Tax Newsletter

Spain

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1. Judgments

1.1 Freedom of establishment. - EU law does not preclude limiting the deduction of interest on loans with related entities to acquire another related entity where the transaction involves an artificial arrangement

Court of Justice of the European Union. Judgment of October 4, 2024. Case C-585/22

Under corporate income tax law in the Netherlands interest cannot be deducted on loans entered into with related entities for the acquisition or extension of an interest in another company which, following that transaction, also becomes a related entity to the taxpayer, unless the taxpayer can demonstrate (i) that the loan is for economic reasons and (ii) that the interest will be subject to at least 10% tax on taxable profit, determined in accordance with the Dutch rules.

The CJEU held that EU law does not preclude the described national rules, because the restriction of freedom of establishment is justified in this case by an overriding reason in the public interest, which is the need to combat wholly artificial arrangements created between related entities to obtain a tax advantage. In its view, the measure is also proportionate to the sought objective, because it allows the interested party to rebut a presumption of the existence of a wholly artificial arrangement by demonstrating the two elements described above.

1.2 Corporate income tax. – The reasoned reports for technological innovation tax credits are binding on the tax authorities

Supreme Court. Judgments of October 8, 2024 and of October 9, 2024 (appeals 1633/2023 and 1635/2023)

The Supreme Court has concluded in three recent judgments that the reasoned report issued by the Science and Innovation Ministry which has responsibility for the technological innovation tax credit is binding on the tax authorities in all respects and cannot be refuted by another report by the tax authorities themselves, except in very exceptional cases. For a summary of one of these judgments, see our publication dated October 15, 2024. All these judgments relate to periods when the Revised Corporate Income Tax Law (applicable until 2014) was in force.

Subsequently, in the resolution of October 21, 2024, TEAC has adopted this case law and concluded that the aforementioned reasoned report binds the tax authorities in all its aspects (project qualification and amount of investments and expenses) but only within the temporary scope of the TRLIS. For subsequent years (in which the current tax law is in force), this report will only be binding in relation to the qualification of the activities.

1.3 Corporate income tax. - An error in fulfilling the capitalization reserve in the balance sheet of the tax return does not stop its application

Catalan High Court. Judgment of January 29, 2024

One of the requirements for the reduction to the corporate income tax base in respect of the capitalization reserve is the recording of a reserve in an amount equal to the reduction, which must appear on the company's balance sheet as a completely separate item and under an

appropriate heading. In the examined case, the company recorded the restricted reserve on its balance sheet, as a separate item and under the appropriate heading, although it made an error when fulfilling the balance sheet provided on its self-assessment, by grouping together all the reserves in the same box. In the tax authorities' view, this error determined failure to meet the requirement laid down for applying the reserve.

The Catalan High Court concluded that a procedural defect cannot prevent the taxpayer from applying a tax benefit, and that the error (in completing the return in this case) can be corrected. If it is shown therefore that the reserve was recorded and the other requirements for applying the reduction were met, the taxpayer cannot be denied the right to apply it.

1.4 Personal income tax. - Real estate attribution of income in respect of ownership of a principal residence does not have to be allocated for taxpayers applying the special regime for workers sent to Spain

Madrid High Court. Judgment of May 6, 2024

A taxpayer elected the special regime for workers sent to Spain, which allows them to continue to be taxed under the nonresident income tax rules, even if they become tax resident in Spain. After moving to Spain, the taxpayer purchased a dwelling, where he lived as his principal residence.

The Personal Income Tax Law states that income must be imputed on the ownership of real property with a few exceptions, including where the property is the taxpayer's principal residence. The Nonresident Income Tax Law applies the provisions in the Personal Income Tax Law on the attribution of real estate income although it does not contain this exception. Madrid High Court concluded, however, that in the examined case income does not have to be allocated in respect of the principal residence, because, although the special regime requires the nonresident income tax rules to be applied to determine the tax debt, the taxable person is deemed to be a personal income taxpayer.

1.5 Transfer and stamp tax. – Where a joint property entity is terminated in a notarized document and the assets are divided up and allocated, there is only one agreement for transfer and stamp tax purposes

Supreme Court. Judgments of September 23, 2024 and of September 26, 2024 (appeals 2034/2023 and 2669/2023)

The Supreme Court has concluded that, where the dissolution and termination of a joint property entity (conducting an economic activity) is formalized in a public deed, as the division and allocation of its assets to the joint owners, there is only one agreement for transfer and stamp tax purposes, due to one transaction being a necessary precursor to the other. The decisive factor is that both transactions are included in the same public deed, are concluded in the same act and formalized simultaneously. This means that the only tax that arises is transfer tax under the corporate transactions heading.

1.6 Transfer and stamp tax. – If the tax authorities use the reference value, the taxable person can request the contradictory expert appraisal, with a stay of payment of the debt

Valencian High Court. Judgment of July 10, 2024

Following a limited review, the tax authorities concluded that the taxable amount for transfer and stamp tax purposes in respect of the purchase of a property should have been the cadastral reference value instead of the value reported by the taxpayer.

The Valencian High Court noted that when appealing an assessment, the taxpayer can request the contradictory expert appraisal, which, by operation of the law, stays enforcement of the tax authorities' assessment.

1.7 Transfer and stamp tax. - In relation to the reduced rate for large families, a conceived unborn child counts for determining a large family

Madrid High Court. Judgment of June 28, 2024

A couple with two born children and a conceived unborn child purchased a home in the Madrid autonomous community and filed their respective transfer and stamp tax self-assessments (for transfer tax under the transfers for consideration heading) on which the standard 6% rate was applied. After the birth of their third child (only a few days after the purchase), they applied for correction of their self-assessments, to request the 4% reduced rate for large families (i.e. families consisting of ascendants with three or more children). The tax authorities rejected their application, after taking the view that the conceived unborn child did not count for determining a large family on the accrual date of the tax.

For Madrid High Court, this reduced rate owes its existence to the obligation of the holders of public powers to ensure family protection in all respects; an obligation that must necessarily guide the interpretation of any benefit granted to families, so that they always choose the one giving the most effective protection. The favorable interpretation towards family protection in this case requires a child that was conceived but not yet born, when the property was purchased, to count as another child for determining the existence of a large family and therefore eligibility for the reduced rate.

1.8 Tax on oil and gas. – The Supreme Court rules on authority, jurisdiction and conditions in connection with obtaining a refund of the autonomous community component of the tax on oil and gas

Supreme Court. Judgments of September 20, September 25 (appeals 3116/2020 and 1902/2021) and September 30, 2024 (appeals 1908/2020, 1600/2021 and 3091/2021)

In a judgment dated May 30, 2024, the CJEU concluded that the autonomous community component of the excise tax on oil and gas (IH) is precluded by EU law (publication dated May 30, 2024). On the back of this judgment, the Supreme Court concluded that the autonomous community component of the tax on oil and gas is illegal and ruled on authority, jurisdiction and conditions in connection with obtaining a refund of incorrectly paid tax. It noted that:

(a) Any party with tax obligations who have borne the tax on oil and gas by reason of a statutory charge are entitled to apply for and obtain a refund unless they charged the

tax to the purchaser of the product, thereby neutralizing its economic effects. Proving that the charge did not take place lies with the tax authorities.

(b) Final customers are not authorized to apply for refunds or be a party in refund procedures for incorrect payments of any amounts borne on purchases of products subject to the tax, because they will have borne the tax through a charge on the product price rather than by reason of a statutory charge. The cost may be recovered via a civil remedy for unjust enrichment against the supplier. If they exhaust all civil remedies, they can bring a proceeding for financial liability of the state.

(c) The jurisdiction for deciding applications for correction of self-assessments and the resulting refund of incorrectly paid tax lies with the provincial finance authority (Hacienda Foral) where the tax payments had been made through that authority.

1.9 Entry and search. - A reception area that is not used exclusively for dealing with the public or displaying products qualifies as constitutionally protected private premises

Galician High Court. Judgment of June 7, 2024

As part of a tax audit, the tax auditors went to the clinic where the taxpayer operated, with a warrant from AEAT's Special Delegate (although without a court warrant). The tax auditors asked for the taxpayer's consent for them to have access to information and documents with tax significance that were stored on computers and in cupboards found in the reception area, but the taxpayer did not give that consent. The tax auditors treated this refusal as an infringement consisting of resisting or obstructing the tax auditors' work, which is not protected under the right to the inviolability of private premises, and they imposed the related penalty.

The Galician High Court noted that, as determined by its own case law, a reception area and offices are treated as constitutionally protected private premises if they are not used exclusively for dealing with the public or displaying products. In this case, the documents that the tax auditors wanted to see were stored in closed cupboards and on computers that were behind the reception counter, in an area not accessible to the public. They are therefore classed as constitutionally protected private premises which means that the taxpayer's acts were justified by the right to the inviolability of private premises and were not subject to a penalty.

1.10 Audit procedure. – Tax auditors cannot reclassify a legal transaction if they had previously rejected "conflict in the application of tax provisions"

Supreme Court. Judgment of September 19, 2024

Two subsidiaries in a consolidated tax group agreed on a capital increase at a Brazilian subsidiary, which was financed out of a loan provided by the parent company. Each of those Spanish companies later transferred their shares in the Brazilian subsidiary, giving rise to a loss. Tax auditors took the view that there was a conflict in the application of tax provisions (article 15 of the General Taxation Law -LGT-), but the consultative committee issued a report concluding that the transactions were not clearly artificial or unsuitable for achieving the obtained result, and for that reason dismissed the existence of conflict. Later the tax auditors relied on the "classification" concept (article 13 of the LGT) to reclassify the legal transaction.

In the tax auditors' view, the signature of the loan, the capital increase and the subsequent sale of shares (taken together) related to a mandate agreement, because all the transactions had been performed under the parent company's orders. Therefore, the loss on the transaction should have been attributed to the parent company instead of to the Spanish subsidiaries.

The Supreme Court cited its earlier case law (July-September 2020 newsletter) and recalled that the "classification", "conflict in the application of tax provisions" and "sham" concepts are not interchangeable; each of them must be used only for the purposes for which they were created. In short, in the court's view, it falls outside the auditors' power of classification to reclassify legal transactions with lawful and real consideration and deny the taxpayer's option to deduct those losses where they had previously rejected the existence of conflict in the application of tax provisions.

2. Decisions

2.1 Corporate income tax. – Application of the leveling reserve is not a tax option

Balearic Islands Regional Economic-Administrative Tribunal. Decision of October 1, 2024

A corporate income taxpayer filed a self-assessment outside the time limit. It applied the leveling reserve on that self-assessment. The tax authorities rejected the right to apply that benefit, on the basis that the leveling reserve is a tax option, and they also imposed a penalty.

The Balearic Islands Regional Economic-Administrative Tribunal (TEAR) cited the supreme court judgment dated November 30, 2021 (publication dated December 13, 2021), relating to the offset of tax losses, and concluded that the leveling reserve does not meet the criteria laid down by the case law to be classed as a tax option, because the Corporate Income Tax Law does not provide an alternative system to be elected, but rather a power for taxpayers meeting the necessary requirements.

This same view was taken also by the Valencian TEAR, in a decision dated May 21, 2024, and Castilla y León TEAR, in a decision dated June 28, 2024.

2.2 Corporate income tax / Personal income tax – TEAC examines the scope of the exclusion of services provided by directors from the rules on controlled transactions

Central Economic-Administrative Tribunal. Decision of September 24, 2024

TEAC examined a case involving an individual who is chief executive officer of an entity (A) and also represents that entity on the managing body of another company (B).

In TEAC's view, the individual performs two clearly separate functions: (i) on the one hand, her executive functions at company (A), which she performs as director and are therefore not part of a controlled transaction for corporate income tax purposes, in line with article 18.2.b) of the Corporate Income Tax Law, which states that a company and its directors are related persons or entities except as regards income in respect of their functions; and (ii) on the other hand, her functions as representative of that entity (A) at company (B), which "cannot be

regarded as being included in her director duties at the first company". This second relationship is a controlled transaction which must therefore be priced at arm's length.

In an earlier decision delivered on March 20, 2024, containing the same conclusion, TEAC affirmed that it is not valid for the arm's length price to be determined by attributing to the individual (under the comparable uncontrolled price method) income for director services provided by (A) to company (B), because this actually is a controlled transaction and therefore cannot be classed as a suitable comparable.

2.3 Nonresident income tax. - Producing a non-habitual resident in Portugal certificate does not stop an individual being classed as tax resident in Spain

Central Economic-Administrative Tribunal. Decisions of June 24, 2024 (5590/2022) and (7650/2022)

A taxpayer who was resident in Portugal received a social security system pension which was subject to withholdings in Spain. He later applied for a refund of the withholdings made in Spain, arguing that this income was only taxable in Portugal under the Portugal-Spain tax treaty, and producing as proof of his residence a residence certificate issued by the Portuguese authorities, stating that he was a "non-habitual resident" and that that residence status was for the purposes of the tax treaty. Tax auditors took the view that, because this special tax regime for non-habitual residents implies that the interested party is not taxed entirely in Portugal on his worldwide income, the tax treaty objective is not fulfilled and therefore he had to be regarded as being tax resident in Spain, due to this being where the core of his economic interests lies, and rejected the refund.

TEAC confirmed the tax auditors' view (which was identical to that given by the DGT, in, among others, resolutions V3379-19, V3533-19 or V2606-17), and concluded that it could be inferred from the Portuguese special tax regime for non-habitual residents that the produced tax residence certificate, even though it was issued "for the purposes of the tax treaty", did not have the necessary scope to allow application of that treaty. In other words, in cases where that special regime is applicable, only the provisions in the national legislation must be taken into account to determine how the various sources of income are taxed.

These decisions were delivered, however, before the supreme court judgments dated July 8 and July 9, 2024 -July to September 2024 newsletter- in which this court reiterated that the validity of tax residence certificates issued by other tax authorities for the purposes of a tax treaty cannot be questioned and that, in the presence of a residence conflict, the provisions in the relevant tax treaty must be taken into account.

2.4 Nonresident income tax. – The limitation on tax at source cannot be made conditional on a minimum tax rate in the state of residence if the tax treaty does not contain a subject to tax provision

Catalan Regional Economic-Administrative Tribunal. Decision of May 9, 2024

A Panamanian tax resident surrendered an individual pension plan set up in Spain and took the view that, in line with article 21.1 (other income) of the Panama-Spain tax treaty, the income was taxable exclusively in the taxable person's state of residence of (Panama) and not in Spain (source state). However, because Panama's tax system is based on the territoriality principle (its residents are only taxed on Panamanian source income), the Spanish tax authorities concluded that the taxpayer could not benefit from the tax treaty rules

so the income had to be taxed in Spain, because otherwise it would not be taxable in either territory.

The Catalan TEAR concluded, however, that, after accepting tax residence in Panama, the taxpayer was entitled to apply the tax treaty rules. According to the tribunal, neither the tax treaty nor the OECD Model Tax Convention contain subject to tax provisions making the exemption or limitation on tax at source conditional on there being a minimum tax rate in the country of residence. As a matter of fact, although the tax treaty protocol contains a few limitation-of-benefits provisions for certain types of income (in line with the suggestions in the OECD Model Convention), none of these provisions is applicable to income from surrendering pension plans.

2.5 Tax on economic activities. - The departure of goods from Spain is an export for the purposes of the tax on economic activities and must be taxed as wholesale trade

Central Economic-Administrative Tribunal. Decision of April 17, 2024

The tax authorities corrected the tax classification for the purposes of the tax on economic activities of a company engaged in selling products to end customers in Spain and in other EU countries, by including it under various “wholesale trade” captions in the tax classifications (instead of under “retail trade” captions where the company had been registered). TEAC confirmed the tax authorities’ interpretation. According to the court:

(a) By reference to the explanatory notes for the National Classification of Economic Activities (CNAE, after its Spanish initials), the terms “import” and “export” as used in the tax on economic activities rules mean “international trade” (either intra-Community or with third countries) as a type of trade other than domestic trade.

(b) Under the tax on economic activities rules, only the payment of amounts relating to the performance of “wholesale trade” activities give the right to carry out both retail sales and “imports” and “exports” of the materials or products traded in those activities.

2.6 Tax management procedure / nonresident income tax. – Where the facts of the case are not at issue, the principle of good administration requires over-adherence to formal rules to be cast aside to deal with a refund

Balearic Islands Regional Economic-Administrative Tribunal. Decision of June 26, 2024

The claimant, a non-Spanish resident, applied for a refund of personal income tax withholdings deducted in Spain from income for work performed outside Spain. The application was made on form 210. The handling office admitted that an incorrect payment had been paid, but rejected the refund on the basis that the application should have been made through a procedure for correcting self-assessments applied for by the withholding agent.

The Balearic Islands TEAR concluded, however, that where the facts of the case are plain and clear, over-strictness or excessive adherence to formal rules must be avoided as far as possible, because the principle of good administration requires the authorities to cast aside *nomen iuris* and act according to the true nature of the requested refund.

2.7 Audit procedure / VAT. – The authorities' interpretation must be the same for similar transactions

Central Economic-Administrative Tribunal. Decision of September 24, 2024

It is a reiterated principle of the Supreme Court and TEAC that, in cases involving hidden sale transactions where both direct tax (personal income tax or corporate income tax) and VAT must be adjusted, because the tax authorities' right to assess VAT has not become statute-barred, the agreed price for these hidden sales will be regarded as including VAT. Otherwise, namely where only direct tax can be adjusted because the right to assess VAT has become statute-barred, VAT will be not be regarded as included.

In the case examined in this decision, the auditors showed the existence of hidden (unreported) transactions in which the parties had not made any mention of VAT and they adjusted direct tax (personal income tax) and VAT. Their work encompassed periods in which VAT had to be assessed and others in which it did not, due to being statute-barred. The auditors took the view that in the years when adjustments could still be made, the amount relating to the hidden sales was the agreed price without VAT, whereas in the period in which VAT had become statute-barred, the amount relating to those sales was the price with VAT.

TEAC concluded that it was not possible to make one interpretation or another depending on the period that is being examined. In other words, the competent body's characterization as to whether the amounts received for the respective transactions include VAT must be the same for the same or similar transactions, regardless of whether the VAT for some periods cannot be assessed due to being statute-barred.

2.8 Audit procedure. – A late filing surcharge cannot be levied where an additional return is filed before the notices of assessment are notified

Madrid Regional Economic-Administrative Tribunal. Decision of January 12, 2024

The LGT states late-filing surcharges do not apply where the taxpayer voluntarily adjusts facts or circumstances that are identical to those adjusted by the tax authorities, if certain requirements are met. One such requirement is that the adjustment must be made within a six-month period from notification of the relevant assessment.

In the case examined in this decision, the additional return (for 2016) was filed before notification of the notice of assessment for fiscal year 2015, on the basis of a principle that had been stated earlier by the auditors during their work. Madrid TEAR concluded that the claimant's actions were reasonable and supportable, based on legitimate expectations arising from work in the audit in progress, and therefore surcharges could not be levied.

2.9 Tax collection procedure. - Challenges of decisions declaring liability and of refusals to admit appeals lodged against collection decisions do not toll the statute of limitations for the right to claim payment of the enforced debt

Central Economic-Administrative Tribunal. Decision of September 18, 2024 (Principle 1 and Principle 2)

It was examined (i) whether the lodging of appeals or claims against decisions declaring liability toll only the statute of limitations for the authorities' right to determine and enforce the tax debt or also stop the time period for their right to claim payment of that debt; and (ii) whether decisions declaring refusal of admission due to the late filing of appeals or claims lodged against strictly collection decisions can have tolling effects on the statute of limitations.

TEAC resolved the first issue by applying the principle determined by the Supreme Court in a judgment dated July 18, 2023 (appeal 6669/2021) and noted that the authorities' powers to enforce liability and claim payment of the debt from the person declared liable are qualitatively different. Therefore, neither the appeal or claim lodged against the decision declaring liability or the decision on the challenge toll the statute of limitations for the authorities' right to claim payment of the debt, which will start to run when the voluntary payment period for the enforced debt ends.

In relation to the second issue, TEAC held that the refusal to admit an appeal or claim has the same effect legally as if it had not been filed, and therefore an ability to toll the statute of limitations cannot be found to exist for either citizens' applications that have not been admitted due to late-filing, or for the decision ordering refusal to admit them (unless an application for a stay of enforcement of the decision has been made due to it having been challenged).

2.10 Tax collection procedure. - The statute of limitations for the authorities' right to claim payment from secondarily liable persons starts to run from when the main debtor's insolvency is determined

Central Economic-Administrative Tribunal. Decisions of April 15 and September 18, 2024

The LGT states that the statute of limitations for the authorities' right to claim payment of the tax debt from secondarily liable persons starts to run from the date of the latest collection step taken in respect of the main debtor or any jointly and severally liable persons.

In these decisions TEAC clarifies that where the tax authorities are prevented from acting (by an insolvency proceeding as happens in the examined case), that time period will start to run from the date on which the debtor's full or partial insolvency is determined, regardless of when the later declaration of bankruptcy takes place; the reason being that, after determining that insolvency, the authorities should have gone on to make the declaration of bankruptcy immediately. By applying this principle to the examined cases, the tribunal found that the statute of limitations period started on the date of the order concluding the insolvency proceeding, due to being the point when it was determined that the insolvent company's assets were insufficient to meet payment of its outstanding debts.

2.11 Enforcement procedure / Corporate income tax. - The upholding of a claim due to the unconstitutionality of Royal Decree Law 3/2016 requires the authorities to make a new assessment without taking the measures held to be unconstitutional into account

Central Economic-Administrative Tribunal. Decisions of July 19, 2024 (5087/2022) and (7941/2022)

TEAC concluded in these decisions that the upholding of economic-administrative claims on the basis of some of the amendments introduced in the Corporate Income Tax Law by Royal Decree Law 3/2016 being held unconstitutional (constitutional court decision 11/2024 of January 18, 2024 - February 2024 newsletter-) requires the authorities to take all necessary steps to reverse the effects of those amendments on the self-assessments filed by taxpayers. Therefore, as required for enforcement of those favorable decisions and under the principles of good administration and complete adjustment, the authorities must issue new assessments without taking into account the measures affected by the unconstitutionality ruling.

3. Resolutions

3.1 Corporate income tax. - Income from a transfer with a retention of ownership clause accrues on payment of the deferred price

Directorate General for Taxes. Resolution V1902-24 of August 21, 2024

The submitted issue concerned the sale of business premises with deferred payment of part of the price, secured by a condition precedent consisting of a retention of ownership by the transferor until full payment of the price. The DGT took the view that, in this case, the risks and rewards inherent to ownership of the premises cannot be considered to be transferred until full payment of the price takes place. Therefore, no income accrues on formalization of the deed of sale, and the received amounts must be treated as liabilities (debt). Later, on full payment of the agreed price, the transfer of the risks and rewards inherent to ownership of the premises will be regarded as having taken place, which will determine accrual of the income.

3.2 Corporate income tax. - Clarification of how to apply the exemption for capital gains on share transfers in a tax group

Directorate General for Taxes. Resolution V1881-24 of August 8, 2024

An entity transferred a 46% interest in a subsidiary at which it was sole shareholder to another entity in the tax group that included the three companies and obtained a gain. The subsidiary had been acquired less than a year before the transfer.

The DGT concluded that the gain obtained on the internal transfer (in the tax group) cannot benefit from the exemption under article 21.3 of the Corporate Income Tax Law because, even though the ownership interest in the transferred subsidiary is higher than 5%, that interest will not have been held uninterruptedly in the year preceding the transfer. Therefore, the gain must be included in the transferring company's individual tax base in the taxable year in which that transfer is carried out and must be taken into account in the aggregation of individual tax bases to determine tax group's tax base. However, the gain must be eliminated for determining the tax group's tax base.

If the interest in the subsidiary is later transferred to outside the tax group, it must be assessed whether date the requirements for applying the exemption in the group are satisfied as of that date. If they are, the exemption will apply, in respect of any income that arises on that second transfer and further in respect of the income that is included (as a result of the elimination made earlier in relation to the first transfer). If the exemption is applicable, an amount must be included in the tax group's tax base, equal to 5% of each of the amounts of income mentioned, in respect of management costs relating to the transferred interest.

3.3 Corporate income tax. - Application of the accelerated depreciation regime is a tax option that does not impose a condition for later taxable periods

Directorate General for Taxes. Resolution V1683-24 of July 10, 2024

The Corporate Income Tax Law gives entities of a reduced size the option of applying accelerated depreciation to certain new fixed assets (by applying double the maximum straight-line depreciation rate). The DGT noted that accelerated depreciation is a tax option which must be elected within the statutory filing period. Therefore, this option cannot be corrected after that period has ended. However, the fact of the taxpayer not having applied accelerated depreciation in the taxable period in which the investment was brought into operation does not prevent it from being applied in later taxable periods, within the voluntary period for each self-assessment.

3.4 Personal income tax. - Double taxation arising from the Italian municipal tax on real estate ownership in that country cannot be corrected

Directorate General for Taxes. Resolution V1742-24 of July 15, 2024

A Spanish tax resident individual owns a property in Italy. On that property the individual pays a municipal tax called "l´imposta municipale propia" (IMU). The DGT recalled that, under the Italy-Spain tax treaty, income derived from immovable property (regardless of whether it is classed as income from immovable capital or as imputed real estate income) is taxable in Spain. The tax treaty does not, however, allow the double taxation that could arise from payment of the IMU to be corrected, because it is not a tax on income that is mentioned in tax treaties. Nor can the double taxation credit under Spanish domestic law be applied, because the IMU is not a similar tax to Spanish personal income tax or nonresident income tax.

3.5 Personal income tax. - The reduction for multi-year income can be applied to the payment of a triennial incentive, if it is not simply deferred payment of an amount earned annually

Directorate General for Taxes. Resolution V1720-24 of July 11, 2024

An entity put in place an incentive program for certain employees based on the company’s accumulated income. The incentive is calculated on the basis of aggregate shareholder value in the previous three years.

The DGT noted that the worker will be entitled to apply the 30% reduction for earned income generated over more than two years if the amount payable at the end of the three-year period is not simply the sum of three amounts generated annually that the employee is entitled to receive at the end of each year. In other words, the right to receive the whole incentive must

be generated at the end of the three-year period, even if it is calculated by reference to the income obtained by the company and the amounts of compensation paid in each of the three years. More specifically, it may be regarded that this requirement has not been fulfilled if, in the event the worker leaves the company before the end of the three-year period, that worker does not forfeit the right to receive the incentive generated up to that point.

The DGT noted further that the right to apply that reduction also requires that, in the five periods preceding the period when the incentive is payable, the taxpayer must not have obtained any other amounts of income with a generation period longer than two years, other than income from the termination of employment, under an ordinary or special contract, to which that reduction had been applied.

3.6 Personal income tax. – The tax credit for electric vehicles purchased with funds that are community property must be applied exclusively by the spouse to whom the vehicle was registered

Directorate General for Taxes. Resolution V1655-24 of July 8, 2024

The requesting party and his spouse, married under the community property system, purchased an electric vehicle entitling them to apply the tax credit under additional provision 58 of the Personal Income Tax Law. The wife is the formal owner of the vehicle, because it was registered to her. It was asked whether each spouse can apply 50% of the tax credit or whether it can only be applied by the formal owner of the vehicle. The DGT concluded that, for couples married under the community property system, the tax credit must be applied exclusively by the spouse to whom the vehicle was registered, regardless of whether it was purchased with funds that were community property.

3.7 Personal income tax and inheritance and gift tax. – Amounts of severance payable after death are only taxed for inheritance and gift tax

Directorate General for Taxes. Resolution V1682-24 of July 10, 2024

The widow and the daughter of a deceased worker received the amounts remaining to be collected by the worker in respect of severance. The DGT concluded that (i) the portion of severance payable before death must be reported as earned income on the deceased person's personal income tax return; and that (ii) any amounts of severance that became payable after death are only taxed for inheritance and gift tax to the heirs.

3.8 Personal income tax and corporate income tax. - A remission of debt between investees by the same individual shareholders does not have any personal income tax consequences for these shareholders

Directorate General for Taxes. Resolution V1849-24 of August 2, 2024

Three entities are fully owned and in equal shares by the same individuals. Two of the entities hold rights to payment against the third entity. In view of this third entity’s difficulties to repay the loans they are considering full or partial remission of the rights to payment.

The DGT recalled that, for accounting purposes, it must be regarded in relation to the remitted portion of the loan that the giver entities are distributing reserves in kind to their individual shareholders (in the amount of the right to payment against the debtor entity) and that those shareholders are contributing that claim to the recipient entity’s equity. Therefore, no

accounting (or tax) income or expense will arise at the three entities. Nor will these transactions generate reportable income for personal income tax purposes for the individual shareholders, due to being separate from the loan made between the companies.

3.9 Wealth tax. - An individual resident in Germany must be taxed in Spain on an interest in a German company whose main asset is a property located in Spain

Directorate General for Taxes. Resolution V1704-24 of July 11, 2024

An individual who is tax resident in Germany is sole shareholder of a German partnership. This company, which has its own legal personality and is able to own assets and rights, purchased in 2023 a property located in Spain, and financed the purchase out of two loans (a bank loan and another from a related company). As of the 2023 year-end, the carrying amount of the property and its market value were equal to more than 50% of total assets on the entity's balance sheet.

The DGT noted that the Germany-Spain tax treaty allows to be taxed in Spain the portion of assets that consists of shares in a company or other body of persons if more than 50% of their value comes directly or indirectly from real estate assets located in Spain. This case is also envisaged in the Spanish domestic legislation. Therefore, if more than 50% of the value of the entity's assets comes from the property located in Spain, it is liable for wealth tax as a nonresident taxpayer on the shares in the German entity. The taxable amount must be determined by reference to the value of the interest (article 16 of the Wealth Tax Law), less any debts recorded in liabilities on the company's balance sheet.

3.10 Wealth tax. – A profit participation loan provided by a nonresident to a Spanish company is not taxed to the nonresident if it is governed by foreign rules

Directorate General for Taxes. Resolution V1597-24 of July 1, 2024

A non-Spanish resident provided a profit participation loan to a 90% owned Spanish company. The place of payment of the loan is New York city and the agreement and the parties' rights and obligations under it are governed and must be interpreted and enforced in accordance with the laws of New York State. According to the DGT, the participation loan is taxed for Spanish wealth tax to the nonresident, because it is not located in Spain (due to not being deposited or managed by a Spanish resident entity or individual), nor can it be exercised or fulfilled in that state (because the agreement is made subject to the laws of New York State and the obligation to repay the loan and interest is located in the United States).

4. Legislation

4.1 Publication of the order implementing the "Veri*factu" Regulations on billing systems and programs

Order HAC/1177/2024 of October 17, 2024 implementing the "Veri*factu" Regulations was published in the Official State Gazette on October 28, 2024 (see our publication with the same date).

4.2 Technical amendments to VAT forms 322 and 390

Order HAC/1167/2024 of October 17, 2024, adding technical amendments to forms 322 and 390 to adapt them to Royal Decree Law 4/2024 of June 26, 2024 (publication dated June 27, 2024), published in the Official State Gazette on October 25, 2024, extended the reduced tax rates for certain food supplies until December 31, 2024. This order came into force on November 1, 2024 and will apply for the first time, in the case of form 322, to the self-assessment relating to October 2024 and, in the case of form 390, to the annual recapitulative statement for 2024.

4.3 Exemptions introduced in relation to discharge control fees for the volume of water that is actually reused

Royal Decree 1085/2024 of October 22, 2024, published in the Official State Gazette on October 23, 2024, approves the Regulations on the reuse of water and amends several royal decrees on water management. It introduces certain exemptions in relation to the discharge control fee. See here for further information on this royal decree.

4.4 AEAT and the Canary Islands Tax Agency extend the Agreement on the technology roll-out for the Immediate Information Sharing System in relation to the Canary Islands general indirect tax

A decision delivered on September 25, 2024, published in the Official State Gazette on October 14, 2024, has amended and extended the Agreement on the technology roll-out for the Immediate Information Sharing System in relation to the Canary Islands general indirect tax and on the information exchanges to be made after the system has been brought into operation. A four-year extension has been ordered running from the end of the term of the previous agreement, following its registration on the State Electronic Registry of Cooperation Instruments and Agencies. It includes a commitment by both tax agencies to make responsible use of any data and access made to ensure maintenance of users and passwords supplied by AEAT.

5. Miscellaneous

5.1 The EU has updated the list of non-cooperative jurisdictions

The European Council decided to update the list of non-cooperative tax jurisdictions, at a meeting on October 8, 2024, by excluding Antigua and Barbuda.

Tax Department

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