March 2014

The Court of Justice of the European Union (CJEU) has handed down the awaited judgment on the so-called "health cent" (the tax on retail sales of certain oil and gas products) in case C-82/12, Transportes Jordi Besora, S.L. In that judgment, the Court concludes that Directive 92/12, on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, precludes the Spanish law establishing the tax on the retail sales of certain oil and gas products.

The infringement on EU law is based on the absence of a "specific purpose," other than a merely budgetary objective for the tax, the establishment of which is precluded by the excise tax directive.

The absence of limitation of the temporal effects of the judgment would mean that those effects should not be confined to open fiscal years or to claims on which a final decision has not yet been made in order for affected parties to request a refund of the tax paid contrary to EU law, although the procedural channels differ in each case depending on whether they involve open or statute-barred years. Consequently, this opens the door to applications for a refund of amounts incorrectly paid over or, alternatively, to the procedure for claiming economic liability of the State, as the case may be.

In any case, the taxpayer will have to prove that it has borne the tax through the relevant invoice just as it will have to prove the damage caused.

Also worth noting is that EU case law does not authorize, save for in exceptional circumstances, the refund of the tax incorrectly charged if it is proven that the person obliged to pay it has actually charged it to other parties, because in those circumstances granting the refund to the one that charged it could lead to a situation of unjust enrichment.

In short, now that the CJEU has handed down the judgment, there are various questions that will have to be analyzed and addressed in each case, both as regards the enforcement phase of the administrative or court decision finding the refund justified, and as regards possible new applications for a refund of taxes paid in statute-barred years. The scope of cases and problems can be very diverse and although the judgment handed down by the CJEU is emphatic as regards the infringement by IVMDH of EU law, the actual refund of the IVMDH borne will largely depend on the appropriate processing of the refund application and, in particular, on the provision of proof that the legal requirements for the refund are met.

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I. Judgments

1. Corporate income tax.- Exemption for the avoidance of international double taxation of Brazilian "juros" (National Appellate Court. Judgment of February 27, 2014)

In this judgment, the Court analyzed the possibility of applying the exemption for the avoidance of international double taxation (article 21 of the Revised Corporate Income Tax Law) to the *juros sobre o capital próprio* ("*juros*") distributed to Spanish parent companies by subsidiaries resident in Brazil. According to Brazilian commercial, accounting and exchange control laws, *juros* are distributions of income, but Brazilian tax legislation permits considering them, albeit on a limited basis, as a deductible expense for Brazilian corporate income tax purposes.

In the case analyzed in this judgment, the tax inspectors, the Central Economic-Administrative Tribunal and the Government Lawyer had considered that the exemption for the avoidance of international double taxation did not apply to the *juros* distributed by Brazilian subsidiaries for the following reasons:

(i) Because of how *juros* are classified by Brazilian tax legislation. Given that the *juros* are considered "interest" for Brazilian tax purposes (because they are deductible), they should also be classified as "interest" for Spanish tax purposes. As the exemption for the avoidance of international double taxation only applies to "dividends or shares in income" and not to income classified as interest, the exemption would not apply to the *juros*.

(ii) Because there is no economic double taxation of the income since, according to the mechanics of the taxation of the *juros* in Brazil, as they are deductible at the Brazilian subsidiary, they would not have been taxed in Brazil.

Nonetheless, the National Appellate Court, in keeping with the appellant's reasoning, confirmed the applicability of the exemption for the avoidance of international double taxation, holding that:

(i) What is important for concluding on the tax treatment in Spain is the legal nature of the *juros*, which requires analyzing the Brazilian legislation that defines them.

(ii) In this regard, the National Appellate Court stated that despite their being called *juros* or "interest" on own capital, they cannot be characterized as interest because they do not remunerate amounts given as a loan. On the contrary, *juros* can be equated with dividends, since their source is the existence of income at the Brazilian subsidiary and the instrument that gives a right to them is the shareholder's stake in the capital, even if they are not equated with such dividends for Brazilian tax purposes.

(iii) Due to their legal nature, *juros* fit perfectly within the concept of "dividends or shares in income" of the legislation regulating the exemption for the avoidance of international double taxation (and of article 10 of the Spain-Brazil tax treaty) and, thus, that exemption fully applies to them.

Regarding the existence or not of economic double taxation, the National Appellate Court considers that where there is a tax treaty, the irrebuttable presumption of taxation abroad, introduced starting in fiscal year 2004, applies.

2. Corporate income tax.- Advance taxation of unrealized capital gains.- Taxation of unrealized gains is valid to ensure the exercise of the taxing power (Court of Justice of the European Union. Judgment of January 23, 2014 in case 164/12)

The Court of Justice of the European Union (CJEU) analyzed a case involving an exchange carried out by two German companies. These companies exchanged their shares in a limited partnership in Germany for those of an Austrian corporate enterprise, which resulted in the disappearance of the German limited partnership. The German tax authorities considered that the assets transferred in the exchange should have been recognized for accounting purposes at an estimated value, not a their carrying value, which would have entailed the taxation of the unrealized gains before their effective realization.

The CJEU considers that the aim of preserving the distribution of the taxing power between Member States can justify the legislation of a State that requires taxing unrealized gains, as long as that State is unable to exercise its taxing power over those gains when they are effectively realized, which question is for the national court to determine.

Moreover, the CJEU considers that the form of paying the tax established by Germany, which permits deferring the payment for several years by providing a guarantee, does not go beyond what is necessary to achieve the aim of preserving the distribution of taxing powers between Member States, as long as, when the taxpayer elects to defer the payment, the obligation to provide a bank guarantee is imposed according to the actual risk of the tax not being collected.

3. Corporate income tax.- Where a taxpayer has received subsidies for R&D activity, the burden of proof of the nature of that activity is on the tax authorities (Supreme Court. Judgment of January 12, 2004)

In this case, the taxpayer had taken the R&D tax credit for some projects for which it had received subsidies. The inspectors questioned that tax credit on the ground that the taxpayer had not evidenced that the products in relation to which that tax credit was taken represented an innovation on the market.

The Court recalled, firstly, that currently, when a taxpayer intends to take the tax credit, it can request a ruling on its applicability, an advance valuation arrangement in relation to the relevant expenses and prior reasoned reports (currently issued by the Ministry of Economy and Competitiveness) relating to the fulfillment of the scientific and technological requirements established in the corporate income tax legislation. However, the law applicable to the case (fiscal years 1997 to 2000) did not establish a system of "preestablished proof" based on the knowledge of experts.

In this situation, according to the Court, the receipt of subsidies for the projects in relation to which the tax credit has been questioned reverses the burden of proof. In this regard, the Court states that:

(i) In the R&D tax credit, we need scientific and technical knowledge in order to determine when a project, product or system is innovative.

(ii) This situation, which rests on knowledge with a decisive component of technical evaluation, exceeds the scope of the scientific or technical knowledge which can be expected of the officials of the tax inspection services.

(iii) Tax inspectors are authorized to obtain the report of independent experts.

(iv) Therefore, having received subsidies (granted by bodies with technical knowledge in the field), the administrative assessment can only be based on a technical report, obtained by the tax authorities, to evidence that there is no research or development activity as defined by the law.

(v) Only after such a report has been obtained can the taxpayer be expected to refute its contents.

(vi) In short, without that technical report, the inspectors, and then the review body, cannot determine whether the projects meet the requirements to qualify for the tax credit.

The question arises as to who has the burden of proof at present when subsidies are received and, even though rulings, advance valuation arrangements or reports can be requested, they have not been requested by the taxpayer (who is not obliged but merely has the right to do so).

4. Transfer and stamp tax and inheritance and gift tax.- A gift with assumption of mortgage debt has a dual nature: with and without consideration (Castilla-León High Court. Judgment of November 29, 2013)

The Court examined a case in which part of a property was given as a gift and the donee assumed the payment of the donors' mortgage debt which exceeded the value of the portion of the property given.

The Castilla-León High Court confirmed that the operation entails two different transactions for tax purposes and that, therefore, there are two taxable events subject to different taxes:

(i) Firstly, there is a transfer for a consideration, for the portion in which both considerations are offset (the delivery of the property and the assumption of the debt), so transfer tax under the "transfers for a consideration" heading is chargeable on the amount of the debt to which the donee is subrogated.

(ii) There is also a transfer for no consideration, for the part on which the donors profit or increase their wealth (as the value of the property given away was lower than the debt assumed by the donee), and which will therefore be subject to inheritance and gift tax.

5. Tax on retail sales of certain oil and gas products (IVMDH).- IVMDH is contrary to Directive 92/12 on excise duties, as it does not pursue a specific purpose (CJEU. Judgment of February 27, 2014 in case C-82/12)

The CJEU has held that IVMDH (known as the "**health cent**") is incompatible with European law. The Court bases its decision on the fact that the purpose of IVMDH is to finance the powers of the autonomous communities, such that it cannot be deemed to have a specific purpose on the terms established in the Directive, as it is not meant to guarantee the protection of health and the environment.

Moreover, regarding Spain's request that the Court limit the temporal effects of the judgment, the CJEU recalled that that limitation is an exceptional decision that requires that the legislating State must have acted on good faith and there must be a risk of serious economic repercussions, and that those circumstances are not present in this case.

More specifically, the Court did not even analyze the existence of serious economic repercussions because the first requirement (that of having acted on good faith) was not met

given that, prior to the approval of the tax, the Commission had already ruled that it was contrary to European Union law (and in fact, an infringement proceeding had been initiated against Spain in 2003).

6. Turnover tax.– A tax on turnover that mostly affects companies with linked undertakings in another Member State can be contrary to the freedom of establishment (Court of Justice of the European Union. Judgment of February 5, 2014, in case 385/12)

The CJEU analyzed a Hungarian tax affecting certain activities (in this case, that of store retail trade) which is calculated on the net turnover of the taxpayer and charged at a steeply progressive rate. In the case of taxpayers with the status of "linked undertakings," the tax base is calculated by adding the net turnover from the activities of all the taxpayers that are linked, applying the tax rate to the sum of turnovers.

Once the tax is calculated, it is divided amongst the different taxpayers in proportion to their individual turnover. Accordingly, the tax payable by each company is higher than what would correspond to each if the turnover were calculated individually.

According to the preamble of the law creating the tax, the aim was to restore the budgetary balance of the State by establishing a special tax for taxpayers whose capacity to bear public burdens surpasses the general obligation to pay tax. The Court held that:

(i) In the context of a tax rule which concerns the taxation of turnover, the situation of a person subject to the tax which belongs to a group of companies is similar to that of a person subject to the tax which does not belong to such a group.

(ii) In those circumstances, if it is established that in the sector concerned, the taxable persons belonging to a group of companies and covered by the highest band of the special tax are, in the majority of cases, "linked", within the meaning of the national legislation, to companies which have their registered offices in other Member States, the application of the steeply progressive scale of the special tax to a consolidated tax base consisting of turnover is liable to disadvantage, in particular, taxable persons "linked" to companies which have their registered office in another Member State.

(iii) Therefore, legislation such as that at issue in the main proceedings, although it does not make a formal distinction according to the registered office of the companies, entails indirect discrimination on the basis of the registered office of the companies which infringes the freedom of establishment.

(iv) According to settled case-law, such a restriction is permissible only if it is justified by overriding reasons in the public interest. It is further necessary, in such a case, that it should be appropriate for ensuring the attainment of the objective in question and not go beyond what is necessary to attain that objective. To these effects, the Court stated that it is not possible to validly invoke, in support of such a system, either the protection of the economy of the country or the restoration of budgetary balance by increasing fiscal receipts.

7. Inspection proceeding.- The duration of proceedings which are resumed after becoming final in the criminal jurisdiction cannot exceed 12 months bearing in mind the time elapsed before they were referred to the Public Prosecutor's Office (National Appellate Court. Judgments of October 17, 2013 and January 20, 2014)

In the cases analyzed in these two judgments, it was concluded that going beyond the 12-month term of inspection proceedings that have been tolled by the processing of a criminal proceeding, adding to that the time spent before the proceedings are referred to the Public Prosecutor's Office and after they are resumed, does not toll the statute of limitations of all the foregoing proceedings.

In the first case, contrary to what the inspectors and the Central Economic-Administrative Tribunal claimed, the National Appellate Court held that the justified delay in the proceedings while they were referred to the Public Prosecutor's Office only means that such period is not computed within the statutory period of twelve months, but once the inspectors receive the final judgment handed down in the criminal jurisdiction, the statute of limitations is resumed and the proceeding must end in the time that remains (in that case, two days), meaning that as the maximum term had been surpassed, the four-year statute of limitations on the tax authorities' right to assess the tax had expired.

In the second case, invoking Supreme Court case law, the Chamber held that once the case file was returned to the tax authorities, they must resume the inspection computing the time periods already used up, without any of the actions taken within the inspection having the effect of tolling the statute of limitations if the 12-month term has been surpassed.

It should also not be forgotten that the maximum statutory period of unjustified interruption of inspection proceedings is six months; once that period is exceeded, although the proceeding has not expired, and among other effects, the statute of limitations is not deemed tolled as a consequence of inspection proceedings carried out until that tolling.

8. Collection proceeding.- The enforced collection surcharge can only be charged once and cannot be multiplied according to the number of joint and several liable parties (Castilla la Mancha High Court. Judgment of October 30, 2013)

This case entailed the enforcement of liability for the debt against the jointly and severally liable parties, where the enforced collection proceeding was initiated against each of those jointly and severally liable parties and one of them paid the tax debt along with the enforced collection surcharge. However, despite that, the inspectors continued claiming the enforced collection surcharge from the rest of liable parties.

The tax authorities argued that the aim of the enforced collection surcharge is to recover the expenses and trouble derived from the initiation of the enforcement period, supporting its view on the basis of a judgment of the Madrid High Court of February 18, 2013, in which the Court held that the enforced collection surcharge was personal for each debtor and served a coercive function to promote the payment of the debt.

On the contrary, the Castilla la Mancha High Court held that the enforced collection surcharge is part of the tax debt and that the fact that it is claimed jointly and severally does not mean that it is multiplied according to the number of liable parties. In other words, there is one debt and as the surcharge forms part of it, multiplying the surcharge by the number of liable parties would be contrary to the idea of joint and several liability.

II. Decisions and rulings

1. *Corporate income tax.- Indemnity received as a consequence of provisional enforcement of a judgment is not revenue until judgment is final (Directorate-General of Taxes. Ruling V0115-14, of January 20, 2014)*

The requesting party asked about the tax treatment of extraordinary revenue recognized for the collection of an indemnity received from the provisional enforcement of a judgment that was appealed to a higher court by the other party. In the event that the amount received had to be reimbursed, along with the applicable interest, it recorded a provision for the same amount.

The Directorate-General of Taxes ("DGT") ruled that:

(i) Indemnities ordered by court judgment become claimable and are included in the tax base of the tax period in which they become final, because the judgment cannot be appealed and the right to the income is certain.

(ii) Therefore, given that in this case the judgment is not final because it has been appealed at second instance, the taxpayer should not recognize any revenue for the indemnity collected on a provisional basis and, thus, that collection should not have any effect on the tax base.

(iii) Once the judgment becomes final, if the decision is favorable, the entity would have to recognize extraordinary revenue for the amount of the indemnity ordered by the court. On the contrary, if the decision is unfavorable, the entity will derecognize the liability accounted for in relation to the collection of the indemnity, with a credit to cash, without that indemnity being recognized at any time in the income statement and, therefore, without the reimbursement of that indemnity having any impact on the tax base of the period.

2. *Corporate income tax and VAT.- Validity of the invoices received by e-mail or platforms (Directorate-General of Taxes. Ruling V0068-14, of January 15, 2014)*

The DGT analyzed the validity of receiving invoices by e-mail or their being made available through a web or platform in order to be printed out, recorded in the accounts and filed. The DGT ruled that:

(i) With respect to corporate income tax, the expense will be tax deductible if it is correctly recorded for accounting purposes, recognized in the fiscal year in which it accrued, matched with revenues and justified by supporting documents. In relation to this latter requirement, it is a factual question that must be evidenced by any legally valid means, which must be evaluated by the tax authorities competent in inspection matters.

(ii) In the area of VAT, the Invoicing Regulations of 2012 promote electronic invoicing, enabling the issuer to choose the form (paper or electronic format) in which it will fulfill the obligation to invoice the invoice and generally without the recipient being able to require the issuer to use one form of invoice or another.

The invoice must be issued, in any case, by any means that enables guaranteeing the authenticity of its origin, the integrity of its contents and legibility, for which the issuer can use an advanced electronic signature, an electronic data interchange (EDI) system or other means which the interested parties have communicated to the State Tax Agency before using them or which have been validated by it.

Consequently, guaranteeing the authenticity of the origin and the integrity of the content of the electronic invoice does not require conditions or requirements in addition to those applicable to paper invoices, and it is for the issuer to prove that guarantee, which could be done through the usual management controls of the business or professional activity which the taxable person has in place, as long as they allow creating a reliable audit trail that establishes the necessary connection between each invoice and the supply of goods or services documented by it.

3. Personal income tax.- The timing of recognition of forward transactions or transactions with a deferred price is an election that must be made on time (Directorate-General of Taxes. Ruling V0151-14, of January 23, 2014)

In the case of forward transactions or transactions with a deferred price, it is possible to recognize the capital gain proportionally to the tax periods in which the price is claimable. The election to apply this special timing of recognition rule must be made in the personal income tax return.

Accordingly, in the DGT's opinion, the application of this special timing of recognition rule is classified as one of the **tax elections** regulated in article 119.3 of the General Taxation Law, which must be expressly made though the relevant self-assessment filed in the voluntary period. Otherwise, that election will not be deemed to have been made and, thus, the general timing of recognition rule will apply.

4. Personal income tax.- The application of the timing of recognition rules for collection and payments is independent from the VAT treatment of the transaction (Directorate-General of Taxes. Rulings V0121-14, of January 21, 2014, and V0122-14, of January 21, 2014)

The DGT analyzed the case of a taxpayer who carried on a professional activity and who supplied services to an entity, receiving half of the total amount of fees (including VAT) in the year in which the services are supplied and half in the following year. In other words, in the first collection, he receives all the VAT charged plus a portion of the fees (the sum of both items being 50% of the amount to be collected).

The taxpayer considered applying the special VAT cash-basis accounting scheme to the income from his activity, and asked what amount must be recognized in each fiscal year. The DGT ruled that:

(i) The VAT charged by the requesting person cannot be deemed business income, just as the VAT borne is not a deductible expense.

(ii) The income to be recognized in the first tax period will be the part of the income relating proportionally to the amount collected, it not being possible to consider that the amounts collected relate fully to the VAT charged, and that the amounts deferred relate to income derived from services supplied.

(iii) The rest of income will be recognized in the tax period in which the rest of amounts billed are collected.

(iv) The foregoing is without prejudice to the fact that the VAT has become chargeable at the time when the services were supplied.

5. Personal income tax.- The change of currency of a loan from Japanese yen to Swiss francs can give rise to a capital gain or loss (Directorate-General of Taxes. Ruling V0104-14, of January 20, 2014)

The DGT had already analyzed in various rulings (V0145-09, V1054-08, V1832-04) the consequences that arise when the denomination of a loan is changed from a foreign currency to euros, ruling that there would be a capital gain or loss, for the amount in euros in which the outstanding debt increased or decreased as a consequence of the change of currency.

The same conclusion is reached where the denomination of a loan is changed from yens to a currency other than euros, which triggers a capital gain or loss for the amount by which the outstanding debt increases or decreases due to the change of currency.

6. Personal income tax.- The tax credit for lease of the principal residence does not require a minimum stay in the residence (Directorate-General of Taxes. Ruling V0101-14, of January 20, 2014)

Article 68.7 of the Personal Income Tax Law establishes a tax credit for amounts paid for the lease of the principal residence, provided that the taxpayer's taxable income does not exceed certain limits. In relation to this credit, two questions are analyzed: the calculation of the credit base and the definition of principal residence for the purposes of this credit. The DGT held that:

(i) The base of the credit will include not only the amount of the lease but also the expenses and charges to be paid to the lessor as owner of the dwelling and which, according to the conditions of the lease agreement, are to be charged to the lessee (for example, community association fees or real estate tax). On the contrary, the credit base will not include the garbage collection fee (where the lessee is not the taxpayer) or the utilities expenses (e.g., water, electricity, gas) or security deposit.

(ii) Once the principal residence has been established in a leased dwelling, the taxpayer is not required to stay there for a minimum period for the purposes of the credit.

III. Legislation

1. Payment of debts using the procedure of direct debit through the non-advanced signature system (PIN24h)

Law 11/2007, of June 22, 2007, on citizens' electronic access to public services , enshrined the relationship with the public authorities by electronic means as a right of citizens and as an obligation for those authorities. Accordingly, the authorities have been reducing to a minimum the filing of self-assessments and tax returns on paper, increasingly promoting new forms of filing based on non-advanced electronic signature systems.

However, up to now, in order to make payments through the State Tax Agency's website, it has been essential for the payer to have an admissible advanced electronic signature.

Considering that an electronic identification and authentication system other than the advanced electronic signature based on the use of a user code and password provided to the taxpayer by the State Tax Agency has sufficient guarantees and security conditions, the Decision of March 4, 2014, by the Directorate-General of the State Tax Agency (published in

the Official State Gazette of March 11, 2014) has approved and ordered the advertising of the processing of information in order for the State Tax Agency to furnish to the tax collection management collaborating entities the telematic identification of those taxpayers and persons who so request when it comes time to pay their debts, using for that purpose the non-advanced electronic signature system with an access key in a prior registration as user (pin24h).

This Decision applies to payment transactions made through the State Tax Agency's website, using the direct debit procedure, provided that the party obliged to make the payment is an individual and the payment relates to (i) self-assessments, (ii) assessments issued by the tax authorities, (iii) levies on prizes from betting and random combination draws, or (iv) levies for the power to seek judicial redress in the civil, judicial review and labor/social security jurisdictions.

The Decision establishes some periods for its application according to the self-assessment form in question. For example, for forms 100 (personal income tax) or 714 (wealth tax), it will apply from April 1, 2014.

2. Refinancing and restructuring of the corporate debt

March 8, 2014 saw the publication in the Official State Gazette of Royal Decree-law 4/2014, of March 7, 2014, adopting urgent measures relating to the refinancing and restructuring of corporate debt.

The different measures intended to improve the legal framework for pre-insolvency, include some tax measures consisting of reducing or deferring the taxation of (i) debt capitalization transactions, and of (ii) debt composition and rescheduling arrangements between debtors and their creditors deriving from the application of the Insolvency Law.

We refer readers to our Tax Commentary 1-2014, found at the following link, in which we summarized the content of those tax measures.

http://www.garrigues.com/es/Publicaciones/Novedades/Documents/Comentario-Fiscal-1-2014.pdf

3. Average traded value for the fourth quarter of 2013 of securities traded on organized markets for wealth tax purposes

March 3, 2014, saw the publication in the Official State Gazette of Order HAP/313/2014, of February 28, 2014, approving the list of securities traded on organized markets, with their average traded value for the fourth quarter of 2013, for purposes of the wealth tax return for 2013, and of the annual informative return for securities, insurance and income.

4. "Tax Lease": transitional provision

Law 1/2014, of February 28, 2014 (Official State Gazette of March 1, 2014), resulting from the passage through Parliament of Royal Decree-law 11/2013, of August 2, 2013, establishes the transitional regime applicable to administrative authorizations in force affected by the content of the Decision of the European Commission of July 17, 2013 on the tax lease.

We refer readers to our Tax Bulletin 8-2013, found at the following link, in which we summarized the contents of that Royal Decree-law in relation to the tax lease regime.

http://www.garrigues.com/es/Publicaciones/Newsletters/Documents/Boletin-Fiscal-Agosto-Septiembre-2013.pdf

5. *Tax benefits to repair damage caused to the Atlantic seaboard and the Cantabrian coast by wind storms and hurricanes*

Royal Decree-law 2/2014, of February 21, 2014, was published in the Official State Gazette of February 22, 2014, adopting urgent measures to repair the damage caused to the Atlantic seaboard and the Cantabrian coast by the wind storms and hurricanes in the first two months of 2014:

- Exemption from real estate tax for fiscal year 2014 for dwellings, industrial, tourist, business, marine-fishing and professional establishments, agricultural and forestry operations, work premises and the like, damaged as a direct consequence of the incidents, where it is proven that:

  - Both the persons and the assets located therein have had to be relocated in part or in full to other different dwellings or premises until the damages suffered have been restored, or

  - The destruction to crops constitutes damage not covered by any public or private insurance.

- Reduction in economic activities tax for fiscal year 2014 for all kinds of industries, business, marine-fishing, tourist and professional establishments whose business premises or assets used in that activity have been damaged as a direct consequence of the incidents, provided that (i) they had to be relocated or (ii) the damage produced has required the temporary suspension of the activity.

  The reduction will be proportional to the time elapsing from the day on which the activity ceased until it recommenced in a normal fashion. notwithstanding cases where the activity ceases to be pursued, which will take effect from December 31, 2013.

The exemptions and reductions in the tax payable for the taxes mentioned will include the legally authorized surcharges thereon. Moreover, taxpayers who, being entitled to those benefits, have paid the demands relating to 2014, can request a refund of the amounts paid.

The following exemptions and reductions are also regulated:

- Exemptions from traffic fees for deregistering vehicles and the issuance of duplicate drivers' licenses and driving permits lost as a consequence of the incidents.

- Exemption from personal income tax on exceptional aid received for personal damage due to death and cases of disability caused directly by the incidents.

- Tax reductions for agricultural operations and activities carried out in the areas determined by means of an Order. The Ministry of Finance and Public Administrations is also authorized to reduce for 2014 the net income indexes for setting the amount of personal income tax payable (direct assessment method) and of value added tax (simplified scheme).

6. *"Exemption thresholds" and "statistical thresholds" for 2014 relating to the intra-Community trade statistics*

Order HAP/178/2014, of February 11, 2014, published in the Official State Gazette of February 13, 2014, establishes for 2014 the "exemption thresholds" and the "statistical thresholds" below which those responsible for supplying information will be exempt from furnishing Intrastat information or will be able to provide simplified information:

- The "exemption threshold" for goods brought into or dispatched from the Peninsula and Balearic Islands and coming from or going to other EU Member States is set at €250,000 of accumulated billings in the preceding or current fiscal year.

- The "statistical threshold" for goods brought into or dispatched from the Peninsula and Balearic Islands and coming from or going to other EU Member States has been set at €6,000,000 of accumulated billings in the preceding or current fiscal year.

IV. Others

1. *Reform of the Spanish Tax System: Report of the Committee of Experts*

On March 14, 2014, the Council of Ministers was presented with the Report of the Committee of Experts for the Reform of the Spanish Tax System. We refer readers to our Tax Commentary 2-2014, found at the following link, where we summarize the contents of the report.

http://www.garrigues.com/es/Publicaciones/Novedades/Documents/Comentario-Fiscal-2-2013.pdf

2. *Form 720: answers to frequently asked questions on the State Tax Agency's website*

March 31 marked the end of the period for filing the return for assets and rights abroad (form 720) for the year 2013. Last March 14, the State Tax Agency published new answers to questions frequently asked about the preparation of this return. In particular, the State Tax Agency stated as follows:

(i) On the one hand, it confirmed that this is a return for assets and rights at the close of 2013 and for assets and rights which had to be reported in relation to 2012 and have ceased to be owned in 2013.

Therefore, taxpayers need not disclose accounts in financial institutions opened and cancelled in 2013, nor securities, insurance, income, real estate and rights over real estate in the same situation.

(ii) In relation to transfers of securities, the tax authorities have also affirmed that:

(a) In the case of securities, the "ownership extinguishment date" is not a compulsory item of data. Therefore, in case of successive transfers of securities in 2013, the information on those transfers may be grouped together where the securities are of the same kind.

(b) If securities which were already disclosed, or had to be disclosed, in the return for 2012 are sold, there are two options (in the event that the sale proceeds have also been reinvested in securities):

- In general, declarants must report all sales and, in turn, the "snapshot" at the close of 2013, but the latter only if the overall value of the securities (adding income and insurance) has experienced an increase of more than €20,000 with respect to the overall securities, income and insurance disclosed in 2012.

- Nonetheless, if the sales proceeds have been reinvested in new securities (reinvestment), the declarant can elect to disclose only the "snapshot" at the close of 2013 (and not the sales), in this case even if the increase in value is not higher than €20,000. For these purposes, it will be considered that the full proceeds from the sale have been reinvested where the total amount obtained is reinvested minus any expenses and commissions inherent to or habitual in these types of transactions.

(c) The securities already disclosed in 2012 that have been transferred to Spain in 2013 need not be reported again, provided that the transfer has not entailed the cancellation of the status of owner or beneficial owner of the securities.

(iii) In the case of structures with corporate vehicles, trusts or similar figures, in 2012 (following the guidelines of the State Tax Agency) declarants should have reported their status:

(a) As owner of the corporate vehicle.

(b) As beneficial owner of the underlying assets.

The dissolution of those corporate vehicles entails that the underlying assets have become the direct property of the declarant. Accordingly, in 2013, it will be necessary to report:

(a) The cancellation of the ownership of the corporate vehicle.

(b) The cancellation of the beneficial ownership of the underlying assets.

(c) The ownership of the underlying assets (those existing at the close of 2013), provided the thresholds triggering the obligation to disclose are surpassed.

(iv) In case of death in 2013 of a person who filed the return in 2012, the tax authorities have clarified that a return must be filed for 2013.

3. Foreign companies that are sole shareholders of Spanish companies: need for a taxpayer identification number or a foreigner identification number (Decision of the Directorate-General of Registrars and of the Notary Profession of January 20, 2014)

February 13, 2014, saw the publication in the Official State Gazette of the Decision of January 20, 2014, of the Directorate-General of Registrars and of the Notary Profession, holding that a foreign company that is the sole shareholder of a Spanish entity must have a tax identification number or a foreigner identification number.

In the case analyzed, the interested party intended to register a public deed declaring the change of sole shareholder of a Spanish limited liability Company as a consequence of the acquisition of all the shares by a foreign Company. The registrar suspended the registration of the public deed on the ground that the deed must include the foreigner identification number (NIE) or the tax identification number (NIF) of the sole shareholder, that is, of the foreign company.

The Decision analyzes the case and states that for purposes of the identification of foreign legal entities that must be recorded on the page of the register opened for a company, a tax identification number will be compulsory if so required by tax legislation.

The fundamental argument is that the public deed contains an act giving rise to relationships of a tax nature or relevance. In this regard, the Decision recalls that the legislation imposes tax obligations on the sole shareholder such as the obligation to pay tax on the dividends received or to be secondarily liable for any tax debt.

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