Tax Newsletter

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Spain

GARRIGUES

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1. An income reclassification cannot be used when a conflict in the application of tax provisions procedure should have been initiated

A conflict in the application of tax provisions procedure requires a prior favorable report by the consultative committee as specified in article 159 of the General Taxation Law (LGT). Any assessments issued without implementing these guarantee mechanisms must be deemed null and void.

The National Appellate Court examined a personal income tax adjustment. The source of the adjustment was in a purchase of treasury shares by a company from several of its shareholders for their later redemption. According to the auditors, the purpose of the company's capital reduction was not to redeem treasury shares, but rather to repay contributions to shareholders and they therefore reclassified the shareholders' income from capital gains to income from movable capital.

In its judgment on November 18, 2021 (appeal 599/2018), the National Appellate Court examined whether the case involved a conflict in the application of tax provisions (as defined in article 15.2 of the General Taxation Law) or, to the contrary, a classification issue related to article 13 of the General Taxation Law, according to which tax obligations must be sought based on the legal nature of the fact, act or transaction, whatever form or nature taxpayers have given to them.

The auditors had implemented this last approach (reclassification). The appellant, however, considered that the first approach (conflict) should have been implemented, and therefore, because the steps legally required for this second type of procedure had not been implemented (including requesting a prior favorable report from the consultative committee as specified in article 159 of the General Taxation Law), the tax authorities' assessment was null and void.

The court concluded that, because the auditors found that only a capital reduction with repayment of contributions had been carried out and that the single reason for using two transactions (purchase and capital reduction) was to evade tax, the company had to:

(a) Reclassify the performed legal transactions through the conflict in the application of tax provisions procedure, report that the performed transactions were incorrect and describe which transactions would have been correct.

(b) Request a prior favorable report from the consultative committee.

Therefore, because this procedure had not been implemented, the assessment at the root of the examined appeal had to be voided.

It needs to be underlined that before the judgment, the Valencian High Court had delivered other judgments in proceedings brought by the other shareholders that sold their shares, and reached the same conclusion. The National Appellate Court therefore held that it was compelled to reach that conclusion, in any event, under the principle of consistency, as an expression, in turn, of the principles of equality and legal certainty recognized in article 14 and article 9.1 of the Constitution, bearing in mind that it is the same legal transaction that is being examined in each case.

2. Judgments

2.1 Corporate Income Tax. - Allowances for bad debts relating to debts with related entities may be deducted when these entities are liquidated

National Appellate Court. Judgment of September 23, 2021

The court examined the treatment of allowances for bad debts in relation to debts with related entities. At issue was whether to be able to deduct allowances of this type, it is a necessary requirement for the related party to have been held by a court to be in a state of insolvency or whether, conversely, a more flexible interpretation is allowed and it is sufficient to evidence an inability to collect its debts.

The National Appellate Court concluded that the Corporate Income Tax Law only allows these allowances to be deducted where the related entity has been held to be in a state of insolvency, and therefore the allowance may only be deducted if that declaration exists. It clarified however that deduction of the (final) loss must be allowed if the related entity is liquidated.

2.2 Corporate income tax and VAT. - The volume of transactions for determining the distribution of powers between the central government and Navarra is computed from the date the supply of goods or services starts

Supreme Court. Judgment of November 17, 2021

The Navarra authorities brought a conflict proceeding against the central government authorities over determination of the date that must be taken into account to estimate the volume of transactions performed by an entity with tax domicile in the common territory in its first year of activity.

For the Navarra tax authorities, the start date for computing the volume of transactions is the date when the entity initiates the supply of goods or services.

AEAT, however, considered that the volume of transactions in the first year must be computed from the date on which the first purchases of goods or rights needed to carry on the activity were made. It based this conclusion on article 5 of the VAT Law, according to which an activity starts when those goods or rights are purchased.

The Supreme Court concluded as follows:

(a) The economic accord between the central government and Navarra is the instrument governing the relationship between the common tax regime and the Navarra tax regime.

(b) That accord is clear and allows the issue to be resolved, without having to apply the central government legislation, contrarily to what AEAT proposed.

(c) Namely, for the distribution of powers in relation to corporate income tax and VAT, the accord identifies the volume of transactions as the aggregate amount of consideration obtained by the taxable persons on supplies of goods and services made.

(d) In relation to the year in which the activity starts, article 19.4 (relating to corporate income tax) and article 33.4 (relating to VAT) of the accord determine that the volume of transactions obtained in the period of activity must be grossed up to a year. For the purposes of computing the volume of transactions in this case, the start date is the date on which the first supply of goods or services is made.

By reaching this conclusion, the court accepted the arguments submitted by the Navarra tax authorities.

2.3 Personal income tax. – Social security contributions in systems equivalent to the Spanish system are deductible from salary income

Supreme Court. Judgment of December 15, 2021

Under the Personal Income Tax Law, the items subtracted from gross salary income to calculate net salary income include the worker's social security contributions.

The Supreme Court held in this judgment that, for these purposes, this item includes any contributions paid into equivalent social security systems to the Spanish system. For this to be the case, they have to be mandatory contributions and stem from work performed for an employer.

2.4 Personal income tax. - The increased allowance for certain taxpayers introduced in Catalonia for personal income tax in 2020 has been rendered null and void

Constitutional Court. Judgment 186/2021 of October 28, 2021

In this judgment the Constitutional Court held to be unconstitutional and null and void article 88.b) of Law 5/2020 of the Parliament of Catalonia of April 29, 2020, which increased the personal allowance for certain taxpayers.

Focusing on a point relating strictly to powers and on the distribution of taxing powers between the central and autonomous community governments, the court concluded as follows:

(a) Autonomous community governments have the power to adopt legislation that increases or decreases the taxpayer's allowance and the allowances for descendants and ascendants, although within the following limits:

- The first is that the increase or decrease cannot be over 10% for each of the amounts determined in the central government legislation.
- Moreover, they cannot define the items or the personal or family circumstances to which each of the allowances relate. Put another way, they cannot change the rules, elements or requirements for the allowance category to apply.

(b) The challenged Catalan law contained an increased personal allowance amounting to €6,105, instead of the €5,550 in the central government legislation, for taxpayers with aggregate tax liability figures (general component plus savings component) amounting to €12,450 or lower.

It exceeded its authority by making that change, because autonomous community governments do not have the power to place conditions for a change to the amount of the allowance, either by making it subject to the taxpayer's income level (as determined in the challenged legislation) or by creating any other personal circumstance not specifically contemplated in the central government legislation.

Basing itself on the principle of legal certainty, the court added that, although the legislation had been overturned, a revision was not needed of the tax obligations that arose under it, in other words, a revision of 2020 self-assessments filed in the voluntary period.

2.5 VAT. - Compensatory payments to offset lower ticket prices received by Madrid Regional Transport Consortium and distributed among transport operators has to be included in taxable amount for the service

National Appellate Court. Judgment of October 25, 2021

In this judgment, the National Appellate Court examined the VAT treatment of the sums that Madrid Regional Transport Consortium (CRTM) receives from public authorities and distributes among transport operators to offset the setting of ticket prices for users which are below the break-even price (ticket price compensatory payments). The system works as follows:

(a) The CRTM receives from users the amounts paid for the transport service, which is physically provided by the transport operator companies.

(b) The operator companies receive from the CRTM a payment equal to the sum of the amounts paid by users plus the ticket price compensatory payments.

On the basis of earlier rulings by the National Appellate Court and the Supreme Court, the CRTM argued that these ticket price compensatory payments are infrastructure subsidies and as such do not have to be included in the taxable amount for the service provided by CRTM, because they are purely instrumental.

The National Appellate Court, however, departed from its earlier principle to conclude that:

(a) The ticket price compensatory payments are price-related subsidies.

(b) These compensatory payments must be included in the taxable amount for the CRTM's transactions.

(c) The fact that the CRTM does not physically provide the transport service has no effect whatsoever on this view.

It therefore concluded that the taxable amount that the operators charge to the CRTM for physically providing the transport services must be equal to the amount that the CRTM charges for the same service to users, and therefore has to include the ticket price compensatory payments.

2.6 Real estate tax. - Local authorities cannot approve separate tax rates for uses other than those set out in the legislation on the cadaster

Madrid High Court. **Judgment of July 26, 2021**

The legislation governing real estate tax allows local authorities to set a standard tax rate for urban properties and separate rates by reference to the priority use which has been allocated to the property, for the purposes of the cadaster (not including residential use).

In the case examined in this judgment, the entity had lodged an appeal against a real estate tax assessment in which the separate rate for "storage-parking" use had been applied. According to the appellant, a separate rate did not apply for this use because the use was not set out in the legislation on the cadaster.

Madrid High Court upheld the appeal, voided the challenged real estate tax assessment, and also held to be null and void the article in the local authority's tax rules governing the tax which set out a separate tax rate for "storage-parking" use.

2.7 Real estate tax. - Late-payment interest accrued on incorrectly paid tax must be calculated on the whole amount of the voided assessment

Madrid High Court. **Judgment of July 26, 2021**

After the value of a property on the cadaster had been voided, incorrectly paid amounts of real estate tax were refunded to the taxpayer.

The local authority calculated late-payment interest not on the voided refundable debt, but instead on the difference between that debt and the amount determined in the new real estate tax assessments calculated on the correct cadastral value.

Madrid High Court concluded, based on supreme court judgments delivered on October 9, 2019 (see our November 2019 Tax Newsletter) and on June 18, 2020, that late-payment interest payable to the taxable person must be calculated on the aggregate amount in the originally issued assessments and not on the difference between these assessments and any new real estate tax assessments that may be reissued on the basis of the new cadastral value.

2.8 Requests for information. – A penalty for failure to comply with a request for information cannot be imposed without first giving the taxpayer the chance to challenge it

Court of Justice of the European Union. **Judgment of November 25, 2021. Case C-437/19**

The French tax authorities sent a request for information to the Luxembourg authorities to obtain information concerning the shareholders and beneficial owners of a Luxembourg company that directly or indirectly owned properties in France.

The Luxembourg authorities requested that information from the entity. This company considered that the request was not allowable and brought an appeal which was held inadmissible. A fine was imposed on this company for failing to comply with the request.

In this judgment, the CJEU recalled its case law on requests for information received in relation to a request for exchange of information between member states, and specifically on the right to challenge requests of this type. It referred in particular to its judgment of October 6, 2020, in which the court concluded as follows:

(a) Where a request for information is made, the right to an effective remedy must be granted to the owner of the information.

(b) Therefore, EU law precludes the legislation of a member state (Luxembourg, in this case) which does not give the option to appeal against a decision in which the competent authority of that country orders a person to provide information it holds to comply with a request for information from another member state.

(c) It is not necessary for the taxpayer to have access to a direct appeal against that request if other appeals exist to the competent national courts that provide the taxpayer with incidental ways to obtain an effective judicial review of the decision.

(d) Lastly, if the legality of the request is recognized following an appeal against the penalty, a new amount of time must be given to the person concerned to comply with the request. A penalty may be imposed only if that person does not comply with the request within that time limit. Otherwise, the right to an effective remedy would not be respected.

2.9 Administrative procedure. - Members of pass-through entities may challenge assessments issued to them in relation to a challenge of their own assessments

National Appellate Court. Judgment of October 25, 2021

The auditors issued an assessment to an economic interest grouping (EIG), in which they lowered the reported tax loss carryforwards. As a result of this, in a later audit conducted on a member (legal entity) of the EIG, an assessment was issued that changed the attribution of the EIG's income. By challenging this assessment, the member indirectly challenged the assessment issued to the EIG which had already become final.

The National Appellate Court concluded in this judgment that the members of an EIG (or other pass-through entity) may challenge the assessments issued against the EIG itself, even after they have become final, in processes for challenging their own assessments.

2.10 Review procedure. - It is necessary to exhaust the economic-administrative jurisdiction, even if a decision on the merits depends solely on interpretation of EU law

Supreme Court. Judgment of November 16, 2021

At issue was whether a taxpayer needs to exhaust the economic-administrative jurisdiction before going to the judicial review jurisdiction in cases where the authorities' decision is challenged solely and exclusively on the basis of a breach of EU law.

The appellant argued that it was allowed to go directly to the judicial review jurisdiction:

(a) For one reason, because the Supreme Court had already concluded, in a judgment delivered on May 21, 2018 (appeal number 815/2018), that it is not necessary to exhaust the administrative jurisdiction where the constitutional nature of legal provisions covering decisions for the application of taxes is at issue, given that administrative bodies do not have the authority to rule on the constitutional nature of a provision in the legislation or to submit a request for a ruling on unconstitutionality.

(b) Another reason was that the CJEU also concluded, in a judgment delivered on January 21, 2020 (Gabalfrisa and others, joined cases C-110/98 to C-147/98), that economic-administrative tribunals cannot refer questions for a preliminary ruling.

Accordingly, the appellant argued that, where a violation of EU law is raised, appealing an administrative decision to the economic-administrative tribunals is useless and ineffective and therefore has an adverse effect on the right to an effective judicial remedy.

The Supreme Court, however, concluded that it is the authorities and the economic-administrative tribunals in particular that have to ensure the correct application of EU law. These tribunals, despite not being able to refer a question for a preliminary ruling, do have a duty to ensure correct application of EU law and therefore may decide not to apply national legislation if they consider it is precluded by EU law. Therefore, going to the economic-administrative tribunals is neither useless nor entails a disproportionate burden.

3. Decisions

3.1 Corporate income tax. - Residual value of buildings does not have to be included in depreciation basis under the table depreciation method

Central Economic-Administrative Tribunal. Decision of November 23, 2021

It was examined whether, under the table depreciation method set out in the Corporate Income Tax Law, the residual value of the building must be included in the depreciation basis.

TEAC concluded that the residual value does not have to be included in the depreciation basis. In its view, the purpose of the depreciation methods in the corporate income tax legislation is for depreciation to reflect the actual depreciation of the assets.

Therefore, the table depreciation method is designed to cover the whole cost by applying a given percentage to the value of the building and no residual value needs to be included.

3.2 Personal income tax. - A spouse who pays the whole of a community property mortgage can apply the whole tax credit for purchase of the taxpayer’s principal residence

Central Economic-Administrative Tribunal. Decision of November 23, 2021

In a court divorce order, use of the marital home (which was community property) was awarded to one of the spouses, who undertook to pay the mortgage alone, despite owning 50% of the property, because the community property arrangement had not yet been dissolved.

The tax authorities considered that the spouse awarded use of the home and taking responsibility for all the loan payments was entitled only to 50% of the tax credit for purchase of the taxpayer's principal residence.

TEAC, however, rejected this interpretation and concluded that a spouse paying the whole of the mortgage is entitled to apply the tax credit in respect of all the paid installments and interest, without having to own the residence in the same proportion.

3.3 Nonresident income tax. - Amounts paid to nonresidents in respect of ICEX scholarships are not exempt

Central Economic-Administrative Tribunal. Decision of November 23, 2021

In this decision, TEAC concluded that sums paid to non-resident individuals by state enterprise ICEX España Exportación e Inversiones in respect of ICEX scholarships (for work experience internships at Spain's Economic and Commercial Offices abroad) are not exempt from nonresident income tax.

In TEAC's view, the ICEX scholarships are not paid under any type of international agreement or accord, instead as part of a unilateral policy adopted by the Spanish government. Therefore, the scholarships cannot be eligible for any of the exemptions allowed in the applicable legislation.

3.4 Wealth tax. - Recognition of shares in foreign companies listed outside Spain must be based on their average trading price in the fourth quarter of each year

Andalusian Regional Economic-Administrative Tribunal. Decision of September 30, 2021

The wealth tax legislation states that the rules for recognizing securities representing investment in the equity of any type of entity are as follows:

(a) If they are traded on organized markets (except for shares in collective investment schemes), they must be recognized by reference to their average trading prices in the fourth quarter of each year (article 15 of the Wealth Tax Law). For these purposes, the Ministry of Economy and Finance has to publish every year a list of the securities traded on organized markets, with their average prices for the fourth quarter of the year.

(b) In all other cases (article 16 of the law), they must be recognized at their imputed values based on the latest approved balance sheet, provided it has been reviewed and verified and the auditor's report contains a favorable opinion.

If the balance sheet has not been audited or the auditor's report does not contain a favorable opinion, the shares must be recognized at the highest of the following three values: (i) par value, (ii) imputed value based on the latest approved balance sheet, or (ii) the value arrived at by capitalizing at a rate of 20% average income at the three fiscal year-ends immediately preceding the date the tax becomes due.

As we recalled in our February 2020 Newsletter, the list of securities traded on organized markets that is published each year only contains securities listed in Spain. For that reason,

AEAT and the DGT have been taking the view that securities listed abroad must be reported as unlisted securities.

The Andalucía TEAR has now concluded to the contrary that the term “organized market” as it appears in article 15 of the Wealth Tax Law is broader than “official secondary market” or “regulated market” because, in the case of entity shares it also includes “multilateral trading facilities”.

Therefore, where an average trading price for the fourth quarter exists in relation to a security listed abroad, that price has to be used to report the asset for wealth tax purposes, regardless of the reference in the article to the publication by the ministry of the official prices of securities traded on organized markets.

3.5 Transfer and stamp tax. - Where the same public deed records a horizontal division and the dissolution of a community property arrangement tax does not have to be charged on both transactions

Central Economic-Administrative Tribunal. Decision of June 29, 2021

This decision concerned a case in which the same public deed recorded both horizontal division of community property and its dissolution (with allocation of the assets to the joint owners). The particular issue was whether one or two transactions occur for stamp tax purposes.

TEAC concluded that in a case of this type, the horizontal division must be regarded as a preparatory and necessary step to be able to carry out the termination of the condominium sought by the joint owners, and so, if both legal transactions are included in the same deed, tax does not have to be charged on both of them.

3.6 Review procedure. - A second application for correction of a self-assessment may be filed if there are new arguments and information or unforeseen events

Central Economic-Administrative Tribunal. Decision of April 22, 2021

In this decision, TEAC adopted the principle determined by the Supreme Court in its judgment of February 4, 2021, according to which the taxpayer may apply a second time for correction of a self-assessment if the statute of limitations has not run; as long as the second application is different from the first, which occurs where it includes arguments, information or circumstances that are new and relevant for the requested refund.

In the specific case examined in this decision, TEAC ruled that the second application could not be considered different from the first because it did not contain new arguments or information, but rather simply repeated the same request for a refund of the payment deemed to be incorrect based on the same reasons and arguments as were included in the first application. It therefore dismissed the filed claim.

3.7 Collection procedure. – If enforcement of an assessment has been stayed following a request by the taxpayer, a decision voiding it cannot be enforced while an appeal is conducted against that decision

Central Economic-Administrative Tribunal. Decision of November 23, 2021

The issue concerned whether the tax authorities are required to enforce a decision by an economic-administrative tribunal voiding an assessment (where its enforcement had been stayed) and order another to be issued, even if an appeal has been filed against that decision.

The auditors argued that, because enforcement of the assessment had been stayed since the case went to the economic-administrative jurisdiction (following a request by the taxpayer), the stay was binding at every stage of its review in the economic-administrative jurisdiction, and therefore the economic-administrative tribunal's decision could not be enforced until a decision had been delivered on the appeal.

Applying the principle determined by the Supreme Court in a judgment on June 28, 2021, TEAC adopted the auditors' view to rule that the tax authorities cannot enforce a decision voiding an assessment and ordered a reversion of procedure for another decision to be delivered, while an appeal filed by the taxpayer is in progress, if enforcement of the assessment has been stayed following a request by the taxpayer.

3.8 Collection procedure. - Filing of appeals against decisions to extend liability tolls statute of limitations for tax authorities' action to collect

Central Economic-Administrative Tribunal. Decision of September 16, 2021

The tax authorities held a taxpayer secondarily liable for another entity's debts.

The TEAR concluded that their right to bring action to collect had become statute-barred because, between the notice of an enforced collection order and the notice of an attachment order on the liable person, the four-year period set out in the General Taxation Law had run.

However, reiterating an earlier principle, TEAC ruled that administrative decisions to extend liability and any actions by the liable person against those decisions toll the statute of limitations for action to collect the tax debt (including the penalty), and therefore their right to action had not become statute-barred.

4. Resolutions by the Directorate General for Taxes

4.1 Corporate income tax. - There must be at least two lines of business for partial spin-off to be eligible for tax neutrality regime

Directorate General for Taxes. Resolution V2537-21 of October 18, 2021, and resolution V2604-21 of October 27, 2021

In these two resolutions, the DGT recalled that, for the tax neutrality regime to be elected for a partial spin-off, the company performing the spin-off must have, at least, two lines of business: the line of business that is being spun-off and the one remaining at the entity. A line of business means a separate organization of human and material resources for each

activity before the transaction was performed (at the entity performing the spin-off, in other words).

In this connection:

(a) In resolution **V2537-21**, it concluded that this requirement had not been fulfilled in a case involving a company carrying on a residential property leasing activity and another activity consisting of leasing shopping malls, parking spaces, warehouses, a hotel and offices. Although both activities fall under two separate classifications for the tax on economic activities, in the DGT's view they did not seem to be two sets of assets able to form two independent autonomous economic units determining two economic operations, in other words, two sets able to function by their own means at the transferring entity.

(b) The same conclusion was reached in resolution **V2604-21**, in a case involving an entity engaged in the management, operation, development and use of real estate assets, whose only real estate asset was an industrial building, which it sought to spin off to a newly created entity. The DGT noted that the building did not amount to a line of business, but rather an isolated asset.

In both cases, however, they could carry out total spin-offs which would indeed be eligible for the neutrality regime, because, in these cases, as a general rule, the law does not require the existence of lines of business.

4.2 Personal income tax. - Unrealized gains are not computable for calculating taxable income in a distribution of additional paid-in capital

Directorate General for Taxes. Resolution V2533-21 of October 8, 2021

An unlisted company (A) was going to distribute additional paid-in capital in kind, by transferring to its shareholder its only assets: the shares it owned in another entity (B), which had a number of properties among its assets.

After examining the personal income tax treatment of the additional paid-in capital, the DGT concluded as follows:

(a) Under the Personal Income Tax Law, where there is a positive difference between the value of equity that the shares represent (in the latest fiscal year ended before the date of distribution of the additional paid-in capital) and its acquisition cost, the amount obtained or the normal market value of the assets and rights received as a result of the distribution of the additional paid-in capital has to be treated as income from movable capital to the extent of that positive difference.

(b) The equity referred to in the legislation is the equity relating to the year ended immediately before the distribution of the additional paid-in capital, as disclosed in the balance sheet prepared in accordance with the accounting legislation.

(c) On that balance sheet it is not required to record any potential unrealized gains arising from the increase in value of the properties of company B.

4.3 Nonresident income tax. – Salary income received by nonresident skipper of fishing vessel operating in international and Spanish waters may be taxed in Spain

Directorate General for Taxes. Resolution V2536-21 of October 14, 2021

The requesting entity's primary economic activity was capture fishing, carried on by operating a Spanish-flagged vessel from its home harbor in Vigo.

The request concerned the possible hiring of a Portuguese resident individual to carry out the activities of skipper of the vessel. The individual's remuneration would consist of a fixed amount for each day's work, plus a variable amount, which would be calculated as a percentage of the economic value of the hauls obtained during each tide.

The vessel only operated in international waters, although, in each tide, the vessel sailed for around 20 hours going out and 20 hours coming back in Spanish waters. The skipper is in charge of the vessel at all times, including the days it sails in Spanish waters and the days it spends in the harbor. Moreover, its hauls are unloaded and any repairs and provisioning are done at the home harbor located in Spain.

In relation to the applicable provisions in the Portugal-Spain tax treaty, the following was noted:

(a) Under article 15.1 of that treaty, the income obtained by the skipper of a vessel, who is tax resident in Portugal, may be taxed in Spain.

Article 15.2 (taxable only in Portugal) does not apply, because the remuneration is paid by a Spanish-resident employer.

Not does article 15.3 (special rule for employment aboard a ship operated in international traffic) apply because the activity carried on by the entity is fishing.

(b) After determining Spain's power to tax the income, any salary income derived, directly or indirectly from a personal activity carried out in Spain is treated as income obtained in Spain. Consequently, the portion of the fixed component of remuneration derived, directly or indirectly, from a personal activity carried out in Spain is taxable in Spain in respect of nonresident income tax and is subject to withholding tax at the applicable rate.

(c) Portugal, as the country of residence, has to eliminate any double taxation that may arise, in accordance with article 23 of the treaty.

4.4 Digital Services Tax – Online intermediation services provided to a subsidiary entity are not subject to the digital services tax

Directorate General for Taxes. Resolution V2535-21 of October 14, 2021

A German resident company belonged to a group engaged in the sale of used vehicles through a digital interface. The vehicles were purchased from private parties and companies by a company resident in the Netherlands, wholly owned by the German company. No digital interface was used to make these purchases.

The Netherlands company sold the vehicles to business owners (dealers) through a digital interface owned by the German company. This latter entity collected a bidding fee from the purchasers receiving the vehicles, and might also receive payments for managing the vehicle's documentation or handing the vehicle over at a specified location.

In relation to the digital services tax arising on these transactions if a purchaser is located in Spain, the DGT noted that:

(a) The service provided by the German company, consisting in the making available of its digital interface to users which allows them to purchase vehicles, fulfills the requirements to be classed as an online intermediation service with an underlying transaction, within the meaning of the digital services tax legislation, in which the underlying transaction is the purchase of vehicles.

(b) Whereas the intermediation service provided to the Netherlands subsidiary is not subject to the digital services tax, because the subsidiary is wholly owned by the German company.

5. Legislation

5.1 Intrastat return amended

On December 30, 2021, the Official State Gazette published Order HFP/1480/2021 of December 28, 2021, approving the contents and filing periods for the return for intra-EU exchanges of goods, and determining the general terms and conditions and procedure for its remote filing.

As in the past, the return has to be filed electronically within 12 calendar days following the end of the period concerned.

5.2 General State Budget Law for 2022 has been published

The Spanish General Budget Law for 2022 (Law 22/2021 of December 28, 2021) was published in the Official State Gazette on December 29, 2021.

For a summary of the most prominent measures, see our commentary dated December 29, 2021.

5.3 Extension of various time periods for the reserve for investments in the Canary Islands Special Zone

On December 29, 2021, the Official State Gazette published Royal Decree-Law 31/2021 of December 28, 2021, which amends several timing references in Law 19/1994 of July 6, 1994, amending the Canary Islands Tax and Economic regime.

For a summary of the main new provisions, see our alert dated December 29, 2021.

5.4 Economic Accord with the Basque Country amended to include digital services and financial transactions taxes

On December 27, 2021, the Vizcaya Official Gazette published Provincial Law 7/2021 of December 13, 2021, ratifying Decision One by the Mixed Commission for the Economic Accord dated July 29, 2021. The law has been adopted to include the digital services tax and financial transactions tax in the Economic Accord and define the connecting factors for VAT purposes in distance transactions.

For a summary of these measures, see our alert dated December 28, 2021.

5.5 Publication of annual equivalent rate for first quarter of 2022, for the purpose of characterizing certain financial assets for tax purposes

On December 27, 2021, the Official State Gazette published the Decision of December 16, 2021, by the Office of the General Secretary for the Treasury and International Finance, which sets out the annual effective interest rate for characterizing certain financial assets for tax purposes, this time for the first calendar quarter of 2022.

The rates are as follows:

- Financial assets with terms of four years or less: -0.337 percent.
- Assets with terms between four and seven years: -0.091 percent.
- Assets with ten-year terms: 0.309 percent.
- Assets with fifteen-year terms: 0.754 percent.
- Assets with thirty-year terms: 1.005 percent.

5.6 The average selling prices for 2022 of certain modes of transport for the purpose of auditing values have been published

On December 24, 2021, the Official State Gazette published Order HFP/1442/2021 of December 20, 2021, which, as happens every year, approves the average selling prices to be used in the management of transfer and stamp tax, inheritance and gift tax, and the special tax on certain modes of transport.

5.7 Form 237 approved for self-assessment of special tax on undistributed income of SOCIMIs

Law 11/2021 of July 9, 2021, on measures to prevent and combat tax fraud, introduced a special tax for SOCIMIs (listed corporations for investment in the real estate market, the Spanish equivalent of REITs) -see our commentary dated July 10, 2021-.

This tax is calculated as 15% of the earnings obtained in the fiscal year which are not distributed and which come from (i) income that has not been taxed at the standard corporate income tax rate or (ii) income that was not obtained from the transfer of eligible assets, within the three-year holding period, where the three-year reinvestment period has been elected.

On December 23, 2021, the Official State Gazette published Order HFP/1430/2021 of December 20, 2021, approving form 237 to be used for self-assessments of that special tax. This order came into force on January 3, 2022 and will be applicable for taxable periods commencing on or after January 1, 2021.

The filing period for the form is 2 months running from the taxable event for the special tax, in other words, from when the resolution on the distribution of income is adopted by the shareholder's meeting or equivalent body.

For filing periods that commenced before January 3, 2022, however, the form may be filed until February 23, 2022 (two months after publication of the order in the Official State Gazette).

The form must be filed online.

5.8 Measures approved to reduce the electricity bill and increase charging stations for electric vehicles, plus time period extended for reduced VAT rate on medical supplies

On December 22, 2021, the Official State Gazette published Royal Decree-Law 29/2021 of December 21, 2021, containing a slew of tax measures.

Including an extension of the time period for the zero VAT rate on medical supplies and the 4% VAT rate on supplies of disposable surgical masks. For a summary of these measures, see our alert dated December 22, 2021.

The decree-law also extends the reductions and suspensions of taxes on electricity bills and gives local tax relief on the installment of charging stations for electric vehicles, as we discussed in a second alert released on the same date.

5.9 The MLI comes into force in 2022

On December 22, 2021, the Official State Gazette published Spain's instrument to ratify the Multilateral Convention (MLI) to implement tax treaty related measures to prevent base erosion and profit shifting.

For a brief summary of the implications of the MLI, see our alert dated December 15, 2021.

5.10 Time period extended for deferral of tax debts of debtors having their tax domicile in La Palma

Aimed at mitigating the effects of eruption of the volcano in La Palma, Royal Decree-Law 20/2021 of October 5, 2021 was published on October 6, 2021 in the Official Gazette and contains a range of support measures for repairing the damage and for social and economic reconstruction on the island.

Moreover, on October 1, 2021, the Canary Islands Official Gazette published Decree Law 12/2021 of September 30, 2021, which adopted tax, organizational and management measures with similar goals.

For a summary of main tax measures in both pieces of legislation, see our alert dated October 6, 2021.

On December 18, 2021, the Official State Gazette published Royal Decree-Law 28/2021 of December 17, 2021, with measures including the amendment of Royal Decree-Law 20/2021, with the following aims:

(a) Extend the time period for deferral of debts until May 2, 2022.

(b) Specify that the beneficiaries of these debt deferrals must have their tax domicile in La Palma.

5.11 Amendments to forms 303, 347, 05 and 06

Order HFP/1395/2021 of December 9, 2021 was published in the Official State Gazette on December 14, 2021, and amends various orders to update the procedures for filing a number of tax returns and their contents:

(a) Form 303 (VAT self-assessment):

Starting on January 1, 2023, the paper filing option will no longer exist.

(b) Form 347 (annual information return for transactions with third parties):

The agreement on the withdrawal of the United Kingdom from the EU (Brexit) set out a protocol determining that although after the end of the transition period (December 31, 2020) transactions with the United Kingdom would have the status of transactions performed with a third country, supplies and acquisitions of goods to or from Northern Ireland were allowed to continue to be taxed as intra-Community transactions (reportable on form 349).

To identify transactions performed with Northern Ireland, the United Kingdom has to use a VAT number starting with XI for companies trading under the Northern Ireland protocol.

Because the protocol does not include services where one of the parties is established in Northern Ireland (these transactions will no longer be treated as intra-Community transactions), from January 1, 2021 those services must be reported on form 347, instead of on form 349.

For that reason the necessary changes have now been made on form 347 to codification of the VAT number to include transactions with traders or professionals whose VAT numbers start with XI, but who are not included in the protocol for Northern Ireland.

These changes came into force on January 3, 2022 and will apply for the first time on the annual return for transactions with third parties relating to 2021.

(c) Form 05 (Prior recognition of certain cases of non-taxable status, exemptions or reductions for registration tax) and form 06 (excise tax on certain modes of transport. Exemptions and non-taxable status without prior recognition):

A field has now been added on both forms to report the taxable amount for the excise tax on certain modes of transport which would be due if any of the cases of non-taxable status, exemptions or reductions to the taxable amount are not applicable.

Form 05 now includes information relating to large family status to speed up the granting process for the reduction to the taxable amount allowed in these cases.

These amendments came into force on January 3, 2022.

5.12 Amendments to various orders relating to information returns

Order HFP/1351/2021 of December 1, 2021, amending certain information tax returns was published in the Official State Gazette on December 3, 2021. It makes amendments (mostly of a technical nature) to the following forms:

(a) **Form 156** (contributions of affiliates and mutual entity members for the purposes of the maternity tax credit).

(b) **Form 180** (leasing or subleasing of urban properties).

(c) **Form 182** (gifts, donations and contributions received and withdrawals made).

(d) **Form 187** (shares representing the capital or equity of collective investment schemes).

(e) **Form 189** (securities, insurance and income).

(f) **Form 198** (annual return for transactions with financial assets and other marketable securities).

(g) **Form 289** (financial accounts in the field of mutual assistance).

(h) **Form 296** (nonresident income tax. Nonresidents without a permanent establishment. Annual withholdings return).

The order came into force on December 4, 2021 and will be applicable for returns relating to 2021 to be filed in 2022.

5.13 Objective assessment method for personal income tax purposes and special simplified VAT scheme for 2022

On December 2, 2021, the Official State Gazette published Order HFP/1335/2021 of December 1, 2021, implementing for 2022 the objective assessment method for personal income tax purposes and the special simplified VAT scheme.

The order has retained the amounts of the signs, indexes, modules, reductions and instructions that were already applicable for 2021. Among others, it has retained the reduction allowed for economic activities carried on in Lorca.

The order came into force on December 3, 2021, and is effective for 2022.

5.14 The 2022 non-business day calendar used by the central government civil service has been published

On December 1, 2021, the Official State Gazette published the decision of November 24, 2021, by the Office of the Regional Territory and Civil Service Secretary, which establishes the calendar of non-business days in relation to the activities of the central government civil service for 2022, for the purposes of computing time periods.

Tax Department

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