Tax Newsletter

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1. Judgments

1.1 Corporate income tax. - An economic interest grouping can be classed as a film production company, even if it has outsourced production

National Appellate Court. Judgment of January 29, 2025

In an inspection proceeding, it was rejected that an economic interest grouping (EIG) could apply the tax credit for investments in film productions for its investors, after finding that the grouping could not be regarded as a film production company, because (i) it did not have its own human and material resources to carry out the production work (absence of initiative), (ii) it did not have ownership rights over the film, after assigning the distribution rights to a third party for eight years, and (iii) it did not assume responsibility for production.

The National Appellate Court concluded otherwise. According to the court, there is no specific definition of producer for tax purposes other than the definition that applies in connection with filmmaking. In that area, the producer is not required to have its own resources, and outsourcing is allowed. Furthermore, the filmmaking legislation has been the driving force behind promoting EIGs as suitable and necessary legal instruments to encourage investment in the industry, creating legitimate trust that must be protected. It underlined further that the competent filmmaking organization (the Filmmaking and Audiovisual Arts Institute -ICAA-) classed the EIG as a production company for filmmaking purposes, and, therefore, since the Administration is unique (and under the Supreme Court's case law dated October 9, 2024), the tax authorities cannot go against that principle.

1.2 Corporate Income Tax. - The member of an EIG can offset a tax loss recognized after an audit on the grouping

Supreme Court. Judgment of December 19, 2024

In an audit on an EIG, a previously unreported tax loss was recognized for it. The member of the EIG requested correction of their corporate income tax self-assessment in order to include that tax loss on their return. The tax authorities rejected this request, stating that the tax loss had not been reported by the member in their original self-assessment, as required by article 25.5 of the revised Corporate Income Tax Law (currently article 26.5). That article states that "the taxable person must substantiate the origin and amount of the tax losses that they seek to offset, by showing the assessment or self-assessment, the accounting records and the appropriate supporting documents, regardless of the year in which they arose".

The Supreme Court concluded, however, that, under the principles of complete adjustment, prohibition of unjust enrichment and *actio nata*, the offsetting of the tax loss by the member is correct, even if it had not been recorded in their original self-assessment, given that at that point the member was unaware of the existence of the tax loss.

1.3 Reserve for investments in the Canary Islands. - When the reserve is used for Canary Island public debt or securities, it is not necessary to continue conducting an activity during the holding period

Supreme Court. Judgment of December 23, 2024

A personal income taxpayer used funds from the reserve for investments in the Canary Islands (RIC) between 2007 and 2011 to subscribe to Canary Island public debt and to shares in an entity. In 2012 he stopped conducting the activity for which he had recorded the reserve, but conducted other activities until April 2017, when he retired.

The Supreme Court concluded that a taxpayer who intends to apply the reserve for investments in the Canary Islands on their personal income tax return is not required to continue conducting their economic activity in the Canary Islands during the investment holding period, where the investment consists of subscription to Canary Island public debt or of any of the securities referred to in article 27.4.d) of Law 19/1994, of July 6, 1994, amending the Canary Island tax and economic regime. However, where those funds are invested in securities, those securities must remain in the taxpayer's assets uninterruptedly for five years, and the rights of use or enjoyment attached to the securities cannot be transferred to third parties.

1.4 IRPF. - The re-charging of salary costs by the employer to other group companies not resident in Spain does not prevent the employee from applying the double taxation credit

Madrid High Court. Judgments of November 25, 2024 (appeals 1162/2022 and 1163/222)

A taxpayer provided services at several companies in a corporate group, located in different countries. His Spanish employer paid his salary, which it subsequently re-charged to the foreign companies. The taxpayer was taxed on this income in the countries where he provided services. The tax authorities rejected application of the international double taxation credit in Spain because, in their opinion, under the applicable tax treaties, the income was only taxable in Spain (for which they underlined that all the income had been paid by a Spanish employer).

Madrid High Court concluded that the income paid by the Spanish company must regarded as having been paid on behalf of the foreign companies to which the taxpayer provided services, in view of the re-charging of the expense. Therefore, his salary costs were paid by entities resident in the countries to which the taxpayer traveled, which allows those states to tax the income. Consequently, the taxpayer is entitled to apply the double taxation credit.

1.5 Inheritance and gift tax. - The withdrawal of funds by an heir implies tacit acceptance of her inheritance

Madrid High Court. Judgment of October 14, 2024

In an audit, the tax authorities took the view that the balance of three accounts in which funds had been withdrawn in the year of death had to be included in the deceased’s estate. The sister and heir of the deceased person was named as the authorized person for those accounts. Once the proposed adjustment was known, the appellant formally disclaimed the inheritance and argued that, for this reason, she was not required to pay inheritance tax.

Madrid High Court noted a legal presumption that the assets that belonged to the deceased up to one year before her death are part of the estate, unless it is proven that they were transferred by the deceased. Since in the examined case no proof had been provided as to the destination of the missing funds, the court applied that presumption. It emphasized, further, that the deceased could not have withdrawn the assets of her own free will (she lived in a care home) and that her sister was the authorized person named on the accounts (having even used these accounts to pay for the deceased's care home), which leads to the conclusion that she withdrew the funds to hide them or to transfer them, which determines tacit acceptance of the inheritance and the appropriate requirement to settle the tax.

1.6 VAT. - To apply the reduced rate stipulated for the supply of buildings suitable for residential use, it is not essential to have a certificate of occupancy or first occupancy

Supreme Court. Judgment of January 28, 2025

It was examined whether, to apply the reduced VAT rate stipulated for the supply of buildings for residential use, it is essential for it to have a certificate of occupancy when the supply is made or, on the contrary, it is sufficient for the building to be completely finished when the building is supplied or made available to the purchaser. The Supreme Court concluded that the fitness of a building for residential use is an objective characteristic and, as such, may be evidenced in each individual case using any legally acceptable means of proof, which must include, among others, the granting of a certificate of occupancy, but considering that there are other ways of providing proof.

1.7 Transfer and stamp tax. - Special use of public property under a municipal permit for installation and operation of terraces is not a taxable event for transfer and stamp tax purposes

Supreme Court. Judgments of January 7 and January 16 2025

A taxpayer installed a terrace on a public highway for its restaurant business and paid the fee for private or special use of public property. The tax authorities took the view that the necessary municipal permit should be treated as if it were an administrative concession, subject to transfer tax under the transfers for a consideration heading. The Supreme Court pointed out that for use of public property to be subject to transfer tax under the transfers for a consideration heading, there must be a transfer of assets to the authorized person. This requirement must be verified by examining the content and circumstances attached to the permit contains. In the examined case, the permit did not entail any transfer of assets going beyond the right to special use under that permit, and therefore it was not taxable for transfer and stamp tax purposes.

1.8 Transfer and stamp tax. – An excess distribution in an inheritance with indivisible assets is not subject to stamp tax

Madrid High Court. Judgment of September 30, 2024

The five heirs in an inheritance agreed to allocate various apartments to only two of them, in order to avoid their legal division. The beneficiaries compensated the other heirs in cash for the excess distribution. The tax authorities reviewed the position of one of the beneficiaries of the excess distribution and concluded that the excess was subject to stamp tax. Madrid

High Court concluded that the excess arising from the allocation to an owner of an indivisible property (i.e. it was inevitable, due to the characteristics of the property itself) is only a partition transaction that is part of the taxable event triggered by the inheritance itself and that, as such, it is subject to inheritance and gift tax. In view of the incompatibility of inheritance and gift tax and stamp tax, the excess distribution is not subject to stamp tax.

1.9 Local taxes. - If there is no decision to impose the tax, the ordinance on that tax it is null and void

Andalusia High Court. Judgment of November 21, 2024

The revised Local Finances Law states that, for optional local taxes (which include fees for occupancy of public property), local entities must adopt a decision to introduce the tax, in addition to approving the relevant tax ordinances. Based on this, the Andalusia High Court (following the principles established by the Supreme Court in its judgment of March 17, 2023) held to be null and void the tax ordinance relating to a fee for occupancy of public property owned by local government, on the ground of the absence of a decision to impose the tax, and rejected that this defect could be remedied simply by approving and publishing the ordinance in the official gazette.

1.10 Cadastral values. - The same piece of land cannot have two classifications giving rise to a cadastral value that does not match the value for expropriation purposes

Balearic Island High Court. Judgment of November 18, 2024

In the case examined in this judgment, the cadastral value of a plot of land included in an area defined as urban land under urban planning rules had been reviewed. The cadastral value determined by this review was significantly higher than the value assigned by a judgment to the same plot for expropriation purposes, because this second appraisal was based on the classification of the plot as rural land, due to not having basic urban services. The Balearic Island High Court concluded that it is not possible for the same land to have two different values depending on which rule is applied. In this specific case, it concluded by reference to the physical, economic and legal characteristics of the plot that its cadastral value must match the value determined by the judgment for expropriation purposes.

1.11 Administrative procedure. - The tax authorities cannot investigate statute-barred debts, even if they are not statute-barred under criminal law.

Supreme Court. Judgment of January 7, 2025

In September 2015, the tax authorities started an audit on personal income tax for fiscal year 2010, which had been statute-barred since July 2015 under the General Taxation Law -LGT- (four years) although it was not statute-bared under criminal law (five years). The Supreme Court concluded that the tax authorities’ right to audit and investigate cannot be extended beyond that four-year period simply because the statute of limitations for the offense has not expired. This limit on the authorities’ ability to investigate has only been altered by the legislature in relation to obtaining data to determine the amounts due in tax periods that have not become statute-barred.

1.12 Administrative procedure. – A change to how notifications are made, without prior notice, violates the taxpayer’s right to due process

Supreme Court. Judgment of December 17, 2024

An audit was started with a notice sent by certified mail, in which the interested party was not informed of its obligation to interact electronically with the tax authorities. At a later stage of the audit, however, the tax authorities sent electronic notifications without informing the taxpayer, who did not receive the notifications of their decisions and did not pay the debts within the time limits, so they were subject to enforced collection. According to the Supreme Court, by their action of sending the first notification on paper the tax authorities created a legitimate expectation that the following steps would be notified in the same way, even more so because the taxpayer did not receive a notice in her e-mail for each electronic notification. Therefore, although these electronic notifications were formally valid, the change to how notifications were made without prior notice gave rise to a denial of due process rights, because the taxpayer could not raise an effective defense. Furthermore, if the tax authorities saw that the electronic notifications had not been received, they should have used alternative means. For all these reasons, the setting aside of the enforced collection assessment was confirmed.

2. Decisions

2.1 Reserve for investments in the Canary Islands. - The prohibition to use the reserve for vacation rental properties cannot be applied retroactively

Canary Island Regional Economic-Administrative Tribunal. Decision of October 1, 2024

In fiscal year 2018, an entity used funds allocated to the reserve for investments in the Canary Islands in 2014 to purchase real estate intended to be used as vacation rental properties before the entry into force of Law 8/2018, of November 5, 2018, amending article 27 of Law 19/1994, of July 6, 1994. That law determined that, starting on November 7, 2018, the reserve for investments in the Canary Islands could not be used for investments in real estate intended to be used as vacation rental properties. No transitional regime was provided and AEAT concluded that it could be applied retroactively. The Canary Island TEAR took the view, however, that this administrative principle was not correct. In other words, the legal amendment is not retroactive, given that there is no provision making it valid on earlier dates.

2.2 Personal income tax. - Directors can benefit from the rules on exempt per diems and remuneration in kind

Central Economic-Administrative Tribunal. Decision of January 30, 2025

The Personal Income Tax Law defines two types of earned income: (i) earned income arising from an employer / employee relationship, a statutory employment relationship or from personal work, and (ii) earned income that is such by express legal decision. The latter includes the income of directors (article 17.2.e). The tax authorities have been taking the view that directors could not benefit from the rules on exempt per diems in the personal income tax legislation or from the exempt or tax-free nature of certain types of remuneration in kind, because they do not meet the requirements of dependence, alienage and otherness inherent in an employment relationship and their earned income is such by decision of the legislature.

In this decision, TEAC confirmed that the exempt per diem rules apply only to employer / employee or statutory relationships that have the described factors of dependence, alienage and otherness, although it clarified that fulfillment of those requirements cannot automatically be denied for directors. In other words, (i) if the director receives per diems in relation to their services as such, they will not be exempt; whereas (ii) if they receive them as an employee, the exemption cannot be denied. For these purposes "it cannot be considered, under the relationship absorption theory, that their commercial relationship prevails over their employer / employee relationship, instead the income paid in respect of their director and employee status at the Company will need to be treated separately" for which the origin or cause of the per diems will have to be analyzed. TEAC cited its decision of July 19, 2024 (although published in January 2025), in which it reached the same conclusion for per diems and for in-kind earned income.

2.3 Personal income tax. – An international double taxation credit can be applied for the exit tax paid in another country

Catalan Regional Economic-Administrative Tribunal. Decision of November 7, 2024

A taxpayer transferred his residence from Israel to Spain in 2016 and became resident in this country in 2017. On the date he relocated, a tax fell due in Israel on the unrealized capital gain relating to the shares held by the taxpayer in a company resident in Israel, as an exit tax for a change of residence. Payment was deferred until the point when the capital gains were actually realized against third parties in 2021, when the employee was still tax resident in Spain. On his Spanish personal income tax return, the taxpayer reported the gain and applied the relevant international double taxation tax credit for the exit tax paid in Israel. The Spanish tax authorities denied his right to this tax credit.

The Catalan TEAR, however, validated the tax credit for the reason that, although the double taxation was not a direct consequence of applying the Israel-Spain tax treaty, the Spanish domestic legislation allows this situation to be corrected. In particular, article 80 of the Personal Income Tax Law states that the tax credit can be applied where (i) the gains were obtained and taxed abroad (ii) in respect of a tax similar to Spanish personal income tax. In this case, both requirements were met.

2.4 Personal income tax. - The acquisition value of a leased property that is transferred must be reduced by the minimum depreciation established in the corporate income tax legislation

Canary Island Regional Economic-Administrative Tribunal. Decision of October 1, 2024

The Personal Income Tax Regulations state that where real estate assets that have generated income from immovable capital are transferred, the acquisition value must be reduced by the relevant depreciation, and the minimum depreciation must be computed in all cases. These regulations determine that depreciation is effective where it does not exceed 3% of the higher of the acquisition cost paid and the cadastral value (not including land). According to the Canary Island TEAR, this rule does not actually establish a minimum depreciation. Therefore, in the absence of a rule in the personal income tax legislation, the corporate income tax legislation must be applied, since it is more complete and specific on depreciation. The minimum depreciation is obtained under the corporate income tax legislation by reference to the maximum useful lives of the assets. For dwellings, this useful life is one hundred years, which results in a 1% depreciation rate.

2.5 Personal income tax. - Registration of the energy efficiency certificate outside the statutory time limit prevents application of the tax credit stipulated in the legislation

Castilla-La Mancha Regional Economic-Administrative Tribunal. Decision of July 31, 2025

Additional provision fifty of the Personal Income Tax Law allows homeowners in buildings with predominantly residential use to deduct 60% of the amounts paid for energy renovation work (i.e., work achieving an improvement in the energy efficiency of the building in which the dwelling is located), which must be evidenced by comparing the energy efficiency certificates issued before the work started and after it ended. Both certificates must have been issued and registered as required in Royal Decree 390/2021, of June 1, 2021, which states that the certificate must be filed for registration within a month after it was issued, unless a different time limit is laid down in the regional legislation. In the case under discussion, the same time limit is provided in the regional legislation and in the central government legislation. In the examined case, the earlier certificate was dated May 21, 2021, so its registration should have taken place on or before the following June 21. Similarly, the later certificate was dated November 2021, so it should have been registered on or before December 11. However, both certificates were registered in June 2023 and, therefore, they are not valid for the purposes of applying the tax credit.

2.6 Nonresident income tax. - Taxpayers without a permanent establishment cannot offset capital losses against capital gains obtained in the same year

Central Economic-Administrative Tribunal. Decision of July 19, 2024

At issue was whether on its nonresident income tax return a nonresident taxpayer in Spain could offset capital losses against capital gains both obtained in Spain in the same tax year (as can be done for personal income tax purposes). It was also asked whether disallowing this offset constitutes discriminatory treatment that is contrary by EU law. TEAC concluded that, unlike the Personal Income Tax Law, the Nonresident Income Tax Law does not allow this offset and recalled that the Nonresident Income Tax Law refers to the Personal Income Tax Law, but this reference is only partial and does not include the rules on offsetting losses against income. It pointed out further that discriminatory treatment contrary to EU law cannot be seen to exist, insofar as taxpayers without a permanent establishment are not taxed on the whole amount of income obtained in the year, whereas nonresident income taxpayers with a permanent establishment and personal income taxpayers are, so they are not in comparable positions.

2.7 Collection procedure. - The request for an expert appraisal of concealed assets made at the taxpayer's instance does not suspend enforcement of the decision to enforce liability

Central Economic-Administrative Tribunal. Decision of December 10, 2024

A taxpayer was held jointly and severally liable for the payment of some tax debts due to having contributed to concealing assets of the main debtor (article 42.2 a) of the LGT). In these cases, the amount that can be claimed from the taxpayer is the lesser of: (i) the value of any assets or rights that have been attached or sold and (ii) the amount of the enforced debt.

This decision analyzes whether the request for an expert appraisal made at the taxpayer's instance to determine the value of the concealed assets (which operates as a limit on the scope of its liability), suspends enforcement of the decision to enforce joint and several liability. In its decision, TEAC reissued its decisions of October 30, 2014 (R.G 120/2014 and 2579/2014), in which it concluded that the filing of a request for an expert appraisal made at the taxpayer's instance does not suspend the decision to enforce liability, because that suspension is only required for administrative assessments determining and quantifying the tax debt and late-payment interest. It noted further that the request for an expert appraisal does not suspend the time limit for filing economic-administrative claims either, so that both procedures can be conducted at the same time.

2.8 Economic-administrative procedure. - The time lag between notification of the decision of the economic-administrative tribunal to the interested party and to the tax authorities is not computed as a time limit for its enforcement, unless it is deliberate

Central Economic-Administrative Tribunal. Decision of July 19, 2024

Article 150.7 of the LGT states that where a judicial or economic-administrative decision finds formal defects and orders reversion of the proceedings, these must be completed in the time remaining from the point to which they were reverted until the end of the maximum term for completion of the audit, or in six months if this latter period is longer. The period starts to run from when the competent body for enforcing the decision receives the case file. In relation to this, it was examined whether a delay of 69 days between notification of the decision to the interested party and to the body responsible for enforcement should be considered excessive and therefore attributable to the tax authorities, which would imply taking into account the length of this delay in the calculation of that period.

In its decision, TEAC drew on the principle applied by the National Appellate Court in its judgment of April 17, 2024 which was contrary to the principle applied by the Supreme Court in its judgment of March 14, 2024 (April 2024 *Newsletter*), and concluded that the 69 day time lag between the two notifications cannot be considered excessive, since (i) it was justified because, due to being an appeal, the decision was sent first to the TEAR, which sent it to the Office of Relations with the Tribunals; and furthermore (ii) no circumstance is alleged, or transpires from the file, from which it may be inferred that, with this time lag, the tax authorities had deliberately sought to obtain any advantage, such as carrying out prior steps that could be considered preparatory to those to be carried out in the enforcement of the decision.

3. Resolutions

3.1 Corporate income tax. - The existence of valid economic reasons is not an essential requirement to apply the tax neutrality regime

General Directorate for Taxes. Resolutions V0042-25, V0043-25, V0049-25 and V0050-25, of January 22, 2025; V0018-25 and V0019-25, of January 9, 2025; V0013-25, of January 7, 2025; V2590-24, of December 12, 2024; V2504-24, V2505-24, V2507-24 and V2511-24, of December 10, 2024; V2494-24, of December 9, 2024; V2442-24, of December 4, 2024; and V2402-24, of November 25, 2024

The DGT has issued new resolutions on application of the neutrality regime to reorganization operations and concluded as follows:

(i) On the one hand, starting out from the Supreme Court's case law, it pointed out that valid economic reasons are not an essential requirement for applying the special regime, instead their absence may allow a presumption that the transaction may have been carried out for the primary purpose of tax fraud or evasion. Furthermore, if the primary purpose is to obtain a spurious or unlawful tax advantage, that advantage will need to be eliminated, although, under EU case law, it can only be eliminated following an overall analysis of the specific case, as established by the CJEU.

Accordingly, in resolution V2402-24, for example, it concluded that a merger carried out as part of a group's large corporate simplification project, and giving rise to savings in labor and administrative costs and operational improvements, can benefit from the special regime, even if there is a tax advantage consisting of saving tax on the dividends that would be distributed among the entities participating in the merger, if the merger were not carried out. With a similar conclusion, we can find resolution V0050-25, on a total spin-off conducted with the intention of safeguarding real estate assets, although it does not mention the existence of a specific tax advantage.

(ii) On the other hand, it concluded that the following economic reasons, in relation to the transactions mentioned, are valid:

(a) Total spin-offs with the aim of (i) carrying out an orderly succession in the management of the companies, so as to ensure continuity within the family (V2442-24), (ii) allowing separate management of the business, preventing conflicts between shareholders and allowing each manager to make decisions independently on part of the assets (V2504-24); and (iii) separating financial resources, cash and surplus financial investments from the risk attached to the industrial business, making it easier to carry out transactions in which it is not necessary to involve all the company's assets and providing greater transparency on the balance sheets (V0042-25).

(b) Spin-off of a line of business to separate mining from preparation, treatment and processing activities, which will strengthen measures to monitor the profitability and efficiency of each, reduce the administrative burden and facilitate application of the mining tax regime (V2590-24).

(c) Downstream improper mergers (V2494-24, V0015-25, V0019-25), improper mergers (V2505-24, V0013-25, V0018-25, V0043-25 and V0049-25), mergers

between sisters (V2511-24) or between entities with different shareholders (V2507-24), with the following objectives:

- Maintain a good brand positioning and increase the volume of products offered in the market.
- Rationalize and restructure operations and the business in a single company, with the resulting savings in administration, management, personnel, social security contribution and management costs; to improve economic efficiency and simplify the organizational structure, by avoiding duplication; or to reduce formal, commercial and tax obligations.
- Centralize decision making, management services, advice and financial management; or applications for subsidies, in order to facilitate compliance with the requirements for obtaining them.
- Improve the ability to negotiate with banking institutions to obtain and enhance financial capacity.
- Eliminate indirect investments to avoid mutual debts between companies that could be difficult to settle.

In some of the analyzed cases, the absorbed entities had tax assets.

In any case, as is customary, the DGT made its conclusions conditional on information provided by the taxpayers, which may be subject to examination by the tax authorities in view of all the prior, simultaneous and subsequent circumstances of the performed transaction.

3.2 Corporate income tax. - Interest on a participating loan is not deductible from the point when the companies belong to the same group

General Directorate for Taxes. Resolution V0048-25, of January 22, 2025

An entity received a participating loan from another entity that was not part of the same group of companies. In a later period both entities became part of a group and in that period the borrower recorded the interest accrued to date, which had not been recorded in previous periods.

The DGT noted that interest is deductible in the year in which it is recognized for accounting purposes, provided that this does not result in lower tax compared with allocating those expenses to the year in which they would have been recognized under the accrual principle. The legal limit on the deduction of these expenses must be considered for these purposes. Moreover, from the point when the lender and the borrower belong to the same group, any (fixed and variable) income must be classed as dividends at the lender company and as a non-deductible expense at the borrower company, even if the entities did not form part of a group when the loan was executed.

3.3 Corporate income tax. - The withholding base for the account-participant's return consists of the consideration agreed between the parties

General Directorate for Taxes. Resolution V0017-25, of January 7, 2025

Entity A is an account-participant under various participation account agreements in which B is the manager. The manager makes monthly payments to the account-participant's account equal to 50% of the operating income of the business. Any losses are credited against income in the following months. Therefore, in the payments received by the account-participant (A), it may happen that income was recorded for the month, but losses are offset from earlier months resulting in an amount payable equal to the difference, which will be the amount that, as specified in the agreement, entity B is required to pay to entity A.

The DGT concluded that the withholding base for the payment to be made to the account-participant's account will be the full amount payable according to the consideration agreed between the parties. Consequently, entity B will be required to withhold corporate income tax from account-participant A, on the positive income for the current month less, if applicable, the losses from earlier months; and this withholding must be made when the income is payable according to the provisions of the participation account deed or agreement.

3.4 Corporate income tax. – Analysis of the treatment of the pre-consolidation surplus operating income in the calculation of the deductible financial expense of the tax group

General Directorate for Taxes. Resolution V0014-25, of January 7, 2025

A group consisting of a parent entity and a subsidiary had been taxed under the consolidated tax group regime since 2020. In earlier periods, the subsidiary had net borrowing costs below the limit equal to 30% of its operating income, giving rise to pre-consolidation surplus operating income to be used in the deduction of net borrowing costs when the group was formed.

The DGT noted that, in the consolidated tax group regime, the limit on the deduction of net borrowing costs relates to the group, therefore the group's net borrowing costs are deductible up to the greater of 30% of the group's operating income and one million euros. If the group exceeds those limits and has non-deductible net borrowing costs, these will be distributed, in the tax period in which they are generated, among the entities belonging to the group that have a surplus after deducting their individual net borrowing costs against their own operating income, and after making the relevant eliminations and inclusions; also by reference to the residual rule in the event that the group's non-deductible net borrowing costs are greater than all the surplus net borrowing costs over 30% of the operating income of each entity.

Therefore, in this case, once the distribution of the group's non-deductible net borrowing costs had been made, since the subsidiary has unused operating income from tax periods before it joined the group, the net borrowing costs allocated to that entity are deductible up to the amount of that unused operating income.

3.5 Corporate income tax. – No limit on the transfer of the tax losses of the absorbed entity if the shareholders did not deduct the losses attached to their ownership interests

General Directorate for Taxes. Resolutions V0007-25, of January 2, 2025, and V2398-24, of November 25, 2024

An entity with tax loss carryforwards was absorbed by its sole shareholder. Under the special tax neutrality regime, the absorbed company's tax loss carryforwards can be offset by the absorbing company, although after they have been reduced by the positive difference between the value of the shareholders' contributions, made by any means, relating to the shares and their tax value. According to the DGT, the spirit and purpose of this rule is to prevent the same loss being offset twice, which would occur if it were allowed for the tax loss carryforwards to be offset by the post-merger company and by the shareholders (either through impairment of the shares, or in relation to the losses disclosed when they are transferred, provided that both were tax deductible). Therefore, that reduction to the tax loss carryforwards transferred to the absorbing entity will not be applicable where the shareholders have not used the losses, regardless of the wording of the rule.

3.6 Corporate income tax. - The support received by a lessee to conduct adaptation work on premises must be recognized in the lease term

General Directorate for Taxes. Resolution V2518-24, of December 10, 2024

An entity is going to receive support from the owner of leased premises for work to be conducted on the premises. Based on the assumption that the lease is an operating lease, the DGT concluded that the monetary support received must be recognized by the lessee by crediting it to deferred revenue to be distributed over several years, which will be taken to income over the lease term. The same principle will be applied for corporate income tax purposes.

3.7 Corporate income tax. - The forgiveness of debt agreed in a court-approved agreement can be classed as a write-off for the purposes of being excluded from the limit on the offset of tax loss carryforwards

General Directorate for Taxes. Resolution V2392-24, of November 25, 2024

Article 26 of the Corporate Income Tax Law states that the limit on the offset of tax loss carryforwards is not applicable on the amount of income relating to write-offs or deferrals under an agreement with the taxpayer's creditors. Moreover, any tax loss carryforwards that are offset against that income are not included to calculate the €1 million minimum amount under article 26 of the Law. The DGT clarified that the write-offs mentioned in this article are not confined to those mentioned in the insolvency legislation and instead include any type of write-off (remission or cancellation of debt by the creditor to the debtor). Therefore, the described exclusion from the limit on the offset of tax loss carryforwards also includes write-offs arising from settlement agreements that are subsequently approved by the court.

3.8 Corporate income tax. – Analysis of the timing of recognition of income arising from amendment of an arrangement with creditors

General Directorate for Taxes. Resolution V2351-24, of November 14, 2024

A company received a proposal for amendment of an arrangement with creditors. It was proposed that the claims recognized in the final list of creditors should be written off by more than 90% and that they should be paid within a month from the date on which the approval of the proposed amendment of the arrangement with creditors becomes final, following a waiver and cancellation of the mortgage collateral.

Under accounting standards, the renegotiation of a liability must be assessed in two stages: (i) first, it must be analyzed whether there has been a substantial change to the terms of the debt, for which the net present value of the cash flows of the old and the new debt is calculated using the initial interest rate; (ii) then, if the change is substantial, the original debt is retired and the new liability is recorded at its fair value. The difference must be recorded as financial income on the income statement.

According to the DGT, a write-off of more than 90% would give rise to a substantial change to the terms of the original financial liability, and therefore an amount of financial income must be recognized equal to the difference between the original financial liability and the new liability at its fair value, in addition to any transaction costs that may affect its amount.

For tax purposes, the special timing of recognition rule in article 11.13 of the Corporate Income Tax Law must be applied (because the income relates to the recording for accounting purposes of the write-offs and deferrals made under the Insolvency Law). Under this rule, an upward adjustment must be made to income for accounting purposes, in respect of the revenue for accounting purposes relating to the cancellation of part of the debt, in the year in which the borrowing costs related to the same debt are recorded and to the extent of that revenue. However, if that revenue exceeds the unrecorded borrowing costs related to that debt, that revenue must be included in the tax base in the proportion that the net borrowing costs recorded in each tax period bear to the total unrecorded borrowing costs related to the same debt.

3.9 Corporate income tax. - There will be no leasing economic activity if two people are hired part-time

General Directorate for Taxes. Resolution V2329-24, of November 8, 2024

A company is subject to the special regime for entities engaged in residential property leasing. The Corporate Income Tax Law states that, to fulfill the requirement for the existence of an economic activity, the entity must have a full-time employee. The DGT rejected that this requirement could be fulfilled by hiring two people on a part-time basis, even if between them they complete the number of hours relating to full-time work.

3.10 Personal income tax. – Damages for breach of a non-competition clause gives rise to a capital loss that is included in the general component of taxable income

General Directorate for Taxes. Resolution V0023-25, of January 9, 2025

Following the breach of a non-competition clause by the seller of a number of shares, a settlement agreement was signed between the parties, providing for the payment of damages by the seller. The DGT pointed out that the payment of damages gives rise to a computable capital loss, because it is not a free gift, it is justified and does not arise from acts of consumption or gambling. Because it does not arise from a transfer (the obligation to pay damages is the consequence of a breach of the non-competition clause, which is a separate and independent fact from the gain or loss arising from the transfer of the shares), it must be included in the general component of taxable income.

3.11 Personal income tax. – Analysis of several questions in relation to tax on carried interest

General Directorate for Taxes. Resolutions V2308-24 and V2309-24, of November 7, 2024

Additional provision fifty-three of the Personal Income Tax Law, on earned income obtained from the management of funds linked to entrepreneurship, innovation and the growth of economic activity (carried interest), stipulates that this income must be included in taxable income for personal income tax purposes at 50% of its amount. The DGT has issued two resolutions on the application of these rules and concluded as follows:

(i) Firstly, it rejected that it applied to income received by employees of an entity resident in Spain, belonging to a group engaged in the management of investment funds, whose carried interest rights relate to a fund formed in Guernsey that invests in operating companies in various industries and jurisdictions (the fund's general partner was also formed in Guernsey). The carried interest is paid through an entity in that jurisdiction owned by the group's employees and shareholders. The DGT noted, in relation to this, that Guernsey is a non-cooperative jurisdiction.

    If, as the entity proposes, the system for distributing carried interest to employees resident in Spain is restructured so that the payment is received from a closed-end alternative investment fund formed in Luxembourg and managed by a group entity, it will have to be analyzed at which entities the special economic rights giving rise to the income are granted and whether such rights continue to come directly or indirectly from an entity resident in a country or territory classified as a non-cooperative jurisdiction. In other words, if the restructuring is limited to a mere change in the payment chain, without the special economic rights actually being altered, that special regime cannot be applied either.

(ii) On the other hand, it accepted that this regime applies to income received by directors, managers or employees who have ceased to perform their duties or services for any reason (retirement, dismissal or termination, disability or incapacity), if it can be evidenced that it is paid in respect of the management carried out while they performed their functions.

In both cases, the DGT warned that the provisions of articles 13, 14, 15 and 16 of the LGT must be considered, relating to the principle of classification, prohibition of analogy, conflict in the application of tax provisions and sham transactions.

3.12 VAT. - The DGT issues several resolutions on the "Veri*factu" Regulations

General Directorate for Taxes. Resolutions V2653-24, of December 27, 2024, V2638-24, of December 26, 2024, and V2484-24, of December 9, 2024

The DGT has issued several resolutions on issues relating to the Veri*factu Regulations and concluded as follows:

(i) First, it noted that the obligations under these regulations are not enforceable on taxpayers required to use the immediate reporting system (SII).

(ii) For taxpayers under the compensatory charge scheme, the obligations will not be applicable for transactions in which there is no obligation to issue invoices, although they will apply in all other cases.

(iii) Lastly, it stated that it cannot be said that all taxpayers using spreadsheets do not have obligations under the regulations. It will depend on whether the spreadsheets could constitute data processing and storage tools that could mean they are classed as Computerized Billing Systems.

As of the date these resolutions were issued, the prior public consultation process on the amendment of the regulations, in order to extend its entry into force, among other objectives, had ended, although the information and participation procedure prior to its amendment had not started.

3.13 VAT. – Since January 1, 2025, streaming services are deemed located where the consumer is established

General Directorate for Taxes. Resolution V2307-24, of November 5, 2024

The DGT analyzed liability for Spanish VAT on services related to the organization of a congress to be held in the Spanish VAT area and which can be attended both in person and online. In relation to streaming services or live transmission, it concluded that, since January 1, 2025, the supply of these services (even if they are not classed as electronically supplied services) must be considered to be located in the Spanish VAT area if the recipient, trader or professional or end customer is established in that territory, according to the amendment of the VAT Directive carried out by Directive (EU) 2022/542 (which has not yet been transposed into Spanish domestic law).

3.14 VAT. - The transfer of all the shares of an entity may be out of the scope of VAT

General Directorate for Taxes. Resolution V2207-24, of October 14, 2024

The issue concerned the acquisition of the shares of an entity engaged in leasing business premises and whose primary asset is a building.

The DGT confirmed that the transfer of shares, if subject to VAT, is exempt unless any of the exceptions to the exemption are applicable as provided in the law (in particular, where the transfer was intended to avoid the payment of tax on the direct transfer of the properties). It also mentioned that such a transfer might be not subject to article 7.1 of the VAT Law, if all the shares of the transferred (operating) entity, represent ownership of a set of material and human elements which are part of its business or professional assets and qualify as an independent business unit.

3.15 Inheritance and gift tax. - An inbound expatriate is taxed as a resident taxpayer

General Directorate for Taxes. Resolution V2345-24, of November 12, 2024

Taxpayers under the special tax regime for people who have moved to Spain (inbound expatriates) are tax resident in Spain, although there are special provisions to determine their liability for Spanish personal income tax. Therefore, according to the DGT, they are taxed as resident taxpayers for inheritance and gift tax purposes, namely, on all assets they receive as a result of transfers subject to the tax, regardless of whether they are located, inside or outside Spain. The applicable regional legislation will be that relating to their principal residence for the highest number of days in the immediately preceding five-year period, counted from date to date, ending on the day before the tax falls due.

3.16 Tax procedure. - The legal representative of an entity whose taxpayer identification number has been withdrawn can access unread notifications in person

General Directorate for Taxes. Resolution V2537-24, of December 10, 2024

Following the withdrawal of an entity’s taxpayer identification number, its digital certificate was withdrawn also. The entity’s sole director was interested in reinstating the company, but to do so she had to access the unread notifications on the company's online tax account, which she could not do without a certificate. According to the DGT, in this case the legal representative (sole director in this case) can appear in person to receive the notification by non-electronic means so as to settle the entity’s tax affairs.

4. Legislation

4.1 Fourth quarter 2024 trading value for approved traded securities

Order HAC/184/2025, of February 25, 2025, published in the Official State Gazette on February 28, 2025, approves the list of securities traded at trading venues, with their average trading values for the fourth quarter of 2024, for the purposes of (i) the 2024 wealth tax return and (ii) the annual information return on securities, insurance and income (form 198) for the same fiscal year.

5. Miscellaneous

5.1 Regular bread and specialty bread will be subject to 4% VAT

The DGT has in the past taken the view that the 4% reduced rate was restricted to supplies, intra-Community acquisitions and imports of the varieties classified as regular bread; and the 10% rate applied to varieties classified as specialty bread. However, the Supreme Court has determined, in its recent judgment of October 15, 2024, that this difference in tax rates (under article 91 of the VAT law) is contrary to the VAT neutrality principle, in relation to ensuring free competition, and contrary to the CJEU's case law.

For this reason, the DGT approved the Decision of February 24, 2025 (published in the Official State Gazette on February 27, 2025), in which it states that the 4% rate applies to supplies, intra-Community acquisitions or imports of all products referred to in Royal Decree 308/2019, of April 26, 2019, approving the quality standard for bread, as well as to products that meet the definition of regular bread, special bread or semi-finished products as specified in that royal decree and have been made with gluten-free flour (naturally or by using a special treatment to reduce its gluten content), or in which the flour has been replaced with other gluten-free ingredients naturally, even if they are the main component. This decision will have binding effects for tax authority bodies and entities responsible for the application of taxes with *ex tunc* effects, namely, from the entry into force of the law it interprets, with the limits determined by the principle of legitimate trust.

Tax Department

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