Tax Newsletter

Spain

GARRIGUES

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1. Judgments

1.1 Parent-Subsidiary Directive - Legislation that taxes a parent company more heavily when it receives dividends is contrary to the directive

Court of Justice of the European Union. Judgment of March 13, 2025. Case C-135 /24

The Parent-Subsidiary Directive is intended to ensure tax neutrality on the distribution of profits by a subsidiary to its parent established in another member state. Article 4.1 of the directive provides that member states can use an exemption or deduction mechanism to attain this objective. Belgium opted for an "inclusion / deduction" method under which dividends received by a Belgian parent company are included in its tax base and then deducted up to the amount of the existing tax base. The Belgian consolidated tax regime allows taxable income to be transferred between companies in the same group. The company receiving this transfer can offset the current year's losses against its income, but cannot deduct dividends up to the amount of the intragroup transfer received. In other words, a loss-making company that receives an intragroup transfer of profits does not use the deduction of dividends in the year it receives them and defers the deduction to later years. This scheme can give rise to higher tax than the tax that would arise if dividends were not received and does not eliminate double taxation, not immediately at least.

The CJEU held that, if the combination of both pieces of legislation results in a parent company being taxed more heavily after receiving dividends than it would have been if it had not received them or if they had been excluded directly from its tax base, this implies that the dividends received are not fiscally neutral for the parent company receiving them, which is contrary to article 4.1 of the directive.

1.2 Corporate income tax / Personal income tax - In transfer pricing adjustments the tax authorities must observe the bilateral adjustment principle

National Appellate Court. Judgment of January 31, 2025

In a tax audit, AEAT made an adjustment to a taxpayer's position and that of two related companies, due to considering that the taxpayer's services to those entities had not been priced at arm's length. This involved increasing the taxpayer's revenues (reported in his taxable income on his personal income tax return) and making a bilateral adjustment on the corporate income tax returns of the beneficiaries of the services (by increasing their expenses). The assessment decisions on the shareholder and on the companies were overturned by the Catalan TEAR. The tax authorities lodged an appeal against the personal income tax assessment decision only, which was upheld, and the adjustment for personal income tax purposes was confirmed, although without recognizing the appropriate bilateral adjustment for corporate income tax purposes on the related entities.

The National Appellate Court concluded that departure from the bilateral nature of the adjustment violates the principle of good administration, giving rise to unjust enrichment for the tax authorities, and therefore overturned the challenged decision.

1.3 VAT. - Denial of the right to modify the taxable amount for uncollectible claims that are below the quantitative limit set out in the VAT Law is contrary to EU law

National Appellate Court. Judgments of January 22, 2025 (appeals 1837/2021, 1838/2021 and 1831/2021)

Article 80.4 of the VAT Law provides that the taxable amount cannot be modified in relation to the unpaid debts of individuals that are not higher than a given amount (€300 in the period to which these judgments relate, €50 since the entry into force of the 2023 General State Budget Law 31/2022 of December 23, 2022).

The National Appellate Court pointed out that article 90 of the VAT Directive gives a margin of discretion to the member states regarding the requirements to be fulfilled for modification of the taxable amount due to non-payment, but underlines that this margin is conditional on the formalities being proportionate to the sought aims and respecting the principles of tax neutrality and effectiveness. The court held in this respect that the need to avoid an excessive administrative burden for the tax authorities (as the tax authorities alleged in the examined cases) is not a sufficient reason for applying the specified quantitative limit, because it is not related to uncertainty over the final nature of the non-payment (which, in the chamber's opinion, is reinforced by the fact that Law 31/2022 reduced the threshold from €300 to €50). Therefore, the National Appellate Court allowed the modification of the taxable amount sought by the appellants, because it considered that the tax authorities simply applied the monetary limit without assessing the final nature of the non-payment.

1.4 Transfer and stamp tax. - Purchases of real estate located in Madrid that can potentially be used for housing are taxed at 2%

Madrid High Court. Judgment of October 18, 2024

The Madrid regional legislation determines a 2% reduced rate for transfer tax under the "transfers for consideration" heading on purchases of residential properties by real estate companies, where a number of requirements are fulfilled. The tax authorities disallowed this reduced rate in relation to the purchase of a property to be used as a home because, according to the certificate from the cadaster, it had office use associated with it. Also, the legal obligation to explicitly state in the deed of sale the buyer's intention to sell the purchased property had not been met either.

In view of this, the Madrid High Court affirmed that this reduced rate is applicable where the purpose of the rule is met, which is none other than to boost the real estate market, for which two requirements are laid down: (i) that when it is purchased the property is able to be used as housing, and (ii) that when it is transferred (which must take place within three years) the property is actually used as housing. Therefore, if in the examined case the property is purchased to be used as housing and it is confirmed that it is sold within the specified period, the reduced rate cannot be denied, despite the absence in the deed of a declaration by the buyer about his intention to sell.

1.5 Inheritance and gift tax / Administrative procedure. - Taxpayer's proof of the onerous nature of the transaction shifts the burden of proof to the tax authorities

Madrid High Court. Judgment of January 7, 2025

The plaintiff set up a company with shares priced at €1. He later decided to carry out a capital increase to allow the entry of new shareholders, who paid a price of €125 per share. According to the tax authorities, subscribing to shares at a price much higher than their par value must be classified as a gift by the new shareholders to the original shareholder (insofar as that shareholder saw the value of his own shares increase), which triggered the taxable event for inheritance and gift tax purposes. In response to this, the plaintiff submitted a document (a shareholders' agreement) that proved that the transaction was for consideration.

In the opinion of Madrid High Court, the tax authorities cannot base their decision on the transaction being for no consideration if the taxpayer submits a document that proves otherwise. In these cases, the burden of proof is reversed and transferred to the tax authorities.

1.6 Local fees / Review procedure. – New evidence may be produced on appeal, where the court has jurisdiction to examine the validity of a general provision that is challenged indirectly

Supreme Court. Judgment of February 24, 2025

The Judicial Review Law limits the taking of evidence in appeals to cases where the evidence has not been denied or has not been properly taken at first instance for reasons not attributable to the parties.

In this judgment, the Supreme Court ruled on an indirect appeal against local tax rules on a local fee and concluded that, in cases where the court of appeal has jurisdiction to rule on the validity of a general provision (the local tax rules) that covers the directly challenged decision (the assessment of the fee), it must also be allowed to produce evidence that may be relevant for examining the legality of the provision. Finding otherwise, the court held, would be tantamount to restricting the options for defending the legality of the general provision which, for example, would not occur if the appropriate request for a decision on legality had been filed.

1.7 Tax on construction, installation projects and works. – A private document issued and ratified in the presence of a court is valid evidence for deducting the contractor’s overheads and profit from the taxable amount

Catalan High Court. Judgment of January 9, 2025

The Catalan High Court confirmed that items relating to a contractor’s overheads and profit in relation to a project can be deducted from the taxable amount for the tax on construction, installation projects and works, based on the private documents issued by the contractor. The court underlined that these documents contained a breakdown of the amount of each of these two items and, moreover, had been ratified in the presence of a court. This does not mean, according to the court, that the breakdown of these items cannot be included in other

documents related to the project that are generally accepted by the case law as evidence and which had also been issued by these same contractor companies (invoices, project certificates, contracts, etc.).

1.8 Management procedure. – In the conversion of deferred tax assets into a claim payable by the tax authorities, late payment interest is generated from when the right to refund them is recognized

Supreme Court. Judgment of February 12, 2025

Article 69 of the Corporate Income Tax Regulations provides, in relation to the conversion of deferred tax assets into a claim payable by the tax authorities, that the "payment shall be governed by the provisions of article 31 of General Taxation Law 58/2003 of December 17, 2003, and of its implementing regulations, and shall not under any circumstances give rise to accrual of the late-payment interest mentioned in paragraph 2 of that article 31".

In the case examined by the Supreme Court, the application for conversion gave rise to an assessment decision that only partially upheld the application, whereas the unpaid portion was recognized later (one amount by TEAC and another by the National Appellate Court). The dispute concerned the payment of this portion not initially recognized: AEAT argued that, under that article 69 of the Corporate Income tax Regulations, interest could not be recognized while the company was claiming the interest generated from the date on which the assessment decision, later held to be incorrect, was issued, because that article must be regarded as referring to cases where the requested payment is accepted in the assessment decision, and the tax authorities cannot benefit from an assessment deficiency (the benefit would be the delay in a payment without a penalty in the form of interest).

The Supreme Court concluded (i) that late payment interest was due in respect of the period between the date of the decision / judgment ultimately recognizing the requested amounts and their actual payment; but (ii) did not recognize late-payment interest for the period between the taxpayer's application and the date of the approval decision.

1.9 Review procedure. – TEAC's reviewing powers in relation to adjusting taxpayer status are limited

National Appellate Court. Judgment of February 24, 2025

The tax authorities examined a company’s taxpayer status for the purposes of the tax on economic activities and decided to register it under heading 661.2 of the tax classifications (relating to trade in hypermarkets) and also to remove it from the 13 captions in which the company had been registered until then in relation to the same activity. In the subsequent claim, TEAC held that it was not correctly recorded under heading 661.2, in view of the characteristics of the company's activity (as it had alleged), but instead of setting aside the contested administrative decision, it concluded that the appropriate heading was 661.1 (trade in department stores). The National Appellate Court upheld the company's appeal, because TEAC overstepped its reviewing powers, by delivering a ruling on a claim unrelated to the one that had been brought by the company, which was aimed only at setting aside the tax authorities’ adjustment in relation to the company’s registration under heading 661.2., but not at being included under a different caption (661.1).

1.10 Collection procedure. – An enforced collection order related to a penalty cannot be stayed without security

Supreme Court. Judgment of March 10, 2025

Article 212.3 of the General Taxation Law (LGT) provides that the timely filing of an administrative appeal or claim against a penalty automatically stays enforcement of the penalty without the need to provide security until they become final in the administrative jurisdiction. According to the Supreme Court, where it is sought to achieve a stay in economic-administrative proceedings of an enforced collection order arising from a breach of the obligation to pay the penalty, this rule on an automatic stay without security is not applicable. In other words, once the penalty is final in the administrative jurisdiction, the exceptional automatic stay regime will cease to be in effect and it will become enforceable; and enforcement steps can only be stayed if security is provided.

2. Decisions

2.1 Controlled transactions. – Under the efficiency principle, the tax authorities can only adjust transactions in which they observe a tax risk

Central Economic-Administrative Tribunal. Decision of February 25, 2025

The shareholders in company (A) are two spouses, each owning 50%, although only the husband provides services to the company and receives an amount of remuneration. The company's revenues come from the services it provides to a second entity (B), related to A and its shareholders, and from an independent third party. The auditors concluded that the remuneration paid by A to its shareholder is insufficient, after determining that A's income comes mainly from the activity carried out by its shareholder directly or indirectly (A had few material and human resources other than that shareholder).

To assess the remuneration to be allocated to the shareholder, the auditors used the cost plus method. In their calculations they assumed that A's margin must be 5% on its costs, because its services are of low added value (as defined in the OECD Guidelines and the EU Joint Transfer Pricing Forum). Because it has few personal and material resources, its cost base to which the margin is added must be small, which increases the shareholder's remuneration (taking as a suitable comparable the fees that A receives from related entity B).

TEAC concluded that the cost plus method is appropriate for pricing the professional services provided by the individual in cases involving dual related party status, provided that certain conditions are met; including that the intermediate company (A) must provide little added value and that the income from related entities (B) and third parties must be taken as a given amount that is not reviewed. In order for the income of intermediate company (A) from related parties (B) to be taken as a given amount not questioned by the auditors, that relationship must have actually been recognized; and the auditors themselves must have decided not to adjust it because they consider that the transactions had been carried out at "arm's length", that is, without any type of contamination or artificial elements (and this is stated unambiguously in their analysis). In short, according to TEAC, under the efficiency principle, the tax authorities can decide not to examine all the elements of the tax obligation, and review only those areas in which they observe a tax risk.

2.2 Corporate income tax. - Fulfillment of the requirements to apply the reduced tax rate must be determined on the date of accrual of the tax in the year of the company's creation

Central Economic-Administrative Tribunal. Decision of December 12, 2024

The Corporate Income Tax Law allows a 15% reduced tax (instead of the 25% standard rate) for newly created entities carrying on economic activities, applicable in the first tax period they have a positive tax base and in the following period. The law specifies, however, that this reduced rate is not applicable if the entity is part of a business group, because in that case it will not be regarded as a small entity.

In the case examined in this decision, the auditors rejected application of the reduced rate by a company because it belonged to a business group when it was created, and it was irrelevant that a subsequent capital increase led to its exit from the group in the same year. TEAC rejected the auditors’ view and concluded that the circumstances of the entity for the purposes of determining the reduced rate must be determined on the date of accrual of the tax for the first year since its creation. Therefore, an entity can be regarded as newly created if it is not part of a group as of the end date of the fiscal year in which it was created, even if it was part of a group when it was created.

2.3 Corporate income tax / Personal income tax. – The tax neutrality regime for shareholders can be rejected, even if the assessment issued on the company is set aside for procedural reasons

Central Economic-Administrative Tribunal. Decisions of May 27 and July 19 2024

In a decision dated October 15, 2018 (November 2018 Newsletter), TEAC concluded that examination of the requirements to apply the tax neutrality regime must be carried out at the company that elects to apply it; therefore, an adjustment cannot be made on the shareholders without first rejecting the neutrality regime in relation to that company.

In these recently published decisions, TEAC qualified this conclusion and concluded that the principle contained in its earlier decision refers exclusively to cases where the requirements had not been examined at the entity. In other words, the setting aside of the decision issued on the company with an order for retroactive effect on procedural grounds cannot be regarded as the absence of an act of exclusion for the enforcing entity.

2.4 Personal income tax. - International double taxation credit does not apply in relation to taxes that can be deducted on a return filed abroad

Madrid Regional Economic-Administrative Tribunal. Decision of January 28, 2025

At issue was whether the international double taxation credit could be applied in relation to federal, state and local taxes paid in the United States.

According to the court, it can be inferred from the wording of article 2 of the Spain-U.S. tax treaty that only federal taxes in the United States are among those covered by the tax treaty, not the taxes of the different states. In addition, under the U.S. income tax legislation, state and local taxes can be deducted on the federal tax return. Therefore, these taxes cannot be deducted from the Spanish tax because otherwise the legislation would be allowing them to be deducted twice.

2.5 Nonresident income tax. – New principles determined in relation to taxes on income received by entertainers and sportspersons

Central Economic-Administrative Tribunal. Decisions of June 24 (General decision 5254/2022) and of December 12, 2024 (General decision 3096/2021, 3144/2021 and 3272/2021)

In its decision dated October 30, 2023 (December 2023 Newsletter), TEAC stated that not all income obtained directly or indirectly from performing in an entertainment or sports event must be classified automatically as income from entertainment or sport for nonresident income tax purposes. The circumstances of each case must be taken into account to classify the income, for which documents will need to be reviewed (i.e., invoices, contracts or others) in which the individual entertainer / sportsperson can be identified along with their participation in a specific event in Spain.

In these new decisions, TEAC states that, if a withholding is made, it must be calculated on the gross amount of income, although EU residents may, when filing their self-assessment, reduce their tax base by expenses that (i) are directly related to their activities in Spain, (ii) are necessary for the performance of their activities in Spain, and (iii) are properly substantiated.

In addition, applying the principle determined by the Supreme Court in its judgment of June 8, 2023 (appeal 6528/2021) - relating to dividends not income obtained by entertainers or sportspersons - TEAC concluded that the general principle of EU law on the prohibition of abusive practices is generally applicable regardless of whether or not the clause in question has been transposed into national law. Therefore, the anti-avoidance clause contained in article 17 of the OECD Model Convention (which allows income from entertainment and sports activities, paid indirectly to the entertainer or sportsperson to be taxed), is applicable even if the applicable tax treaty predates the inclusion of that clause in the model and, therefore, is not expressly contemplated.

2.6 VAT. - VAT rounding on transactions performed at a price inclusive of VAT must be done for each assessment period

Central Economic-Administrative Tribunal. Decision of November 26, 2024

An entity engaged in the retail sale of products (i.e., with a price "inclusive of VAT"), used rounding (to two decimal places) in calculating the applicable VAT charges on each product unit sold. The auditors considered that the rounding should be done on all the supplies made on each sale receipt (i.e., on the figure for all product sales on the same ticket).

TEAC noted that, according to the CJEU's case law, in the absence of specific provisions on this subject, it is up to the member states to determine the VAT rounding rules and methods, under the principles of tax neutrality and proportionality; and concluded that the rounding used to calculate the VAT charged on transactions carried out at a price inclusive of VAT

must be done in the final phase of the VAT self-assessment, in order to minimize the distortion caused by rounding (i.e. not as the taxable person had done on each product separately, nor as the auditors proposed, for each ticket).

2.7 Collection procedure. - Payment of the tax debt during the processing of an application for deferred or split payment is equivalent to withdrawal (not to non-admission), so only late-payment interest may be claimed, not the surcharge in the enforcement period

Central Economic-Administrative Tribunal. Decision of February 18, 2025

The filing of an application for deferred or split payment in the voluntary period prevents the enforcement period from starting, although not the accrual of late-payment interest; whereas non-admission of the application implies that it is regarded as not filed for all purposes. It was examined whether the non-admission of an application for deferred payment submitted in the voluntary period entails, with retroactive effect, disappearance of the stay of the start of the enforcement period that is triggered by the application itself as a precautionary measure.

TEAC concluded that non-admission determines that it is regarded as not filed for all purposes, so the start of the enforcement period is not altered. Consequently, if payment of the tax debt occurs after notification of the non-admission decision, but when the original voluntary payment period has run (and before notification of the order initiating enforced collection proceedings), the enforcement period surcharge will be payable.

However, payment of the debt during the processing of the application for deferred or split payment must be interpreted as tacit withdrawal of the application, and therefore the tax authorities can claim late-payment interest for the period between the day following the due date in the voluntary period and the date of payment, although not the enforcement surcharge

3. Resolutions

3.1 Personal income tax. - Termination of the employment relationship means exclusion from the inbound expatriates regime, even if there is a noncompetition clause

Directorate General for Taxes. Resolution V0128-25 of February 12, 2025

The requesting party is a director and one of the founding shareholders of a company incorporated in England and Wales. In 2022, he signed an ordinary employment contract with a Spanish company belonging to the same group and elected the special regime for inbound expatriates. In a reorganization process he will contribute his shares in the English entity to another British entity, after which he will sever ties with the group, so he will leave his directorship and end his employment relationship with the Spanish company. The end of his employment relationship will trigger the coming into effect of a noncompetition clause for a 24-month term. During this period, he will receive a gross annual amount of remuneration for each year the clause is in effect.

In these circumstances (termination of the employment relationship followed by a two-year period of inactivity), the DGT concluded that exclusion from the special regime would occur. If, however, the remuneration under the non-competition clause were paid simultaneously with the start of a new employment or director relationship, meeting the requirements under

article 93 of the Personal Income Tax Law, exclusion from the special regime would not occur (the DGT has generally concluded in numerous resolutions that the new relationship must begin in "the short term").

As regards the contribution of shares in the English entity to another entity, any capital gain that is obtained would not be subject to tax under the special tax regime.

3.2 Personal income tax. – Analysis of the tax treatment of a spinoff with the withdrawal of shareholders not covered by the neutrality regime

Directorate General for Taxes. Resolution V0135-25 of February 12, 2025

An Argentine company engaged in the operation of a rural farm is owned by individuals who are tax resident in Spain and an individual tax resident in Argentina. It is intended to carry out a partial spinoff for two of the original shareholders to become shareholders of two new companies. To achieve this, the new companies will receive a set of elements belonging to the assets of the original company consisting of a proportional part of the original property, material and human resources and debts; and a capital reduction will be carried out at the original company to exclude the outgoing shareholders, who will become the new shareholders of the acquiring or beneficiary companies. The other original shareholders will keep their shares in the original company, and will not obtain, under the transaction, a stake in any of the new companies. According to the information provided by the requesting party, the proposed transaction would not be able to benefit from the special tax neutrality regime in Spain. The DGT concluded as follows:

(i) Shareholders receiving shares in the new companies and ceasing to be shareholders at the original company:

   (a) According to the Argentina-Spain tax treaty, if the gain derives, directly or indirectly, more than 50% of its value from real estate located in Argentina, this state may tax those gains, although the tax cannot exceed 10% of the gain where the requesting party directly owns at least 25% of its capital (15% tax in other cases).

   (b) The gain may also be taxable in Spain, as the transferor's state of residence (if applicable), because the special tax neutrality regime is not applicable.

   (c) If the transaction is taxable in both Argentina and Spain, the double taxation can be corrected regardless of when effective taxation occurs in Argentina, as provided in the tax treaty.

(ii) Shareholders staying at the original company and not acquiring shares in the new companies: because shares in the original Argentine company are not transferred to them, no capital gain or loss will occur, without limitation to articles 13, 15 or 16 LGT (classification, conflict in the application of tax provisions and sham transactions).

3.3 Nonresident income tax. - Compensatory payments arising from a cost-sharing agreement are subject to withholdings

Directorate General for Taxes. Resolution V0119-25 of February 7, 2025

A Spanish resident company owns 99.99% of a company resident in Brazil. In relation to their contribution to the joint development of a technological platform, the two entities signed a cost-sharing agreement. After development of the platform is complete, the Brazilian company will operate it in Brazil and the Spanish company in all other countries. The sharing agreement provides that the need for compensatory payments will be reviewed periodically, for which the expected profit ratio for each entity and the value of the contributions made by each will be determined. Whichever entity has an expected profit ratio higher than its contribution ratio must make a compensatory payment to the other party. The Spanish company expects that it will have to make compensatory payments to the Brazilian company to bring the contribution it made into line with its expected profit ratio. For accounting purposes, both entities recognize most (around 90%) of their contributions as internally generated intangibles (software) in the development phase, whereas the portion not recognized as an intangible is recognized as a period expense for the relevant year. Similarly, the portion of the compensatory payments that relates to the intangible will be treated as a reduction to the value of the intangible for the recipient, and an increase in its value for the payer. The portion relating to non-capitalized expenses will be treated as income for the recipient and an expense for the payer.

In relation to the obligation to make withholdings from these compensatory payments, the DGT pointed out that a distinction must be made between the portion relating to the transfer of the intangible and that relating to the reimbursement of non-capitalized expenses:

(i) Transfer of the intangible: this portion must be classified as a capital gain, which will be taxable in Spain (although it will not be subject to withholdings), because the transferred intangible (the percentage of the platform) is a right that will be used by the Spanish entity and become part of its assets.

(ii) Non-capitalized expenses: the income derived from the portion of the compensatory payment that relates to expenses incurred by the Brazilian company and falling under the cost-sharing agreement which have not been capitalized, could be treated as royalties, in the same way as technical support. These services are treated as income obtained in Spain, because they are not specifically directed at, and do not specifically serve the purposes of, a portion of the Spanish entity's activities performed outside Spain. The Spanish entity will make 10% withholdings, because the protocol to the Brazil-Spain tax treaty contains a most favored nation clause.

3.4 VAT. – Reverse charge mechanism applies in the transfer of a property encumbered with more than one mortgage where a portion of the price is retained to cover cancellation

Directorate General for Taxes. Resolutions of February 19, 2025 (V0197-25 and V0198-25)

The DGT looked at the reverse charge mechanism under article 84.One.2.e) of the VAT Law in relation to the transfer of a hotel complex under construction, encumbered by more than one mortgage. Under the agreement reached between the parties, when the purchase option is exercised by the consulting entity, a portion of the price will be retained to cancel those

mortgages. After determining that the subject-matter of the transfer is not an independent economic unit, the DGT confirmed that the reverse charge mechanism is applicable, because in the analyzed cases a property encumbered with a mortgage is transferred, with retention of a portion of the price for cancellation of that mortgage; although it clarified that this will not be the case where the mortgages are canceled before or simultaneously with the transfer (at the execution of the deed), because in this case it will be considered that the property is acquired free of encumbrances.

3.5 Real estate tax. – The taxable amount relating to the holder of a surface right over a property includes only the cadastral value of the built structure

Directorate General for Taxes. Resolution V0044-25 of January 22, 2025

The DGT concluded, in relation to a property with a surface right, that there are two taxable persons for real estate tax purposes: the owner of the land and the surface right holder. Therefore, the taxable amount for the owner will be the cadastral value of the land, whereas the taxable amount for the surface right holder will be the cadastral value of the built structure. To reach this conclusion, the DGT relied on the Supreme Court's reasoning that, in relation to a surface right, a distinction can be made between (permanent) ownership of the land on which the building is built and (temporary) ownership of the built structure, and this second type relates to the surface right holder (December 2023 Newsletter).

3.6 Tax on increase in urban land value. – DGT clarifies when the transfer of ownership of a property carried out under a private agreement is considered to have taken place

Directorate General for Taxes. Decision V2593-24 of December 13, 2024

The requesting party and her spouse purchased a house in 1980 under a private sale agreement. On the date the agreement was signed, the keys were handed over and the property was occupied by the buyers. Years later, the seller's heirs recorded the private agreement in a public deed. The issue submitted for resolution concerns whether the acquisition of ownership of the property (and therefore, accrual of the tax on increase in urban land value) occurs on the date of the private agreement or on the execution date of the deed.

The DGT pointed out that, to conclude as to the acquisition date of ownership of the property for the purposes of accrual of the tax, the specific circumstances of the case must be taken into account. Therefore, if proof can be provided of the existence of the private agreement and of real and actual delivery of the property to the buyer on the date of its signing, ownership of the property is considered to have been transferred on that date. If, by contrast, proof cannot be provided of the date of the agreement, the first of the dates on which any of the circumstances set out in article 1227 of the Civil Code occurred must be taken into account (the date of inclusion of the agreement on a public register, from the death of any of the individuals who signed it, or from the day on which it was handed over to a public official by reason of his position), and proof must also be provided of the delivery of the property. Lastly, if neither of the two cases described above occurs, the transfer date of the property must be the execution date of the deed.

4. Legislation

4.1 Approval of two types of stamped digital notarial documents for transfer and stamp tax purposes

Order HAC/305/2025 of March 27, 2025, approving stamped digital notarial documents and amending the Economy and Finance Order of December 27, 1991, issuing instructions on AEAT's economic and financial regime, was published in the Official State Gazette on March 31, 2025. The new order has included new types of digital notarial documents, consisting of a digital template sheet and a digital authorized copy sheet for a third party, created by Law 11/2023 of May 8, 2023. These documents are subject to stamp tax; and the General Council of Notaries has been put in charge of distribution and collection of the tax and will be responsible for the task of paying over the tax revenues to the Public Treasury and providing the necessary information for their correct recognition where digital documents are used.

4.2 Amendment of corporate income tax prepayment forms

Order HAC/262/2025 of March 12, 2025 published in the Official State Gazette on March 19, 2025, amends the order approving the corporate income tax and nonresident income tax prepayment returns for permanent establishments (forms 202 and 222). The main amendments adapt the forms to (i) the new rules on the deduction of borrowing costs introduced by Law 13/2023 of May 24, 2023 (which, among others, excluded from the calculation of operating income, any revenues, expenses or income that have not been included in the tax base); and to the amendments to Law 7/2024 of December 20, 2024 in relation to (ii) the inability to deduct expenses arising from the recording for accounting purposes of the global minimum tax (Pillar 2) (iii) the new tax rates for micro-companies and small entities, and (iv) the 50% limit for aggregation of individual losses in tax groups.

4.3 Publication of the Annual Tax and Customs Control Plan

On March 17, 2025, the Official State Gazette (BOE) published the decision of February 27, 2025 by the Directorate-General of the State Tax Agency, approving the general guidelines in the 2025 Annual Tax and Customs Control Plan.

The plan fosters use of **artificial intelligence** in the Tax Agency's various areas of activity, staff **training**, and the creation of new **virtual tools**, notably the making available of the new "Renta DIRECTA" (DIRECT Income Tax) option to certain taxpayers for filing personal income tax returns that do not require changes to the draft tax return (Renta WEB).

In relation to prevention, to assist with completion of VAT returns, relevant information is going to be made available to taxpayers together with their tax information for personal income tax and corporate income tax returns.

In the area of **investigation and control of tax and customs fraud**, the monitoring of certain transactions and activities will be increased. Among other measures, (i) taxpayers for whom discrepancies are identified between their standard of living and their reported income and/or assets will be reviewed along with conduit companies used to divert personal expenses or place assets for personal use; and there will be increased monitoring of (ii) transactions that could hide significant capital gains, (iii) profiles such as traders or professionals without credit card income or who fake business activities to obtain VAT refunds and (iv) vacation rentals. In relation to nonresidents, (v) they will step up their efforts to bring into compliance

withholdings on the income of entertainers and sportspersons and income obtained from real estate.

Lastly, in relation to the **control of fraud in the collection phase**, (i) software will be created for the selection of debtors grouped by types of conduct, (ii) the procedure for the seizure of money in demand deposits will be reformed, (iii) emphasis will be placed on preventive control and monitoring of collection risks associated with tax offenses and smuggling, and (iv) the National Insolvency Proceedings Team will start operating along with bringing into operation the monitoring of correct application of the collection regime for certain guarantees provided by ICO.

4.4 Approval of the 2024 personal income tax and wealth tax return forms

Order HAC/242/2025 of March 13, 2025, approving the forms for 2024 personal income tax returns and wealth tax returns was published in the Official State Gazette on March 14, 2025.

Tax information and the draft personal income tax return can be obtained from April 2, 2025 and the filing time limits (including confirmation of the draft personal income tax return) will begin on April 2 and end on June 30 2025. Tax debts can only be paid by direct debit until and including June 25, 2025. However, if only the second installment is paid by direct debit, this direct debit can be made until June 30, 2025.

This order makes the necessary changes to personal income tax form 100 for implementation of the correction self-assessment, which replaces the previous two-step system involving an additional self-assessment and a request for correction and is set up as the general procedure for modifying self-assessments, except where the reason for the correction is a potential violation by the applied piece of legislation of the articles of other higher-ranking provisions.

Finally, for this income tax season, a secure commerce system for payment by credit or debit card has been added along with payment by instant transfer on secure e-commerce platforms (Bizum, for example).

4.5 Amendment of various orders related to the tax authorities' collection tasks

Order HAC/241/2025 of March 10, 2025, published in the Official State Gazette on March 14, 2025, amends the following orders:

(i) Order EHA/2027/2007 of June 28, 2007, partially implementing the General Collection Regulations in relation to credit institutions providing the approved collection entity service for AEAT. Namely, provision has been made legally and in operational terms for amounts received using the new secure e-commerce payment methods and the benefits of the online NRC consultation service that the Tax Agency provides for its approved collection entities have been further defined.

(ii) Order EHA/1658/2009 of June 12, 2009, setting out the procedure and conditions for payment by direct debit of certain debts through credit institutions that are authorized providers of collection services for AEAT. Among other measures, it determines the days regarded as non-working days for the filing of self-assessments with payment by direct debit and the inability to pay by direct debit self-assessments filed outside the specified time limits for electing this payment method (including in relation to

correction self-assessments). Moreover, additions have been made to the regulations on the inclusion of approved collection entities in the procedure for managing direct debits from accounts held at other entities located in the Single Euro Payments Area (SEPA Zone). And, lastly, the technical specifications for the self-assessment direct debit files that the AEAT makes available to approved collection entities have been modified, in order to adapt their detailed reporting to the specific nonresident income tax provisions (form 210).

(iii) Lastly, the Order of June 4, 1998, on certain aspects of collection management of the fees that are rights of the Public Treasury, has been amended to provide for the remote filing procedure for enforcement orders and other aspects relating to procedures for refunding fees that are collected entirely under the state budget.

Tax Department

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