2019
December

TAX
NEWSLETTER

GARRIGUES

Latest developments and legal trends - Legislation of interest

Resolution Requests - Decisions - Judgments

CONTENTS

2.6 Administrative procedure.- Liability arising from transfers of undertakings is not joint and several if it can be inferred from contractual documents that the tax debt must be assigned to specific assets attributed to a single entity

2.7 Transfer and stamp tax.- Sale of gold by private parties to business owners is subject to transfer tax

2.8 Tax procedures.- The data verification procedure is null and void where a limited audit is required

2.9 Penalty procedure.- When a penalty is voided for substantive reasons and the decision has become final, the enforcement period is one month

2.10 Enforcement procedure.- The tax authorities have to provide proof of the date when they receive the decisions they are required to enforce

3. Decisions

3.1 Corporate income tax.- Even though the existence of a valid economic reason has been accepted for several successive interrelated restructuring transactions, the absence of that reason may be found in one of them

3.2 Corporate income tax.- Penalty regime for breach of reporting obligations for controlled transactions cannot be applied to transactions before the regulations implementing these obligations

3.3 VAT.- Exclusivity clause in the distribution of insurance is a supply of services subject to and not exempt from VAT

3.4 Limited audit procedure.- For the purposes of a limited audit a general request for all movements in the taxpayer's bank account is not valid

3.5 Audit procedure.- Taxpayer's failure to appear in the procedure does not justify attributing a delay to the taxpayer for the whole period of nonappearance

3.6 Collection procedure.- TEAC looks at joint and several liability for concealing or transferring the principal debtor's property or rights

3.7 Collection procedure.- An order initiating enforced collection proceedings rendered and notified before the decision on the request for a stay is unjustified

4. Resolution requests

4.1 Corporate income tax.- Two part-time employees do not count as one full-time employee

4.2 Corporate income tax.- Logistics buildings are depreciated according to the percentage determined for warehouses

4.3 Corporate income tax.- The provision for maintenance expenses is deductible if it is recorded correctly

4.4 Personal income tax.- Rules on exit tax for change of residence to another EU state also apply for Switzerland

4.5 Personal income tax.- Dividends must be attributed to each shareholder according to their ownership interest, regardless of private arrangements among them

4.6 Tax on increase in urban land value.- Local councils may approve a reduction of up to 60% of the taxable amount only where the cadastral value is affected by a collective general appraisal procedure

5. Legislation

5.1 VAT form 318 approved

5.2 Amendments to form 390: VAT annual summary, and the Order determining its filing procedure

5.3 Approval of forms for providing proof of tax residence of foreign pension funds and collective investment vehicles

5.4 New tax stamp formats for bottles or other receptacles for alcoholic beverages

5.5 The average sale prices for 2020 of certain modes of transport for the purpose of auditing values have been published

5.6 Various orders relating to information returns have been amended

5.7 Approval of forms for registration at the commercial registry of individuals providing services to companies and trusts

5.8 Wealth tax renewed for 2020 and other tax measures

5.9 Publication of the annual equivalent rate for the first calendar quarter of 2020, for the purpose of characterizing certain financial assets from a tax standpoint

5.10 The 2020 non-business day calendar for central government public services has been published

5.11 Objective assessment method for personal income tax purposes and simplified VAT rules for 2020

1. Accelerated amortization for intangible assets with indefinite useful lives is allowed in the regime for companies of a reduced size

The Directorate General for Taxes (DGT) has concluded that the accelerated amortization system may be used in the regime for companies of a reduced size, though only for goodwill and for intangibles with useful lives that cannot be reliably estimated.

The special regime for companies of a reduced size allows a number of tax incentives. Among others, article 103.5 of the Corporate Income Tax Law (LIS) states that the intangible assets referred to in article 13.3 of the law (acquired when the requirements for claiming that special regime are satisfied) may be amortized at 150 percent of the amount determined according to that article.

That article 13.3 is no longer valid, however, following the amendments introduced in the Corporate Income Tax Law (LIS) by Law 22/2015 of July 20, 2015 which gave new accounting treatment to intangible assets. Before Law 22/2015 was in force, the accounting and tax treatment for intangible assets was as follows:

(a) Intangible assets with definite useful lives were amortized for accounting purpose over their useful lives. From a tax standpoint, any amortization expense so recorded was tax deductible (article 12.2 LIS).

(b) Intangible assets with indefinite useful lives (including goodwill) were not amortized for accounting purposes. According to the then current wording of article 13.3 of the LIS, however, 5% of their cost could be deducted each year without having to be recognized for accounting purposes.

Following Law 22/2015 all intangible assets are considered to have useful lives, although in some cases they cannot be reliably estimated. Following this amendment, the Corporate Income Tax Law (article 12.2) states that intangible assets are amortized over their useful lives; and if their useful lives cannot be reliably estimated, their amortization expense for accounting purposes is deductible up to an annual limit of 5% of their cost. Goodwill is also allowed to be amortized within this same limit.

In other words, the amortization system for intangible assets is now contained in article 12.2, whereas before Law 22/2005 the system in article 12.2 had to be used for intangible assets with definite useful lives and the one in article 13.3 for intangible assets with indefinite useful lives, including goodwill. Now that article 12 is used for both systems the provision in article 103.5 relating to accelerated amortization in the regime for companies of a reduced size has become invalid.

In view of this change to the law, the DGT (in resolution V3057-19 of October 30, 2019) concluded that accelerated amortization may be used in the regime for companies of a reduced size, though only for goodwill and for intangible assets where their useful lives cannot be reliably estimated.

This interpretation surprisingly means that a more unfavorable system has been kept for intangible assets where their useful lives can be reliably estimated compared with other intangible assets, for which the regime for companies of a reduced size also allows accelerated amortization (in article 103.1 LIS).

2. Judgments

2.1 Corporate income tax.- Accelerated amortization is an option and cannot be claimed if not elected in the tax return

National Appellate Court. Judgment of September 20, 2019

In this judgment the National Appellate Court discussed whether or not the benefit of accelerated amortization for companies of a reduced size is a tax option.

It came to the conclusion that for reasons of legal certainty, claiming this benefit is a tax option. Therefore, if it is not elected in the self-assessment return to be filed in the voluntary period, this benefit cannot be elected after that period has ended.

2.2 Corporate income tax.- The 'relationship theory' (*teoría del vínculo*) does not apply where, although an employment relationship coexists with a contract for services, the characteristics of working for another and dependency defining an ordinary employment relationship are present

Madrid High Court. Judgment of July 11, 2019

In a tax audit, the tax authorities took the view that the deduction in respect of personnel expenses of amounts paid to a worker with a senior management contract who was simultaneously chief executive officer was unjustified, under the "relationship theory" which states that in these cases the contract for services absorbs the employment relationship.

Against this, the court concluded that the "relationship theory" does not automatically apply, because it has to be examined whether the worker actually carries out the tasks of a director.

In the examined case, the worker was director of a sole-shareholder company and its only shareholder was another group company. Moreover, the worker reported to the chairperson of the company who reported to the parent company's board of directors. It was also determined that the worker had very limited functions and no real decision-making power.

This shows, according to the court, that in this case the characteristics of dependency and working for another defining a worker with an ordinary employment relationship were present. Therefore, the "relationship theory" does not apply here and deduction of the personnel expense cannot be denied.

2.3 Corporate income tax.- Tax neutrality regime cannot be denied by reason of a breach of procedural requirements alone

National Appellate Court. Judgment of June 10, 2019

Following a merger for which the tax neutrality regime had been claimed, it was determined that the regime had not been expressly elected in either the merger plan, or the other transaction documents. The relevant notification to the tax authorities of the intention to elect this regime had not been made either. The examined merger was performed when the Revised Corporate Income Tax Law was in force (before periods that commenced in 2015), in which these two requirements had to be met to claim the tax neutrality regime.

The National Appellate Court held that the regime could not be denied in the examined case because, in its opinion, the regime could not be made subject to procedural requirements; ruling otherwise, said the court, would run counter to European directives. This does not mean that a penalty cannot be imposed for failure to meet procedural requirements.

2.4 Tax on increase in urban land value.- Supreme Court confirms option to apply for damages to the legislating state in relation to the tax on increase of urban land value

Supreme Court. Judgment of November 21, 2019

The Supreme Court confirmed in this judgment the option to claim financial liability from the legislating state as a mechanism for recovering amounts incorrectly paid in respect of the tax on increase in urban land value, if the necessary requirements for initiating this procedure are met.

It had suggested this in its earlier judgment rendered on October 3, 2019 (discussed in our November 2019 Tax Newsletter), but it did not uphold the lodged appeal then because it considered that the absence of an increase in value of the land had not been evidenced; whereas in this case it had.

2.5 Real estate tax.- The concession holder for a parking lot is not the taxable person for real estate tax purposes if it has licensed its use to third parties

National Appellate Court. Judgment of October 29, 2019

The holder of an administrative concession for a building is the cadastral holder in relation to the building, which makes them the taxable person for real estate tax purposes.

The National Appellate Court reviewed the case of a company that held an administrative concession for a parking lot, but had licensed the right to use the parking spaces to a group of users. The court concluded that, since the parking spaces under the concession qualify as inalienable property in the public domain (*bien demanial*), the fact of having licensed the right to use them to third parties means that the entity can no longer be considered the cadastral holder of the parking lot, or therefore, taxable person for real estate purposes.

2.6 Administrative procedure.- Liability arising from transfers of undertakings is not joint and several if it can be inferred from contractual documents that the tax debt must be assigned to specific assets attributed to a single entity

National Appellate Court. Judgment of October 23, 2019

The National Appellate Court examined a spin-off by a company involving the transfer of all its assets and liabilities to two companies. One of the companies received a real estate asset, whereas the other assets and liabilities of the company performing the spin-off were allocated to the other company.

Following an audit on the company performing the spin-off, it was concluded that the spin-off could not benefit from the tax neutrality regime, and therefore tax was claimed from the company performing the spin-off in respect of the implicit gains in the transferred assets. After the relevant assessment had been issued, liability for the whole debt shifted (as a result of a transfer of undertakings) to one of the beneficiary companies of the spin-off. The debt was for a higher amount than the net value of the assets received by that company in the spin-off. The tax auditors argued that the rule determines joint and several liability, which was validation for the shift of liability being done in that way.

Against this, the National Appellate Court concluded as follows:

(a) There cannot be joint and several liability where the spin-off plan clearly identifies which company actually holds the tax debt for which liability has shifted, as occurred in this case.

(b) The tax auditors should have made two assessments for shifted liability: one for the gain generated in respect of assignment of the building to one of the beneficiary companies and another for the gain on the other assets, allocated to the second company. Accordingly, each transferee is liable for the tax debt relating to them according to the assets received in the spin-off.

2.7 Transfer and stamp tax.- Sale of gold by private parties to business owners is subject to transfer tax

Supreme Court. Judgment of December 11, 2019

It was examined whether a transfer of gold by private parties to business owners was subject to VAT or transfer tax as a transfer for consideration.

The Supreme Court revised its case law on this subject and concluded that where the transferor is a private party the transfer is subject to transfer tax as a transfer for consideration. According to the court, transactions of this type must be examined from the transferor's standpoint and the transfer and stamp tax legislation only lifts this tax charge where the transferor is a business owner or where the transfer is subject to VAT. This conclusion remains unchanged if the taxable person for transfer tax purposes is the transferee and this transferee is a trader acting as such.

An important feature of this case is that, before rendering a decision, the Supreme Court submitted a reference for a preliminary ruling to the Court of Justice of the European Union as to whether the fact of charging transfer tax on these transactions could affect the VAT neutrality principle. The Court of Justice, in a judgment rendered on June 12, 2019 on case C-185/18, concluded that the neutrality principle was not affected.

This judicial interpretation contradicts the interpretation of the Central Economic-Administrative Tribunal (TEAC) in a decision rendered on October 20, 2016, for a ruling on a point of law.

2.8 Tax procedures.- The data verification procedure is null and void where a limited audit is required

Supreme Court. Judgment of November 28, 2019

In the examined case a data verification procedure had been conducted in relation to a personal income tax exemption claimed for reinvestment in the taxpayer's principal residence, which resulted in the tax authorities issuing an assessment. The assessment was set aside by the Regional Economic-Administrative Tribunal (TEAR) for the Canary Islands because it was considered that the tax authorities should have used a limited audit procedure. A new assessment was issued as a result. This second assessment was issued, however, after more than four years had passed from the date when the tax should have been reported.

The Supreme Court confirmed the interpretation established in its judgment on July 2, 2018 and concluded that the use of a data verification procedure when the appropriate course of action would have been to initiate a limited audit procedure renders the procedure null and void by operation of law. Therefore the work performed in the data verification procedure rendered null and void does not toll the statute of limitations for the tax authorities' right to assess, which means that, in this case, the second assessment was also null and void due to being statute-barred.

2.9 Penalty procedure.- When a penalty is voided for substantive reasons and the decision has become final, the enforcement period is one month

National Appellate Court. Judgment of October 1, 2019, appeal 259/2016

In the examined case, TEAC had rendered a decision holding that one of the challenged penalties was null and void for substantive reasons.

As a result of this decision, the tax authorities had to render a new penalty decision, to enforce that decision partially upholding the claim.

The National Appellate Court concluded that the tax authorities had one month in which to do this. If they fail to meet this time limit, it is considered that the new decision was rendered out of time and therefore has expired, which means that the statute of limitations period or the tax authorities' right to impose a penalty is not considered to be tolled.

2.10 Enforcement procedure.- The tax authorities have to provide proof of the date when they receive the decisions they are required to enforce

National Appellate Court. Judgment of June 5, 2019

A regional economic-administrative tribunal issued a decision partially upholding the taxpayer's claim. When enforcing that decision, the tax authorities had to issue a new assessment.

The General Taxation Law states that enforcement must be performed within the time remaining in the period allowed for the procedure that gave rise to the partially voided assessment or in six months, whichever is longer. The time period starts to run from when the decision is entered on the register held by the body responsible for its enforcement.

In the examined case, however, no proof appeared in the file of the date of receipt of the decision by the tax authorities; and no proof of this had been produced in the later review procedure, even though it had expressly been requested by the taxpayer.

The Supreme Court concluded in this judgment that:

(a) The tax authorities should have provided verifiable evidence of the date on which the enforceable decision was received by the body that had to enforce it.

(b) Because it failed to do so, it is presumed that it received the decision ten days after it was issued.

(c) Because the new assessment was issued after the maximum time limit calculated from the end of the ten-day period, it was considered that the audit work did not toll the statute of limitations.

Two cassation appeals are awaiting decisions by the Supreme Court which will have to examine whether it is reprehensible for the tax authorities to defer the forwarding of the case record to the body responsible for enforcing the decision, and if so, what consequences this would have (admission decisions of November 14, 2018 -appeal 5442/2018- and of February 14, 2019 -appeal 7483/2018-).

3. Decisions

3.1 Corporate income tax.- Even though the existence of a valid economic reason has been accepted for several successive interrelated restructuring transactions, the absence of that reason may be found in one of them

Central Economic-Administrative Tribunal. Decision of October 8, 2019

Several transactions were performed as part of a reorganization (mergers, spin-offs, share contributions and exchanges), all for the common aim of simplifying a future transfer upon death (*mortis causa*) of the family business, by enhancing its organization and management. The tax authorities accepted that these reasons were valid and accepted that the neutrality regime could be claimed generally.

They questioned, however, that the neutrality regime could be claimed for a few capital increases performed through nonmonetary contributions of shares, in that they considered that the reason for those transactions might not be the simplification described above, instead the distribution of commonly owned assets with zero tax cost.

TEAC concluded that the necessary appraisal of each reorganization by reference to all the circumstances surrounding it, in other words, within its context, does not mean that each transaction taken individually cannot have its own profile and aims. So, even though any of these transactions may have been performed as a result of a broader restructuring with a valid economic reason for the restructuring as a whole, it may be found that one specific transaction does not have a valid economic reason.

3.2 Corporate income tax.- Penalty regime for breach of reporting obligations for controlled transactions cannot be applied to transactions before the regulations implementing these obligations

Central Economic-Administrative Tribunal. Decision of September 10, 2019

The Revised Corporate Income Tax Law approved by Legislative Royal Decree 4/2004 of March 5, 2004 (similarly to the current law on that tax) contained a penalty regime for a breach of the reporting obligations for controlled transactions. These obligations, however, only became applicable in February 19, 2009.

For this reason, TEAC ruled to void a penalty imposed for breach of these obligations in relation to fiscal year 2008, in that the infringement cannot be considered to exist where an obligation has been breached that was enforceable when the controlled transactions took place. In short, that penalty regime is not valid retroactively, instead only in relation to reporting obligations for transactions performed on or after February 19, 2009. For earlier transactions the general provisions on tax infringements and penalties apply.

TEAC also voided the penalty imposed in relation to fiscal year 2009, because the taxable person had performed the reporting obligation, even though the pricing inferable from that report was different from the pricing that the tax authorities considered applicable.

3.3 VAT.- Exclusivity clause in the distribution of insurance is a supply of services subject to and not exempt from VAT

Central Economic-Administrative Tribunal. Decision of October 15, 2019

An insurance distribution agreement between a banking group and an insurance group contained an exclusivity clause under which the banking group agreed not to sell at its offices any life insurance policies from companies outside the insurance group. The insurance group was to pay the price for this exclusive arrangement in a number of installments. The first was to take place when a number of agreed conditions were met.

TEAC took the view that, because the exclusivity clause has its own specific price separate from the commission that would be payable for the distribution of insurance policies, it is a supply of services subject to and not exempt from VAT. The tribunal rejected the argument that the exclusivity arrangement could itself be an insurance contract or that it entailed mediation on its own behalf in

the supply of insurance services, because no obligation to find new customers for the insurance company was acquired, only the obligation not to sell the insurance policies of other companies. And it did not appear either to be able to be classified as an ancillary service to those described above, for the same reasons.

VAT is considered to become chargeable in full (in other words, on the whole of the price) when the conditions triggering the obligation to make the first payment of the agreed price are considered met. According to the tribunal, this interpretation may be inferred from the CJEU's judgment of November 29, 2018 in case C-548/17.

3.4 Limited audit procedure.- For the purposes of a limited audit a general request for all movements in the taxpayer's bank account is not valid

Catalan Regional Economic-Administrative Tribunal. Decision of September 12, 2019

In relation to a limited audit of personal income tax, the tax authorities made a general request for information to know every movement in all the taxpayer's accounts. The aim was to ascertain whether the taxpayer had obtained unreported income.

The TEAR for Catalonia rendered this request for information void on the basis of article 136.3 of the General Taxation Law. According to the tribunal, it may be concluded from the wording of this article that a specific request may be made for financial documents to evidence certain transactions, but not a general request for all bank account movements not related to financial transactions.

3.5 Audit procedure.- Taxpayer's failure to appear in the procedure does not justify attributing a delay to the taxpayer for the whole period of nonappearance

Central Economic-Administrative Tribunal. Decision of November 12, 2019

After several unsuccessful attempts at notification, the tax authorities considered an audit had commenced on publication of the notice in the Official State Gazette. Because the taxpayer failed to reply to the requests made throughout the procedure, the tax authorities had to request the necessary information and documents from third parties. Additionally, since the taxpayer did not appear at any point in the procedure, the tax auditors attributed a delay to the taxpayer for the whole length of time taken by the procedure.

TEAC concluded that nonappearance alone is not a ground for a permanent delay attributable to the taxpayer for the whole length of the audit procedure, instead evidence must be provided, in all cases, of the reason why that nonappearance delayed, obstructed or prolonged the audit work. In other words, the tax audit report must contain an explanation of the requests for information that ultimately could not be obtained by other means and the assessment decision must provide reasoning for the period to be computed for the nonappearance, for which general and overall information is not allowable.

3.6 Collection procedure.- TEAC looks at joint and several liability for concealing or transferring the principal debtor's property or rights

Central Economic-Administrative Tribunal. Decision of November 26, 2019

TEAC examined in this decision the joint and several liability system in article 42.2.a) of the General Taxation Law, which is the system applicable to anyone who causes or assists with concealing or transferring the principal debtor's assets or rights for the purpose of preventing the tax authorities from seeking payment; and concluded as follows:

(a) This type of joint and several liability requires satisfaction of the following requirements: (i) existence of an outstanding debt, (ii) concealment of the principal debtor's property or rights so as to evade attachment, (iii) an act or omission by the allegedly liable person consisting of causing or assisting with hiding; and (iv) the allegedly liable person must have acted knowingly.

(b) This joint and several liability does not take the form of a penalty, because it is regarded as security for the tax debt.

(c) The steps to conceal or transfer the debtor's property may consist of one or more legal acts or transactions. These legal transactions may be carried out simultaneously or successively, and the process as a whole must be examined along with the relationships among the acting parties.

(d) It is not necessary for the liable person to have acted formally at all stages of the process, although the tax authorities must provide evidence that the person knew or should have known that their conduct could result in a loss to public funds. Evidence of this knowledge may be provided in the form of prima facie proof and presumptions.

(e) The property originally able to be attached may change throughout the concealment process, in that the concealment occurs also in the transfer of the ownership instruments representing the property that had been removed earlier from the principal debtor's assets.

3.7 Collection procedure.- An order initiating enforced collection proceedings rendered and notified before the decision on the request for a stay is unjustified

Central Economic-Administrative Tribunal. Decision of October 22, 2019

A taxpayer filed a request for a stay with the competent regional economic-administrative tribunal (TEAR) when the debt had already entered the enforcement period. The tax authorities served an order initiating enforced collection proceedings before the TEAR had rendered a decision on the request for a stay of the assessment. That request for a stay was later denied.

TEAC, under the interpretation established by the Supreme Court in a judgment rendered on February 27, 2018, ruled to set aside that order initiating enforced collection proceedings, in that the filing in the economic-administrative jurisdiction of a petition for a stay of the tax debt, even if this is done after an order initiating enforced collection proceedings has been issued, prevents it from moving forward and being enforceable, thereby placing a condition on its notification until the reviewing body renders a decision on the filed request for a stay.

4. Resolution requests

4.1 Corporate income tax.- Two part-time employees do not count as one full-time employee

Directorate General for Taxes. Resolution V2705-19 of October 3, 2019

In relation to property leasing, an economic activity can only be deemed to exist if at least one person with a full time employment contract is used for organization of the activity.

According to a strict interpretation of this rule, the DGT replied that this requirement may not be regarded satisfied as a result of having two or more workers with part-time contracts because at least one of them must have a full-time employment contract.

So, because in the described case there were two workers who each had contracts for 25 hours a week, and neither of them had full-time contracts, the requirements to consider that the company carries on an economic activity were not met.

4.2 Corporate income tax.- Logistics buildings are depreciated according to the percentage determined for warehouses

Directorate General for Taxes. Resolution V2697-19 of October 2, 2019.

A company had acquired a piece of land on which it planned to build a logistics building, with the aim of leasing it to an independent third company and it would be used to store furniture to be distributed to the various points of sale (physical stores).

The tax depreciation tables contain "Warehouses and tanks (for gases, liquids and solids)" and "Industrial buildings", but not logistics buildings.

According to the definitions for the two terms in the Real Academia Española dictionary, the DGT concluded that the "Warehouses and tanks (for gases, liquids and solids)" caption more closely reflects the element concerned. However, this is a factual issue that the taxpayer is required to substantiate using any means of proof allowed by law and which would be assessed by the competent bodies of the tax authorities.

4.3 Corporate income tax.- The provision for maintenance expenses is deductible if it is recorded correctly

Directorate General for Taxes. Resolution V2892-19 of October 21, 2019

A company is engaged in the wholesale sale of office furniture and equipment. Separately from the warranty it offered to the purchaser, it was going to sign maintenance contracts for multiyear terms, which would include both replaceable tangible elements of the equipment and consumables, travelling time and labor, for a fixed price payable in advance in the first year of all installments over the term of the contract (5 years).

Because the price of the service to be provided is collected in the first year of the term of the contract on the element to be maintained, it was asked whether a provision could be recorded in the accounts, calculated by reference to the requesting party's historical data (able to be

substantiated from a financial and cost accounting standpoint) on the expenses associated with general maintenance of similar equipment.

The DGT explained that this is not a case of sales with a warranty associated with those sales, but rather of a separate and additional maintenance service for which a price is received. As a result, the special rule allowing deduction of provisions for expenses associated with the risks relating to repair and service warranties is not applicable, and none of the other rules on non-deductible provisions appear to be applicable either.

Therefore, any provision that might be recorded for maintenance expenses will be treated as a tax deductible expense if it has been recognized for accounting purposes consistently with accounting law and the requirements laid down in the law have been met in terms of being recorded in the accounts and recognized on an accrual basis, having revenues equal expenses, and being substantiated by supporting documents.

4.4 Personal income tax.- Rules on exit tax for change of residence to another EU state also apply for Switzerland

Directorate General for Taxes. Resolution V2959-19 of October 24, 2019

An individual was going to relocate to Switzerland to study at university, and intended to return to Spain after the university course had ended. By reference to the value of the individual's assets, the regime for capital gains due to change of residence would apply. The request concerned whether the rules reducing its effects where the change of residence takes place to another EU member state would be applicable.

The DGT referred to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons having as its purpose to bring about the free movement of persons between the contracting states.

According to the provisions of that Agreement and its interpretation by the Court of Justice of the European Union in case C-581/17, the DGT concluded that the provisions for the case of a change of residence to another EU Member State had to be held applicable also in cases involving relocation to Switzerland.

4.5 Personal income tax.- Dividends must be attributed to each shareholder according to their ownership interest, regardless of private arrangements among them

Directorate General for Taxes. Resolution V2779-19 of October 9, 2019

A limited liability company is owned by three individuals, in varying proportions. They were considering whether to pay equal dividends to each of them.

The DGT warned that the dividends would have to be attributed to each shareholder, for personal income tax purposes, in amounts determined by their ownership interests in the capital stock, regardless of any private arrangement that had been arrived at among the shareholders for their payment; and also advised of the effects for inheritance and gift tax purposes on shareholders receiving dividends above the amount determined by the percentage of capital stock they own.

4.6 Tax on increase in urban land value.- Local councils may approve a reduction of up to 60% of the taxable amount only where the cadastral value is affected by a collective general appraisal procedure

Directorate General for Taxes. Resolution V2904-19 of October 21, 2019

The taxable amount for the tax on increase in urban land value is calculated by reference to the cadastral value of the land on the date the tax falls due. Local councils have the power to allow a reduction equal to up to 60 percent of the cadastral value for a period of up to five years, from entry into force of the cadastral value arising from a general collective appraisal procedure.

The issue examined for resolution related to a building inherited in 2017. The cadastral value of the building had been affected by two partial collective appraisals in 2013 and 2015, and the request concerned whether that reduction could be applied to calculate the taxable amount for the tax on increase in urban land value that had fallen due as a result of the inheritance.

The DGT disallowed this. Based on a strict interpretation of the law, it concluded that the reduction is only applicable where the new cadastral value of the building is affected by a general collective appraisal, not a partial appraisal.

5. Legislation

5.1 VAT form 318 approved

The December 31, 2019 edition of the Official State Gazette published Order HAC/1270/2019 of November 5, 2019, approving form 318: VAT. Adjustment of the proportions of tax for assessment periods before commencement of habitual supplies of goods or services" and determining the place, manner, period and procedure for filing it.

This form has to be filed where taxpayers have been subject to the taxing powers of a provincial or central governing tax authority, in assessment periods before they commence habitual supplies of goods or services relating to their activity or to another different activity in later assessment periods, or where the proportion in which they are taxed by the various central or provincial government authorities has changed substantially in those same assessment periods, and on the form they can adjust the refunded tax.

That adjustment must be made according to the percentages of tax to each of the authorities concerned in the first complete calendar year following commencement of the habitual supplies of goods or services relating to their activities.

For these purposes, taxable persons will have to file a specific return with all the tax authorities affected by the adjustment (form 318 approved in this order is the form that must be filed with the central government tax authority), within the period allowed for filing the latest self-assessment return for the first complete calendar year following commencement of the habitual supplies of goods or services relating to their activities.

This order came into force on January 1, 2020.

5.2 Amendments to form 390: VAT annual summary, and the Order determining its filing procedure

The December 31, 2019 edition of the Official State Gazette published Order HAC/1274/2019 of December 18, 2019, amending Order EHA/3111/2009 of November 5, 2009, approving form 390: VAT annual summary return, and Order HAP/2194/2013 of November 22, 2013, on the procedures and general conditions for filing certain self-assessments, information returns, business taxation status notification forms, communications and refund applications of a tax nature.

The main new legislation introduced by this order is as follows:

- It has done away with the option of filing the following returns remotely by SMS: VAT annual summary return (form 390), annual return for transactions with third parties (form 347), and form 190: personal income tax withholdings from payments in cash and in kind. Salary income and income from economic activities, prizes and certain capital gains and attributions of income. Annual summary.

- A new name has been given to Box 662 on form 390: VAT annual summary. This box is for stating the amounts for offset generated in the year in any assessment period other than the last one where they are not included in box 97 on the same form 390, in other words, where they have not been transferred to other assessment periods in the year.

  Its name has been changed to "Amounts for offset generated in the period, other than those included in box 97" (*Cuotas pendientes de compensación generadas en el ejercicio y distintas de las incluidas en la casilla 97*).

This order came into force on January 1, 2020. In particular, removal of the option to file the returns mentioned above remotely by SMS will be applicable for information returns relating to fiscal year 2019 and following years.

5.3 Approval of forms for providing proof of tax residence of foreign pension funds and collective investment vehicles

The December 31, 2019 edition of the Official State Gazette published Order HAC/1275/2019 of December 18, amending Order EHA/3316/2010 of December 17, 2010, approving nonresident income tax self-assessment forms 210, 211 and 213.

Royal Decree 595/2019 of October 18,2019 determined a new special system for providing proof of tax residence enabling certain types of pension funds and collective investment vehicles to claim the exemption allowed in article 14.1 c) of the revised Nonresident Income Tax Law.

This Order approves the return forms, and the adaptation of the documents required to be filed with form 210 in relation to providing proof of the tax residence of certain types of entities which as a general rule do not have a separate legal and tax personality.

Moreover, two new types of income have been added, 37 and 38, which those entities must use to identify that they are making use of the special method of proof for the purposes of claiming that exemption.

This order came into force on January 1, 2020. Although it should be noted that:

(a) The method for providing proof of residence of the entities mentioned will be applicable:

(i) In relation to making withholdings, to any withholdings that are required to be made on or after January 1, 2020.

(ii) In relation to the returns on form 210, to any that are filed on or after January 1, 2020, and to any tax refund application procedures that have not ended on January 1, 2020.

(b) The new income type codes 37 and 38 have to be used in relation to any self-assessments on form 210 that are filed on or after January 1, 2020 in relation to income arising on or after January 1, 2019.

5.4 New tax stamp formats for bottles or other receptacles for alcoholic beverages

The December 31, 2019 edition of the Official State Gazette published Order HAC/1271/2019 of December 9, 2019, approving the implementing rules for article 26 of the Excise and Other Special Taxes Regulations, approved by Royal Decree 1165/1995 of July 7, 1995, on tax stamps for alcoholic beverages.

This Order approves the new-format tax stamps that must be affixed to all bottles and other receptacles containing alcoholic beverages that are moved outside excise duty suspension, except for any that are moved in the transitional period specified in that Order.

The new wording of that article 26 contains important changes to these seals for their movement because, in addition to the visible identification code, they will contain an electronic security code that may be used to verify their authenticity and remotely link every tax stamp to information on the establishment where they are delivered (establishment and activity code) and its owner (taxpayer identification number).

Furthermore, the new formats will include enhancements from the standpoint of technology at Fábrica Nacional de Moneda y Timbre for the security and printing of these stamped documents.

This order came into force on January 1, 2020. For the first six months of 2020, however, establishments may affix any seals they have requested from AEAT before January 1, 2020 in certain formats.

Moreover, it is stated that any seals under Order EHA/3482/2007 of November 20, 2007 already affixed to bottles or other receptacles containing alcoholic beverages made or imported in the European Union before July 1, 2020 will remain valid, in all cases during their selling period, with a time limit expiring on January 1, 2022.

5.5 The average sale prices for 2020 of certain modes of transport for the purpose of auditing values have been published

The December 31, 2019 edition of the Official State Gazette published Order HAC/1273/2019 of December 16, 2019, 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.

5.6 Various orders relating to information returns have been amended

The December 31, 2019 edition of the Official State Gazette published Order HAC/1276/2019 of December 19, 2019, amending various orders relating to information returns.

The specific forms that have been amended are:

- Form 194. Information return. Personal income tax, corporate income tax and nonresident income tax withholdings from income from movable capital and income from the transfer, reimbursement, exchange or conversion of assets of any kind representing the raising and use of third-party capital.

  The information relating to the field called "transfer, redemption, reimbursement, exchange or conversion value" (*valor de transmisión, amortización, reembolso, canje o conversión*) has been updated to include the same precision as for the cost value (*valor de adquisición*) field (no reduction of the transaction's ancillary costs).

- Form 198. Information return. Annual return for transactions in financial assets and other marketable securities.

  This form has been changed to adapt it to the information needed to assist the taxpayer with reporting their traded securities.

  - The "code number" (*clave código*) field has been changed to determine as a general rule that the securities must be identified with the issuer's ISIN and taxpayer identification number.

  - The "origin number" (*clave de origen*) field has been changed to make a distinction between mortis causa and inter vivos transfers for no consideration, and it has been clarified that the delivery of shares issued at no charge is considered a transaction for consideration.

  - The "transaction code" (*clave de operación*) field has been changed to include new codes for transactions relating to stock splits and reverse stock splits (code L), delivery of shares issued at no charge (code X), and mergers and spin-offs with deferral (codes Y and Z, respectively).

  - The codes relating to capital reductions have been reorganized, and a distinction now exists between those related to repayment of contributions (codes G and I), and the new codes relating to those from redemptions of shares (new code J) and those from undistributed income (new code K).

  - The "market code" (*clave de mercado*) has been changed to make a distinction between official secondary securities markets in the European Union and in other countries.

  - A new field has been added relating to transaction costs, additional information needed for the taxpayer's investment securities, another for identification of certain related transactions (new field called "order number of the related transaction" (*número de orden de la operación relacionada*)), and for amounts of monetary compensation delivered or received in business restructuring transactions.

  - A new "transaction time" (*hora de la operación*) field has been created relating to intraday transactions, to know the order in which a sequence of transactions took place.

  - Lastly, the "declarer type" (*naturaleza del declarante*) field has been changed, which currently appears as a check on registration type 1, and has changed to registration type 2, thereby improving computer validations to prevent the errors that had been occurring.

- Form 196. Information return. Annual summary of tax withholdings from income from movable capital and other income by reason of the consideration derived from accounts at all kinds of financial institutions.

  It has been changed to allow a foreign address to be supplied for notification purposes.

- Form 193. Information return. Tax withholdings from certain kinds of income from movable capital. Tax withholdings from certain kinds of income.

  The "payment" (*pago*) field has been changed to prevent completion errors for dividends from foreign shares where the reporting institution is not the first payer in Spain.

- Form 280. Annual information return on long-term savings plans.

  The "return identification number" (*número identificativo de la declaración*) and "previous return's identification number" (*número identificativo de la declaración anterior*) fields have been changed to replace the multi-delivery system (up to 30,000 records) with the new online TGVI system, applicable to this form since 2019.

- Form 184. Annual information return. Pass-through entities.

  The information fields relating to income from economic activities have been changed. Since 2015, form 184 has contained a reduced list of certain expenses (i.e. personnel expenses, goods and services acquired from third parties, deductible taxes other than income tax and finance costs and other tax deductible expenses).

  For fiscal year 2019 a longer list of expenses has been included for economic activities under the (normal and simplified) direct assessment system: personnel expenses, operating expenses, deductible taxes other than income tax, leases and royalties, upkeep and repairs, independent professional services, utilities, finance costs, depreciation and amortization expense, provisions and other tax deductible expenses.

  New fields have been included for listing expenses in relation to income from movable capital relating to interest and other finance costs, upkeep and repair (for the fiscal year and for the last four years which have not been deducted), taxes other than income tax and surcharges, delinquent accounts receivable, amounts due to third parties, insurance premiums, depreciation expense for real estate and movable property, and other deductible expenses.

  Additionally, a new field has been included relating to the number of days in which the building has been leased or loaned for use.

- Form 289. Annual information return. Financial accounts in the field of mutual assistance (CRS).

  The contents of schedules I and II have been updated to reflect the current list of countries committed to exchange of information, and to include on the list the countries with which information will be exchanged in and after 2020.

This order came into force on December 31, 2019, and will be applicable for the first time for returns relating to 2019 that are filed in 2020, except for the changes relating to form 198, which will be applicable to returns relating to 2020 that are filed in and after 2021.

5.7 Approval of forms for registration at the commercial registry of individuals providing services to companies and trusts

The December 28, 2019 edition of the Official State Gazette published Order JUS/1256/2019 of December 26, 2019, on registration at the commercial registry of individuals and legal entities that in a business or professional capacity provide the services described in article 2.1.o) of Anti-Money Laundering and Counter-Terrorist Financing Law 10/2010 of April 28, 2010.

5.8 Wealth tax renewed for 2020 and other tax measures

The December 28, 2019 edition of the Official State Gazette published Royal Decree-Law 18/2019 of December 27, 2019, adopting tax and cadastral measures along the same lines as in previous years.

See our Alert dated December 30, 2019 for a summary of this royal decree.

5.9 Publication of the annual equivalent rate for the first calendar quarter of 2020, for the purpose of characterizing certain financial assets from a tax standpoint

The December 26, 2019 edition of the Official State Gazette published the decision of December 16, 2019, by the Office of the General Secretary for the Treasury and International Finance, which, as is now the custom, sets out the reference rates that will apply for the calculation of the annual effective interest rate for the purposes of characterizing certain financial assets from a tax standpoint, this time for the first calendar quarter of 2020. The rates are as follows:

- Financial assets with terms of four years or less: -0.358 percent.
- Assets with terms between four and seven years: -0.068 percent.
- Assets with ten-year terms: 0.350 percent.
- Assets with fifteen-year terms: 0.559 percent.
- Assets with thirty-year terms: 1.062 percent.

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

5.10 The 2020 non-business day calendar for central government public services has been published

The December 4, 2019 edition of the Official State Gazette published the decision of November 27, 2019, by the Office of the Public Services Secretary, which establishes the calendar of non-business days in relation to central government public services for 2020, for the purposes of computing time periods.

5.11 Objective assessment method for personal income tax purposes and simplified VAT rules for 2020

The November 30, 2019 edition of the Official State Gazette published Order HAP/1164/2019 of November 22, 2014, implementing for 2020 the personal income tax objective assessment method 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 2019. Among others, it has retained the reduction allowed for economic activities carried on in Lorca.

The order came into force on December 1, 2019, and is effective for 2020.

For more information:

Tax Department

Follow us:

GARRIGUES

Hermosilla, 3
28001 Madrid, Spain.
T +34 91 514 52 00 **F** +34 91 399 24 08

www.garrigues.com