Tax Newsletter

Spain

GARRIGUES

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1. Judgments

1.1 Freedom of establishment. – If the taxation of the profits of permanent establishments abroad is waived, it is valid not to permit deducting their losses

Court of Justice of the European Union. Judgment of September 22, 2022. Case C-538/20

An entity resident in Germany that operates a securities trading bank opened a branch in the United Kingdom which was closed after generating losses. After the closure, the losses could not be carried forward in the United Kingdom for tax purposes. Despite that, the German tax authorities denied the possibility of offsetting them in the Germany entity's tax return, on the ground that according to the tax treaty between the United Kingdom and Germany, this latter State had waived its power to tax (and deduct) the profits (and losses) of permanent establishments in the United Kingdom.

The CJEU ruled that the freedom of establishment is not breached by national legislation that prevents a resident company from deducting from its taxable profits the final losses incurred by a permanent establishment situated in another Member State where the Member State of residence has waived its power to tax the profits of that permanent establishment in the other State.

1.2 Freedom of establishment. – National legislation must not establish a tax that reduces the remuneration of a limited and specific category of the gaming sector

Court of Justice of the European Union. Judgment of September 22, 2022 Joined cases C-475/20 and C-482/20

A legislative amendment in Italy led to the reduction of the commissions of operators who perform the organized activity of taking bets through gaming machines.

The CJEU considered that a piece of legislation such as that indicated must be deemed contrary to the freedom of establishment, due to imposing a levy the effect of which is to reduce the remuneration of a limited and specific category of operators in the gaming sector (in this case, the license holders responsible for the management of games played on gaming machines) if it is evidenced that the imposition of that levy is based exclusively on reasons related to the improvement of public finances.

However, the court clarified that the principle of the protection of legitimate expectations must be interpreted as not precluding, in principle, a piece of national legislation which temporarily reduces the license holders' commissions agreed to in the concession agreements with the tax authorities, unless it appears that those license holders were not given the time necessary to adapt to that new situation (which must be evaluated taking into account the unforeseeable nature of that measure and the extent of the impact of that reduction on the profitability of the investments made by license holders).

1.3 Corporate income tax. – It is not contrary to EU Law to exclude from the scope of the measures to prevent tax avoidance by shell companies only those whose securities are traded on regulated national markets

Court of Justice of the European Union. Judgment of October 6, 2022. Joined cases C-433/21 and C-434/21

Italian legislation establishes that companies that are listed on the national stock market are automatically excluded from the measures to prevent tax avoidance by shell companies in force in Italy. This ground for exclusion does not apply to unlisted subsidiaries of companies listed on the Italian market, or to national or foreign companies that are listed on foreign markets.

The CJEU considered that this provision is not contrary to the freedom of establishment.

1.4 Personal income tax. – A capital gain subject to personal income tax is generated in the termination of a tenancy in common if the asset is revalued

Supreme Court. Judgment of October 10, 2022

The Personal Income Tax Law establishes that in terminations of joint ownership arrangements, no capital gain is generated and, therefore, the assets received by each of the joint owners are not revalued. In other words, according to the law, the joint owners will receive the assets awarded in the termination at their original value, thereby deferring the taxation until a future transfer.

However, the Supreme Court held that if, upon the termination of the tenancy in common (in this case, of a building), the absolute ownership of the building is awarded to one of the joint owners in exchange for cash compensation to the other which is calculated based on the actual value of the building, a capital gain is generated for the joint owner that receives the cash, due to the difference between the compensation received and the acquisition cost of his portion of the building. This gain will be subject to personal income tax.

That is not precluded by the fact that, in these cases of termination of a tenancy in common of indivisible assets, transfer tax under the "transfers for a consideration" heading is not charged, because for the purposes of this tax, it is understood that there is no transfer but merely the specification or expression of the rights that the parties already had under joint ownership.

This same view was taken by the Directorate-General of Taxes in resolution V2038-22 of September 21, 2022.

1.5 Personal income tax. – The premium paid in a call option agreement is savings income

Supreme Court. Judgments of June 21, 2022 (appeals numbers 7121/2020, 7749/2020) and September 20, 2022 (appeal 5730/2020)

According to the personal income tax legislation, gains derived from transfers must be included in the savings component of taxable income, and are taxed at fixed rates which currently range between 19% and 26%, and which, starting in 2023, could be taxed in the higher bracket, at the rate of 28%, according to the tax reforms announced. All other gains form part of the general component of taxable income, and are taxed according to a scale of rates of between 19% and 47%, without prejudice to the applicable autonomous community legislation.

In these judgments, the Supreme Court concluded that the premium received for the grant of a call option right must be included in the savings component of taxable income because with that grant, the owner transfers authorities specific to its ownership right (which it temporarily waives).

1.6 Economic activities tax - Navarra. – The tax authorities must state the reasons for applying the maximum multiplier established in provincial legislation for the purpose of assessing the tax

Navarra High Court. Judgment of June 28, 2022

The legislation on economic activities tax in Navarra permits municipal councils to weight the minimum tax payable with multipliers according to the physical location, the displaying of signs or other characteristics or circumstances of the establishment in which the activity is performed. The multiplier must be between 1 and 1.4.

The Navarra Higth Court concluded in this judgment that the ordinance regulating these multipliers must state why the maximum multiplier (1.4) was chosen rather than another multiplier falling within the permitted range. This lack of stated reasons can be asserted in the appeals filed against the assessments issued in application of the ordinance.

1.7 Entry and search. – The failure to provide documentation in a certain format does not justify entry and search of a domicile

Supreme Court. Judgment of October 3, 2022. Madrid High Court. Judgment of February 16, 2022

In these judgments, the court analyzed different matters related to entry and search in a domicile in the context of a tax inspection:

(a) The Supreme Court analyzed a case in which the tax inspectors delivered to the company's legal representative an informative annex containing the taxpayer's rights and obligations (among other issues, it stated that "when it is necessary to enter the constitutionally protected domicile of the taxpayer, its consent or the relevant court authorization must be obtained"), after which the taxpayer consented to the entry. However, the taxpayer asserted in the subsequent proceeding that the consent was not valid because the annex did not inform of the possibility of opposing the entry and search.

The court recalled that without court authorization, the inspectors could only enter the domicile with the taxpayer's consent, which must be express, free and informed. In this case, it held that the consent was adequately given in view of that annex and taking into account the content of the official records signed by the company's legal representative.

(b) The Madrid High Court reviewed a case in which the tax authorities had asked the court to authorize the entry and search which was denied because it was based solely on the fact that the taxpayer had not furnished the accounting records in the format requested by the inspectors.

The court held that the failure to furnish some of the accounting records or furnishing them in a different format than the one required does not justify entry and search in the domicile because the tax authorities have other less burdensome means available to them to determine the tax base of the tax.

1.8 State liability. – The legal costs borne in administrative proceedings are refundable if the contested and annulled proceeding was not reasonable or the grounds were not stated

National Appellate Court. Judgment of September 20, 2022

After filing several economic-administrative claims, the assessments issued to a company were rendered null and void. Since the entity's claims had been upheld in full, it filed a request for compensation for State liability for the legal expenses borne.

Although in the specific case examined, the National Appellate Court rejected the company's claim, it recalled that according to Supreme Court case law, this compensation is justified where the requirement of unlawfulness is met, that is, where the administrative decision annulled has been based on illogical or unreasonable grounds or where no reasoning whatsoever is given.

It should be noted that the judgment had one dissenting opinion issued by one of the judges who disagreed with the majority opinion of the Chamber, on the grounds that there was an invalidating defect as a matter of law (not of voidability) which generated a duty for the tax authorities to compensate the taxpayer for the economic loss incurred (via indemnity).

1.9 Collection procedure. – The reduction in the surcharge for late filing applies even if its deferral or payment in installments is requested

Supreme Court. Judgment of October 13, 2022

The General Taxation Law (LGT) establishes a system of surcharges for late filing of returns. These surcharges are reduced by 25% if, once assessed, they are paid on time and are not contested. In the case analyzed, the taxpayer filed a supplementary return and paid the tax debt but, subsequently, the surcharge was assessed, of which it paid 25%, requesting a deferral of the remaining 75% with a bank guarantee.

The Supreme Court held that if the taxpayer pays the entire debt resulting from the self-assessment filed late, the 25% reduction in the surcharge will apply, even if part of the payment of that surcharge is deferred or paid in installments with sufficient guarantee (provided such deferral or installment payment is requested on time and fulfills the

established legal requirements). The contrary would breach the principle of good administration and would worsen the condition of the taxpayer that pays the self-assessed tax debt late and defers the surcharge or pays it in installments, compared to the taxpayer that does the opposite, that is, that defers the principal debt or pays it in installments and pays the surcharge on time.

1.10 Penalty procedure. – In a simulated act, it is not possible to claim that a reasonable interpretation has been made

Supreme Court. Judgments of September 20, 2022 (appeals 3587/2020 and 6959/2020), September 27, 2022 (appeal 7037/2020) and October 10, 2022 (appeal 6561/2020)

Article 16.3 of the LGT establishes that in the regularization issued as a result of the existence of simulation, late-payment interest and, as appropriate, penalties, will be charged. Moreover, article 179.2.d) of the LGT excludes penalties in cases where the taxpayer has made a reasonable interpretation of the law.

The Supreme Court considered that, in cases of simulation, it cannot be sustained that the taxpayer's conduct was reasonable. In other words, simulation, by its very nature, is always willful misconduct because in such cases there is conscious and deliberate concealment aimed at not paying some of the tax debt owed.

1.11 Penalty procedure. – To apply the aggravating factor of repeated commission of tax infringements, penalties that became final, by negative silence, more than four years before the new infringement cannot be taken into account

Supreme Court. Judgment of October 4, 2022

Article 187.1.a) of the LGT states that penalties can be aggravated in cases of repeated commission of tax infringements. This case applies where the taxpayer has been penalized for the same kind of infringement according to a final decision in the administrative jurisdiction within the four years prior to the commission of the new infringement.

The Supreme Court held that, for these purposes, the penalties contested in economic-administrative claims that may be deemed rejected by negative silence (because one year has elapsed since the claim) shall be deemed final since that time. In other words, a penalty which, according to this criterion, has become final before the start of the four years prior to the imposition of a new infringement, cannot be taken into account when applying that aggravating factor.

1.12 Review procedure. – It is disproportionate to refuse leave to an appeal because it was not filed with the body to whom it was addressed

Supreme Court. Judgment of September 19, 2022

In this judgment, the Supreme Court held that leave cannot be refused to an appeal because it should have been filed with a court but it was filed through Lexnet in the Judicial Review Distribution and Registration Office, with the particularity that the notice of appeal did correctly indicate the court to which it was addressed.

According to the court, having verified that the appeal was filed on time, with express indication that it was intended for the appropriate court, the decision to refuse leave to the appeal for the reason indicated is disproportionate and infringes the right to effective judicial protection.

1.13 Enforcement procedure. – Economic-administrative decisions annulling assessment decisions for substantive reasons must be enforced within a period of one month

Supreme Court. Judgment of September 27, 2022

Article 150.5 of the LGT, in its wording in force until October 11, 2015, established that where a court judgment or economic-administrative decision orders the roll-back of the inspection proceedings, they must end within the period remaining from the moment to which the proceedings were rolled back until the end of the maximum period for completion of inspection proceedings. Based on this wording, the Supreme Court has been sustaining that, in the absence of a provision of law stating the contrary, the period regulated in this article had to be applied in the cases of annulment for formal or substantive reasons.

As from said date, this article (now 150.7 of the LGT) refers exclusively to cases in which the roll-back is ordered because of formal defects found. For this reason, the Supreme Court has now ruled that in cases where the roll-back is ordered due to substantive defects, article 150.7 of the LGT will not apply but rather article 239.3 of that law (and article 66.2 of the Review Regulations). In other words, in these cases, the tax authorities have one month for enforcement following the date on which the economic-administrative tribunal's decision is entered on the register of the State Tax Agency (including the register of the Office for Court Relations).

The legal consequence derived from the breach of the one-month period is that late-payment interest cannot be claimed as from such breach.

2. Decisions

2.1 Personal income tax. – The 40% reduction is claimable for benefits from a number of pension plans

Central Economic-Administrative Tribunal. Decision of October 24, 2022

The personal income tax legislation in force up to 2006 envisaged the application of a 40% reduction for payments in the form of a lump sum derived from pension plans, where more than two years had elapsed following the first contribution. With the elimination of this reduction by Law 35/2006, a transitional regime was regulated, according to which that reduction can be applied to payments derived from contingencies prior to January 1, 2007, and to those derived from later contingencies, in this case for the portion relating to the contributions made before that date. For these purposes, the transitional regime can only be applied to the payments received in the year in which the contingency arises or in the following two years.

In this decision, the Tribunal analyzed whether a taxpayer that held several pension plans with contributions prior to 2007, could benefit from the 40% reduction in more than one fiscal year.

The TEAC has confirmed the contested decision (decision of the Regional Economic-Administrative Tribunal of the Valencia Autonomous Community – TEARV – of April 29, 2021, analyzed in our alert of July 23, 2021), examining the case of a taxpayer who had received payments in the form of a lump sum from two pension plans in two different fiscal years. Upon receipt of the first payment derived from one of the plans, the taxpayer determined his net income applying said 40% reduction and, thus, the inspectors considered that the same type of reduction could not be applied to a payment received in a later fiscal year derived from a second pension plan. The TEARV rejected that view.

In other words, when payments are received from various pension plans, the 40% reduction could be applied to all the amounts received in the form of a lump sum (single payment) in the fiscal year in which the contingency relating to each plan arises and in the following two years.

2.2 Personal income tax. – The imputation of income from real estate will be 2% of the cadastral value if this value has not been revised through a general collective appraisal procedure

Extremadura Regional Economic-Administrative Tribunal. Decision of May 31, 2022

The Personal Income Tax Law establishes that real estate income must be imputed for properties not used in an economic activity that do not generate income from capital and that are not the taxpayer's habitual residence. The imputation rate is, in general, 2% of the cadastral value, unless this value has been reviewed, modified or determined through a general collective appraisal procedure and has entered into force in the tax period in question or in the ten preceding ones, in which case the imputation rate will be 1.1%.

The Extremadura TEAR underlined in this decision that the reduced rate of 1.1% can only be applied if the modification of the cadastral value derives from a general collective appraisal procedure, not if it is the result of another type of procedure.

2.3 Personal income tax. – To conclude on where the main center of the taxpayer's economic interests is, it is necessary to compare country by country where the income is generated and the assets are located

Central Economic-Administrative Tribunal. Decisions of February 22, 2021 (Guideline 1 and Guideline 2) and of May 24, 2022 (Guideline 1 and Guideline 2)

The status of personal income taxpayer revolves around the concept of habitual residence in Spain. According to the Personal Income Tax Law, a taxpayer is deemed to have his habitual residence in Spain where (i) he spends more than 183 days in Spain in the calendar year, or where (ii) the main center of his economic activities is directly or indirectly located in Spain.

In its decision, the TEAC established the following criteria:

(a) To determine the location of the main center or base of economic activities or interests, all the objective criteria must be taken into account, that is, both the place where most of his income is obtained, and the place where most of the investments are concentrated. For that purpose, one must analyze the existing proof and make a comparison of income and investments country by country.

(b) Following the view of the Supreme Court in its judgment of July 4, 2006 (appeal 3400/2001), the provision of a certificate of residence in another State is not incompatible with the status of tax resident in Spain by application of Spanish national legislation.

2.4 VAT. - The TEAC accepts that any type of communication sent through a notary is sufficient to change the taxable amount for irrecoverable debts

Central Economic-Administrative Tribunal. Decisions of September 20, 2022 (appeals 3635/2020 and 7718/2020)

In view of the Supreme Court judgments of June 2 and 9, 2022 (which we referred to in our Newsletter of June 2022), the TEAC has modified its position regarding the requirements necessary to change the VAT taxable amount for irrecoverable debts.

In particular, it concluded that the requirement for the taxable person to have requested the payment of the debt through a formal demand served by a notary to the debtor, is deemed met by any communication to the latter by notary, regardless of the form of the certificate issued in this regard.

2.5 Transfer and stamp tax. - What is the tax treatment of the termination of a tenancy in common or joint ownership of real estate

Balearic Islands Regional Economic-Administrative Tribunal. Decisions of April 28 and May 31, 2022

These decisions analyze how the termination of a tenancy in common or joint ownership of certain assets is taxed under transfer and stamp tax. The Balearic Islands TEAR concluded as follows:

(a) The termination of a tenancy in common resulting from various inheritances, according to which one of the tenants in common receives full ownership of a building in exchange for cash and a share in other properties, is subject to stamp tax, not to transfer tax under the "transfers for a consideration" heading ("TPO"), because (as the Supreme Court held in its judgment of October 30, 2019) in this case, the requirements of indivisibility, equivalence and proportionality are met.

(b) However, the award in a court auction of the full ownership of the property to one of its two tenants in common is subject to TPO because the award is made through an auction, not through an agreement between the parties.

2.6 Management procedure. – Where a decision orders the roll-back of proceedings and the issuance of a new assessment in the context of a tax management procedure, late-payment interest will only be charged until the date of the first assessment annulled

Central Economic-Administrative Tribunal. Decision of October 4, 2022

Article 150.7 of the LGT regulates the calculation of late-payment interest in cases where a new assessment is issued as a consequence of the fulfillment of the order to roll-back inspection proceedings contained in an administrative decision or court judgment.

In this decision, the TEAC clarified that this article cannot be applied, by analogy, to tax management procedures and concluded that, in order to determine the late-payment interest relating to a new assessment issued due to the roll-back of proceedings in the context of a management procedure, regard must be had to the criteria established by the Supreme Court in its judgment of December 9, 2013 (appeal 4494/2012) and by the TEAC itself in its decision of October 28, 2013 (R.G. 4659/2013), according to which, in order to determine the "*dies ad quem*" of the late-payment interest accrual period, late-payment interest will only be charged up to the date of the first assessment annulled.

2.7 Collection procedure. – The TEAC establishes new guidelines in relation to cases of shifting of joint and several liability due to concealment or transfer of assets with the aim of obstructing the actions of the tax authorities

Central Economic-Administrative Tribunal. Decision of September 15, 2022 (Guideline 1 and Guideline 2)

The TEAC analyzed the case of joint and several liability of article 42.2.a) of the LGT, in other words, liability held by anyone who causes or cooperates in the concealment or transfer of assets or rights of the person with the payment obligation for the purpose of obstructing the action of the tax authorities. In relation to this case, it established the following guidelines:

(a) The economic-administrative bodies can refute the conclusions that the tax authorities reach from the circumstantial evidence used to justify the shifting of liability, but in no case can they refrain from evaluating such proof or modifying the factual scenario determined by it (for example, altering the concealed asset or right).

(b) The scope of the liability is formed by the lower between (i) the debt of the principal debtor, and (ii) the value of the assets that could have been attached by the tax authorities if they had not been removed from the debtor's assets in order to prevent their being attachment.

(c) In general, when several liable parties are involved in the same case of concealment, which consists of the acquisition of ownership of assets or rights from the principal debtor, the scope of liability for each of them should be limited by the value of the assets or rights relating to each one's percentage share in such acquisition.

2.8 Collection procedure. – The attachment order on a building registered in the debtor's name tolls the statute of limitations for collecting the debt, even if the building has been sold

Murcia Regional Economic-Administrative Tribunal. Decision of April 29, 2022

Article 66 of the LGT establishes that the tax authorities' right to claim the payment of tax debts becomes statute-barred after 4 years. Moreover, article 68 of the LGT specifies that this period is tolled by any action by the tax authorities aimed at collecting the tax debt.

In the case analyzed, the tax authorities issued an attachment order on a building that was registered at the Property Registry in the name of the debtor, but that had been sold by it several months before the attachment, which rendered the attachment null and void.

The Murcia TEAR highlighted that the attachment order was effective to toll the statute of limitations of the right to claim the debt because the tax authorities based it on what was recorded in the Registry (public reliance on registered information).

2.9 Management procedures. - The management bodies can decide on requests for correction of self-assessments raising issues relating to special regimes, but not verify the application of such regimes

Central Economic-Administrative Tribunal. Decision of October 4, 2022

The TEAC applied the view established by the Supreme Court in its judgment of March 23, 2021 (appeal 3688/2019) and concluded that procedures involving the verification of the applicability of special regimes established in the corporate income tax legislation must be carried out by inspection bodies.

However, it clarified that, in the case analyzed by the TEAC, the taxpayer, having applied the special regime for partially exempt entities, had requested the correction of a self-assessment, and the management body only performed a task of comparing the information possessed by the tax authorities and the information or proof provided by the interested party to justify the correction, which did fall within the management powers in the scope of requests for correction of self-assessments.

2.10 Management procedure. – A new view by the courts is a sufficient basis for requesting the correction of a self-assessment, even where a request was already made which was denied and became final

Central Economic-Administrative Tribunal. Decision of October 4, 2022. **Balearic Islands Regional Economic-Administrative Tribunal.** Decision of May 31, 2022

The Tribunal analyzed whether a taxpayer could make a second request for correction of a self-assessment after the first one had been denied (without having contested the decision in time), due to the existence of a judgment or decision that modified the previous view and that did not exist when the first request was denied.

The TEAC applied the view adopted by the Supreme Court in its judgment of February 4, 2021 (Newsletter of February 2021) according to which the taxpayer may apply a second time for correction of a self-assessment, given that arguments, information or circumstances have arisen that are relevant for the requested correction.

Along the same lines, the Balearic Islands TEAR accepted a refund application of a tax that was self-assessed by a taxpayer applying a view that was subsequently modified by the Supreme Court. Specifically, the taxpayer had self-assessed the stamp tax on the termination of a tenancy in common, calculating the tax on the total value of the real estate, rather than on the value of the part awarded, in contrast to what the Supreme Court ruled subsequently in its judgment of October 9, 2018 (Tax Newsletter of November 2018).

3. Resolutions

3.1 Corporate income tax. - Expenses of vehicles used to perform the activity may be deductible, even if they are used by the shareholders

Directorate General of Taxes. Resolution V2097-22 of September 30, 2022

The case involved an entity that needed to acquire at least two vehicles purchased outright or under a "renting" arrangement, for the day-to-day management performed by the shareholders/members at the company.

The DGT ruled that if the vehicles are used to perform the company's activity, the depreciation or lease expenses (depending on the case) will be deductible, provided the conditions of accounting recognition, recognition on an accrual basis and supporting documentation are met, if they do not qualify as non-tax deductible expenses under any specific provision of the Corporate Income Tax Law.

3.2 Corporate income tax. - The conditions for fulfilling the equity holding requirement in relation to the capitalization reserve are clarified

Directorate General of Taxes. Resolution V2099-22 of September 30, 2022

The DGT analyzed the equity holding requirement for purposes of the capitalization reserve and concluded as follows:

(a) The holding requirement relates to the amount by which equity increased, not to each one of its captions. Therefore, the disposal of any of the elements forming part of the equity during the holding period will not entail a breach of said requirement, provided the amount by which equity increase is maintained overall during that period.

(b) This holding requirement means that, in each of the 5 years after applying the capitalization reserve, the difference between equity at the end (not including the earnings figure for that year) and at the beginning of the fiscal year (not including the earnings for the previous year) must be equal to or higher than the increase in equity that gave rise to the reduction.

(c) If, in any of the fiscal years relating to the holding period, there is a decrease in the voluntary reserves as a consequence of the distribution of dividends, that charge to reserves will mean a lower amount of equity at the end of the fiscal year in which the distribution takes place, for purposes of determining the fulfillment of the holding requirement.

3.3 Personal income tax. - The making available of vehicles for use by sales agents is valued at normal market value

Directorate General of Taxes. Resolution V1931-22 of September 12, 2022

The Personal Income Tax Law establishes that the making available of vehicles for use by employees can generate income in kind valued annually according to whether the vehicle is owned by the company (20% of the cost) or under "renting" or financial lease arrangements (20% of the market value as if the vehicle were new) and weighting the result of this valuation rule by the availability for private use of the vehicles.

In this resolution, the DGT clarified that this treatment only applies when the vehicles are made available to individuals with an employment relationship. In the case of vehicles made available to traders or professionals, even if it is in payment of services, it will generate income from economic activities. That income will be valued at market value, and the making available of the vehicle shall be deemed to be solely for private use (given that the vehicle cannot be understood to have been used "in an employment context").

3.4 Tax on Fluorinated Greenhouse Gases. - Certain issues regarding tax on fluorinated greenhouse gases are clarified

Directorate General of Taxes. Resolution V2067-22, of September 27, 2022, and resolutions V2083-22, V2084-22 and V2085-22, of September 30, 2022

The new wording of the tax on fluorinated greenhouse gases took effect on September 1, 2022, in relation to which the following issues were clarified:

(a) In relation to the taxable event of manufacture and in cases involving a storer, downward differences in gas stocks shall not be taxed if it is proven, by any legally admissible means of proof, that such differences are due to inaccuracies in the measuring devices.

(b) As the law does not distinguish between regenerated gases, recycled gases or virgin gases, the intra-Community importation and acquisition of any of these gases will constitute the taxable event.

(c) The procurement of regenerated or recycled gas in the territory of application of the tax will not be subject because such transactions are not considered manufacturing.

(d) The importation of waste gas for recovery is subject to the tax. The subsequent recycling and regeneration are not considered manufacturing and, therefore, the taxable event does not take place.

(e) The communication of fluorinated gases existing as of September 1, 2022 must include the identity and the amount, expressed in kilograms, of such gases, and it is sufficient to communicate the trade name, management heading and code of the fluorinated bases for their identification. The communication need not be made in an official form, and it must cover the total fluorinated gases existing in the facilities, both bulk and gas contained in the preloaded equipment or devices.

(f) The documentation that accompanies the gases at all times must permit their traceability. In any case for the purposes of application of the tax, it is not necessary to distinguish between the gas regenerated in Spain and the gas obtained through an intra-Community import or acquisition, given that the taxable events are the manufacture, intra-Community acquisition and import.

(g) A company that carries out Storage of Chemical Products will not acquire the status of storer if its volume of sales or deliveries during the immediately preceding calendar year does not exceed 8,000 kilograms of gases to which the tax applies.

(h) In order to obtain a refund, evidence of the payment of the tax may be provided through the certificate or invoice that must be furnished by those who make sales or deliveries of fluorinated gases or products, equipment or devices containing them.

(i) An end user that buys directly from an EU manufacturer or distributor of refrigeration units loaded with coolant shall have the status of intra-Community acquirer and must file the relevant self-assessment and pay the tax.

(j) For the purpose of completing the self-assessment return (form 587), the management codes, the TARIC codes, the GWPs (global warming potentials) and the tax rates relating to the gases and mixtures are listed in the Excel sheet located in the "Help" drop-down menu on the State Tax Agency's website, in the section relating to "Tax on Fluorinated Greenhouse Gases in force since September 1, 2022."

4. Legislation

4.1 The Economic Accord with Navarra is modified

October 20, 2022 saw the publication of Law 22/2022, of October 19, 2022**,** introducing numerous modifications in the Economic Accord with Navarra. In our Commentary of November 3, 2022 these modifications are analyzed.

4.2 Strengthening of tax measures to boost energy efficiency and transposition of the regulation of reverse hybrid mismatches

On October 19, 2022, the Official State Gazette published Royal Decree-Law 18/2022 of October 18, 2022, containing a slew of tax measures. In our alert of last October 20, we summarized these measures, aimed at boosting energy efficiency and modifying the rules on reverse hybrid mismatches.

4.3 The procedure for the partial refund of Excise Tax on Oil and Gas is approved

On October 5, 2022, the Official State Gazette published Order HFP/941/2022, of October 3, establishing the procedure for the partial refund of excise tax on professional oil and gas and amending Order EHA/993/2010, of April 21, establishing the procedure for the partial refund of the excise tax on oil and gas borne by farmers and livestock breeders (in force since October 6).

Among other issues, the Order establishes that the procedure for making the partial refund will be the same for all owners of vehicles that meet the conditions specified in article 52 bis of Law 38/1992, regardless of their place of residence.

In addition, for nonresident beneficiaries with residence or permanent establishment in the European Union, the Order (i) eliminates the obligation to appoint a tax representative with domicile in Spanish territory in order to request the registration on the census of beneficiaries of refunds for professional gas and vehicles owned by them, and (ii) establishes that they may request the refund with the same requirements as for resident beneficiaries.

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