Tax Newsletter

Spain

GARRIGUES

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Contents

1.10 Real estate tax. – The taxable person for real estate tax purposes must be determined generally by reference to ownership of the property at the Property Registry

1.11 Tax on economic activities. – The payment obligation for the tax on economic activities is examined in cases relating to the cessation of operations and casinos

1.12 Administrative procedure. – The Spanish Tax Agency cannot arbitrarily decide when to make notifications electronically or in person

1.13 Characterization procedure. – A transaction that took place in a statute-barred year may be characterized as a sham where it has effects in non-statute barred years

1.14 Audit procedure. – The tax authorities can use their right to two shots where the first assessment has been rendered void on the ground of substantive defects

1.15 Tax collection procedure. – The balance of an account coming from another in which pensions, wages or salaries are paid is not attachable within the legal limits

1.16 Review procedure. – The time gap between notification of the economic-administrative tribunal's decision to the interested party and to the tax authorities is a delay attributable to that tribunal

1.17 Penalty procedure. – Failure to appear by the legal representative of a legal entity following a request by the auditors is subject to a penalty

1.18 Penalty procedure. – Penalties may be examined in a cassation appeal

2. Decisions

2.1 Personal income tax. – Obtaining the services of a marketplace agency to create a virtual store is an agreement

for services not an agreement to acquire amortizable rights or brands

2.2 Nonresident income tax. – Nonresidents cannot apply the reduction for residential property rental

2.3 Nonresident income tax. - The burden of proving nonresident status lies with the tax authorities where the taxpayer produces a certificate of residence for tax purposes

2.4 Nonresident income tax. - Income from property rental obtained by a nonresident investment fund must be reported by the fund itself not by the fund manager

2.5 VAT. – TEAC examines the VAT treatment of vehicles provided to employees

2.6 VAT. - The final termination of a transaction requires the customer to correct input VAT even if no correction invoice has been received

2.7 Penalty procedure. – The tax authorities have four years in which to claim the reduction for early payment of the penalty if the penalty decision is appealed

3. Resolutions

3.1 Corporate income tax. - Management of the rental activity may be outsourced to a specialized company

3.2 Personal income tax. - The loss arising from investments in Afinsa, after the insolvency proceedings had concluded, must be included in the general component of taxable income for 2023

3.3 Personal income tax. - Various doubts clarified over the limits for pension plan contributions

3.4 Personal income tax. – Any health insurance premiums continuing to be paid for workers included in a collective layoff

are exempt to the extent of the statutory limits provided for this type of compensation

3.5 Personal income tax. - Termination of the employment relationship and the start of a new relationship as director do not result in exclusion from the inbound expatriates regime

3.6 Nonresident income tax. - Gains obtained from the transfer of an interest in a German KG is taxable in Spain if its assets primarily consist of properties located in Spain

3.7 Nonresident income tax. - Income obtained by a remote worker resident in Andorra relating to in-person meetings in Spain may be taxable in Spain

3.8 Nonresident income tax. - The Swiss shareholder of a Spanish company under liquidation is not taxable in Spain on any income obtained

3.9 Inheritance tax. - Liability for tax as nonresidents arises on securities issued by nonresident entities although deposited at financial institutions located in Spain

4. Legislation

4.1 Reductions have been made to the applicable net income and general reduction indexes in the personal income tax objective assessment method

4.2 Publication of the annual equivalent rates relating to the second calendar quarter of 2024, for characterizing certain financial assets for tax purposes

5. Miscellaneous

5.1 AEAT publishes on its website the new supreme court judgments on the scope of tax management activities

1. Judgments

1.1 Corporate income tax. – A director's severance payment is not deductible if it was not documented in the bylaws or in the director's contract

Supreme Court. Judgment of April 8, 2024

The Supreme Court has confirmed that a severance payment made to a director by reason of his removal (including non-compete clauses, among other elements) is not deductible if, as occurred in the examined case, the payment was agreed *ex profeso* by the board at the time of removal. The court underlined that, if a severance clause had not been provided in the contract and, moreover, the severance did not appear in the bylaws, it must be interpreted that the company was not required to make that payment and, if it did so, it was a nondeductible gift.

1.2 Corporate income tax. – In relation to unincorporated joint ventures applying the special regime, the deduction of an expense attributed to their members may only be rejected in relation to these members

Supreme Court. Judgment of March 19, 2024

Under the special regime for unincorporated joint ventures (UTEs), these joint ventures are not liable for corporate income tax where their members are Spanish resident companies (their rights and obligations are attributed to their members in proportion to their respective percentage shares). In view of this, the Supreme Court concluded that, where that special regime is applied, it is not necessary to carry out an examination or audit process on the unincorporated joint venture if its tax base is not questioned, instead only the right to deduct certain items or expenses for any of its members, in relation to the portion of that tax base relating to that member. In these cases, the process only needs to be carried out on the member.

In other words, the deduction of an expense (in the case analyzed, of the impairment loss on the UTE's assets) can be rejected in the proceeding followed against the member, by transferring to the shareholder the corporate income tax base pursuant to the special regime for UTEs.

1.3 Personal income tax. – The Supreme Court concludes that losses cannot be computed in transfers for no consideration by *inter vivos* transactions

Supreme Court. Judgment of April 12, 2024

Under the personal income tax legislation, any transfer for no consideration (such as a gift) carries a loss or gain for the giver equal to the difference between the acquisition cost and transfer value of the gifted item. However, the law states that losses due to transfers for no consideration must not be computed as capital losses.

According to the Supreme Court, the letter of the article is clear when it states that capital losses produced by *inter vivos* transfers for no consideration must not be computed as such for personal income tax purposes. The aim of this exclusion by the law, according to the court, is to prevent taxpayers including on their returns losses arising from acts depending

solely on their discretion, and so to avoid tax evasion mechanisms. In addition, precisely due to this discretion on the part of the giver, it cannot be considered that this legal provision contravenes the ability-to-pay principle.

1.4 Personal income tax. – Per diems are exempt where they have a compensatory purpose, not where they remunerate work performed

Supreme Court. Judgment of February 15, 2024

According to the Supreme Court, in order to determine whether amounts paid by a company to its workers (called "per diems") are subject to personal income tax and withholdings, the relevant factor is to determine their true purpose. They are exempt if they are paid for the purpose of covering expenses of the worker; whereas, if they remunerate work performed, they cannot be characterized as exempt. It is therefore necessary to analyze each case in order to reach one conclusion or the other, according to the facts involved.

1.5 Personal income tax / administrative procedure. - A taxpayer's residence cannot be determined using prima facie evidence from prior years

National Appellate Court. Judgment of December 20, 2023

Tax auditors concluded that a taxpayer was resident in Barcelona not in Madrid, basing their conclusion on various items of prima facie evidence. Among other activities, visits were made to the taxpayer's homes and companies, his water and electricity consumption was examined together with the municipality where he was registered, the flights he had made were reviewed and statements were sought from witnesses, although most of these items of prima facie evidence related to the period between 2008 and 2011 instead of 2015, which was the year under review. For this reason, the National Appellate Court rejected the tax authorities' conclusion, and held that tax residence in a given year cannot be determined on the basis of prima facie evidence from prior years. The court noted also, among other factors, that it is not the auditors' job to make judgment regarding the appellant's lifestyle and his personal decisions on cohabitation with his family.

1.6 VAT. – Subsidies for funding management of the passenger interurban public transport service are not subject to VAT

Supreme Court. Judgments of March 27, 2024, number 523/2024 (Appeal 265/2023) and number 524/2024 (Appeal 1059/2023)

It was examined whether VAT is chargeable in respect of subsidies granted by public entities for funding management of the passenger interurban public transport service. The Supreme Court concluded that subsidies covering an operational deficit cannot be treated as consideration for the transport services. They are merely indemnificatory, because they serve to rebalance the harm or loss arising from providing the service, and also, no service is provided to the public entity making the contributions.

These conclusions are applicable to services provided before the new wording of article 78 of the VAT Law introduced by final provision ten of the Public Sector Contracts Law effective since November 10, 2017 (which expressly excludes monetary contributions that public authorities make to fund the management of public services in which there is not a significant distortion of competition), because this new wording is merely provided as clarification.

1.7 VAT. - Not filing form 039 or filing it late for the inclusion of new entities means the Special Scheme for the Group of Entities cannot be applied in that calendar year

National Appellate Court. Judgment of February 21, 2024

The court examined the effects of failure to file or filing form 039 for *Notification of information relating to the* Special Scheme for the Group of Entities (REGE) outside the time limit provided in the VAT Law (December preceding the start of the calendar year in which the scheme is sought to be applied).

The National Appellate Court concluded that the setting of a time limit for fulfillment of the notification obligation is not, in this case, a mere formal requirement that may be corrected, instead it is a timing requirement with its own substance, such that not making the notification or making it late means that the special scheme cannot be applied in the relevant calendar year (the year following the month of December mentioned) to the entities that were going to be included in the group.

1.8 Inheritance and gift tax. – Civil lawsuits on inheritance with an impact in determining the essential elements of inheritance tax stay the collection procedure

Supreme Court. Judgment of March 13, 2024

Article 69.4 of the Inheritance and Gift Tax Regulations states that, where a lawsuit or voluntary testamentary proceedings are brought after settlement of the estate has taken place, deferred payment of the debt may be ordered. The Supreme Court held that, in line with the purpose of this article, it may be concluded that the existence of a civil lawsuit on the inheritance (with a direct impact in determining the essential elements of inheritance tax) stays the collection procedure prompted by failure to pay the self-assessment even if it was filed before the start of the civil proceedings.

1.9 Cadastral values. - The cost/benefit multiplier is applicable in the cadastral valuation of properties built under a self-managed property development system

Supreme Court. Judgment of April 10, 2024

As discussed in our March 2021 newsletter, in a judgment dated February 25, 2021, the Supreme Court concluded that the cost/benefit multiplier (in relation to the costs and benefits of property development activities) does not have to be applied to valuations for the cadaster of properties which are subject to a transfer prohibition, due to not being built for the performance of a property development activity. In view of the interpretation in this judgment, in recent years numerous doubts have arisen over whether this multiplier might not have to be used either in valuations for the cadaster of properties which, while not having a restriction on their sale, were not built for subsequent transfer (such as, for example, in the case of properties built under the self-managed property development system).

The Supreme Court has now concluded that, for the purposes of valuations for the cadaster of properties built under the self-managed property development system, that cost/benefit multiplier cannot be omitted. According to the court, the market value of the properties taken

as reference for a valuation for the cadaster is independent from the real intention or otherwise to sell them later, and only the potential to be sold is needed. Therefore, only where there is a restriction or prohibition on transferring the property in question can it be considered that this multiplier does not apply for the purposes of its valuation for the cadaster.

1.10 Real estate tax. – The taxable person for real estate tax purposes must be determined generally by reference to ownership of the property at the Property Registry

Supreme Court. Judgment of March 21, 2024

In this judgment, the Supreme Court concluded that, for real estate tax purposes, ownership at the Property Registry prevails over ownership appearing on the cadaster, unless the date of the document giving rise to inclusion on the cadaster is later than the date of the instrument recorded at the that registry.

1.11 Tax on economic activities. – The payment obligation for the tax on economic activities is examined in cases relating to the cessation of operations and casinos

National Appellate Court. Judgments of March 4, 2024 and January 16, 2024

The taxable event for the purposes of the tax on economic activities is the "mere" conduct of any economic activity involving the organization for the taxable person's own account of means of production and human resources, or of one or the other, for the purpose of taking part in the production or distribution of goods or services, regardless of the business income actually obtained. On that basis, the National Appellate Court concluded as follows:

(a) In a judgment dated March 4, 2024 it concluded that the tax element "number of gaming tables" as related to the economic activity of "casinos" must be determined according to the "assignment" of the tables to the activity, regardless of their actual "use".

(b) In a judgment dated January 16, 2024 the court examined a case in which a cease of operations order had been issued and concluded that effective cessation cannot be interpreted to have taken place if, as in the examined case, all the employees' employment contracts had not yet been terminated, regardless of whether no business income has been generated.

1.12 Administrative procedure. – The Spanish Tax Agency cannot arbitrarily decide when to make notifications electronically or in person

National Appellate Court. Judgment of February 9, 2024

In the course of an audit process, the tax authorities notified the appellant (a legal entity) of its inclusion in the electronic notifications system. Despite this, the following notifications continued to be made on paper at the tax domicile designated by the taxpayer and, at the end of the process, the assessment decision was notified electronically, which the taxpayer did not see within the ten day period provided in the legislation (and therefore it was considered to be notified after those ten days had run).

The National Appellate Court held that, although the taxpayer is a legal entity which has to carry out its relationship with the Spanish Tax Agency (AEAT) electronically, the fact that the Spanish Tax Agency had made earlier notifications on paper in the same procedure had caused confusion and an expectation for the taxpayer that it would receive notifications in the same way. For that reason, it upheld the company's appeal, underlining the importance of the tax authorities acting in good faith and observing the principle of legitimate expectations, by taking steps to ensure actual receipt of notifications.

1.13 Characterization procedure. – A transaction that took place in a statute-barred year may be characterized as a sham where it has effects in non-statute barred years

Supreme Court. **Judgment of March 11, 2024**

In 2016 an audit was commenced in relation to a taxpayer's personal income tax in fiscal year 2014, which ended with an assessment decision in which the auditors gave a sham characterization to a loan assignment agreement executed in 1999 between the taxpayer and a company where they were director, under which they received monthly compensation.

The Supreme Court held that, in the amendment made to article 115 of the General Taxation Law (LGT) by Law 34/2015, the legislature introduced the principle that there is no statute bar for tax examination work, regardless of the date on which the characterized transaction was performed. The legal regime put in place by this reform is applicable to examination and investigation processes commenced following its entry into force and earlier processes that had not ended on that date. In short, potential doubts over the application or otherwise of the principle of no statute bar for tax examination work could arise between the entry into force of the LGT in 2003 and its reform in 2015, but not for later processes. Therefore, the auditors may recharacterize as a sham a legal transaction concluded in a year that became statute-barred in the valid term of the 1963 LGT, but has effects in non-statute barred years.

1.14 Audit procedure. – The tax authorities can use their right to two shots where the first assessment has been rendered void on the ground of substantive defects

Supreme Court. Judgments of **April 3, 2024** **and** **April 5, 2024**

The Supreme Court concluded that, after a tax assessment is rendered void on the ground of substantive defects, the tax authorities may initiate a new audit process and deliver a second assessment decision, for which the only restrictions are the statute bar and a prohibition of *reformatio in peius* (a change for the worse) and of repetition of the same error. In the new process the principle of retaining acts and procedures not affected by the ground for rendering the act void in the first process must be applied, and the necessary investigative acts may be performed to deliver a second assessment decision that is compliant with the law.

The court clarified that the new assessment is not issued to enforce a court ruling (or an economic-administrative ruling, if applicable) rendering void a tax assessment on factual grounds, because that enforcement is exhausted in the rendering void decision itself and in the expulsion of the voided act from the legal world.

For further details, see our May 7, 2024 entry in the Garrigues Tax Blog.

1.15 Tax collection procedure. – The balance of an account coming from another in which pensions, wages or salaries are paid is not attachable within the legal limits

Supreme Court. Judgment of March 15, 2024

Article 171.3 LGT states that, where wages, salaries or pensions are regularly paid into the account affected by an attachment, the limits provided in the Civil Procedure Law must be observed. The Supreme Court concluded that, if no wage, pension or salary is paid directly into a current account, but its balance comes from another account receiving any of these payments, the limits preventing attachment must be applied.

1.16 Review procedure. – The time gap between notification of the economic-administrative tribunal's decision to the interested party and to the tax authorities is a delay attributable to that tribunal

Supreme Court. Judgment of March 14, 2024

Article 150.7 of the LGT states that, where a judicial or economic-administrative decision finds procedural defects and orders reversion of procedure, the procedure must end in the period remaining from when the procedure was reverted, until the end of the maximum period for completion of audit work, or within six months, whichever is longer. This period starts to run from when the case file is received by the authority responsible for enforcement.

In the examined case, TEAC's decision was notified to the taxpayer in December 2016, whereas the tax authority received it in March 2017. According to the tax authorities, the enforcement period was six months running from this second date. If it was reckoned, however, as the taxpayer was saying, from the first date, the enforcement ultimately carried out would have been performed outside the legal time limit for audit work. The Supreme Court accepted the taxpayer's arguments, because a time gap such as that described with no reasonable justification cannot benefit the tax authorities. Finding otherwise would breach the principle of good administration and the right of anyone with tax obligations for examination and audit work to take place within the legal time limits.

1.17 Penalty procedure. – Failure to appear by the legal representative of a legal entity following a request by the auditors is subject to a penalty

Supreme Court. Judgment of April 8, 2024

In performing the duty conferred by article 142.3 of the LGT, auditors repeatedly requested the personal appearance of an entity's shareholder and director acting severally. As a result of their repeated failure to appear (and although the company's voluntary representative did appear), a penalty was imposed for "resistance, obstruction, excuses or refusal in relation to cooperating with the work of the tax authorities" (an infringement defined in article 203.1 LGT).

According to the Supreme Court (article 45.2 LGT), in the case of a legal entity the presence of the person with tax obligations requires the appearance of the person holding responsibility as the representative body, in other words, its organic or legal representative, not a voluntary representative. Therefore, a penalty may be levied for failure to appear by that organic or legal representative, without any justified reason, at the place and time specified by the auditors.

1.18 Penalty procedure. – Penalties may be examined in a cassation appeal

Supreme Court. Judgment of April 5, 2024

A penalty was levied on an individual for issuing false invoices. The penalty was confirmed by the Galician High Court. The facts and presumptions on which the tax authorities had based their decision to levy a penalty were also examined by the Criminal Court, which delivered a final judgment denying the existence of false invoices. In view of the above, the appellant lodged a cassation appeal with the Supreme Court.

The Supreme Court held that the cassation appeal is a suitable instrument for reexamining administrative penalties, since, according to the European Court of Human Rights (judgment dated June 30, 2020 in the *Saquetti Iglesias v Spain* case), in cases involving the imposition of serious administrative penalties two review instances must be ensured (as occurs with criminal penalties). In the examined case, it was evidenced that the criminal court denied the existence of false invoices, and therefore the administrative penalty had to be rendered void. Otherwise, the right to an effective remedy would not be respected.

2. Decisions

2.1 Personal income tax. – Obtaining the services of a marketplace agency to create a virtual store is an agreement for services not an agreement to acquire amortizable rights or brands

Catalan Regional Economic-Administrative Tribunal. Decision of December 18, 2023

A taxpayer obtained the services of a marketplace agency to create a virtual store and provide marketing and training services for selling products. The tax authorities held that the payments made to the agency remunerated the acquisition of an amortizable intangible asset, because the subject-matter of the contract consisted of the creation of a product and its own brand, intended to be used in the taxpayer's activities on a lasting basis. Therefore, they held that the expenses paid under that contract were not deductible.

According to the Catalan TEAR, however, the subject-matter of this type of contracts is generally to gain access to an existing virtual platform and the services inherent to it in order to make money from the products that the taxpayer will sell on the platform, without acquiring intangible assets. It therefore recognized the right to deduct the payments.

2.2 Nonresident income tax. – Nonresidents cannot apply the reduction for residential property rental

Central Economic-Administrative Tribunal. Decisions of March 20, 2024 (800/2021) and (1093/2021)

According to TEAC, the tax on income from residential property rental which is not carried on as an economic activity depends on the tax residence of the taxable person: (i) if they are resident in the European Union (EU), the expenses set out in the Nonresident Income Tax Law may be deducted, but the reductions provided in that law will not be applicable, including those relating to residential property rental, and the tax rate is 19%; (ii) if they are outside the EU, no expenses may be deducted or reductions applied, and the tax rate is 24%.

TEAC affirmed that this treatment is not discriminatory to nonresidents, until the Supreme Court or the Court of Justice of the European Union conclude otherwise. In relation to the reduction for residential rental, it found that the European Commission has sent a formal notice to Spain for Spain to allow the reductions to be applicable to nonresidents, although it stated that the procedure is ongoing.

2.3 Nonresident income tax. - The burden of proving nonresident status lies with the tax authorities where the taxpayer produces a certificate of residence for tax purposes

Central Economic-Administrative Tribunal **Decision of December 18, 2023**

A taxpayer requested a refund of withholdings made from income from personal work paid by his employer, based on his non-Spanish resident status. The tax authorities asked the taxpayer to provide a certificate of residence issued by the tax authorities in the country where he said he was resident. Because that certificate had not been filed, they rejected his refund application.

TEAC recalled that the filing of a certificate of tax residence in another country is not incompatible with tax residence in Spain. However, if the interested party files a certificate of tax residence in a foreign country, the tax authorities will have to prove his Spanish tax resident status. Otherwise, if no such certificate is filed (as occurred in the examined case), the taxpayer has to evidence his residence in that third state and his non-Spanish resident status using other means of proof.

2.4 Nonresident income tax. - Income from property rental obtained by a nonresident investment fund must be reported by the fund itself not by the fund manager

Central Economic-Administrative Tribunal. **Decision of December 18, 2023**

A German real estate investment fund filed nonresident income tax self-assessments (forms 210) to report income obtained from the rental of properties in Spain, showing an overpayment of tax. Because the fund did not have a legal personality, the activity was carried out by a fund manager which also appeared as owner of the properties under a requirement in German law, which differs from Spanish law (the Law on collective investment schemes states that properties belonging to a real estate investment fund must be registered in its name). The tax authorities rejected the requested refunds due to finding that those amounts of income have to be reported by the manager, not the investment fund.

TEAC referred to the interpretation determined by the Directorate General for Taxes in resolution **V2997-21** and stated that, even if the manager acts on behalf of the fund and owns the properties under the trust relationship imposed by German law, the beneficial owner of income obtained in Spain is the investment fund, and therefore it was the fund that had to report the income.

2.5 VAT. – TEAC examines the VAT treatment of vehicles provided to employees

Central Economic-Administrative Tribunal. Decision of February 20, 2024

An entity provided vehicles to its employees outside flexible compensation arrangements, and had deducted 50% of the amounts of input VAT paid on the vehicles' lease payments, without charging VAT to employees in respect of the provided vehicles. The tax authorities characterized the provision of vehicles as an onerous transaction and held that the company could deduct the full amounts of input VAT paid; although it should have charged VAT to its employees on the value of their private use of the vehicles.

In line with the recent judgment delivered on January 29, 2024 by the Supreme Court (February 2024 newsletter) and with other rulings by TEAC itself, it recalled that, to characterize the provision of vehicles to employees as services provided on an onerous basis, there must be a direct relationship between that provision and the consideration received in exchange. Additionally, the consideration must have a value that may be expressed in cash. The fact that for personal income tax purposes the provision of a vehicle creates income in kind does not necessarily mean that the transaction must be characterized as onerous for VAT purposes. Therefore, it voided the assessment because the onerous nature of the provision of vehicles had not been evidenced (the tax authorities had based the onerous nature of the provision of those vehicles only on the characterization as income in kind for personal income tax purposes).

2.6 VAT. - The final termination of a transaction requires the customer to correct input VAT even if no correction invoice has been received

Central Economic-Administrative Tribunal. Decision of February 20, 2024

TEAC confirmed that, in the event of final termination of an agreement, with the taxed transaction being rendered void, the customer must correct any deductions made in the past, even if the relevant correction invoice has not been received from the supplier.

In the examined case, the tax authorities found that the supplier of the services had issued the relevant correction invoices two years after the transaction had been terminated by the court. However, it had not been evidenced that those invoices had been sent and received by the customer, which did not correct the deduction originally made. Despite this, TEAC concluded that, regardless of whether termination of the agreement took place in a period which, at the time it was verified by the tax authorities, had already become statute-barred, the adjustment may be made in the period when the correction invoices were issued.

2.7 Penalty procedure. – The tax authorities have four years in which to claim the reduction for early payment of the penalty if the penalty decision is appealed

Central Economic-Administrative Tribunal. Decision of February 22, 2024

Following an audit, an assessment decision and a penalty decision were delivered in 2015. In the penalty decision the reduction for early payment under the LGT was applied (then 25%, now 40%). To apply this reduction, the taxpayer needs to pay the penalty within the time limit and must not lodge an appeal or claim. The company appealed against the assessment and penalty and, in 2020, the tax authorities claimed the amount of the previously applied reduction.

TEAC clarified that the claim for the reduction is not an act imposing a penalty or an act claiming a tax debt, therefore the special statute of limitations periods under the LGT are not applicable, instead, in the absence of a specific tax rule, the rule in the General Budget Law is applicable, which determines that the statute of limitations period for the finance authority's right to claim amounts owed is four years. Bearing in mind that the clock starts running on the statute of limitations on the date when the requirements for applying the reduction are breached (in this case, the day when the taxpayer appealed) and that more than four years had run since that date, the tax authorities' right to claim the reduction had become statute-barred.

3. Resolutions

3.1 Corporate income tax. - Management of the rental activity may be outsourced to a specialized company

Directorate General of Taxes. Resolution V0090-24 of February 15, 2024

A multinational group invests in properties which it uses for rental. To isolate the risks and manage and finance the properties separately, each investment is made through a separate company. One of the group companies, a Spanish resident company, chose to manage its rentals by outsourcing them to a company specialized in real estate management and therefore did not have its own employees.

The DGT recalled that, generally, it is considered that property rental is an economic activity where to organize that activity the company uses at least one individual working full time under an employment contract. However, depending on the circumstances, this requirement must be considered met even if the material and human resources needed to participate in the market are not its own but outsourced from a company outside the business group. The same conclusion was given in resolutions V3859-16, V1606-17 and V1794-17.

3.2 Personal income tax. - The loss arising from investments in Afinsa, after the insolvency proceedings had concluded, must be included in the general component of taxable income for 2023

Directorate General of Taxes. Resolution V0652-24 of April 12, 2024

The requesting party made an investment in products marketed by Afinsa, a company undergoing insolvency proceedings following an insolvency order by a judgment delivered by Madrid commercial court no 6 on June 12, 2023. According to the DGT, on conclusion of the insolvency proceedings, the taxpayer can consider that a capital loss has occurred equal to the unrecovered amount of his claim against the insolvent debtor, which may be recognized in 2023. That loss must be included in the general component of taxable income for personal income tax purposes in this period, because it does not arise from a transfer or assets.

3.3 Personal income tax. - Various doubts clarified over the limits for pension plan contributions

Directorate General of Taxes. Resolution V0238-24 of February 29, 2024

Under the personal income tax legislation, reductions in respect of pension plan contributions may be applied in determining net taxable income. The standard deduction amounts to €1,500. However, this reduction may be increased as follows, according to clarifications given by the DGT:

(a) Workers: the standard limit may be raised by €8,500 if there are employer contributions; or employee contributions to the same employee welfare instrument in an amount equal to or below certain sums calculated by applying a multiplier to the employer's contribution. This multiplier must be 1 where the worker obtains, in the year, gross earned income above €60,000 paid by the company making the contribution.

The term "gross earned income" determining application of a multiplier amounting to 1 includes all amounts of income determined in article 17.1 of the Personal Income Tax Law, in other words, all monetary or in-kind earnings or benefits obtained, directly or indirectly, from personal work or from an employment or public employee statute-based relationship, and which cannot be classed as income from economic activities. The DGT clarified that, if in a year, contributions have been made for the same worker by more than one employer, the calculation must be made by each employer making contributions individually.

(b) Individual employers or professional practitioners who are sponsors and participants in an occupational pension plan: the standard limit for the employer or professional practitioner may be increased by €4,500 (not by €8,500).

(c) Workers who are both employees and self-employed individuals at the same time and make contributions to an occupational pension plan and to a simplified pension plan for self-employed individuals: in this case, the following distinction is needed:

(i) If there are employer contributions, the standard limit may be increased by €8,500 for those employer contributions or for the worker's contributions to the same employee welfare plan in an amount equal to or below the sums set out in the Personal Income Tax Law by reference to the annual amount of the employer contribution. The €4,250 increase may also be applied to any contributions the worker makes to the simplified pension plan for self-employed individuals. However, the maximum reduction allowed as a result of applying these increases is €8,500 in a year.

(ii) If there were no employer contributions, the applicable maximum increase is €4,250 for the worker's contributions to the simplified pension plan for self-employed individuals.

(d) Individual employers who are sponsors of an occupational pension plan to which contributions are made and who also make contributions to a simplified pension plan for self-employed individuals: the standard limit may only be increased by €4,250 for contributions made jointly to the occupational pension plan in which the employer is sponsor and participant and to the pension plan for self-employed individuals.

3.4 Personal income tax. – Any health insurance premiums continuing to be paid for workers included in a collective layoff are exempt to the extent of the statutory limits provided for this type of compensation

Directorate General of Taxes. Resolution V0063-24 of February 15, 2024

The requesting party had his employment relationship with a company terminated in a collective layoff. In the layoff agreement the entity agreed to pay for a health insurance policy for its workers.

Starting out from the premise that the entity is the policyholder, the premiums for the laid off employee, his spouse and/or offspring are exempt to the extent of the limit set out in the Personal Income Tax Law for every worker (€500 in a year for each of the individuals mentioned and €1,500 for each of those individuals with a disability). Any excess over those amounts is treated as earned income in kind for the employee, must be reported at the cost for the company, and neither the relief provided for severance or the reduction for multiyear income are applicable to that income.

3.5 Personal income tax. - Termination of the employment relationship and the start of a new relationship as director do not result in exclusion from the inbound expatriates regime

Directorate General of Taxes. Resolution V0009-24 of February 12, 2024

A taxpayer who initiated an employment relationship with a Spanish company elected the special regime for workers assigned to Spain. After setting up a limited liability company in which he held an 80% ownership interest, he decided to resign from the company where he worked, and become director of his new company. For his director services he received fixed compensation plus a bonus.

The DGT reiterated the interpretation expressed in earlier resolutions (V0432-17 and V1739-17) and confirmed that resignation from a previous employment relationship (the relationship that was the reason for the requesting party moving to Spain and electing the special regime for inbound expatriates) does not mean that the taxpayer forfeits the right to apply that special regime if, as occurs in this case, after a short period the taxpayer started a new relationship as director of a Spanish company, as long as the other requirements for the regime continue to be met.

Those requirements may not be met, however, if non-director services are provided to the company, giving rise to income from economic activities being obtained through a permanent establishment in Spain.

3.6 Nonresident income tax. - Gains obtained from the transfer of an interest in a German KG is taxable in Spain if its assets primarily consist of properties located in Spain

Directorate General of Taxes. Resolution V0383-24 of March 12, 2024

The requesting individuals are German resident spouses, the only partners in equal shares of a German resident *Kommanditgesellschaft* (KG). The KG owns a property located in Spain, which is its only asset. The requesting individuals intend to transfer their interests in the KG to a German resident family foundation not having a charitable purpose.

The DGT noted the following:

(a) KG's do not have a separate legal personality from that of their partners, are taxed under the pass-through regime, and income attributed to the partners retains, under the German legislation, the nature of the activity or source from which it comes. Therefore, they must be treated in the same way as Spanish pass-through entities.

(b) The Germany-Spain tax treaty contains a shared taxation system with no limit for capital gains obtained from the transfer of interests in a KG whose assets primarily consist of properties located in another contracting state.

(c) Consequently, the gains obtained from the sale of interests in the KG, whose only asset is a property located in Spain is taxable in Spain under Spanish domestic law.

3.7 Nonresident income tax. - Income obtained by a remote worker resident in Andorra relating to in-person meetings in Spain may be taxable in Spain

Directorate General of Taxes. Resolution V0162-24 of February 19, 2024

An individual relocated to Andorra with their family. They provide services to a Spanish company under a remote work arrangement, except for certain meetings which they have to attend in person at the company's offices located in Spain. The DGT confirmed that, under the Andorra-Spain tax treaty and Spanish domestic legislation, amounts of income obtained by a worker resident in Andorra could be subject to nonresident income tax in Spain, if the work is performed physically in Spain.

3.8 Nonresident income tax. - The Swiss shareholder of a Spanish company under liquidation is not taxable in Spain on any income obtained

Directorate General of Taxes. Resolution V0159-24 of February 19, 2024

As a result of the winding up and liquidation of a Spanish company, which only had cash in its assets, a Swiss resident shareholder will obtain income equal to the difference between acquisition cost and the value of the company’s liquidation dividend. According to the DGT, this income must be characterized as a capital gain. Because there is no real estate among the Spanish company's assets, this capital gain is not taxable in Spain, instead only in Switzerland, under the tax treaty between the two countries.

3.9 Inheritance tax. - Liability for tax as nonresidents arises on securities issued by nonresident entities although deposited at financial institutions located in Spain

Directorate General of Taxes. Resolution V0323-24 of March 5, 2024

A nonresident individual is the heir of another nonresident individual. On his death, this second individual had investment securities in nonresident entities managed by a Spanish financial institution under custody and administration agreements for financial instruments.

The DGT concluded that the heir is taxable for inheritance and gift tax purposes as a nonresident taxpayer, including on both the securities and shares issued by entities or establishments located in Spain (because they may be exercised or fulfilled in Spain), and also on any issued by nonresident entities which are deposited at offices of banks or other financial institutions located in Spain (due to being located there).

4. Legislation

4.1 Reductions have been made to the applicable net income and general reduction indexes in the personal income tax objective assessment method

Order HAC/348/2024 of April 17, 2024, published in the Official State Gazette on April 19, 2024, contains amendments for 2023 to the applicable net income and general reduction indexes in the personal income tax objective assessment method for agricultural and livestock activities affected by various exceptional circumstances (Annex I to the order contains the applicable reductions classified by autonomous community, province and activity).

4.2 Publication of the annual equivalent rates relating to the second calendar quarter of 2024, for characterizing certain financial assets for tax purposes

Published in the Official State Gazette (BOE) on April 13, 2024, the Decision of April 12, 2024 by the Office of the General Secretary for the Treasury and International Finance sets out the effective annual interest rate relating to the second calendar quarter of 2024, for characterizing certain financial assets for tax purposes.

The rates are as follows:

- Financial assets with a term equal to or shorter than four years: 2.317 percent.
- Assets with terms higher than four, but equal to or shorter than seven years: 2.286 percent.
- Assets with ten-year terms: 2.530 percent.
- Assets with fifteen-year terms: 2.904 percent.
- Assets with thirty-year terms: 2.954 percent.

In all other cases, the reference rate for the period closest to the period when the issuance is made will be applicable.

5. Miscellaneous

5.1 AEAT publishes on its website the new supreme court judgments on the scope of tax management activities

Royal Decree-Law 13/2022 of July 26, 2022 amended article 117.1.c) LGT to include among tax management functions the examination of special regimes (July-August 2022 newsletter), coming into effect on January 1, 2023. By reason of the publication of two supreme court judgments, on April 29, 2024, AEAT published on its website a notice summarizing these judgments which "complete the legal rules on this subject". The judgments concerned are dated February 5 and March 21, 2024 (appeals 6559/2022 and 373/2023), relating to periods prior to 2023, which AEAT summarizes in its notice:

(a) In the first it is concluded that, in a limited review process in which a restriction for applying the objective assessment regime for personal income tax purposes is identified (from the information held by the tax authorities and without examining the accounting records), the relevant assessment made by applying the objective assessment method may be issued, because this case does not involve a special regime.

(b) In the second, a case is examined in which an entity argued it was impossible to examine tax benefits or incentives in a tax management process, on the basis of the Supreme Court's case law issued in 2021 and in which these functions are set out in article 141 LGT, relating to audit processes. The court dismissed the appeal and noted that the recognition and examination of tax incentives and benefits had already been recognized among the functions of tax management bodies before that real decree-law.

According to AEAT, these judgments help clarify the joint interpretation of article 117 and article 141 LGT. Namely, the Supreme Court tells us that the provisions in both articles must be interpreted strictly; and that if a function is set out in both articles, this indicates that management and audit functions are compatible for performing that function.

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