GARRIGUES

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The current worldwide economic context has prompted multinational groups to embark on corporate restructurings leading them very often to uproot all or part of their operations to other countries, which can in some cases lower their taxable profits in Spain. In these processes, some Spanish companies have been made into low-risk or contract manufacturers, or low-risk distributors or commission agents, and a large slice of the risks associated with manufacturing and distribution activities has been moved to nonresident companies in the same group.

Restructurings of this type basically pose an issue regarding both the value of the transferred assets and business, and the conduct of the transferred businesses after the reorganization (manufacturing cost, distribution margin). Another question that arises is whether, after the reorganization, the nonresident companies that take on the principal risks and functions attached to the operations continue operating through a permanent establishment for tax purposes in Spain.

A Supreme Court Judgment rendered on January 12, 2012 (discussed in this bulletin) examines the case of a nonresident entity that sells products in Spain which are manufactured for it by a low-risk manufacturer, resident in Spain and related to it. In this case, the manufacturer also promotes the sale of those products.

The judgment concluded that just because there is a manufacturer in Spain that manufactures exclusively for the nonresident entity does not mean that the nonresident has a fixed place of business in this country; also, the Spanish entity does not have the authority to enter into contracts in the name of the nonresident. In other words, the starting point is that no permanent establishment exists from either of the two traditional angles: the fixed place of business and the dependent agent that binds the nonresident.

The Supreme Court, however, held that the nonresident has a permanent establishment through the manufacturer/selling agent because both functions are carried out by the same person. This conclusion is reached through a debatable interpretation of the current wording of the OECD Model Convention, which the court applied even though it is not consistent with the interpretation of the tax treaty between the countries concerned, by relying on the principle of "dynamic interpretation" of tax treaties which has recently come into vogue.

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1. JUDGMENTS

1.1 Nonresident income tax.- Spanish company manufacturing and promoting sales for nonresident entity is permanent establishment (Supreme Court. Judgment of January 12, 2012)

This judgment analyzed the case of a Spanish company in a multinational group that manufactured and sold pharmaceuticals on a standalone basis in Spain. Following a corporate restructuring, it started manufacturing for a nonresident group entity, with which it entered into a sales promotion agreement. The inspectors took the view that the Spanish company was a permanent establishment in Spain of the nonresident company.

The National Appellate Court held that the nonresident entity did not have a fixed place of business in Spain and acknowledged that the Spanish company did not have the authority to bind the nonresident entity. Despite this, it concluded that the Spanish company was a dependent agent of the nonresident because along with promoting sales it also manufactured the products it was promoting.

The Supreme Court confirmed the National Appellate Court's view. This means that the definition of dependent agent under tax treaties is being given a broader interpretation than that of an agent with the authority to bind the nonresident.

1.2 Transfer and stamp tax.- Transfer tax is payable on transfers of businesses as going concern if objective requirements in Article 108 Securities Market Law are met (Supreme Court. Judgment of December 22, 2011)

There has been much debate as to whether Article 108 of the Securities Market Law applies to transfers of shares in companies that are a going concern and own real estate. One of the questions raised is whether it should apply where there is no fraudulent intent, as this article was originally designed to combat evasion.

In its judgment, the Supreme Court repeated the view it had already taken in other judgments (of October 6, 17 and 18 2011, discussed in previous bulletins) that the transaction is subject to transfer and stamp tax when it meets the objective requirements established in that article, regardless of whether or not there was fraudulent intent.

1.3 Collection proceeding.- Stay of tax penalties without needing to post bond in economic-administrative jurisdiction does not automatically continue in judicial review jurisdiction (Supreme Court. Judgments of December 2 and 15, 2011, and January 16, 2012)

There is an automatic stay on tax penalties in the administrative jurisdiction without the need to post a bond, and, until recently, the courts had been allowing the stay (also without the need to post a bond) to continue automatically in the judicial review jurisdiction.

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The Supreme Court appears however to subscribe to the opposite view, as it held in judgments dated December 2, 2011, December 15, 2011, and January 16, 2012, that the automatic stay on the penalty without the need for a bond that is granted in the economic-administrative jurisdiction does not automatically continue in the judicial review proceeding, but rather a court decision is needed, after considering the circumstances of the specific case concerned and the disputed interests, and examining the specific reasons alleged for a stay on enforcement of the penalty.

1.4 Penalty proceeding.- Tax penalty cannot be based only on result of reassessment (Supreme Court. Judgment of January 13, 2012)

In the case examined by the Supreme Court, the National Appellate Court had overturned a tax penalty on the ground that sufficient reasons had not been given to hold that the taxpayer was at fault. The National Appellate Court relied on the following arguments:

- The tax authorities must evidence and give reasons for both the facts underlying the infringement and also the specific form of fault that warrants the imposition of the penalty. Fault must be demonstrated to the same extent as the conduct being penalized, and that evidence must relate not only to the facts determining liability but also to any that qualify or aggravate the infringement.

- In this specific case, the company had not concealed information from the tax authorities and, besides, its conduct stemmed from an interpretation of the law that was reasonable, to say the least (even though the authorities' interpretation was different), and it must therefore be held that it employed the required diligence.

- On top of this, no specific reasons were provided in the penalty decision as to why the essential condition for fault was met, as it simply pointed out in relation to the degree of fault found that the company knew it was applying an incorrect method (the case concerned a depreciation method for assets).

The Supreme Court confirmed the National Appellate Court's judgment and set, as a preliminary view, that it is the court's task to determine and assess the fault of the taxpayer in a tax infringement, as on many occasions it is purely and simply a factual issue. The Supreme Court also recalled that the existence of an infringement cannot be based on a simple reference to the result of the reassessment performed by the tax authorities or, as in the case under examination, on simply identifying a failure to pay the tax debt.

1.5 Penalty proceeding.- Secondary liability of company directors for penalties extends to tax penalties imposed on companies (Supreme Court. Judgment of January 13, 2012)

The Supreme Court recalled in this judgment a general rule that liability includes the whole tax debt but not penalties, and a special rule that liability does not include penalties except where they stem from the liable person's participation in the infringement. In the

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case of directors, therefore, if it is concluded that they participated in the infringements, then their liability must include the penalties, by applying a special rule that overrides the general rule in the specific scenario governed by it.

1.6 Inspection proceeding.- Inspection work on tax group is considered to commence on date initiated at any company in group (National Appellate Court. Judgment of November 17, 2011)

In the case debated in this proceeding, inspection work was initiated at one of the companies in the tax group before the parent company had been officially notified, and at issue was the date from which the maximum term allowed for inspection work must start to be counted.

In line with the view already sustained in its judgment of July 23, 2009, the National Appellate Court held that when computing the maximum term for inspection work, in this case, it must be considered that the work commenced when the proceeding was initiated against the parent company, regardless of whether or not the parent company knew about it. To consider otherwise would be tantamount to saying that the tax authorities could benefit from an incorrect step on their part, to the detriment of the taxpayer.

1.7 Tax proceeding.- Increased tax liability due to concealed information not compatible with indirect assessment (National Appellate Court. Judgment of November 24, 2011)

According to the view espoused by the National Appellate Court, as it is an inherent and inseparable part of the indirect assessment method, concealed information cannot be used as a determining factor for the size of a tax penalty for a tax debt calculated using the indirect assessment method.

1.8 Tax proceeding. Time-barred tax obligation for principal debtor means no shifting of liability (National Appellate Court. Judgment of November 18, 2011)

An enforced collection surcharge had been levied on a company in respect of personal income tax withholding obligations and almost seven years later, after the collection proceedings against the principal debtor had become time-barred, it was sought to bring a proceeding to shift the tax liability to the company's directors, as the *other persons liable for the tax debt*.

The National Appellate Court stated that a proceeding to shift tax liability cannot be brought where the action that could have been brought against the principal debtor has become time barred. In this case, therefore, insofar as more than four years had passed between the notification date of the enforced collection and the following step, the liquidated debt could not be claimed either from the principal debtor or from any of the directors with secondary or joint and several liability.

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2. DECISIONS AND RULINGS

2.1 Corporate income tax.- Reinvestment tax credit can be taken for reinvestment of income derived from delivery of properties to shareholders by reason of capital reduction (Directorate-General of Taxes. Ruling V3042-11, of December 23, 2011)

A ruling request was submitted concerning a capital reduction with repayment of contributions to shareholders by delivering properties used in the business that were part of the company's tangible fixed assets.

Under article 15 of the Corporate Income Tax Law, in transactions of this type the company reducing its capital must include in its tax base the difference between the fair market value of the transferred assets (the properties) and their carrying amount. Furthermore, under article 1274 of the Civil Code, a capital reduction with repayment of contributions to the shareholders can be treated as a legal transaction for consideration.

Therefore, if the transferred assets meet the requirements laid down for this purpose, it could be considered that the income arising on their transfer qualifies for the reinvestment tax credit. The amount to be reinvested should be determined by reference to the value of the transferred assets in accordance with article 15, namely, their fair market value.

2.2 Corporate income tax.- LIFO method in reversal of provisions for share impairment losses (Directorate-General of Taxes. Ruling V3041-11, of December 23, 2011)

The examined case involved the reversal of a provision for share impairment losses that had been recorded over several years and the Directorate-General of Taxes (DGT) held that, from a tax standpoint, the first provisions or value adjustments that are reversed are the last ones to be recorded, as they are the first to recover the value of the shares held.

2.3 Corporate income tax.- Standing contribution to chamber of commerce is deductible even if voluntary (Directorate-General of Taxes. Ruling V3039-11, of December 23, 2011)

Following the entry into force of Royal Decree-law 13/2010, of December 3, 2010, and now that the period for the transitional rules it contains has ended, the payment of the standing contribution to the chamber of commerce will be compulsory only for companies that decide voluntarily to be members.

The DGT recalled that a corporate income tax deductible expense is any expense that meets the conditions determined in the law in terms of being recorded for accounting purposes, being recognized on an accrual basis, expenses being matched to revenues and supporting documents being available, provided it is not a nondeductible expense under article 14 of the Corporate Income Tax Law and, in particular, it is not a donation or gift.

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It was concluded in this regard that, even if belonging to a chamber of commerce is voluntary, insofar as all of the functions conferred by the law and the services provided are aimed at furthering the businesses of companies, the contribution will be treated as a tax-deductible expense for the year as it has matching revenues and is not a gift.

This same treatment applies to personal income taxpayers making the contribution.

2.4 Corporate income tax. Tax and accounting treatment of interest-free loans between related parties (Directorate-General of Taxes. Ruling V3038-11, of December 23, 2011)

The DGT examined the tax treatment of a loan provided by one company to another in which it had a 15% ownership interest. The loan was interest-free with yearly repayments over five years. By reapplying the principles mentioned in previous rulings, the DGT concluded that the tax treatment depends on the accounting treatment. Therefore:

- The lender must recognize the loan at its fair value, and, thus, the difference between that value and the amount transferred to the borrower (in proportion to its 15% ownership interest) must be recognized as an addition to its contribution to the borrower's equity. The rest of that difference must be treated as a period expense which will not be deductible.

- The borrower must recognize the difference between the fair value of the loan and the amount received from the lender (in proportion to its 15% ownership interest) as a contribution from the lender. The rest of the difference must be treated as revenue which will be computed in the corporate income tax base.

- The accrued interest must be calculated using the effective interest rate method by reference to the amount initially recognized, which will be the fair value of the financial instrument.

The DGT added that if accounting legislation is applied correctly, it may be considered that the pricing method for controlled transactions, provided in Article 16 of the Corporate Income Tax Law (market value), has been observed.

2.5 Corporate income tax and VAT. Different definitions of "line of business" and "independent business unit" (Directorate-General of Taxes. Ruling V3025-11, of December 23, 2011)

The examined scenario was the carve-out of a vehicle selling and leasing business, in which the fleet of vehicles was transferred (with the rights vis-à-vis suppliers), along with the lease agreements executed with clients (with most of the related collection rights) and the associated liabilities. Certain residual assets were not transferred (furniture, tools, lease agreements on buildings, etc.) nor were the workers transferred, although the services agreements needed for the recipient to carry on the business were concluded.

The requested ruling was as to whether the transferred assets were a "line of business," for the purpose of applying the special corporate income tax treatment for corporate restructurings, and an "independent business unit," for the purpose of not being subject to VAT.

The DGT recalled that a "line of business" exists where the transferred assets and liabilities determine the existence of a business operation at the transferor, which is carved out and transferred as a whole to the recipient, after which the recipient can continue carrying on the same business under the same conditions, even if not all the assets and liabilities are transferred but all of the contracts needed to keep the business in operation are concluded.

By contrast, an "independent business unit" under VAT Law has a narrower definition. In addition to the requirement for there to be a set of tangible and (as applicable) intangible assets that form an independent business unit capable of carrying on a business or professional activity by its own means, it is also necessary for the transferred unit to be able to operate by its own means.

In the case examined by the DGT, this last requirement was not met because the recipient needed the services of the transferor to be able to operate independently. Therefore, although the carve-out could benefit from the special treatment under the Corporate Income Tax Law it was not be allowed to take the VAT-free treatment.

2.6 Corporate income tax.- Interest-free loans contain subsidized interest reducing tax credit base (Directorate-General of Taxes. Ruling V2980-11, of December 21, 2011)

The conditions regulating some of the tax credits to boost certain activities (such as tax credits for environmental investments or tax credits for R&D&I activities) require the amount of any subsidies received to be subtracted from the tax credit base. The requested ruling was as to whether a subsidy exists when the investments are funded out of an interest-free loan.

According to the Spanish Accounting and Audit Institute's (ICAC) ruling number 1 in its Official Gazette (BOICAC) number 81, published in March 2010, loans provided with zero interest or at below-market rates will give rise to subsidized interest equal to the difference between the amount of the debt and the fair value of the debt (net present value of the payments to be made discounted at the market interest rate), and that difference will be the amount of the subsidy to be used to calculate the tax credit base.

2.7 Corporate income tax.– Special treatment not applicable to merger where absorbing company is holding company with no economic activity, if merger results in deductible goodwill (Directorate-General of Taxes. Ruling V2949-11, of December 19, 2011)

The special tax neutrality treatment for restructuring transactions is conditional on the existence of valid economic reasons, such as to restructure or rationalize the businesses of the companies taking part in the transaction, other than pure tax reasons.

For this ruling a merger was examined between a holding company and its two wholly owned subsidiaries. The DGT underscored that in this case the economic activity of the absorbing company is immaterial as it is a pure holding company, and therefore the assets after the merger are the same ones the companies had before it took place.

Along these lines, it may be said that the transaction did not add anything new to the activities carried on by the absorbed companies and, therefore, no genuine restructuring of its business was apparent, while the tax advantage obtained from writing off the merger goodwill had indeed been taken, and the cost savings given as reasons for the transaction were marginal. It was therefore concluded that the special tax treatment did not apply.

2.8 Corporate income tax.- Tax incentives for enterprises of a reduced size can be taken by pure holding companies (Regional Economic-Administrative Tribunals of Valencia (decision of November 22, 2011) and Galicia (decision of December 15, 2011)

The Central Economic-Administrative Tribunal concluded in a decision dated January 29, 2009, rendered as a definitive ruling on a point of law, that the special tax treatment for enterprises of a reduced size cannot be taken by holding companies, because they do not carry on genuine business operations. This decision was rendered on a case to which the former pass-through rules (Law 43/1995, of December 27, 1995) applied.

The Regional Economic-Administrative Tribunals of Valencia and Galicia held that the Central Economic-Administrative Tribunal's decision is no longer binding, as new legislation is now in force (Legislative Royal Decree 4/2004, of March 5, 2004), and therefore the central tribunal's decision is a definitive ruling concerning another law that is no longer in force.

Having said that, the Regional Economic-Administrative Tribunal of Valencia concluded in its analysis of that tax treatment that:

- Taxpayers do not qualify for the treatment by reason of their nature, but by reason of their turnover, and therefore the treatment applies to holding companies.

- There is no legal basis for finding that a pure holding company or a company engaged in leasing real estate, simply by not having material or human resources, is not an "enterprise" (given that, according to the Commercial Code, an enterprise is any business company, without any distinction whatsoever). It also recalled that leasing real estate is an economic activity belonging to an enterprise for the purposes of the tax on economic activities.

- Moreover, although the rules on the special treatment refer to "enterprises" (*empresas*) and not to "entities" (*entidades)* of a reduced size, all of its articles refer to "entities" (*entidades)*. Thus, under a systematic interpretation of the rules consistent with all of the legislation on this tax, "entities" must be taken to be synonymous with "enterprises".

2.9 VAT.- Time period for amending VAT taxable amount in insolvency proceedings is cut by half where insolvency is conducted as "abbreviated" proceeding (Central Economic-Administrative Tribunal. Decisions of December 13, 2011 and of January 17, 2012)

The VAT Law allows a reduction in the VAT taxable amount where the client is undergoing an insolvency proceeding, within the period established in Article 21.1.5 of the Insolvency Law, i.e., one month from publication of the insolvency order in the Spanish Official State Gazette (BOE).

Despite the wording of the VAT Law, the Central Economic-Administrative Tribunal has held that this period must be cut by half where the insolvency is conducted in an "abbreviated" proceeding, as that period under the Insolvency Law is the period for notification of claims by creditors to the insolvency manager, and in the abbreviated proceeding, this period is not a month but (generally) 15 days.

1.1. Wealth tax.- No wealth tax on shares in nonresident company owning properties in Spain (Directorate-General of Taxes. Ruling V 2982-11, of December 21, 2011)

Nonresidents are liable for wealth tax in Spain, as nonresident taxpayers, on the assets and rights they hold that may be exercised in Spanish VAT territory.

For this ruling, the DGT examined whether a non Spanish resident individual was liable for wealth tax on shares in a German tax resident company, having as its principal asset a property in Spain (which, before being contributed to the German company, was owned by that individual).

The DGT replied that he was not liable, because the shares are in a nonresident entity, even if its principal asset is located in Spain (the individual *would* be liable if he owned the building in Spain himself).

2.10 Tax proceeding. Principle of reclassification is a power of the authorities not to be used by taxpayers to change their classification of their own contracts (Central Economic-Administrative Tribunal. Decision of December 1, 2011)

In this case, the taxpayer had executed a contract that the parties had called a '*cuentas en participación*' (silent partnership) agreement, but considered that this was not the true nature of the contract, and had taken the tax treatment for what it considered to be the true nature of the contract.

The Central Economic-Administrative Tribunal stated in this decision that, although the General Taxation Law provides that tax obligations must be claimed according to the nature of the fact, act or transaction performed, regardless of the form or name given by the parties, that reclassification principle is one of the powers that tax law gives to the tax

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authorities to claim the tax (without the taxpayer being able to alter the classification that may be inferred from the executed contract). On top of this, the principle of good faith requires observance of the parties' intention as determined in the contract, without the taxpayer being able to escape from the legal classification that may be inferred from that intention simply because that classification is costly in tax terms.

2.11 Economic-Administrative Proceeding.- Special appeals for a definitive ruling on a point of law only have forward-looking (*ex nunc*) effects, and therefore cannot give cause for a review of final decisions (Central Economic-Administrative Tribunal. Ruling of December 13, 2011)

The aim of a special appeal for a definitive ruling on a point of law is for binding uniform standards to be laid down for all tax authorities. In the Central Economic-Administrative Tribunal's view, however, any interpretation given in decisions on appeals of this type only binds the tax authorities from when it is adopted, and does not have retroactive effects.

In line with this view, final decisions cannot be reviewed as a result of the adoption of a decision on a special appeal for a definitive ruling that adopts a different standard.

3. LEGISLATION

3.1 Reform of the labor market. Tax measures

The new labor market reform legislation was published in the Official State Gazette on February 11, 2012 (Royal Decree-law 3/2012, of February 10, 2012, on urgent measures to reform the labor market). This piece of legislation makes several amendments to tax law:

- Tax incentives are provided for business owners who use the new indefinite-term employment contract in support of entrepreneurs, provided for enterprises with fewer than 50 workers when the person is hired.

  This type of contract cannot be used by enterprises which in the six months before perfection of the contract (i) have terminated employment contracts on objective grounds which have been held unjustified in a court judgment; or (ii) have carried out a collective layoff, if the terminations and dismissals took place after the entry into force of this new decree and the new contracts are aimed at filling jobs in the same professional group as those affected by the termination or dismissal, at the same workplace(s).

  To be able to take the tax incentive, the employer will have to keep the employee hired for at least three years following commencement of employment (and will have to pay back the incentive if it fails to do so), unless the contract is terminated as a result of a disciplinary dismissal held or acknowledged to be justified, resignation, death, retirement or total or absolute permanent or comprehensive disability.

These incentives are as follows:

- If the first employment contract concluded by the enterprise is with a person under the age of 30, the enterprise will be entitled to a three thousand euro tax credit.

- Where hiring an unemployed person receiving contributory unemployment benefits, the enterprise will be entitled to a tax credit equal to 50% of the unemployment benefits remaining to be received by the worker on the date of the contract, subject to a cap of twelve months' benefits, in line with the following rules:

  - The hired worker must have received the benefits for at least three months when he is hired.

  - The amount of the credit will be set on the date employment commences and will not be amended as a result of subsequent circumstances.

  - The enterprise will ask the worker to produce a Public Employment Service certificate as to the remaining amount to be paid.

- The compulsory severance payment for unjustified dismissal has been lowered from 45 days' salary per year of service, capped at 42 months' salary, to 33 days per year of service, capped at 24 months' salary, although subject to transitional rules.

  Therefore, for contracts formalized before the entry into force date of the new legislation, severance will be 45 days' salary per year of service before that date and 33 days' salary per year of service after that date, and the resulting severance payment cannot exceed 720 days' salary, unless the calculation of severance for the previous period resulted in a higher period (in which case this latter amount will be taken as the maximum amount of severance, which cannot under any circumstances exceed 42 months' salary).

  This lowering of the mandatory amount of severance for unjustified dismissal carries a parallel reduction in the personal income tax exemption on the severance payment.

3.2 Dissolution or mandatory capital reductions. Computation of impairment losses in equity

The new decree on financial system reform (Royal Decree-law 2/2012, of February 3, 2012 on financial industry reform published in the Spanish Official State Gazette on February 4, 2012) has further extended (on a seamless basis and for all legal purposes) for the fiscal year ending after it comes into force (February 4, 2012), the waiver of the obligation for impairment losses in connection with property, plant and equipment, investment property and inventories to be included in equity for the purpose of determining whether grounds for mandatory capital reduction or dissolution exist at Spanish corporations and limited liability companies.

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This waiver was introduced in Clause 1 of the Single Additional Provision of Royal Decree-law 10/2008, of December 12, 2008, initially for the two years ending after it came into force (December 13, 2008).

3.3 "Courtesy days" for electronic notifications

February 2, 2012 saw the publication in the Spanish Official State Gazette of a decision by the Spanish tax agency dated January 24, 2012 amending a previous decision dated May 18, 2010, on the registration and management of powers of attorney and the registration and management of succession processes and of appointments of legal representatives of minors and disabled persons for the performance online of formalities and steps with the tax agency.

The specific aim of this decision is to allow authorized representatives to specify the days the tax authority cannot send notifications at the authorized email address ("courtesy days").

It also contains transitional rules stating that unless they have been expressly waived or revoked, any authorizations to receive communications and notifications executed before February 3, 2012 (entry into force date of this decision) include authorization for the representative to specify those "courtesy days".

Lastly, the decision provides that the waiver of any authorization in this respect will not be deemed to have taken place until it has been evidenced to the tax agency that the waiver was notified by duly authenticated means to the principal.

3.4 Petition for ruling on whether documentation obligations and penalty regime for controlled transactions are constitutional

The Constitutional Court has decided to admit the petition for a ruling submitted by the Judicial Review Chamber (Panel 2) of the Supreme Court, in relation to subarticles 16.2 and 16.10 of Legislative Royal Decree 4/2004, of March 5, 2004, approving the Revised Corporate Income Tax Law, as they potentially violate article 25.1 of the Constitution. These subarticles provide for the obligation to keep certain documents available to the tax authorities (the specific terms are to be set by regulation) and contain the rules on infringements and penalties concerning the documentation of controlled transactions.

In essence, it was queried whether the law has given full authority for the implementing regulations to define the contents of the mandatory documents that the taxpayer must prepare and produce at the request of the tax authorities, and whether unlawful conduct consisting of not producing those documents (or producing inaccurate or incomplete or false documents) can depend therefore on the implementing regulations.

In the Supreme Court's opinion, this creates an open field for the implementing regulations to set out the essential components of the definition of unlawful conduct, which might be contrary to article 25.1 of the Constitution. According to this article, the law must define prohibited conduct clearly and precisely and cannot give complete and absolute authority for such matters to a regulation.

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3.5 Notification of the details of the recipient to the payer of salary income

The Spanish Official State Gazette of January 30, 2012 contained publication of the decision of January 23, 2012, amending form 145, for notification of the details of the recipient to the payer of salary income or of any changes to details notified at an earlier date.

This amendment stems from the new wording on the tax credit for investment in the taxpayer's principal residence introduced by Royal Decree-law 20/2011, of December 30, 2011 on budgetary, tax and financial measures to redress the public deficit. Readers might recall that:

- Up to and including 2010, the tax credit for investment in the taxpayer's principal residence did not depend on the level of the taxpayer's taxable income.
- Law 39/2010, of December 22, 2010, restricted the tax credit to taxpayers whose taxable income was below 24,107.20 euros, but provided a set of transitional rules to cover cases where the taxpayer was already entitled to the tax credit before January 1, 2011 but was no longer entitled due to the restriction.
- However, Royal Decree-law 20/2011, of December 30, 2011, has now reinstated the pre-2011 wording on tax credits for investment in the taxpayer's principal residence (even for 2011), which means that this tax credit will once again apply irrespective of the taxpayer's taxable income.

This new legislation has brought about a change to form 145, to eliminate the distinction between taxpayers who apply the general tax credit rules and those who apply the transitional rules. In short, taxpayers wishing to reduce their withholding rate by two integers and are entitled to do so must notify their payer that they are entitled to the tax credit and that the aggregate amount of their gross salary income from all payers is below 33,007.20 euros in the year.

As this new measure only applies to income satisfied or paid on or after February 1, 2012 (provided the income does not relate to January), it will take effect only in relation to notifications of details to payers, or of changes to details notified at an earlier date, which are to be made on or after February 1, 2012.

4. OTHER NEWS

4.1 Opinion of the European Economic and Social Committee on the "Proposal for a Council directive on a common consolidated corporate tax base in the European Union

The European Economic and Social Committee (EESC) has issued a favorable opinion on the proposal for a directive on a common consolidated corporate tax base in the European Union. Readers may recall that on March 16, 2011, the European Commission submitted a proposal to align the corporate tax base in the European Union, while keeping tax rates under the national sovereignty of the member states.

The key points of this opinion are as follows:

- The EESC supports the project, as it considers it will promote the neutrality of the tax and reduce tax competition among member states, and has stressed that the consolidated tax base should be neutral in terms of tax revenue.

  According to the Committee, the main benefit of this project is being able to consolidate (offset profits and losses, avoidance of double taxation, simplification of transfer pricing, equal treatment of subsidiaries and permanent establishments, etc.), and therefore it does not believe that the project should be started only (as some member states had requested) as a "common" corporate tax base without consolidation.

  The disadvantages it mentions are slower decision-making concerning tax policy with the associated loss of flexibility when considering tax incentives, which could lead to a loss of foreign investment to other jurisdictions. It also points to the need to measure the social and economic impact of the consolidated base in countries whose economies are partly based on tax competition.

- It endorses a consolidated base under an optional arrangement during the introductory phase but which should be mandatory above a certain threshold.

- It supports the independence of the consolidated base from accounting rules but with a resulting improvement in the definition of some concepts and the introduction of more detailed rules for some sectors to achieve uniformity of application.

- It welcomes the avoidance of double taxation of income earned outside the EU by applying a blanket exemption from tax to any such income. However, the EESC does not agree with the proposed switch to the credit method in cases where the level of foreign tax is too low, given that it believes this would affect not only abusive arrangements but also "normal business activities."

- The uniform formula for apportionment of the tax base among member states according to labor, assets and sales factors was seen to be appropriate as it avoids distortion and double taxation, although the Committee suggests (i) examining whether intangible assets should be included as an apportionment factor and (ii) restricting the excessive weight of the "sales" factor which unduly favors large member states with market-oriented economies simply because of their size.