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Information Alert

Tax Department

MAIN TAX CHANGES IN LAW 6/2018

I. Corporate Tax

Law 6/2018 introduced few changes to Law 27/2014 regulating Corporate Tax, but some of the changes are of considerable importance. These are the affected articles and the modifications involved:

Article 23 Reduction of income derived from certain intangible assets, also known as Patent Box

The tax relief of the Patent Box involves a reduction in the Tax Base for the tax that may reach as high as 60% of the net income earned by the entity through the assignment or transfer of the ownership of certain intangible assets to third parties. This is a form of relief that most assuredly exists in tax regimes similar to ours, but it is no less contentious for that. Both the European Union and the OECD have sought a certain harmonisation of this form of relief under the BEPS scheme in order to avoid tax competition among the member states. As a result of this “harmonisation”, the Spanish government has ratified modifications of the following aspects, under Law 6/2018:

- Intangible assets likely to produce income subject to reduction are limited to:
 - Patents, utility models, supplementary protection certificates for medications and plant protection products, designs and models that serve a double purpose: enjoying legal protection in accordance with currently existing industrial property regulations and whose creation is the result of research, development or innovation activities.
 - Advanced software that has been registered and that is the result of research and development processes (not including innovation).
- Not included in the Patent Box – and this is one of the salient characteristics of the modification introduced – is income from secret plans, formulas or procedures from rights to information related to industrial, commercial or scientific experiments – in other words, what can be described as know-how.

The formula for calculating the reduction remains the same, but the overall treatment of the relief does not. Until the change was introduced, this was calculated separately for each financial year without consideration of what happened in previous years or what might happen in future ones. Under the new version, the case of negative income in one financial year will have to be taken into consideration if positive income that had been reduced was incurred in previous years. If this occurs, the negative income must also be reduced until it equals the positive income of the previous financial years. A similar restriction is established for the reverse situation.

The new regulation naturally entails the need for establishing a transitory regime, and so the LPGE 2018 contains a new version of Transitory Provision 20 of the Law. Five different regulatory provisions within a period of 10 years require this regulation. The rules must be carefully observed, as they may affect contracts in force. A purely illustrative example: a Know How assignment contract concluded in 2010 that chose to apply the rules of the Budget Law of 2016 in the previous year would now, in financial year 2018, have no right to apply the reduction that it applied in the prior years.

Article 36.2 Deduction for investments in film productions, audio-visual series and live dramatic and musical performances

Several obligations are introduced for Spanish producers involved in the production of foreign films and seeking to apply this tax relief. Strictly speaking, they are not tax obligations.

Additional Provision 14 Modifications to the legal regime for fractionated payments

The minimum fractionated payment and the calculation of the accounting result regardless of the tax base have been excluded for capital risk entities regulated under Law 22/2014.

II. Value Added Tax

Effective immediately (5/07/2018):

- The minimum threshold (90 euros) of return for passenger exports (Art. 21.2. A.a VAT) has been removed.
- The National Direction of Traffic (DGT) standard is ratified whereby they enjoy an exemption for export to domestic air or marine transportation in connection with transport to or from the area of application of the tax, provided that there is one transport title including both forms of transit (Article 22.13).
- Movie theatre tickets will be taxed at a reduced rate of 10% (Art. 91.1.2.6).
- The threshold for telecare and other dependency assistance services is reduced from 75% to 10%, so that they may enjoy the super-reduced rate of 4% (Art. 91.2.2.3).

Effective 1/01/2019:

- The application of the exemption for services offered to members by cooperative associations is restricted, with special reference to economic interest groups when they engage in activities that basically enjoy the exemption (Art. 20.1.6). This significantly affects sectors such as finance and insurance, which will have to find alternative formulas such as, for example, applying the Company Group Regime in its advanced form.
- Implementation of Directive 2017/2455 for telecommunication, radio broadcasting and television services offered electronically to individuals of other member states but that comprise an extremely small part of the activity of the provider, as long as the provider is established in one member state of the EU (Art. 70.1.4 and 8).
- The special regime applicable to telecommunication, radio broadcasting or television services offered electronically to entrepreneurs or professionals not based within the Community is modified, allowing its application to businesses not established in the EU but that for other reasons may be identified within the union for the purposes of application of VAT (Art. 163.80 and 90).

III. Personal Income Tax

The measures incorporated in the Personal Income Tax on the one hand increase the reduction of the taxation of the lowest income workers and the taxpayers who bear the greatest family burdens, such as working women, large families or people with disabilities and on the other hand, introduce some specific improvements in the taxation of certain incomes and investments.

For this purpose, the LPGE introduces the modifications that we will analyse below and that we will distinguish according to their entry into force, some from 1 January 2018 and others with effect on 5 July 2018 (the day after the publication of the LPGE in the BOE (Official State Gazette of Spain)), also analysing the transitional regime for 2018 for each of them.

A. With effect from 1 July 2018

1. The deduction percentage for obtaining income in Ceuta and Melilla is raised from 50 to 60 per cent (section 7 of art. 68 on Deductions).
2. The tax incentive is increased up to 1,000 euros regulated in article 81 of the maternity deduction when expenses are paid for looking after a child under three years old in authorized nurseries or educational centres. Considered as such are the amounts paid to nurseries and child education centres due to pre-registration and registration, the assistance, in general and extended hours, and the food, provided that they have been produced for full months and are not considered exempt income from the work in kind.

In the tax period when the child reaches three years old, the increase may be applied for the expenses incurred after this age is reached until the month before the month in which the second child education cycle may begin.

This increase cannot be collected in advance.

3. The investment deduction is expanded in new or recently created companies regulated in article 68, increasing both the deduction percentage, from 20% to 30%, and the base of the deduction, which is increased from 50,000 euros to 60,000 euros.
4. The 48th Additional Provision creates a deduction for the family units made up of tax residents in Member States of the European Union or the European Economic Area, thus equating the fee which would have to be paid in the event that all the members of the family unit were tax residents in Spain.

B. With effect from 5 July 2018

1. Article 20 on the reduction by obtaining earned income increases, on the one hand, the amount of the earned income allowed to apply the reduction, and on the other hand, the amount of the reduction.

Article 20. Reduction for obtaining earned income	2015 - 4/07/2018	From 4/07/2018
Net earned income under	14,450.00	16,825.00
Who do not obtain income, excluding that which is exempt, over	6,500.00	6,500.00
NEI ≤	11,250.00	13,115.00
Amount of the reduction	3,700.00	5,565.00
NEI <	14,450.00	16,825.00
Amount of the reduction	$3,700 - 1.1562 \times (EI - 11.250)$	$5,565 - 1.5 \times (EI - 13.115)$

2. Article 81.Bis Deductions for large family or dependant persons with disabilities, increases the deduction up to 600 euros per year for each child that exceeds the minimum to be considered a large family under general or special regime. The general regime large family is considered that with more than two children and special regime large family that with five or more children.

Thus, a regular large family with 4 children will be entitled to a deduction of 1,800 euros compared to the 1,200 euros to which they were entitled under the regulations in force so far.

For the special large families whose deduction was 2,400 euros regardless of whether they had 5 or more children, their deduction will be 3,000 euros for 6 children, 3,600 euros for 7 children...

The spouse who is not legally separated is included when they are a person with disability provided that they do not obtain income, excluding those exempted, over 8,000 euros and do not generate the right to the deduction for offspring or parents with disabilities.

For the purpose of the calculation of the number of months for the calculation of the amount of the deduction, the family situation will be the one on the last day of each month. The monthly payment amount for the deduction in advance shall be 100 euros per spouse not legally separated with disability and 50 euros per month for each of the children who are part of the large family who exceed the minimum required to acquire the corresponding qualification.

3. Article 96 which regulates the obligation to declare, which raises the limit below which the taxpayers are not obliged to declare that they receive earned income from more than one payer, and provided that the sum of the amounts received from the second and other payers, in order of amount, exceeds 1,500 euros, from 12,000 to 14,000 euros.
4. The exempted amount of the special Levy on prizes from certain lotteries and bets regulated in the 33rd Additional Provision, is increased from 2,500 to 40,000 euros.

The above modifications are subject to a transitional regime that is detailed below

C. Transitional regime for 2018

1. The system is modified immediately for payments on account provided for in article 101 to accommodate the increase of the deduction for income obtained in Ceuta and Melilla.
2. The 47th Additional Provision is added that regulates the application of the reduction for obtaining earned income as well as the determination of the stoppage rate on earned income during the 2018 tax period.

The applicable reduction due to obtaining earned income will be, for:

- Returns prior to the entry into force of the LPGE:
 - That established in the regulations in force on 31/12/2017.
- Returns after the entry into force of the LPGE:
 - That established in the regulations in force on 31/12/2017 + $\frac{1}{2}$ of the difference between that which would correspond to the regulations in force on 1/01/2019 and that in force on 31/12/2017.

For the purposes of the calculation of the stoppages, for:

- Returns prior to the entry into force of the LPGE:
 - The regulations in force on 31/12/2017 will be applied.
- Returns after to the entry into force of the LPGE:
 - The regulations in force on 31/12/2017 will be applied with special features:

a) New table with limits excluding the obligation to make stoppages.

After 1-1-2015 there will be no stoppages on the earned income whose amount does not exceed the annual amount established in the following chart according to the number of children and other offspring and the situation of the tax payer:			
2015 - 4/7/2018			
Situation of the taxpayer	Number of children and other offspring		
	0 Euros	1 Euros	2 or more Euros
1st: Single, widow, divorced or legally separated taxpayer		14.266,00	15.803,00
2nd: Taxpayer whose spouse does not obtain income over 1,500 euros per year, excluding those which are exempt.	13.696,00	14.985,00	17.138,00
3rd: Other situation	12.000,00	12.607,00	13.275,00

After 4-7-2018 there will be no stoppages on the earned income whose amount does not exceed the annual amount established in the following chart according to the number of children and other offspring and the situation of the tax payer:			
From 4/07/2018			
Situation of the taxpayer	Number of children and other offspring		
	0 Euros	1 Euros	2 or more Euros
1st: Single, widow, divorced or legally separated taxpayer		15.168,00	16.730,00
2nd: Taxpayer whose spouse does not obtain income over 1,500 euros per year, excluding those which are exempt.	14.641,00	15.845,00	17.492,00
3rd: Other situation	12.643,00	13.455,00	14.251,00

For Social Security pensions or liabilities or benefits for unemployment, another chart of limits is approved excluding the obligation to make stoppages.

b) Base for the calculation of the stoppage rate

The reduction for earned income for the purposes of the stoppages calculation shall be applicable from the entry into force of the LPGE.

The regularization of the rate of stoppage or payment on account will be done in the first earned income which is paid from the entry into force of the LPGE or, at the discretion of the payer, in those which they pay from the month after the entry into force of the LPGE.

3. The 33rd Transitional Provision provides that the increase of the deduction for large family and the deduction for the disabled spouse not legally separated will be determined exclusively considering the months initiated after the entry into force of the LPGE, and as such for 2018 the maximum deduction per additional child will be 300 euros and for the disabled spouse 600 euros.
4. As regards the obligation to declare, in accordance with the 34th Transitional Provision, the ceiling for 2018 will be 12,643 euros.
5. The 35th Transitional Provision regulates the transitional regime for the amount exempt from the special levy on the prizes from certain lotteries and bets for the years 2018 and 2019 which will be as follows:
 - Until 4 July 2018: 2,500 euros.
 - From 5 July 2018 and until 31/12/2018: 10,000 euros
 - Fins al 4 de juliol de 2018: 2.500 euros
 - A partir del 5 de juliol de 2018 i fins al 31/12/2018: 10.000 euros
 - Per a l'exercici 2019: 20.000 euros
 - Per a l'exercici 2020: 40.000 euros.

IV. Net Wealth Tax

The requirement for its levy is extended during 2018.

V. Legal and default interest

They are fixed at 3% and 3.75% respectively, keeping those to date.

VI. Tax on economic activities

With effect for the tax periods beginning from 5 July 2018, the following modifications are made to the rates and the instructions for the tax:

1. The rates are reformed under headings 251.3 Manufacture of inorganic chemicals that includes the manufacture of industrial gases, except for compressed gases and 253.1 Manufacture of compressed gases and solidified carbon dioxide (dry ice).

2. The 50% reduction is eliminated on the quota in favour of the State Postal Company.