrevocable gifts with effects that are postponed until the giver's death may benefit from the reductions allowed for inheritance

Directorate General for Taxes. Ruling V1356-20 of May 12, 2020

The legislation governing the tax on increase in urban land value allows local councils to approve a reduction of up to 95% to the gross tax payable on transfers of land upon death to descendants, adopted offspring, spouses, ascendants and adopting parents.

In this resolution, the DGT accepted the option to claim this reduction in the case of an irrevocable gift taking effect on the date of the giver's death; as long as the tax rules governing the tax allow this reduction on the date the giver's death occurs and all the other requirements laid down in those rules are also met

5. LEGISLATION

5.1 Zero rated VAT and IGIC has been extended until October 31, 2020 for domestic supplies, imports and intra-Community acquisitions of certain healthcare materials, other tax measures were adopted and these measures were later repealed

Royal Decree-Law 27/2020, of August 4, 2020, and Decree Law 13/2020, of July 30, 2020, extended until October 31, 2020 zero rated VAT and IGIC on supplies, imports and intra-Community acquisitions (as applicable) of certain healthcare materials (see our alerts dated **August 5, 2020** and **July 31, 2020**).

Moreover, Royal Decree-Law 27/2020 allowed a specific tax regime for the final of the UEFA Women's Champions League 2020 and stamp tax relief for deeds formalizing moratoriums for loan and mortgage payments and for leases, loans, finance leases and operating leases not secured by a mortgage that occur under the provisions on mortgage moratoriums for the tourism industry (Royal Decree-Law 25/2020, of July 3, 2020) and for the industry for public transport of goods and discretionary transport of passengers by bus (Royal Decree-Law 26/2020, of July 7, 2020).

This Royal Decree-Law was repealed by a repeal decision published on September 11, 2020, so for the time being those tax measures must be considered to be repealed.

However, the measures relating to VAT and to the final of the UEFA Women's Champions League 2020 were reintroduced by Royal Decree-Law 28/2020, of September 22, 2020 (**alert**).

Lastly, the stamp tax relief mentioned above was reintroduced by Royal Decree-Law 30/2020, of September 29, 2020 (**alert**).

5.2 Amendments introduced to the collection management cooperation service provided by credit institutions

The August 12, 2020 edition of the Official State Gazette published Order HAC/785/2020, of July 21, 2020 introducing various amendments in relation to collection management.

These include certain cases in which cooperating institutions will not be able to reverse or correct revenues collected earlier through them. This measure is designed to avoid cases where taxpayers (by simply showing a receipt for payment supplied by a cooperating institution and before the payment has been recognized on the tax databases) request certain types of actions by the central government tax authorities (return of guarantees, lifting of attachments, issuance of certificates of payment or of being up to date with tax obligations, etc.) that require the prior payment of tax.

Moreover, so that within the scope of AEAT (Spanish tax agency) debts may be paid by transfer, the essential conditions for this have been specified.

5.3 Economic reactivation measures are approved in the fields of transport and housing to confront the impact of COVID-19

The July 8, 2020 edition of the Official State Gazette published Royal Decree-Law 26/2020, of July 7, 2020 on economic reactivation measures to confront the impact of COVID-19 in the fields of transport and housing.

Tax measures:

a) The Corporate Income Tax Law has been amended in relation to the tax regime allowed for **port authorities**, which cease to be partially exempt from the tax, to comply with Commission Decision of January 8, 2019 (C (2018) 8676 final). Additionally a new tax credit has been created for investments made by port authorities (article 38 bis) and it has been stipulated that the depreciation expense for assets eligible for this credit is not deductible.

b) Moreover, in relation to the shipping industry, the measures originally set out in article 16 to article 20 of Royal Decree-Law 15/2020, of April 21, 2020, on additional urgent measures to support the economy and employment (**see our alert**) have been amended to give organizations managing ports or the competent authorities flexibility for the collection of infrastructure fees in the context of the COVID-19 outbreak.

Specifically, exceptional measures have been adopted in relation to the occupancy fee, the activity fee and the ship fee, together with the deferral of tax debts in port contexts.

c) The Formula 1 Spanish Gran Prix has been declared an event of exceptional public interest for the purpose of article 27 of Law 49/2002, of December 23, 2002, on the tax regime of non-profit entities and on tax incentives for patronage. The program starts on January 1, 2020 and ends on December 31, 2023.

5.4 Stamp tax relief introduced for moratoriums on mortgage payments for buildings used for tourism activities

The July 6, 2020 edition of the Official State Gazette published Royal Decree-Law 25/2020, of July 3, 2020 on urgent measures to support economic reactivation and employment which includes the introduction of a moratorium on mortgage payments for buildings used for tourism activities.

This measure was accompanied by stamp tax relief for the deeds formalizing those moratoriums.

For further information see our **alert dated July 6, 2020** providing a summary of this legislation.

5.5 The Protocol amending the tax treaty signed by Spain and India has been approved

The July 9, 2020 edition of the Official State Gazette published the Protocol between the Kingdom of Spain and the Republic of India, signed at New Delhi on October 26, 2012, to amend the Convention and Protocol between the Republic of India and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed at New Delhi on February 8, 1993; which entered into force with effect from December 29 2014.

Among other amendments nonresident income tax is included in Spain for the purposes of applying the treaty, the exchange of information regime is amended in line with the OECD Model Convention; and an article 28.A is introduced on “assistance in the collection of taxes” and an article 28.B on “Limitation of benefit”.

5.6 Phone helpline launched using the cl@ve PIN system for carrying out certain formalities and steps with AEAT

The July 7, 2020 edition of the Official State Gazette published the Decision of July 1, 2020, by AEAT's Collection Department, bringing into operation the phone helpline, on the nonadvanced signature channel with a PIN number in an earlier registration (cl@ve PIN), for the formalities and steps included in the annex to the decision, which has been given the name REC@T (after the Spanish acronym).

The formalities able to be carried out using this system relate basically to attachments of assets and income, to deferred and split payments of debts, to offsets of debts by decision of the authorities or at the taxpayer's request, and to tax payments out of bank accounts.

This decree is applicable to formalities carried out on or after July 8, 2020.

5.7 Publication of the annual equivalent rate for third calendar quarter of 2020, for the purpose of characterizing certain financial assets for tax purposes

The June 29, 2020 edition of the Official State Gazette (BOE) published the decision of June 25, 2020, by the Office of the General Secretary for the Treasury and International Finance, which, as is now the custom, sets out the reference rates that will apply for the calculation of the annual effective interest rate for the purposes of characterizing certain financial assets for tax purposes, this time for the third calendar quarter of 2020. The rates are as follows:

- Financial assets with terms of four years or less: -0.194 percent.
- Assets with terms between four and seven years: -0.060 percent.
- Assets with ten-year terms: 0.422 percent.
- Assets with fifteen-year terms: 0.756 percent.
- Assets with thirty-year terms: 1.338 percent.

In all other cases, the reference rate for the period closest to the period when the issuance is made will be applicable.

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