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1. Once the liquidation phase has begun administrative enforcement actions cannot be taken to collect pre-insolvency claims

Under article 55 of the Spanish Insolvency Law, it is not allowed after the insolvency order to take individual enforcement action or initiate tax or administrative enforced collection proceedings against the debtor's property; although until approval of the liquidation plan, administrative enforcement proceedings in which an attachment order has been issued are allowed to continue, together with enforcement actions for employee claims in which the insolvent company's assets have been attached, although certain restrictions apply. This means therefore that from when the liquidation phase commences enforcement proceedings can no longer be initiated to collect claims against the insolvent debtor, even if they are pre-insolvency claims.

In a judgment dated March 20, 2019, the Supreme Court examined the case of an insolvent company, which, with the liquidation phase already in motion, received various interlocutory orders initiating enforced collection proceedings targeted at enforcing given tax claims classified as pre-insolvency claims by the tax authorities. Both the tax authorities and later Castilla y León Regional Economic-Administrative Tribunal held that this administrative enforcement was valid, on the basis of article 164.2 of the General Taxation Law and article 84.4 of the Insolvency Law which, they argued, do allow administrative enforcement actions to secure payment of pre-insolvency claims, after the liquidation phase has commenced.

Taking the opposite view, the Supreme Court concluded in its judgment that from a combined interpretation of the mentioned articles of the Insolvency Law (article 55 and article 84.4) and the General Taxation Law (article 164.2), clearly the prohibition of enforcement actions after the liquidation phase has commenced applies in relation to both post-insolvency and pre-insolvency claims, regardless of whether the claims are held by public authorities or other creditors.

This bars the tax authorities from rendering interlocutory orders initiating enforced collection proceedings after the liquidation phase has commenced, to secure payment of their pre-insolvency claims, until the effects of the insolvency order have been lifted. They must apply instead for payment of the pre-insolvency claims to the court hearing the insolvency through the procedures in an ancillary proceeding.

In a decision dated February 26, 2019, the Central Economic-Administrative Tribunal (TEAC) arrived at a similar conclusion in a case where, after the liquidation phase had commenced, the authorities attempted to offset a pre-insolvency claim against a debt owed to the insolvent debtor. TEAC concluded, similarly to the Supreme Court, that this offset is not valid because it amounts to an individual enforcement action against the debtor's property which cannot be ordered without first bringing an ancillary proceeding with the court hearing the insolvency.

2. Judgments

2.1 Corporate income tax.- Interest on a loan to buy treasury stock is not deductible

National Appellate Court. Judgment of February 7, 2019

The company applied for a loan from a financial institution to enable it to acquire treasury stock so that the shares could be redeemed later with the resulting reduction of the company's capital.

The National Appellate Court confirmed the administrative interpretation disallowing the deduction of interest on that loan, based on the argument that these types of loans do not benefit the company or serve the company's interests, only those of its shareholders.

2.2 Corporate income tax.- Late-payment interest arising from notices of assessment by tax auditors was deductible before the current Corporate Income Tax Law

Castilla y León High Court. Judgments of September 14 and September 26 2018

The view now appears to be accepted by both the Directorate General for Taxes and by TEAC that the late-payment interest arising from notices of assessment in an audit has been deductible on the corporate income tax return since Law 27/2014, of November 27, 2014, came into force, or in other words, for fiscal years that began on or after January 1, 2015.

According to the administrative interpretation, however, the deduction of this type of interest is not allowed for earlier periods, when the Revised Corporate Income Tax Law approved by Legislative Royal Decree 4/2004, of May 5, 2004 was in force. As a general rule, the deduction of this interest is denied on the basis that the interest arises from actions that are against the law.

Castilla y León High Court, however, leaned towards allowing deduction of the late-payment interest also in periods when the Revised Law was in force, because these expenses had not been included in the list of nondeductible expenses provided in that law. It added that the court can hardly allow the deduction of late-payment interest under the current law and disallow it under the previous legislation, when the wording of both is essentially identical.

The conclusion reached by these judgments matches those upheld in earlier ones, such as the judgment rendered by Aragon High Court on July 20, 2016.

2.3 Personal income tax.- If it is evidenced that ownership of the assets comes from a statute-barred year, there cannot be an unjustified capital gain

Supreme Court. Judgment of March 18, 2019

A taxpayer had transferred a given sum of money to a checking account. The tax auditors found there had been an unjustified capital gain due to the absence of proof as to when that amount had arisen, even though the taxpayer evidenced that it came from another account in which that amount had appeared in statute-barred years.

The Supreme Court found in the taxpayer's favor and affirmed that an unjustified capital gain cannot be attributed where the person provides proof that it has owned the assets or rights from a date before the period open for review; in that case, moreover, it is not necessary to identify the source or origin of those assets or rights.

2.4 Personal income tax.- Tenured public service workers and public sector employees are eligible for tax relief for work performed abroad

Supreme Court. Judgment of March 28, 2019

The Personal Income Tax Law provides an exemption for income from the performance of work abroad (article 7.p). On this occasion the court examined whether this exemption is applicable to income received by "funcionarios" (tenured public service workers) or public sector employees sent on secondment to work abroad for an international organization that has Spain among its members.

The Court concluded that the exemption is applicable as long as the work is actually performed outside Spain and benefits the international organization, even though it may simultaneously give rise to income for the employer or other entities. This holds true even if the work performed outside Spain consists of supervision or coordination tasks and regardless of whether the trips are sporadic or for short lengths of time.

2.5 Personal income.- Pensions for permanent incapacity received abroad are only exempt if they have been classified as such by the Spanish social security authorities

Supreme Court. Judgment of March 14, 2019

The court examined whether a total disability pension received in Switzerland where the law makes no distinction between different degrees of incapacity may be treated as absolute or comprehensive disability for the purpose of claiming the exemption in article 7.f) of the Personal Income Tax Law.

The Supreme Court concluded that:

(a) The pension received cannot automatically be treated as a benefit for absolute permanent incapacity under the Spanish social security system, because in Switzerland no distinction is made between one degree of incapacity and another.

(b) So, to claim the exemption under Spanish law for absolute permanent incapacity benefits a classification decision by the Spanish social security authorities (INSS) is needed. To obtain this classification, the interested party must provide proof of all the elements needed to evidence the specific condition that determined the right to receive the foreign pension.

2.6 Nonresident income tax.- Spanish law discriminates against nonresident investment funds in Spain

Supreme Court. Judgment of March 27, 2019

As we advanced in our Alert dated April 8, the Supreme Court has confirmed that nonresident investment funds in Spain receive unjustified discriminatory treatment. See our Alert for further details.

2.7 Inheritance and gift tax.- Final assessments issued under a law precluded by European law may be held null and void as a matter of law

National Appellate Court. Judgment of November 22, 2018.

In a judgment rendered on September 3, 2014 the Court of Justice of the European Union held that the Spanish inheritance and gift tax law was precluded by EU law because it did not allow the autonomous communities' own laws to be applied (as opposed to central government law) in given cases; for that reason the law on the tax was amended starting in January 1, 2015 to allow

taxable persons resident in the European Union or in the European Economic Area to benefit from the more favorable autonomous community legislation if certain requirements were met. The Supreme Court has since made this option more widely available to taxable persons resident in third countries, which the tax authorities had already been accepting.

The National Appellate Court examined in a judgment rendered on November 22, 2018 whether to allow an assessment by the tax authorities to be reviewed in that it had already become final when the law governing the assessment was held to be precluded by EU law. The court concluded that, insofar as the Court of Justice of the European Union did not place any limits on the effects of its conclusion, the challenged assessment issued under a law held illegal must be held null and void as a matter of law, and therefore, reviewable, even if it is final.

2.8 VAT.- Vocational training courses are subject to VAT in the place where they are actually given

Court of Justice of the European Union. Judgment of March 13, 2019, case C-647/17

The CJEU examined whether the place of supply for VAT purposes in relation to an accounting and management course must be the place where the training is actually given (as services in respect of admission to scientific or educational events) or at the place of business of the persons receiving the services (under the standard rule on the place of supply of services for VAT purposes).

In the CJEU's view, services in respect of admission to educational and scientific events relate to conferences and seminars and include supplies of services of which the essential characteristics are the granting of the right of admission to an event in exchange for a ticket or payment, and therefore they must be subject to VAT in the place where they are actually supplied.

2.9 Transfer and stamp tax.- The taxable amount for stamp tax purposes in the dissolution of a condominium is the value of the transferred portion of the property

Supreme Court. Judgments of March 14 (1), 20 (3) and 26 (1) 2019

The court examined various cases of dissolution of a condominium in which excesses over their share in ownership occurred for one of the joint owners, who acquired a legally and physically indivisible asset.
In relation to transfer and stamp tax the Supreme Court concluded that:

(a) The extinguishment of a condominium with the transfer to one of the joint owners of an indivisible asset in exchange for its equivalent value in cash is not subject to transfer tax under the transfers for consideration heading.

(b) It is, however, subject to stamp tax insofar as the transaction is documented in a public deed.
The taxable amount is the value of the portion of the asset that is transferred. In other words, since the transferee of the property was one of the joint owners, who already owned part of the property before the condominium was extinguished, stamp tax is only charged on the remaining portion of the property which it acquired in the dissolution of the condominium. This confirmed the court's interpretation as stated in its judgment of October 9, 2018, summarized in our Tax Newsletter - November 2018.

2.9 Tax on increase in urban land value.- The new Navarra law on the tax on increase in urban land value is unconstitutional

Constitutional Court Judgment of March 27, 2019

In judgment 72/2017 dated June 5, 2017, the Constitutional Court held unconstitutional and null and void given articles of the Navarra Provincial Local Finances Law 2/1995, of March 10, 1995, due to making transfers of land at a loss subject to the tax on increase in urban land value.

This conclusion resulted in the adoption of new provisions through Provincial Law 19/2017 which, among other matters, provided that the courts had to dismiss any proceedings commenced in relation to assessments or self-assessments of the tax on increase in urban land value issued under the previous Provincial Law and return the case records to be examined by the respective local councils.

The Constitutional Court held that the provision was also unconstitutional and null and void by breaching the distribution of powers between the central government and the autonomous community governments (article 149.1.6 of the Constitution), in that the jurisdiction for procedural legislation lies exclusively with the central government.

2.10 Tax on increase in urban land value.- The Constitutional Court is to examine whether the law on the tax is unconstitutional for cases where the land has increased in value

Constitutional Court Interlocutory order of March 26, 2019

As we announced in our Tax Alert dated April 4, 2019, the Constitutional Court has ruled to admit for consideration another request for a ruling on constitutionality in which it will examine whether the current rules on the municipal tax on increase in urban land value are precluded by the Spanish Constitution also where the transferred land has increased in value but the tax liability is confiscatory or disproportionate in relation to the gain obtained on the transaction.

2.11 Tax on increase in urban land value.- The Constitutional Court is to examine whether the law on the tax is unconstitutional for cases where the land has increased in value

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2.12 Tax on increase in urban land value.- In the transfer of a piece of land, any development costs after the purchase cannot be added to the cost price to calculate the taxable gain

Supreme Court. Judgment of March 12, 2019

Following the latest case law, it is allowed for the tax on increase in urban land value not to be charged on a transfer of land if no gain was obtained; in the same vein, the courts are now examining whether the tax has to be paid if there is a gain but it is lower than the taxable amount.

In this context, it is particularly important to calculate the sale and the cost price of the transferred land correctly.
In a judgment dated March 12, the Supreme Court concluded that, to calculate the taxable gain, any development costs paid after the purchase cannot be added to the purchase price. These costs, the court said, are part of the value of the land itself and will have been included to determine its transfer value.

2.13 Local government fees.- Defects in the reasoning of a technical and economic report founding a local government fee cannot be corrected by a court

Castilla y León High Court. Judgment of February 19, 2019

Castilla y León High Court explained in a recent judgment that defects in the reasoning of a technical and economic report issued by a local council when approving the tax rules governing a local government fee cannot be corrected or supplemented in the proceeding related to challenging those rules.

The court recalled that the technical and economic report must include, from when it is issued, all the elements needed to inform the taxpayer straightforwardly and conclusively of the methods and standards employed to quantify the fees.

2.14 Management procedure.- Adjustments to unreported assets are not allowed in audits of reported values

Supreme Court. Judgment of February 25, 2019

Following an audit of reported values in relation to a property received by inheritance and included on the taxpayer's tax return, the tax authorities issued an assessment in which they also added the values of a few bequeathed assets that the taxable person had not calculated on the tax return.

The Supreme Court concluded that in an audit of reported values carried out in relation to an inheritance and gift tax self-assessment, the tax authorities cannot include elements other than those appearing in the notarial document for acceptance and award of the inheritance and delivery of bequeathed assets that the taxpayer had attached to their return; this is because in the audit it is only allowed to review the values of assets reported voluntarily.

2.15 Tax procedures.- An application for deferred or split payment of the debt in the period for enforcement does not stop surcharges applying

Supreme Court. Judgment of March 27, 2019

There are three types of surcharges in the period for enforcement: (a) a 5% enforcement surcharge if the debt is paid over in full before the interlocutory order initiating enforced collection proceedings is notified, (b) a 10% reduced enforced collection surcharge if the debt is paid in full in the voluntary payment period that commences with notification of the interlocutory order, and (c) a 20% ordinary enforced collection surcharge if the debt is paid after the voluntary period.

It was examined whether, after the voluntary period for paying over a tax debt has run and a request for deferred or split payment of the debt has been made before the enforced collection order was notified, the surcharge claimable by the tax authorities is the 5% enforcement surcharge or the 20% ordinary enforced collection surcharge.

The Supreme Court concluded that, following expiry of the voluntary payment period for the tax debt, the application for deferred or split payment of the debt is not treated as payment as such. Therefore, although the application for deferred or split payment of the debt was before the interlocutory order initiating enforced collection proceedings was notified, the claimable surcharge is not the 5% enforcement charge, because the requirement to pay the tax debt in full before notification of the order has not been met.

2.16 Principle of criminalizing defined conduct.- The Supreme Court examines the analogy mechanism in relation to a contraband offense

Supreme Court (Criminal Chamber). Judgment of February 26, 2019

The Supreme Court (Criminal Chamber) made in this judgment an analysis of the so-called “fill in the blanks” criminal rules (such as those relating to tax offenses) in relation to an alleged contraband offense in a case involving the sale of “tobacco leaves” (criminal law uses the term “tobacco products” not “tobacco leaves”).

The court observed that, whereas “tobacco leaves” are a raw material, “tobacco products” are the result of an industrial process on the raw material. So, treating “tobacco leaves” in the same way as “tobacco products” may only be done by applying an analogy mechanism, which is not allowed by criminal law. Therefore, the alleged contraband of “tobacco leaves” cannot be criminalized due to the absence of defined criminal acts.

2.17 Retroactive application of tax laws.- The tax on the value of electricity output is chargeable in the historic territories from when the central government law was approved

Constitutional Court Judgments of January 17, 2019 and of February 14, 2019

On July 19, 2014 the Álava provincial law that approved the tax on the value of electricity output came into force. According to the provincial law, the effects of this law were valid retroactively from January 1, 2013, the date when the law creating the tax for Spain as a whole came into force.

The Constitutional Court examined whether this provincial law was potentially unconstitutional due to breaching the principle of legal certainty, by entailing retrospective application of tax law. The court concluded that, in this case, the retroactive nature of the provincial tax does not pose a problem because the historic territories have the power to set the legislation on their tax system, although they must reach an agreement with the central government and have regard to the central government’s general tax structure. In other words, Álava was required to include the tax on the value of electricity output in its tax system from when this tax came into effect for the rest of Spain, and therefore from that time it could be charged without posing problems concerning its retroactive application.

3. Decisions

3.1 Corporate income tax.- The limit on tax credits for events of exceptional public interest is 90% of the gifts made to the consortium over the length of the program

Central Economic-Administrative Tribunal. Decision of March 11, 2019

The base for calculating the tax credit for events of exceptional public interest is restricted to 90% of the gifts made to the consortium for the performance of programs and activities related to the event of exceptional public interest.

At issue was whether the limit had to be calculated by reference to all the gifts made to the consortium over all the years of collaboration with it or whether, by contrast, the calculation must be on an annual basis, by reference to the gifts made to the consortium every year.
According to the interpretation set by the DGT in binding ruling V0106-11 of January 21, 2011, TEAC concluded that the limit on the tax credits for events of exceptional public interest is 90% of the gifts made to the consortium over the whole length of the program.

3.2 Nonresident income tax.- A nonresident income tax withholding higher than the required amount is an incorrect payment

Central Economic-Administrative Tribunal. Decision of March 11, 2019

A nonresident income taxpayer had had a nonresident income tax withholding deducted from salary income not obtained in Spain, and therefore decided to apply for recovery of the amount in a procedure for refund of incorrect payments. The application for a refund was not accepted by the tax authorities because they considered the taxpayer had not followed the right procedure.

TEAC concluded in this decision that the withholdings deducted in respect of nonresident income tax had been incorrect. In other words:
(a) If the withholding requested to be refunded by the claimant is incorrect (namely, higher than the amount that would be calculated by correctly applying the law in force when the withholdings were made), the procedure for the request is an application for incorrect payments.

(b) If, however, the withholding was lawful but the person is entitled to a full or partial refund (because a lower amount of tax was due), the proper route is to file a tax return.

In the specific case raised, since the taxpayer argued that the income did not have to be taxed in Spain, the application procedure for a refund of incorrect payments should be used. TEAC therefore ordered reversion of the proceedings for the authorities to carry out the appropriate procedure to determine whether the income was indeed not subject to tax in Spain.

3.3 VAT. Royalties are part of customs value if they are related to the imported goods

Central Economic-Administrative Tribunal. Decision of February 20, 2019

A TEAC decision examined whether the customs value of imported goods includes the payment of royalties to third parties (other than the seller) while the legislation applicable until May 2016 was in force.

The tribunal concluded that royalties must be included in the customs value in cases such as that examined, in which it is observed that:
(a) The royalties are related to the imported goods, due to the imported goods being the same goods that are sold and give rise to the royalty and due to bearing the trademark from their country of origin on their labels.

(b) The payment of the royalties is a condition for sale of the imported goods in that the licensor exerts control over the manufacturer. For these purposes, the court specified as the main indications of control the need for the supplier and the product to be authorized first and the audits that the licensor may make at the suppliers' factories.

Despite this, the court (applying the interpretation in the Supreme Court judgments dated June 21, 2010 and February 28, 2011) concluded that VAT on the import does not have to be charged on the royalties paid if the reverse charge mechanism has been declared, to avoid double taxation.

3.4 Administrative procedure.- The decision to correct the tax domicile has effects in relation to non-statute barred tax obligations on its notification date

Central Economic-Administrative Tribunal. Decision of March 11, 2019

A taxpayer was notified of the correction by the tax authorities of its tax domicile and at issue was which tax debts were affected by that correction.

TEAC concluded that, as a general rule, a change of tax domicile will have effects for all non-statute barred substantive obligations. A decision to correct the tax domicile, however, may only be relied on as against the taxpayer from when it is notified to it, and therefore will only have legal effects for any substantive tax obligations that have not become statute-barred on the date of its notification.

The TEAC has therefore corrected the interpretation upheld in previous decisions in which it had concluded that the legal effects of a change of domicile could be relied on as against the taxpayer from the date on which it was notified of the change of domicile procedure.

3.5 Collection procedure.- Tax debts cannot be offset against claims acknowledged by another authority

Central Economic-Administrative Tribunal. Decision of March 20, 2019

A taxpayer applied for the offset of a tax debt in respect of personal income tax withholdings against a subsidy granted by the Valencian autonomous community government. The Valencian TEAR held that the debt could be offset even though the subsidy was not a tax claim.

Against the decision rendered by the Valencian TEAR, AEAT filed a special appeal for a ruling on a point of law, which has been upheld by TEAC, setting the following interpretation: the offset of debts under the General Taxation Law may only be done in respect of claims acknowledged by Hacienda Pública Estatal, the central government finance authority, where the same person is creditor and debtor with respect to that finance authority.

TEAC took the view, in fact, that the offset applied for by the person with tax obligations in this case is impossible to perform because the only way in which AEAT may claim from an autonomous community or local agency the payment of a monetary sum acknowledged for a person with tax obligations is through a different mechanism to offset (i.e. attachment).

3.6 Collection procedure.- Collection of a debt cannot be enforced if an application has been made for deferred or split payment of the debt without notifying dismissal of the administrative proceeding initiated with that application

Central Economic-Administrative Tribunal. Decision of February 26, 2019

A taxpayer filed an application for deferred and split payment in relation to a tax debt. In view of this, the tax authorities asked the person with tax obligations to provide certain information and documents. The taxpayer failed to comply with that request, for which reason that application for deferred and split payment was dismissed, although that dismissal was not notified to the taxpayer. Later, an interlocutory order initiating enforced collection proceedings was issued which this time was notified to the taxpayer.

TEAC overturned the interlocutory order initiating enforced collection proceedings by taking the view that, before it was issued, the taxpayer should have been notified of the decision to dismiss the application for deferred and split payment.

3.7 Economic-administrative procedure.- The economic-administrative tribunals are not required to ask for the case record to be completed before declaring the debt statute-barred

Central Economic-Administrative Tribunal. Decision of March 20, 2019

A taxpayer received notification of an attachment order more than four years after receiving notification of the previous interlocutory order initiating enforced collection proceedings. For this reason, Madrid TEAR held on its own motion that the right to collect the debt had become statute-barred. In a later appeal for a ruling on a point of law, AEAT alleged that, before declaring the debt statute-barred on its own motion, the tribunal should have requested completion of the case record to allow inclusion of any items proving that steps tolling the statute of limitations period had taken place.

TEAC dismissed the appeal and concluded that the economic-administrative tribunals may on their own motion or on the motion of the interested party declare the debt statute-barred without giving the tax authorities the chance to complete the case record with any documents proving that the statute of limitations period had been tolled.

In short, any case records sent to the courts must be complete. And, if they are not complete, the economic-administrative tribunals are not required to request for their completion, unless there has been an absolute breach by the tax authorities of their obligation to send the case record.

3.8 Economic-administrative procedure.- No response to a request for a refund of incorrect payments for more than four years does not make the right to the refund statute-barred

Central Economic-Administrative Tribunal. Decision of February 20, 2019

Catalonia TEAR held on its own motion that a taxpayer's right to the refund of an incorrect payment had become statute-barred because more than four years had run since it had made its application and there was no record of any steps tolling the statute of G

Against this, TEAC concluded that the authorities' inaction in the procedure initiated with an application for a refund of incorrect payments for a length of time longer than any of the statute of limitations periods, may not make the right exercised by the applicant become statute-barred. It referred in making its decision to a national appellate judgment dated June 22, 2015.

Therefore, TEAC partly upheld the claim and ordered reversion of the proceedings to Catalonia TEAR for it to examine the facts.

4. Legislation

4.1 Approval of the effective annual interest rate for the second calendar quarter of 2019, for the purpose of characterizing certain financial assets for tax purposes

On March 28, 2019 the Official State Gazette (BOE) published the decision of March 27, 2019, by the Office of the General Secretary for the Treasury and Financial Policy, which, as is now the custom, sets out the reference rates that will apply for the calculation of the effective annual interest rate for the purposes of characterizing certain financial assets for tax purposes, this time for the first calendar quarter of 2019. The rates are as follows:

- Financial assets with terms of four years or less: -0.146 percent.
- Assets with terms between four and seven years: 0.114 percent.
- Assets with ten-year terms: 0.880 percent.
- Assets with fifteen-year terms: 1.421 percent.
- Assets with thirty-year terms: 1.890 percent.

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

4.2 New legislation in relation to making payments of the debts managed by AEAT directly from bank accounts

On March 28, 2019 the Official State Gazette published Order HAC/350/2019 of March 5, 2019, amending Order EHA/1658/2009 of June 12, 2009 establishing the procedure and the conditions for making payment of certain debts managed by AEAT directly from bank accounts.

It notably extends the use of direct payment from bank accounts for deferred and split payment of non-tax debts granted by the competent bodies of the Economy and Finance Offices, applicable for payments falling due after July 1, 2019, provided the necessary adaptations have been completed by the tax authorities and, in all cases, for payments falling due after October 1.

This Order came into force on March 29, 2019.

5. Miscellaneous

5.1 Approval of an international agreement on taxation and the protection of financial interests with the United Kingdom regarding Gibraltar

The Spanish cabinet has approved an international agreement on tax and the protection of financial interests between Spain and the United Kingdom, signed "ad referendum" in Madrid and London on March 4, 2018.

The agreement sets out:
- Criteria for resolving disputes over residence for tax purposes of individuals in favor of residence in Spain, linked to presence and the place where the center of vital and economic interests is located. Where these criteria cannot be applied, tax residence in Spain is presumed, unless the taxpayer provides proof of residence in Gibraltar.
- Special rules on residence for Spanish nationals. Among other rules, a four-year "tax quarantine" has been included in which any non-Spanish nationals tax resident in Spain who change their residence to Gibraltar will not lose their tax residence in Spain.

 Residence criteria for legal entities. Residence in Spain will be presumed for companies and other types of Gibraltarian entities that have a significant relationship with Spain, in other words, where (i) the majority of the entity's assets are located in Spain, or (ii) the majority of their income is obtained in Spain, or (iii) the majority of their owners reside in Spain or, lastly, (iv) the individuals managing them are tax resident in Spain (all of the above with a few exceptions).
 A special arrangement for administrative cooperation which will ensure bilateral use of the highest international standards existing from time to time, and the exchange of information on certain individuals, entities or assets, particularly relevant for combatting fraud in the area: cross-border workers, vehicles, vessels, beneficial ownership of all types of companies and other entities, persons related to trusts linked to Spain, among others.

That exchange of information applies retroactively from January 1, 2014 for automatic exchanges, and from January 1, 2011 for other types of exchange of information.

5.2 The VAT Committee approves guidelines in relation to certain elements of Brexit

At a meeting held on March 12, the Commission's VAT Committee "almost unanimously" agreed on certain criteria for interpreting the application of VAT legislation when the United Kingdom's withdrawal from the EU takes place.

Most notably the following:
(a) Any supplies of goods to an EU member state that take place before Brexit but the goods arrive in the EU after Brexit (in other words, where the VAT on the import is charged when the goods enter the EU) cannot be declared as intra-Community acquisitions.
(b) The return to the EU after Brexit has taken place of goods sent to the United Kingdom before Brexit can benefit from the reimportation arrangement (which means these transactions are exempt from VAT). For these purposes it must be evidenced by the person making the reimportation that the relevant legal requirements are met, and in particular, that the goods are returned to the EU in an unaltered state except normal depreciation due to the use made of them.
(c) The rules on VAT refunds to operators not established in a member state but established in the EU will cease to apply to those established in the United Kingdom when Brexit takes place. From that time, the rules in the 13th Directive (article 119 bis of the Spanish law) will apply.
Although taxable persons will not be able to send applications electronically on the portals set up by the national tax authorities, any VAT charged before Brexit must be refunded under the rules applicable to operators established in the EU (regarding time limits, restrictions, etc.).
Any VAT charged after Brexit will be subject to the rules for operators not established in the EU, which means they may be subject to additional conditions such as the existence of reciprocity or the appointment of a tax representative.