Tax Newsletter

TAXAND

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1. Beneficial owner principle not applicable if not expressly allowed by tax treaty

Supreme Court draws this conclusion because an interpretation guideline supplied by the commentaries on the OECD model tax convention cannot invalidate the contents of a tax treaty agreed between signing states.

In a judgment rendered on September 23, 2020 (cassation appeal 1996/2019), the court analyzed the ability to apply the withholding rate provided in the Spain-Switzerland tax treaty to royalties paid to a Swiss entity, when it was confirmed in an audit that this Swiss entity was not the beneficial owner of those royalties.

The National Appellate Court had concluded (supporting the tax auditors' view) that the withholding rate could not be applied, even though it acknowledged that the tax treaty did not refer to the beneficial owner in the tax treaty article on royalties. According to the National Appellate Court, tax treaties must be interpreted, as far as possible, according to the spirit of the commentaries on the OECD model tax convention, or in other words, under a dynamic interpretation of tax treaties; and that model tax convention currently contains that concept.

As it had found in a judgment rendered on March 3, 2020 in cassation appeal 5448/2018 (see our **newsletter dated June 5, 2020** and our **earlier alert dated June 2, 2020**), the Supreme Court noted that this view, adopted by the tax authorities and later supported by the National Appellate Court, is not consistent with the described principle of dynamic interpretation. The court underlined that this principle cannot be taken as a reason for sidestepping the contents of the tax treaty agreed between the parties that signed it. The OECD model tax conventions and their commentaries are not, the court said, sources of law.

In relation to the case under examination, the court also drew attention to the fact that the Spain-Switzerland tax treaty had been modified to include the concept of beneficial owner, although only for dividends and interest, not for royalties, which indicates that it could have been the signatories' intention for this concept not to affect the taxation of royalties. As the court said, the beneficial owner clause or principle is not a metalegal rule or principle of natural law that always has to be imposed whenever interpreting a tax treaty, leaving aside its specific provisions and therefore the sovereign intention of the countries that signed it.

It had also happened in this particular case that the auditors had not allowed application of the Spain-United States treaty either (the US is where the parent company and beneficial owner of the rights that gave rise to the payment of the royalties was based), and applied the higher rates required in domestic law to the royalties.

The court criticized this conclusion, because its only aim appears to be to obtain the highest possible amount of tax from the taxpayer.

2. Judgments

2.1 State Aid. - General Court of the European Union confirms existence of state aid in Spanish tax lease system

General Court of the European Union. **Judgment of September 23, 2020. Joined cases T-515/13 RENV and T-719/13 RENV**

As we reported in our Alert dated September 23, 2020 (see here), in this judgment the General Court of the European Union dismissed appeals lodged by the Kingdom of Spain as one party, and Lico Leasing and PYMAR (small and medium-sized Spanish shipyards), as another, against the European Commission's decision in 2013, holding that the tax advantages in what is known as the Spanish tax lease system were illegal state aid.

This judgment does not mark the end of this proceeding because, for one reason, it can be challenged in a cassation appeal to the Court of Justice of the European Union (CJEU), and for another, the appeals for annulment lodged by investors have not yet been settled

2.2 International tax evasion and tax fraud. - A request for information issued in the context of an information exchange request from another member state must be able to be challenged by the owner of the requested information

Court of the European Union. **Judgment of October 6, 2020. Joined cases C-245/19 and C-246/19 RENV**

Each of the main lawsuits stemmed from an exchange of information request sent by the Spanish tax authorities to the Grand Duchy of Luxembourg, in order to obtain information regarding a Spanish-resident individual, where that individual was the subject of a tax investigation. Those lawsuits gave rise to several references for preliminary rulings in relation to which the CJEU reached the following conclusions:

a) First, the court held that the owner of the information must be granted the right to an effective remedy and therefore EU law precludes the legislation of a member state (of Luxembourg, in this case) that disallows the option of appealing a decision in which the competent authority in that state requires a person holding that information to report it, for the purpose of handling an exchange of information request sent by the tax authorities of another member state.

   The court added however that it is not necessary for the taxpayer to have access to a direct appeal against that decision if other appeals exist to the competent national courts that provide the taxpayer with incidental ways to obtain an effective judicial review of the decision.

b) In a second ruling, the CJEU ruled on what constitutes "foreseeably relevant" information for the management of taxes, within the meaning of the directive on administrative cooperation in the field of taxation.

On the one hand, the court stated that the identity of the person possessing the information concerned (the identity of the taxpayer that is the subject of the investigation that gave rise to the exchange of information request), and the period covered by the investigation qualify as "foreseeably relevant information". In another, it found along the same lines that any information relating to agreements, invoices and payments which, although not expressly identified, may be defined by any personal, timing and substantive criteria that establish their association with the investigation and the taxpayer it concerns, also qualify as "foreseeably relevant" information.

2.3 Transfer pricing and freedom of establishment. - EU law does not stop the application of transfer pricing legislation to a transaction performed between a branch resident in a member state and its parent company established in another member state, even if that legislation does not apply where parent company and subsidiary are resident in the same member state

Court of Justice of the European Union. Judgment of October 8, 2020. **Case C-558 /19**

The Romanian tax authorities adjusted some financial transactions between a Romanian branch and its Italian parent company.

Under Romanian law, transactions performed between companies resident in Romania and nonresident companies are subject to transfer pricing rules, and under those rules, interest should have been charged on the financial transactions at the market rate.

However, the Romanian legislation only treats branches as separate persons from their parent company if they are a permanent establishment of a nonresident legal entity (parent company), and so transfer pricing adjustments are made to the income of a branch only if the parent company is established in another member state.

The CJEU held that this creates less favorable treatment for the branches of nonresident companies. However, it noted that to permit the branches of nonresident companies to transfer their profits to their parent companies may well undermine the balanced allocation of taxing rights among the member states, so the difference in treatment is justified. And so concluded that EU law on freedom of establishment does not, in principle, preclude legislation such as that described.

2.4 Transfer pricing. - State tax agency (AEAT) is obliged to notify transfer pricing adjustments to related parties taxed under Basque Country provincial legislation

Supreme Court. Judgment of September 17, 2020

Article 16 of the revised Corporate Income Tax Law allowed the tax authorities to examine whether related-party transactions had been priced at arm's length, and make any necessary pricing adjustments. Whereas article 21 of the Corporate Income Tax Regulations, approved by Royal Decree 1777/2004, of July 30, 2004, stated that if the

taxpayer filed an appeal or claim against the assessment resulting from the pricing adjustment, that assessment had to be notified to the related parties concerned, although that notification is not required where the parties concerned are not Spanish resident.

Relying on that provision, in the proceeding that led to this judgment, the prescribed notification was not given to the parties, because they resided in the Basque Country and were not therefore resident in the "common area" of Spain (i.e. excluding Navarra and the Basque Country) for direct tax purposes. In the earlier judgment the National Appellate Court concluded that, although Decision 8/2012 by the Arbitration Board for the Economic Arrangement with the Basque Country had held that the authorities were required to make an effort to prevent excessive amounts of tax for all the entities affected by adjustments of this type, it did not impose any obligation to give notification in the manner described.

The Supreme Court concluded, however, that, under the principles informing the Economic Arrangement with the Basque Country and under the principle of good management, "the State Tax Agency (AEAT) is required to give notification, under the legislation in force in the "common area", of the performance of transfer pricing adjustments to an entity taxed under the legislation of the Basque historical territories".

2.5 Corporate income tax. - It is contrary to EU law to establish a different double taxation tax credit mechanism depending on the residence of the paying entity

Supreme Court. Judgment of September 17, 2020

The Revised Corporate Income Tax Law allowed a number of different types of mechanisms for double taxation relief on dividends received from entities in which more than 5 percent of the share capital was owned, which depended on the residence of the paying entity. If the dividends were paid by a Spanish resident entity, up to 100% of the gross tax payable on the dividends could be deducted. Whereas if the dividends were paid by a non-Spanish resident entity, only the tax actually paid abroad could be deducted.

In this judgment, the Supreme Court confirmed its case law in which it held that this different treatment depending on the residence of the entity paying the dividends was contrary to the free movement of capital.

The lawmakers have since acknowledged this discrimination and the Corporate Income Tax Law now in force contains a relief mechanism that applies in the same way to Spanish source dividends and dividends from other countries.

2.6 Corporate income tax. – The neutrality regime cannot be denied for transactions in which the only tax advantage is the deferral regime itself

National Appellate Court. Judgment of July 16, 2020

A company operating in the hospitality industry owned the building in which it conducted its business. The company decided to split up its business into two businesses and transfer them to two companies: Company Z, also operating in the hotel industry, received the hospitality line of business; and company C, operating in the property leasing industry,

received the building. All the companies belonged to a group of family businesses. The aim of the transaction was to isolate the real estate assets of the hospitality business and protect the family wealth.

The neutrality regime was elected for the spin-off. The tax authorities disallowed that regime because the existence of valid economic reasons had not been substantiated. They argued that moving assets out of a company to preserve the family wealth does not qualify as a valid economic reason for the purposes of claiming that regime. Although the tax authorities did acknowledge that the only tax advantage for the transaction was the deferral of the implicit capital gains in the separate businesses or assets.

The National Appellate Court's conclusions on this subject were as follows:

a) To analyze whether the deferral regime is allowed the transaction must be examined as a whole to determine whether it was carried out for an essentially tax related aim.

b) Achieving greater tax efficiency is not an impediment to claiming the special regime. Moreover, if the only tax advantage obtained arises from claiming the neutrality regime and any economic reason exists, it cannot be disallowed.

c) Splitting up assets to limit the risks of the different types of activities that are conducted qualifies as a valid economic reason.

2.7 Personal income tax. - The exemption for reinvestment in the taxpayer's principal residence is confirmed at the time of the exchange for a future building

Supreme Court. **Judgment of July 16, 2020**

The facts were as follows:

a) In October 2006 a public deed for an exchange was executed recording the delivery of the taxpayer's principal residence to a developer for it to build a new dwelling on the site, which after being built would be delivered to the taxpayer.

b) On his personal income tax return for 2006, the taxpayer reported the capital gain obtained from the transfer of his principal residence, on which he claimed the relief for reinvestment in the taxpayer's principal residence (which requires the reinvestment to be made within two years).

c) In November 2009 the built residence was formally delivered and it became the appellant's new principal residence.

d) The tax authorities considered that the reinvestment had been made after the end of that two-year period, so the relief could not be claimed.

The Supreme Court countered this by noting that an exchange is a bilateral transaction for consideration and with transfer of ownership, which rolls into one transaction the exchanges associated with two reciprocal purchases. Concluding therefore that the reinvestment must be deemed to take place when the taxpayer delivered his first principal

residence to the developer, and that the length of time the developer took to build and deliver the second residence is simply a delay in performing the terms agreed by a third party outside the tax relationship.

2.8 VAT. - Transfer of newly built residence to third party other than the tenant that had not exercised a call option is exempt from VAT

Catalonia High Court. Judgment of June 18, 2020

After examining the facts, the court concluded that the sale of a newly built residence, used previously by a tenant for two or more years under a lease agreement with a call option and later purchased by a third party other than the tenant, must be treated as the second transfer of a residence exempt from VAT.

This principle departs from the view taken by the Directorate General for Taxes -DGT- (among others, in resolution V0409-20, of February 20, 2020). According to the DGT, the transfer of a building by the developer that built it (to be leased with a call option) is treated as a first transfer, regardless of whether the transferee is the tenant and option-holder or a third party other than the tenant.

2.9 Transfer and stamp tax. - In contributions of buildings with assumption of liabilities there are two agreements for the purposes of Transfer and stamp tax

Supreme Court. Judgment of September 17, 2020

Castilla y León High Court. Judgment of July 16, 2020

La Rioja High Court. Judgment of July 2, 2020

A number of recent judgments have examined whether in transactions for the formation or an increase of capital at a company in which mortgaged properties are contributed and the company assumes the outstanding mortgage, there is only one agreement (the capital increase, subject to transfer tax in its form of capital duty) or two agreements (this agreement and assumption of the liability, subject to transfer tax as a transfer for consideration).

The principle applied by the Supreme Court and the Castilla y León and La Rioja high courts in these judgments is that in these cases two taxable events indicative of economic capacity are identifiable, because they are two separate transactions, so much so that the mortgaged properties can be contributed without the recipient assuming the liability. Therefore, the capital increase (or formation of the company) is subject to capital duty and the assumption of debt, to transfer tax as a transfer for consideration.

2.10 Transfer and stamp tax. - Transfers of remaining ownership share are subject to transfer tax if the property is divisible or if they can be avoided or reduced by making a different allocation

Supreme Court. Judgment of September 16, 2020

In the Supreme Court's view, when co-ownership is terminated, the transfer of the remaining ownership share to one of the co-owners is not subject to transfer tax as a transfer for consideration only if the following requirements are satisfied:

a) The property transferred to one of the co-owners (in exchange for cash payments to the others) must be legally, physically or financially indivisible.

b) No distribution must be possible among the owners other than the transfer of the property to only one of them, so as to observe as far as possible the principles of equivalence in division of the co-owned item and of proportionality between the transfer made and the interests or shares of every co-owner.

c) The aim must clearly be to terminate co-ownership, not to transfer ownership of the property.

In the case examined in this judgment, the property transferred to only one of the co-owners was a building on six floors with residential and commercial units, and for that reason, the court concluded that the foregoing requirements were not met and the transfer of the remaining property was subject to transfer tax.

2.11 Transfer and stamp tax. - Purchase by individual of shares in company that it already controlled indirectly may be subject to transfer tax as a transfer for consideration

Supreme Court. Judgment of September 11, 2020

A Spanish resident company (A), owning assets consisting mainly of real estate, was wholly owned by a company (B) resident in the British Virgin Islands. An individual later purchased 48.98% of the first company. In a subsequent capital increase at A, the individual increased its ownership of A to 62.13%. Company B then sold its shares to the individual after which that individual wholly owned A.

At issue was whether that second share purchase (in which the individual obtained complete control of A) is exempt from transfer tax under article 108 of the Securities Market Law (LMV), according to the wording applicable in 2009.

The Supreme Court ruled that the purchase by an individual of shares in a company indirectly controlled by them is not eligible for that relief (if the other objective requirements for the relief not to apply are met). Namely, the court concluded that if the individual buying the shares already holds indirect control over the company that does not imply acknowledgment or existence of a previous position of “control”. It was not the lawmakers’ intention to make the individual’s ownership interest combinable with that of the directly owned company, in that this combination of an individual and a legal entity does not form (under the law) a “group of companies”.

2.12 Transfer and stamp tax. - An audit of reported values is not necessary to conclude that carrying amount matches actual value

Supreme Court. Judgment of September 11, 2020

As a general rule, share transfers are not subject to VAT or transfer tax, unless the transferred shares are in companies owning assets consisting mainly of real estate, if a number of requirements are met.

In order to calculate their assets, the net carrying amounts of all recognized assets must be replaced with their respective actual values determined as of the date on which the transfer or acquisition takes place.

In the case examined in this judgment, the tax authorities accepted the carrying amounts to conclude that the share transfer was subject to transfer tax.

In its judgment, the Supreme Court sided with the tax authorities and concluded that a separate and independent procedure to examine the values of the elements on the company's balance sheet was not necessary, if the values stated in the accounting records provided by the taxpayer are taken, due to considering that they match their actual value.

2.13 Transfer and stamp tax. - A stamp tax lien does not have to be noted with the entry for the property because this tax is not levied on the transfer

Madrid High Court. Judgment of June 22, 2020

The transfer and stamp tax legislation states that, in transfers of property and rights, the property or commercial registries must make a note in the margin beside the entry for a property or right, of a lien for the tax liability.

The tax lien implies that the property or right owned by the debtor on entering into a given obligation may be attached to pay the debt, even if the property or right had come to be owned by a third party other than the debtor.

In this judgment, the court concluded that the tax lien does not have to be noted where the debt relates to stamp tax, because this tax is levied on the document not on the transfer.

2.14 Transfer and stamp tax. - The novation of a mortgage formalized in a notarial deed recording a change to interest rate and maturity date is subject to and not exempt from stamp tax

Castilla y León High Court. Judgment of June 12, 2020

It was examined whether liability for stamp tax arose on novation of a mortgage formalized in a public deed in which the interest rate and maturity date of the loan were changed, although not the mortgage liability.

In the court's view, a change to the interest rate (from fixed to variable) and to the maturity date have financial content and may be quantified, which is expressed, at least, in the finance cost relating to the new term and to the interest charged.

Therefore, the transaction is subject to and not exempt from stamp tax.

2.15 Transfer and stamp tax. - A horizontal division before termination of co-ownership is not subject to stamp tax due to being an inescapable prior element to be able to end the condominium

Asturias and Valencia High Courts. Judgment of May 29 and June 4, respectively

In both examined cases, the taxpayers formalized a public deed for horizontal division and termination of a condominium and self-assessed stamp tax on termination of the condominium, though not on the previous horizontal division.

The competent tax authorities claimed stamp tax on the horizontal division because they considered that horizontal division and termination of co-ownership were two separate taxable agreements.

Under the principle established by the Supreme Court, it was concluded in both judgments that a horizontal division before termination of co-ownership is not subject to stamp tax because it is an inescapable element to be able to end the condominium.

2.16 Excise tax on spirits and alcoholic beverages. - Even if the report submitted to apply for a refund of the tax is incomplete, entitlement to a refund of the tax does not disappear if substantive requirements are met

Supreme Court. Judgment of September 30, 2020

A refund of the tax on spirits and alcoholic beverages is allowed if the product is used in the preparation of aromatizers to produce food products and non-alcoholic beverages. Under article 54 of the Regulations on Excise and Other Special Taxes, a specific application must be filed for the refund, accompanied by a technical report containing the information detailed in article 57 bis of the same regulations, which requires a list of the products that will be obtained by using the alcohol.

In the case examined in this judgment, the report did not mention all the products to which the alcohol concerned was added. For that reason, the tax authorities argued that a portion of the refund had been applied for incorrectly.

The Supreme Court confirmed, as it had done in its judgment of February 27, 2018 (see our alert 4-2018), that a procedural breach alone does not automatically lead to forfeiture of the right to claim excise tax benefits if the taxpayer substantiates that the products have been used for the purposes that give entitlement to that benefit.

2.17 Cadastral values. - The physical features of properties entered on the Cadaster prevail over information recorded in a public deed or at the Property Registry

Madrid High Court. Judgment of June 5, 2020

At issue was whether the area that must be assigned to a property for cadastral purposes is the figure entered on the cadaster or whether the figure recorded for other purposes prevails.

Madrid High Court concluded that producing data on the area of a property that is recorded at the Property Registry or in a public deed does not provide sufficient proof to refute the presumption of accuracy that applies to the physical descriptions of properties entered on the Cadaster, which include their area.

2.18 Cadastral values. - The penalty required in the cadastral regulations for failure to report alterations to the physical or economic characteristics of a property takes priority over that determined in the General Taxation Law

Madrid High Court. Judgment of May 18, 2020

The revised Law on the Real Estate Cadaster defines an infringement for failure to report to the Cadaster any physical or economic alterations that affect a property. The General Taxation Law contains a similar infringement, consisting of a breach, in general, of the obligation to file complete and correct returns for the tax authorities to make the relevant tax assessments. The penalty determined in the General Taxation Law can go up to a considerably higher amount than the sum required in the cadastral regulations.

In the case examined in this judgment, the local council had imposed on the appellant the penalty specified in the General Taxation Law, because it had not reported to the Cadaster work performed on a property it owned and therefore had paid lower real estate tax than it would have done if it had reported that work.

Madrid High Court found in favor of the appellant, by holding that the infringement defined in the cadastral regulations must be taken instead of that defined in the General Taxation Law, in light of the priority of specific over more general rules.

2.19 Administrative procedure. - A search warrant for a taxpayer's home must be justified rather than based on tax auditors' suspicions founded on statistical studies

Supreme Court. Judgment of October 1, 2020

In the case examined in this judgment, the tax auditors had used as a reason to search a taxpayer's home the low earnings from their economic activity in relation to the average income reported across the country for the same activity. The tax auditors argued that this was an indication that the taxpayer could be hiding sales it had actually made.

The Supreme Court (supporting its reasoning on its judgment of October 10, 2019, discussed in our Tax Newsletter - November 2019) concluded as follows:

a) A search warrant for a home must be connected with the existence of an audit that has been commenced and notice of its commencement must have been given to the audited person.

b) A search warrant cannot be issued for prospective, statistical or vague purposes, to see what they find, without precise identification of the specific information they intend to obtain.

c) The court decision allowing the search warrant must provide adequate reasons for the need, suitability and proportionality of the search, and critically review the information submitted by the tax authorities, which must be queried regarding its appearance and credibility, meaning that the data provided cannot be accepted automatically, without founded reasons or any critical analysis. The warrant may only be allowed after a comparative analysis of each individual requirement.

d) A search cannot be authorized for reasons related to general or vague data or reports or, on the whole, from a comparison of the alleged situation of the owner of the home with that of other unidentified taxpayers or taxpayer groups, or with average figures for sectors of activity across the country, without any specific details or segmentation supporting the reliability of those sources.

   Any such analysis must be exceptional, take all the existing circumstances into account, and especially, determine, on the basis of those circumstances (after confirming their origin, reliability and the actual situation of the interested party with respect to them), that the search is strictly necessary, which requires an assessment of the existence of other circumstantial factors and, in particular, the owner's previous behavior in response to procedures or requests for information by the tax authorities.

e) Lastly, any search performed without giving prior notice to the party concerned must be exceptional and have particular justification.

2.20 Collection procedure. – In recovery of state aid late-payment interest is governed by EU legislation

Supreme Court. Judgment of September 23, 2020

Where the European Commission holds that a specific measure amounts to illegal state aid, the state is required to initiate its recovery. This judgment looks at how to calculate late-payment interest on recoverable amounts.

The taxpayer argued that late-payment interest is determined under domestic law (in this case, the General Taxation Law or its equivalent in devolved provincial tax legislation). By contrast, the tax authorities considered that the interest accrued until recovery had to be determined under the provisions of EU law in article 9 and article 11 of Commission Regulation (EC) No 794/2004, of April 21, 2004.

The Supreme Court ruled that in these cases EU law is applicable as the law governing action to recover state aid (domestic law only provides the procedure for enforcement).

2.21 Penalty procedure - The *non bis in idem* principle is not breached where liability for a penalty for issuing false invoices is found for the person who used those invoices

Supreme Court. Judgments of September 17, 2020 (appeals 325/2019, 193/2019 and others)

A penalty was imposed on taxpayer A for incorrectly reporting VAT deductible items, using false invoices. A few of those invoices were issued by taxpayer B, who received a penalty for an infringement consisting of breaching invoicing or documenting obligations, treated as a very serious infringement where it consists of issuing invoices with false data.

The tax authorities also found taxpayer A jointly and severally liable for the penalty imposed on taxpayer B, for which reason the Supreme Court examined whether, in this case, the double jeopardy principle was breached in that the infringement committed directly by taxpayer A implies, precisely, the use of replacement invoices or documents with falsified data issued by taxpayer B.

The court concluded that this principle is not breached where a taxpayer receives a penalty for incorrectly applying for refunds while also being held jointly and severally liable for the penalty imposed on another taxpayer for breaching their invoicing obligations, even where the definition of the infringement committed by taxpayer A implies use of the false invoices issued by taxpayer B.

The two infringements, according to the court, are founded on different grounds and are aimed at protecting different direct and immediate interests, so the three identical features (party, facts and grounds) determining a breach of the *non bis in idem* principle do not exist. Moreover, in this case, the infringement committed by taxpayer A cannot be used as an aggravating factor in relation to use of the false invoices, so double punishment for the same facts does not exist.

2.22 Review procedure. - An application for judicial review cannot be refused if the court has not first requested correction of its defects

Supreme Court. Judgment of October 1, 2020

The law on the judicial review jurisdiction states that, where an application for judicial review is filed on behalf of a legal entity, the written application must be accompanied by the decision adopted by the body responsible for the decision to file an application, together with the documents substantiating that authority.

In the case examined in this judgment, the application was accompanied by a general power of attorney for lawsuits for the court procedural representative, granted by a legal entity that said it was acting on behalf of the applicant legal entity. In its answer to the application, the defendant authority pleaded (as a ground for the application being inadmissible) that it had not been evidenced that the legal entity satisfied the necessary requirements to decide on the filing of the application for itself. At the conclusions stage, the applicant produced a copy of the notarial deed recording, among other actions, the granting to that individual of a necessary and sufficient power of attorney to take that decision. The

Basque Country High Court, however, declared, without a prior request for correction, that the application was inadmissible on the basis that the produced documents were not sufficient.

The Supreme Court found in this judgment that an application for judicial review cannot automatically be declared inadmissible because the documents do not provide sufficient evidence of the power to decide on the filing of the application. Before it can be declared inadmissible, a request must be sent to the applicant to correct any defects identifiable in the produced documents, otherwise, the applicant's right to defense is denied.

2.23 Enforcement procedure - Unjustified delays by tax authorities in receipt and enforcement of decisions and judgments partially upholding claims may lead to right to assess becoming statute-barred

National Appellate Court. **Judgment of June 26, 2020**

The tax authorities have six months to issue a new assessment to enforce a decision or judgment partially upholding a claim. The law states that this period starts to run from when the body responsible for enforcing the decision receives the case file. The consequence of failing to observe that period is that the statute of limitations does not stop running because of the audit work carried out.

In the examined case, the National Appellate Court itself had delivered a judgment partially upholding a claim, which required the tax authorities to issue a new assessment. The judgment became final on January 20, 2011 (when the Supreme Court failed to admit the cassation appeal lodged against that judgment). Although it was not until March 10, 2014 that the case file for that proceeding was received by the administrative body responsible for enforcement (over three years later in other words).

The National Appellate Court concluded that there had been a material and unjustified delay between the date the Supreme Court delivered judgment and the date the administrative case file was received by the body responsible for enforcement, from which it must be concluded that the maximum period specified by tax law for enforcement (six months) has not been observed. As a result, the right to assess must be held statute-barred.

3. Decisions

3.1 Transfer pricing. - Not all transfer pricing adjustments require a secondary adjustment

Central Economic-Administrative Tribunal. Decision of July 21, 2020.

It was concluded in an audit that certain legal services billed by a company had been provided personally and directly by its majority shareholder and sole director (an individual). For that reason the auditors found that salary income had to be attributed to that shareholder, for which an adjustment was added to the controlled transaction (primary adjustment).

In a later claim, the individual applied for a secondary adjustment to be made as allowed in article 16.8 of the revised Corporate Income Tax Law.

Under that article, where the connection is defined by a relationship between shareholder and company, the difference between the agreed and market value must be treated (in a proportion relative to the ownership interest in the company) as (i) a share in income (if that difference benefits the shareholder or partner), or (ii) shareholder or partner contributions to the company's capital (if the difference benefits the company).

TEAC concluded, however, that this secondary adjustment is not mandatory in that:

a) When the adjustment is made to the shareholder individual's income by attributing salary income in respect of the services provided, this secondary adjustment is of no consequence, because it has no effect on the personal income tax payable in the adjusted years and does not lead to a lower (deducible) expense for the individual.

b) The secondary adjustment must be made (i) either when the taxpayer transfers their shares, (ii) or when they want to recover the funds arising from the attributed salary income that have stayed in the company's hands (so that they will not be taxed on them again).

TEAC had taken the same view in a decision delivered on September 11, 2017 (RG. 6224/15).

3.2 Corporate income tax. - Quantification of tax credit base for R&D&I activities is not binding on tax authorities

Central Economic-Administrative Tribunal. **Decision of July 21, 2020**

The Corporate Income Tax Law allows taxpayers to apply for a reasoned report from the Ministry of Economy and Competitiveness (or any attached body), in relation to satisfaction of the scientific and technology requirements to classify the taxpayer's activities as research and development or technological innovation, for the purposes of the credit for activities of this type.

In this decision, TEAC reiterated the principle adopted in a decision dated April 9, 2019 and concluded that this reasoned report is only binding for the tax authorities in relation to classification of the project, but not for determining the base of the tax credit.

After looking at the facts, TEAC concluded that, despite the project being classified as technological innovation in the report concerned, none of the reported expenses qualify for inclusion in the tax credit base, so it denied the right to the tax credit.

3.3 Personal income tax. - Termination of co-ownership of a principal residence with attribution of the whole residence to only one of the co-owners can entitle that owner to claim the whole tax credit for purchase of their principal residence.

Central Economic-Administrative Tribunal. Decision of October 1, 2020

Before January 1, 2013, the Personal Income Tax Law allowed taxpayers to deduct a percentage of amounts paid to purchase or renovate their principal residences. Following removal of this tax credit, starting on that date, a transitional regime came into force allowing taxpayers who had purchased their principal residences before that date to continue claiming the tax credit (if they had been claiming the tax credit before January 1, 2013).

TEAC held in this decision that observing the rights acquired in relation to the tax credit cannot mean a broadening of those rights.

The facts related to termination of co-ownership of the principal residence carried out after January 1, 2013, under which one of the parties obtained 100% of the residence. In this case, TEAC affirmed, the right to claim the tax credit in respect of the portion acquired to bring its share up to that percentage must always be determined by the conditions that governed the tax credit for that portion before termination of co-ownership.

In short, any co-owner that on or after January 1, 2013 obtains 100% ownership of the residence cannot claim the credit for the portion that it acquires to bring its ownership share to 100% above and beyond what the other co-owner would have been entitled to deduct following termination of the co-ownership if that termination had not taken place.

Or in other words: claiming the tax credit for purchase of the taxpayer's principal residence in relation to the portion acquired to bring their ownership share to 100% of full ownership of the property will always be conditional on whether the co-owner had claimed that tax credit in a year before 2013 in the percentage relating to its co-ownership share (provided it had not used up its right to continue claiming the tax credit before the date of termination of the co-ownership).

3.4 Administrative procedure. - Right to a refund of tax incorrectly paid can be tolled as a result of activities carried out on other parties

Murcia Regional Economic-Administrative Tribunal. Decision of November 22, 2019.

Father and son terminated co-ownership of a property, transferring 100% of the assets to the father, which was documented in a public deed. Although the taxable person for transfer and stamp tax purposes was the father (as the person who increased his ownership share), it was the son who filed a self-assessment.

The tax authorities initiated a review procedure on the father because he had not filed a self-assessment. During this procedure, it was submitted and evidenced that the tax had been paid over by the son. In response to which the tax authorities found that one taxable person's debt cannot be offset with a payment made by another person and issued an assessment for the tax to the father.

For that reason, the son requested the correction of his self-assessment and a refund of the tax incorrectly paid. The tax authorities denied the refund due to being statute-barred.

Murcia Regional Economic-Administrative Tribunal (TEAR) concluded, in light of the clear connection between the son's refund procedure for incorrectly paid taxes and the limited review procedure against the father, that the latter tolled the statute of limitations for the son's right to request a refund.

3.5 Audit procedure. - Tax auditors must give proper reasons for using indirect assessment method

Murcia Regional Economic-Administrative Tribunal. Decision of December 20, 2019.

The General Taxation Law allows the tax authorities to use the indirect assessment method to determine the tax base in any of the following circumstances: (i) failure to file returns or filing incomplete or inaccurate returns, (ii) resistance, obstruction, excuses or refusal in relation to the auditors' work, (iii) material breach of accounting or registration obligations; and (iv) disappearance or destruction of accounting books or records or of transaction receipts.

Murcia TEAR recalled however that the existence alone of any of these circumstances does not allow the indirect assessment method to be used. The auditors also have to give reasons why the data and background information obtained in their work do not allow the tax base to be determined using the direct assessment method.

3.6 Collection procedure. - An application for deferred or split payment of charged taxes cannot be admitted if it is not based on failure to collect charged tax and no documents are produced to substantiate this fact

Central Economic-Administrative Tribunal. Decision of September 23, 2020

The taxpayer filed an application for deferred/split payment of the tax reported on a VAT return due to a temporary liquidity problem, stating that the amount it was asking to be split or deferred related to tax that had been charged but not collected. For these purposes, they attached a document containing a list of the issued invoices identifying the ones that had been collected and those that had not.

The authorities issued a request for information to examine whether the charged amounts had indeed not been collected. Even though the taxpayer replied to the request, the tax authorities failed to admit the application on the basis that the interested party had not evidenced that point.

Valencia TEAR held that the correct response in these cases was to deny the application, not fail to admit it, because the admission requirements were met. Moreover, it recalled that the reasons for denial must always be given, expressly mentioning the requested documents that had not been produced and their effect on the adopted decision.

In the subsequent appeal, TEAC concluded as follows:

a) That an application for deferred and split payment of charged taxes cannot be admitted if the interested party does not base its application on the fact that the charged tax has not been collected and does not provide documents evidencing this fact when they file the application.

b) It is only when these two requirements have been met, but the produced documents are found to be insufficient, that the authorities can made a request for correction so that the application can be completed.

c) If after a request for correction has been made, the interested parties fail to provide a timely and sufficient response, admission of the application can be refused; whereas if a timely response was given to the request, but the observed defects have not been corrected the application must be denied.

3.7 Review procedure. - The right to late-payment interest in cases of late refunds of VAT by the person who charged it incorrectly cannot be reviewed in the economic-administrative jurisdiction

Central Economic-Administrative Tribunal. Decision of July 22, 2020

A company considered that it had been charged incorrect amounts of VAT. For that reason, it did not deduct them and applied for a refund of excess amounts charged. The authorities resolved to uphold its application partially and noted (under article 89.five. b) of the VAT Law) that it was the seller (the party who charged the VAT) who had to correct the invoice and refund the amount incorrectly charged to the company.

In the appeal filed with TEAC, the company acknowledged that it had obtained a refund from the person who had charged it incorrectly. It nevertheless requested late-payment interest due to delay in the refund.

TEAC concluded that, in these cases, the person who paid the incorrect charge is entitled to request late-payment interest from the person who made that charge, if the refund is made with a delay. And if they do not obtain payment, they may initiate legal proceedings, which do not include an economic-administrative claim, because it is not a tax matter.

3.8 Enforcement procedure. - The period for issuing a second assessment after a decision fully upheld is the general statute of limitations

Central Economic-Administrative Tribunal. Decision of July 22, 2020

The tax authorities issued an assessment decision. In the appeal brought against that assessment decision, the company's petitions were upheld, which meant the administrative decision was set aside, although the authorities could issue a new assessment. Later, the authorities issued a second assessment.

The appellant company considered that their right to assess had become statute-barred, resulting from failure to observe the six-month period required in article 150.5 of the General Taxation Law (now article 150.7 LGT) for cases where the authorities issue a second assessment to enforce a judicial or economic-administrative decision upholding a claim.

Adopting the Supreme Court's principle, TEAC acknowledged that the six-month period applies where the decision being enforced partially upholds a claim (for procedural or substantive reasons). Whereas if the claim is upheld in full (as with this case), enforcement only involves invalidating the challenged decision, which must be done within that six-month period.

Once the challenged decision has been invalidated, a second assessment becomes subject, once more, to the statute of limitations. In other words, following the setting aside of the first assessment, as long as the tax obligation continues to exist, the authorities have the option of issuing a new assessment by carrying out a new procedure, within the statute of limitations (bearing in mind in that case the restriction preventing a repeat of the defect present in the invalidated decision).

4. Resolution requests

4.1 Corporate income tax. - Bad debt provision for a credit that should not have been recorded is not deductible

Directorate General for Taxes. Resolution V2671-20 of August 24, 2020

The issue submitted for resolution concerned a company from which a worker stole money held in a bank account. After a criminal complaint had been filed, the worker confessed the illegal appropiation and stated that he was unable to refund the money. For that reason, a few years later the company recorded a debt owed by the worker, but was considering treating it immediately as an impairment loss because it was more than unlikely that the company would not recover the stolen funds. It was asked whether that impairment loss could be treated as a deductible expense.

After receiving a request for the accepted standard, the Spanish Accounting and Audit Institute (ICAC) replied that:

a) The accounting records must be reviewed, to correct the balances in the current account, adjust the value of assets and record the relevant revenue or expense relating to prior years, in respect of the cumulative effect of variations in assets and liabilities, in a reserves caption (due to involving an accounting error).

   In the analyzed case, the cumulative effect of those adjustments seems to be a charge to a reserves caption, in respect of the extraordinary expense caused by the theft.

b) However because the worker has stated that they do not have the stolen money and the requesting company considers it more than unlikely that it will recover the stolen money, there is no need to record a debt from that worker.

From that standpoint, for corporate income tax purposes:

a) In respect of the charge to reserves arising from the theft, it would allow a deductible expense on the corporate income tax return in the fiscal year the charge to reserves was made, as long as it was not incurred in a statute-barred period, because in that case, if the expense were deducted, then tax would be reduced.

b) The impairment loss for the debt is not deductible, due to incorrect recognition (because the debt should never have been recorded in the first place).

4.2 Corporate income tax. - Dividends paid before joining a tax group cannot be eliminated to calculate the capitalization reserve

Directorate General for Taxes. Resolution V2670-20 of August 24, 2020

The requesting company owned 56% of company A (parent company of a tax group), which paid a dividend to it in 2015. Later the requesting company increased ownership of A to 75%, which caused the disappearance of the tax group headed by A. In 2016 the requesting company became the parent company of a new tax group joined in by A.

In relation to use of the capitalization reserve in 2016, the DGT noted the following:

a) The increase in equity within the tax group (a necessary condition for using the reserve) must be calculated by reference to the sum of the equity figures of all the companies belonging to the group and the eliminations and inclusions of income/losses arising from intercompany transactions, all of which must be done under accounting consolidation rules.

b) Because in 2015 the requesting company did not belong to the tax group headed by company A, the dividends paid by company A to the requesting company did not qualify as intercompany dividends for the purpose of calculating the elimination under accounting consolidation rules; and therefore do not have to be eliminated for calculation of the increase in equity to be taken into account for use of the capitalization reserve.

4.3 Corporate income tax. - Access for minority investors to the spun-off business is valid reason for claiming neutrality regime

Directorate General for Taxes. Resolution V2618-20 of August 3

It was intended to spin off the business of operating telecommunications infrastructure belonging to company B by transferring it by universal succession to newly created company C. Later, company A, owning the whole of company B performing the spin-off, and the beneficiary of the spin-off, company C, will transfer its ownership of company C to its Netherlands resident sole shareholder, company D, through the payment of dividends out of reserves. Then company D will transfer the acquired ownership interest to a holding company also resident in the Netherlands and belonging to the same group of companies.

It was noted, however, that the group intends to allow minority investors to take up a stake in this holding company (never above 50%).

The reorganization was being considered in the context of the multinational group's new strategy, after it decided to split up its passive infrastructure business and its local cellphone operators into two separate businesses. By separating its telecommunications business and the operation of that infrastructure and grouping the latter into a holding company, it intends to:

a) Achieve more specialized management and greater efficiency in the selling of infrastructure.

b) Give visibility to the spun-off business and make it give value to investors.

c) Provide also the opportunity to obtain external funding by giving access to any new minority investors who want to invest in the spun-off business, without letting this decision affect the multinational group's other lines of business.

The DGT concluded that the main reason underlying the spin-off performed by company B does not seem to be to later transfer the shares of the beneficiary company, achieving lower tax than would have been the case in the event of a direct transfer, by company B, of the elements used in the spun-off business, therefore it may be concluded that the reasons submitted for performing the proposed restructuring could be considered economically valid; and the neutrality regime may be claimed.

4.4 Corporate income tax. - Minimum holding period to be eligible for the exemption provided in article 21 of Corporate Income Tax Law does not include the time the interest was owned by a related party who is an individual

Directorate General for Taxes. Resolution V2519-20 of July 23, 2020

An individual contributed shares in a company to another company in an unprotected transaction. Later, the recipient of the contribution transferred a portion of the received shares. It was asked whether the period in which the individual owned the shares before the contribution could be included to calculate the minimum holding period before this second transfer (in relation to the relief for income arising from the transfer).

The DGT concluded that because the previous owner of the shares was an individual not a company (and therefore cannot belong to a group within the meaning of article 42 of the Commercial Code), the period in which that individual owned the shares does not count for the purpose of compliance with the minimum holding period.

4.5 Personal income tax. - Exemption for awarding shares cannot be claimed where the minimum holding period is not expected to be met

Directorate General for Taxes. Resolution V2480-20 of July 21, 2020

The Personal Income Tax Law allows to apply an exemption for shares awarded to workers. To be eligible for the exemption the shares must be held for at least three years.

The request concerned a worker who had not met that holding period because the shares from their employer were purchased by a third party (following a tender offer squeezing out the minority shareholders). When the shares were awarded, the worker was informed about the imminent tender offer.

The DGT recalled that the holding requirement cannot be deemed not to be met in the event of restructuring transactions in which employees exchange their shares for others (in the parent company, for example, for shares in another company which, through the exchange, becomes the main shareholder of that parent company). This conclusion was provided in binding resolution V1222-16 of March 28, 2016.

It noted however that the described case is a different situation for two reasons:

a) Because the purpose for which the tax benefit is allowed is not met, namely encouraging worker participation in the company, by conferring on them the economic and non-economic rights of shareholders.

b) Because the squeeze-out was notified by the buyer several months before the award of shares to the employee, the company already knew that the minimum holding period would not be met.

4.6 Personal income tax. - To be eligible to apply the exemption for work performed abroad it is irrelevant how intragroup services have been priced

Directorate General for Taxes. Resolution **V2339-20** of July 09, 2020

The requesting company belongs to an international group engaged in strategic consulting services for senior management. Certain employees in organization departments (working in administration services, human resources or financial services), provide services for other offices in the group which require them to work abroad. These services have traditionally been billed to the group using the cost-plus method. Recently, however, the group has chosen to use the profit-split method, so there will be no direct billing of the costs of each period spent abroad to the company receiving the services. It was asked whether this change to the transfer pricing policy affects the exemption for work performed abroad.

The DGT concluded that it would be eligible for the exemption if (i) the recipients of the services are nonresident companies or permanent establishments abroad, (ii) the services provide an advantage or benefit to those recipients and (iii) for the services to be provided a worker physically travels abroad (it needs to be recalled also that the destination country must charge a tax identical or similar to Spanish personal income tax, which is deemed to take place where it has signed a tax treaty with Spain). This will be true regardless of the pricing used for controlled transactions.

4.7 Personal income tax. - Tax paid on income obtained incorrectly may be recovered and must be refunded

Directorate General for Taxes. Resolution V2313-20 of July 07, 2020

The requesting individual, who was chairman of a board of directors, was convicted of an offense of illegal appropriation due to receiving compensation prohibited by a provision in the law or bylaws. In a judgment they were ordered to pay indemnity to the injured party, equal to the amount unlawfully received. This amount was reported at the relevant time as salary income for personal income tax purposes.

The DGT noted that the indemnity for civil liability is a justified capital loss which does not result from an act of consumption, is not a gift, and does not come from gambling. It concluded however that because it arose from a crime of illegal appropriation it is not computable as a loss for personal income tax purposes.

However, because it had been taxed as salary income for personal income tax purposes, a correction of the initial self-assessment can be made to obtain the relevant incorrect payment.

4.8 Nonresident income tax. – The DGT gives its view on deduction of certain expenses by a branch

Directorate General for Taxes. Resolution V2480-20 of July 21, 2020

The issue was submitted by the branch of a German company owned by a Japanese company (75%) and by a Belgian Company (25%). The branch imports, exports, and distributes electronic components for the automotive industry. The Japanese company owns a non-standard software program, usable in the logistics field, which is assigned under license to various group companies, including the branch.

The DGT took the view that:

a) The payments to the Japanese company in respect of royalties for the right to use the software are deductible at the branch, because they relate to management software which will be used by the branch in its activity and will be the balancing entry for revenues relating to the permanent establishment (even though it does not have its own legal personality).

b) Since the payments are made to a company resident in Japan, if this company produces a certificate of residency in that country, the Japan-Spain tax treaty will be applicable, based always on the assumption that the source state is Spain not Germany (country of residence of the branch's head office) and that the conditions set out in article 12.5 of the Japan-Spain treaty are met, which states that "Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated".

Therefore, under the treaty, the branch is required to withhold tax at the maximum 10% rate on any royalties it pays to the Japanese company.

4.9 Nonresident income tax - The migration of an LLC to Spain is not subject to tax in this country

Directorate General for Taxes. Resolution V2353-20 of July 9, 2020

Company A, resident in the US, owns:

a) 100% of a Limited Liability Company (LLC) resident in the US, sole shareholder of a limited liability company resident in Spain. The LLC's assets at the Spanish company do not consist mainly, directly or indirectly, of real property located in Spain.

b) 100% of the share capital of an Irish company.

It was intending to carry out a restructuring in which company A would transfer its interest in the LLC to the Irish company through a share exchange. Later the LLC would relocate its registered office and place of effective management to Spain, and take the legal form of a Spanish limited liability company, though retain the same legal personality, from the standpoint of Spanish and US corporate law.

According to the DGT:

a) The income arising from the exchange may be characterized, for the purposes of applying the Spain-United States tax treaty, as a capital gain and therefore the provisions in article 13 will have to be applied. Because the transferred shares do not relate, directly or indirectly, to companies whose assets consist mainly of real property situated in Spain, or entitle the owner to the enjoyment of any real property in that country, the potential capital gain may only be taxed in the United States.

b) Neither the relocation nor the change of the LLC's legal form to a Spanish limited liability company will alter its legal personality. Therefore, they will not determine the generation of taxable income for either the company or the shareholders in Spain.

4.10 Wealth tax. - DGT analyzes various issues related to family business exemption for businesses engaged in property leasing

Directorate General for Taxes. Resolution V2325-20 of July 07, 2020

A married couple own 100% of a company engaged in property leasing. The wife is sole director of the company and carries out management activities, for which she receives a monthly income of €900. Moreover, a daughter of the couple (who does not live with them) has an employment contract for full-time work with the company, and receives just over €1,000 a month as administrator. They are considering making her the sole director of the company (replacing her mother), while retaining her employment contract, as a business administration graduate. She would not receive any compensation for her services as director; and her income under her employment contract would be increased by reference to her new category.

In relation to the wealth tax exemption for shares in the family business, the DGT concluded that:

a) For property leasing to be regarded as an economic activity, the company must have at least one individual employed under a employment contract for full-time work. This requirement may only be considered met if the contract is an employment contract under the labor legislation in force. It makes no difference for these purposes whether the employed individual is a family member.

   In other words, if (as described in the request) the daughter of the requesting individual becomes sole director of the company, this requirement will only be deemed met if she retains her employment contract for full-time work and receives compensation for the activities she carries out under that employment contract, which must be activities related to managing the leasing of properties.

   In short, the requirement will not be deemed met if the employment contract is a senior management contract because, in that case, due to also being sole director of the company, her relationship is a commercial not an employment relationship.

b) In relation to the requirement related to management activities being carried out at the company for which compensation is received representing more than 50% of income from business or professional activities and personal work:

   - What matters is not so much the name of the position as whether the position involves activities for the administration, management, running, coordination and operating of the organization concerned. The activities must be carried out at the owned company.

   - It is not a requirement, in any case, for the person carrying out the management activities to own shares, as long as the requirement relating to shares is met within the family group.

   - The fact of providing services as director of the company for no compensation does not mean, in itself, failure to satisfy the requirement relating to management activities, if it is evidenced that the activities for the administration, management, running, coordination and operating of the organization concerned are carried out and that the income received for those activities represents more than 50% of the person's aggregate income from business or professional activities and professional work. Therefore this requirement cannot be seen to be met in the described case.

4.11 Tax on economic activities. - The activity of buying and selling securities for a company's own benefit is not subject to the tax on economic activities

Directorate General for Taxes. Resolution V2568-20 of July 28, 2020

The DGT analyzed the case of a company owned by two shareholders and engaged in the activities of an insurance agency, which buys and sells shares (for its own benefit) on the Spanish stock market through a broker. It was asked whether it should be registered for the tax on economic activities in respect of that activity.

The DGT noted that an activity of that type consisting of buying and selling securities does not meet the requirements specified in the law to be treated as an economic activity for the purposes of the tax on economic activities, so the company would not have to register that activity.

5. Legislation

5.1 The laws on the tax on financial transactions and on the tax on certain digital services have been published

The October 16, 2020 edition of the Official State Gazette (BOE) published Law 4/2020 on the tax on certain digital services (IDSD) and Law 5/2020 on the financial transaction tax (ITF), both dated October 15, 2020. The two taxes come into effect three months after publication of their laws, namely on January 16, 2021.

The versions published in the BOE match those sent to the lower house of the Spanish parliament, because no amendments were added by the upper house. The only difference is a minor error in the law on the tax on certain digital services. In an alert published on October 9, 2020 (see here) we summarized the main features of both taxes.

You are reminded that the tax on certain digital services must be assessed quarterly, so the first assessment will be for the first quarter of 2021. This makes final provision four of Law 4/2020, relating to the self-assessments for the second and third quarters of 2020 void of content.

The financial transaction tax is to be assessed monthly, so the first assessment will be for transactions performed in the first half of January 2021. Another relevant date for this tax is Wednesday December 16, 2020, which is when any Spanish companies with a market capitalization above one billion euros must be identified. It is the transfers of shares in these companies that will be subject to the new tax in 2021.

5.2 Publication of the reference rates for calculating the annual equivalent rate for fourth calendar quarter of 2020, for the purpose of characterizing certain financial assets for tax purposes

The September 28, 2020 edition of the Official State Gazette (BOE) published the decision of September 23, 2020, by the Office of the General Secretary for the Treasury and International Finance, 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 fourth calendar quarter of 2020. The rates are as follows:

- Financial assets with terms of four years or less: -0.359 percent.
- Assets with terms between four and seven years: -0.221 percent.
- Assets with ten-year terms: 0.210 percent.

- Assets with fifteen-year terms: 0.509 percent.
- Assets with thirty-year terms: 0.873 percent.

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

6. Miscellaneous

6.1 European Union updates tax haven blacklist

The European Council decided to update the list of non cooperative tax jurisdictions, at a meeting on October 6, 2020.

The Cayman Islands and Oman were removed from the EU list of non-cooperative jurisdictions (black list), after “having passed the necessary reforms to improve their tax policy framework”.

Whereas Anguilla and Barbados have been added to the list, due to not being sufficiently compliant with the international standard on transparency and exchange of information on request.

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