International Bar Association Annual Conference 2024

Recent Developments in International Taxation

Spain

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Extension of a new solidarity wealth tax for high-net-worth individuals

A temporary levy on large fortunes was introduced for fiscal years 2022 and 2023 on individuals with assets exceeding €3m. However, in December 2023, the tax was extended indefinitely, if taxation on capital is not reviewed in the context of the reform of the regional financing system. It is a central government tax that will apply to all autonomous communities in Spain and it is supplementary to net wealth tax (NWT). The tax rates range from 1.7 per cent for assets between €3m and €5,347,998; 2.1 per cent up to €10,695,996; and 3.5 per cent for assets exceeding the latter amount. Additionally, there is a tax-free allowance of €700k and a joint limitation, like the one already existing for personal income tax (PIT), and NWT may also be applied.

Approval of new anti-fraud billing systems

Spain has approved new regulations to standardise billing systems for entrepreneurs and professionals, aimed at preventing and combating tax fraud. These regulations focus on ensuring the integrity and inalterability of invoices. Royal Decree 1619/2012 concerning invoice obligations is partially amended to address the misuse of dual-use software.

Certain groups, such as those under the Immediate Supply of Information on VAT regime, are exempt from fulfilling those requirements.

Even though the regulations took effect on 7 December 2023, compliance requirements will be requested from 1 July 2025. Computer system developers have nine months to adapt their products following the Ministerial Order detailing technical requirements.

Regulations on the beneficial ownership register

Royal Decree 609/2023 of 11 July 2023 approved regulations for the creation of an electronic, central and public beneficial ownership register providing access to general information regarding the beneficial ownership of legal entities and other entities or structures without a legal personality.

Madrid approves the ‘Mbappé Bill’

The regional government of Madrid has approved the ‘Mbappé Bill’ , introducing a PIT credit for individuals who have not been tax resident in Spain for the past five years, and who wish to invest in and move to Madrid. The regulation aims to attract foreign investment, creating jobs and wealth in the region.

The key points are the following: (1) a 20 per cent tax credit on an investment in financial instruments like debentures, bonds and shares, excluding immovable assets; (2) the investment must be made within the year of acquiring tax residence or the following year, with the credit applicable in the same year (excess credit can be carried forward for five years); (3) taxpayers must maintain their investment and tax residence in Madrid for six years; and (4) investment in tax havens is prohibited, and the taxpayer cannot hold executive or managerial positions in the invested entity.

The bill is now with the Regional Assembly for further processing and, if approved, will be retroactively effective from 1 January 2024.

Pillar Two regulations

In June 2024, the Spanish Congress introduced a bill to establish a complementary tax ensuring a global minimum level of taxation for multinational enterprises (MNEs) and large domestic groups, in line with the European Union Minimum Taxation Directive and Organisation for Economic Co-operation and Development (OECD) Global Anti-Base Erosion (GLoBE) Model Rules. The bill proposes a 15 per cent minimum tax for MNEs with consolidated revenues of €750m or more in at least two of the last four years, and it is being fast-tracked for parliamentary approval.

The bill introduces a complementary tax based on three forms, that is, domestic, primary and secondary complementary taxes, aligned with the income inclusion rule and undertaxed profits rule. It includes safe harbour provisions to reduce compliance burdens during the initial implementation years, with permanent and transitional rules to simplify tax calculations for jurisdictions with a low risk of significant additional taxes.

Permanent safe harbour rules set the primary complementary tax at zero for entities in Member States with a qualifying domestic complementary tax, applicable under specific conditions to other jurisdictions. Transitional country-by-country reporting (CbCR) safe harbour rules apply if an in-scope group meets at least one of three tests in a jurisdiction: the *de minimis* test, the effective tax rate (ETR) test or the routine profits test. These transitional rules are valid for tax periods beginning before 1 January 2027 and ending before 1 July 2028.

The bill will take effect for tax periods starting 31 December 2023, except for the undertaxed profits rule, which will apply from 31 December 2024.

Spanish case law

Burden of proof for the anti-abuse clause regarding withholding taxes on dividends lies with the tax authorities

On 21 June 2023, the Spanish Supreme Court ruled that the tax administration bears the burden of proof in justifying the rejection of the EU Parent-Subsidiary exemption for dividends distributed to EU parent companies.

The case involved a Spanish taxpayer who distributed a dividend to its Luxembourg parent company in 2010, claiming the exemption under Spanish non-resident income tax (NRIT) Law. The exemption was denied by the tax administration because the ultimate investor was a Canadian public pension fund. The National Court sided with the taxpayer, stating that the tax administration wrongly presumed a fiscal purpose without proper justification and must provide further proof using information exchanges under international conventions.

The Supreme Court upheld this view, stating that the tax administration must prove the applicability of the anti-abuse clause, aligning with Court of Justice of the European Union (CJEU) rulings and revising previous case law to reflect this principle.

Residence certificate issued for tax treaty purposes is valid

On 12 June 2023, the Spanish Supreme Court ruled that judicial and tax authorities in Spain cannot disregard a foreign certificate of tax residence when applying a tax treaty concluded by Spain. An individual with dual Moroccan–United States citizenship claimed US residency under the Spain–US Income Tax Treaty, but the Spanish tax authorities rejected the US-issued tax certificate.

The Supreme Court determined that Spanish authorities must accept the tax residence certificate from a country with which Spain has a tax treaty, stating that national bodies are not competent to judge the issuance circumstances of another state's tax certificate and cannot unilaterally assess a residence conflict when a valid certificate is presented.

Constitutional Court dismisses high-net-worth individual's tax appeal

A temporary levy on large fortunes was introduced for fiscal years 2022 and 2023 on individuals with assets exceeding €3m.

On 25 March 2023, the *Spanish Official Gazette* announced that the Constitutional Court had admitted to processing the appeal against Article 3 of Law 38/2022, which introduced the large fortunes levy.

In November 2023, the Constitutional Court dismissed the appeal of unconstitutionality against the temporary solidarity tax of solidarity on large fortunes.

Unconstitutionality of certain corporate income tax (CIT) measures

On the 19 January 2024, the Constitutional Court ruled that certain stricter tax measures imposed on large companies by Royal Decree-Law 3/2016 were unconstitutional. These measures include: (1) stricter limits on offsetting tax losses for large companies; (2) additional limits on applying double taxation deductions for large companies; and (3) the requirement for the automatic reversal of previously deducted impairment losses on shareholdings from 2016 to 2020.

The Court determined that these measures exceed the regulatory scope of a decree-law and significantly impact corporate income tax, which is fundamental to the tax system. This decision, similar to a previous ruling on municipal capital gains tax, specified that tax settlements not contested by the judgment date and self-assessments not rectified will not be reviewed.

However, Spain's Socialist Party is willing to revive corporate income tax measures declared unconstitutional by the Constitutional Court. It has proposed amendments to a bill discussed in Parliament that would reintroduce the previously unconstitutional measures from a December 2016 decree.

The amendments would aim to re-establish certain tax measures included in Royal Decree-law 3/2016 to alleviate the revenue loss derived from the removal from the legal system of this regulation. In particular:

- the loss carry-forward limits for the compensation of tax bases would go from the 70 per cent, in force after the Constitutional Court judgment, to 50 per cent for entities with a turnover between €20m and €60m in the 12 months prior to the commencement of the taxable year; and then to 25 per cent for companies with a turnover of at least €60m in the 12 months prior to the commencement of the taxable year;
- international and domestic tax credits would be limited from 100 per cent after the Court decision to 50 per cent of the tax due (tax payable before the application of tax credits) on the aggregate amount of domestic and international tax credits for the avoidance of double taxation for companies with a net turnover of at least €20m in the 12 months prior to the commencement of the taxable year; and
- impairment losses deducted for tax purposes prior to 1 January 2013 that had not been reversed on 1 January 2024 would be fully incorporated into the taxable base.

Finally, the 50 per cent limitation on the losses of subsidiaries that consolidated groups could deduct in 2023 would be extended through 2024.

As of the date of this report, the bill has not been passed

Spanish General Directorate of Taxes (GDT) doctrine

Participation exemption on photovoltaic entities

On 26 July 2023, the GDT clarified that the capital gains derived from the sale of shares in special purpose vehicles (SPVs) for photovoltaic projects in the 'ready to build' (RtB) phase is 95 per cent exempt from CIT if specific conditions are met.

The debate was whether SPVs should be considered portfolio entities (with more than 50 per cent of assets as securities or not engaging in economic activities) or not.

The GDT concluded that this exemption applies if the SPVs are engaged in economic activities during the promotion phase, involving the management of production means or human resources for market participation, and not classified as portfolio entities.

Such a binding consultation is contrary to an earlier ruling from August 2021, which indicates that the GDT criterion has changed.

Tax advantage denied under anti-abuse clause must be distinct from tax deferral inherent in a restructuring's tax neutrality regime

On 27 September 2023, the GDT ruled that when the main purpose of restructuring is tax evasion or avoidance, the tax advantage to be eliminated is not the inherent tax deferral on generated income.

The case at hand analyses an individual that planned to transfer a 60 per cent shareholding in Company A to Company B (wholly owned by the individual) through a securities exchange of shares, with Company A distributing prior profits to Company B two years later.

In this regard, the GDT determined that tax advantages can only be adjusted if it is proven that tax evasion or avoidance was the main purpose of the transaction. The adjustment must remove the sought tax advantage, excluding the inherent tax deferral.

The GDT followed the judgment of the Court of Justice of the EU in the *Europark* case (Case C-14/16) of 8 March 2017, as well as Supreme Court ruling 1503/2022 of 16 November 2022, in which it clarified that the obtaining of a tax advantage is inherent in the deferral regime itself because it is characterised by its tax neutrality.

However, in April 2024 the Central Economic-Administrative Court (*Tribunales Económico-Administrativos Central* or TEAC) in similar cases (exchange of share contributions) adopted a criterion that differs from the one expressed by the GDT. In this regard, while the TEAC acknowledges that only the undue tax advantage obtained by the taxpayer should be regularised, the significant difference with the GDT criterion is that the TEAC believes that the deferral of taxation resulting from the contribution of shares itself can also be considered an abusive tax advantage.

The TEAC resolution raises many questions that the Supreme Court will have to clarify in the future.

Non-residents holding interests in companies that participate in a listed entity that owns real estate are not subject to Spanish wealth tax

From 1 January, the Wealth Tax (WT) Act was amended to set forth that non-residents that hold interest in non-listed entities whose assets consist, directly or indirectly, of at least 50 per cent real estate located in Spanish territory are deemed to be situated in Spain and, therefore, subject to WT.

On 21 September 2023, the GDT issued a ruling clarifying that non-residents that hold interest in companies participating in listed entities with real estate investments in Spain are not considered to be located in Spanish territory. Therefore, non-residents are not subject to Spanish WT for holding such companies.