GARRIGUES

Tax Newsletter

Spain

September 2025

European Union recommends the use of tax incentives to reconcile sustainability with competitiveness

Following on with bringing flexibility to the rules on tax incentives to achieve decarbonization of the economy while staying competitive, the European Commission has approved the State Aid Framework to support the Clean Industrial Deal and published Recommendation (EU) 2025/1307 on tax incentives.

The European Green Deal, launched in December 2019, was designed as a response to climate and environmental challenges in the European Union (EU), with the ultimate goal of achieving climate neutrality by 2050 and an interim target of a net reduction in greenhouse gas emissions by at least 55% (compared with 1990 levels) by 2030. Because achieving this goal could take a toll on the competitiveness of European companies, the Letta and Draghi reports have pointed to the need to combine the fight against climate challenges with maintaining or recovering that competitiveness. In line with the recommendations in these reports, in its Competitive Compass for the EU, the European Commission proposed in January 2025 the creation of a joint roadmap for decarbonization and competitiveness, which was introduced in February 2025 and is built around the so-called Clean Industrial Deal. This roadmap charts business incentives for European industry to decarbonize and specifically mentions corporate income tax incentives (including accelerated depreciation or tax credits for investments in industrial decarbonization and clean technology projects).

Because these measures could be classed as state aid, in June 2025 the Commission approved the State Aid Framework to support the Clean Industrial Deal and Commission Recommendation (EU) 2025/1307 of July 2, 2025, on tax incentives has been added to achieve the described goals.

First, the recommendation is to introduce tax assets (which may take the form of corporate income tax credits, or alternatively, for other taxes) to encourage investments that ensure sufficient manufacturing capacity in clean technologies and for industrial decarbonization, along with increasing the intensity of these credits for projects carried out by small and medium-sized enterprises. It also proposes that companies should be allowed to carry forward unused tax credits in the following four years or even monetize them (as is currently the case with R&D&I tax credits, for example).

Generous incentives are also recommended for clean technologies and corporate fleets of zero-emission vehicles through accelerated depreciation (with a minimum depreciation of 30% of eligible costs in the year of acquisition) or allowing full and immediate expensing. It also encourages flexibility by allowing taxpayers to decide on their depreciation schedules and allowing these types of incentives to be applied more intensely in relation to investments that contribute to achieving policy objectives relating to resilience.

With just a few months to go before the end of fiscal year 2025, Spanish legislation is expected to be amended to introduce this type of incentive. Currently, only certain low-emission vehicles and recharging infrastructure are eligible for unrestricted depreciation, provided that, in both cases, they come into operation in tax periods beginning in 2024 and 2025.

1. Corporate income tax and nonresident income tax

Future tax cost savings can be an economic reason for a merger by absorption (DGT. Resolution V1503-25 of August 18, 2025)

In relation to a merger, the DGT stated that the described reasons (i.e., simplification of the corporate structure, reduction of administrative, commercial, and tax obligations, and the resulting cost savings) are valid economic reasons. It highlighted specifically that the reduction in tax costs arising from the new structure, together with the improvement in asset management, respond to a lawful business logic. This interpretation is based on supreme court case law, which has held reorganizations aimed at optimizing companies' operational and tax efficiency to be valid, as long as they do not have a spurious tax advantage as their main objective.

The gain obtained by a nonresident shareholder in the dissolution of a Spanish company whose only asset is cash is taxable only in the country of residence (DGT. Resolution V1398-25 of July 22, 2025)

The requesting party, a Swedish resident, owns 50% of a Spanish limited liability company. That company is to be liquidated and its only asset is cash, which will be distributed among the shareholders by reference to their ownership interests. The DGT concluded that the income obtained by the nonresident shareholder must be classified as a capital gain, although it is not taxable in Spain due to the composition of the entity's assets.

National Appellate Court adopts the CJEU's interpretation on the right to a refund of withholdings applied to nonresidents with losses (National Appellate Court. Judgment of July 28, 2025)

The National Appellate Court has adopted the CJEU's conclusions in its judgment dated December 19, 2024 (see December 2024 - January 2025 newsletter) and concluded that preventing the refund of tax withheld on dividends to nonresident companies that have recorded losses contravenes the free movement of capital under article 63 of the Treaty on the Functioning of the EU. According to the National Appellate Court, the CJEU's conclusions in relation to the Vizcaya provincial legislation are equally applicable to the Spanish central legislation.

The court further rejected the argument that the absence of proof of losses should be a reason for refusing to grant a refund, by pointing out that the tax authorities have sufficient mechanisms in place to verify these losses.

2. Personal income tax

If a nonproportional distribution of dividends is not provided for in the bylaws, a donation will be considered to exist (DGT. Resolution V1525-25 of August 21, 2025)

The shareholders of a limited liability company agreed to distribute future dividends although not in proportion to their ownership interests. The DGT pointed out that, as a general rule, dividends at a limited liability company must be distributed in proportion to the shareholders' ownership interests, unless the bylaws expressly provide for a different method. If no such provision exists, the receipt of amounts over and above their ownership percentages, distributed without the expectation of anything in return, must be classed as a capital gain for no consideration subject to inheritance and gift tax, with the beneficiary of the excess being liable for the tax.

Late-payment interest under article 29.3 of the Workers' Statute is taxable as a capital gain in the general tax base (DGT. Resolution V1323-25 of July 15, 2025)

The DGT states that late-payment interest recognized by the courts under article 29.3 of the Workers' Statute, received in connection with salary claims, is taxable for personal income tax purposes as a capital gain, which must be included in the general tax base.

The personal income tax valuation rule for shares in unlisted companies prevails over the transfer pricing rule, which does not preclude proving that the price paid reflects market value (National Appellate Court. Judgment of July 14, 2025. Madrid High Court. Judgment of July 14, 2025)

The National Appellate Court has confirmed that the transfer price of shares in unlisted companies must be determined by reference to the special rule in article 37.1.b) of the Personal Income Tax Law, even where there is a relationship between the parties, in line with the principle that specific provisions prevail over general ones. It concluded further that the limited review procedure is valid for verifying the value used in a transaction of this type, and that the tax authorities can take the economic data appearing in the corporate income tax self-assessments as a basis, without violating the prohibition on directly examining accounting documentation.

The Madrid High Court pointed out that this special rule is applicable unless proof can be provided that the amount actually paid matches the sum that would have been agreed between independent parties on an arm's length basis. In the examined case, the court paid particular attention to the company's impairment losses and its equity deficit, added to which the tax authorities did not question the accuracy of the data provided by the taxpayer.

Severance for unjustified dismissal recognized in a court-approved settlement agreement can benefit from the exemption (DGT. Resolution V1279-25 of July 10, 2025).

An employee challenged his unjustified dismissal and later reached an agreement with the company in court, which was approved by court decision. The DGT pointed out that the severance can benefit from the exemption provided in the personal income tax legislation to the extent of the statutory limit stipulated in the Workers' Statute, capped at €180,000. Any amount over and above that limit is taxable as employment income, but may qualify for the reduction for income generated over more than two years, if the individual has been at the company for that length of time. The severance payment must be attributed to the tax period when the court decision approving the agreement becomes final.

Dividends distributed from reserves generated before the shares were acquired are taxable as capital gains for personal income tax purposes (DGT. Resolution V1277-25 of July 10, 2025)

The requesting party inherited all the shares in a company and later agreed to distribute dividends charged to reserves generated prior to the acquisition. According to the DGT, the received amounts are taxable as income from movable capital and must be included in the savings tax base, even if they come from reserves created before they were acquired. The DGT also pointed out that currently there is no exemption or tax credit applicable to that income.

Moral damages recognized by the courts for violation of freedom of association are exempt, although damages for loss of earnings are not (DGT. Resolutions V1195-25 of July 2, 2025, and V1328-25, of July 15, 2025)

Moral damages were awarded by judgment to a taxpayer (with the associated legal interest) together with other damages for loss of earnings (unpaid wages), relating in both cases to violation of his freedom of association.

The DGT concluded that (i) due to having been set by the courts, the moral damages are exempt under article 7.d) of the Personal Income Tax Law (with the exemption applying to interest paid as compensation for late payment of the exempt damages). Whereas, (ii) the damages for loss of earnings (unpaid wages) do not qualify for the exemption, because they do not relate to personal injury, but rather to indemnity for wages; although they can benefit from a 30% reduction if the unpaid earnings relate to a period longer than two years and are recognized in one fiscal year.

The DGT examines the requirements for applying multiyear income treatment to certain amounts of multiyear compensation (DGT. Resolutions V1226-25 of July 4, 2025, and V1183-25 of July 1, 2025)

In these two resolutions, the DGT concluded that the 30% reduction provided for income generated over more than two years may be applied to the following amounts of compensation:

A length-of-service bonus paid upon reaching a certain length of service (more than two years) and a loyalty bonus for critical positions, which requires four years of service and is paid at the end of that period, provided that the employee stays at the company. The DGT emphasized that the reduction is applicable in both cases by reference to the specified periods, although on condition that it is verified that the agreement in which these payments were covenanted was signed more than two years before the income vested.

A special bonus for the collaboration of certain employees with the professionals who carried out *a* due diligence review in the process of selling the company, offered in October 2021 and paid in April 2024, after the investor took up a stake. The DGT clarified that, for these purposes, the generation period is the period to which the work being compensated relates, without the addition of any further time until the income becomes payable.

The acquisition value of the right to use a parking space must be adjusted for the term of the concession that has run (DGT. Resolution V1182-25 of July 1, 2025).

In 2011, the consulting party acquired the right to use a parking space, under a 60-year municipal administrative concession granted in 2007. He subsequently transferred this right for a price lower than the acquisition cost. The DGT pointed out that this transaction gave rise to a capital gain or loss, calculated as the difference between the transfer and acquisition values. Because the concession is temporary and part of the right has already been used between the acquisition and the transfer, the acquisition value must be reduced in proportion to the amount of time that has run. Additionally, it pointed out that capital losses arising from use of the right cannot be counted as capital losses.

The exception to the presumption of private use for mixed-use vehicles intended to be used to transport goods can be applied to other professionals who use the vehicles to transport materials related to their trade (TEAC. Decision of June 24, 2025)

TEAC concluded that the exception to treatment as private use for mixed-use vehicles intended to be used to transport goods for the purposes of determining whether they are used for an economic activity (art. 22.4.a) of the Personal Income Tax Regulations) does not apply only to the individuals who have transporting goods as their activity. This exception must be interpreted according to its purpose, which is to prevent individuals engaging in economic activities from deducting expenses for vehicles that they can and do use for private and non-business activities. Therefore, (i) if the vehicle,

due to its bodywork, signage, appearance, and the owner's activity, indicates professional use, it must be presumed to be used for business purposes, in which case, if the tax authorities see fit to deny this use, they must prove that it is put to private use; conversely, (ii) if, based on these same signs, it appears that it is put mainly to private use, it must be presumed not to be used for business purposes, unless the taxpayer proves that the vehicle is used exclusively in their activity.

3. Indirect taxes and tariffs

VAT must be considered included in transactions reassessed as non-exempt in cases of fraud (TEAC. Decision of July 15, 2025)

A company had reported and invoiced intra-Community supplies as VAT-exempt. The tax authorities concluded that the transactions were fraudulent and not exempt. In the light of CJEU and supreme court case law, TEAC concluded that, in these cases, if the taxable person cannot charge VAT, or correct VAT charged, to the purchasers, the received amounts must be considered inclusive of VAT.

The recharging of VAT on the sending of waste to disposal sites is subject to the standard rate (DGT. Resolution V1312-25 of July 11, 2025)

An entity carries out waste treatment and disposal activities and manages a waste treatment center, acting as substitute for the taxpayer of the tax on the sending of waste to disposal sites, and on waste incineration, and co-incineration. It recovers that tax from a local council and a provincial consortium by issuing an invoice. The DGT concluded that the recharging of the tax is not classed as a substitute, instead it is an independent supply of a service, subject to and not exempt from VAT at the 21% standard rate.

4. Local taxes

The municipal capital gains tax must be calculated by reference to the individual values of properties acquired for a global price (DGT. Resolution V1213-25 of July 4, 2025)

A taxpayer inherited a dwelling and a parking space for which a joint value was stated in the deed of inheritance, not their individual values. The DGT concluded that, to determine whether there is an increase in the value of the land for the purposes of calculating the municipal capital gains tax on the subsequent sale of one of the properties, the previous global value must be allocated among the different assets using a logical and legally accepted method, such as calculating the ratio between the cadastral value of each property and the sum of the cadastral values of all of them and applying this ratio to the stated global value.

The 40% reduction to the tax on economic activities for calculating the computable area relating to accommodation activities is not applicable to other activities, even if they include an accommodation service (TEAC. Decision of May 13, 2025)

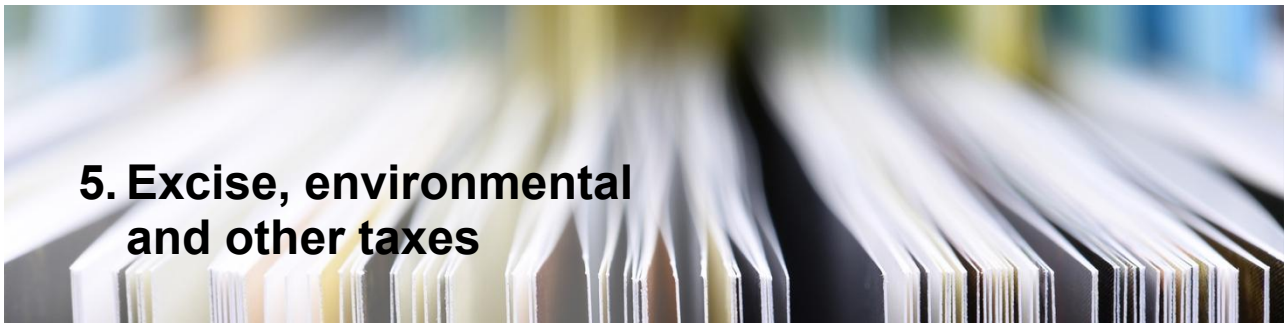
TEAC concluded that the 40% reduction stipulated in the Tax on Economic Activities Instruction for calculating the computable area relating to accommodation economic activities does not apply in the case of a company that is registered under heading 951 *"Assistance and social services for children, young people, the physically disabled, and the elderly in residential facilities,"* even if this activity includes accommodation services. This reduction is only applicable to accommodation activities covered by caption 68 in the tax classifications.

Courts accept the Supreme Court's interpretation on the separation of cadastral and tax effects from the procedure for correcting discrepancies (Canary Island and Madrid High Courts. Judgments of April 25, 2024 and May 8, 2025, and April 14, 2025)

The Canary Island and Madrid High Courts have accepted the Supreme Court's interpretation in a judgment dated December 21, 2023 (January 2024 newsletter), according to which (i) the limitation of the (future) timing effects that the cadastral rules recognize for the discrepancy correction procedure does not apply in the tax field; and (ii) the procedure for refunding incorrectly paid tax is suitable for recovering excess tax paid on the basis of a voided cadastral valuation, even where the assessments concerned have become final because they were not appealed within the time limit.

The Cadaster must carry out a discrepancy correction procedure if the taxpayer justifiably requests that procedure (Valencia High Court. Judgment of February 5, 2025)

The Valencia High Court concluded that the Cadaster must initiate a discrepancy correction procedure if the owner registered in the cadaster makes a valid request with reasons. The decision ultimately adopted by the Cadaster may be appealed. This is in line with TEAC's interpretation in its decisions dated April 28, 2025 (May 2025 newsletter).



5. Excise, environmental and other taxes

Vehicles temporarily taken off the road are not subject to Catalonia's carbon dioxide emissions tax (Catalan High Court. Judgment of September 4, 2025)

The Catalan High Court has held that the environmental purpose of the tax prevents vehicles being taxed if, after being temporarily taken off the road, they cannot be driven or emit CO_2, even before the legal reform that clarified this for subsequent fiscal years.

Revenues from the sale of guarantees of origin are not included in the taxable amount for the tax on the value of electricity output (DGT. Resolution V1406-25 of July 23, 2025)

The consulting party is an entity engaged in the generation of electricity using renewable sources (solar and wind), which obtains guarantees of origin that it subsequently sells to companies intending to market renewable energy to their customers. The DGT considers that the income obtained from the sale of these guarantees does not have to be included in the taxable amount for the tax on the value of electricity output, because it does not appear among the items of remuneration listed in the legislation governing the electricity industry.

6. Tax procedure

The tax authorities cannot issue a third or subsequent assessment to replace others that were previously set aside (Supreme Court. Judgment of September 29, 2025)

The Supreme Court has concluded that the tax authorities can only issue a second assessment to correct an earlier one that has been set aside, although not a third or subsequent assessments, even if there are new formal or substantive defects. Allowing further assessments goes against the principles of good administration and good faith and would cause an unjustified detrimental effect on the taxpayer. In short, it is not acceptable to give the tax authorities an indefinite chance to repeat administrative tax actions until they get it right, to the detriment of citizens.

It is not necessary for an appellant who has obtained a favorable judgment to join an appeal for examination of previously unexamined grounds by the lower court (Supreme Court. Judgment of September 24, 2025)

The Supreme Court has held that where the claimant obtains a fully favorable judgment at first instance, upholding their claims, and in that judgment no decision was delivered on some of the grounds for the claim on the understanding that they did not need to be examined, that claimant does not have to join an appeal filed by the tax authorities for the court of appeal to examine those grounds. Requiring the claimant to join that appeal would be contrary to the right to effective judicial protection, because the favorable judgment is not detrimental to the claimant and cannot be interpreted as a waiver of the unexamined grounds, if they were correctly raised in the claim.

The Supreme Court recognizes the right of access to the source code of public algorithms in relevant automated decisions (Supreme Court. Judgment of September 11, 2025)

The Supreme Court has recognized that the right of access to public information (as a personal constitutional right that can be exercised against the tax authorities) includes access to the source code of computer applications used for automated decision-making affecting social rights, such as energy assistance relief, in this case. The court held that algorithm transparency is essential for citizen control and compliance with administrative law and that intellectual property or security limits can only restrict access if they are adequately justified and proportionate. Our October 7, 2025 publication in Garrigues Digital analyzes this ruling in detail.

The late filing of an appeal or claim against a tax adjustment does not result in forfeiture of the reduction for agreement as stipulated for penalties (TEAC. Decision of July 17, 2025).

According to TEAC, the failure to admit an appeal or claim for consideration on the grounds of late filing means that it is considered not to have been filed for all purposes. For this reason, it cannot result in forfeiture of the 30% reduction under article 188.1.b) of the LGT for agreement with the adjustment.

A director's secondary liability for outstanding tax debts when a company ceases its activity is not a penalty, so the *ne bis in idem* principle does not apply (TEAC. Decision of July 11, 2025)

TEAC found that the declaration of directors' secondary liability for a company's outstanding tax debts when a company ceases its activity (article 43.1.b of the LGT) is not a penalty measure.

Therefore, the *ne bis in idem* principle, which prevents two penalty measures from being imposed for the same reason, does not apply.

It therefore concluded that, after a first enforcement of secondary liability under this provision has been rendered invalid on substantive grounds, the tax authorities can, within the statute of limitations period, initiate a new procedure and issue a second decision against the same party on the same grounds for liability.

Companies must comply with debt attachment orders until they are formally notified of the lifting of the attachment (DGT. Resolution V1239-25 of July 4, 2025)

According to the DGT, a company cannot cease to comply with its obligations arising from attachment notices of receivables or earnings relating to its suppliers or employees if the attaching body has not notified it of termination of the attachment, even if the supplier or employee submits proof that they are current with payments or that they have paid the debt that gave rise to the attachment. None of this precludes the taxpayer's right to request from the attaching body any information it sees fit for better compliance with the attachment.

The unattachable portion of wages, salaries, or pensions remains unattachable and does not become savings, even if it is not spent in the month it is received (TEAC. Decision of June 18, 2025)

TEAC has amended its interpretation by concluding that the unattachable portion of wages, salaries, or pensions stays unattachable indefinitely, regardless of how it is received and with no time limit, to ensure that the amount relating to that guaranteed minimum income cannot be classed as attachable savings income, even if it is not spent before the next monthly payment. It clarified, however, that it is up to the interested party objecting to the attachment to prove that all payments into the account come from unattachable income.

To calculate late-payment interest for the enforcement period after payment of the enforced debt, a right-to-be-heard period must be allowed (TEAC. Decision of June 18, 2025)

TEAC concluded that the calculation of late-payment interest for the enforcement period, made after payment of the enforced debt, must follow the general procedure for calculations made by the tax authorities, which requires, under article 99.8 of the General Taxation Law, a right-to-be-heard period to be held before the proposed calculation. However, if, instead of the right-to-be-heard period, the tax authorities grant a submissions periods of a similar length simultaneously with notification of the proposal, that irregularity will not render the calculation invalid if it does not deny the interested party's right to a defense.

Further information:

Tax

GARRIGUES

Plaza de Colón, 2
28046 Madrid
T +34 91 514 52 00
info@garrigues.com

Follow us on:

Blog

garrigues.com