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TAX NEWSLETTER

Latest developments and legal trends - Legislation of interest

News Roundup - Judgments

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1. Awarded judicial costs are only taxable over and above the cost of the fees of a lawyer and court procedural representative

A decision by Murcia Regional Economic Administrative Tribunal (TEAR) concluded that the capital gain obtained from collecting the legal costs received by the successful party in a lawsuit must be calculated by reducing the received indemnification by the fee expenses paid.

The settled administrative interpretation is that awarded legal costs are a capital gain for the beneficiary of those costs, which must be included in the general component of taxable income, because it does not hail from a transfer (and is taxed therefore at the marginal rate). The authorities themselves, however, consider that the court costs paid by the party receiving the legal costs are to be treated as consumption expenditure and therefore cannot be computed as a capital loss.

The Ombudsman's Recommendation dated July 18, 2017 (complaint 16007256) had already flagged up the asymmetry arising in the personal taxation of the beneficiary on the legal costs according to this official interpretation. The Ombudsman remarked that the Supreme Court, in a judgment rendered on November 30, 2005, had held that the legal costs are really a repayment of the costs of the proceeding to the successful litigant, and therefore making the legal costs taxable without reducing them by the costs of the proceeding was tantamount to taxing an invented gain, which violates the constitutional principle of economic capacity.

As the Ombudsman mentioned, if the interpretation of the Directorate-General for Taxes (DGT) is upheld, the "principle of effective judicial protection could be affected", because this scenario may have a bearing on a citizen's decision to use the courts. He therefore recommended studying a change to the taxation of legal costs as a capital gain subject to personal income tax, to make taxable only the amount over and above the costs of the proceeding.

In the meanwhile there have already been administrative decisions finding in favor of more reasonable treatment, such as that mentioned by the Ombudsman. Among these, the decision by Murcia TEAR rendered on January 11, 2019, in which the tribunal concluded that:

(i) The legal costs received by the successful party in a lawsuit are aimed at indemnifying the party for the lawyer's and court procedural representative's fees, which implies a capital gain has been obtained.

(ii) That capital gain, however, must be calculated by reducing the received indemnification by the fee expenses paid.

(iii) The resulting sum must be included in the general component of taxable income.

2. Judgments

2.1 Corporate income tax.- The contribution of a property encumbered with a mortgage cannot be taxed under the neutral regime on the portion of the debt that did not fund the acquisition

National Appellate Court. Judgment of March 21, 2019

In the incorporation of a company, the appellant contributed a property encumbered with a mortgage, together with the mortgage debt. That debt was much higher than the outstanding portion of the cost price. The special regime for restructuring transactions provided in the Corporate Income Tax Law was elected for that contribution.

The auditors argued, and the National Appellate Court so confirmed in this judgment, that the portion of the contributed debt that exceeds the debt obtained to finance the acquisition of the property cannot be taxed under that special regime, because there is not a direct relationship between the whole loan and the contributed property.

The court underlined that it is one thing to claim the neutrality regime and defer the tax on any income that might arise on the contribution of the asset and the outstanding debt on its acquisition and it is another completely different thing to attempt to defer the gain arising in the hands of the transferor on the transfer of a liability with a higher value, unrelated to the acquisition of the property.

2.2 Personal income tax.- The personal income tax law in force until 2008 under which the general component of taxable income had to include interest received by related parties is lawful

National Appellate Court. Judgment of February 27, 2019

Until 2008, the personal income tax legislation laid down that the interest received from loans with related parties had to be included in the general component of taxable income instead of in the savings component, unlike the other types of income from movable capital arising from the transfer of own capital to third parties.

The National Appellate Court concluded in this judgment that this legislation is not in breach of either the Spanish Constitution or EU Law, because:

(a) From one angle, the constitutional principles of equality and economic capacity are not affected.

(b) From another (EU Law), it may be seen that the legislation was applicable to any resident for personal income tax purposes, with no exception, wherever the income was from, as long as the related party requirement was met.

2.3 Inheritance and gift tax.- The main source of income may, in exceptional circumstances, be a source from the year before death

Supreme Court. Judgments of April 5 and April 8 2019

To be able to claim the "family business" reduction the economic activity carried on by the decedent must be their main source of income.

According to the Supreme Court, the general rule is that this requirement must be examined by reference to the income obtained in the decedent's year of death, in other words, the year in which inheritance and gift tax fell due. It accepted, however, that in exceptional cases, this conclusion may be refined.

Specifically, in the case at issue, the decedent had died in the first six months of the calendar year, and the farming business, because of the type of crops involved, did not generate income until the second six months of every year. It had also been evidenced that in earlier years that economic activity was the decedent's main source of income.

The court held therefore that, because of the exceptional circumstances of the type of activity, the year to be taken into account to examine whether the revenues from the activity are the main source of income was the year immediately before the year of death.

2.4 Tax on increase in urban land value.- The "Cuenca mechanism" is not valid for calculating the base for the tax on increase in urban land value

Supreme Court. Judgment of March 27, 2019

As we announced in our Tax Alert dated April 16, 2019, the Supreme Court has rejected the option of using the "Cuenca mechanism" for calculating the base for the tax on increase in urban land value, which had been allowed by a few courts.

We will still have to wait for the Constitutional Court's new conclusions in relation to the other unsettled issues in relation to this tax.

2.5 Real estate tax.- The reduction for properties under construction also applies in the period following their completion

Valencia High Court. Judgment of January 8, 2019

The court examined the timeframe for claiming the real estate tax reduction for properties under construction that are used in the businesses of urban and real estate development and construction companies. The law says that this reduction (which interested parties must apply for before the work starts) may be claimed for up to three years and may amount to up to 90% of the real estate tax liability.

Valencia High Court concluded in this judgment that, according to the letter of the law, the reduction must also be applicable in the tax period following completion of the work, provided the general three year limit laid down in the law is not overstepped.

2.6 Tax on radiotoxic elements.- Constitutional Court overturns Catalan tax on radiotoxic elements

Constitutional Court Judgment of March 27, 2019

The Constitutional Court has held unconstitutional and rendered null and void the Catalan law approving the Catalan tax on radiotoxic elements, after concluding that this tax is equivalent to the central government tax on generation from spent nuclear fuel.

In this same judgment the Constitutional Court recalled the constitutional nature of the Catalan tax on empty homes as decided in constitutional court judgment 4/2019, dated January 17, 2019.

2.7 Administrative procedure.- A change of interpretation cannot have an adverse effect on the taxpayer

National Appellate Court. Judgment of April 17, 2019

The National Appellate Court examined a case concerning a taxpayer reporting their taxes according to the interpretations then in force and recognized by the tax authorities as obtained from a number of binding rulings by the DGT, a report by the Spanish tax agency AEAT and the personal income tax manuals published by AEAT in several fiscal years. Following a change of interpretation in a decision by the Central Economic-Administrative Tribunal (TEAC), the auditors issued several assessments to the taxable person, claiming payment of the debt arising from TEAC's new interpretation. According to the auditors, no penalty was imposed because the tax authorities' interpretation known when the taxable person filed their tax returns had been followed.

As we explained in our Tax Alert dated May 27, the National Appellate Court overturned the decisions that confirmed those assessments and harshly criticized the tax authorities' actions, to uphold the principle of legitimate expectations. Further information, here.

2.8 Administrative procedure.- Rendering general provisions null and void does not automatically render null and void decisions based on them

Supreme Court. Judgment of April 01, 2019

The Charter for Andalucía Tax Agency, approved by Decree 324/2009 of September 8, 2009, was later rendered null and void. After it had become null and void, a taxpayer initiated a procedure for reviewing decisions that are null and void as a matter of law against an assessment and a penalty (which had become final) rendered by Andalucía Tax Agency.

The Supreme Court concluded, however, that the rendering null and void of general provisions does not automatically make null and void final administrative decisions made while those provisions were in force, even though those decisions may fall in each specific case within any of the grounds for being rendered null and void as provided for in article 217 of the General Taxation Law.

2.9 Administrative procedure.- A notification is valid if it is proved that the taxpayer was aware of its content

Supreme Court. Judgment of April 11, 2019

The Supreme Court examined whether a notification of the commencement of an audit proceeding was valid if it was sent to a person other than the person with tax obligations or that person's representative at an address other than the address provided for receiving notifications (and which, moreover, is not the tax domicile of either) and underlined that the key factor for deciding as to the validity of a notification is whether, through it, the intended recipient had actual knowledge of the notified information.

In relation to which it made the following distinctions:

(a) **Notices observing all the formalities in the law:** In these cases it must be presumed that the information has been brought to the interested party's attention but the interested party is allowed to prove that this was not the case.

(b) **Notices with a breach of material formalities:** In these cases it is presumed that the information did not come to the interested party's attention, and they were not given the right to defend themselves, but the authorities are allowed to prove that this was not the case. In other words, in these cases the burden of proof lies with the authorities.

(c) **Notices breaching secondary formalities:** In these cases it is presumed that the information came to the interested party’s attention unless proof to the contrary is provided.

Because in the examined case the notification was made to a third party (other than the person with tax obligations and their representative) at a place that was not the address of either, or the tax domicile of one or the other, it must be presumed it did not come to the interested party's attention; but this presumption allows proof to the contrary by the authorities, as mentioned above.

2.10 Management procedure.- A provisional assessment decided in a procedure initiated through a return has precluding effects

Supreme Court. Judgment of April 10, 2019

In this judgment the Supreme Court examined the effects of assessments issued in tax management procedures initiated through a return. Specifically, in the reviewed case, the tax authorities’ assessment recognized the right to claim a tax benefit.

The court affirmed that, after the right to a given benefit has been recognized in an assessment by the authorities, that benefit cannot later be reviewed by tax auditors. In other words, if the management body grants the benefit, it must be considered that it has reviewed compliance with the requirements laid down by the law to enjoy that benefit.

The auditors are only allowed to amend the conclusions from the management procedure if in a later audit new facts or circumstances come to light as a result of different work to that performed and specified in the provisional assessment.

2.11 Review procedure.- A request for a preliminary ruling is needed before deciding that domestic law is not applicable

Constitutional Court. Judgment of March 26, 2019 (BOE of April 25, 2019)

The Supreme Court rendered a judgment in 2016 holding that the method for determining the percentage shares of energy assistance relief was precluded by the EU directive on the electricity industry, and therefore set it aside. It based its judgment on earlier case law from the Court of Justice of the European Union (**CJEU**) for similar cases.

The tax authorities appealed against this judgment because they considered that the Supreme Court should have submitted a reference for a preliminary ruling to the CJEU for the CJEU to decide whether Spanish law was precluded by EU law. In short, according to the tax authorities, the Supreme Court had incorrectly applied the “clear act” theory (according to which it is not necessary to submit a request for a preliminary ruling if the CJEU has already rendered its conclusion on a similar case to the one being examined).

The Constitutional Court set aside the appealed judgment after deciding that, in this case, the “clear act” did not apply and concluding that the Supreme Court’s actions had breached the right to due process, because it decided not to apply domestic law without obtaining the CJEU’s opinion. There was a dissenting opinion to the judgment in which a judge questioned whether the Constitutional Court should enter into examining the similarity between cases decided by the CJEU and that submitted to the Supreme Court (on energy assistance relief) to assess whether it is a case of a “clear act”, because it involves an ordinary law issue.

2.12 Penalty procedure.- Liability for collaborating with a tax infringement cannot be shifted and a serious penalty imposed for the same facts

National Appellate Court. Judgment of March 06, 2019

In the examined case, a false invoice had been issued by a taxable person. The auditors shifted liability for the penalty imposed on the taxable person to the person who allegedly cooperated with him to issue the invoice and at the same imposed a penalty on the liable party. In other words a penalty proceeding was carried out alongside the shifting of liability in another proceeding, both against the liable person.

The National Appellate Court reiterated in this judgment the interpretation made in earlier decisions and concluded that liability for cooperating with a tax infringement cannot be shifted while at the same time imposing on that person a serious penalty for the same facts, consisting also in cooperating with the same infringement.

There are currently two decisions admitting appeals on this same issue at the Supreme Court. Namely, the decisions of February 21, 2019 (appeal 7714/2018) and June 11, 2018 (appeal 1569/2018).

3. Decisions

3.1 Corporate income tax.- Directors’ compensation should have been set out with certainty in the bylaws (at least under the legislation before the current Corporate Income Tax Law)

Central Economic-Administrative Tribunal. Decision of April 9, 2019

The auditors set aside a deduction for corporate income tax purposes for compensation paid to the company's directors, insofar as they considered that in the bylaws a compensation system had been determined from which the amount could not be known with certainty.

TEAC concluded that for directors’ compensation to be treated a deductible expense for corporate income tax purposes the bylaws must state that directors are compensated for their services and set out the amount with “certainty” (in other words, the specific compensation system must be determined in the bylaws).

If the chosen system is a share in the company's income (as occurred in the case at issue), TEAC held that the percentage of income to be paid needs to be determined completely in the bylaws, which means setting a maximum limit for that share is not enough.

By contrast, TEAC held that the expense must be allowed to be deducted if the bylaws stipulate a set amount to be updated each year by the shareholders’ meeting (provided they state the shareholders’ resolution approving that amount).

The decision, however, relates to periods before the entry into force of the current Corporate Income Tax Law 27/2014, of November 27, 2014, in which a reference to the deduction of the compensation under examination was expressly introduced.

3.2 VAT.- Effective use or enjoyment of a service must be evidenced to determine whether it is subject to VAT

Central Economic-Administrative Tribunal. Decision of March 28, 2019

The VAT Law contains an effective use clause (*cláusula de cierre*) in the place of supply rules for services. According to this clause, certain services will be deemed supplied in Spanish VAT territory, where they are effectively used or enjoyed in Spanish VAT territory (even if, under those place of supply rules, they are not deemed supplied in the European Union).

TEAC has concluded in a recent decision that to apply that clause the customer for the services at issue over their place of supply is required to use them in transactions that must, in turn, be considered to take place in Spanish VAT territory.

In this respect, if the tax authorities fail to evidence that the supplied services were used in Spain in the terms mentioned, it must be concluded that they are not subject to VAT in Spanish VAT territory.

3.3 VAT/Transfer and stamp tax.- The definitions of "independent business unit", for VAT purposes and of "whole set of business assets, rights, and liabilities", for transfer and stamp tax purposes, must receive the same treatment

Central Economic-Administrative Tribunal. Decision of March 28, 2019

A taxpayer transferred an industrial facility used for the sale of rice. This facility amounted to an "independent business unit" but was not the whole set of that person's business assets, rights, and liabilities. The taxable person therefore considered that the transfer was not subject to VAT (because it involved the transfer of an "independent business unit") though it was subject to stamp tax, because the transfer had been documented in a public deed and the act had to be registered.

The tax authorities adjusted the taxpayer's tax liability because they considered that the transfer was subject to transfer tax as a transfer for consideration, on the basis of article 7.5 of the revised Transfer and Stamp Tax Law, which provides that supplies of properties that are part of the transfer of "a whole set of business assets, rights, and liabilities" are subject to transfer tax as a transfer for consideration if they are not subject to VAT.

In other words, the tax authorities gave the same treatment to the definitions of "independent business unit" and "a whole set of business assets, rights, and liabilities" as used in the VAT and transfer and stamp tax laws, respectively.

TEAC confirmed this questionable administrative interpretation because, in its opinion, the legislation does not have to be interpreted to the letter, instead according to what (in the tribunal's view) may be seen as its spirit: the necessary coordination between VAT and transfer tax on a transfer for consideration to ensure that every transfer of property is always subject to one tax or the other.

3.4 Administrative procedure.- It is correct to notify the taxpayer even if the taxpayer has appointed a representative to receive notifications

Central Economic-Administrative Tribunal. Decision of April 9, 2019

A taxpayer had authorized a company to act as its representative for receiving electronic notifications. The power of attorney was registered on AEAT's register of authorized representatives.

Later, a penalty notification was sent to the taxpayer's electronic address (but not to the representative's). After there had been no access to its contents within ten days, the decision was deemed notified. The later economic-administrative claim to Madrid TEAR was not admitted due to late filing.

In the subsequent appeal, TEAC concluded that the notification made to the electronic inbox associated with the enabled electronic address of the person with tax obligations was correct, because the tax authorities are not required to make notifications to the representative when they are made in procedures initiated on the authorities' initiative. In these procedures, according to TEAC, the General Taxation Law authorizes the tax authorities to use (in no specific order) any of the places listed in article 110.2 of the General Taxation Law.

3.5 Audit procedure.- The time period for rendering a second assessment decision runs from when the auditors receive the decision on reversion of the procedure

Central Economic-Administrative Tribunal. Decision of April 23, 2019

At issue in this decision was determining when the time period for inspection work starts and ends for audit work to stop in cases where the procedure is ordered to be reverted by the tax or judicial authorities due to procedural defects.

TEAC concluded that the time period determined in article 150.7 of the General Taxation Law (formerly article 150.5) for the reversion of audit work in cases of procedural defects must run from when the decision ordering the reversion is received by the Audit Office responsible for continuing the procedure, not from when it is received by the Office for Relations with the Tribunals at AEAT.

3.6 Audit procedure.- A field auditor who had been an expert in the earlier criminal proceeding does not have to be removed

Central Economic-Administrative Tribunal. Decision of April 9, 2019

In a criminal proceeding a taxpayer was acquitted in relation to a tax offense. As a result of this decision, the case record was returned to AEAT for it to continue with the audit that had been started. The field auditor in this audit was the same auditor that testified as an expert in the criminal proceeding. That audit ended with an assessment decision which was appealed to TEAC by the person with tax obligations.

TEAC dismissed the claim and, among other conclusions, determined that the field auditor did not have to be removed because he had acted as an expert in the criminal proceeding. TEAC affirmed that the grounds for removal of experts set out in the then in force Law 30/1992 (such as “clear enmity”) cannot be extended to field auditors.

TEAC held, moreover, that the failure to include the criminal proceedings in the administrative case file does not deprive the taxpayer of their right to defense, insofar as the person with tax obligations has access to those proceedings at all times.

3.7 Collection procedure.- The time period for rendering a new decision shifting liability after a previous decision has been set aside is six months

Central Economic-Administrative Tribunal. Decision of March 20, 2019

TEAC was asked how long the tax authorities have to render a new decision shifting liability, after a TEAR regional tribunal has decided to revert the procedure and the first decision has been set aside.

TEAC concluded that the six-month period set out in article 104 of the General Taxation Law is applicable, not the period set out in article 150.5 -now article 150.7-, which is only applicable to audit procedures, not to collection procedures. This time period must run from when the TEAR's decision has been entered on the register of the authority responsible for enforcement.

A breach of that time period, according to TEAC, gives rise to expiry of the collection procedure, with the related consequences.

3.8 Collection procedure.- Applications for deferred/split payment made by dissolved companies in liquidation may be dismissed outright

Central Economic-Administrative Tribunal. Decision of April 24, 2019

A company in the process of liquidation and dissolution applied for deferred payment of a tax debt by claiming it had temporary cash flow problems. That application was rejected by the tax authorities because (i) the fact of the company being in the process of liquidation and dissolution means that its cash-flow problems are permanent (not temporary); and besides, (ii) the company had other debts that were being enforced.

Andalucía TEAR upheld the taxpayer's claim. This tribunal affirmed that the application for deferred payment should not have been rejected without first examining the documents produced by the taxpayer (insofar as the existence of assets that could secure collection action by the authorities could be inferred from them).

In the subsequent special administrative appeal for a ruling on a point of law, TEAC confirmed what AEAT had said and set an official interpretation that applications for deferred/split payment filed by dissolved companies in liquidation may be denied without having to carry out any specific analyses or studies of the alleged economic difficulties, because they are permanent difficulties.

3.9 Penalty procedure.- Not reporting income not mentioned in the information provided by the tax authorities is allowed to be subject to a penalty

Central Economic-Administrative Tribunal. Decision of April 3, 2019

Every year personal income taxpayers have access to the information the tax agency has on the types of income obtained. That information may be incomplete, however, and sometimes, incorrect.

In this decision, TEAC set an official interpretation that, in cases where a personal income tax return is filed according to incorrect or incomplete data supplied by AEAT in its tax information, a tax infringement may arise if there is fault on the taxpayer's part.

It must be recalled that penalties cannot be imposed automatically. It is not enough simply to identify that (by objective standards) the taxable person has committed an infringement, instead it must be confirmed that the taxable person was at fault and there must be special reasoning proving that fault.

4. Rulings

4.1 Corporate income tax.- Partially exempt entities may use the capitalization reserve

Directorate General for Taxes. Ruling V0428-19, of February 26, 2018

The capital reserve corporate income tax benefit consists of a reduction to the tax base equal to 10% of the increase in equity if certain requirements are met, basically linked to not distributing dividends, in other words, to that increase in equity staying in place for a period of time (five years).

It was asked whether a consortium recognized as an association with public benefit status in 1943 which is taxed under the tax regime for partially exempt entities (set out in articles 109 through 111 of the Corporate Income Tax Law) may use the capitalization reserve, from the standpoint that in this regime a portion of their income is tax exempt.

According to the DGT, entities of this type are indeed allowed to use the capitalization reserve, but only a portion relative to the increase in their equity that comes from non-exempt income.

4.2 Corporate income tax.- Indemnification payments from insurers to cover penalties are taxable

Directorate General for Taxes. Ruling V0424-19 of February 27, 2019

The Spanish Data Protection Agency imposed a penalty on the entity, which was recorded as an expense for accounting purposes. The entity had signed an insurance contract, providing cover for public authority penalties, so the insurer paid out indemnification equal to the amount of the penalty.

According to the DGT, this indemnification is a computable revenue even if the penalty is not deductible, because although the law says that penalties are not deductible, it contains no particular provisions in relation to amounts paid out by insurance companies.

4.3 Personal income tax.- Where the same discounts are offered to own employees and employees of other companies, there is no income in kind

Directorate General for Taxes. Ruling V0341-19 of February 15, 2019

The employees of a company and of its subsidiaries were allowed to buy at discounted prices the brand name products they sold. It so happened that every employee of all the large companies with offices near that company’s head offices could also buy the same products at the same prices and subject to the same terms and conditions and discounts as its employees. In practice, the number of employees of nearby companies benefitting from these conditions was similar or higher even than the number of employees of the company and its subsidiaries, and therefore the level of sales made to those employees of nearby companies was also similar to or greater than the level of sales made to its own employees.

On the basis of these figures, the DGT concluded that they may be classed as ordinary or normal discounts, which means that there is no income in kind for the employees of the requesting entity and its subsidiaries.

4.4 Inheritance and gift tax.- An inbound expatriate receiving a gift may apply the legislation of the autonomous community where they reside

Directorate General for Taxes. Ruling V0293-19 of February 13, 2019

In the examined case a taxable person who had been claiming the special tax regime for inbound expatriates under the personal income tax legislation, received a gift of 50% of a property in Madrid. The giver was their spouse, also an inbound expatriate.

According to the DGT, inbound expatriates have tax resident status in Spain, even if they have chosen to be taxed as nonresidents for personal income tax purposes under the special tax regime for inbound expatriates. In other words, for the purposes of other taxes they are treated as residents. For inheritance and gift tax, therefore, they are taxed on all the property they receive, wherever located.

Therefore, they are also treated as residents when determining the autonomous community legislation applicable to them. In this particular case, due to involving the gift of a property in the Madrid autonomous community, this autonomous community government is responsible for charging the tax.

4.5 Inheritance and gift tax.- Disclaiming an inheritance after the tax has become statute-barred implies there is a gift

Directorate General for Taxes. Ruling V0229-19 of February 4, 2019

This ruling examines the tax effects of disclaiming an inheritance. The DGT recalled, first, that a disclaimer is a voluntary and freely-decided action in which the person called on to inherit declines their right to receive the whole of their inheritance (never part) irrevocably and unconditionally, in a public instrument executed in the presence of a notary. Its effects are valid retrospectively to the time of the decedent’s death. In these cases, the beneficiary of the disclaimer is the person who is taxed for inheritance and gift purposes.

It was asked, however, what effects would arise on the tax if the disclaimer by an heir and the acceptance of their parts of the inheritance by the other heirs occurs after the tax has become statute-barred. According to the DGT, in these cases it is considered:

(a) That both the disclaimer and the acceptance of the inheritance by the persons benefitting from the disclaimer have *ex tunc* effects. This means that the person disclaiming the inheritance never received it and therefore is not liable for inheritance tax or wealth tax.

(b) In these cases involving a statute bar, however, the person who received the inheritance by reason of the disclaimer will be deemed to be actually the beneficiary of a gift, for which reason they must be liable for gift tax at the time of the disclaimer, as provided in the legislation on the tax.

This gift, however, only has effects for the recipient. It does not mean that the declining party must be liable for personal income tax or wealth tax because, as mentioned, it is considered that they never acquired the disclaimed property.

4.6 VAT.- The DGT examines the VAT implications of flexible compensation plans

Directorate General for Taxes. Ruling V0366-19 of February 20, 2019

This ruling examined the case of a company that granted to its workers, under a flexible compensation plan, meal vouchers amounting to a "multi-purpose voucher" (exchangeable for hospitality services only in Spanish VAT territory).

According to the DGT, in the context of a flexible compensation plan, a worker declining part of their monetary compensation in exchange for income in kind determines the existence of a transaction for consideration that the employer makes to benefit the worker and is subject to VAT:

(a) If the supply of the products is subject to and not exempt from VAT (as is the case with the meal vouchers mentioned), the employer must pay over the chargeable tax.

(b) If, however, the supplies of goods or services are exempt (which would occur with insurance transactions, for example) no VAT would have to be paid over but the employer's right to deduct VAT might be affected, if it alters the employer's deductible proportion.

5. Legislation

5.1 Corporate income tax return forms for fiscal year 2018 have been published

The Official State Gazette, May 17, 2019, published Order HAC/554/2019 of April 26, 2019, approving the corporate income tax and nonresident income tax return forms for permanent establishments and for pass-through entities formed in other countries with presence in Spain, for the tax periods commenced between January 1, 2018 and December 31, 2018.

In this one order, instructions are provided concerning the reporting and payment procedure, the general terms and conditions and procedure for filing them electronically are laid down, and an amendment is made to Order HAP/2194/2013 of November 22, 2013, on the procedures and general terms and conditions for filing certain self-assessments and information returns of a tax nature.

The main new change is that the PADIS assistance program for form 200 is no longer available and will be replaced with an assistance form ("*Sociedades web*"). Elsewhere, the forms are adapted to the new legislation approved in the year, notably:

- To adapt the regime for reduction of income from certain intangible assets to bring it into line with OECD rules.
- To update the list of priority patronage activities and events of exceptional public interest.
- To provide the option, for the first time, to **set aside 0.7% of the gross corporate income tax payable for activities in the public interest** classed as social interest activities.

- To add a new nondeductible expense consisting of the tax debt in respect of stamp tax (notarial documents), for mortgage deeds in which the taxable person is lender.
- New rules arising from applying Circular 4/2017 for entities subject to the Bank of Spain's accounting rules (which require, among other elements, an updating of the forms for the balance sheet, income statement, and statement of changes in equity).

There are no amendments regarding the time limits for filing the forms (July 25 for taxpayers with fiscal years coinciding with the calendar year), for payment of the tax debt directly from a bank account (July 20), or in relation to the additional information forms and the requirements for filing them.

5.2 Reductions for 2018 of given indexes for the objective assessment method for personal income tax have been approved

The Official State Gazette, April 30, 2019, published Order HAC/485/2019 of April 12, 2019, reducing for the 2018 taxable period the net income indexes applicable in the objective assessment method for personal income tax for agricultural and livestock activities affected by various exceptional circumstances.

5.3 New tax stamps for cigarettes and loose tobacco

The Official State Gazette, April 30, 2019, published Order HAC/484/2019 of April 9, 2019, approving the implementing rules for article 26 of the Excise and Other Special Taxes Regulations (Royal Decree 1165/1995 of July 7, 1995) on tax stamps for cigarettes and loose tobacco.

These laws set out changes (i) to the products that must have a tax stamp or seal affixed to them, while maintaining the obligation for cigarettes and including for the first time packets of loose tobacco, and (ii) to the implementation date of the new tax stamps, which will have to be affixed to all packets sold in Spain on or after May 20, 2019.

5.4 The rules on completing the electronic internal administrative document and form 525 have been amended

The Official State Gazette, April 29, 2019, published Order HAC/481/2019 of March 26, 2019, approving the rules on completing the electronic internal document and form 525 “Accompanying internal emergency document”, applicable in relation to domestic movements of products subject to special manufacturing taxes, which will enter into force on July 1, 2019.

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