

New Tax Legislation in the Budget Law for 2016 (Law 48/2015, of October 29, 2015. Published in the BOE on October 30, 2015)

On October 30, 2015, the Official State Gazette (BOE) published Law 48/2015, of October 29, 2015, on the General State Budget for 2016 (LPGE). The most important new items of tax legislation in this law are described below.

1. Personal Income Tax

1.1 Employer paid sickness insurance premiums

Under the Personal Income Tax Law, employer paid sickness insurance premiums are exempt income where they cover the employer and/or the employee's spouse and descendants, up a €500 limit for each of them. Any excess over and above that limit is taxed as income in kind.

Additionally, in determining the net income from economic activity, under the direct assessment method, the sickness insurance premiums paid by the taxpayer may be deducted up to the same limit.

This limit is now raised, to €1,500 in both cases, where the sickness cover is for a person with a disability.

1.2 Limits for use of the objective assessment method in fiscal years 2016 and 2017

In relation to the use of the objective assessment method for income for certain economic activities, the amounts of certain aggregates determining the thresholds for eligibility for the regime has been raised for 2016 and 2017. Specifically:

- (i) The limit relating to the gross income obtained on all the activities as a whole is raised from €150,000 to €250,000, generally; and from €75,000 to €125,000, if the aggregate gross income for the immediately preceding year relates to transactions for which an invoice is required where the customer is a trader or professional acting as such.
- (ii) The limit relating to aggregate purchases of goods and services, not including purchases of real estate, goes up from €150,000 to €250,000.

Consistently with these changes, a transitional regime is provided in relation to the limits determining eligibility for the special VAT arrangements related to that method, which is described below.

2. Corporate Income Tax

2.1 Reduction to income from certain intangible assets ("patent box")

The Corporate Income Tax Law (LIS) provides a reduction applicable to the income from the licensing and transfer of certain intangible assets, allowing this income to be included in the tax base at 40% of its amount if certain requirements are satisfied.

The calculation method for the reduction is amended, effective July 1, 2016, to adapt it to the decisions adopted by the European Union and by the OECD. The percentage reduction will now be determined by multiplying by 60% a coefficient calculated according to the following fraction:

- In the numerator, the expenses incurred by the licensing/transferring entity, directly related to the creation of the asset, including those derived from subcontracting third parties not related to it. These expenses will be increased by 30%, although the numerator can never be higher than the denominator.
- In the denominator, the expenses incurred by the licensing/transferring entity, directly related to the creation of the asset, including those derived from subcontracting (in this case there is no mention that the subcontracting must be of third parties not related to it) and, where applicable, to the acquisition of the asset.

The expenses referred to above cannot include finance costs, depreciation expense in respect of real estate, or other expenses not directly related to the creation of the asset.

The requirements to apply the reduction remain unchanged, with the following exceptions:

- (i) The requirement for the licensing/transferring entity to have created the licensed/transferred assets in, at least, 25% of their cost, has been deleted.
- (ii) The reduction for the transfer of the intangible assets will not apply where the transfer is made between related parties (the previous rule excluded entities in the same group within the meaning of article 42 of the Commercial Code).

The coexistence of more than one regime on the application of this incentive has made it necessary to adapt its transitional regime which is now as follows:

- (i) For licensing/transfer transactions performed before the entry into force of Law 14/2013, of September 27, 2016 to support entrepreneurs and their internationalization, it may be elected to apply, in all the tax periods remaining until the termination of the agreements, the regime established in the former Corporate Income Tax Law (Legislative Royal Decree 4/2004). The election must be made in the return for the 2016 tax period.
- (ii) For any licensing/transfer transactions that have been or will be performed in the period between the entry into force of that Law 14/2013 and June 30, 2016, it may be elected to apply, in all the tax period remaining until the termination of the agreements, the regime established in the current Corporate Income Tax Law (LIS or Law 27/2014) according to the wording in force as of January 1, 2015. This election also must be made in the return for the 2016 tax period.

- (iii) For any transactions performed between July 1, 2016 and June 30, 2021, it may be elected to apply the regime established in the current LIS, according to the wording in force as of January 1, 2015. This election must be made in the return for the tax period in which the transfer was performed.

The rules described in letters a) and b) above will be applicable until June 30, 2021. Thereafter, any licensing/transfer transactions that were performed in accordance with the rules in those letters must apply the regime according to the new wording.

2.2 Conversion of certain deferred tax assets into a loan payable by the tax authorities

Royal Decree-Law 14/2013 introduced in the LIS the regime for conversion of deferred tax assets (DTAs). That regime consisted in (i) a new rule on the timing of recognition in the tax base of certain provisions for the impairment of loans or other assets in connection with bad debts and provisions or contributions to employee benefit systems and, where applicable, preretirement benefits; and (ii) the establishment of the requirements and options to carry out the conversion of any generated DTAs into a loan payable by the tax authorities (through the monetization of DTAs).

The LPGE makes some important additions to this regime, which were analyzed in detail in our Tax Commentary 6-15 "Reform of the monetization regime of deferred tax assets (DTA) in the General State Budget Law for 2016".

<http://www.garrigues.com/sites/default/files/documents/comentario-fiscal-6-2015.pdf>

2.3 Management of the tax

Effective for tax periods beginning on or after January 1, 2015, an exemption is provided from the obligation to file a corporate income tax return for any taxable persons who apply the regime for partially exempt entities (the taxpayers referred to in subarticle 9.3 LIS) provided that:

- (i) Their total revenues do not exceed €75,000 (formerly, €50,000) annually.
- (ii) Their revenues qualifying as exempt income do not exceed 2,000 annually.
- (iii) All the nonexempt income they obtain is subject to withholding taxes.

3. Wealth Tax

Royal Decree-Law 13/2011 temporarily reinstated the wealth tax for fiscal years 2011 and 2012 (following its elimination in practical terms since 2008 by allowing a 100% reduction). This regime has been extended for successive years. Now, the LPGE extends it for 2016, so the 100% reduction will not apply (in principle) until 2017.

It should not be forgotten, however, that although it is an amendment at central government level, the autonomous communities have used their legislative powers in this respect and therefore regard must be had to the specific autonomous community legislation.

4. Value Added Tax

- (i) Technical amendments are made to the exemption for provisions of services directly related to exports of goods and, effective January 1, 2016, any goods to be put on sale at duty-free shops at ports and airports are included in the exemption for imports.
- (ii) Elsewhere, consistently with the transitional regime concerning the limits for application of the objective assessment method for personal income tax purposes in fiscal years 2016 and 2017, it updates the limits for those fiscal years which determine eligibility for the special VAT arrangements related to that method.
- (iii) Lastly, it is laid down that any partnerships which, effective January 1, 2016, acquire the status of corporate income taxpayers and, therefore, stop applying the special compensatory charge VAT arrangement:
 - (a) May apply in the self-assessment return in which they stop applying the arrangement a tax credit calculated by applying to the cost value of their inventory items on the date on which they stop applying the arrangement (not including VAT and compensatory charge) the rates for that tax and surcharge that are in force on that date.
 - (b) That inventory must be submitted to the tax authority for their tax domicile within fifteen days from the date on which stop applying the arrangement.

5. Other amendments

5.1 *Transfer and stamp tax*

The tax rates applicable to the transfer and reinstatement of titles of nobility has been revised by 1%, for 2016.

5.2 *Special tax on electricity*

Effective January 1, 2016, a technical adjustment is added to the exemption for certain facilities from the special tax on electricity, which clarify that the following are exempt (i) the electricity used at the electricity generation facilities to carry on that activity, and (ii) the power supplied to the electricity generation, transmission and distribution facilities to carry on these activities at the facilities.

5.3 *Tax on fluorinated greenhouse gases*

The 0.66 reduction to the rates applicable in 2015 has been extended for 2016 insofar as, currently, a considerable number of the taxed fluorinated gases have no substitutes that are equally efficient and less harmful to the atmosphere.

5.4 Local taxes

5.4.1 Real estate tax. Revision of cadastral values

Different index-linked adjustment multipliers for cadastral values have been set for 2016, based on the year of entry into force of the cadastral values resulting from a collective valuation procedure (through the method of comparison to local property values).

The application of these multipliers will require prior satisfaction of the requirements established in article 32.2 of the Revised Real Estate Cadaster Law.

Year of entry into force of comparative values	Adjustment multipliers
1984, 1985, 1986 and 1987	1.13
1988	1.12
1989	1.11
1990, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002	1.10
2003	1.06
2005	0.92
2006	0.82
2007	0.77
2008	0.70
2009	0.77
2010	0.85

The foregoing multipliers will be applied as follows:

- In the case of real estate valued according to data on file at the Real Estate Cadaster, the multipliers will be applied to the value assigned to those assets for 2015.
- In the case of cadastral values notified in fiscal year 2015, obtained from applying the partial comparative values approved in that year, they will be applied to those values.
- Where alterations have been made to the characteristics of the real estate, according to the data on file at the Real Estate Cadaster, and the changes have not become effective, the multipliers will be applied to the value assigned to those properties according to the new circumstances, by the authority in charge of the Cadaster, using the modules that would have been used as a basis for setting the cadastral values of the other properties in the municipality.

5.4.2 Real estate tax and tax on the increase in urban land value. 2011 earthquake in Lorca

A 50% reduction in real estate tax is established for fiscal year 2016, with the same requirements as for the exemption from this tax established in article 12 of Royal Decree-law 6/2011, of May 13, 2011, adopting urgent measures to repair the damage caused by the earthquakes that occurred on May 11, 2011 in Lorca, Murcia.

Also, for 2016, a 50% reduction in the tax on the increase in urban land value is provided for any transfers of real estate (dwellings, industrial and commercial establishments, work premises and the like, on urban land, located in the municipality of Lorca, as referred to in article 12.1 of Royal Decree-law 6/2011, of May 13, 2011) made to rebuild the area affected by those earthquakes.

5.5 Charges

The main provisions on charges are:

- The following remain unchanged, generally, for fiscal year 2016 (i) the fixed rates and amounts established for the charges levied on games of chance, sweepstakes or gambling, (ii) the quantification of the parameters needed to determine the amount of the charge for reserving the public radio spectrum, and (iii) the basic amounts for the landing fee and of the port fees;
- Airport public levies are reduced; and
- Reductions are established for occupancy, ship, passenger and goods fees at ports of general interest, together with the adjustment multipliers applicable to ship, passenger and cargo fees.

5.6 Not-for-profit entities and tax incentives for patronage

5.6.1 Events of exceptional public interest

The following are declared as events of exceptional public interest for the purposes of Law 49/2002, of December 23, 2001, on the tax treatment of not-for-profit entities and tax incentives for patronage (listed below are the translated names of those events and the length of the related support programs):

- Second Centennial of Museo Nacional del Prado (from November 20, 2016 to November 19, 2019).
- Twentieth Anniversary of the Reopening of Gran Teatro del Liceo de Barcelona and the Bicentennial of the creation of the "Societat d'Accionistes" (from July 1, 2016 to June 30, 2019).
- Foro Iberoamericano de Ciudades, the Latin American Cities Forum (from January 1, 2016 to December 31, 2018).
- 2025 Malaga Innovative Culture Ten-Year Plan (from January 1, 2016 until December 31, 2018).
- Twentieth Anniversary of the Declaration of Cuenca as a World Heritage Site (from January 1, 2016 to December 31, 2016).
- 2017 FIS Freestyle Ski and Snowboarding World Championships in Sierra Nevada (from January 1, 2016 to December 31, 2018).
- Twenty-Fifth Anniversary of Museo Thyssen-Bornemisza (from January 1, 2016 to December 31, 2018).

- 2018 European Water Polo Championship in Barcelona (from January 1, 2016 to December 31, 2018).
- Centenary of the birth of Camilo José Cela (from January 1, 2016 to June 30, 2017).
- 2017: Year of the Retina in Spain (from January 1, 2016 to December 31, 2017).
- Caravaca de la Cruz 2017. Jubilee Year (from January 1, 2016 to June 30, 2018).
- 2020 Support Plan for the Youth Sports System (from January 1, 2016 to December 31, 2018).
- The 2150 anniversary of the Siege of Numantia (from January 1, 2016 to December 31, 2016).
- Fifth centenary of the death of Fernando el Católico (from January 1, 2016 to December 31, 2016).
- 525th Anniversary of the Discovery of America in Palos de la Frontera (Huelva) (From January 1, 2016 to December 31, 2017).
- Prevention of Obesity. Lighten your life (From January 1, 2016 to December 31, 2018).
- 75th Anniversary of William Martin: The English legacy (from January 1, 2016 to December 31, 2018).
- The departure from Alicante of the Alicante 2017 round the world sailing race (from January 1, 2016 to December 31, 2018).

This means there is an option to claim the set of specific tax incentives applicable to any activities performed for the appropriate organization of these events. Specifically, it is provided that the maximum tax benefits set out in Ley 49/2002 will apply in relation to all these events.

5.6.2 *Priority patronage activities*

Following suit from previous years, the law includes a list of the priority patronage activities and programs which can apply the tax incentives set out for them in Law 49/2002.

For these activities, as in 2015, the tax credit percentages and limits established in Law 49/2002 will be raised by five percentage points. The annual €50,000 limit per contributor for some of the specified activities, which was introduced in the Budget Law for 2015, has been retained.

5.7 Tax regime applicable to certain transactions performed by the Spanish Mint (*Fábrica Nacional de Moneda y Timbre-Real Casa de la Moneda*)

Effective January 1, 2015, the Spanish Mint will be exempt from any central government taxes that might arise on the formation of the public commercial company, and on the transfers, of the shares to the Bank of Spain, acts or transactions for change of use of public property, assignment to public use and to a specific purpose, and conferral of powers of administration,

notifications of new construction made by the Entity as result of a restructuring of its line of operations for the manufacture of euro notes, in which those resulting from the manufacture of high-security paper are included in that line.

The regime applicable to the Spanish Mint, in relation to transfer and stamp tax is the exemption regime provided, among other entities, for the central government and regional governments (article 45.I.A).a) of the Revised Transfer and Stamp Tax Law).

The above transfers, acts or transactions will likewise be exempt from tariffs or fees in respect of the services of public authenticating officials and property registrars.

5.8 **Public Multi-Purpose Income Indicator**

The Public Multi-Purpose Income Indicator, which is referred to, among others, in the personal income tax legislation (in the rules, for example, on the exemption for the benefits received by reason of taking in minors, disabled persons and persons aged over 65, which is confined to cases where the person's other income does not exceed that indicator) is set, for 2016, at the following figures:

- Daily indicator: €17.75.
- Monthly indicator: €532.51.
- Annual indicator: €6,390.13.

In addition, where reference to the minimum wage has been replaced by a reference to the Public Multi-Purpose Income Indicator, the annual indicator will be €7,455.14, provided the reference to the minimum wage involves the annual figure (unless nonregular salary payments are expressly excluded; in this case, the amount would be €6,390.13).

5.9 **Legal interest rate for money and late-payment interest**

For 2015, the legal interest rate for money is set at 3% and the late-payment interest rate, at 3.75%.