2019
January

TAX NEWSLETTER

GARRIGUES

Latest developments and legal trends - Legislation of interest

News Roundup - Judgments

CONTENTS

residence of the family members and of whether there has been separation or divorce

2.8 Tax on economic activities.- Location multipliers must be reasoned

2.9 Tax on construction, installation projects and works.- The tax base in a final assessment cannot contain items not previously included in the provisional assessment

2.10 Cadastral values.- The cost/benefit multiplier does not apply for calculating the cadastral value of properties not built for subsequent sale

2.11 Audit procedure.- Economic-administrative tribunal decisions changing an interpretation given by the DGT cannot be implemented retroactively

3. Ruling requests

3.1 Corporate income tax.- A change to the book value of shares does not have tax effects

3.2 Corporate income tax.- The grant of a call option on a building is taxed according to the accounting treatment of the transaction

3.3 Personal income tax.- Principal residence status ends if the property is rented out to tourists, even if for a few days

3.4 Personal income tax and tax on increase in urban land value.- A "gift in payment" of the principal residence to a third party other than the mortgage creditor with the creditor's consent is exempt

3.5 Inheritance and gift tax.- Solar panels are characterized as real property

3.6 Inheritance and gift tax.- Family business benefits are not available if the decedent or giver is not subject to wealth tax as a resident or non-resident taxpayer

3.7 Inheritance and gift tax and tax on the increase in urban land value.- Some specific comments on the taxation of a fiduciary heir and fideicommissaries

3.8 Information returns.- Attorneys-in-fact for the accounts of nonresident entities do not have to report them on Form 720 if they are disclosed in consolidated financial statements in Spain

4. Legislation of interest

4.1 The Annual Tax and Customs Control Plan for 2019

4.2 General cooperation is extended to the remote filing of applications for correction of self-assessments

4.3 Approval of the 2019 General Budget Law for the Canary Islands autonomous community

4.4 Tax credit for the creation of employment with the contract to support entrepreneurs

4.5 The VAT regulations have been amended in relation to invoicing, to tax management and audit work and procedures to implement the common rules on the procedures applicable to taxes other than income tax and excise and other special taxes

4.6 Amendments have been introduced to various information returns (forms 187, 117, 190, 196, 198, 289 and 291)

4.7 Amendments to forms 309, 036, 030 and 034

4.8 New legislation on tax and cadaster matters in Royal Decree-Law 27/2018

4.9 A package of tax, labor and social security measures designed to encourage artistic creation and filmmaking in Spain has been approved

4.10 Form 233: Information return for expenses at authorized kindergarten or infant education institutions

4.11 The average selling prices for 2019 of certain modes of transport for the purpose of auditing values have been published

4.12 Amendment of the Personal Income Tax Regulations

4.13 Publication of the annual equivalent rate for the first quarter of 2019, for the purpose of characterizing certain financial assets

4.14 The 2019 non-working day calendar for central government public services has been published

4.15 Form 763 for the self-assessment of the tax on gambling activities has been amended

5. Miscellaneous

5.1 The DGT clarifies the VAT treatment of vouchers - Decision of December 28, 2018, by the Directorate-General for Taxes

1. Tax compliance: UNE standard 19602 will help establish good tax practices

Companies will have access to a tool helping them adopt protocols for the adoption, implementation, maintenance and enhancement of compliance programs in the field of tax law.

In the context of tax management at companies, the risk associated with potential tax noncompliance is gaining increasingly more attention. Identifying, managing and monitoring tax risks, in their various forms, is in fact one of the main concerns of companies of all sizes and in all industries.

This was the context that saw in the field of quality standards the appearance of the draft UNE standard 19602 (Tax compliance management systems. Requirements and guidance), prepared by the Spanish Association for Standardization. Its public consultation period ended at the end of January 2019. The committee that drew up the draft had input from professional firms, companies from an assortment of industries, universities and some autonomous community and local governments.

The standard under completion shares the same high level structure with those preceding it in the field of general and criminal compliance (UNE 19600 and UNE 19601) and will be a certifiable standard.

It is intended that the future standard will lay out requirements and guidelines for the adoption, implementation, maintenance and enhancement of the policies contained in tax compliance management systems at organizations with the two-fold aim to favor the implementation of good tax practices and facilitate strict compliance with tax law.

The implementation of this standard through the relevant protocols will depend, in all cases, on each entity's size, industry, risks, internal procedures or relationship with the tax authorities (among other factors).

2. Judgments

2.1 Principle of primacy.- Government authorities have a duty to disapply national law that is contrary to EU law

Court of Justice of the European Union. Judgment of December 4, 2018, case C-378/17

The Court of Justice of the European Union (CJEU) recalled in a judgment rendered on December 4 that the primacy of EU law means that the national courts called upon to apply provisions of EU law must be under a duty to give full effect to those provisions. This involves, if necessary, refusing to apply any conflicting provision of national law, without requesting or awaiting the prior setting aside of that provision of national law by legislative or other constitutional means.

The CJEU went on to clarify that this duty to disapply national legislation that is contrary to EU law is owed not only by national courts, but also by organs of the State – including administrative authorities - called upon, within the exercise of their respective powers, to apply EU law.

2.2 State aid.- The selective nature of State aid must be examined from the standpoint of the objective pursued by the tax system concerned

Court of Justice of the European Union. Judgment of December 19, 2018, case C-374/17

The question referred to the CJEU for a preliminary ruling concerned whether State aid excluded the company from the exemption provided for in German transfer tax law for transfers of real property as a result of restructuring procedures involving only companies in which at least 95% of their shares were held in the years before and after those transactions.

Before ruling on the facts of the case, the CJEU recalled that the selective nature of a State aid must be examined in the light of the objective pursued by the tax system concerned. From that standpoint, it held that the referred case did not fulfill the selectivity requirement insofar as the companies in a same group and independent companies are not in a comparable situation. The CJEU argued in this respect that the distinction is justified since it seeks to avoid the double taxation that would occur if transfers of real property were taxed within a same group.

2.3 Personal income tax.- The sale of the principal residence is only exempt if ownership of the property has been held for longer than three years

Supreme Court. Judgment of December 20, 2018

The Supreme Court examined the case of a couple who had been residing in a dwelling since 1973. The dwelling was originally owned separately by one of the spouses, but was contributed to the community property system in October 2003. In August 2006, the dwelling was transferred by both spouses. Because they were both aged over 65, they applied for the exemption for the principal residence available for taxpayers over that age.

The Supreme Court confirmed in relation to this case that the exemption is only available for the gain relating to half the property, namely, the portion belonging to the spouse that had owned the dwelling since 1973; because the other spouse had owned their half for fewer than three years.

The court affirmed that for the exemption to be applicable it is necessary, in addition to the age requirement, (i) for the transferred dwelling to have been the principal residence for an uninterrupted period of, at least, three years (which was satisfied in this case), and (ii) that throughout that period the taxpayer held absolute ownership of the residence (which in this case was only satisfied by one of the spouses).

2.4 Personal income tax.- Nonresidents subject to personal income tax in the framework of limited tax liability may deduct compulsory contributions paid into an occupational pension scheme

Court of Justice of the European Union. Judgment of December 6, 2018, case C-480/17

German law does not allow non-resident taxpayers subject to personal income tax in the framework of limited tax liability to deduct the amount of compulsory contributions paid into an occupational pension scheme, in due proportion to the share of the income taxable in Germany, even if the contributions are directly linked to the activity which generated that income; whereas a taxpayer

resident in Germany, subject to personal income tax in the framework of unlimited tax liability is able to deduct those contributions to the extent laid down by national law.

According to the CJEU, this legislation restricts the freedom of establishment.

The European court took the view, however, that German law does not restrict the freedom of establishment by not allowing non-resident taxpayers to deduct non-compulsory contributions and amounts paid under private pension insurance arrangements from their tax bases, to the extent that they are not necessary to practice their profession in Germany, or to receive the taxable income, for which reasons it held that, in this case, resident and non-resident taxpayers are not in a comparable situation.

2.5 Transfer and stamp tax.- The transfer tax payable on acquiring control of a company with real estate assets is calculated by reference to all the shares held

Supreme Court. Judgment of December 18, 2018

The Securities Market Law requires transfer tax (under the transfers for consideration heading) or VAT (as applicable) to be charged where control is acquired of companies whose assets are mostly composed of real estate not used for business or professional activities, or where, if such control is already held, the existing ownership interest is increased.

In the examined case, the transferee already held shares in the company, but increased his interest to the point where he gained control. At issue was whether, in this case, the transfer tax base must be calculated by reference only to the shares that enabled him to gain control or, by contrast, to all the shares held in the company.

The Supreme Court concluded that, since December 1, 2006, the date on which the amendment of the former article 108 of the Securities Market Law came into force, the tax base for these transactions must be determined by reference to the whole ownership interest that the person comes to hold when control is acquired, regardless of whether the transferee already held shares in the company.

2.6 Transfer and stamp tax.- Deeds for the creation of pledges without transfer of possession are subject to stamp tax

Madrid high court judgment of July 9, 2018

Madrid High Court concluded in a judgment that a deed for the creation of a pledge without transfer of possession in relation to income from real property (a very common transaction in sales of real property) is an act with assessable economic value that may be registered at the Personal Property Registry.

Therefore, the taxable event for stamp tax purposes (notarial documents) occurs.

2.7 Real estate tax.- The head of a large family is the beneficiary of real estate tax reductions regardless of the residence of the family members and of whether there has been separation or divorce

Balearic Islands High Court. Judgment of September 19, 2018

The real estate tax ordinance approved by Palma City Council excludes large families from eligibility for the reduction where not all members of the family unit live at the address for the beneficiary of the reduction.

According to the Balearic Islands High Court, this restriction is discriminatory and, therefore null and void as a matter of law, although it specified that the reduction may only be claimed at one address for the same large family.

2.8 Tax on economic activities.- Location multipliers must be reasoned

Aragon High Court. Judgment of July 13, 2018

Local councils have the power to set rules on certain types of multipliers (location multipliers) weighting the physical location of premises in each municipality according to the category of the street on which they stand. The setting of rules on these multipliers is optional and they must be included in the relevant municipal ordinances.

A judgment by Aragon High Court examined the resolution by Zaragoza City Council adopted on December 23, 2016, approving Ordinance number 1 and its Annex relating to the tax categories of streets in the city and the resulting amendment of the location multipliers in the Tax Ordinance for the Tax on Economic Activities. Specifically, the challenge concerned the fact that in the administrative procedure for the first of the ordinances not one document appeared that gave reasons for the categorization of streets and their change of category from the previous ordinance; and no reasoning was present either in the procedure for the Ordinance for the Tax on Economic Activities.

Aragon High Court recalled that courts have the power to monitor and, if needed, reclassify the location multipliers for the tax on economic activities; and affirmed that the location multipliers must be reasoned and set on the basis of tax fairness parameters, as well as being understandable so the taxpayer may challenge them, because the fact that the Local Finances Law gives local councils the power to modify the minimum charges by applying the location multipliers does not allow them to be determined without any method whatsoever.

Because in the examined case these requirements were not met, the location multipliers in the Ordinance for the Tax on Economic Activities were rendered null and void.

2.9 Tax on construction, installation projects and works.- The tax base in a final assessment cannot contain items not previously included in the provisional assessment

Supreme Court. Judgment of December 13, 2018

As we mentioned in our Tax Alert dated January 10, 2019, the Supreme Court concluded in a judgment rendered on December 13, 2018 that local councils are not allowed to include in the tax base in the final assessment of the tax on construction, installation projects and works (ICIO) items

or elements which, despite appearing in the estimate submitted earlier by the taxable person, were not taken into account by the tax authorities to determine the tax base in the provisional assessment.

2.10 Cadastral values.- The cost/benefit multiplier does not apply for calculating the cadastral value of properties not built for subsequent sale

National Appellate Court. Judgment of October 8, 2018

To determine the cadastral value of an urban property a number of correction modules and multipliers are used. These include the cost/benefit multiplier reflecting the costs and benefits associated with property development.

In a judgment rendered on October 8, 2018, the National Appellate Court concluded that this multiplier does not apply when calculating the cadastral value of a hospital and of a home for the elderly, even if their owner had them built, on the basis that they were not built for the purpose of later being sold, but to be exploited directly in the healthcare and geriatric activities conducted by the owner/developer.

2.11 Audit procedure.- Economic-administrative tribunal decisions changing an interpretation given by the DGT cannot be implemented retroactively

Andalusia High Court. Judgment of December 19, 2018

The case examined by Andalusia High Court concerned a taxable person who based a tax return on an interpretation that had been reiterated by the Directorate General for Taxes (DGT) in relation to a certain taxable event. The Central Economic-Administrative Tribunal (TEAC) later gave an opposite interpretation in one of its decisions and, on the basis of that TEAC interpretation, the person's tax amount was adjusted in an administrative procedure.

According to Andalusia High Court, this adjustment was contrary to the principles of legitimate expectations and to the estoppel doctrine.

3. Ruling requests

3.1 Corporate income tax.- A change to the book value of shares does not have tax effects

Directorate General for Taxes. Ruling V2805-18, of October 25, 2018

A company acquired shares in a business reorganization for which the tax neutrality regime had been elected. Those shares were recognized for accounting purposes at their historical cost. The company considered that it should have recognized the shares for accounting purposes at their underlying carrying amount on acquisition.

The DGT did not characterize this change in the value of the shares as an accounting error but as a voluntary revaluation and recalled that, under the Chart of Accounts, assets cannot be revalued even if their market value is higher than their carrying amount.

Therefore, if the taxable person makes a voluntary revaluation of its assets, not protected by statute or regulation, this revaluation for accounting purposes will not have any effect on its corporate income tax.

3.2 Corporate income tax.- The grant of a call option on a building is taxed according to the accounting treatment of the transaction

Directorate General for Taxes. Ruling V2749-18, of October 17, 2018

The shareholder of a dissolved company that was in the liquidation period offered a real estate company a call option on the net assets (a building) that the shareholder would be entitled to receive in that liquidation. The premium in respect of acquiring the option was to be part of the future purchase price; or else returned if the purchase did not ultimately take place.

The request concerned whether the receipt of the premium could be regarded as a taxable capital gain for the shareholder.

The DGT concluded that the tax treatment of the transaction is determined from its accounting treatment, because the Corporate Income Tax Law does not contain a specific regime for similar situations. Therefore, said the DGT, "there is no requirement to make any adjustment to book income for tax purposes in relation to the accounting entries needed for the sale of the call option that the requesting entity intends to execute".

3.3 Personal income tax.- Principal residence status ends if the property is rented out to tourists, even if for a few days

Directorate General for Taxes. Ruling V2768-18, of October 24, 2018

The requesting individual had a principal residence on which he was claiming the tax credit for investment in a residence, under the transitional rules allowing taxpayers to continue claiming that tax credit where the residence was acquired before 2013. In the summer, he rents out the residence as a tourist rental home.

This implies, according to the DGT, that the residence ceases to have principal residence status, and there will be no entitlement to the tax credit.

However, in the first year the residence is rented out as a tourist rental home the tax credit may be claimed for the number of days that elapsed until the first day of rental. Starting on that date, the right to the deduction is forfeited unless the residence starts being inhabited again uninterruptedly by the taxpayer (without renting it) for at least the following three years.

3.4 Personal income tax and tax on increase in urban land value.- A "gift in payment" of the principal residence to a third party other than the mortgage creditor with the creditor's consent is exempt

Directorate General for Taxes. Ruling V2646-18, of October 2, 2018

The personal income tax legislation and the legislation on the tax on increase in urban land value provide an exemption for transfers made by individuals in the form of a gift of the principal residence to discharge their debts secured with mortgages taken out with credit institutions.

The DGT considers that both exemptions are claimable even if the "gift in payment" is made to a third party, other than the mortgage creditor, provided it is this creditor that imposes that condition to agree to the gift in payment and accepts it as a means of discharging the obligation.

3.5 Inheritance and gift tax.- Solar panels are characterized as real property

Directorate General for Taxes. Ruling V2880-18, of November 6, 2018

The requesting party, with tax domicile in Madrid, was to receive the gift of a solar panel, in a solar farm in Castilla-La Mancha.

The autonomous community government responsible for charging the tax will depend on whether the solar panel is characterized as an item of personal property (Madrid autonomous community) or real property (Castilla-La Mancha autonomous community).

The DGT, on the basis of its own previous interpretation (ruling of April 23, 2010) and that of the Supreme Court (judgment of May 30, 2007) in relation to other taxes, concluded that an asset consisting of a solar panel installed in a solar farm is characterized as an item of real property for inheritance and gift tax purposes. Consequently, by being located in a solar farm in Castilla-La Mancha, the government for this autonomous community will be responsible for charging the tax on the gift.

3.6 Inheritance and gift tax.- Family business benefits are not available if the decedent or giver is not subject to wealth tax as a resident or non-resident taxpayer

Directorate General for Taxes. Ruling V2792-18, of October 24, 2018

The request concerned eligibility for family business benefits following the death of a Mexican resident who left his heirs an interest in a company resident in Mexico.

A wealth tax exemption is available for shares in companies, subject to certain requirements. If the exemption is available, the heirs are entitled to a reduction in their inheritance tax bill.

In the case described, the decedent did not have to report the shares for wealth tax purposes not even as a nonresident taxpayer because he was not resident in Spain and his assets (the shares in the Mexican company) were not located in Spain either. In other words, the reason for not reporting the shares in Spain for wealth tax purposes, was not because he claimed that exemption, but because he was not subject to the tax. He did, nevertheless, satisfy the requirements for the

exemption. Among others, he owned more than 5% of the nonresident company and exercised management functions which accounted for most of his income.

Despite this, according to the DGT, because the decedent was not subject to Spanish wealth tax by reason of his ownership of the shares and of his residence, the inheritance tax reduction could not be claimed. This conclusion (which is questionable, especially since there were elements related to the taxable person or income in the European Union or the European Economic Area) is similar to that contained in Ruling V3238-17, of December 15, 2017, regarding the gift of shares in a family business resident in Finland, by a non-Spanish resident giver.

3.7 Inheritance and gift tax and tax on the increase in urban land value.- Some specific comments on the taxation of a fiduciary heir and fideicommissaries

Directorate General for Taxes. Ruling V2791-18, of October 24, 2018

A mother with more than one child (one of which had been declared incapacitated by a court) appointed the incapacitated child fiduciary heir and the other siblings fideicommissary substitutes. The fideicommissary substitution was to come into effect after the death of the incapacitated brother subject to certain conditions.

The fiduciary arrangement involves, briefly, the fiduciary receiving all the assets with power of disposition. In other words, the fiduciary arrangement is equivalent to a usufruct arrangement, in that the fiduciary has the right to enjoy the assets (including with the power of disposition) in the fiduciary's lifetime and the fideicommissaries (who act as bare owners) will only receive the assets that the fiduciary has not transferred at the time of the fiduciary's death.

Therefore, in relation to corporate income tax:

(a) When the mother dies, the fiduciary heir is taxed in respect of absolute ownership of the assets in the inheritance, because he has the right to dispose of them without any conditions. At that time, the taxation of the fideicommissaries is put on hold.

(b) Later, when the fiduciary brother dies, it will be deemed that the fideicommissaries inherit all the assets of the first decedent (their mother). The assets must be reported at their value on the date of the fiduciary's death.

However, since the fiduciary was taxed in respect of his mother's assets as if he had received them with absolute ownership, an application could be made for a refund of the tax paid by the fiduciary in respect of the assets he had not transferred (namely, in respect of the assets he really enjoyed as usufructuary not as the real owner).

The fideicommissaries are also required to report the assets they inherit directly from their fiduciary brother, and include the tax refund mentioned above in the remnant estate.

In relation to the tax on increase in urban land value:

(a) When the mother dies (first decedent), the fiduciary heir will be taxable person for the tax on increase in urban land value in respect of the transfer of ownership of the urban land as if he acquired absolute ownership of it.

(b) The taxation of the fideicomissaries (the other siblings) is put on hold until when the fiduciary dies. At that time, the fideicommissaries will be taxed if the ownership of urban land is transferred to all or some of them.

3.8 Information returns.- Attorneys-in-fact for the accounts of nonresident entities do not have to report them on Form 720 if they are disclosed in consolidated financial statements in Spain

Directorate General for Taxes. Ruling V2869-18, of November 5, 2018

A company resident in Spain has a number of subsidiaries in other countries that own bank accounts in other countries also. Several workers at the Spanish company, who are tax-resident in Spain, are attorneys-in-fact authorized to operate those accounts.

The legislation on Form 720 for reporting assets and rights located in other countries requires bank accounts in other countries to be reported by their holders and beneficial owners and by their representatives, beneficiaries, authorized representatives or anyone otherwise having power of disposition regarding the accounts.

However, the law contains an exemption from the obligation to report accounts in other countries where the holders are legal entities resident in Spain and the accounts are recorded in their financial statements, disclosed separately, and identified by their number, the credit institution and branch where they appear open, and country or territory in which they are located.

On the basis of that exemption, the DGT gave a flexible interpretation and took the view that the attorneys-in-fact for the foreign accounts of non-resident companies do not have to report those accounts if they are recognized in the consolidated financial statements or disclosed in the notes to the consolidated financial statements. This recognition must be construed broadly to be valid where the accounts are recorded in ancillary accounting documents provided they tally with the financial statements and give consistency to them; although from the information it must be possible to extract information on the accounts that is sufficient and free from any doubt.

This reasoning is wholly consistent with the interpretation given in rule V1861-13, on June 5, 2013.

4. Legislation of interest

4.1 The Annual Tax and Customs Control Plan for 2019

The Tax Control Plan for 2019 has been published in Decision of January 11, 2019 by the Directorate-General of the State Tax Agency (AEAT) (Official State Gazette of January 27, 2017).

The key new elements included in the various areas are set out below:

1. In relation to information and assistance for the prevention of noncompliance, the following initiatives are notable:

   (a) Ensure the correct operation of the Virtual Assistant for the Immediate Supply of Information (SII) system and continue with the design work on the VAT Virtual Assistant (AVIVA).

(b) Enhance assistance in the personal income tax return season. Under this heading, work will continue on taking the Renta WEB service forward with a new version of the investment securities program to develop it in a web environment and with the pre-completion of data by the Tax Agency based on the data extracted from forms 198 and 189. They also plan to increase use of the Renta WEB phone system called *Le llamamos* ("We'll call you") and strengthen *Agencia Tributaria*, the Tax Agency's mobile app.

(c) Prepare an assistance system for completing notifications of registration cancellation or status changes by taxpayers, including an assistant and a new form.

(d) Study the option of allowing VAT taxable persons not using the Immediate Supply of Information (SII) system to know the transactions reported by users of the Immediate Supply of Information system in which they have participated.

2. In relation to the investigation and audit work on tax and customs fraud the plan stresses that audit and investigation tasks must focus not simply on adjusting irregular tax practices but on their preventive effects.

   Other highlighted elements are (i) the sharp increase in information collected as a result of rolling out AEAT's latest large projects (the Immediate Supply of Information (SII) system, the CRS -Common Reporting Standard- and the receipt of information from country-by-country reports, (ii) the work performed to analyze asset values and the existence of tax risks at legal entities with high net worth (with assets owned directly or indirectly) and (iii) the new mandatory disclosure of aggressive tax planning schemes and other techniques for hiding the ownership of income and assets, resulting from the transposition of Council Directive 2011/16/EU of February 15, 2011.

   From those instruments:

   (a) With respect to multinational groups and large companies, preventive steps will be encouraged targeted at protecting tax bases and providing legal certainty, such as, for example, Advance Pricing Agreements, simultaneous controls in various jurisdictions and Mutual Agreement Procedures ("MAP").

   There will also be impacts on the selection phase of cases to audit and audit work will be led by experts in international taxation. It is highlighted in this respect that (i) they will monitor effective application of the rules in the Multilateral Convention, that (ii) transfer pricing will be a priority area for audit work, and that (iii) particular attention will be paid to certain payments that may significantly erode tax bases such as intergroup services or royalty payments from the licensing of intangibles.

   Lastly attention will be paid to the correct attribution of income to permanent establishments and a spotlight will be placed on identifying structures related to low tax jurisdictions that may be replicated to be used by multiple taxpayers.

   (b) In relation to net worth analysis the aim of ensuring effective implementation of the CRS (Common Reporting Standard for financial statements) is highlighted as the cornerstone for the exchange of information system, and therefore, tax transparency. In this respect, it points to the work that is to be carried out on verifying the implementation by financial institutions of their obligations under the CRS.

   It also highlights the fundamental contribution by the work of the new Central Unit for coordinating the Monitoring of High Net Worth Individuals and Entities, created in the National Fraud Investigation Office.

(c) In relation to the hiding of business or professional activities and the fraudulent use of companies, coordinated dawn raid operations are going to be stepped up with IT audit units.

(d) Regarding the new business models (digital economy), an initial study of FINTECH technologies will be conducted and monitoring procedures will be carried out to ensure proper taxation of the ownership and transfer of virtual currencies, and of the source of funds used in acquiring them.

(e) Highlighted in relation to VAT is the amendment of Council Regulation (EU) 904/2010 of 7 October 2010 on administrative cooperation and combating fraud, which will involve closer and more active participation among the various countries in the European Union to combat cross-border VAT fraud more effectively.

It also charts greater control over the taxpayer register for entities to exclude any that are potential clients to be used by criminal organizations to commit offenses.

Lastly, the following targets are underlined: (i) control of active organizations in the hydrocarbons industry, (ii) control over warehousing procedures other than customs procedures and (iii) control over input VAT refunds in acquisitions of goods made by non-resident travelers in Spanish VAT territory.

(f) In the field of corporate income tax, emphasis is placed on low activity companies on which a varied range of tax management and audit examinations will be conducted.

(g) In relation to control procedures on tax groups and entities, particular attention will be paid to the offset of net operating losses close to expiration of their statute of limitations and to VAT groups included in the advanced category in the special regime, by making use of the information on the Immediate Supply of Information (SII) system.

Also underscored is the need to monitor tax groups with low net sales/revenues figures on a consolidated basis or with a very small number of members and groups in which there are no internal transactions.

(h) Regarding the control and review of information on the taxpayer register, the Plan emphasizes the need to clean up the registers, and mentions a new prevention strategy involving a review of new taxpayers entered on the register ("right from the start" strategy), and the inclusion of a taxpayer register control module in tax audit activities.

(i) Mentioned as an important axis of their work is the verification of taxpayers' proper compliance with their tax obligations with the central government authorities, and the provincial authorities for the Basque Country and Navarra .

(j) In relation to customs fraud control it notably mentions the potential effects of Brexit and the resulting adaptation measures needing to be adopted.

4.2 General cooperation is extended to the remote filing of applications for correction of self-assessments

The decision rendered on December 21, 2018, by the Directorate-General of the State Tax Agency, extending the scope of general cooperation on tax management/collection matters to the remote filing of applications for correction of self-assessments, and approving the standard document for

evidencing the appointment of a representative to be filed remotely on behalf of others was published in the Official State Gazette on January 7, 2019.

4.3 Approval of the 2019 General Budget Law for the Canary Islands autonomous community

On December 31, 2018, the Canary Islands Official Gazette published Law 7/2018, of December 28, 2018 on the 2019 General Budget for the Canary Islands autonomous community which includes, among other tax measures, a reduction of the standard Canary Islands general indirect tax rate to 6.5% as mentioned in our Tax Alert (**Canary Islands Tax Alert dated December 31, 2018**).

4.4 Tax credit for the creation of employment with the contract to support entrepreneurs

Royal Decree-Law 28/2018, of December 28, 2018, for the revaluation of public pensions and other urgent social security, labor and employment measures was published in the Official State Gazette on December 29, 2018.

Among the various amendments to labor and employment law, it repeals the contracts to support entrepreneurs in effect from January 1, 2019. A transitional regime has been provided, however, for contracts concluded earlier, which will continue to be governed by the legislation in force when they were concluded.

This repeal affects the corporate income tax incentives associated with those contracts, although they will stay in place for contracts executed before that date.

4.5 The VAT regulations have been amended in relation to invoicing, to tax management and audit work and procedures to implement the common rules on the procedures applicable to taxes other than income tax and excise and other special taxes

Royal Decree 1512/2018, of December 28, 2018 amending various Regulations in the field of VAT, invoicing, procedure and excise and other special taxes was published in the Official State Gazette on December 29, 2018.

The following new amendments are notable:

(a) VAT Regulations (Royal Decree 1624/1992, of December 29, 1992):

- Various technical adjustments have been introduced as a result of the implementation in Spanish domestic law of the new place-of-supply rules for telecommunications, radio or television broadcasting, and electronically supplied services, and the simplification of the requirements laid down to elect the one-stop-shop system made through the 2018 General State Budget Law.

- Along the same lines, it provides that the applicable legislation in relation to invoicing by taxable persons electing the special regimes applicable to telecommunications, radio and television broadcasting, and electronically supplied services will be the legislation of the member state of identification not of consumption. This amendment is also included in the Regulations on invoicing obligations.

- A few amendments have been included to facilitate the voluntary election to apply the immediate supply of information system (SII).

- It sets out the information that must be supplied by taxable persons on transactions performed in the calendar year before the date on which they are required to use the immediate supply of information system (SII).

- It will also be necessary to disclose the electronic refund documents which, since January 1, 2019, have become mandatory for refunds of VAT on export under the travelers' scheme.

(b) Regulations on invoicing obligations (Royal Decree 1619/2012, of November 30, 2012). In addition to the described amendment in these Regulations:

- An update has been made to the list of VAT-exempt transactions for which it will be mandatory to issue an invoice and an exception to this obligation (as was already in place for insurers and credit institutions) has been provided for other financial institutions in respect of any exempt insurance and financing transactions they perform.

- The special invoicing procedure applicable to travel agencies acting for and on behalf of other traders or professionals in the marketing of those services has been extended to include the travel services subject to the special scheme for travel agencies.

(c) General Regulations on tax management and audit work and procedures and implementing the common rules on procedures to manage, collect and audit taxes (Royal Decree 1065/2007 of July 27, 2007).

- The supply of all information on transactions with subscription rights has been centralized at the custodian. Only in the absence of a custodian in Spain, will the disclosure obligation lie with the financial intermediary or with the public authenticating officer certifying the transaction.

- Rules have been set on the new options available to certain taxable persons so that their telecommunications, radio and television broadcasting, and electronically supplied services, provided to end consumers will always be taxed in the member state of consumption.

- It sets out an exemption from the obligation to file the information return for transactions included on the record books and other transactions (form 340) for taxable persons with an obligation to supply their invoicing records electronically for the purposes of the Canary Islands general indirect tax.

(d) Regulations on Excise and Other Special Taxes (Royal Decree 1165/1995 of July 7, 1995).

- Technical adjustments have been included arising from the inclusion of the autonomous community tax rate for the tax on hydrocarbons in the special portion of the central government rate approved in the 2018 General State Budget Law.

- It has implemented the procedural obligations required for certain tax benefits for the purposes of the tax on hydrocarbons and the special tax on coal.

- The relevant technical adjustments have been made arising from the new legislation on the identification of packaging units of tobacco products and their traceability.

- Certain obligations and formalities for beer manufacturers have been simplified.

- The entry into force envisaged for January 1, 2019 for the new procedures introduced by Royal Decree 1075/2017 for sales en route and of aircraft and vessel fueling operations has been delayed on until July 1, 2019.

Lastly, through Royal Decree 1512/2018, of December 28, 2018 the places where it will be possible to authorize, subject to customs control, a duty-free shop at ports or airports have been determined to increase operators' legal certainty.

4.6 Amendments have been introduced to various information returns (forms 187, 117, 190, 196, 198, 289 and 291)

Order HAC/1417/2018, of December 28, 2018, was published in the Official State Gazette on December 29, 2018 and amends the orders approving certain information returns. The new legislation notably includes:

(a) **Form 187** (for the information return on shares representing the capital or equity of collective investment vehicles) and **form 198** (annual return for transactions with financial assets and other transferable securities). The following has been clarified in relation to transfers of subscription rights:

- If they are subject to tax withholdings, they are reported on form 187.

- If they are not subject to tax withholdings, they are reported on form 198.

- Where a custodian in Spain is involved, only the custodian will have to file the form (187 and/or 198). In the absence of a custodian, the financial intermediary or public authenticating officers certifying the transaction will have to file the return.

- Form 187 does not have to be filed in cases of advance payments by the shareholder or investor making the transfer or obtaining the refund. This exclusion only applies to the shareholder or investor. In other words, all other parties with obligations participating in the transaction (financial intermediaries, public authenticating officers, management entities) will be required to file the form.

- A field has been included for reporting the expenses arising from the sale of subscription rights that are not taken into account for the purposes of the withholding.

(b) **Form 117** (withholdings in relation to income from transfer or redemption of shares in collective investment vehicles and from transfers of subscription rights).

A few unclear names have been corrected on a few boxes.

(c) **Form 190 (**Information return. Withholdings. Salary income and income from economic activities, prizes and certain capital gains and attributions of income. Annual summary).

The form has been adapted to improve the quality of the information in relation to cases of exempt income in kind in which the companies or employers provide the service related to the first cycle of infant education to the children of their workers under indirect mechanisms and to allow any maternity and paternity public social security benefits received to be reported as exempt.

(d) **Form 196** (Information return. Annual summary of withholdings from income from movable capital obtained as a result of the consideration arising from accounts at all types of financial institutions), **Form 198** (annual return for transactions with financial assets and other transferable securities) and **form 291** (Information return. Nonresident income tax. Accounts of nonresidents without a permanent establishment).

A field has been added to identify any accounts presumed abandoned as referred to in Law 33/2003, of November 3, 2003, on government property, with problems for identifying those reported.

(e) **Form 289** (Annual information return on financial accounts in the field of mutual assistance) The countries with which exchange of information is made have been updated.

The Order came into force on December 30, 2018 and will apply for the first time to the annual returns for 2018 which will be filed in 2019.

4.7 Amendments to forms 309, 036, 030 and 034

Order HAC/1416/2018, of December 28, 2018, was published in the Official State Gazette on December 29, 2018 and amends various orders in relation to forms 309, 036, 030 and 034.

On **form 309 for the non-periodical VAT self-assessment return** (Order HAC/3625/2003, of December 23, 2003) the cases in which the obligation to file the return is envisaged have been broadened to include those of taxable persons electing the special schemes for agriculture, livestock and fishing and for the compensatory charge who owe amounts to the tax authorities as a result of the amendment to the taxable amount for fully or partially unpaid transactions.

Elsewhere, the inclusion in Spanish domestic law of the new place-of-supply rules for telecommunications, radio and television broadcasting, and electronically supplied services and the simplification of the requirements laid down to elect the one-stop-shop system (through the 2018 General State Budget Law) were behind the introduction of **amendments to form 036** (Order EHA/1274/2007, of April 26, 2007) **and to form 034** (Order HAP/1751/2014, of September 29, 2014).

Lastly, amendments have been made to **form 036** (Order EHA/1274/2007, of April 26, 2007) **and form 030** (Order EHA/3695/2007, of December 13, 2007) to add a new box to report the effective date of the change of tax residence.

The order entered into force on January 1, 2019.

4.8 New legislation on tax and cadaster matters in Royal Decree-Law 27/2018

Royal Decree-Law 27/2018, of December 28, 2018, adopting certain measures related to tax and the cadaster, was published in the Official State Gazette on December 29, 2018. We discussed this new law in our Tax Commentary dated January 2, 2019 .

4.9 A package of tax, labor and social security measures designed to encourage artistic creation and filmmaking in Spain has been approved

Real Decree-Law 26/2018, of December 28, 2018 was published in the Official State Gazette on December 29, 2018, and has approved a package of urgent measures designed to encourage and protect the performance of artistic creation and filmmaking activities in Spain. We discussed this law in our **Tax / Labor and Employment Alert dated January 2, 2019**.

4.10 Form 233: Information return for expenses at authorized kindergarten or infant education institutions

Order HAC/1400/2018, of December 21, 2018 approving (among others) form 233: "Information return for expenses at authorized kindergarten or infant education institutions" was published in the Official Gazette on December 27, 2018.

This return must be filed by the kindergarten or infant education institutions in January of each year in relation to the information for the immediately preceding year. Exceptionally for the 2018 return, the filing period will end February 15, 2019.

4.11 The average selling prices for 2019 of certain modes of transport for the purpose of auditing values have been published

Order HAC/1375/2018, of December 17, 2017, approving the average selling prices applicable in the management of transfer and stamp tax, inheritance and gift tax and the special tax on certain modes of transport, was published in the Official State Gazette on December 24, 2018.

The order entered into force on January 1, 2019.

4.12 Amendment of the Personal Income Tax Regulations

Royal Decree 1461/2018, of December 21, 2018, amending the Personal Income Tax Regulations was published in the Official State Gazette on December 22, 2018. The amendments are essentially to adapt them to the measures introduced in the Personal Income Tax Law by the 2018 General State Budget Law (Law 6/2018, of July 3, 2018).

Among others:

(a) It describes the calculation method for the maternity tax credit, following the increases introduced by the 2018 General State Budget Law for cases in which costs relating to minding children under three at kindergarten or infant education institutions have been paid.

(b) The contents are specified for the information return to be filed by the authorized kindergarten or infant education institutions.

(c) The regulations have been adapted to the new regime applicable to tax credits for large families or dependents with disabilities.

(d) It has set by regulation the limits determining the withholding and reporting obligations set out in the Personal Income Tax Law, applicable on or after January 1, 2019.

(e) Effective from January 1, 2019, it has removed the exemption from the obligation to keep tax records for taxpayers who keep accounting records that comply with the Commercial Code except for any taxpayers carrying on business activities that determine net income under the normal direct assessment method.

(f) Specification is given of the requirements that must be met by insured lifetime annuities under contracts containing reversion mechanisms, defined benefit periods or counterinsurance mechanisms in the contracts referred to in article 38.3 (exemption for reinvestment of lifetime annuities) and additional provision three (individual systematic saving plans) of the Personal Income Tax Law.

These requirements will not apply to life insurance contracts concluded before April 1, 2019 under which the benefits are received in the form of an insured lifetime annuity.

4.13 Publication of the annual equivalent rate for the first quarter of 2019, for the purpose of characterizing certain financial assets

On December 22, 2018 the Official State Gazette (BOE) published the decision of December 19, 2018, by the Office of the General Secretary for the Treasury and Financial Policy, 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 for tax purposes, this time for the first calendar quarter of 2019. The rates are as follows:

- Financial assets with terms of four years or less: 0.017 percent.
- Assets with terms between four and seven years: 0.330 percent.
- Assets with ten-year terms: 1.165 percent.
- Assets with fifteen-year terms: 1.693 percent.
- Assets with thirty-year terms: 2.142 percent.

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

4.14 The 2019 non-working day calendar for central government public services has been published

The Official State Gazette (BOE) of December 11, 2018 published the Decision of November 29, 2018, of the Secretary of State for the Civil Service, providing for the purposes of calculating time periods, the non-working day calendar within the scope of the central government public services for 2019.

4.15 Form 763 for the self-assessment of the tax on gambling activities has been amended

Order HAC/1363/2018, of November 28, 2018 in relation to form 763 (self-assessment of the tax on gambling activities) was published on December 22, 2018 in the Official State Gazette.

Specifically, it has adapted the self-assessment form to the new legislation in the 2018 General State Budget Law which determined that (i) in all gambling cases (except in the case of charitable mutual sports betting run by the government and random combination draws for advertising or promotional purposes) the tax base (to which a single rate applies) will consist of net prize revenues and (ii) a 50% reduction to the rates to be charged in the autonomous cities of Ceuta and Melilla.

This Order came into force on December 23 and will be applicable for self-assessments relating to the fourth quarter of 2018 and thereafter.

5. Miscellaneous

5.1 The DGT clarifies the VAT treatment of vouchers - Decision of December 28, 2018, by the Directorate-General for Taxes

The Decision of December 28, 2018 by the Directorate General for Taxes, on the VAT treatment of vouchers was published in the Official State Gazette on December 31, 2018. The draft decision was discussed in our **VAT commentary dated November 28, 2018** when it was submitted for public consultation.

This decision transposes the amendments introduced in the VAT Directive in 2016, regarding taxation of the issue, distribution and exchange of vouchers, in other words, of the instruments that must be accepted "as full or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of the potential suppliers of the goods or services are known because they are either indicated on the instrument itself or in related documentation, including the terms and conditions of such instrument".

From this general definition a distinction is made between "single-purpose" vouchers, meaning a voucher where the tax due on the goods or services for which the voucher will be exchanged is known at the time of issue, and "multi-purpose vouchers", meaning a voucher where the tax due on the transaction will only be known when the voucher is exchanged (because, for example, they may be exchanged for goods or services that are taxed at different rates or that have different places of supply).

The provisions concerned must be applied to vouchers issued on or after December 31, 2018.

For further 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