Tax Newsletter

Spain

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1. Judgments

1.1 Free movement of capital. - Taxing debt instruments at different rates depending on the issuer's place of residence is precluded by EU law

Court of Justice of the European Union. Judgment of October 12, 2023. Case C-312/22

The Portuguese personal income tax legislation determines a 20% tax rate for interest income from bonds and debt instruments payable by entities resident in Portugal, whereas equivalent amounts of income payable by companies resident in third countries are taxed at a progressive rate that may go up to 40%.

The Court of Justice of the European Union (CJEU) held that a national legislation such as that described is precluded by the free movement of capital, because it makes the applicable tax rate depend on the place of residence of the paying entity, thereby giving rise to discriminatory treatment among taxpayers according to the country where they make their investments.

1.2 Corporate income tax. – Member states cannot include additional requirements to those in the directive for applying the tax neutrality regime

Court of Justice of the European Union. Judgment of November 16, 2023. Case C-318/22

The Hungarian tax authorities concluded that a partial spinoff could not benefit from the tax neutrality regime provided in the Hungarian legislation that transposed Directive 2009/133/EC, on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States. Under Hungarian law, partial spinoffs can only benefit from that regime if a capital reduction is performed at the company performing the spinoff, which did not happen in the examined case.

Although the spinoff was purely internal, the CJEU declared that it had jurisdiction to examine the compatibility between the national law and the directive in the examined case. According to the court:

(i) Generally speaking, consideration of the limits which the national legislature may have placed on the application of EU law to purely internal situations is a matter for domestic law and hence falls within the exclusive jurisdiction of the courts of the member state concerned.

(ii) However, the Hungarian legislature expressly applies EU law, without placing any limits on the cases falling under that law and without distinguishing between the spinoffs occurring in a national context and those carried out with the participation of different member states.

After accepting its jurisdiction, the CJEU examined the case concerned and concluded that the directive does not leave Member States discretion with regard to implementation which would permit them to make the fiscal neutrality regime subject to additional (internal) conditions, because this would be tantamount (as in the examined case) to precluding the

application of that system in cases where the transferring company is held by a single shareholder.

1.3 Corporate income tax. – The compensation of companies' senior managers is deductible even where they are directors, if it relates to actual services

Supreme Court. Judgment of November 2, 2023

In this judgment, the Supreme Court examined whether compensation paid to the companies' chief officers with senior management employment contracts, who are also board members, is deductible for corporate income tax purposes. The answer is yes.

The court applied its judgment dated June 27, 2023 (see our publication dated July 6, 2023), and gave the following reasoning:

(i) A free gift cannot exist where undisputed actual services are remunerated, regardless of whether the contractual relationship absorption doctrine applies. The opposite view is in breach of EU law, due to making workers who are members of managing bodies worse off.

(ii) Nor are these expenses precluded by the law, under the court's own reiterated interpretation in relation to the deduction of late-payment interest, whereby only expenses arising from bribes and similar types of conduct fall in this category.

(iii) Moreover, it is not reasonable for directors to carry out their activities for free or without the payer being able to deduct the expense.

(iv) If it were a gift, the income would not be subject to personal income tax, but rather inheritance and gift tax, which is managed by the autonomous community governments.

The court therefore concluded that remuneration paid to the companies' chief officers with senior management employment contracts who are also members of their managing bodies is deductible, if it relates to the provision of undisputed, real and actual services.

1.4 Corporate income tax. – R&D&I tax credits can be applied even if they have not been included on the self-assessment for the period in which they arose

Supreme Court. Judgment of October 24, 2023

The Supreme Court examined whether the R&D&I tax credit can be applied within the maximum period determined in the law if it was not reported on the self-assessment for the period in which the expenses and investments occurred, to which the reply was yes.

According to the court, the reason for the tax credit is substantive. In other words, the right to apply it arises from the existence of the substantive requirements provided for this purpose in the corporate income tax legislation and is restricted to 18 years. Therefore, the right to the tax credit is not forfeited by failing to meet the procedural requirement to have first reported it in the self-assessment for the period in which it arose or otherwise in a correction of that self-assessment, provided that the time limit mentioned above is observed.

The court placed special emphasis on the DGT's resolutions allowing deductions to be applied without needing to have included them on the relevant self-assessment or to have followed a correction procedure (V0802-11, V0297-12 and V2400-14), although it did not mention later resolutions V1510-22 and V1511-22 (tax newsletter for July and August 2022), in which the DGT changed this interpretation.

Lastly, the court explained that its conclusion does not apply to other tax credits, because this specific treatment of R&D&I tax credits arises from the uniqueness and special characteristics of its regulations.

1.5 Corporate income tax. – In cash pooling agreements the withholding obligation arises for interest payments calculated for periods ending earlier than the stipulated due dates

Supreme Court. Judgment of October 19, 2023

In a cash pooling agreement it was stipulated that interest would be calculated monthly, although it would be added to the outstanding principal sum, and not become payable until certain dates specified in the agreements.

According to the Supreme Court, withholdings on interest must be made monthly not on the due date determined in the agreement, because as stipulated in the agreement itself, amounts of interest calculated on a monthly basis are added to the principal sum of the transaction. The important factor, therefore, is that the result of each monthly interest calculation has been included in the creditor's assets and is added to the account as one more supply made by that creditor.

1.6 Personal income tax. – Simplified invoices are valid for the deduction of certain costs, such as a lawyer's clothing expenses

Catalan High Court. Judgment of July 27, 2023

In an audit, the tax authorities rejected the deduction of several expenses that the taxpayer (a lawyer) had deducted to calculate net income from his activities, including those incurred to buy ties and made-to-measure suits. The Catalan Regional Economic-Administrative Tribunal (TEAR) later accepted deduction of the expense relating to the production of a made-to-measure suit, but rejected the expense related to the ties, because it was not supported by an invoice but by a receipt.

The Catalan High Court, however, confirmed deduction of the expense incurred to buy ties, in the same way as that relating to the production of the made-to-measure suit, because these garments are an almost indispensable complement to the recognized formal requirements for the professional activities of lawyers and therefore are related to their economic activity. According to the court, although the simplified invoice is not a complete invoice, it was not evidenced in the proceeding that none of the cases in which this type of invoice is valid applied, in addition to which, the person with tax obligations evidenced the charge in his bank account.

1.7 Temporary solidarity tax on large fortunes. - The temporary solidarity tax on large fortunes is constitutional

Constitutional Court. Judgment of November 7, 2023

The Constitutional Court has dismissed the action for unconstitutionality lodged by the Madrid autonomous community government against article 3 of Law 38/2022 of December 27, 2022, and confirmed the constitutionality of the temporary solidarity tax on large fortunes.

In the judgment (the wording of which is known although it has not yet been published in the Official State Gazette), the court deals with the following issues:

(i) Regarding the breach of article 23.2 of the Spanish Constitution, due to the temporary solidarity tax on large fortunes having been introduced through an amendment in the procedure for a proposal for a law with a different subject-matter, the court concluded that such a breach can only occur where there is a clear absence of any connection between the content of the amendment and the initiative with respect to which it is submitted, which *"is not the case with the temporary solidarity tax on large fortunes"*. According to the court, the amendment fulfills the uniformity requirement, because the solidarity tax on large fortunes seeks to achieve the same purpose as the energy and bank taxes originally mentioned in the proposal for a law: *"to support the "income pact" and the "distribution of effort" to confront the consequences of the energy and price crisis"*.

(ii) With respect to the claim of a breach of the financial independence of the Madrid autonomous community government and the principle that matters related to devolved taxes are reserved for organic law, in relation to wealth tax (infringement of articles 156.1 and 157.3 of the Constitution), the court concluded that the solidarity tax on large fortunes *"leaves unchanged the autonomous community's legislative powers recognized in the wealth tax rules"*, and therefore its entry into force has no effect on autonomous community powers.

(iii) In relation to the potential breach of the ability-to-pay principle and the principle prohibiting confiscatory tax (article 31 of the Constitution), the court held that the tax would only have a confiscatory effect if it used up wealth, not the income arising on the taxed assets, which is a separate expression of the ability-to-pay.

Lastly, with regard to a breach of article 9.3 of the Constitution (legal certainty, retroactive effect), the court recalled that the solidarity tax on large fortunes does not apply in respect of a taxable period, but rather only by reference to a specific date (December 31 of the fiscal year). Therefore, on the date the legislation came into force there was no situation which had started to have effects, and therefore it is not retroactive and does not breach the legal certainty principle.

1.8 Transfer and stamp tax. – The taxable amount for transfer tax under the corporate transactions heading is zero in a capital reduction with a waiver of the right to call uncalled capital

Supreme Court. Judgments of November 13, 2023 (appeals 1939/2022 and 2591/2022)

A company reduced its share capital by reducing the par value of its shares with the aim of waiving the right to call shareholders' uncalled capital. When the reduction took place the uncalled capital was not yet payable.

In this type of transactions, the taxable amount for the purposes of transfer tax under the corporate transactions heading consists of the actual value of the assets and rights provided to the shareholder. Therefore, if the company is waiving the right to call uncalled capital, the actual value will be the value of the waived right to payment.

The Supreme Court concluded, however, that if, as happened in the examined case, the waived uncalled capital payments were not yet payable, the taxable amount is "0", because no actual asset (a right to payment) exists at the company. In other words, because no actual transfer of assets to shareholders took place, there is no taxable amount.

1.9 Real estate tax. - Barcelona local authority rules on real estate tax have been declared partially null and void due to determining a separate charge for uses other than those set out in the cadastral legislation

Catalan High Court. Judgment of September 28, 2023

The Catalan High Court has declared to be partially null and void the Barcelona local authority rules on real estate tax in force in fiscal year 2021 in relation to the requirement for a separate charge for "parking" use, which it did by applying the interpretation in the supreme court judgment of January 31, 2023 (which we discussed in our February 2023 newsletter).

1.10 Local authority charges / Covid-19. - The reduction to the tax on economic activities liability during the state of emergency is not applicable to a local authority urban waste collection charge

Valencia High Court. Judgment of September 20, 2023

The Supreme Court has recently delivered a several judgments (May 2023 newsletter) concluding that the companies that had to stop operating during the state of emergency declared as a result of the pandemic are entitled to a reduction equal to the proportional part of the tax on economic activities liability relative to the amount of time that industry, trade or activities stopped operating.

In the case examined in this judgment it was considered whether the same interpretation may be applied in relation to the local authority urban waste collection charge in fiscal years 2020 and 2021. The Valencia High Court denied this option. According to the court, the chargeable event is the performance of the local authority waste collection activity, regardless of whether the service is used by the private party. If the service on which the charge in question is levied operated without interruption and without any restrictions in fiscal years 2020 and 2021, it must be considered that the chargeable event took place.

1.11 Review procedure. – The tax authorities cannot spontaneously send additions to the originally sent administrative case file

Supreme Court. Judgments of October 27, 2023 and November 2, 2023

In these judgments it was examined whether the tax authorities can spontaneously complete the case file or send an "additional case file" for an economic-administrative claim if this has not been requested by a party or the tribunal itself.

The Supreme Court concluded that the body that delivered the reviewable decision has an obligation to send the complete case file to the economic-administrative body within the one-month period mentioned in article 235 of the General Taxation Law. This period is preclusive for the authorities, and therefore they cannot spontaneously send additions to the originally sent case file if they have not been requested by the economic-administrative tribunal itself or by a party.

According to the court, there are many elements that could be impaired by sending an incomplete case file or sending the case file outside the time limit, starting with standard procedure itself and the balance that it is intended to ensure. As a result, neither the interested parties nor the authority that delivered the reviewed decision can adopt decisions with an immediate effect on procedural matters which, somehow or other, could alter their standard procedure. Decisions of this type fall exclusively within the powers of the economic-administrative tribunal.

1.12 Administrative procedure and review procedure. – The legal requirement for a table of contents must provide an organized view of all the documents in the electronic case file

Supreme Court. Judgment of October 2, 2023

Article 70 of the Common Administrative Procedure Law states that the administrative case file is an orderly set of documents serving as background information to the administrative decision. The case file must contain a numbered table of contents containing all the documents. Lastly, where under a legal provision (such as article 48 of the Judicial Review Law) the electronic case file needs to be sent, it must be accompanied by a table of contents ensuring that it is complete and cannot be changed.

The Supreme Court concluded in this judgment that the table of contents must provide an organized view of all the documents in the case file, for it to meet the necessary parameters for a quick, organized and efficient search. As a result, if it is an electronic case file, the table of contents must be able to be viewed by opening the sheets without needing to look at every page whenever it is decided to examine or compare a piece of information.

In the examined case the case file did not contain a table of contents. This prevented a quick search, which was the ultimate aim, of both electronic administration and of the justice system.

1.13 Appraisal procedure. - Absence of reasons in the expert report submitted by the authorities is a material defect which cannot be corrected through a reversion of procedure

National Appellate Court. Judgment of September 28, 2023

In the case examined in this judgment, the taxpayer had applied for correction of his inheritance and gift tax self-assessment, in which he alleged that the declared value of the inherited real estate assets had to be the cadastral value revised using the revision multipliers published by the Andalusian government. The National Audit Office concluded that those values published by another government authority were not binding on it and, on the basis of an expert report issued by the Public Treasury's architect, rejected the application. Later, the Central Economic-Administrative Tribunal (TEAC) partially upheld the claim filed by the taxpayer, rendered void the assessment that had been made due to the absence of reasons in the expert report submitted by the government authorities, and ordered a reversion of procedure to allow them to correct the observed defect.

The National Appellate Court recalled that, under a reiterated supreme court interpretation, a reversion of procedure can be ordered following a partial upholding of a claim, only if the defects observed in the assessment are procedural, although not if they are substantive, as occurs where reasons are not given in an appraisal report.

1.14 Penalty procedure. – The statute of limitations for a penalty for issuing false invoices starts when each assessment period ends

Supreme Court. Judgment of November 13, 2023

At issue was when the statute of limitations starts for imposing tax penalties for an infringement consisting of issuing invoices or equivalent documents with false or falsified information, where this infringement is committed over more than one taxable period.

The Supreme Court concluded that, for these purposes, each of the taxes and taxable or assessment periods must be considered separately, rather than the date on which the latest invoice or document with false or falsified data was issued. In other words, this is not, as the tax authorities had supported, a continued infringement in the implementation of a previously designed plan, nor, therefore, a case of continued willful misconduct, which is one of the elements which, according to the case law, must exist for a continued infringement to be identified.

2. Decisions

2.1 Administrative procedure. – An assessment issued without observing the scope of the procedure must be voided

Central Economic-Administrative Tribunal. Decisions of September 25 and of October 24, 2023

The dispute consisted of determining the effects arising where, in the context of an audit, the tax authorities carry out steps falling outside the scope of the procedure.

TEAC ruled on this matter in a decision dated September 22, 2021 (October 2021 newsletter), in which it applied the interpretation determined by the Supreme Court in . In this decision, TEAC concluded that a breach of its obligation to stay within the scope of the procedure qualifies as a substantive defect, and therefore it cannot be remedied via a reversion of procedure. It clarified, however, that only the portion of the adjustment that overstepped that scope could be adjusted.

However, in two new decisions, TEAC has warned that this issue has been examined again by the Supreme Court in a judgment dated May 3, 2022 (May 2022 newsletter) and that the interpretation determined in that judgment requires it to reconsider its interpretation, to the effect that the assessment issued with a breach of the scope of the procedure must be voided as a whole not partially.

2.2 Personal income tax. – Receipts evidencing expenses in another country are not proof of residence, because they do not identify the customer

Central Economic-Administrative Tribunal. Decision of October 30, 2023

In the examined case, the taxpayer had reported his income as a nonresident, although the tax authorities concluded that he was resident in Spain. The taxpayer did not produce a residence certificate for the country where he had gone to work, alleging also that the authorities in that country had refused to issue a certificate. TEAC confirmed the authorities' interpretation and made the following observations:

(i) There is no residence conflict to be resolved where the country in which the taxpayer alleges that he resides has not issued a residence certificate, especially if the country in question (which is not mentioned in the decision but appears to be Portugal) usually issues this type of certificate without too many bureaucratic obstacles. This refusal can only be due, according to the tribunal, to not meeting the residence requirements under the country's internal legislation.

(ii) In the absence of a residence conflict, residence cannot be examined under the rules in the tax treaty between Spain and that other country, and instead Spain's internal rules must be applied (article 9 of the Personal Income Tax Law), which contain a two-fold principle, based on more than 183 days spent in Spain and on the center of economic interests.

(iii) To analyze the center of economic interests, several objective elements need to be considered, such as the origin of the earned income or assets in each country. If, as in the examined case, the taxpayer does not make any effort to evidence these elements and yet there are important economic nexus factors with Spain, it may be concluded that the taxpayer is resident in Spain.

(iv) In its analysis of the time spent in Spain, if no residence certificate for another country is produced, sporadic absences must be counted as days spent in Spain. In relation to this analysis, the court affirmed, among other things, that producing taxi or restaurant receipts from the other country is not proof of residence, because the customer is not identified (especially if the customer paid in cash).

TEAC underlined in this respect that, although freedom of proof prevails in this type of analysis, it does not allow a relaxed examination of proof. Additionally, from the standpoint of serving as proof, items that are not produced are equally as valid as those that are, and therefore if the taxpayer chooses certain dates for selecting the documents to be produced (related to bank account movements, for example), it is probably because there are many other items of proof that provide evidence to the contrary.

2.3 VAT. – Deducting input VAT and offsetting VAT carried over from prior periods is a right not an option for the taxpayer

Central Economic-Administrative Tribunal. Decisions of October 24, 2023 (00/00272/2021/00/00 and 00/06065/2021/00/00)

TEAC examined whether (i) a deduction of input VAT and (ii) an offset of excess input VAT carried over from previous periods are rights for the taxpayer or tax options under article 119.3 of the General Taxation Law which cannot therefore be modified after the voluntary period for the tax.

The tribunal adopted the Supreme Court’s recent case law in judgments delivered on February 23, 2023 (March 2023 newsletter) and concluded that in both cases they were rights rather than tax options, because the law does not grant an alternative for election between different and mutually exclusive tax regimes.

Therefore, the right to deduct and the right to offset may be exercised at any time within a four-year period from when input VAT is paid (deduction) or from when the self-assessment determining an amount to be carried forward for offset (offset) is filed, and the amount originally reported may be modified.

2.4 Administrative procedure. – Items of proof may be produced in administrative review procedures, if they do not arise from malicious intent by the interested party

Central Economic-Administrative Tribunal. **Decision of October 30, 2023**

It was examined whether items of proof can be produced in administrative review proceedings (appeal for reconsideration or economic-administrative claim) if they were not produced by the party with tax obligations in the procedure for applying taxes, despite having been requested to do so by the authorities.

After analyzing the Supreme Court's case law and administrative precedents, TEAC made a definitive determination and concluded that the interested party can produce those items of proof outside the time limit, if that party is not considered to act with abuse or malicious intent. If it is confirmed that there has not been an abuse of process, the review body will have to assess the produced items of proof. However, it may only uphold the claim of the party with tax obligations where, after making that assessment, it has been evidenced completely without needing further examination. If further examination is needed, the claim must be dismissed because the review body is not entitled to make that examination.

2.5 Penalty procedure. - Infringements due to inadequate reporting of tax assets and to incorrectly reporting net income without giving rise to underpayment are mutually independent and complementary

Central Economic-Administrative Tribunal. Decision of October 30, 2023

A company filed a corporate income tax self-assessment in which it reported a tax loss. Following an audit procedure, certain adjustments were made which increased its tax base to a positive figure. The adjustment did not, however, give rise to an amount of tax payable, because tax loss carryforwards reduced the tax base to zero. Despite this fact, two penalties were imposed: (i) one for inadequately reporting tax assets to be offset in future periods (paragraph one of article 195.1 of the General Taxation Law), and (ii) another for incorrectly reporting net income for the year, without giving rise to underpayment (paragraph two of that article).

TEAC rejected the conclusion reached by the Catalan TEAR (which supported that the described infringements are alternatives and cannot be applied simultaneously) and noted that these are two complementary infringements which are compatible, because they relate to two different and independent types of conduct which may occur when a self-assessment is filed.

2.6 Penalty procedure. - The place of residence of the party with tax obligations is not a ground for relief from its liability for failing to comply with correctly notified requests

Central Economic-Administrative Tribunal. Decision of October 23, 2023

AEAT made two requests for information via the Authorized Electronic Address to an entity resident in one of the “foral” provinces with broader powers (Álava, Guipúzcoa, Navarra and Vizcaya). The entity failed to access the requests within ten calendar days from when the notices were made available, and so they were considered to be rejected (and therefore, the requests also). For this reason, a penalty was imposed on the entity for a purported infringement consisting of resisting, obstructing or refusing to comply with administrative steps.

The penalty was overturned by the Basque Country TEAR, which considered that the taxpayer’s place of residence should have served as a ground for relief from liability. According to the tribunal, the central government authorities had ignored the particular characteristics of taxpayers with tax domiciles in “foral” provinces, and additionally, the penalty could have been avoided if the request had been served on paper.

TEAC rejected this interpretation and made the following definitive determination:

(i) Residents of “foral” provinces are required to receive electronic notices subject to the same conditions as other taxpayers.

(ii) Failure to comply with a request correctly notified by the authorities due to failing to access its contents is an element constituting an infringement, regardless of the place of residence of the taxpayer.

(iii) The existence of a person qualifying for the infringement must be examined in each individual case, by reference to the particular circumstances, except for the place of residence of the person with obligations, which cannot be considered to relieve liability in a case such as that examined.

2.7 Penalty procedure. - The period for imposing a penalty for the late filing of self-assessments is reckoned from when the self-assessment was filed

Central Economic-Administrative Tribunal. Decision of September 25, 2023

The General Taxation Law states that a penalty procedure arising from a verification and examination process has to start within six months (three, in the wording of the law examined in the decision) from notification of the assessment. The question in dispute was whether that period (of three or six months) is applicable to penalty procedures started as a result of procedures to verify the filing of self-assessments.

TEAC adopted the interpretation determined in its decision dated December 16, 2020 (680/2018), in which it gave a positive reply to that question and noted that, where those verification steps end with the late filing of a self-assessment omitted by the taxpayer, the period for commencing the penalty procedure must be reckoned from the date when that self-assessment is filed. This caused it to set aside the penalty imposed on the claimant because, in the examined case, the applicable three month period had been considerably exceeded.

3. Resolutions

3.1 Corporate income tax. – If the cash received in a distribution of dividends is to be used for its activity, the entity may not be a holding company

Directorate General for Taxes. Resolution V2328-23 of August 10, 2023

Two individuals are considering contributing their shares in entity B to entity A through a share exchange. Entity A will engage in managing B's investments and financial assets through a board of directors. Any dividends that A receives from B will be retained in the entity's cash account or invested in fixed-income securities.

The DGT concluded that, for the purposes of analyzing whether A is a holding company within the meaning of article 5.2 of the Corporate Income Tax Law, its cash and fixed-income securities must be considered not to be used in its economic activity, unless the cash is to be used in the normal course of the entity's activity and therefore may be classed as an element used in its activity.

3.2 Corporate income tax. – Analysis of the tax effects of a merger between two EU resident entities involving two Spanish consolidated tax groups

Directorate General for Taxes. Resolution V2201-23 of July 26, 2023

The DGT has analyzed the consequences for the consolidated tax regime of a merger in which a Netherlands company (X), the parent of a Spanish consolidated tax group (Group X), absorbs a French entity (Y), the parent, in turn, of another Spanish consolidated tax group (Group Y). The merger was approved in January 2021 and was made valid retroactively from

January 1 of that fiscal year. Additionally, the tax neutrality regime under Directive 90/434/EEC was elected for it. According to the DGT:

(i) Group Y will cease to exist on the date when, under French law, it is considered that its parent company Y ceased to exist.

(ii) Insofar as the merger involves a universal succession, X will step into Y's shoes, and therefore the subsidiaries in Group Y will come to be part of Group X. If all the companies coming into the new tax group were part of the group that has ceased to exist, any resolutions adopted by those companies and notified to the tax authorities will be considered valid, so it will not be necessary to adopt new company resolutions; despite which, in the return for the first prepayment in relation to the new structure, the representative entity will have to notify the tax authorities of the changes experienced in the group.

(iii) The tax bases of the two groups in 2021 must be determined by reference to the following rules:

- Broadly speaking, the retroactive validity of mergers for accounting purposes has effects for corporate income tax purposes. In this case, however, because the companies involved in the merger are not resident in Spain and the agreed retroactive validity will apparently only affect the absorbed company, that retroactive validity will not have any impact for determining the individual tax bases of the subsidiaries in both groups, or on the consolidated tax bases.

- The tax base of Group X for fiscal year 2021 will have to include the individual tax bases of the subsidiaries in Group Y between the day following the date when Group Y ceased to exist and December 31, 2021.

- Group Y and its subsidiaries will have to fulfill their tax obligations from the first day of fiscal year 2021 until the date when parent company Y ceases to exist.

- No eliminations can be included in relation to Group Y as a result of its merger into Group X, as required in article 74.3 of the Corporate Income Tax Law.

4. Legislation

4.1 Several information sharing forms have been updated

Order HFP/1284/2023 of November 28, 2023, published in the Official State Gazette on November 30, 2023, approves form 430, for self-assessment of the tax on insurance premiums and determines the manner and procedure for filing it. Additionally, the following information returns have been modified and the contents of annexes I and II to the ministerial order approving form 289, for the annual information return on financial accounts in the field of mutual assistance have been updated:

- **Form 165**, information return on individual certificates issued to the shareholders or other equity holders in newly or recently created entities.

- **Form 180**, information return on withholdings from lease or sublease income from urban real estate.

- **Form 184**, annual information return on flow-through entities.
- **Form 188**, annual information return (summary) on withholdings on movable capital from debt-to-equity transactions and life or disability insurance contracts.
- **Form 189**, annual information return on securities, insurance and income.
- **Form 193**, annual information return (summary) on personal income tax withholdings on certain types of income from movable capital and on certain amounts of income for corporate income tax purposes and nonresident income tax purposes (permanent establishments).
- **Form 194**, annual information return (summary) on withholdings for personal income tax, corporate income tax and nonresident income tax purposes (permanent establishments) on income from movable capital and amounts of income obtained from the transfer, redemption, refund, exchange or conversion of any type of assets representing the attraction and utilization of the capital of others.
- **Form 196**, annual information return (summary) on withholdings on income from movable capital and amounts of income obtained on financial accounts, and annual information return on authorized individuals and on account balances of financial institutions.
- **Form 198**, annual information return on transactions with financial assets and other marketable securities.
- **Form 296**, annual information return (summary) on nonresident income tax withholdings (without a permanent establishment).

Among the various updates, a new field has been included on forms 193 and 296 so that separate information may be provided on withholdings paid over to central government authorities and to the authorities belonging to the “foral” provinces of the Basque Country and to the “foral” community of Navarra, to be completed only where the withholdings have to be paid in proportion to taxable income from transactions.

The order came into force on December 1, 2023 and will be applicable for the first time to information returns in respect of 2023, to be filed in 2024. The articles relating to form 430, however, will come into force on January 1, 2024 and will be applicable for the first time to the self-assessment relating to January 2024, which will have to be filed in the first twenty days of February 2024.

Also published in the November 30 edition of the Official Gazette, Order HFP/1286/2023 of November 28, 2023 amends the orders that approved the following forms:

- **Form 190**, annual information return (summary) on withholdings on earned income and income from economic activities, prizes and certain capital gains and amounts of imputed income for personal income tax purposes.
- **Form 270**, annual summary of withholdings in respect of the special tax on prizes from certain lotteries and bets.

The order came into force on December 1, 2023 and will be applicable for the first time to the filing of forms 190 and 270 in respect of fiscal year 2023 for which the filing period starts on or after January 1, 2024.

4.2 Form 281 has been approved and the requirements have been determined for the record book of trading transactions with movable tangible goods performed in the ZEC where the goods do not go through the Canary Islands

Order HFP/1285/2023 of November 28, 2023, also published in the November 30, 2023 edition of the Official State Gazette, approves form 281 and determines the requirements for the record books of trading transactions carried out in the Canary Islands Special Zone (ZEC) where the goods do not go through the Canary Islands.

For a summary of the main new provisions, see our alert dated December 4, 2023.

4.3 The non-working days for the purposes of reckoning administrative time periods for 2024 have been published

On November 22, 2023, the Official State Gazette published the decision of November 16, 2023 by the Office of the Public Services Secretary, which determines the calendar of non-working days in relation to central government public services for 2024, for the purposes of reckoning administrative time periods.

4.4 Notification of completion of the internal procedures for application of the multilateral treaty in relation to Mexico, Tunisia, Vietnam and Finland

The Official State Gazette for November 18, 2023 published the notification by Spain to the secretary general of the OECD, as depositary of the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (BEPS), done in Paris on November 24, 2016. Through this notification Spain has confirmed completion of the internal procedures for the convention's provisions to take effect in relation to the tax treaties signed with Mexico, Tunisia and Vietnam. Spain also notified the (i) withdrawal of the reservations made in relation to the convention with Finland and (ii) the completion of the internal procedures for the additional notifications in relation to this country to take effect.

Tax Department

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Hermosilla, 3

28001 Madrid, Spain.

T +34 91 514 52 00 - **F** +34 91 399 24 08