5-2015
September

Amendment of the General Taxation Law

On September 22, 2015, Law 34/2015, of September 21, 2015, partially amending General Taxation Law 58/2003, of December 17, 2003 was published in the Official State Gazette. It will enter into force, in general, twenty days after its publication in the Official State Gazette, i.e., on October 12, 2015.

With this reform, lawmakers intend to bolster the legal certainty of taxpayers and tax authorities, reduce the potential for litigation, prevent tax fraud and increase the efficiency of tax management, inspection and collection by the tax authorities.

The following are the principal new features of Law 34/2015, which mainly affect the General Taxation Law (the "LGT"), but also the Judicial Review Jurisdiction Law, the Criminal Procedure Law and the Corporate Income Tax Law.

1. Provisions aimed at interpretation or clarification

This Law establishes the possibility for the relevant departments of the Ministry of Finance and Public Authorities to issue provisions aimed at interpretation or clarification, which will be binding on all agencies of the tax authorities, without a request for a ruling first having to be submitted to the Directorate-General of Taxes by a taxpayer entitled to do so. These provisions must be published in the appropriate official gazette, and may be submitted to public consultation if deemed necessary having regard to their nature.

2. Conflict in the application of a tax provision. Penalty

The new law contemplates the possibility of imposing penalties in cases of regularization based on a conflict in the application of a tax provision. It thus defines a new statutory offense, characterized as serious.

For such purpose, reports issued by the Consultation Committee in cases in which a conflict is declared will be made public (although any reference permitting the identification of the person in question will be eliminated), and will thus serve as support for the imposition of penalties in substantially equal cases in which other taxpayers fail to comply with the administrative position taken in these reports.

The law specifically establishes a rebuttable presumption according to which neither sufficient care in the performance of tax obligations nor a reasonable interpretation of the provision (circumstances which generally prevent the imposition of penalties) can be deemed to exist in such cases.

3. Statute of limitations

As regards the statute of limitations, the following changes are made to the LGT:

(a) In relation to taxes charged periodically by way of a tax statement, the LGT now provides that where the determination of the tax debt does not require the filing of a tax return or self-assessment, the statute of limitations will begin to run on the date on which the liability for the tax arises.

(b) It regulates the statute of limitations on connected tax obligations, defined by the law as tax obligations in which one item is affected or determined by items relating to another obligation or a different period. In such cases, the tolling of the statute of limitations in connection with one tax will toll the statute of limitations on any of the other tax obligations that are conditional on the regularization of the main tax.

This special tolling of the statute of limitations on connected tax obligations will apply to cases in which the statute of limitations is tolled after the law enters into force.

(c) The potential for disputes in connection with the statute of limitations on the right to inspect tax bases, tax payable and unused tax assets has given rise to a substantial amendment, according to which the right (or, rather, the power) of the tax authorities to examine and inspect is differentiated from the right of the tax authorities to determine the tax debt.

Although in its most recent case law, the Supreme Court had extended the tax authorities' powers to examine tax bases or tax payable offset or available for offset, or tax credits used or available for use in connection with corporate income tax, and similar amendments had been made to the related articles of Corporate Income Tax Law 27/2014, of November 27, 2014, it is by virtue of Law 34/2015 that the LGT incorporates the rule according to which the right of the tax authorities to commence an examination of such tax assets will become statute-barred ten years after the day following the deadline for filing the tax return for the tax year or period in which the right to offset such tax bases or tax payable or to take such tax credits arose.[1]

It is also expressly stipulated that general inspections of tax obligations and tax periods in connection with which the right to assess tax has not become statute-barred will include, in all cases, the examination of all unused tax assets in connection with which the right to inspect has not become statute-barred pursuant to the foregoing. On the contrary, where the tax inspection is partial, the fact that the inspection will include the examination of the aforesaid tax assets must be expressly stated.

It also specifies that the examination of such tax assets (offset, used or available for use) that have not yet become statute-barred can only be performed during the inspection of tax obligations and tax periods in connection with which the right to assess has not become statute-barred.

[1] Law 34/2015 rewords articles 26.5, 31.7, 32.8 and 39.6 of Corporate Income Tax Law 27/2014, of November 27, 2014, in order to bring them into line with the new wording of the LGT.

After the aforesaid ten-year period, and unless the legislation specific to each tax stipulates otherwise, the statute of limitations on the right to inspect will not affect the obligation to submit the tax returns on which the tax bases, tax payable or tax assets were included, as well as the related accounting records, in a tax inspection of the years (not yet statute-barred) in which the related offsets or use took place.

(d) The powers of the tax authorities are also extended. They may now examine and inspect the events, acts, items, operations, businesses, values and other circumstances determining the tax obligation, even where they involve tax years or periods and taxes in connection with which the right of the tax authorities to determine the tax debt in the related assessment has already become statute-barred, provided that they have a tax impact on tax years or periods which are not yet statute-barred.[2]

When discharging the aforesaid examination and inspection functions, the tax authorities may characterize (performing not only a factual but also a legal examination) the events, acts, activities, operations and businesses carried on by the taxpayer, regardless of the prior characterization given to them by the taxpayer itself and independent of the year or period in which it was given, the applicable provisions being, as the case may be, the provisions of the LGT that regulate characterization, conflict in the application of a tax provision and simulation.

A difference is therefore made between the statute of limitations on tax assets available for offset or use and the power of the tax authorities to examine transactions, events, businesses and other acts, on which there is deemed to be no statute of limitations.

The transitional regime of this legislation applies the same solution already introduced by Law 27/2014 (referred to above) and, accordingly, the aforesaid amendments will apply to inspections and examinations that had already been initiated when Law 34/2015 entered into force and in which a preliminary assessment had not yet been issued by that date.

4. Length of a tax inspection

A substantial amendment has been made to the regulations determining the length of a tax inspection. Until now, the maximum length of an inspection was 12 months, extendable to 24 months in certain circumstances. Those periods could be extended as a result of "delays not attributable to the authorities" or "warranted interruptions".

The lawmaker, aware of the potential for tax disputes in this connection, considerably extends the permitted length of a tax inspection, eliminates the concepts of "delays not attributable to the authorities" and "warranted interruptions" (but replacing them with cases in which the inspection period stops running), as well as the existence of the unwarranted interruption of more than 6 months.

Specifically, the principal new features are:

(a) General limit on the length of an inspection: In general, the phases of an inspection must be concluded within 18 months, extendible to 27 months in the case of enterprises obliged to have their financial statements audited or forming part of a consolidated tax group. The inspection of a taxpayer subject to the 27-month period will cause the same 27-month period to be applied to inspections of other related persons or entities.

[2] This aspect was also regulated in Corporate Income Tax Law 27/2014. See footnote 1.

In general, in the notice of the commencement of an inspection, the taxpayer must be informed of the inspection period applicable to it, and such period will apply to all tax obligations and periods examined in the inspection, even if the circumstances used to determine the length of the inspection affect only some of the obligations or periods included in the inspection. Thus, another matter that had often given rise to court claims in the past has been resolved.

(b) Cases in which the inspection period stops running: As indicated, the law includes cases in which the period of the tax inspection will stop running, which are basically the same as the former cases of warranted interruption:

(i) where the case file on the conflict in the application of a tax provision is forwarded to the Consultation Committee;

(ii) where tax authorities submit a conflict to the Arbitration Boards;

(iii) where the case file is forwarded to the Public Prosecutor's Office or to the relevant court without an assessment having been made;

(iv) where a notice is received from the court, ordering that the inspection period be interrupted or stop running with respect to certain tax obligations in an inspection in progress or due to cases of force majeure.

The attempt to notify the taxpayer of the preliminary resolution or assessment, or of the agreement ordering the completion of the proceeding in the case of the taxpayer's formal acceptance of the assessment, is added as a case in which the inspection period stops running.

Other than in the last case, in all of the other cases mentioned above the inspectors will not be able to take any action relating to the inspection in which the period has stopped running, notwithstanding the fact that requests submitted previously to the taxpayer or to third parties must be answered. After the inspection period is resumed, the inspection will continue throughout the remainder of that period.

Nonetheless, consideration is given to the possibility of "breaking up" the inspection. In other words, if the tax authorities deem that any tax period, tax obligation or item thereof is not affected by the grounds causing the period to stop running, the inspection thereof will continue and, if appropriate, the related assessment can be issued.

(c) Cases of extension: The length of the inspection may be extended in three cases:

(i) Where requested by the taxpayer (provided that the request is made prior to the case file review phase), who may request up to 60 calendar days for the inspection as a whole (referred to as "courtesy days"). In this case the inspectors may deny the request if it is not sufficiently justified or if they believe the extension could be detrimental to the progress of the inspection. The denial cannot be appealed.

(ii) Where documentation is submitted late. These delays will only affect the length of the inspection if the requested documentation is submitted after the deadline granted in the third demand made by the inspectors, in which case the maximum inspection period will be extended for 3 months, provided that the documentation is submitted at least 9 months after the commencement of the inspection. The

extension will be for 6 months if the documentation is submitted after the preliminary assessment is issued and will cause the agency in charge of assessing the tax to resolve to commence a supplementary proceeding.

(iii) The inspection period will also be extended for 6 months where, after record is left of the observation of circumstances that require the application of the indirect assessment method, data, documents or evidence relating to such circumstances are submitted.

(d) Failure to comply with the maximum inspection period will mean, as occurred under the former wording of the LGT, that the inspection will not be deemed to have tolled the statute of limitations. Furthermore, any payments made will have the nature of spontaneous payments on which no late-payment interest can be claimed between the last day of the maximum period and the actual end of the inspection.

The statute of limitations will be tolled by the performance of steps after the end of the applicable period. The requirement to serve formal notice on the interested party of the resumption of the inspection has been eliminated from the LGT, although the law does stipulate that the taxpayer is entitled to be informed of the taxes and periods covered in the inspection that is to be performed.

(e) Lastly, the provision is upheld according to which, when a court or economic administrative ruling (with the added wording "observes formal defects") orders the rollback of the inspection, the inspection must be brought to a close within the period remaining between the time to which the inspection is rolled back and the end of the general period, or within six months, whichever is longer. Although the initial idea was to amend the rule for determining the start date for computing such period, the existing wording was finally kept, indicating that the period will be computed from the receipt of the case file by the body with the authority to enforce the ruling.

The change introduced in connection with this matter is found in the inclusion of a new paragraph, pursuant to which late-payment interest will be claimed for the new assessment bringing the inspection to an close, indicating that the start date for calculating the late-payment interest will be the same one that would have corresponded to the assessment that was rendered void, and that the interest will accrue until the time at which the new assessment is issued. Thus, this provision overrides the most recent Supreme Court case law according to which, in cases of the rollback of an inspection due to formal defects, late-payment interest could only be charged through the issue date of the first assessment that was rendered void.

5. Publication of a list of debtors

Despite its contentious nature, the LGT now includes rules on the publication of "situations of material breach of tax obligations" ("debtors' list"). The essential purpose is to enable the tax authorities to publish periodically list of "defaulting taxpayers" who owe the Public Treasury tax debts or penalties exceeding €1,000,000 and are subject to enforcement proceedings. This list will not include tax debts and penalties that have been deferred or held in abeyance.

Prior notice will be served on the debtor in question of his inclusion on the list and he will have ten days in which to submit whatever pleadings he deems appropriate, although they must refer exclusively to the existence of patent, factual or arithmetic errors in connection with the prior circumstances leading to his inclusion on the list.

The list will be published electronically during the first six months of each year (exceptionally, in 2015 the publication will take place in the second half of the year) and will cease to be accessible three months after publication. It will specify that the situation reflected on the list is the situation that exists on the date taken as a reference, and that any actions taken by debtors thereafter in order to pay their tax debts or penalties cannot alter the list.

6. Evidence

In connection with evidence, the LGT now provides that an invoice does not serve as preferred evidence of the existence of transactions and, accordingly, if the tax authorities question its validity on reasonable grounds, the taxpayer will have to adduce other evidence of the authenticity of the transactions.

7. Value examination procedure and limited procedure

(a) Changes are made in the LGT to the regulations on the value examination procedure, with a view to safeguarding the possibility of imposing penalties and of adapting those imposed where an *inter partes* expert appraisal is requested.

(b) In the area of the limited examination procedure, the taxpayer is allowed to furnish his accounting records, voluntarily and without prior request, simply as support for certain data held by the tax authorities, without such voluntary submission preventing a subsequent examination as part of an inspection.

8. Penalty regime

In connection with tax penalties (in addition to what was already mentioned regarding the new offense in cases of a conflict in the application of a tax provision), the new features can be summarized as the following three:

(a) The fixed fine stipulated for the offense consisting of the submission of self-assessments or tax returns other than by electronic, computer or telematic means, where there is an obligation to submit them using such means, without occasioning any loss, or answers to individualized demands for information, is reduced from €1,500 to €250.

(b) A new tax offense is introduced, consisting of the breach of accounting and registry obligations, which refers to the delay in the obligation to keep books of invoices on the website of the State Tax Agency by furnishing the records of invoices on the terms stipulated by regulations.

(c) If, following commencement of the penalty proceeding, the circumstances provided for under article 150.5 (cases of extension of the inspection period) are found to exist in the inspection to which it relates, the deadline for concluding the penalty proceeding (6 months from the notice of commencement of the proceeding) will be extended by the same period as that resulting from the provisions of article 150.5.

9. Indirect assessment

With respect to indirect assessment:

(a) The LGT regulates the potential sources of the data to be used to determine the tax base: (i) signs, indices and units if the taxpayer was able to use the objective assessment method; (ii) the enterprise itself; (iii) statistical studies; or (iv) a sample taken by the inspectors.

(b) It also requires the possibility of using this method partially (e.g., only to determine sales/revenues but not purchases/expenditures).

(c) It admits the deductibility of VAT borne determined indirectly, even if the invoices or documents generally required by tax law are not available.

(d) In taxes such as VAT, with tax periods of less than one year, the taxable amount assessed will be distributed on a straight-line basis over the related tax periods, unless the taxable person provides evidence that timing the distribution differently would be more appropriate.

10. Economic-administrative claims

As indicated in the preamble of Law 34/2015, the amendment made to the section on economic-administrative claims has two basic objectives:

- to speed up processing by the tribunals;
- to reduce the potential for litigation.

For such purpose, a number of amendments are made to the LGT, including most notably the following:

(a) The powers of the Central Economic-Administrative Tribunal are strengthened, with a view to enabling the Tribunal to adopt, ex officio or at the request of a Regional Economic-Administrative Tribunal, a definitive ruling on matters of special importance or where contradictory rulings have been handed down by the various Regional or Local Economic-Administrative Tribunals.

The rulings handed down in these proceedings will have the same effects as the ruling on an extraordinary appeal to a superior administrative body for a definitive ruling on a point of law pursuant to article 242 of the LGT, a notable feature being that they will have no impact on the particular legal situation of the taxpayer who had been party to the previous rulings.

(b) At the same time, the Regional or Local Economic-Administrative Tribunals are attributed with the power to adopt rulings to establish a position in matters of special importance or where contradictory rulings have been handed down by the separate chambers of the tribunal itself. As above, the ruling handed down to establish a position will have no impact on the particular legal situation created by the previous rulings.

(c) The fixed number of cases in which economic-administrative claims can be joined, already established in the LGT, is limited further and, at the same time, a new case is introduced, consisting of the joining of claims filed by various interested parties against a single tax-related act or action.

Nonetheless, what is really new in this section is the possibility that, outside the fixed number of cases established in the LGT, the economic-administrative tribunals can join, on reasonable grounds and after hearing the parties, claims which they deem it advisable to resolve together, given the connection between them (which "a priori" would permit the joining of claims referring to different taxes).

(d) In the interest of speeding up the actions of the tribunals, a number of measures are established to encourage the use of electronic means in the area of economic-administrative claims.

In this connection, the most significant change is the obligation to file and process economic-administrative claims using electronic means where the claimants are obliged to receive communications and notices by electronic means (which is the general rule in the case of corporate enterprises, i.e., corporations and limited liability companies).

(e) In matters of costs, the original wording of the LGT already stipulated the possibility for the economic-administrative tribunal to order the claimant to pay the costs where there has been recklessness or bad faith (although in practice this imposition of costs has been, to date, completely exceptional).

This order to pay costs is maintained, but certain qualifications are introduced with respect to the former wording of the provision: first, there is a new requirement for the economic-administrative tribunal to put forth the grounds for such order for costs; secondly, the possibility of ordering costs is extended to cases in which the claim is not admitted (formerly costs could only be ordered where the tribunal ruled against the claimant); furthermore, costs will now be imposed *"on the person who can be accused of recklessness or bad faith"* (in the former wording, the provision referred specifically to the *claimant*); and, lastly, the enforceability of the order for costs will now be conditional on the ruling in question being upheld, if appropriate, in the hypothetical case of an appeal filed against it.

(f) In connection with administrative silence, the taxpayer is released from the need to file a claim against the express administrative decision if such claim had already been filed against the presumed administrative decision. In other words, if an express decision is handed down after the claim against the presumed dismissal has been filed, the express decision must be forwarded to the tribunal following the service of notice on the interested party. The notice must state that the express decision, depending on its contents, will either (i) be deemed contested in the economic-administrative jurisdiction, offering the claimant a new deadline for submitting pleadings, if appropriate; or (ii) give rise to the termination of the proceeding by out-of-court settlement, which will be declared by the tribunal that is conducting the review proceeding.

At the same time, and according to the position taken by the Supreme Court and the Constitutional Court, presumed unfavorable rulings of economic-administrative tribunals can be contested without having to submit to a deadline (obviously until the express ruling is handed down).

(g) New provisions are issued to regulate the procedure for references for a preliminary ruling by economic-administrative tribunals, also stipulating that the request for such references will stay the economic-administrative proceeding and toll the statute of limitations.

(h) With respect to the enforcement of rulings handed down by economic-administrative tribunals, the LGT now specifies that enforcement orders will not form part of the procedure that gave rise to the decision being contested, unless the ruling being enforced

had noted the existence of formal defects which would have reduced the claimant's possibilities of defense, in which case the proceeding will be rolled back to the time at which the formal defect occurred.

It also provides that, other than in cases of rollback, a notice of the actions resulting from the enforcement of the ruling must be served within one month after the ruling is recorded in the register of the body in charge of enforcing it. A failure by the authority to comply with the deadline will stop the accrual of late-payment interest against the taxpayer.

(i) In connection with the ordinary appeal to a superior administrative body (*recurso de alzada*) and in cases in which the appeal is filed by a Director-General of the Ministry, by a Departmental Director of the State Tax Agency or by the equivalent bodies of the Autonomous Communities and of cities with a Charter of Autonomy, it is now possible to request a stay on the enforcement of the ruling being appealed if, in the opinion of the appellant authority, there are reasonable indicia that the collection of the debt finally enforced could be frustrated or made seriously difficult.

An injunctive or definitive stay will prevent the refund of any amounts paid in and the release of any guarantees provided by the interested party in the economic-administrative claim at first instance in order to obtain the stay on the appealed ruling.

(j) Certain technical improvements are introduced and clarifications made to the appeal to set aside a decision (*recurso de anulación*).

In particular, the filing of the aforesaid appeal will cause the time prior to the deadline by which to file any ordinary appeal to a superior administrative body which could, if appropriate, be filed against the appealed ruling, to stop running.

It is also clarified that if the ruling on the appeal to set aside a decision is dismissed, any appeal filed thereafter will serve to contest not only this ruling but also that handed down previously by the economic-administrative tribunal (and subject to the appeal to set aside a decision), it being possible to have such appeal include the grounds on which the appeal to set aside a decision was filed and any other matters relating to the merits of the case and to the administrative decision initially contested, thus complying with the case law already laid down by the Constitutional Court.

(k) An appeal against enforcement (*recurso contra la ejecución*) is created, to be filed against decisions handed down as a consequence of the enforcement of an economic-administrative ruling.

This appeal will be processed in an abbreviated proceeding, except in the specific case of an economic-administrative ruling ordering the rollback of the proceeding, in which case it will be processed in whatever abbreviated or general proceeding is appropriate according to the amount of the initial claim.

Furthermore, it will now be impossible to stay the appealed decision where no new issues are raised with respect to the economic-administrative ruling being enforced, and neither is it possible to file an appeal for reconsideration prior to the appeal against enforcement.

(l) The deadline for issuing a ruling on the extraordinary appeal for judicial review of a final decision (*recurso extraordinario de revisión*) is reduced from 12 to 6 months, and the interested party may assume that its appeal has been dismissed after such deadline has lapsed.

(m) Lastly, certain improvements are made to the regulation of the abbreviated proceeding before unipersonal bodies. In particular, the claimant is allowed to appeal before the body that handed down the decision it intends to contest, with a view to consulting the administrative case file during the period prior to the deadline for filing the claim.

11. Tax management, inspection and collection actions and proceedings in cases of a crime against the Public Treasury

One of the amendments to the LGT with the greatest impact is a result of the reform of the regulations on crimes against the Public Treasury brought about by Organic Law 7/2012. According to the Preamble, a number of amendments are essential in order to establish an administrative procedure that permits the issue of tax assessments and the collection and guarantee of the related payment even in cases in which a criminal proceeding is brought.

For such purpose, the LGT now includes a Title VI dedicated to the actions to be taken in such cases, substantial amendments are made to the regime governing injunctive relief and the wording of article 180 (principle of non-concurrence of tax penalties) is brought into line with the new configuration.

The following are the principal changes made in this connection:

(i) Issue of assessments where there are indicia that a crime has been committed against the Public Treasury and exceptions to the general rule.

Unlike under the former statutory regime, if the tax authorities find that there are indicia that a crime has been committed, the general rule will now be to continue processing the proceeding according to the general rules, although the official copy of the case record containing indicia of criminal liability will be forwarded to the Public Prosecutor's Office. Thus, the appropriate assessment will be issued, but all items of the tax obligation that relate to the possible crime against the Public Treasury will be separated from those that are not. With respect to the latter items, the proceeding will follow the ordinary assessment procedures.

Logically, there is no change to the impossibility of bringing or continuing an administrative penalty proceeding in connection with the same facts where there are indicia that a crime has possibly been committed.

Where (i) the processing of the administrative assessment can cause the crime to become statute-barred in accordance with the statute of limitation periods stipulated in the Criminal Code; (ii) the amount of the assessment cannot be determined precisely or it is impossible to attribute it to a specific taxpayer; or (iii) the tax assessment could be detrimental to the investigation or examination of the fraud, the official copy of the case record containing indicia of criminal liability will be forwarded to the Public Prosecutor's Office and the assessment will not be issued.

(ii) The LGT now includes the statutory definition of voluntary regularization, defining it as the complete recognition and payment of the tax debt prior to notification of the commencement of a tax examination or inspection.

It specifies that the tax debt for such purposes will comprise all of the items referred to in article 58 of the LGT, and the taxpayer must perform the self-assessment and simultaneous payment of the tax payable and of any statutory late-payment interest and surcharges accrued by the payment date.

It also expressly provides for the possibility of voluntary regularization after the right of the tax authorities to determine the tax debt has become statute-barred. In this area, the tax authorities' power to perform the necessary examinations to determine, if appropriate, the existence of a voluntary regularization on the foregoing terms is upheld and only where there is no certainty regarding such regularization will the official copy of the case record containing indicia of criminal liability be forwarded to the appropriate court or to the Public Prosecutor's Office.

(iii) It expressly regulates the procedure to be followed if a tax assessment is issued, with a few novel changes, such as the following:

(a) Notice of the proposed assessment will be served on the taxpayer, who will be granted a 15-day period in which to submit pleadings.

(b) In no case will any procedural defects incurred lead to the total or partial extinguishment of the tax debt related to the crime.

(c) Following an examination of the pleadings, the relevant body will issue an administrative assessment, with such body's prior or simultaneous authorization to file the criminal complaint and, thereafter, the official copy of the case record containing indicia of criminal liability will be forwarded to the appropriate court or to the Public Prosecutor's Office.

(d) After the official copy of the case record has been forwarded to the Public Prosecutor's Office, the voluntary period in which to pay the tax debt resulting from the administrative assessment will only begin to run when it is notified that the related criminal complaint has been admitted for consideration.

(e) If the criminal complaint is not admitted, the inspection will be rolled back to a time before the assessment related to the crime was issued, and the appropriate preliminary assessment will then be issued.

(f) In the event that willful misconduct determining a possible crime concurs with other items or amounts capable of being regularized in connection with which there are no indicia of willful misconduct, two assessments will be issued:

(i) One related to the crime, to which all items with respect to which there are indicia of willful misconduct will be added and from which all adjustments to which the taxpayer is entitled will be subtracted, together with any items to be deducted or offset and the tax payable initially paid in.

(ii) A proposed assessment comprising all proven items (whether or not related to the crime) from which the amount resulting from the proposed assessment related to the crime will be deducted.

(g) Against the administrative assessment related to a possible crime there can be no appeal or claim filed through administrative channels, notwithstanding any adjustment that might be required in accordance with what is determined in the criminal proceeding. On the contrary, it will be possible to file general appeals and claims against the assessment resulting from the items and amounts not related to the possible crime.

(iv) In the area of the collection of these tax debts, the LGT now expressly provides that the existence of the criminal proceeding will not halt the actions taken to collect the debt. Only certain predefined grounds can be put forth against the decisions handed down in the collection proceeding.

(v) The definition of parties liable for the tax debt assessed now includes those who caused or cooperated actively in the performance of the actions that gave rise to the assessment and were accused in the criminal proceeding of the crime reported, or were sentenced as a result thereof.

(vi) Additional Provision Ten of the LGT ("Civil liability charge and fine for crime against the Public Treasury") is amended with a view to having the scope of the civil liability include the tax debt not assessed by the tax authorities due to the statute of limitations or on other statutory grounds, including late-payment interest, together with the fine. This liability is also to be demanded under the administrative enforced collection procedure.

(vii) An Additional Provision Ten is included in Judicial Review Jurisdiction Law 29/1998, pursuant to which the judicial review courts will have the jurisdiction to hear claims arising from tax decisions issued pursuant to these provisions and with respect to injunctive relief adopted after the commencement of a criminal proceeding for a crime against the Public Treasury.

(viii) Logically, as a result of the redefinition of the regime applicable in connection with crimes against the Public Treasury, certain amendments are made to the Criminal Procedure Law in a new Title X BIS, dedicated to the special features of such crimes.

(ix) These regulations must be deemed completed in the area of customs with the introduction of a specific article setting forth the special features of the assessment of the customs debt in cases of crimes against the Public Treasury.

(x) Lastly, amendments are also made in connection with the adoption of injunctive relief (article 81 of the LGT), with a view to bringing the former wording into line with the appearance of the twofold assessment, previously nonexistent.

12. State aid

A new Title VII is added to the LGT, specifically regulating the procedures to be used for the enforcement of decisions to recover State aid, differentiating the recovery procedure that involves the regularization of a tax obligation from that which does not.

This new Title brings Spanish legislation into line with the Community legislation on unlawful and incompatible aid by implementing Regulation 659/1999, expressly mentioning the specific rules on the statute of limitations applicable in this regard pursuant to Community legislation (10 years) or the fact that a failure to comply with the 6-month limit on the length of a tax inspection stipulated in article 104 of the LGT does not cause the inspection to lapse. Late-payment interest is also governed by the provisions of EU legislation (Regulation (EC) 794/2004).

It stipulates the impossibility of requesting the deferral or payment in installments of debts resulting from the enforcement of recovery decisions. An ordinary appeal for reconsideration and, if appropriate, an economic administrative claim can be filed against the decision or assessment resulting from the enforcement of the recovery decision. In this connection, it provides that, in the event of review, a stay will only be possible if a guarantee is provided by depositing cash with the Government Depository Agency.

The recovery procedure in cases of regularization of the items of the tax obligation must be brought to a close (i) with an express ruling including the items of the tax obligation affected by the recovery decision and the time period subject to the proceeding, the list of facts and legal grounds supporting it and the provisional assessment, or an express statement that this is not required; or (ii) with the commencement of an inspection. In such cases, where a court ruling deems there to be formal defects and orders the rollback of the administrative proceeding, such proceeding must be completed within the period remaining until the end of the 6-month period stipulated in article 104 of the LGT, or within 3 months, whichever is longer.

Where the recovery decision does not involve the regularization of a tax obligation, the procedure will be simplified through the reduction of processing deadlines (from 6 to 4 months) and the scope of the actions to be taken.

13. Mutual agreement procedure

Pursuant to the new Additional Provision Twenty One of the LGT and to the new wording of Additional Provision Nine of the Judicial Review Jurisdiction Law, in cases in which, pursuant to Additional Provision One of the Revised Nonresident Income Tax Law, a mutual agreement procedure in matters of direct taxation provided for under international conventions or treaties takes place simultaneous to the review procedures set forth under Title V of the LGT, the review procedures will be stayed, both in administrative and the judicial channels, until the mutual agreement procedure has been conducted.

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