Tax Newsletter

GARRIGUES

May 2021

Contents

2.10 Stamp tax. - Joint property entities are not taxable persons for stamp tax

2.11 Local authority fees. - Limitations on the taxing power of member states apply to fees for usage or special use of the local public domain to be paid by companies in the landline and internet sector

2.12 Tax on increase in urban land value. - Difference between transfer and purchase prices of land reflects taxable economic capacity for the tax on increase in urban land value, even if they are not market values

2.13 Hydropower electricity generation charge. - Supreme Court overturns hydropower electricity generation charge for fiscal years 2013 and 2014

2.14 Management procedure. - Management bodies cannot review the claiming of special tax regimes

2.15 Management procedure. – A management procedure commenced only for the purpose of tolling the statute of limitations does not have that effect

2.16 Audit procedure. - Under the previous wording of the General Taxation Law, the referral of the case record to the public prosecutor’s office tolled the statute of limitations for the audit and suspended the statute of limitations for the penalty proceeding

2.17 Audit procedure. - If an audit is commenced before the end of another audit with which there is a substantive connection, there is a single audit and the period for its completion starts to run from the start of the first audit

2.18 Extension of liability. - Minors cannot be held liable for cooperating with concealment of assets

2.19 Extension of liability. - In decisions extending liability for tax it is absolutely necessary to describe how the payments made by the main debtor were allocated

2.20 Extension of liability. - The principle of good administration requires that delays must be substantiated in the decision extending liability

3. Decisions

3.1 EU law / Inheritance tax. - European case law preventing different treatment based on the taxpayer's residence affects all the laws of a state

3.2 Corporate income tax. - Existence of net worth imbalance is as determined in the financial statements

3.3 Corporate income tax. - The neutrality regime may be applied partially to a spin-off in which debts are transferred which are not directly linked to the transferred assets

3.4 Personal income tax. - There is no separation if the worker works again for the same company, even if no fraudulent intention existed

3.5 Nonresident income tax - Evidence of ownership of the dividend and its withholding is provided if its traceability can be verified from payment to receipt by the entity that bore the withholding

3.6 Tax on economic activities. - The reduction to the tax on economic activities for sectors declared to be in crisis requires proof of the existence of a reconversion or restructuring process

3.7 Tax registers. - Collective investment schemes have revenues for the purposes of being considered large companies

3.8 Management procedure. - A request for incorrect tax payments only tolls the statute of limitations for the right to request the refund derived from that specific request

3.9 Collection procedure. - A reduced surcharge needs to be assessed in cases of deferred or split payment if it is made within the new time periods granted by the tax authorities

3.10 Collection procedure. - Where notifications are made to a taxpayer's appointed representative, the appointment must appear in the files

3.11 Penalty procedure. - Failure by the tax authorities to comply with the right to joint conduct of the penalty proceeding means the breach of a right requiring reversal of the penalty

4. Resolutions

4.1 Corporate income tax. - Remuneration paid to shareholders in respect of their work for the entity is deductible

4.2 Corporate income tax. - An employee managing the leasing of the company's own and third parties' properties is not sufficient to determine the existence of an economic activity

4.3 Personal income tax. - Days forming part of mandatory quarantine abroad are included in the number of days spent abroad for the purposes of the exemption for work performed abroad

4.4 Personal income tax. - The award of stock options as compensation for an economic activity does not benefit from exemption on the first €12,000

4.5 Personal income tax. - Refund of excess contributions by self-employed business owners is a taxable revenue in the year in which it is decided

4.6 Personal income tax. – Employers' contributions to pension plans may go up to €10,000

4.7 Nonresident income tax. - Tax treatment applicable to severance for termination of a non-resident's employment contract

4.8 Nonresident income tax. - Income paid to an LLP is subject to withholding tax

5. Legislation

5.1 Approval of the financial transaction tax regulations and amendments to other tax laws

5.2 Approval of forms for self-assessment and assessment of the tobacco fee and charge

1. Surcharges do not have to be imposed where the taxpayer files self-assessments outside the time limit to adapt its conduct to points made by the auditors

A surcharge has to be imposed for the late filing of self-assessments. For this to apply, however, the self-assessment must be filed spontaneously, in other words not due to a prior request by the authorities. In a new decision, the Central Economic-Administrative Tribunal (TEAC) made the definition of prior request more flexible.

In an audit, a taxpayer's position was adjusted by increasing the taxable amount for VAT purposes in respect of its vehicle leasing activities. According to the auditors, the taxable amount should have included all the items invoiced to the lessee, including the finance costs charged to it (which had not been included by the taxable person to calculate the taxable amount).

The company decided to file supplementary returns for fiscal years following those affected by the adjustment, to apply the method decided in the audit.

The tax authorities imposed surcharges for the late filing of those returns. They argued that those returns had been filed spontaneously because the methods determined in the audit on earlier years could not be transferred automatically to subsequent fiscal years. This case is not comparable, in the tax authorities' opinion, with those examined by the National Appellate Court (judgment on March 30, 2011, in appeal 141/2008), the Supreme Court (in a judgment on November 19, 2012, in appeal 3526/2011) and TEAC (in a decision on October 9, 2014), because, in these cases, the tax audits had resulted in reductions to taxable amounts or amounts to be offset or deducted in subsequent years, which made it necessary for the taxpayer to adjust its position in those tax periods.

In its **decision on April 20, 2021**, TEAC acknowledged that its interpretation to date had been that there were two separate types of cases:

(a) Where the tax authorities have all the information as a result of a prior verification and can therefore automatically extend the adjustment to the second period without conducting any new audit work. In these cases, if in view of the absence of a complete adjustment by the tax authorities the taxpayer elects to file supplementary returns, a "prior request" by the tax authorities must be considered to exist and therefore no surcharges can be imposed.

(b) Where the circumstances described above do not arise. In these cases, by filing the supplementary returns the taxpayer has acted spontaneously, namely the taxpayer cannot be considered to have acted based on a "prior request" and therefore surcharges need to be imposed.

TEAC has now changed its method (based on the Supreme Court's conclusions in its recent **judgment of November 23, 2020**), to make a flexible interpretation of the definition of "prior request". It concluded that this request must be considered to exist where the taxpayer files late self-assessments to adapt its conduct to the tax authorities' conclusions in a prior verification procedure. In other words, according to the tribunal, the absence of surcharges "would not apply only in cases where the taxpayer's subsequent acts are the necessary consequence of prior acts by the tax authorities, resulting in the required subsequent correction and this is quantified, (…) instead it should include others induced or driven by taxpayers' knowledge of relevant data for determining the tax debt that had become known in a procedure conducted to adjust an earlier period, with substantially similar facts*"*.

In TEAC's view, this interpretation is strengthened where the taxpayer's conduct has not been penalized in the earlier procedure.

2. Judgments

2.1 European Union legislation. – The income paid by a non-established open-end investment fund must receive the same treatment as that paid by one established in Spain, regardless of its legal form

Court of Justice of the European Union. Judgment of April 29, 2021. Case C-480/19

A taxpayer resident for tax purposes in Finland received income derived from his investment in a Luxembourg "SICAV" open-end investment fund which, according to its bylaws, was an undertaking for collective investment in transferable securities (UCITS). The Finnish equivalent of the Spanish Central Economic-Administrative Tribunal concluded that, due to the functional and legal characteristics of an UCITS, that income was taxable as salary income not as income from movable capital, which would not have been the case if the income had come from an UCITS resident in Finland.

The Court of Justice of the European Union (CJEU) noted that two situations which are comparable (income from two types of UCITS within the meaning of the UCITS Directive) are receiving different treatment. Because the Finnish government had not relied on overriding reasons of public interest in the proceeding to justify this different treatment, the CJEU held that a practice of the type described is precluded by the free movement of capital.

2.2 Transfer prices. - Tax auditors are not required to take the group's transfer pricing policy into account if a bilateral adjustment is not able to be made

Supreme Court. Judgment of March 18, 2021

The Corporate Income Tax Law states that the contributions of pension plan sponsors are deductible, if various requirements are met (attributed for tax purposes to the person to whom the benefits are linked, irrevocable transfer of the right to receive the future benefits and transfer of ownership and management of the funds that the contributions involve). If these requirements are not fulfilled, the contributions are not deductible until the benefits are paid out to the recipients.

A Spanish company did not deduct any of its contributions when they were made because not all the requirements described were fulfilled, until the recipients (workers) started receiving payments under their retirement plans. Therefore, the original increases in the tax base by the amounts of the contributions were netted against decreases by the same amount when the benefits were paid to the worker.

The following circumstances existed, however:

(a) Up until a given date, a worker had provided his services only for the Spanish company.

(b) On that date, the worker was appointed chairman of another group company outside Spain, resident in the Netherlands. He then provided services to both companies.

(c) The contributions to his retirement plan continued to be made in full by the Spanish company.

For these reasons, the auditors denied the Spanish company's right to deduct the full amount of the contributions; and limited the deduction to the portion of the contributions which they considered related to the services provided for the Spanish company.

Although the assessment decision itself recognized that a bilateral adjustment should have been made (because the expense actually occurred), the auditors did not ultimately make one because this type of adjustment, in their opinion, was not contemplated in the Netherlands-Spain tax treaty.

The taxpayer argued in relation to this situation that the business group's transfer pricing policy should have been taken into account, according to which the Spanish subsidiary had to obtain an arm's length net margin on sales, and accordingly, if the right to deduct some of the expense was denied, a portion of the revenues should have been adjusted to determine the final tax base.

In reply to this argument, the Court concluded that the transfer pricing policy does not affect adjustments for tax purposes, and therefore revenues did not need to be decreased.

Moreover, in its judgment the court recalled that taxpayers are allowed to use a mutual agreement procedure to resolve any double taxation resulting from the adjustment made, confirming the Spanish authorities' inability to make a bilateral adjustment in this case.

2.3 Corporate income tax. – The recovery of share value can be done at the company that acquired them not necessarily at the one that recorded an impairment loss

Supreme Court. Judgment of May 6, 2021

In the examined case, the taxpayer recorded certain impairment loss provisions for shares which, under article 19.6 of the revised Corporate Income Tax Law (TRLIS) and the tax authorities' interpretation, were considered tax deductible. Moreover, as a result of the subsequent transfer of those shares to a nonresident related company, the taxpayer recorded a loss which was tax deductible.

The auditors considered that, under that article, the recovery of the value of the transferred company should give rise to both the impairment loss provision described above, and the loss generated on the transfer of the shares that had previously been deducted, being recovered by the taxpayer (even if at that time the taxpayer was no longer owner of the shares, because they had been transferred).

The auditors' method was later confirmed by the Central Economic-Administrative Tribunal and the National Appellate Court, which departed from its own method in two earlier decisions and adopted the auditors' interpretation, after finding that it was consistent with the wording of article 19.6 and with its role as an anti-avoidance rule, called upon to avoid "revenue laundering" situations as a result of the transfer of shares to companies resident in other countries.

The Supreme Court made the following remarks:

(a) It reprimanded the National Appellate Court for not giving sufficient reasons for departing from its own precedents, and crushing the taxpayer's right to effective judicial protection. It criticized also the fact of administrative bodies being able to openly ignore judicial precedents due to considering that they contained an incorrect method.

It underlined on this subject that both the Directorate General for Taxes (in various replies to requests for resolution) and AEAT itself (in its Practical Manuals for tax returns) had in the past supported the method used by the taxpayer. According to the court, those decisions amount to genuine own acts which cannot be ignored by the tax authorities going against taxpayers' legitimate expectations; a situation which, in the court's opinion, should have been corrected by the National Appellate Court.

(b) In relation to the facts of the case, it rejected that article 19.6 is an anti-abuse rule and that it is used for the only purpose of "maintaining or retaining the chance to tax" in Spain. To remedy situations involving abuse, according to the court, the lawmakers provided the general anti-abuse provisions (i.e. fraud upon the law and conflict in the application of tax provisions), which require the tax authorities to fulfill specific procedural requirements to safeguard taxpayers' rights.

Moreover, it rejected that the interpretation of a law should be made to pivot on a circumstantial element, such as the fact of a taxpayer having transferred the shares to a nonresident related entity, because this may amount to unjustified discrimination precluded by EU law.

The Supreme Court affirmed that the method for avoiding a non-taxation situation cannot be the creation of rules that generate potential double taxation scenarios and entail an invasion of the tax sovereignty of the state of residence of the (direct or indirect) owner of the shares, contrary to the tax treaty provisions (which cannot be altered unilaterally by one of the signing states without implementing the established procedure for doing so).

Based on all these arguments, the court concluded that the taxpayer had acted correctly.

2.4 Corporate income tax. - To deny the special neutrality regime it is not necessary to conduct a procedure for conflict in the application of tax provisions

Supreme Court. Judgment of March 31, 2021

In the case examined by the court the special tax neutrality regime had been denied for a reorganization transaction. The court was asked whether, for this denial, it is enough for the tax authorities to find that no valid economic reasons exist in the transactions or, to the contrary, a procedure for conflict in the application of tax provisions needs to be conducted (article 15 of the General Taxation Law –LGT-).

The Supreme Court concluded that a finding of the absence of a valid economic reason, which has been suitably reasoned and submitted for judicial control, allows the special regime to be rejected. According to the court, the anti-abuse clause included in the Corporate Income Tax Law (which has its origin in EU law) operates as *lex specialis*. However, this is not an obstacle, where the facts and circumstances so require, to conducting the procedure under article 15 of the General Taxation Law.

In any event, for penalty purposes, it would not be enough only to affirm that there is no valid economic reason, instead reasoning must be provided, in the penalty decision, on the existence of fault as required by the case law.

2.5 Corporate income tax. - The lessor cannot deduct withholding taxes in respect of leasing properties if their rent has not been paid

Supreme Court. **Judgment of March 10, 2021**

The court examined a case in which the lessee did not pay the rent or therefore make the relevant withholding in respect of the lessor's corporate income tax. However, the lessor, under the accrual method and article 17.3 of the TRLIS (now article 19.3 of the Corporate Income Tax Law), reported tax on the income, deducted the withholding taxes owed, and applied for a refund due to exceeding the resulting tax liability.

That article 17.3 provided that, where no tax has been withheld or tax was withheld on a lower amount than was owed, the recipient should deduct from its tax liability the amount that should have been withheld. This article presumed, therefore, that tax had actually been withheld and on the correct amount of income.

The Supreme Court clarified, however, that this presumption only operates where the renter has actually paid the rent because otherwise, if there is no payment, it cannot be presumed that any tax was withheld. Therefore, a lessor that did not receive any income in respect of its leases cannot deduct any withholding tax.

2.6 Personal income tax. - In the context of criminal law it cannot be presumed that unjustified increases in capital are attributable to the year in which they are identified

Supreme Court (Criminal Chamber). **Judgment of April 9, 2021**

For personal income tax purposes, unjustified capital gains include any assets or rights held, reported or acquired which do not relate to the income or capital reported by the taxpayer, as well as the reporting of debts that do not exist. Under tax law, it is presumed that these gains were obtained in the year they appear, unless the taxpayer proves that they have owned the assets or rights from a date before that of the statute of limitations.

In this judgment, it was analyzed how that presumption operates in the context of criminal law, in particular regarding the presumption of innocence.

According to the court, under criminal law, unlike tax law, the taxpayer/defendant does not need to evidence that the increases in capital are from a date before the date of the statute of limitations. In other words, it cannot simply be presumed that assets or rights are from transactions performed in the fiscal year in which they appear, instead indications are required to corroborate that first information; and to refute those indications it is enough for the accused to produce a minimally reasonable alternative explanation which cannot be refuted by the prosecution.

Any reasonable doubt must work in favor of the accused in all cases.

2.7 Personal income tax. - Tax not withheld may be deducted, even if the payer is a related party

Supreme Court. **Judgment of March 25, 2021**

The Personal Income Tax Law provides that where a payer does not withhold tax correctly or withholds a lower amount than was owed “for a reason attributable only to the withholding agent or person required to make an advance payment of tax”, the recipient may deduct the amount that should have been withheld.

In the case examined in this judgment, the recipient of the income owned 50% of the payer and was its director acting severally. The tax authorities considered that, because the income was paid by a related entity, the recipient was not entitled to substantiate the amount of withholding tax owed (higher than the amount deducted).

The Supreme Court delivered to the contraryconclusion. According to the court:

(a) Although this issue needs to be decided on a case by case basis, the recipient’s conduct, even if it is the payer’s director or shareholder of the payer, is, in principle, separate from the payer’s. In other words, the tax authorities are allowed to hold the recipient liable for a breach of the withholding obligation, but cannot simply bar deduction of the withholding tax.

(b) Not allowing the deduction of the higher amounts of withholding tax owed would give rise to unfair enrichment by the tax authorities if they also sought the withholding tax from the payer, or would transfer the withholding agent’s obligation to the recipient if the tax authorities only sought it from the recipient.

2.8 Personal income tax. - Reimbursement alimony agreed before a notary or before a court reduces taxable income

Supreme Court. **Judgment of March 25, 2021**

Article 55 of the Personal Income Tax Law provides that reimbursement alimony payments to the spouse, and spousal and descendant support payments, with the exception of those determined for the taxpayer’s offspring, made in both cases by court decision, give entitlement to a reduction in taxable income.

A literal interpretation of the article could suggest that the reduction can only be claimed where the reimbursement alimony payments are made “by court decision". When the Personal Income Tax Law was approved, however, the option of conducting a divorce or separation process before a notary or court clerk did not exist.

The Supreme Court concluded therefore that taxable income for personal income tax purposes can also be reduced in respect of the payment of reimbursement alimony where the alimony is determined in an agreement executed before a court clerk or a notary.

In the specific case examined, it rejected the reduction because the reimbursement alimony was determined in a prenuptial agreement not linked to a separation or divorce and because, in addition, it had not been signed under a court decision or before a notary or court clerk.

2.9 Wealth tax. - Participating loans provided to an entity exempt from wealth tax are not exempt

Supreme Court. Judgment of March 30, 2021

Under article 4.Eight.Two of Wealth Tax Law 19/1991, of June 6, 1991, shares in companies that fulfill certain conditions (mainly, they must not manage capital consisting of movable or real estate assets and the owner or the owner's family unit must have a certain ownership interest and carry on management activities) are exempt from wealth tax.

The case examined in this judgment concerned a taxpayer who had reported shares in a family business as exempt from wealth tax, but reported as non-exempt the participating loan that the taxpayer had provided to that same company. After filing a self-assessment, the taxpayer applied for correction due to considering that the participating loan was equivalent to an ownership interest in the capital of an exempt company, and therefore should also be exempt from the tax.

Following an analysis of the characteristics of participating loans, the Supreme Court concluded that they are not securities representing an interest in the equity of a company, instead they represent the transfer of own capital to third parties, even if they are treated as equity for accounting purposes for the purposes of reducing a company's capital and liquidating it.

Therefore, according to the court, participating loans are not exempt from wealth tax.

2.10 Stamp tax. - Joint property entities are not taxable persons for stamp tax

Supreme Court. Judgment of April 22, 2021

At issue was whether joint property entities are taxable persons for stamp tax on the acquisition of real estate; and if so, whether liability for that debt can be extended to the co-owners separately.

Article 35.4 of the General Taxation Law states that joint property entities must be treated as persons with tax obligations "in the laws that so stipulate". As noted by the Supreme Court, no law stipulates that joint property entities are persons with tax obligations in relation to stamp tax (which is not the case for the tax on corporate transactions -capital duty-, another transfer and stamp tax heading).

Therefore, joint property entities are not taxable persons for stamp tax, and therefore, the co-owners cannot be held liable in relation to a tax debt for which the joint property entity is not and cannot be taxable person.

2.11 Local authority fees. - Limitations on the taxing power of member states apply to fees for usage or special use of the local public domain to be paid by companies in the landline and internet sector

Supreme Court. Judgment of April 26, 2021

As discussed in our **Newsletter in February 2021**, the CJEU replied (in its **judgment of January 27, 2021)** to two references for a preliminary ruling submitted by the Spanish Supreme Court concerning the application of Directive 2002/20/EC of the European

Parliament and of the Council of 7 March 2002, on the authorization of electronic communications networks and services (Authorization Directive), to the charge made by a local council to a telecommunications operator. This charge was determined only by reference to the gross revenues obtained annually by the company.

The Supreme Court has now delivered a decision on the cassation appeal in which those references for a preliminary ruling were submitted, and in view of the CJEU's method concluded that the limitations to the taxing power of member states under article 12 and article 13 of the authorization directive do not apply to the fees for usage or special use of the local public domain charged to companies in the landline and internet sector.

2.12 Tax on increase in urban land value. - Difference between transfer and purchase prices of land reflects taxable economic capacity for the tax on increase in urban land value, even if they are not market values

Andalusia High Court. Judgment of December 10, 2020

The examined case involved an entity, which, as part of its liquidation process, transferred, by auction, a productive unit containing real estate. The tax on increase in urban land value fell due on the transfer. Under the rules determining the taxable amount for the tax, the entity had an outstanding balance payable, even though the transfer price of the land was below its acquisition cost.

At first instance, the court found in favor of the local council on the basis that, to verify the existence of an increase in the value of the land, the actual market value of the land at the time it was sold must be taken, not the price agreed by the parties.

On appeal, however, Andalusia High Court ruled in favor of the entity, by arguing that the difference between the sale and purchase prices contained in the deeds reflects the actual taxable economic capacity for the tax. Otherwise, the court noted, this economic capacity "would be diminished" if the appellant, on top of having to sell the land at a lower price than its actual market value by reason of its liquidation, had to meet an amount in respect of the tax on increase in urban land value calculated under the rules on the tax.

2.13 Hydropower electricity generation charge. - Supreme Court overturns hydropower electricity generation charge for fiscal years 2013 and 2014

Supreme Court. Judgment of April 15, 2021

The Supreme Court has overturned certain provisions of Royal Decree 198/2015, of March 23, 2015 implementing article 112 bis of the revised Water Law and regulating the charge for use of inland water for electricity generation (hydropower electricity generation charge).

That royal decree came into force in 2015, although it required the charge to be self-assessed for 2013 and 2014. For that reason, the Supreme Court has held to be null and void transitional provision two and a paragraph of additional provision one, due to imposing a tax obligation with maximum retroactive effect (in other words, in relation to periods that had ended completely when it came into force) and, moreover, without authorization by any legal provision.

2.14 Management procedure. - Management bodies cannot review the claiming of special tax regimes

Supreme Court. Judgment of March 23, 2021

The management bodies belonging to the tax authorities commenced a limited review procedure on a professional association. This organization was taxed under a special regime for partially exempt entities. The taxpayer appealed against the issued assessment arguing that the management body did not have the power to conduct that review, because, under article 141 of the General Taxation Law, it is the task of auditors to review fulfillment of the requirements for special tax regimes.

The Supreme Court confirmed the taxpayer's position and affirmed that article 141 of the General Taxation Law contains a legal reservation of authority under which only the auditors have the power to review partially exempt entities and, in general, any taxed under special tax regimes (articles 47 through 129 of the Corporate Income Tax Law).

According to the court, the legislation is clear on this point, there is no room for excuses or ways around it, and it does not allow systematic interpretations.

2.15 Management procedure. – A management procedure commenced only for the purpose of tolling the statute of limitations does not have that effect

National Appellate Court. Judgment of March 15, 2021

In June 2012, the tax authorities notified the taxpayer of commencement of a data verification procedure. In the notice, certain documents were requested to clarify discrepancies in relation to the taxpayer's 2007 corporate income tax self-assessment. The verification procedure ended without a provisional assessment.

The circumstances in relation to this data verification procedure were:

(a) Its commencement took place in June 2012, in other words, only a month before the tax authorities' right to assess for fiscal year 2007 became statute-barred (which took place in July 2012).

(b) The tax authorities already had most of the requested documents in their possession.

(c) The procedure ended before the person with tax obligations had produced all the requested documents, with a notice saying only that the incidents that had prompted the procedure had been clarified, and there was no need to make an adjustment to the taxpayer.

Later (after July 2007), an audit was commenced on a period including 2007. That audit ended with an assessment in which adjustments were made to a few elements of corporate income tax in that fiscal year 2007.

The National Appellate Court concluded in this judgment that, in view of the circumstances described above, the only purpose of the data verification procedure was to toll the statute of limitations. It therefore concluded that fiscal year 2007 was statute-barred when the audit commenced and accordingly voided the assessment for that fiscal year.

2.16 Audit procedure. - Under the previous wording of the General Taxation Law, the referral of the case record to the public prosecutor's office tolled the statute of limitations for the audit and suspended the statute of limitations for the penalty proceeding

Supreme Court. Judgment of April 15, 2021

In March 2007 an audit was commenced to review an entity's corporate income tax (fiscal year 2003 and fiscal year 2004). In May 2008 the audit was suspended after the case record was sent to the public prosecutor's office due to the existence of indications of criminal conduct. In November 2009 the tax authorities were notified that the criminal case had been closed and they resumed their audit work. In view of the justified delays and interruptions in the procedure, the period allowed for completion of the audit work would end on March 2010. The assessment decision was notified in April 2010, however.

Article 150 of the General Taxation Law stipulates that the consequence of the tax authorities exceeding the period allowed for completion of audit work is it being considered that the work does not toll the statute of limitations for the tax authorities' right to make assessments. Applying this article to the examined case would mean concluding that, when notice of the assessment decision was served in April 2010, the tax authorities' right to assess corporate income tax for 2003 and 2004 had already become statute barred.

The tax authorities challenged this conclusion, however, because they considered that article 180 of the General Taxation Law in force when the audit took place contained an exception to this general rule for cases in which indications of criminal conduct were observed and the case record was sent to the public prosecutor's office. That article 180 stipulated a "suspension" of the statute of limitations until the proceeding had been settled in the criminal jurisdiction, not a tolling of that period. Accordingly, the effect stipulated in article 150 of the General Taxation Law for cases in which the period for completion of audit work is exceeded does not apply, because that article refers to the tolling of the procedure not to its suspension.

The Supreme Court concluded, however, that article 180 of the General Taxation Law was only applicable to penalty proceedings (because it appears among the articles regulating sanctioning powers) and did not, therefore, provide an exception to the rules governing audits. Therefore, the referral of the case record to the criminal jurisdiction in an audit has only the effects stipulated in article 150 of the General Taxation Law: it was considered to be a justified tolling of the procedure and allowed the period for completion of the audit to be extended from 12 to 24 months, but nothing more.

2.17 Audit procedure. - If an audit is commenced before the end of another audit with which there is a substantive connection, there is a single audit and the period for its completion starts to run from the start of the first audit

Supreme Court. Judgment of December 15, 2020

The case involved the following facts:

- A personal income tax audit relating to fiscal year 2009 was commenced on October 8, 2010.

- On May 23, 2012 the auditors issued assessments signed in agreement. The assessment was considered made and notified a month later.
- On May 29, 2012 (before the assessment was considered made) the finance authority notified the commencement of a new personal income tax audit for 2007 and 2008.
- On May 29, 2013 the personal income tax assessment decision for fiscal years 2007 and 2008 was served.

The taxpayer argued that the two procedures were really part of a single audit, and therefore the tax authorities had exceeded the period for completion of the audit, with the consequence that none of the work performed had tolled the statute of limitations.

The Supreme Court accepted that the finance authority may commence an audit before an earlier audit that was still in progress has ended. It specified further, however, that "formally" the procedures are separate, the new procedure must be considered to be inserted into the earlier one (and so there will be a single procedure), unless the tax authorities provide sufficient justification of the absence of connection between the items, taxes or years that are being audited in each case.

Because in the examined case the auditors failed to provide justification that there was no connection between the two procedures, the court confirmed the taxpayer's method and concluded that when the second 2007 personal income tax assessment was issued it had become statute-barred.

2.18 Extension of liability. - Minors cannot be held liable for cooperating with concealment of assets

Supreme Court. Judgment of March 25, 2021

A taxpayer made a gift to his daughter (a minor at the time), represented by her father, of bare ownership of the family home. The tax authorities held the minor jointly and severally liable for her father's debts, arguing that she had knowingly and voluntarily cooperated with the shedding of his capital to conceal assets that the tax authorities could realize to collect his debts.

The National Appellate Court found in favor of the tax authorities, focusing the discussion on the precondition for liability, namely, on the shedding of capital and the gain that the minor obtained with the gift, regardless of the fact that she had to act through her father as her representative.

The Supreme Court, however, held that the National Appellate Court had confused the legal capacity of the minor, as holder of rights and obligations (which is the element that allowed her to acquire bare ownership of the home), with her capacity to act. In the court's opinion, the determining factor is that the precondition for the liability that has been declared requires willful misconduct, carried out to defraud the public finance authority, which is something that minors cannot do because they do not have the capacity to act and cannot be accused by operation of the law.

The court affirmed that it was aware that this doctrine could be misinterpreted as a kind of authorization opening up a mechanism for fraud, so it warned that its judgment does not prejudge the validity of the performed legal transactions or prevent the tax authorities from bringing the appropriate action to terminate the legal transaction under civil law or to bring criminal action for dealing in assets with a view to defrauding creditors, precisely against anyone with criminal liability, which can never include a minor.

2.19 Extension of liability. - In decisions extending liability for tax it is absolutely necessary to describe how the payments made by the main debtor were allocated

Supreme Court. Judgment of March 17, 2021

The tax authorities held the director secondarily liable for a company's outstanding tax debts. The decision extending liability, however, did not describe the debts or identify how the payments made by the company had been allocated to those debts and discharged them.

It was asked (i) which formal requirements decisions extending liability for tax must fulfill and, in particular, whether it is necessary to describe the allocation of payments where there is more than one outstanding tax debt, and (ii) whether the fulfillment of those formal requirements is necessary also where it is a company director that is held liable and it may be presumed that the director knows the contents of the assessments subject to extension of liability.

In reply to the first question the Supreme Court concluded that, one of the formal requirements that decisions extending liability for tax must fulfill is that they must describe the allocation of payments by the main debtor where there is more than one outstanding debt.

In relation to the second question, the court accepted that the ability to consider that a breach of these formal requirements has been remedied must be examined in each individual case, and there is no single reply. It rejected however that this defect may be remedied simply by the fact of the liable person liable being a company director or by the ability to request proof of the allocations in administrative or judicial appeals against the declaration of liability.

2.20 Extension of liability. - The principle of good administration requires that delays must be substantiated in the decision extending liability

Supreme Court. Judgment of March 15, 2021

In an extension of liability proceeding a longer period for submitting pleadings was requested, which was granted by the tax authorities. Later, the taxable person contended that the proceeding had expired, without subtracting that period for pleadings from the period allowed for completing the proceeding. The Extremadura TEAR disallowed this argument because that longer period was granted in reply to a request by the liable person, and therefore the delay was not attributable to the tax authorities.

The Supreme Court found in the liable person's favor because in the decision extending liability because in the decision extending liability it has not been expressly substantiated which delays were not attributable to the tax authorities, which is contrary to the principle of good administration. This requirement for substantiation, according to the tribunal, is not fulfilled where the delays are justified later in a review proceeding, because finding otherwise would mean denying the appellant of their right to defense.

3. Decisions

3.1 EU law / Inheritance tax. - European case law preventing different treatment based on the taxpayer's residence affects all the laws of a state

Central Economic-Administrative Tribunal. Decision of February 26, 2021

The tax authorities delivered an assessment decision on the inheritance tax payable by a taxpayer resident in Algeria who inherited, among others, properties located in the Basque Country.

Against that assessment, the interested party filed an economic-administrative claim pleading, among other arguments, that EU case law determining that it is not allowed to give different tax treatment to gifts or legacies of real estate located inside and outside Spain applied where the taxpayer resides in third countries outside the EU or European Economic Area.

TEAC confirmed that this case law did apply to a case of the type examined, regardless of the applicable law (central government or provincial law). According to the tribunal, the principle settled by EU case law is applicable to all the legislation in a state, in other words, to all of its central or autonomous community laws or laws issued under accords.

3.2 Corporate income tax. - Existence of net worth imbalance is as determined in the financial statements

Central Economic-Administrative Tribunal. Decision of April 22, 2021

A tax group's parent company was excluded from the group by reason of the net worth imbalance that was shown in its financial statements, which had not been remedied within the period stipulated in the law. The company pleaded that the apparent net worth imbalance was due to an accounting error, which had not been corrected.

TEAC upheld the tax authorities' arguments and concluded that the existence or otherwise of a net worth imbalance cannot be found using different methods from those used in the financial statements by the person with tax obligations, unless this person pleads that there has been an accounting error that has been suitably corrected in the financial statements for subsequent years under the mechanisms provided for this purpose in the accounting legislation.

For these purposes, the auditors simply have to ascertain whether the alleged accounting error has been remedied or corrected for accounting purposes, without entering into examining whether or not the error actually existed under the accounting legislation, because the company's position of being subject to a ground for dissolution must be determined from the company's accounting records and not from accounting methods applied by the auditors.

3.3 Corporate income tax. - The neutrality regime may be applied partially to a spin-off in which debts are transferred which are not directly linked to the transferred assets

Central Economic-Administrative Tribunal. Decision of December 16, 2020

The auditors rejected the ability to claim the neutrality regime to a partial spin-off (performed in 2012) for the reason that, together with the spun-off properties, debts were transferred which were contracted for purposes other than to acquire those properties. They therefore required tax to be charged on the difference between the market value of the acquired elements and their carrying amounts. That market value was the value specified by the taxpayer himself in the spin-off deed, which was based on various appraisal reports.

In addition to other remarks in the decision, the TEAC concluded that the regime cannot be disallowed completely for this reason, and accepted that it can be claimed partially, in other words, by excluding from the deferral only the portion of the gain relating to the debts that are not directly linked to the transferred properties.

3.4 Personal income tax. - There is no separation if the worker works again for the same company, even if no fraudulent intention existed

Central Economic-Administrative Tribunal. Decision of April 22, 2021

The Personal Income Tax Regulations state that entitlement to the exemption for severance payments is forfeited where there is no actual separation from the company by the worker. It is presumed for these purposes, in the absence of evidence to the contrary, that there was no such separation where, in the three years following dismissal or termination, the worker provides services again to the same company or to another company related to it.

TEAC concluded that this presumption *iuris tantum* applies even if no fraudulent aim is found. All of this is regardless of whether the worker can prove that the separation actually occurred. It must be noted that the Galicia High Court recently concluded (in a **judgment on September 17, 2020,** discussed in our **Newsletter for January 2021**) that each case needs to be examined according to its own circumstances; and that evidence of the separation may be considered to be provided where the worker was dismissed under a collective layoff procedure and when they are later hired their length of service is not recognized and their vested rights under the previous employment relationship have not been retained.

3.5 Nonresident income tax - Evidence of ownership of the dividend and its withholding is provided if its traceability can be verified from payment to receipt by the entity that bore the withholding

Central Economic-Administrative Tribunal. Decision of November 24, 2020

TEAC has reiterated the principle upheld in its decision of January 16, 2020 (summarized in our **newsletter for March 2020**), by accepting that, for the purposes of requesting a refund of excess tax withheld in respect of nonresident income tax, evidence of ownership of the dividend and its withholding tax may provided by producing sufficient proof of the chain of custody/beneficiaries.

In the specific case examined in this new decision, TEAC recognized the sufficiency of evidence of the ownership of the dividend and of its withholding where, from information on the financial intermediary and on the other participant intermediaries, the traceability of the dividend, between its payment and its receipt, may be verified by the entity that bore the withholding.

3.6 Tax on economic activities. - The reduction to the tax on economic activities for sectors declared to be in crisis requires proof of the existence of a reconversion or restructuring process

Central Economic-Administrative Tribunal. Decision of April 20, 2021

As a result of the economic and financial crisis that started in 2007, a company engaging in the manufacture of vehicles requested a change to its status for the purposes of the tax on economic activities so that rule 14.3 of the instruction on the tax applied to it. This rule allows sectors declared to be in crisis to be taxed on the average capacity consumed instead of on the size of their installed capacity in kilowatts. The tax authorities rejected this request, however, on the basis that the entity had not managed to provide evidence of fulfillment of the requirements to apply this rule.

In its decision, TEAC recalled that:

(a) Under the principle adopted by the Supreme Court, for rule 14.3 of the instruction for the tax on economic activities to apply it is not necessary for the declaration of the sector in crisis to be expressly contained in an administrative provision or declaration.

(b) However, even if it may be concluded from the documents produced by the entity that the economic crisis particularly affected the automotive sector, those documents do not evidence the existence of a reconversion or restructuring process on that sector, and therefore that rule does not apply.

3.7 Tax registers. - Collective investment schemes have revenues for the purposes of being considered large companies

Central Economic-Administrative Tribunal. Decisions of March 23 and April 22 2021

In these two decisions, TEAC concluded that collective investment schemes have revenues for the purposes of being considered large companies.

The tribunal recalled in this respect that, regardless of whether they may not be "traders or professionals" for VAT purposes, their inclusion on the Large Companies Register has other implications, among others, for calculation of the corporate income tax prepayment.

3.8 Management procedure. - A request for incorrect tax payments only tolls the statute of limitations for the right to request the refund derived from that specific request

Central Economic-Administrative Tribunal. Decision of October 27, 2000

A taxable person filed a personal income tax self-assessment as a resident in Spain. Later that person applied for correction of the self-assessment because they considered that, under the Netherlands-Spain tax treaty, their center of vital interests had to be considered to be in Netherlands, which prevented them from being treated as tax resident in Spain. After their request had been rejected, the taxable person commenced a claim proceeding.

Later, the taxable person filed a new application for correction of their personal income tax self-assessment for the same period (assuming residence in Spain) due to considering that a reduction allowed for multiyear income could be claimed, and to request also a refund of the excess amounts paid for this other reason. In relation to this second request, the tax authorities concluded that its right to apply for a refund had become statute-barred and rejected the attempt to correct the self-assessment. Following this further rejection, the taxpayer brought the relevant appeals. In this case, the taxpayer pleaded that the statute of limitations had been tolled as a result of the first application for correction and the appeals filed against it.

In line with two earlier decisions on **January 18** and **March 8 2018,** TEAC concluded that the procedures resulting from a specific application for correction of a self-assessment and for a refund of incorrect tax payments do not have tolling effects in relation to any other requests that might be filed in relation to the same self-assessment, but for a different reason.

Therefore, TEAC said, it is crucial for an application to specify the reasons why it was filed, because any procedures resulting from the request will have a tolling effect only in relation to the same tax item, period and claims.

3.9 Collection procedure. - A reduced surcharge needs to be assessed in cases of deferred or split payment if it is made within the new time periods granted by the tax authorities

Central Economic-Administrative Tribunal. Decision of April 15, 2021

A person with tax obligations requested deferred and split payment of the surcharge for the late filing of a personal income tax self-assessment. The request related to a surcharge that had already been reduced by the 25% allowed for payment within the voluntary period. Although the tax authorities granted the request in the terms it was made, they later served on the taxpayer a decision demanding payment of an amount equal to the reduction, on the basis that the reduced surcharge had not been paid within the original payment period.

TEAC concluded that, in the case of assessments of surcharges for late payment, where deferred or split payment has been granted, payment of the reduced surcharge within the time periods granted by the tax authorities entails fulfillment of the requirements laid down for claiming the 25% reduction. Finding otherwise would run counter to the principles of good faith and legitimate expectation.

3.10 Collection procedure. - Where notifications are made to a taxpayer's appointed representative, the appointment must appear in the files

Valencian Regional Economic-Administrative Tribunal. Decision of December 22, 2020

The tax authorities served notice of enforced collection orders on an entity other than the taxpayer, as the taxpayer's appointed representative.

The Valencia TEAR upheld the taxpayer's claim and overturned the enforced collection orders because they were served on an appointed representative whose appointment did not appear in the authorities' files. This, according to the tribunal, is a substantive defect which means that the challenged decision has to be overturned.

3.11 Penalty procedure. - Failure by the tax authorities to comply with the right to joint conduct of the penalty proceeding means the breach of a right requiring reversal of the penalty

Catalan Regional Economic-Administrative Tribunal. Decision of January 29, 2021

In the context of a limited review procedure, the taxpayer made a request for the potential penalty proceeding to be conducted jointly with the limited review procedure, under article 26 of the general regulations on the tax penalty regime, which regulates the right to choose not to have the penalty proceeding conducted separately.

The tax authorities conducted the review procedure and penalty proceeding separately, however.

The Catalan TEAR concluded that the taxpayer's right to choose not to have the penalty proceeding conducted separately had been breached, and therefore reversed the imposed penalty.

4. Resolutions

4.1 Corporate income tax. - Remuneration paid to shareholders in respect of their work for the entity is deductible

Directorate General for Taxes. Resolution V0625-21 of March 17, 2021

The examined issue concerned a company whose three shareholders were directors acting severally and they also worked for the company, carrying out various tasks for which they received remuneration. They received no remuneration for their services as directors, as stated in the Bylaws.

The DGT concluded as follows:

(a) Corporate income tax: The remuneration paid to shareholders as employees is deductible, if the statutory conditions for commercial law and labor law purposes are fulfilled as well as the requirements relating to recording in the accounts, recognition under the accrual method and substantiating documents.

(b) Personal income tax:

- Regardless of the type of relationship (employment or commercial) that the shareholders have with the company and their social security regime, the remuneration received for carrying out activities in the company's corporate purpose is classed as salary income.

- Insofar as it is not paid in respect of their services as directors, this remuneration must be priced at arm´s length, because the shareholders and the company are related parties.

- The withholding tax to be deducted from that remuneration must be calculated under the general rules stipulated for salary income, in other words the fixed withholding rate for directors will not apply.

4.2 Corporate income tax. - An employee managing the leasing of the company's own and third parties' properties is not sufficient to determine the existence of an economic activity

Directorate General for Taxes. Resolution V0438-21 of March 2, 2021

A company leasing its own properties and managing the leasing of properties owned by third parties has a full-time employment contract with one of its directors, under which the director takes care of administering both activities. The performance of this task and its remuneration are separate from the activities the individual performs as director and the related remuneration.

The DGT advised that, in this case, it may not be concluded that the company's property leasing activity amounts to an economic activity, because the individual hired to manage it devotes part of their time to managing the leasing of properties owned by third parties. It may not be concluded therefore that they devote all of their time to the leasing of the company's own properties.

4.3 Personal income tax. - Days forming part of mandatory quarantine abroad are included in the number of days spent abroad for the purposes of the exemption for work performed abroad

Directorate General for Taxes. Resolution V0767-21 of March 31, 2021

A company sent a few of its employees abroad to work for foreign companies. As a result of the measures adopted by each country to contain COVID-19 infections, a few workers had to remain in quarantine at their destinations, for the periods determined by each country.

It was asked whether, for the purpose of claiming the exemption for work performed abroad under article 7.p) of the Personal Income Tax Law, that quarantine period may be included in the number of the days that the worker had to spend abroad for the purposes of calculating their exempt salaries.

The DGT recalled that the Supreme Court, in judgment 274/2021, of February 25, 2021 (cassation appeal number 1990/2019), determined the principle that the phrase "salary income received for work actually performed abroad" includes the compensation received in respect of the number of days that the workers had to spend in the destination country or to return to Spain.

Therefore, under the court's reasoning, the time spent in quarantine at the destination must be included to determine the number of days spent abroad.

4.4 Personal income tax. - The award of stock options as compensation for an economic activity does not benefit from exemption on the first €12,000

Directorate General for Taxes. Resolution V0740-21 of March 29, 2021

The requester carries on an economic activity and one of its clients, as remuneration for services provided, gave him the chance to participate in its stock options program.

The DGT concluded that this remuneration for an activity must be treated as follows:

(a) If the stock options are nontransferable, the income will arise when the shares are acquired.

(b) The income must be priced at the positive difference between the market value of the shares on the day the call option is exercised and the amount paid by the requester.

(c) The exemption under article 42.3.f) of the Personal Income Tax Law is not available for that remuneration because it is for shares awarded to workers.

(d) Lastly, the market value of the share on the day the call option is exercised will be taken as its acquisition cost for the purposes of calculating the capital gain or loss in a future sale of the shares.

4.5 Personal income tax. - Refund of excess contributions by self-employed business owners is a taxable revenue in the year in which it is decided

Directorate General for Taxes. Resolution V0568-21 of March 11, 2021

The requester applied to the social security authorities in December 2020 for a refund of incorrect payments relating to excess contributions as a self-employed business owner derived from retroactive application of the "flat rate", obtained in the same month a decision allowing the request and received the amount concerned in January 2021.

Assuming that the excess contributions were deducted at the relevant time on the taxpayer's personal income tax return in the calculation of net income from activities, the refund of those amounts must be treated as income, attributable to the period in which the decision on the refund was made. A supplementary return does not therefore have to be filed for the periods in which the refunded amounts were paid.

4.6 Personal income tax. – Employers’ contributions to pension plans may go up to €10,000

Directorate General for Taxes. Resolution V0504-21 of March 5, 2021

A reduction to the deductible amount for determining net taxable income for personal income tax, in respect of contributions to pension plans came into effect on January 1, 2021.

The DGT has now clarified how the new limits must be interpreted:

(a) General limit: €2,000 per annum. This limit includes both taxpayer and employer contributions.

(b) Additional limit: €8,000 per annum only for employer contributions.

Therefore, the employer contributions giving the right to a reduction may amount in aggregate to €10,000 if there are no personal contributions by the taxpayer. It must be remembered that the limit determined in the law is not only a limit on deduction, it is also a financial limit.

4.7 Nonresident income tax. - Tax treatment applicable to severance for termination of a non-resident’s employment contract

Directorate General for Taxes. Resolution V0753-21 of March 30, 2021

The requester was employed by a Spanish company in 1988 but, as a result of being sent to Mexico for work reasons, he was resident in that country in 2018 and 2019. In 2019 his employment relationship was terminated, and he will therefore receive a severance payment. The termination, as described in the request for resolution, may take place in the form of an unjustified dismissal on disciplinary grounds or of a departure by mutual accord. In all three cases the severance would be paid in a lump sum.

The DGT specified the following principles:

(a) Whatever form the termination takes, the severance payment will be taxed under the provisions on employment income in article 15 of the Mexico-Spain tax treaty.

(b) The taxable severance must be shared proportionately between Spain and Mexico, according to the length of time the worker provided services in each country.

Consequently:

(i) The power to tax the portion of the severance derived from work performed in Spain, will be shared between Mexico (as the requester’s country of residence) and Spain (as the country where the job giving rise to the severance was performed).

(ii) This severance will be subject to nonresident income tax in Spain and it is Mexico (as the country of residence) that will have to eliminate any double taxation arising.

(iii) The exemption under the personal income tax legislation for severance for dismissal or departure of the worker may be claimable.

(c) However, according to the Commentaries to the OECD Model Tax Convention, punitive damages or damages awarded on grounds such as discriminatory treatment or injury to one's reputation should be treated according to article 21 of the treaty (other income) not as employment income.

That article contains a shared power system, allowing Spain (as the country of source) to tax the portion of severance that is not characterized as employment income. In this case, the exemption allowed in the personal income tax legislation for indemnification resulting from civil liability for personal damage, in the amount recognized in the law or by the courts might be applicable.

4.8 Nonresident income tax. - Income paid to an LLP is subject to withholding tax

Directorate General for Taxes. Resolution V0748-21 of March 30, 2021

A Spanish company received legal advisory services from a British company having the legal form of a Limited Liability Partnership (LLP) and entered on the register for England and Wales, although it carries on its economic activity in a continuous and habitual manner through a fixed place of business in Spain.

Reiterating the principle explained in previous resolutions, the DGT noted that entities of this type have a legal nature identical or similar to that of pass-through entities formed under Spanish law.

Therefore, any income paid to entities of this type is subject to withholding tax on payments in cash or in kind, which must be calculated under the personal income tax rules.

5. Legislation

5.1 Approval of the financial transaction tax regulations and amendments to other tax laws

Royal Decree 366/2021, of May 25, 2021, implementing the procedure for filing and paying financial transaction tax self-assessments and amending other tax legislation was published in the Official State Gazette (BOE) on May 26, 2021.

In our **Alert on May 26, 2021** we summarized the main new legislation in relation to the regulations implementing the financial transaction tax.

The other new items of legislation are summarized below:

(a) VAT: It includes two eminently technical amendments to the VAT regulations, to make it possible for any taxable persons signing agreements to sell consignment stock and using the immediate information sharing system to be able to fulfill their obligation to keep a new section in their records of certain intra-Community transactions (article 66.3) on the State Tax Agency's (AEAT's) website.

Namely: (i) it determines the time period for sharing the information on these transactions and (ii) sets out the additional fields needed to complete the information for recording the stock.

(b) Information on tourist rental homes: A new article 54 ter is added to the General Regulations on tax management and audit work and procedures, requiring tourist rentals to be reported.

This article is added with the same contents as the former article 54 ter, reversed by the Supreme Court in its judgment of July 23, 2020 because its adoption procedure had not been notified to the European Commission. See our **Alert on July 28, 2020**.

(c) Information on financial accounts: An amendment is added to article 4 of Royal Decree 1021/2015, of November 13, 2015, laying down the obligation to identify the tax residence of persons who own or have control over certain financial accounts and to inform on those accounts in the context of mutual assistance. It is provided in particular that the information return must be filed, even if there is no specific information to report.

5.2 Approval of forms for self-assessment and assessment of the tobacco fee and charge

The May 19 edition of the Official State Gazette (BOE) published **Order HAC/475/2021**, of April 29, 2021, approving the self-assessment and assessment forms for the fee and charge under Law 13/1998, of May 4, 1998, on the Tobacco Market and Tax Legislation.

The following forms have been approved:

(a) **Self-assessment form for the fee under code 596 – Provision of tobacco market services**, for verifying fulfillment of the requirements for recognition and official approval of premises and warehouses by reason of a change or modification of a site, for outlets and inspection of premises for cases of transfers of their ownership, performance of works or authorization of warehouses.

(b) **Self-assessment form for the fee under code 597 – Application for a tobacco outlet concession**, for verifying fulfillment of the conditions for granting the concession for tobacco and stamp outlets.

(c) **Self-assessment form for the fee under code 598 – Authorizations for points of sale selling with a surcharge**, for verifying fulfillment of the conditions to obtain the authorization of each point of sale selling with tobacco products with a surcharge.

(d) **Assessment form for the fee under code 599 – Charge for tobacco and stamp outlets**, for annual assessment of the charge.

More information:

Tax Department

Follow us:

GARRIGUES

This publication contains general information and does not constitute a professional opinion, or legal advice.

Hermosilla, 3

28001 Madrid, Spain.

T +34 91 514 52 00 **F** +34 91 399 24 08

garrigues.com