Tax Newsletter

Spain

GARRIGUES

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1. Judgments

1.1 DAC 6. – A person subject to legal professional privilege is not required to notify information to other intermediaries

Court of Justice of the European Union. **Judgment of December 8, 2022. C-694/20**

Directive 2011/16/EU, as amended by Directive (EU) 2018/822 **(DAC6),** requires "intermediaries", meaning anyone that designs, markets, organizes, or makes available for implementation or manages the implementation of a reportable cross-border arrangement, to give certain types of information to the tax authorities on those arrangements. This directive was transposed into Spanish law by Law 10/2020 of December 29, 2020 (alert dated December 30, 2020), and completed with Royal Decree 243/2021 of April 6, 2021 (commentary dated April 9, 2021).

Article 8ab (5) of the directive states that member states may take the necessary measures to give intermediaries subject to legal professional privilege the right to a waiver from filing the information, but allows these intermediaries to be required in such cases to notify, without delay, any other intermediary (or, if there is no such intermediary, the relevant taxpayer) of their reporting obligations.

The CJEU concluded that this requirement is invalid in the light of article 7 of the Charter of Fundamental Rights of the European Union (EU) when it targets lawyers who are subject to legal professional privilege. That article protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients, which is justified by the fundamental role of lawyers in a democratic society. In these cases, the obligation to notify incumbent on other intermediaries not subject to legal professional privilege (or, if there is no such intermediary, on the relevant taxpayer) ensures that the tax authorities are notified of reportable cross-border arrangements. Moreover, after receiving the information, the tax authorities may request additional information from the relevant taxpayer (who may then contact their lawyer for assistance) or review their tax position.

Effective application of this principle, after the Spanish transposition legislation has been amended, should mean that a lawyer subject to legal professional privilege will not have to make notifications to the other intermediaries, because these intermediaries or, ultimately, the relevant taxpayer, will have to notify the arrangement concerned to the tax authorities.

1.2 Notification and withholding obligations - EU law does not preclude legislation requiring real estate intermediaries to notify information on rental agreements and to withhold tax from rental payments, although it does preclude the obligation to appoint a representative for nonresidents

Court of Justice of the European Union. **Judgment of December 22, 2022. C-83/21**

An Italian law (on the tax regime for short-term rentals) requires providers of real estate intermediary services to notify the domestic tax authorities of data related to rental agreements and to levy a withholding at source on the amounts paid by lessees. Moreover, those intermediaries must appoint a tax representative in Italy if they do not have a permanent establishment in that country.

According to the CJEU, the first two obligations do not place restrictions on the freedom to provide services, although the third does because it deters intermediaries from providing these services in Italy.

1.3 Corporate income tax. – National Appellate Court changes its principle on technological innovation tax credit for software projects

National Appellate Court. Judgments of November 23, 2022 in appeals 431/2020 and 637/2019

As we summarized in our commentary dated October 11, 2021, in various judgments delivered in 2021 the National Appellate Court allowed the technological innovation tax credit to be applied in respect of software projects in non-manufacturing industries and allowed the tax credit base to include both diagnostics costs and project development costs. Now, however, the court has delivered new judgments in relation to two banking institutions, in which it changes (and clearly states it has done so) its conclusions in this respect, following the clarifications given by expert public officials on the Computer Support Team at the Large Taxpayer Office attached to AEAT, the Spanish Tax Agency. Here are the details:

(i) Firstly, the court recalled that the reports by the Ministry of Economy and Competitiveness (or body attached to it) relating to fulfillment of the scientific and technological requirements to characterize R&D or technological innovation activities are not binding on the tax authorities with regard to the costs that may be included in the tax credit base.

(ii) It also acknowledged that software projects may in principle be considered to fall within technological innovation activities.

However, the tax credit only has to be calculated on the costs that fall within those contained in paragraphs 1 (technological diagnostics) and 2 (industrial design and production process engineering) of article 35.2.b) of the Revised Corporate Income Tax Law (same article as in the current law). For these purposes:

(a) Industrial design activities do not include software programs.

(b) "Process engineering" should not be confused with "engineering for tools used in the process" which means that generally it does not include the development of software tools.

1.4 VAT. - Not including reference to "reverse charge" on invoice issued by intermediary in a triangular transaction determines failure to fulfill requirements for derogation

Court of Justice of the European Union. Judgment of December 8, 2022. C-247/21

An Austrian entity bought vehicles from a supplier established in the UK and resold them to a client in the Czech Republic, which is where the vehicles were sent directly. The invoices for the last sale transaction did not contain any reference to a "reverse charge" instead only a reference to an "Exempt intra-Community triangular transaction".

The Austrian authorities therefore considered that, because there was no reference to the transfer of the tax liability on the invoices to the end customer, an intra-Community acquisition had been made in Austria (the state where the Austrian entity was established) since it had not been evidenced that the acquisition had been taxed in the Czech Republic.

The CJEU recalled that the requirement, in triangular transactions, to mention on the invoice that the reverse charge mechanism has been applied is set out in the directive and is the only way of ensuring that the end recipient is aware of the legal assessment of the transaction made by the issuer and of that recipient's own legal obligations. This is also a requirement that cannot be fulfilled subsequently by correcting the originally issued invoice.

1.5 VAT. - VAT becomes chargeable on services provided by insolvency practitioners at end of each phase of the insolvency proceeding

Supreme Court. Judgments of November 14 and November 16, 2022 (appeals 1847/21 and 2178/21)

It was examined whether the VAT on services provided by insolvency practitioners becomes chargeable at the end of each phase of the insolvency proceeding or, by contrast, when the insolvency proceeding finishes.

The Supreme Court concluded that the tax becomes chargeable at the end of each phase of the insolvency proceeding not when the proceeding finishes, which means that VAT must be charged on the fees relating to each phase.

1.6 VAT. – Intermediary services in financial transactions are not exempt if independence and autonomy does not exist between the parties

National Appellate Court. Judgment of November 3, 2022

The court examined application of the exemption under article 20.1.18.m) of the VAT Law relating to intermediary services in financial transactions, in the case of a company acting as financial agent of a banking institution.

According to the National Appellate Court, for the exemption to apply it is necessary not only for the provider of the negotiation service to be a third party other than the parties they bring together, but also for that provider to act with independence and autonomy. In the examined case, the exemption is not applicable because the agent acted under instructions from the banking institution, similar to those that would be given to its own employees, and therefore this relationship must be considered to involve outsourced services not an intermediary activity.

1.7 VAT. - Input VAT paid on purchase of tickets for public shows and recreation services is not deductible if use in business activity is not substantiated

National Appellate Court. Judgment of October 20, 2022

The National Appellate Court confirmed, on the basis of article 96 of the VAT Law, that the input VAT paid in relation to the costs of buying tickets for public shows and recreation services (sports events) are not deductible, because they relate to hospitality to clients or

potential clients, unless the relationship between the costs and the business activity is substantiated.

The court did, however, set aside the penalty imposed on account of deduction of the tax because, in its opinion, there are legal arguments to support that this was a reasonable interpretation of the law in view of the doubts that may arise regarding how article 96 of the VAT Law fits with EU law.

1.8 Tax on construction, installation projects and works. – A Canary Islands law that extended the taxable event for the purposes of the tax on construction, installation projects and works to include an event not provided for by the central government legislature is unconstitutional

Constitutional Court. **Judgment of October 25, 2022**

The Constitutional Court has held to be unconstitutional the last point of subarticle 4 of article 6 bis of Canary Islands Parliament Law 11/1997, in the wording given by Canary Islands Parliament Law 2/2011, because it extended the taxable event for the tax on construction, installation projects and works to include events where the responsibility for zoning and planning control of the works lay with the Canary Islands autonomous community government, instead of with the local authorities (as required by the central government legislation).

According to the court, the autonomous community law encroached on the central government's exclusive powers to regulate the taxes belonging to local government entities.

However, as it had done previously in a judgment dated October 26, 2021 on the tax on increase in urban land value, the court ruled that any assessments or self assessments of the tax on construction, installation projects and works that had not been challenged before the judgment was delivered cannot be reviewed on the basis of this judgment.

1.9 Penalty rules and review procedure. – A second penalty issued to replace another that had become final may be challenged on the basis of substantive grounds rather than just the amount

Supreme Court. **Judgment of November 7, 2022**

Following the partial setting aside of a real estate tax assessment, a new penalty decision was ordered to be delivered to replace the previous penalty decision (based on the set aside assessment), even though it had already become final. The taxpayer challenged the new penalty on substantive grounds.

The Supreme Court allowed the option of challenging a penalty imposed to reduce the amount of a earlier final penalty, by alleging grounds relating to the penalty as a whole not just the modified amount. According to the court, the new penalty is not really a decision reproducing or confirming an earlier penalty, instead it is a new penalty that may be appealed and with respect to which the grounds for challenge cannot be restricted on the basis that the original penalty had become final.

1.10 Administrative procedure. – Tax Agency required to use alternative forms of communication if it knows that the taxpayer is not accessing electronic notifications

Constitutional Court. **Judgment of November 29, 2022**

The tax authorities notified the inclusion of a company on the mandatory electronic notification system to a minor, a family member of the entity's legal representative, who did not work at the entity or have a power of attorney for it. They later initiated a limited review in which they requested a number of documents substantiating incurred input VAT. The notice of commencement, sent to the enabled electronic address ("DEH"), was considered to be given after 10 days had passed, even though it had not been opened. The subsequent proposed decision (denying deduction of input VAT due to the absence of substantiation) was notified and considered to be notified in the same procedure and the taxpayer did not file any submissions. The same happened with the subsequent provisional assessment. Finally, the notification of the order initiating enforced collection proceedings was received by the company, although the economic-administrative claim filed against that order was not admitted on account of it being outside the time limit.

Taking all these circumstances into account, the Constitutional Court concluded that the tax authorities had not acted correctly. According to the court:

(i) Although the tax authorities had not breached the rules on electronic notifications, they knew that the company was not accessing them.

(ii) Therefore, instead of notifying every act in the procedure electronically and deciding to initiate enforced collection proceedings, they should have used alternative forms of communication which would have been able to bring the existence of the limited review procedure to the company's attention.

(iii) Additionally, it cannot be held that a failure to access notifications must be considered to result from a lack of diligence on the part of the company's legal representative.

The tax authorities therefore failed to observe the right of an effective remedy, and as a result the proceedings must be reverted to before the point when the provisional assessment decision was delivered.

1.11 Extension of liability procedure. – Security provided by main debtor to suspend enforcement of debt benefits joint and several co-debtors

Supreme Court. **Judgment of November 25, 2022**

Article 124.2 of the General Collection Regulations provides that applications for deferred or split payment of debts, or applications for suspension of the collection procedure, made by a co-debtor do not affect the collection procedure commenced against the other co-debtors.

The Supreme Court considers, however, that this restriction only makes sense between co-debtors, not between the main debtor and a co-debtor. Everything that has a bearing on the debt passes to the co-debtor and therefore any payment, deferred or split payment, or suspension of payment obtained by the main debtor is relevant and must benefit the co-debtors. However, the court clarified that this conclusion could change if the security provided by the debtor is not sufficient.

1.12 Review procedure. – A favorable decision ordering reversion of proceedings is subject to application for judicial review where that reversion was not requested by the applicant

Supreme Court. Judgment of November 22, 2022

It was examined whether the decision by an economic-administrative body setting aside the challenged tax related acts, while ordering a reversion of proceedings, is subject to an application for judicial review, if this reversion was not requested either directly or on a secondary basis by the claimant.

The Supreme Court concluded that in this case it cannot be considered that the taxpayer's demands were fully upheld, because, although the challenged administrative acts were set aside, a reversion of proceedings was ordered and this had not been requested. Therefore, the taxpayer's right to bring judicial review proceedings directly without waiting for new administrative acts to be issued cannot be denied.

A decision declaring the application for judicial review not admissible in these cases breaches the articles on standing to challenge (article 19.1) and existence of administrative acts that can be challenged (article 25.1) in the Judicial Review Jurisdiction Law, and the right of an effective remedy (article 24.1 of the Spanish Constitution).

The court clarified, in any event, that, to dispute any new assessments and penalties that may be issued in enforcement of a decision by the economic-administrative tribunal partially upholding a claim, instead of an appeal for reconsideration or an economic-administrative claim, an appeal against enforcement has to be filed, which cannot be founded on the demands or submissions submitted in the claim and already rejected by the decision being enforced.

2. Decisions

2.1 Form 720- Enforcement procedure. – Following the CJEU's judgment setting aside the information return on assets abroad, penalties should not be imposed in enforcement of decisions partially upholding claims

Catalan Regional Economic-Administrative Tribunal. Decision of September 15, 2022

The tax authorities issued an assessment (recognizing an unjustified capital gain) along with a penalty decision on a taxpayer on account of the late filing of Form 720 on assets and rights abroad. The assessment and penalty decision contained other adjustments. After a claim was filed, the economic-administrative tribunal issued a decision partially upholding that claim, in which the taxpayer's submissions in relation to the consequences arising from breaches relating to Form 720 were not accepted, whereas the submissions relating to other adjustments were. The decision became final because it was not appealed.

As a result of enforcement of the decision, the taxpayer filed an appeal raising substantive grounds against recognition of the unjustified capital gain and the penalty arising from recognition of this gain, on the basis of the CJEU judgment dated January 27, 2022 which concluded that that Form 720 is precluded by EU law (alert dated January 27, 2022).

The Catalan TEAR concluded that, under article 241ter.1 of the General Taxation Law (LGT), substantive grounds cannot be submitted in the appeal against enforcement of a decision, because they should have been raised in the ordinary challenge proceeding. It restricted this conclusion, however, to the submissions relating to the assessment (recognition of the gain) not to the penalty, because the original penalty never became enforceable on account of the economic-administrative tribunal's decision only partially upholding the claim. In such a case, a new penalty cannot be imposed because, following the CJEU's judgment, the defined infringement has disappeared.

2.2 Corporate income tax. - Neither a declaration of insolvency or declaration of the debtor being in default are equal to judicially declared insolvency for the purpose of deducting impairment losses

Central Economic-Administrative Tribunal. Decision of October 24, 2022

Tax auditors rejected the right to deduct impairment losses recorded by an entity because they were debts between related parties and there had not been a judicially declared insolvency. To dispute their adjustment, the interested party produced a decision ordering a necessary insolvency proceeding on the debtor and alleged that it had ceased to be director of the investee in the examined fiscal years, so its related-party status resulting from its investment in the debtor was purely formal.

TEAC confirmed the authorities' principle and pronounced on each of these issues in the following terms:

(i) A declaration of insolvency on a related company cannot in and of itself be considered a judicially declared insolvency, because that declaration only brings to light that the debtor is in a state of insolvency, not whether this state is provisional or definitive. Nor does a declaration that the debtor is in default imply an absolute insolvency, instead only the absence of sufficient known assets for payment of the debts.

(ii) The law does require shareholders to have decision-making power over an entity to be considered related parties, instead only to have a certain ownership percentage.

2.3 Personal income tax. - Amounts of income received as result of a court judgment must be recognized in the period when the judgment becomes final, even if the appeal does not relate to right to collect them

Central Economic-Administrative Tribunal. Decision of November 24, 2022

A taxpayer made to take mandatory retirement in 2015 appealed against the decision until obtaining a favorable judgment in 2018. In enforcement of the judgment, the taxpayer received the amounts of income that would have been earned in the intervening years. These amounts of income were recognized by the taxpayer on a personal income tax return (by filing correction returns) for each of the fiscal years between 2015 and 2018 in which the amounts of income were originally payable.

TEAC, however, confirmed the auditors' principle and concluded that the amounts of income should have been recognized in full in 2018, under the timing of recognition rule in the Personal Income Tax Law, according to which any amounts of income awaiting a judgment must be recognized when that judgment is final. According to the tribunal, this rule is applicable where there is a pending lawsuit and the result of that lawsuit will determine the

right to receive the income concerned, even if that right is not in dispute in the proceeding, as occurred in the examined case.

2.4 Personal income tax. Exemption for work performed abroad is not applicable to trips for training reasons

Catalan Regional Economic-Administrative Tribunal. **Decision of October 13, 2022**

The exemption for work performed abroad is subject to a number of requirements, including that the work must be performed "for" or "to benefit" a nonresident company or permanent establishment located in another country.

The Catalan TEAR has denied application of the exemption in respect of a few workers who traveled to attend a training program for national experts in professional training organized by the European Commission, because they were sent for training purposes not to actually perform work abroad. In other words, according to the tribunal, this assignment was not made to benefit a nonresident entity.

2.5 Personal income tax. – Regional tribunals now accepting that exemption for work performed abroad may benefit directors' compensation for executive functions

Balearic Islands Regional Economic-Administrative Tribunal. **Decision of September 28, 2022**

The tax authorities have been denying that directors may benefit from the exemption for work performed abroad. However, the Supreme Court concluded, in a judgment delivered on June 20, 2022 (June 2022 Newsletter), that directors are indeed entitled to the exemption in respect of compensation for executive functions; as the Supreme Court has again confirmed in a recent judgment on December 13, 2022 (cassation appeal 707/2021).

The Balearic Islands TEAR has now applied this case law and allowed the exemption in a case where this requirement was fulfilled (in addition to the other requirements for the exemption).

2.6 Personal income tax. – Application of abatement multipliers to determine capital gain is a right not an option

Catalan Regional Economic-Administrative Tribunal. **Decision of September 15, 2022**

Transitional provision 9 of the Personal Income Tax Law defines a set of abatement multipliers applied to reduce the capital gains arising on transfers of assets not used in economic activities which were acquired before December 31, 1994.

A taxpayer forgot to apply those multipliers, and, on realizing their error, applied for correction of their self-assessment. The tax authorities rejected the application because, in their opinion, application of those multipliers is an option (which therefore must be elected in the voluntary period). The Catalan TEAR, by contrast, held that the provision defines a right rather than an option, and determines how to calculate the amounts of capital gains.

2.7 Personal income tax. - Tax management bodies cannot examine income from pass-through entity

Valencian Regional Economic-Administrative Tribunal. **Decision of June 14, 2022**

In a limited review, a tax management body examined the recognition of amounts of income from a pass-through entity.

On the basis of the supreme court decision dated March 23, 2021 (May 2021 Newsletter), the Valencian TEAR concluded that the assessment obtained in that procedure was null and void, because tax management bodies cannot examine special regimes (including the attribution of income under the Personal Income Tax Law). This prohibition affects both an examination of the application of special regimes and any fact, item of data or circumstance arising from those regimes.

2.8 Inheritance and gift tax. - The 99% reduction cannot be applied to excess distribution arising from termination of joint-property entity following divorce

Madrid Regional Economic-Administrative Tribunal. **Decision of September 30, 2022**

After two taxpayers divorced, all the assets of the joint-property entity were distributed to one of them, and no compensation was received by the other. In their gift tax self-assessment, the spouse that received the assets applied the 99% reduction allowed by the Madrid autonomous community government for gifts between spouses.

The Madrid TEAR considered that this reduction could not be applied, because when the gift was made the taxpayers were already divorced and therefore cannot be considered spouses for the purposes of that reduction.

2.9 VAT. – Application of reverse charge mechanism examined in relation to supplies of real estate assets subject to mortgages

Central Economic-Administrative Tribunal. **Decision of September 20, 2022**

An entity bought various real estate assets subject to mortgages, paying the seller the agreed price and the amounts needed to cancel the charge. The seller charged VAT on the transfer of the assets. The tax authorities considered that the VAT was not deductible because, in their opinion, the taxable person in these transactions is the buyer of the properties (article 84.One.2, letter e), third indent of the VAT Law).

TEAC concluded (from the standpoint of EU law) that in these cases the reverse charge mechanism does not apply, because it is neither a transfer of a real estate asset to the creditor for the debt, in exchange for extinguishment of the debt (dation in payment), nor does it require the buyer to accept or extinguish the mortgage, because the real estate assets are acquired free and clear of charges.

2.10 Administrative procedure. - Proof can be produced in an economic-administrative proceeding, if there is no bad faith or abuse of the law

Balearic Islands Regional Economic-Administrative Tribunal. Decision of October 25, 2022

In defense of its interests, a taxpayer produced an item of proof in the review phase. This item of proof had not been produced in the audit, because it could not be obtained at that point due to circumstances beyond the taxpayer's control.

The Balearic Islands TEAR allowed (on the basis of the Supreme Court's case law) items of proof to be produced in the review phase, provided that the limits of good faith and the prohibition of abuse of the law are observed. In any event, it clarified that the produced proof must materially substantiate the taxpayer's claim, meaning that the tribunal should not have to carry out any investigative work, which is a task allocated to the tax management or audit bodies.

2.11 Administrative procedure. – If a decision delivered in an economic and administrative proceeding is consistent with the appellant's claims, there is no breach of prohibition of *reformatio in peius*

Central Economic-Administrative Tribunal. Decision of November 24, 2022

In two decisions partially upholding claims (relating to personal income tax and corporate income tax) TEAC concluded that the tax authorities had made a mistake when calculating the corporate expenses to be counted to determine the market value of a controlled transaction. To implement TEAC's ruling, an assessment was issued resulting in an underpayment and simultaneously a greater refund of personal income tax was assessed. The interested party challenged enforcement of the decision with respect to corporate income tax, due to considering that it was contrary to the prohibition of *reformatio in peius*.

TEAC concluded that this prohibition was not breached because the decision delivered in the economic-administrative proceeding, and enforced by the tax authorities, is fully compatible with the interested party's demands and therefore all the legal consequences arising from the partial upholding of the submitted claim have to be accepted.

2.12 Enforcement procedure. – Enforcement outside the time limit of an economic-administrative decision partially upholding a claim on substantive grounds does not cause expiry; it simply stops interest being computed

Central Economic-Administrative Tribunal. Decision of October 20, 2022

TEAC has changed its principle on the basis of the supreme court judgment of September 27, 2022 (October 2022 Newsletter) and concluded that the enforcement time period for economic-administrative decisions setting aside an assessment on substantive grounds is one month, running from the date the decision is entered on AEAT's register (including the register of the Office for Court Relations).

It added however that the consequence of a breach of that time period is not expiry of the proceeding (as the taxpayer had requested), instead only that late payment interest payable to the tax authorities will stop being charged from the point when the time period was breached.

2.13 Collection procedure. - Time period for action to collect ordinary and subordinate pre-insolvency order claims starts to run when judgment concluding the insolvency proceeding becomes final

Central Economic-Administrative Tribunal. Decision of November 16, 2022

The tribunal examined the statute of limitations for the tax authorities' right to demand payment of ordinary or subordinate pre-insolvency order debts, which were not recognized, namely, not included on the final list of creditors.

TEAC affirmed that, in these cases, both if the time period for payment in the voluntary period has not started (as occurred in the examined case), and if it has started, but has not ended on the date of the insolvency order, the statute of limitations will start to run on the date when payment of those claims may be sought, in other words, when the court judgment concluding the insolvency proceeding as a result of performance of the arrangement with creditors becomes final. For that reason, a claim cannot be held to be statute-barred if more than four years have not run between when conclusion of the proceeding is judicially declared and the date when the order initiating enforced collection proceedings is notified.

However, if when the insolvency order was issued, the enforcement period for payment of the claims had already started, the statute of limitations for collection action will restart also when the court judgment concluding the insolvency proceeding as a result of performance of the arrangement with creditors becomes final.

3. Resolutions

3.1 Corporate income tax. – A line of business exists even when a few of the properties used for leasing are being reformed at the time of a spin-off

Directorate General of Taxes. Resolution V2292-22 of October 31, 2022

A company engaging in property leasing activities and agricultural farm business activities intends to carry out a partial spin-off to separate both activities.

For the tax neutrality regime to apply to a partial spin-off, the transferred assets must be considered a line of business at the transferring company and, after the spin-off, the transferring company must keep at least one other line of business.

The DGT concluded that the fact of a complete reform being carried out at one of the properties used in the property leasing activity does not prevent it being considered that a line of business exists.

4. Legislation

4.1 Approval of Canary Islands Budget Law for 2023

On December 31, 2022, the Official Gazette of the Canary Islands published the Canary Islands Budget Law for 2023, which contains numerous new items of legislation, including provisions on the Canary Islands general indirect tax.

This new legislation was summarized in our Commentary dated December 31, 2022.

4.2 "RETO DE" sports program declared event of exceptional public interest

Law 39/2022 of December 30, 2022 was published in the Official State Gazette on December 31, 2022.

Among other new legislation, the "RETO DE" sports program has been declared an event of exceptional public interest for the purposes of article 27 of Law 49/2002, of December 23, 2002, on the tax regime of not-for-profit entities and on tax incentives for patronage.

The support program for this event will start on January 1, 2023 and end on December 31, 2025.

4.3 Procedural obligations implemented for tax on non-reusable plastic packaging and for tax on waste sent to landfill, incineration, and co-incineration

The following orders were approved in the Official State Gazette on December 30, 2022:

(i) Order HFP/1314/2022 of December 28, 2022, on the procedural obligations for the tax on non-reusable plastic packaging.

(ii) Order HFP/1337/2022 of December 28, 2022, on the procedural obligations for the tax on waste sent to landfill, incineration and co-incineration

In our alerts dated December 30, 2022 (on plastics, and waste) we take a look at the types of obligations that are defined in both orders.

4.4 Index-linked adjustments made to amounts of salary income below which no withholdings have to be made, and rules amended for reduction to contributions to employee welfare systems from previous years

On December 29, 2022, the Official State Gazette (BOE) published Royal Decree 1039/2022 of December 27, 2022, amending the Personal Income Tax Regulations and the General Regulations on management and audit work and procedures and implementing the common rules on procedures for the application of taxes ("Application Regulations"), as summarized below:

(i) Contributions to employee welfare systems:

The Personal Income Tax Law allows the taxable amount to be reduced for contributions made to employee welfare instruments (subject to limits which have been changed in recent years). Any amounts that cannot be used in the year the

contributions are made may be used in the following five years. For these purposes, the regulations on the tax set out that where contributions made in the year exist alongside contributions made in previous years that could not be reduced, this second type of contributions will be considered to be reduced first.

It has now been added that, after the reductions from previous years have been used, the reduction to contributions for the current year must observe the combined maximum reduction limit in force (under article 52.1 of the law on the tax); and any surplus relating to premiums for dependency group insurance policies, to contributions to employee welfare programs created for people with disabilities, and to employee welfare mutual insurance societies for professional athletes must be recognized according to their own limits.

Moreover, the Application Regulations have kept the obligation for pension fund managers to file an annual return with the tax authorities in which they have to include information on the individual investors in the plans belonging to the funds and the amounts of contributions (made directly by them, by authorized persons or by the plans' sponsors); but the same type of obligation has been introduced (for the first time) for the sponsors of the pan-European personal pension products under Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP), who will have to report individually on savers and on the amounts of contributions made by them to subaccounts opened in each PEPP account.

(ii) Tax withholdings from salary income.

(a) The amounts of salary income below which no withholding must be made, have been increased, coming into effect on January 1, 2023. The table is now as follows:

Taxpayer's status	Number of children and other descendants		
	0 - Euros	**1 - Euros**	**2 or more - Euros**
1. Single, widow, divorced or legally separated taxpayer.	-	17,270	18,617
2. Taxpayer whose spouse does not receive income higher than €1,500 per annum, excluding exempt amounts.	16,696	17,894	19,241
3. Other statuses	15,000	15,599	16,272

(b) Also coming into effect on January 1, 2023, where the total amount of salary income is not higher than €35,200 per annum (previously, €22,000), the withholding rate will be subject to a limit equal to 43% of the positive difference between that total amount and the relevant amount determined according to the foregoing table.

4.5 New charges on energy and for credit institutions and new solidarity tax on large fortunes

On December 28, 2022, the Official State Gazette (BOE) published Law 38/2022 of December 27, 2022 for the establishment of temporary charges on energy and for credit institutions and credit financial establishments, and creating the temporary solidarity tax on large fortunes, in addition to amending certain tax laws.

We summarized the tax measures in this law in our commentary dated December 28, 2022.

4.6 New measures approved to soften the economic crisis

On December 28, 2022, the Official State Gazette (BOE) published Royal Decree-Law 20/2022 of December 27, 2022, approving measures in response to the economic and social crisis and to support reconstruction of the Island of La Palma and other vulnerable situations:

(i) VAT:

(a) This royal decree-law extends until December 31, 2023 the reduced 5% rate for supplies, imports, exports and intra-Community acquisitions of natural gas and of briquettes and pellets made from biomass materials and firewood, used in heating systems. In this period, the compensatory charge applicable to supplies of those briquettes and firewood will be equal to 0.625%.

(b) Until June 30, 2023, the tax rate applicable to basic food products has been reduced (to 0% from 4%) as well as that for oils and pastas (to 5% from 10%).

(c) Elsewhere, the reduced 5% rate for certain supplies of electricity has been extended until December 31, 2023.

(d) The 4% rate for supplies, imports and intra-Community acquisitions of disposable surgical face masks has also been extended, although until June 30, 2023.

(e) Lastly, the 0% rate has been extended until June 30, 2023 for supplies, imports and intra-Community acquisitions of products for in vitro diagnostics and vaccines and for services provided in relation to the supplies, imports and intra-Community acquisitions needed to combat the effects of SARS-CoV-2, as well as for the purposes of the special compensatory charge scheme.

(ii) Excise tax on electricity: the 0.5% rate has been extended until December 31, 2023.

(iii) Tax on the value of electricity output: the temporary suspension of this tax has been extended until December 31, 2023

4.7 Revenue from the tax on waste sent to landfill, incineration and co-incineration has been devolved to various autonomous community governments

On December 28, 2022, the Official State Gazette (BOE) published a number of laws, in which revenues from the tax on waste sent to landfill, incineration and co-incineration have been devolved to the following autonomous community governments:

(i) Andalucía: Law 32/2022 of December 27, 2022.

(ii) Canary Islands: Law 33/2022 of December 27, 2022.

(iii) Catalonia: Law 34/2022 of December 27, 2022.

(iv) Valencia: Law 35/2022 of December 27, 2022

(v) Galicia: Law 36/2022 of December 27, 2022.

(vi) Balearic Islands: Law 37/2022 of December 27, 2022.

4.8 Publication of annual equivalent rate for first quarter of 2023, for the purpose of characterizing certain financial assets for tax purposes

On December 27, 2022, the Official State Gazette published the Decision of December 19, 2022, by the Office of the General Secretary for the Treasury and International Finance, which sets out the effective annual interest rate for the first quarter of 2023, for the purpose of characterizing certain financial assets for tax purposes. The rates are as follows:

- Financial assets with a term equal to or shorter than four years: 1.881 percent.
- Assets with terms higher than four years but equal to or below seven years: 2.134 percent.
- Assets with ten-year terms: 2.645 percent.
- Assets with fifteen-year terms: 2.506 percent.
- Assets with thirty-year terms: 2.852 percent.

4.9 General State Budget Law for 2023 published

The General Budget Law for 2023 (Law 31/2022 of December 23, 2022) was published in the Official State Gazette on December 24, 2022 and contains numerous tax measures.

We summarized those measures in our commentary released on the same date.

4.10 Startups Law published

The Startups Law (Law 28/2022 of December 21, 2022 promoting the ecosystem for startups) was published in the Official State Gazette on December 22, 2022. It contains a range of tax incentives for startups, their investments and workers, as well as various other measures unrelated to startups.

We summarized the tax measures in our commentary dated December 22, 2022.

4.11 The average sale prices for 2023 of certain modes of transport for the purpose of auditing values have been published

On December 20, 2022, the Official State Gazette published Order HFP/1259/2022 of December 14, 2022, approving the average sale prices to be applied in the management of transfer and stamp tax, inheritance and gift tax and the special tax on certain modes of transport.

4.12 Various tax forms and information returns modified and approved

By Order HFP/1192/2022 of December 1, 2022 (Official State Gazette -BOE- of December 3, 2022) the following information returns were amended to take effect on the 2022 returns which will be filed in 2023:

- **Form 198** (transactions in financial assets and other marketable securities).
- **Form 196** (tax withholdings from income from movable capital and other income by reason of the consideration derived from accounts at all kinds of financial institutions).
- **Form 181** (loans and credit facilities, and financial transactions related to real estate assets).
- **Form 280** (long-term savings plans).
- **Form 184 (**pass-through entities).
- **Form 289** (financial accounts in the field of mutual assistance -CRS-).

Furthermore, by Order HFP/1245/2022 of December 14, 2022 (Official State Gazette -BOE- of December 19, 2022), a change has been added to **form 309** for nonperiodical VAT returns and assessments to reflect the changes arising from the new 5% rate applicable to certain components of electricity bills (alert dated June 27, 2022) and to supplies, intra-Community acquisitions and imports of natural gas, briquettes and pellets made from biomass materials and firewood (alert dated September 21, 2022). These changes will apply in 2023 and subsequent years.

Elsewhere, by Order HFP/1246/2022 of December 14, 2022 (Official State Gazette -BOE- of December 19, 2022) **form 480** (annual summary of the tax on insurance premiums) has been approved with an extended filing period until January 31, and the order governing **form 190** (annual summary of personal income tax withholdings) has been amended; with effects for information returns relating to 2022.

Lastly, the order approving **form 140**, to apply for advanced payment of the personal income tax maternity credit has been amended by Order HFP/1336/2022 of December 28, 2022 (Official State Gazette -BOE- of December 30, 2022) . It includes the following rules:

(i) It will not be necessary to re-file applications for advanced payment for January 2023 and subsequent years if that advanced payment was applied for until December 31, 2022 and the amount for December 2022 has been received; AEAT will continue paying the related amount where the requirements laid down in the legislation in force are met on or after January 1, 2023.

(ii) Applications in 2023 may be filed at the Tax Agency's electronic office on or after January 2, 2023.

4.13 Legislation on non-business days

On December 16, 2022, the Official State Gazette published the Decision of December 1, 2022, by the Office of the Public Services Secretary, which establishes the calendar of non-business days in relation to central government public services for 2023, for the purposes of computing administrative time periods.

Furthermore, it has been written into law in Organic Law 14/2022 of December 22, 2022 that the days between December 24 and January 6 each year will be non-business days for litigation purposes. For further details on exceptions to this law, see our alert dated December 23, 2023.

4.14 Implementation of objective assessment method for personal income tax purposes and special simplified VAT scheme for 2023

On December 1, 2022, the Official State Gazette published Order HFP/1172/2022 of November 29, 2022, implementing for 2023 the objective assessment method for personal income tax purposes and the simplified special VAT scheme. The order has retained the amounts of the signs, indexes, modules, reductions and instructions that were already applicable for 2022. In relation to personal income tax, by contrast, the following changes have been introduced:

(i) Reductions:

(a) The general reduction to net income will amount to 15% in 2022 and 10% in 2023.

(b) In both periods, the prior net income figure may be lowered by 35% of the acquisition price of the agricultural diesel fuel, and by 15% of the acquisition price of the fertilizers, which are necessary to operate.

(c) Also in the two periods a 20% reduction may be applied to net income in the cases of taxpayers carrying on economic activities on the Island of La Palma.

(d) Lastly, the reduction for economic activities carried on in Lorca has been retained.

(ii) In 2023, the tax liability for amounts of direct support uncoupled from the Common Agricultural Policy in proportion to the revenues from crops or operations has been made conditional on the obtaining of minimum revenues in the activity not including the revenue from the direct support itself.

The order came into force on December 2, 2022 and is effective for 2023.

5. Miscellaneous

5.1 Spain confirms conclusion of the internal procedures for Multilateral Convention provisions to take effect

On December 20, 2022, the Official State Gazette (BOE) published the notification of conclusion of the internal procedures for the Multilateral Convention provisions to take effect in relation to the following conventions:

Convention number on the list	Other contracting jurisdiction	Date of receipt
40	Hong Kong (China).	11/30/2022
71	Senegal	11/30/2022
76	Thailand	11/30/2022

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