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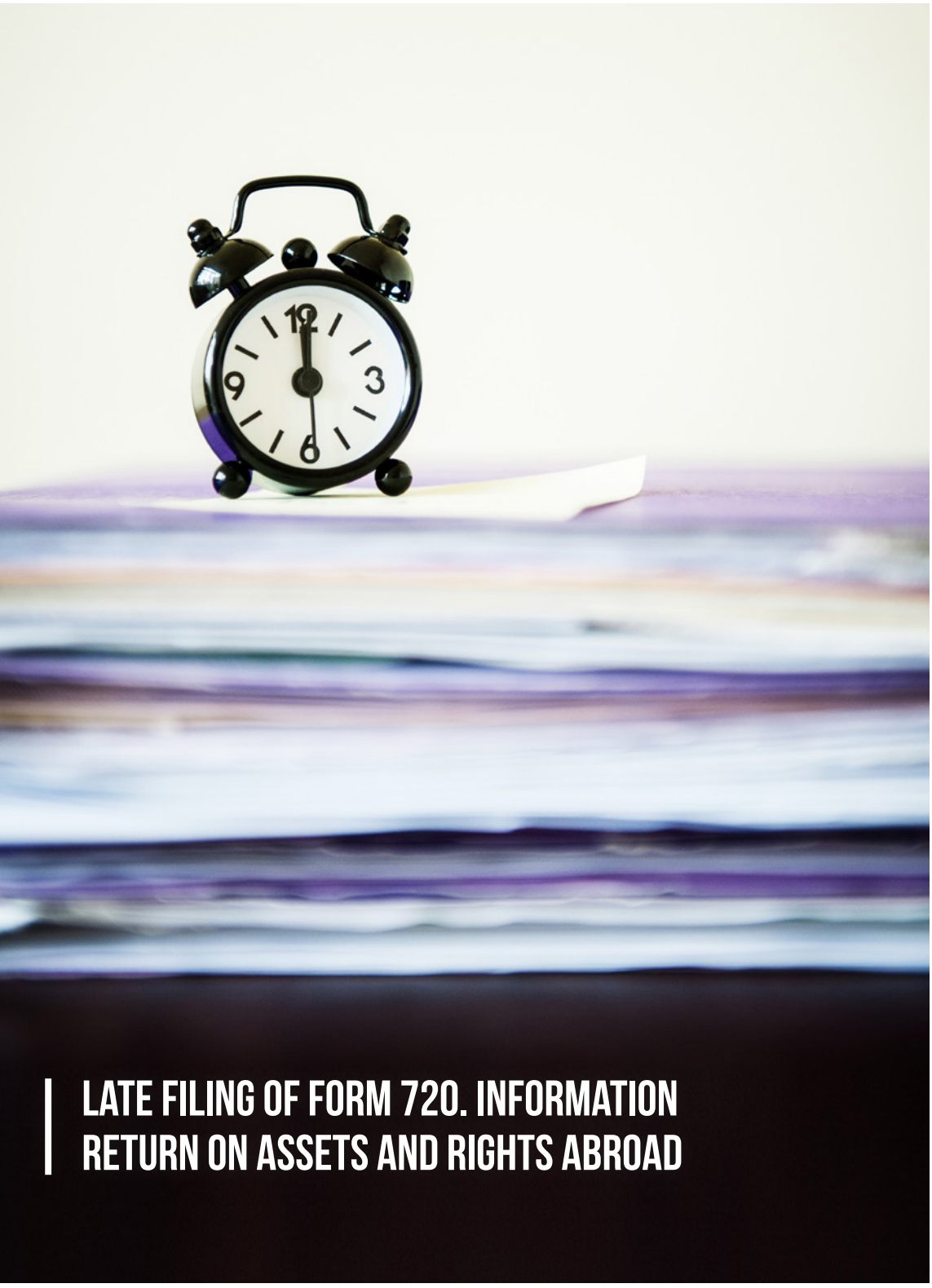
NEWSLETTER
TAX

JULY 2017



LATE FILING OF FORM 720. INFORMATION RETURN ON ASSETS AND RIGHTS ABROAD

SUMMARY

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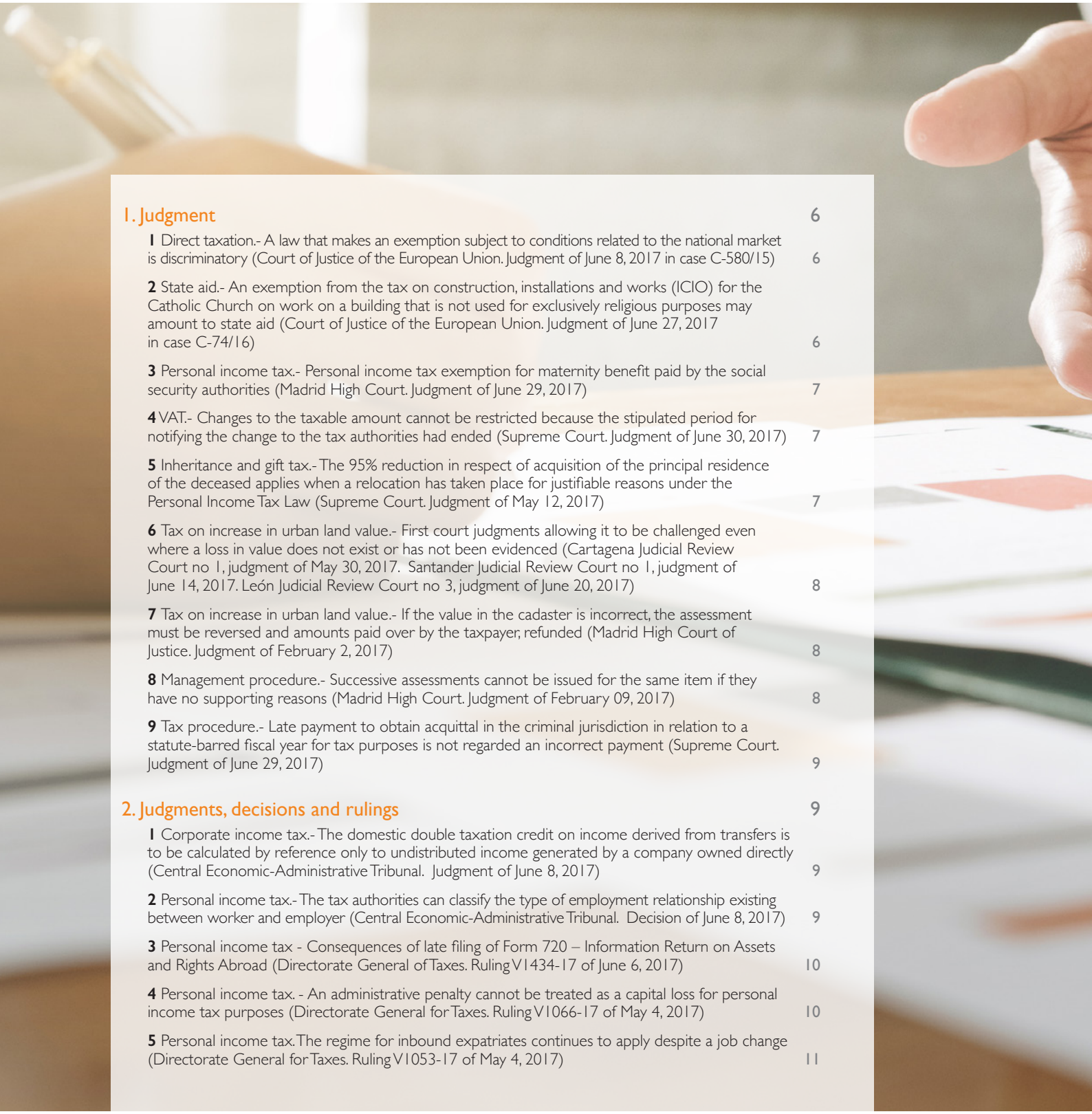

GARRIGUES
TAX

TAX NEWSLETTER

Law 7/2012 introduced in the General Taxation Law the obligation to report assets and rights abroad on Form 720 in March of each year regarding the assets and rights abroad in the preceding year (the return for 2012 could be filed until and including April 2013).

The same law amended article 39 of the Personal Income Tax Law and article 134 of the revised Corporate Income Tax Law (now article 121 of the Corporate Income Tax Law currently in force) to provide for one of the consequences which the failure to file or the late filing of the return would have on each of those taxes. More specifically, in both articles it is provided that, in these cases, it will be presumed that there is an unsubstantiated capital gain equal to the value of the assets or rights (for personal income tax purposes) or that the assets or rights were acquired with unreported income (for corporate income tax purposes).

The only way to avoid this consequence is by evidencing that (i) either the assets and rights were acquired when the party concerned was not a taxpayer or taxable person for the tax, (ii) or they were acquired with reported income.

Added to this attribution of unreported income or unsubstantiated gain is a penalty for a serious tax infringement amounting to 150% of the liability in respect of the attributed income or gain. All of which is on top of the "procedural" penalties for the failure to file or the late filing of Form 720, which are calculated by reference to the item or sets of data unreported, or reported late or incorrectly.

All in all, the consequence of simply filing Form 720 late can be extremely costly, which, in fact, has caused the European Commission to commence infringement proceeding 2014/4330 against Spain "certains traits de l'obligation de déclaration informative sur avoirs sis à l'étranger (Modelo 720)".

In this newsletter we discuss a decision by the DGT (V1434-17, of June 6, 2017) in which this tax body concludes (against the traditional standards on the attribution of unsubstantiated gains for personal income tax purposes or unreported income for corporate income tax purposes) that the taxable person him or itself may attribute this gain or income on a supplementary return for the tax filed when Form 720 is filed late; in other words, it is not the sole prerogative of the tax authorities. This avoids the 150% penalty, which will be replaced by the relevant surcharges for late filing.


5

01 JUDGMENT

1 Direct taxation.- A law that makes an exemption subject to conditions related to the national market is discriminatory (Court of Justice of the European Union. Judgment of June 8, 2017 in case C-580/15)

In its judgment of June 6, 2013 (case C 383/10), the CJEU held that Belgium had placed a restriction on the freedom to provide services by having a tax regime providing a tax exemption only for the interest paid by banks resident in Belgium.

Following that judgment, the tax regime concerned was amended, after which the exemption applied to returns on savings deposits placed at banking institutions established in Belgium and at banking institutions in other member states. In actual fact, however, the new regime only applied to returns on savings deposits placed at Belgian banks because the exemption was subject to conditions related to the Belgian market.

In this context, a request for a preliminary ruling was made to the CJEU for it to rule as to whether the new tax regime was a restriction on the freedom to provide services. The CJEU concluded that it was, on the basis of the following considerations:

(i) Legislation such as that described has the effect of discouraging:

i. Belgian residents from using the services of banks established in other member states, because, in practice, interest payments by those banks are not exempt because the savings accounts with banks in other member states do not satisfy the conditions in the Belgian legislation; and,

ii. holders of a savings account with a bank established in Belgium, who satisfy the conditions for the exemption, from transferring their account to a bank established in another member state.

(ii) Such discrimination may not be allowed because it does not pursue an objective in the public interest, nor can consumer protection be contended to justify the obstacle that the described legislation creates to the freedom to provide services.

2 State aid.- An exemption from the tax on construction, installations and works (ICIO) for the Catholic Church on work on a building that is not used for exclusively religious purposes may amount to state aid (Court of Justice of the European Union. Judgment of June 27, 2017 in case C-74/16)

A religious congregation applied for a refund of sums incorrectly paid in respect of the tax on construction, installations and works (ICIO) on the work carried out on a school because it considered itself exempt from that tax, under the Agreement of January 3, 1979 between the Spanish State and the Holy See concerning financial matters. The requested refund was denied by the local authority.

Being in disagreement with the decision adopted by the local authority, an appeal for judicial review was lodged and the court submitted a request for a preliminary ruling to the CJEU, asking, in essence, whether a tax exemption such as that described might amount to prohibited state aid. The CJEU concluded that it did on the basis of the following considerations:

(i) The starting point is that a religious congregation may be classified as an "undertaking", and in principle, educational activities not subsidized by a state satisfy the conditions to be regarded an "economic activity".

(ii) The exemption from ICIO is liable to affect trade and distort or alter competition because that exemption might make the educational services that the religious institutions provide more attractive by comparison with the services provided by other establishments.

(iii) It may confer a selective advantage insofar as it is not a general measure applicable without distinction to all economic operators.

On that basis, the CJEU concluded that the exemption might amount to state aid if the activities concerned are economic, a matter that must be determined by the referring court.

3 Personal income tax.- Personal income tax exemption for maternity benefit paid by the social security authorities (Madrid High Court. Judgment of June 29, 2017)

The Madrid High Court has reiterated its position expressed in a judgment of July 6, 2016 whereby the maternity benefit paid by the social security authorities is exempt from personal income tax.

It must be taken into account that the Central Economic-Administrative Tribunal (TEAC) took the opposite view in its decision of March 2, 2017, as did Andalucía High Court in its judgment of October 27, 2016, so we will have to wait and see how this matter evolves.

4 VAT.- Changes to the taxable amount cannot be restricted because the stipulated period for notifying the change to the tax authorities had ended (Supreme Court. Judgment of June 30, 2017)

The VAT Law allows the taxable amount to be reduced where the customer for the transactions has not paid the tax charged on them, if an insolvency order is rendered after the VAT became chargeable on the transaction. That reduction to the taxable amount must be made within a given time period.

In the examined case, the company made the change more than a month after the statutory time limit, but notified the tax authorities of the change made to the taxable amount (which prevented the company in insolvency from being able to deduct incorrect VAT payments). The tax authorities denied the right to change the taxable amount because the time limit laid down in the law had not been met.

In this cassation appeal for a definitive ruling on a point of law, the Supreme Court examined the legislation and, after an extensive analysis concerning the principle of neutrality, concluded that insofar as compliance with the statutory time limit does not guarantee that the tax authorities will appear in insolvency proceedings as creditor for the claim in respect of the correction within the time limit in which it is called on to do so, failure to comply with that time limit cannot cause a particular loss to the Public Treasury.

5 Inheritance and gift tax.- The 95% reduction in respect of acquisition of the principal residence of the deceased applies when a relocation has taken place for justifiable reasons under the Personal Income Tax Law (Supreme Court. Judgment of May 12, 2017)

During the deceased's illness, before his death, he moved house to live with his son. The tax authorities considered that, in such a case, the heir could not claim the 95% reduction provided for inheritance of the principal residence, because it had ceased to be the principal residence before death.

Specifically, the Inheritance and Gift Tax Law provides that the reduction may be claimed in acquisitions upon death (*mortis causa*) of the principal residence of the deceased person, if the heirs are the spouse, ascendants or descendants of the deceased, or a collateral relative aged over sixty-five who had lived with the deceased for the two years preceding death.

The Supreme Court noted that the term "principal residence" is not defined in the legislation on the tax, and therefore referred to the definition in the Personal Income Tax Law. That legislation sets out scenarios in which a relocation does not mean that a home forfeits its status as "principal residence". More specifically, the Court included the evidenced relocation for health reasons (especially since death occurred as a result of that illness) in the exception provided for "other similar reasons supported".

6 Tax on increase in urban land value.- First court judgments allowing it to be challenged even where a loss in value does not exist or has not been evidenced (Cartagena Judicial Review Court no 1, judgment of May 30, 2017. Santander Judicial Review Court no 1, judgment of June 14, 2017. León Judicial Review Court no 3, judgment of June 20, 2017)

Following the constitutional court judgments in relation to the provisions on the tax on increase in urban land value (the legislation for Spain generally and in the separate provincial legislation), in which it was concluded that the articles on the calculation method for the tax base and the ability for the taxpayer to report a different value are unconstitutional and null and void, insofar as they tax scenarios of non-existing increases in value, several judicial review courts have already issued decisions on specific cases in which it was not evidenced by the taxable person that there was no increase in value.

In these judgments it is affirmed that:

- It lies with the authorities to evidence the existence of an increase in value of the land for the purpose of charging the tax (Cartagena Court no 1, in its judgment of May 30, 2017). For these purposes, using the values in the cadaster for determining the increase in value is no longer valid, and there is no alternative method that has legal support for the calculation of the liability in respect of the tax on increase in urban land value (León Court no 3, in judgment of June 20, 2017).

- Santander Judicial Review Court no 1 (in its judgment of June 14, 2017) goes one step further by affirming that, until a new law on the tax on increase in urban land value, articles 107.2 (tax base) and 110.4 (management of the tax – self-assessments) in the Revised Local Finances Law are unconstitutional, and as a result, null and void. Therefore, the tax cannot be charged on the basis of those articles not even where the value of the land has increased while it was owned by the taxpayer.

7 Tax on increase in urban land value.- If the value in the cadaster is incorrect, the assessment must be reversed and amounts paid over by the taxpayer, refunded (Madrid High Court of Justice. Judgment of February 2, 2017)

The local authorities issued an assessment in respect of the tax on increase in urban land value by reference to the value of the assets appearing in the cadaster. After the assessment was issued, the cadaster corrected the classified use of the property and, consequently, its value. This correction was made valid retroactively insofar as the original classified use of the property was incorrect. Despite this, the local authority argued that its assessment was correct because it had been calculated by reference to the value for the property in the cadaster when the tax on the increase in urban land value fell due, regardless of whether it had later been amended.

Madrid High Court threw out this argument and rendered the assessment null and void. The court held that the correction made by the cadaster must take effect from when the mistake was made according to the principle of economic capacity enshrined in article 31 of the Spanish Constitution. Doing otherwise would be allowing a fictitious economic capacity to be taxed.

8 Management procedure.- Successive assessments cannot be issued for the same item if they have no supporting reasons (Madrid High Court. Judgment of February 09, 2017)

The deceased died in 1999, and the heirs filed inheritance tax returns. In 2002, a provisional assessment was issued after an audit of values. Madrid Regional Economic and Administrative Tribunal (TEAR) reversed that assessment on the basis of no supporting reasons.

The tax authorities carried out a fresh audit and issued another provisional assessment (the second), which was appealed by the taxpayer to Madrid TEAR due to having no supporting reasons. This second assessment was also reserved on that ground. The process was repeated a third time and even a fourth provisional assessment was issued.

On this occasion, Madrid TEAR reversed the fourth assessment, but failed to rule on all the matters raised by the taxpayer, for which reason the case was taken to Madrid High Court.

This Court, based on the facts, especially on the sequence of assessments none of which had any supporting reasons, reversed the last of the assessments (this time no further assessment could be issued) and concluded that after 18 years and four assessments that had subsequently been reversed, the taxpayer is entitled to have his tax position clarified on a definitive basis.

9 Tax procedure.- Late payment to obtain acquittal in the criminal jurisdiction in relation to a statute-barred fiscal year for tax purposes is not regarded an incorrect payment (Supreme Court. Judgment of June 29, 2017)

The taxpayer failed to make payment within the time limit. To avoid any criminal liability, the taxpayer made a voluntary adjustment to his tax position in which he included a year with respect to which the tax authorities' right to audit had become statute-barred, and for that reason the taxpayer later requested a refund of the payment related to that year, because he regarded it incorrect.

The Supreme Court denied the request for a refund and affirmed that claiming a refund after a decision by a criminal court is contrary to the estoppel doctrine and could even be classified as evasion of the law (*frau legis*).

It must be noted here that these scenarios are covered in the General Taxation Law (article 221.1.c), which provides that absolutely no refund is allowed of sums paid in the voluntary adjustment under article 252 de la General Taxation Law (inserted under Title VI, on steps and procedures for enforcement of taxes in cases of criminal offenses against the Public Treasury); that article provides that the tax authorities will not refer a case with indicia of criminal liability to the competent jurisdiction or send the proceeding to the public prosecution service where the accountable party has adjusted their tax position voluntarily, including adjustments related to statute-barred years.

02 JUDGMENTS, DECISIONS AND RULINGS

1 Corporate income tax.- The domestic double taxation credit on income derived from transfers is to be calculated by reference only to undistributed income generated by a company owned directly (Central Economic-Administrative Tribunal. Judgment of June 8, 2017)

The taxpayer transferred shares and claimed the domestic double taxation tax credit (article 30.5 of the Revised Corporate Income Tax Law). The credit was initially calculated by reference to the reserves of the transferred company. However, the taxpayer subsequently applied for correction of its self-assessment in order to claim a larger credit, by adding the accumulated reserves of an indirect investee.

Applying the standard already established by the DGT, the National Appellate Court, the Supreme Court and TEAC itself, TEAC ruled once again that accumulated undistributed income in indirect investees cannot be taken into consideration for the purposes of this credit, since only the undistributed income generated by the directly owned investee whose shares are transferred may be taken into account.

2 Personal income tax.- The tax authorities can classify the type of employment relationship existing between worker and employer (Central Economic-Administrative Tribunal. Decision of June 8, 2017)

The opinion formed by the auditors was that the relationship between an employee who had been dismissed and the employer was a special senior management employment relationship rather than an ordinary employment relationship, meaning that the whole severance payment was subject to personal income tax withholdings. In the economic-administrative claim filed, the company argued that the auditors had overstepped their powers by classifying the employment relationship, since this is not a tax matter. The company also

argued that the conclusions reached by the auditors were invalid because they were based simply on circumstantial evidence.

TEAC, however, confirmed that, pursuant to article 13 of the General Taxation Law, the tax authorities do have the power to classify legal arrangements which, in principle, pertain to other areas of law, when necessary in order to analyze a taxable event, i.e. when the matters in question are tax-relevant and it is done purely for tax purposes.

The forms actually used by the parties make no difference for these purposes; it is the use of circumstantial evidence that is valid. In this specific case, the analysis made by the auditors, based on the employee's activities, authority and powers, was considered valid.

It is to be noted that the National Appellate Court recently concluded, in a judgment dated March 8, 2017, that severance paid to senior managers may be exempt, in the amount stipulated in the Senior Management Royal Decree (the judgment related to a case of withdrawal, but the same conclusion would foreseeably apply to a case of dismissal). This judgment was discussed in our May newsletter (**http://www.garrigues.com/doc/emags/Tax-Newsletter-May-2017/#/1/**).

3 Personal income tax - Consequences of late filing of Form 720 – Information Return on Assets and Rights Abroad (Directorate General of Taxes. Ruling V1434-17 of June 6, 2017)

The ruling request concerned the consequences of the late filing of the Information Return on Assets and Rights Abroad (form 720) by an individual resident in Spain, without a prior request from the tax authorities.

According to the DGT, the consequences are as follows:

a) A penalty for procedural irregularities may be imposed simply for filing the return late. This penalty is €100 for each item or set of data omitted in relation to the asset being reported, subject to a minimum cap of €1,500 (Additional Provision 18.2 of the General Taxation Law - LGT).

b) The provisions of article 39.2 of the Personal Income Tax Law must be applied: attribution of an unsubstantiated capital gain, unless the taxpayer can demonstrate that the ownership of the assets or rights relates to income which has been reported, or that such assets or rights were acquired with income obtained in tax periods during which the individual was not deemed a taxpayer for personal income tax purposes.

The DGT's understanding in this respect is that the income is to be deemed reported if the taxpayer himself, when filing form 720, files simultaneously a personal income tax self-assessment recognizing voluntarily this unsubstantiated capital gain. In this way, a fine equal to 150% of the amount of tax payable resulting from the attribution of the unsubstantiated capital gain can be avoided. The relevant surcharge will nevertheless be payable.

Finally, it is noted that although the DGT's interpretation of the legislation refers to article 39.2 of the Personal Income Tax Law, it may also be taken to apply to the provisions of article 121.6 of the Corporate Income Tax Law (article 134.6 of the Revised Corporate Income Tax Law).

4 Personal income tax. - An administrative penalty cannot be treated as a capital loss for personal income tax purposes (Directorate General for Taxes. Ruling V1066-17 of May 4, 2017)

The ruling request related to whether a traffic fine could be treated as a capital loss for personal income tax purposes.

The conclusion reached by the DGT is that although the payment of an administrative penalty might fall within the definition in article 33.1 of the Law, the fact cannot be overlooked that it results from the commission of an offense, i.e. a voluntary act or omission which is unlawful and is defined by the law.

In view of the subjective element involved in the commission of the offense (the reason for which the fine was imposed), the DGT concludes that

the payment of the fine should be likened to the use of income by the taxpayer for spending purposes, meaning that it should not be computed as a capital loss.

5 Personal income tax. The regime for inbound expatriates continues to apply despite a job change (Directorate General for Taxes. Ruling V1053-17 of May 4, 2017)

A worker who had been posted to Spain elected the regime for inbound expatriates. He subsequently left this job in Spain, voluntarily, and went to work for another company unrelated to the first employer.

The conclusion reached by the DGT was that the fact that the taxpayer, voluntarily and due to supervening circumstances, terminated the employment relationship which resulted in his being posted to Spain in order to initiate another employment relationship with a different Spanish resident company unrelated to his former employer, does not constitute grounds for his exclusion from this special regime.

6 Personal income tax.- Dividends to which entitlement is recognized in a court judgment are taxable when the judgment becomes final, with late-payment interest being classed as other income (Directorate General for Taxes. Ruling V1243-17 of May 22)

The Supreme Court handed down a judgment recognizing a Panamanian resident's ownership of shares in a Spanish entity. The Panamanian resident's entitlement to receive dividends approved and distributed by the company in previous years was recognized simultaneously. Once the judgment had become final, the dividends were paid. They related to several years, some of which were statute-barred. Late-payment interest was also received.

The first issue raised was the rule applicable regarding the timing of recognition of the dividends.

The DGT pointed out that according to the legislation on nonresident income tax, dividends are taxable when they become payable. In the case in hand, this was when the judgment recognizing the right to receive them became final, meaning that they should be recognized in the year in which this occurred. This obligation therefore applied to all the dividends, irrespective of the year to which they related.

According to the provisions of article 10 of the Spain-Panama tax treaty, dividends are subject to withholding tax at the reduced rate of 10%. To be able to apply this reduced rate, the recipient must provide the payer with evidence of their tax residency status (for treaty purposes), in the form of the corresponding tax residency certificate.

Finally, in relation to the taxation of late-payment interest, the DGT reached the following conclusion:

a) Since the interest is for indemnification purposes, it cannot be classed as income from movable capital, and neither does it fit with the definition of interest provided in article 11 of the treaty.

b) Neither, on the other hand, can it be classed as a capital gain for the purposes of article 13 of the treaty since this rule relates to capital gains deriving from disposals.

c) It is therefore to be classed as "Other income" (article 21 of the treaty).

7 Value added tax.- Free legal aid services are not subject to VAT (Directorate General for Taxes. Ruling V1892-17 of June 30)

A ruling was requested on whether the provision of free legal aid services within the framework of Law 1/1996 of January 10, 1996 on free legal aid is subject to VAT.

These services have traditionally been considered not subject to VAT. In its ruling V0170-17 of January 25, 2017, however, the DGT changed its position in the light of recent case law emanating from the Supreme Court, concluding that such services were subject to VAT at the standard rate of 21%.

However, following the recent entry into force of Law 2/2017 of June 21, 2017 amending the

aforementioned Law 1/1996 (referred to in the legislation section of this newsletter below), the DGT has once again changed its position, returning to the traditional view that these services are not subject to the tax. This conclusion is based on the argument that services provided within the framework of the free legal aid system are mandatory services rendered free of charge, and that the amounts received by the professionals involved (from the Bar Associations) are for indemnification purposes.

8 Value added tax.- Failure to send a copy of a correcting invoice to the insolvency manager does not cause forfeiture of the right to change the taxable amount (Central Economic-Administrative Tribunal. Decision of April 25, 2017)

The creditor of a debtor in an insolvency proceeding changed the taxable amount on the invoices issued to that debtor but failed to send the correcting invoices to the insolvency manager. It nevertheless sent them to the debtor within the required period and notified this circumstance to the tax authorities, also within the time limit.

The conclusion reached by TEAC was that this procedural irregularity cannot automatically result in the creditor losing its entitlement to reduce the tax base. TEAC's own past rulings (e.g. Ruling no. 06771/2013 of November 24, 2016) affirm that failure to meet requirements of a formal or procedural nature cannot bring about the forfeiture of substantive rights, unless the irregularity committed prevents the authorities from correctly performing their control functions. In the case in question, it was not demonstrated in the assessment issued by the authorities that the procedural irregularity had prevented them from exercising that control.

This criterion is in line with that applied in the recent supreme court judgment of June 30, 2017, discussed above in the Judgments section, in which, as mentioned, the conclusion was also reached that substantive rights should take priority over procedural requirements.

9 Tax collection procedures.- A final judgment finding the defendant guilty of a tax offense is an enforceable instrument for the purposes of the enforced collection of debts deriving from civil liability claims (Central Economic-Administrative Tribunal. Decision of June 29, 2017)

A Madrid Criminal Law Enforcement Court ordered the State Tax Agency (AEAT) to instigate enforced collection proceedings for the collection of a debt derived from a civil liability claim based on an offense committed by a taxpayer against the Public Treasury. The authorities acted accordingly and issued a notice of attachment for the purpose of collecting the debt. The taxpayer, who objected to such notice, filed the corresponding economic-administrative claim with Madrid TEAR. The claim was upheld because the taxpayer had not been served, prior to the notice of attachment, a payment demand or order initiating enforced collection proceedings.

A special appeal for a definitive ruling on a point of law was lodged and TEAC contradicted the finding of Madrid TEAR, concluding that neither a payment demand nor an order initiating enforced collection proceedings is required to have been served on the taxpayer for the enforced collection of a debt derived from a civil liability action based on an offense committed by the taxpayer against the Public Treasury, since the final judgment in respect of the offense against the Treasury already constitutes, for these purposes, an enforceable instrument.

03 LEGISLATION

1 The Protocol amending the double tax treaty signed by Spain and Mexico is published

The Protocol amending the Convention between the Kingdom of Spain and the United Mexican States

for the Avoidance of Double Taxation, signed by the two countries on July 24, 1992, was published in the Official State Gazette on July 7, 2017.

The objective in renegotiating this treaty was to bring it into line with certain changes made to the OECD's Model Convention and changes in the economic and legislative situations of the two countries, and to implement a series of measures proposed in the BEPS Action Plan. Such measures include most notably the inclusion in the Protocol of a Principal Purpose Test clause, stipulating that the treaty will not be applicable in cases in which one of the main objectives of a structure or transaction is to take advantage of the favorable tax treatment available under it.

The amendments introduced through the Protocol include, in particular, the following:

- An exemption from the taxation of dividends in the source State is established when the beneficial owner is a company resident in the other State which owns directly at least 10% of the share capital of the company by which the dividends are distributed.

- The tax rates applicable to interest payments are reduced: They are set at 4.9% for payments made to banks (as opposed to the previous rate of 10%) and at 10% in all other cases (previously 15%).

- The tax rate for capital gains obtained on the sale of shares is set at 10% of the taxable gain (down from 25%).

  In relation to the transfer of shareholdings in entities with real property assets, the reference to the fact that they should be made up "primarily" (directly or indirectly) of real estate assets or real-estate-related rights is replaced with an objective rule: "more than 50 percent" of the entity's value must come directly or indirectly from real estate.

- A new restructuring clause is introduced for share-for-share exchanges, subject to certain term-of-ownership requirements, and with the original cost for tax purposes being maintained.

- The existence of a permanent establishment is envisaged when a resident of the other State engages in activities consisting of the exploration, production, refining, processing, transportation, distribution, storage or marketing of oil and gas for more than 30 days over any twelve-month period.

The date of entry into force of the Protocol is 27 September 2017, with its provisions taking effect as follows:

- For taxes withheld at source, on amounts paid or owed on or as from the date of entry into force of the Protocol.

- For taxes calculated by reference to a tax period, for tax periods commencing on or as from the date of entry into force of the Protocol.

- In all other cases, on or as from the date on which the Protocol comes into force.

2 Power of attorney forms that can be registered on the Electronic Empowerments Register

Order HFP/633/2017 of June 28, 2017 was published in the Official State Gazette on July 04, 2017. This Order approves the power of attorney forms that can be entered on the central government's Electronic Empowerments Register and on the electronic empowerments registers of local authorities and establishes the signature systems which are to be valid for *apud acta* empowerments perfected electronically.

The specific power of attorney forms that can be registered are:

a) Form 1: General power of attorney authorizing the attorney-in-fact to act on behalf of the principal in any administrative actions and before any authority.

b) Form 2: General power of attorney authorizing the attorney-in-fact to act on behalf of the principal in any administrative actions before a specific authority, entity or body.

c) Form 3: Power of attorney authorizing the attorney-in-fact to act on behalf of the principal only for the performance of the formalities it specifies.

d) Form 4: Form for the withdrawal of a power of attorney granted.

This Order will come into force on January 2, 2018.

3 Reform of the Corporate Income Tax Regulations in relation to credit risk provisioning by financial institutions

Royal Decree 683/2017 of June 30, 2017 amending the Corporate Income Tax Regulations (RIS) was published on July 1, 2017.

The purpose of this amendment is to bring the tax legislation on loan impairment losses at financial institutions (set out in articles 8 and 9 of the RIS) into line with the amendments made by the Bank of Spain's Circular 4/2016 of 27 April, 2016 to the rules on the accounting treatment of credit risk provisioning by financial institutions.

The main changes (effective as from January 1, 2016) are as follows:

a) It is expressly added that the regulations apply to provisions recorded in respect of real estate assets by the asset management companies referred to in article 3 of Law 8/2012 (irrespective of the size of the ownership interest held by the credit institutions in such companies) and to other institutions belonging to the same corporate group for commercial law purposes as the credit institution, although only for the purposes of article 9.4 of the RIS on the deductibility of amounts recorded in provisions for the impairment of certain real estate assets.

b) In relation to the deductibility for tax purposes of specific credit risk provisions, it is stipulated that:

- Provisioning by institutions which have developed internal methodologies for estimating provisions will be deductible to the extent that the estimate is based on individual analyses.

- Where the estimates calculated are collective, they will only qualify for deduction up to the total aggregate amount calculated by applying the provisioning percentages estimated by the Bank of Spain. This latter method will also be applicable to institutions which have not developed such internal methodologies.

There has been no change to the rules on the treatment of country-risk provisioning. The amounts recorded in these provisions will therefore continue to be deductible provided they do not exceed the minimum provisions envisaged in Appendix IX to Circular 4/2004 for risks of this type.

c) The rules establishing the non-deductibility of the provisions under article 9.2 of the RIS are left generally unchanged, although some specific stipulations are made in respect of loans receivable from state-owned entities, from related individuals or entities, and from political parties, unions and certain other entities. New references to loans for which there is no apparent risk are also included.

d) In relation to general-purpose provisions for standard risk loans and standard risk loans subject to special surveillance, the rule established is that these are deductible subject to a limit equal to 1% of the overall positive change in the amount of risks required to be covered by general-purpose provisions.

e) A specific section is added in relation to provisions for loan impairment losses on foreclosed assets and assets received for the payment of debts.

Finally, the new royal decree sets out a transitional regime for (i) credit risks of financial institutions generated prior to January

1, 2016, (ii) the impairment of debt instruments of securitization funds, and (iii) credit risk at financial credit institutions.

4 Effective annual interest rate for the third calendar quarter of 2017 for the purpose of classifying certain financial assets for tax purposes

As is customary, the reference rates that apply for the third calendar quarter of 2017, announced in the Decision of June 26, 2017 of the Office of the Secretary-General for the Treasury and Financial Policy, have been published in the Official State Gazette (on June 27, 2017). The rates applicable are as follows:

- Financial assets with terms of four years or less: 0.017 percent;
- Assets with terms of between four and seven years: 0.172 percent;
- Assets with terms of ten years: 1.116 percent;
- Assets with terms of fifteen years: 1.540 percent;
- Assets with terms of thirty years: 2.366 percent;

In all other cases, the reference rate for the term that is closest to that of the issue made will apply.

5 2017 receipts for the tax on economic activities. Amendment of the voluntary payment period

The Decision of June 19, 2017 of the Tax Collection Department at AEAT, amending the voluntary payment period for tax on economic activities charges in 2017, was published in the Official State Gazette of June 26, 2017. This Decision relates to the national and provincial tax charges and stipulates where they are to be paid.

The period stipulated is September 15 through to November 20, 2017 inclusive.

6 Free legal aid and VAT

Law 2/2017 of 21 June, 2017 amending Law 1/1996 of January 10, 1996 on free legal aid was published in the Official State Gazette on June 22, 2017.

The amendment made highlights the nature as indemnification of amounts received by legal practitioners within the framework of the mandatory free legal aid system, the implication being, in short, that services of this kind are not subject to VAT.

Its entry into force is envisaged on January 1, 2017, meaning that it affects services provided from the beginning of this year.

04 MISCELLANEOUS

1 The OECD publishes the 2017 edition of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

The OECD has published the 2017 version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

This version of the Guidelines is without doubt the most important revision to date of the original text approved in 1995 by the OECD Council.

The new edition includes some major changes as a result of the revisions undertaken during 2016 in order to reflect the amendments and clarifications agreed upon in the 2015 reports on BEPS actions 8 to 10 and 13.

It also includes the revised guidance on safe harbors approved in 2013 which recognizes that properly designed safe harbors can help to relieve some formal compliance burdens and provide taxpayers with greater certainty.

Finally, this new edition of the Guidelines also contains some consistency changes, to bring the paragraphs or chapters which have not been amended into line with the amendments made to others.

2 Draft legislation envisaging the amendment of regulations and other royal decrees

The Ministry of Finance and the Civil Service has initiated the public information procedure for various draft royal decrees:

a) On July 7, 2017, the Draft Royal Decree for the amendment of the Personal Income Tax Regulations (Royal Decree 439/2007), the Corporate Income Tax Regulations (Royal Decree 634/2015), and the Inheritance and Gift Tax Regulations (Royal Decree 1629/1991).

b) On July 7, 2017, the Draft Royal Decree for the amendment of:

- **a.** The Value Added Tax Regulations (Royal Decree 1624/1992).
- **b.** The Transfer and Stamp Tax Regulations (Royal Decree 828/1995).
- **c.** The Excise and Special Taxes Regulations (Royal Decree 1165/1995).
- **d.** The Tax on Fluorinated Greenhouse Gases (Royal Decree 1042/2013).
- **e.** The Regulations governing billing obligations (Royal Decree 1619/2012).
- **f.** Royal Decree 3485/2000 on relief and exemptions under the diplomatic, consular and international bodies regime and for the amendment of the General Regulations on Vehicles.
- **g.** Royal Decree 1065/2007, approving the General Regulations on tax management and audit procedures and proceedings and implementing the common rules on procedures to manage, collect and inspect taxes.

c) Prior to this, on June 30, 2017, four draft royal decrees were published, for the amendment of: (i) the General Regulations Governing Tax Penalties (Royal Decree 2063/2004), (ii) the General Tax Collection Regulations (Royal Decree 939/2005), (iii) the General Regulations on Administrative Reviews (Royal Decree 520/2005) and (iv) and the General Regulations on tax management and audit procedures and proceedings and implementing the common rules on procedures to manage, collect and audit taxes (Royal Decree 1065/2007). The draft for the amendment of this latter text also envisages the amendment of (v) the royal decree regulating the Council for the Defense of the Taxpayer (Royal Decree 1676/2009).

The publication of these drafts was discussed in our Tax Alerts of April and May, 2017 (in the latter case in relation to the amendments affecting VAT and billing). These are available here:

http://www.garrigues.com/es_ES/noticia/proyectos-de-modificacion-de-los-reglamentos-del-irpf-impuesto-sobre-sociedades-impuesto

http://www.garrigues.com/es_ES/noticia/proyecto-de-modificacion-del-reglamento-del-iva-y-del-reglamento-de-facturacion-audiencia-e

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