

NEWSLETTER

The **Spanish** government has introduced extraordinary tax measures and increased certain taxes

DECEMBER 2016

SUMMARY

ROYAL DECREE-LAW 3/2016, OF 2 DECEMBER 2016 (“RDL”), OF 2 DECEMBER 2016 (“RDL”) WAS PUBLISHED IN THE SPANISH OFFICIAL GAZETTE, APPROVING, AMONGST OTHERS PROVISIONS, TAX MEASURES AIMED AT RAISING FUNDS TO ADDRESS THE COUNTRY’S BUDGET DEFICIT. THE GOVERNMENT HAS INTRODUCED EXTRAORDINARY CORPORATE INCOME TAX MEASURES AND INCREASED CERTAIN EXCISE TAXES, ESSENTIALLY AIMED AT RAISING FUNDS TOGETHER WITH THOSE ACTIONS TAKEN TO COUNTERACT TAX FRAUD. IT IS EXPECTED TO DO SO TO THE TUNE OF SOME ADDITIONAL EUROS 7,000 MILLION THIS YEAR ALONE.

Introduction

Royal Decree-Law 3/2016, of 2 December 2016 (“RDL”) was published in the Spanish Official Gazette, approving, amongst others provisions, tax measures aimed at raising funds to address the country’s budget deficit. The government has introduced extraordinary corporate income tax (CIT) measures and increased certain excise taxes, essentially aimed at raising funds together with those actions taken to counteract tax fraud. It is expected to do so to the tune of some additional Euros 7,000 million this year alone.

The tax measures introduced in the CIT pursue to broaden the CIT taxable base of major multinationals, modifying certain exemptions and tax credits. Although they may be significant, somehow they are in line with those introduced in year 2015 with the new Spanish CIT Law and with the tax system of other EU member States.

The purpose of increasing certain excise taxes (taxes on alcohol and certain beverages and taxes on tobacco production) is also essentially aimed at raising funds.

The new tax measures should not have adverse tax consequences for small and medium sized entities and freelances. Spanish personal Income Tax and VAT remained unchanged.

The RDL also extends Spanish wealth tax for year 2017.

Spanish local tax on real estate (IBI) is increased as well.

In addition, a Royal Decree aimed at controlling and fight the tax fraud and update the VAT was also approved.

This Alert summarizes the most relevant measures included in the new RDL:

a) Corporate Income Tax

Spanish CIT tax rates remain unchanged (the general 25% CIT rate is to be applicable for tax year 2017). However, the RDL introduces limitations on some tax credits and exemptions.

The exemption and tax credits modified are the following:

1. Spanish participation exemption tax regime

Tax losses derived by Spanish taxpayers from the transfer of entities which gains and dividends had qualified for the application of the Spanish tax exemption regime would not be tax deductible for CIT purposes.

In turn, losses derived from any type of depreciation in value in the portfolio of entities resident in Spanish blacklisted tax havens or in low tax jurisdictions (i.e. the foreign company would have to be subject to a nominal tax rate of at least 10%) are not deductible from a Spanish CIT perspective.

2. Reversion of the impairment of certain shareholdings

The reversion of impairments on entities which where deductible for tax purposes in tax periods prior to 2013 and that, as of such a date, had been considered as non-tax deductible for CIT purposes, will have to be reverted for a minimum amount on a year-by-year basis for a 5 year period, this regardless of whether or not the impairment exceeds the corresponding amount. This is because, these impairments correspond to non-realized estimated losses which had reduced the taxable base of the Spanish corporate taxpayer.

3. Tax loss carryforwards

Several limitations on the set off of carry forward net operating losses (NOLs) are introduced based on an entity's turnover, as follows:

Where the turnover is more than Euro 60 million, NOLs carried forward may offset 25% of taxable income. Where turnover is more than Euro 20 million but not higher than Euro 60 million, losses carried forward may offset only 50% of the taxable income.

But please note NOLs would be able to be carried forward indefinitely.

4. Tax credit to relief double taxation

A new limitation is established in order to apply the tax credit for the relief of double taxation. Tax credits for the relief of double taxation could not exceed an amount equal to 50% of the CIT's quota of corporate taxpayers with a turnover of more of Euro 20 million. This measure is already applicable in 2016 tax year.

b) Wealth tax

Spanish Wealth tax was established, on a temporary basis, by RD 13/2011, published on 17 September 2011, and has been also extended for 2017.

This tax levies individual's net wealth. There may be changes on this tax depending on the Autonomous Communities.

A Spanish resident is subject to Wealth Tax on the value of his worldwide assets less liabilities as of December 31 each year. Tax is applied at progressive rates which also vary depending on the autonomous community of residence (the highest progressive rate in Catalonia is 2.75%) with an exemption for the first EUR 500k-700k (plus some assets are also exempt, such as the habitual adobe up to specific limits); or there is no taxation at all, such as in the community of Madrid (actually, a 100% rebate).

c) Excise duties

1. Excise duties on alcohol and certain non-alcoholic beverages

Excise duty on alcohol a certain non-alcoholic drinks (hard sodas) is increased at 5% in the whole Spanish territory (including Canary Islands). Tax rates on beer and wine remain unchanged. Even with these reform, Spanish excise duties on the aforementioned products continue being the lowest in the EU but such reform contributes to reduce the different existing tax treatments between the EU member States.

2. Excise duty on Tobacco

Excise on tobacco is also increased.

d) Postponements and divisions

The Spanish tax rule which allows (under certain circumstances) the deferral or division of withholding taxes and payments on account is abolished. Consequently, taxpayers will not be able to opt for these choices.

e) Local Property tax (Impuesto sobre Bienes Inmuebles or "I.B.I.")

Spanish local tax on real estate is calculated, annually, in respect of private properties held for personal use- no economic- on the property's cadastral value, which is assigned by the local authority and is generally lower than the acquisition or market value. Spanish local property tax is generally nominal ad is paid to the local town.

RDL approves an increase on the coefficients which update the cadastral value of the Spanish real estate. The aforementioned increase is to be carried out in year 2017. Therefore this measure implies an immediate effect on the amount of Spanish local property tax to be paid by taxpayers.

The government considers that this measure is necessary in order to raise funds for the reinforcement of the financing, tax consolidation and budget stability of the local administration.

d) Minimum wage

The minimum wage is increased at 8% in respect of the minimum wage established for year 2016.

e) Measures to counteract tax fraud and update the Spanish VAT system

Effective January 2017, a new reporting system for invoices called Immediate Supply of Information (ISI) is expected to come into force. Under this system, taxpayers who file VAT returns monthly will be required to maintain and submit VAT books electronically. The new requirement will be optional for other taxpayers. Under this system, all invoices issued and received for VAT purposes must be transmitted electronically and almost immediately to the Spanish tax authorities so they have all information about operations carried out by VAT taxpayers in real time.

Questions and/or comments?



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