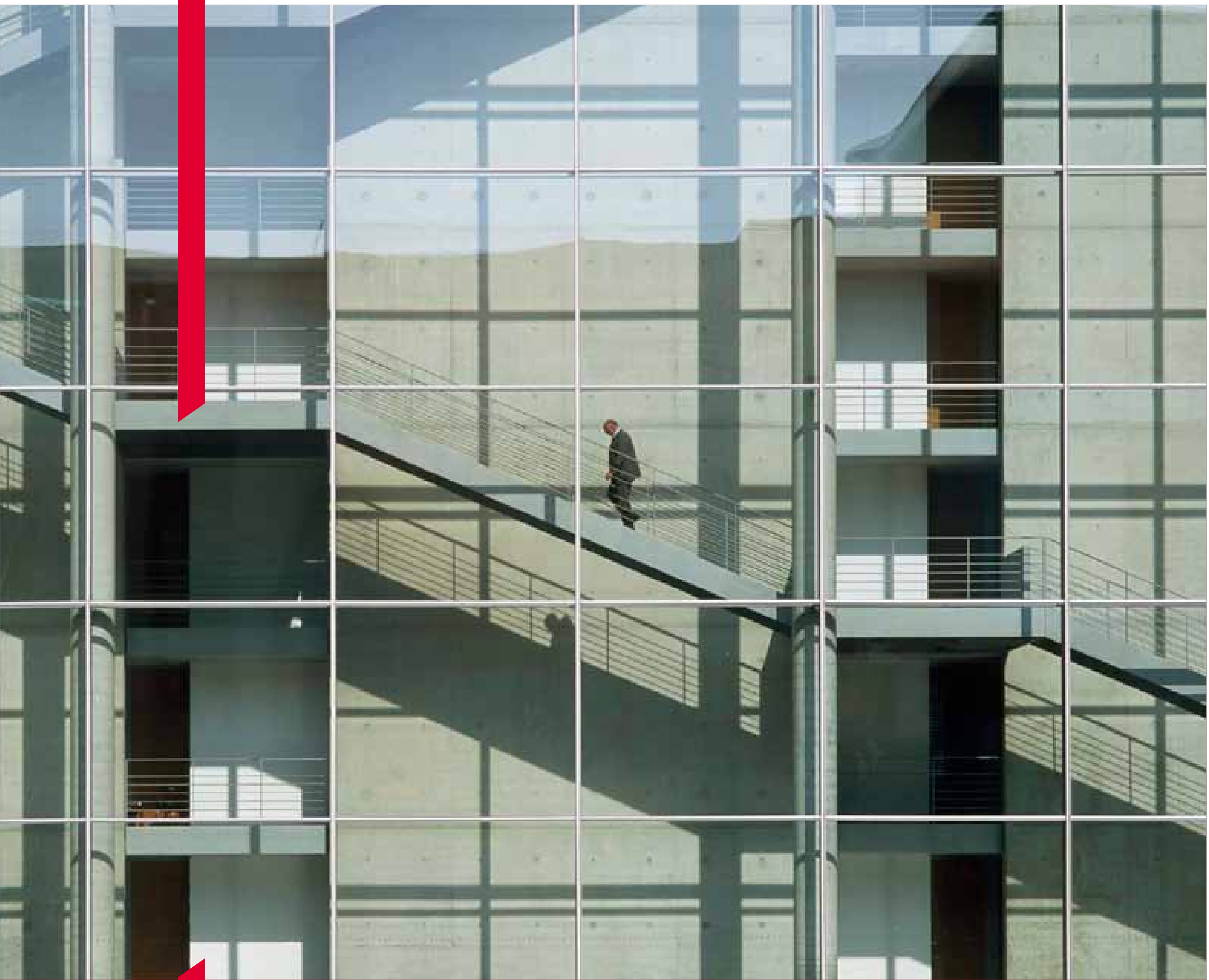

BDO ABOGADOS Y ASESORES TRIBUTARIOS

TAX NEWS

Royal Decree-Law 20/2012 dated 14 July. Spain's new measures to guarantee budget stability and promote competition in the market

Spain's new measures to guarantee budget stability and promote competition in the market (Royal Decree-Law 20/2012 dated 14 July) were published last Saturday, 14 July, in the Official State Gazette (BOE). These measures are aimed at reducing public debt and contain certain changes in tax rules, the main points of which may be summarised as follows:

MEASURES AFFECTING CORPORATE INCOME TAX ("CIT")

Permanent measures affecting financial years commencing as of 1 January 2012

- Limits on the deductibility of financial expenses are extended to include all business entities subject to CIT, irrespective of whether they form part of a group of companies (as defined under Article 42 of the Commercial Code).

  If the tax period is less than one year, the sum of net financial expenses deductible for the period is obtained by multiplying the figure of 1 million euro by the proportion between the duration of the tax period and the actual length of the financial year.

  This rule will not apply in the event a company is dissolved, with no possibility for expenses pending deduction to be carried forward.

  These limits do not apply to insurance companies.

  Following the above, the Directorate General of Taxes issued a ruling on 16 July this year establishing the interpretative criteria necessary in order to clarify legal nuances in the practical application of this rule. The ruling sheds light on basic concepts such as what may be understood as financial expenses or any income triggered by the granting of capital loans by one company to another.

Temporary measures affecting financial years commencing in 2012 and 2013

- A new limit is established for setting off loss carry forwards in large companies (taxable persons whose turnover in the previous financial year exceeded 6,010,121.04 euro):

  a. Loss carry forwards are limited to 50 per cent (previously 75 cent) of taxable income prior to setoff for taxable persons whose turnover in the previous financial year was above twenty million euro but below sixty million euro.

  b. The limit is reduced to 25 per cent (previously 50 per cent) for companies whose turnover in the previous financial year was not less than sixty million euro.

- RDL 20/2012 establishes no change in the 1 per cent limit on the annual deduction of the original acquisition price of intangible fixed assets relating to goodwill for taxable years beginning in 2012 and 2013. As an exception to this limit, taxpayers liable to Personal Income Tax whose turnover in the tax period immediately previous was not higher 10 million euro are allowed an annual deduction of 5 per cent.

- The maximum annual deduction of the amount paid for intangible fixed assets with an indefinite useful life is reduced from 10 per cent to 2 per cent. As an exception to this limit, taxpayers liable to Personal Income Tax whose turnover in the tax period immediately previous was not higher than 10 million euros are allowed a maximum annual deduction of 10 per cent.

"Minimum amount required for Corporate Income Tax payments by instalment, based on a percentage (12%) of the results of the Profit & Loss account applies to taxable persons whose net turnover, in the twelve months prior to the date of commencement of tax periods in financial years 2012 or 2013, reached a figure of not less than 20 million euro."

- Amendment of the method used to calculate Corporate Income Tax paid in instalments:

  a. Solely for the purpose of payments by instalment following the method used according to the taxable income as at the first three, nine and eleven months of the financial year, taxable income on which the instalments are based will now include 25% of the dividends and revenue for which an exemption may be claimed under Article 21 of the CIT Act.

  b. Following approval of RDL 20/2012, and for instalments pending in the 2012 financial year and tax periods commencing in 2013, there is an increase in tax rate percentages for companies whose turnover in the previous financial year was more than 10 million euro, i.e.:

     – Companies whose net turnover in the previous financial year was between 10 and 20 million euro will apply a rate of 23 per cent to their instalments.

     – Companies whose net turnover in the previous financial year was between twenty and sixty million euro will apply a rate of 26 per cent to their instalments.

     – Companies whose net turnover was not less than sixty million euro in the previous financial year will apply a rate of 29 per cent to their instalments

  Minimum instalment: Royal Decree-Law 12/2012 introduced a minimum amount required for payments by instalment, based on a percentage of the results of the Profit & Loss account, aside from the taxable income for the financial year in progress. This minimum instalment applies to taxable persons whose net turnover, in the twelve months prior to the date of commencement of tax periods in financial years 2012 or 2013, reached a figure reached a figure of not less than twenty million euro.

RDL 20/2012 amends the percentages for determining the minimum amount required for payments by instalment.

Thus, no instalment may be less than 12 per cent (previously 8 per cent) of the earnings reflected in the Profit & Loss account in the first three, nine and eleven months of each calendar year .

The minimum instalment will be 6 per cent (previously 4%) when 85 per cent of the income obtained by the companies in question corresponds to revenue for which an exemption may be claimed under Articles 21 and 22, or the deduction allowed under Article 30.2, of the codifying legislation of the Corporate Income Tax Act (i.e. the 100% exemption or deduction to avoid double taxation at domestic level).

When determining the minimum amount required for instalments, only those made in the same tax period will be taken into account.

However, tax deducted at source and tax abatements will not be taken into account, nor may any amounts be set off from losses carried forward from previous financial years.

Limits on the deductibility of financial expenses are extended to include all business entities subject to CIT, irrespective of whether they form part of a group of companies

Measures in effect up to 30 November 2012 exclusively.

- A new, special charge is introduced on dividends and revenue from foreign sources which fulfil the description provided under Article 21.1.a) of the CIT Act (minimum stake 5 per cent) but, as they qualify as passive income, may not benefit from the option to be taxed at 8 per cent under the special scheme recently approved.

  The special rate applicable will be 10 per cent, except for the portion of taxable income deriving from share transfers which corresponds to the reversion of decreases in value which would otherwise have been treated as tax deductible.

  The special charge must be self assessed using Form 250 and paid in a term of 25 calendar days from the date on which it accrues, i.e.:

  - For dividends, the date on which the General Meeting of Shareholders passes a resolution to distribute profits.
  - For transfers of equity in companies not resident in Spain, the date on which the transfer takes place.

  Losses caused by a decrease in value of shares which may be due to the distribution of profits subject to this special charge will not qualify as deductible.

MEASURES AFFECTING PERSONAL INCOME TAX

- The suppression of an allowance for the acquisition of a place of normal residence has been limited to eliminating the relief formerly available to taxpayers who, by means of external financing, purchased their home prior to 20 January 2006 and were granted higher deduction percentages. However, the reasons put forward for suppressing this relief clearly convey the intention to eliminate this deduction altogether with effect from 2013.

- An indefinite increase has been made in the percentage of withholding tax or advance payments applicable to earnings from employment derived from giving training courses, lectures, talks, seminars and other similar events, or from creating literary, artistic or scientific works, whenever the rights thereto are assigned, and to fee revenue paid for the performance of personal services in an independent capacity from 1 September 2012 onwards.

  The percentage withheld on the activities described in the preceding paragraph is increased to 19 per cent, and to 9 per cent (for certain cases set out in the regulations). Let us remember that the withholding tax in question was previously 15 per cent and 7% respectively.

  Without prejudice to the above, with effect from 1 September 2012, and only for tax years 2012 and 2013, the percentage withheld on the above income will be 21º%.

MEASURES AFFECTING VALUE ADDED TAX

- Aside from some residual amendments, such as limiting the concept of whether construction work carried out qualifies as the delivery of goods, and the limit on the special scheme for used goods, the fundamental amendment lies in the three point increase (from 18 to 21 per cent) in the standard VAT rate, which will come into force on 1 September 2012.
- The reduced rate will likewise go up from 8 percent to 10 per cent with effect from 1 September 2012. The extra-low rate remains the same at 4 per cent.
- The most significant increase lies in certain products and services which are no longer taxed at the reduced or extra-low rate and will now be chargeable at the standard rate of 21%. Items of significance include the following:

a. Live flowers and plants

b. School materials, except books, albums, musical scores, maps and sketchbooks (formerly taxed at the extra-low rate).

c. Mixed services in the catering industry, performing arts, discotheques, dance halls, barbecues and other similar activities or amenities.

d. Services rendered by individuals as interpreters, artistes, directors or technicians to film, theatre or musical show producers cinematográficas, obras teatrales o musicales.

e. Entrance tickets for cultural and leisure events (cinema, plays, shows, concerts, circuses and amusement parks).

f. Services rendered by individuals performing sports or physical education.

g. Services rendered by funeral and cemetery businesses, and the delivery of goods related to such services.

h. Healthcare, dental care and spa treatments not exempt from VAT.

i. Hairdressing and complementary services.El suministro y recepción de servicios de radiodifusión y televisión digital.

j. The supply and reception of radio broadcasting and digital television services.

k. Imports, acquisition and delivery of works of art, antiques and collector's items within the E.U.

- Temporarily, up to 31 December 2012, the delivery of housing will continue to be taxed at the extra-low rate of 4 per cent.
- After the above date, the 4% rate will only apply to the delivery of properties which qualify as officially protected housing or to housing delivered to business entities engaged in letting, which enjoy a special CIT scheme.

  With effect from January 1 2013, the delivery of any housing which does not fulfil the above description will be taxed at the reduced rate of 10 per cent.
- Reliefs available under the special scheme for farming and cattle breeding will increase from 10 per cent and 8.5 percent to 12 per cent and 10.5 per cent respectively, in an attempt to avoid the new VAT rates causing a negative impact on these activities.
- The rates applicable to the equivalence surcharge (an additional VAT charge for retail traders) will increase from 4 per cent to 5.2 per cent (standard rate) and from 1 per cent to 1.4 per cent, passing on the increase in VAT rates to persons taxed under this special scheme.

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