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NEW END-OF-YEAR TAX LEGISLATION (2017)- AMENDMENTS TO THE REGULATIONS ON A NUMBER OF TAXES

The Official State Gazette of December 30, 2017 published Royal Decree-Law 20/2017, of December 29, 2017, extending and approving various tax measures and other urgent employment- and social security-related measures (the “**Measures Royal Decree-Law**”), which, inter alia, revises the elements of tax law that are traditionally amended by the Budget Law and, due to starting to apply on January 1, 2018, needed to be approved urgently. This new piece of legislation entered into force on the date it was published, i.e. December 30, 2017.

Various royal decrees amending the regulations on a number of taxes were published on the same date:

- a. Royal Decree 1074/2017, of December 29, 2017, amending the **Personal Income Tax Regulations**, approved by Royal Decree 439/2007, of March 30, 2007, the **Corporate Income Tax Regulations**, approved by Royal Decree 634/2015, of July 10, 2015, and the **Inheritance and Gift Tax Regulations**, approved by Royal Decree 1629/1991, of November 8, 1991.
- b. Royal Decree 1075/2017, of December 29, 2017, amending the **Value Added Tax Regulations**, approved by Royal Decree 1624/1992, of December 29, 1992, the **Transfer and Stamp Tax Regulations**, approved by Royal Decree 828/1995, of May 29, 1995, the **Excise and Special Taxes Regulations**, approved by Royal Decree 1165/1995, of July 7, 1995, the **Regulations on the tax on fluorinated greenhouse gases**, approved by Royal Decree 1042/2013, of December 27, 2013, the **Regulations on invoicing obligations**, approved by Royal Decree 1619/2012, of November 30, 2012, **Royal Decree 3485/2000**, of December 29, 2000, **on relief and exemptions under diplomatic, consular and international organization arrangements and amending the General Vehicle Regulations**, approved by Royal Decree 2822/1998, of December 23, 1998, and Royal Decree 1065/2007, of July 27, 2007, approving the **General Regulations on tax management and audit work and procedures and implementing the common rules on procedures for applying taxes**.

In this newsletter, we summarize the most notable elements of these royal decrees:

1. **Amendments in relation to personal income tax**
- 1.1 **Amendments to the Personal Income Tax Regulations**

Royal Decree 1074/2017 introduces various amendments to the Personal Income Tax Regulations. Aside from amendments concerning reporting requirements and the adaptation of various articles of the Regulations to the most recent statutory changes, the main amendments are as follows (according to their date of entry into force):

1.1.1 **New provisions with effect from January 1, 2017**

- a. **Costs of studies to train or retrain personnel**

The Central Economic-Administrative Tribunal (TEAC) (in its decision of April 4, 2017) and the State Tax Agency (AEAT) (in its report of May 5, 2017) concluded that all-expenses-paid invitations from pharmaceutical companies to medical professionals to attend medical conferences generate income in kind attributable to those professionals.

As announced in the preamble to Royal Decree 1074/2017, it is now clarified that the personnel training or retraining study costs not qualifying as income in kind will also include those which are funded by the employer indirectly.

This indirect funding will include that paid by companies or entities that **market products for which the worker must have suitable training**, provided that the employer authorizes such participation.

b. Family tax exemption for descendants

Descendants that give entitlement to the family tax exemption for descendants are now defined not only as persons related to the taxpayer by reason of guardianship or fosterage within the meaning of the civil legislation (as was provided in the Personal Income Tax Law) but also as persons **whose guardianship and custody has been determined by a court decision**.

1.1.2 New provisions with effect from December 30, 2017

a. Correction of returns

The procedure for voluntarily correcting errors on the tax return and that have an adverse effect on the taxpayer is simplified.

Taxpayers will now be able to choose between (i) the procedure existing to date, consisting of filing a request to correct the tax return, and (ii) **correcting the error directly on the tax return form itself**.

Although this new procedure will be governed generally by the provisions of article 120.3 of the General Taxation Law and article 126 to article 128 of the Inspection Regulations, certain special provisions are established:

- If the tax authorities confine their work to checking the filed documents against the background information and figures that are in their possession and order that the tax return must be corrected on the terms requested by the taxpayer, the administrative decision will not preclude the subsequent verification of the subject-matter of the proceeding.
- If the administrative decision gives rise to a refund derived from the personal income tax legislation with no late-payment interest to be paid, the decision will be deemed notified upon receipt of the bank transfer, without a provisional assessment needing to be issued.

b. Withholding tax on preemptive subscription rights

The Personal Income Tax Regulations are adapted to the new withholding tax rule that will apply from January 1, 2017 to **transfers of preemptive subscription rights** at both listed and unlisted entities.

The withholding agent will be the custodian, and in the absence of a custodian, the financial intermediary or the public authenticating official who has attested the transfer.

The obligation to withhold tax will, as a general rule, arise when the transfer is formalized, regardless of the covenanted collection terms. If, however, the withholding agent is the custodian, the tax must be withheld when it receives the proceeds of the transfer for delivery to the taxpayer.

The 19% withholding tax rate will apply to the proceeds obtained in the transaction, unless the withholding agent is the custodian, in which case it will apply to the proceeds that it receives for delivery to the taxpayer.

1.1.3 New provisions with effect from January 1, 2018

a) Increases in the exemption for certain fellowships

The new legislation increases the exempt amount of public fellowships and fellowships granted by beneficiaries of patronage for study purposes. The figures are amended as shown below:

| | | Previous limits | New limits |
|--|--------|-----------------|------------|
| Generally | | 3,000 | 6,000 |
| Compensation for travel and accommodation expenses | Spain | 15,000 | 18,000 |
| | Abroad | 18,000 | 21,000 |
| PHD studies | Spain | 18,000 | 21,000 |
| | Abroad | 21,600 | 24,600 |

b) Exempt amount of indirect cafeteria service mechanisms

The new legislation increases from €9 to €11 the daily exempt amount for indirect mechanisms for providing cafeteria services (meal vouchers or similar documents, cards or any other electronic payment method supplied to the worker to cover this need).

1.2 Amendments introduced by the Measures Royal Decree-Law.- Limits on the application of the objective assessment method in 2018

The Measures Royal Decree-Law extends to 2018 the application of certain thresholds which, if exceeded, trigger exclusion from the objective assessment method for income from certain economic activities (and which were initially introduced only for 2016 and 2017 by the State General Budget Law for 2016). Specifically:

- a. The limit relating to gross income obtained from all activities is raised from €150,000 to €250,000 generally; and from €75,000 to €125,000 for cases where the volume of gross income from the immediately preceding year relates to transactions for which an invoice must be issued where the recipient is a trader or professional acting as such.
- b. The limit relating to the volume of purchases in goods and services, excluding acquisitions of property, plant and equipment, increases from €150,000 to €250,000.

The Measures Royal Decree-Law also extends to 2018 the limits (initially envisaged for 2016 and 2017 only) that trigger exclusion from the special VAT schemes linked to the above-mentioned objective assessment method (simplified scheme and special scheme for agricultural, livestock and fisheries).

Lastly, a new time period is set for submitting waivers or revocations of these special methods and schemes, which will be one month on or after December 31, 2017. Waivers and revocations submitted (for 2018) in December 2017, will be deemed submitted within the appropriate period, and the adopted option may be changed within one month from December 31, 2017.

2. Amendments in relation to corporate income tax

Royal Decree 1074/2017 also introduces amendments to the Corporate Income Tax Regulations. Given that certain amendments are limited to adapting the Regulations to various statutes, we will only summarize the other amendments (according to their date of entry into force):

2.1 With effect for tax periods commencing on or after January 1, 2016.- Transfer pricing documentation

Amendments are made to the rules governing country-by-country reporting in order to bring the Corporate Income Tax Regulations into line with Council Directive (EU) 2016/881 of May 25, 2016, amending Directive 2011/16/EU.

It is a well-known fact that Spanish-resident entities that are deemed to be the parent company of a group (within the meaning of article 18.2 of the Corporate Income Tax Law) and that are not simultaneously a subsidiary of another resident or nonresident entity, must supply country-by-country information. This information must be supplied by Spanish-resident entities that are a direct or indirect subsidiary of a non-Spanish-resident entity that is not

simultaneously a subsidiary of another as well as by permanent establishments in Spain of nonresident entities of the group, subject to satisfaction of certain requirements.

It is now clarified that:

- a) Subsidiaries or permanent establishments in Spain will not be required to supply the information where:
 - the multinational group has appointed a constituent entity of the group that is resident in an EU member state to supply the information, or where;
 - the information has already been reported in its jurisdiction of tax residence by another nonresident entity appointed by the group as a surrogate of the parent company for the purposes of such reporting. In the case of a surrogate with tax residence outside the European Union, it will be necessary to fulfill the conditions set out in point 2 of section II of annex III of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.
- b) If the nonresident entity refuses to supply all or part of the information on the group to the Spanish-resident entity or to the permanent establishment in Spain required to supply the information, these entities will submit the information they have and inform the tax authorities of this circumstance.

In addition, among the information to be supplied, the expression “other equity” is replaced by “other accumulated earnings on the end date of the tax period”.

2.2 With effect for tax periods commencing on or after January 1, 2018.- New exception to obligation to withhold tax

Regarding withholding tax, the Measures Royal Decree-Law establishes a new exception to the obligation to withhold tax on amounts paid to pension funds by open pension funds, as a result of the repayment or switching of shares in investor pension funds or investor pension plans, pursuant to the revised Pension Plan and Fund Law, approved by Legislative Royal Decree 1/2002, of November 29, 2002, and to its implementing provisions.

3. Amendments in relation to VAT and invoicing obligations

Royal Decree 1075/2017 amends the **Value Added Tax Regulations**, among other pieces of legislation. Specifically:

a) VAT books, generally:

- a. AEAT is empowered to authorize in certain cases (at the request of the interested parties) (i) not including in the VAT books all the references or all the information specified, or (ii) making summary entries for invoices subject to conditions other than those established generally; all of the foregoing is in the event it is determined that the commercial or administrative practices of the sector of business in question so justify. The Invoicing Regulations specify that the tax management department at AEAT will have responsibility over these matters.
- b. It is clarified that in the general procedure for making summary entries, the invoices must have been issued on the same date, even if the tax became chargeable on the transactions within the same calendar month.
- c. It is provided that in the transactions carried out under the special scheme for used assets, art objects, antiques and collector's items and under the special scheme for travel agencies, the total amount of the transaction must be entered in the VAT books.

b) Electronic transmission of invoicing records to the Immediate Supply of Information System (SII). Several technical adjustments are made regarding time periods:

- a. The information related to transactions to which the special VAT cash-basis accounting scheme applies must be provided within the same time periods as the other invoices, although any additional data must be supplied within four days following total or partial collection or payment of the transactions.

- b. The notification of the correction of entries on the records is linked to the time when the taxable person becomes aware of the error. Accordingly, the notification must be made before the 16th day of the month following the end of the period in which the taxable person becomes aware of the error made
 - c. In the case of correcting invoices, the time period for providing these invoices is linked to the performance date of the transaction not subject to VAT for which an invoice should have been issued and to the actual time period for issuing it or, as applicable, for its recognition for accounting purposes.
 - d. The quarterly return period is retained for taxable persons that voluntarily elect to use the SII, which, as a consequence of that election, would have to file tax returns monthly.
- c) A number of technical adjustments are made to the **refund procedure for travelers**, making the electronic refund system established in Royal Decree 596/2016 obligatory. Despite this, the invoice issued by the supplier can also be used up to January 1, 2019.
- d) An amendment is included in relation to the **system of monitoring taxable persons subject to the Special VAT Group Scheme** to adapt it to the new regulations contained in the General Taxation Law, in relation to justified interruption and to delays not attributable to the tax authorities in tax audits on constituent entities.
- e) Also, in order to comply with Supreme Court judgment 418/2016, of February 9, 2016, which rendered null and void, due to being discriminatory, the provision contained in the VAT Regulations for **electing to apply the import VAT deferral system** (because it does not allow taxable persons taxed exclusively by a provincial tax authority to elect the system), these taxable persons have been included and the procedure for them to make that election is provided.

Moreover, it is provided generally that taxable persons may elect the import VAT deferral system in the month of November of the year before the year in which it will take effect. The Royal Decree includes, however, a transitional provision to allow taxable persons taxed exclusively by a provincial tax authority to elect to apply it in 2018 after the general time limit.

The main amendments to the **Invoicing Regulations** (in addition to those already mentioned) are the following:

- a. An option is added to send correcting invoices before the 16th day of the month following the date on which they would have been issued if the recipient were a trader or professional.
- b. Amendments are introduced in relation to invoicing by travel agencies, which broaden the cases in which they are authorized to issue invoices for the supply of the service when acting on behalf of a third party.

Lastly, Royal Decree 1075/2017 also includes in relation to VAT a **revision of Royal Decree 3485/2000, on relief and exemptions under diplomatic, consular and international organization arrangements, and the procedure for applying them**.

All of the amendments mentioned above take effect on January 1, 2018.

In parallel, Order HFP/1307/2017, of December 29, 2017 has been approved in order to include on VAT returns the new elements introduced by that Royal Decree 1075/2017.

4. Amendments in relation to other taxes

4.1 Transfer and stamp tax

The following changes in relation to transfer and stamp tax have been introduced by Royal Decree 1075/2017:

- A procedure is established for self-assessing the tax in cases of acquisitions of a large number of movable assets from private parties by traders or professionals on a continued basis over time.

The procedure, which will apply where there are more than 100 acquisitions in a month (provided the individual amount of each acquisition does not exceed 1,000 euros), will allow the tax on all acquisitions made in a complete month to be self-assessed on a single form, within thirty business days following the last day of the month concerned.

- A new means is introduced to evidence the filing and, if applicable, payment of the tax at the competent tax management office, for taxpayers that must pay tax to the state tax authority. In particular:
 - Certificate issued for that purpose by the competent management office at AEAT which contains all the references and requirements necessary to identify the notarial, judicial, administrative or private document that contains or lists the act or contract that gives rise to the tax, along with the payment document, if any, or relevant copy of the tax return.
 - Any other means determined by regulations by the Ministry of Finance and Public Service.

These amendments take effect on January 1, 2018.

4.2 Inheritance and gift tax

Royal Decree 1074/2017 introduces the following amendments to the Inheritance and Gift Tax Regulations:

- In cases of **real estate acquisitions**, the cadastral reference number of the assets must be included..
- Similarly to transfer and stamp tax, the filing with the competent tax management office of the **self-assessment** together with the documents containing acts or contracts subject to the tax, as well as the **payment** of the tax, as appropriate, or the **non-taxation or the applicable tax benefits**, may be evidenced using the means established in the legislation on the tax and also by those already specified for transfer and stamp tax (certificate issued by the competent management office at AEAT or any other means determined by regulations by the Ministry of Finance and Public Service).

These amendments take effect on December 30, 2017.

4.3 Real estate tax. Revision of cadastral values

As happens every year, the indexation allowance multipliers applied to cadastral values are established (through the **Measures Royal Decree-Law**) for 2018:

| Year of entry into force of comparative appraisal methods | Indexation allowance multipliers |
|---|----------------------------------|
| 1984, 1985, 1986, 1987, 1988, 1989 y 1990 | 1.08 |
| 1994 | 1.07 |
| 1995 | 1.06 |
| 1996 | 1.05 |
| 1997, 1998, 1999 y 2000 | 1.04 |
| 2001, 2002 y 2003 | 1.03 |
| 2005, 2006, 2007, 2008, 2009 y 2010 | 0.96 |
| 2011 | 0.95 |
| 2012 | 0.91 |

The application of these multipliers will first require satisfaction with the requirements established in article 32.2 of the Revised Real Estate Cadaster Law.

The foregoing multipliers will be applied to the municipalities included in Order HFP 885/2017, of September 19, 2017, as follows:

- In the case of real estate valued according to the data on file in the Real Estate Cadaster, the multiplier will apply to the value assigned for 2017.
- In the case of cadastral values notified in 2017 obtained from applying partial comparative appraisal methods approved in that year, the multiplier will apply to those values.
- In the case of real estate that has undergone alterations according to the data on file at the Real Estate Cadaster which have not become effective, the multiplier will apply to the value assigned to the real estate according to

the new circumstances by the Directorate-General of the Cadaster, by applying the modules which served as a basis for setting the cadastral values for the other real estate in the municipality.

4.4 Excise and special taxes

Royal Decree 1075/2017 also modifies certain elements of the Excise and Special Tax Regulations to fulfill citizens' rights to interact with public authorities electronically, while making enhancements to the management and monitoring of excise and special taxes on manufacturing (all effective January 1, 2018 generally). Specifically:

- Amendments are made so that the accounting records required to be kept using a computerized accounting system are kept through AEAT's website.
- Also, following authorization by the management office, the taxpayers that are not required to keep accounting records using a computerized accounting system, are allowed to file their accounting records through that website.
- A new system of tax seals in relation to fiscal markings is introduced which includes an electronic security code capable of storing the data relating to product traceability, for ease of control and tracking.
- A procedure similar to the EMCS (Excise Movement and Control System) is established for route sales in order to give continuity to the procedure for computerized control of the movement of products subject to excise and special taxes on manufacturing

Other amendments are introduced due to the need to revise the legislation to adapt it to the new industrial and commercial processes and to simplify procedures and reduce formalities. Examples of this are:

- Amendment to the procedure for intra-Community movements called "distance sales".
- Reduction of guarantees for small amounts of beverages under suspension arrangements to be dispatched to a non-domestic Community location.
- Implementation of the option, for all the products included in the objective scope of excise tax on oil and gas, which are to be placed in a tax warehouse in order to be mixed with other products subject to the tax, of performing that formality on the ship carrying those products.
- Release from the requirement to file electricity tax returns for taxpayers that are not retailers or distributors, in periods in which the tax payable is zero euros.

Lastly, specific control provisions are introduced for establishments which perform the first processing of raw tobacco within the objective scope of tax on tobacco products.

4.5 Tax on fluorinated greenhouse gases

In the interests of more effective monitoring of the tax, Royal Decree 1075/2017 amends the recapitulative statement of transactions, specifying that the parties required to file it must keep the inventory books throughout the statute of limitations period for the tax at the establishment where they conduct their business.

Moreover, the requirement to file a signed statement or, as the case may be, a signed communication to enjoy certain tax benefits is eliminated.

These amendments become effective on January 1, 2018.

5. Other amendments: national minimum wage

The **Measures Royal Decree-Law** approves an increase for 2018 in the national minimum wage (up 4% over 2017), which is therefore 24.53 euros/day and 735.90 euros/month.

It is also provided that the government will determine the rules for the effect of this increase, and of any increases approved in 2018 and 2019, on the references to the national minimum wage contained in the collective agreements in force as of December 26, 2017, and in non-central government legislation and in private contracts and covenants in

force as of January 1, 2018; nonetheless, the salaries established in collective agreements and in private contracts or covenants which as a whole and on an annual basis are below the national minimum wage in force at any given time must be amended by the amount necessary to ensure that those amounts are received.

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