

6 September 2021

News Alert

Tax Department

On 10 July, the Official State Bulletin published the umpteenth Law on measures to prevent/combat tax fraud, Law 11/2021, on preventing and combatting tax fraud, transposing Council Directive (EU) 2016/1164, of 12 July 2016, laying down rules against tax avoidance practices, which directly affect the functioning of the internal market, modifying various tax regulations and in matters concerning gambling regulations. This is a legal provision that has had a long and complicated development.

On 24 November 2020, we already had the opportunity to analyse in different Informative Alerts the news that the Bill intended to introduce, which has ended up becoming Law 11/2021. Some of them have not undergone any substantial changes in their parliamentary proceedings. Others, however, have seen their wording affected by parliamentary proceedings, including having the text of the Law's provisions included, which were not contemplated in the bill. In this regard, and to make it easier to read this Alert, we have found it more useful to avoid any reference to the bill and to whatever was mentioned in our previous Alerts, since this could give rise to a certain degree of confusion. We therefore propose a reading of this Alert based exclusively on the finally approved and published wording, i.e., the only one that was legally effective.

Law 12/2021 is an "omnibus" law, incorporating precepts of a very different nature and purpose, so many of the approved provisions have no relationship between them. Despite this, we will attempt to summarise in this Informative Alert its essential elements, even when the length of the legal text makes it hard to obtain a brief and concise summary.

We can affirm that some (a few) amendments constitute authentic instruments for combatting tax evasion. Others (the majority) are no more than mechanisms for increasing fiscal pressure without altering the rates of each tax figure, by simply raising their bases. Finally, some are the product of the obligatory transposition of Community Directives to our system, as in the case of the ATAD Directive (Anti-Tax Avoidance Directive).

It is hard to highlight or put into order the provisions of the new regulations because of their significance or general application. If we had to, we would highlight the appearance for the first time of the concept of "reference value" applicable to the properties, obligations, and violations associated with management/invoicing software that violates the requirements to be determined by the regulations, the new taxation of the SICAV or the SOCIMI, the disappearance of the legal concept of a "tax haven" and its replacement with "non-cooperative jurisdiction", the new controls established on cryptocurrencies, the new and numerous powers of the Tax Administration, and a long series of very important precepts in fiscal matters.

The new provisions of the Law generally came into force on 11 July 2021. However, some did so retroactively, and others will do so later.

Let's look at the most significant legislative developments.

A. Corporation tax

The amendments introduced in this tax are largely, but not solely, a product of the partial transposition of the ATAD Directive, Directive 2016/1164. Here is what is new:

1. Exit Tax

Article 19.1 of Law 27/2014, which regulates Corporation Tax, is amended by introducing the provisions of Article 5 of the ATAD Directive. In essence, the exit taxation of the hidden reserves of assets existing in Spain gets harder when they are transferred to another jurisdiction of the European Union or the European Economic Area.

If up to now said taxation could be deferred at the time the assets in question are transferred to third parties, now, at most, it may be divided into five annual instalments with a stiff regulation of its maturity, guarantees, breaches, or advances linked to different cases.

In addition, and consistent with the foregoing, a criterion is introduced for evaluating the entry of goods from other States under coverage of the ATAD Directive.

2. SICAV

To date, this type of collective investment institution was taxed at a rate of 1%. The only condition established by Law was that the number of shareholders be no less than 100. However, these shareholders were not required to make a minimum investment in the capital of the SICAV.

The new regulation of Article 29.4.a), which will apply to tax periods starting on 01/01/2022, requires each shareholder to have invested at least €2,500.00 and, if it is a compartment of the SICAV, €12,500.00. Said situation must also be maintained for at least three quarters of the tax period.

As a significant development, the AEAT [Agencia Estatal de Administración Tributaria (Spanish Tax Agency)] is also given control of this legal requirement, and said competence is withdrawn from the CNMV [Comisión Nacional del Mercado de Valores (Spanish Securities & Exchange Commission)].

Obviously, those SICAVs that do not meet these requirements will be subject to the general tax rate of 25% as of fiscal year 2022.

Given the loss of appeal that this implies for this form of investment, it is expected that the company will opt for dissolution with liquidation, with a special tax regime. The basic outlines of this liquidation regime are as follows:

- a. Exemption in the ITP [Impuesto de Transmisiones Patrimoniales (Wealth Transfer Tax)], modality of corporate transactions, and exemption in the Tax on Financial Transactions.
- b. Maintenance of the 1% tax rate until the company's termination.
- c. Non-taxation of the earnings in the IRPF (Personal Income Tax), Corporation Tax or IRNR (Income Tax on Non-Residents) of the partners on the condition that the total amount of the liquidation fee obtained is reinvested in another collective investment institution that meets the requirements to apply the 1% tax rate. To this end, a kind of "transfer" of funds is implemented between the liquidating company and the institution receiving the funds.

The dissolution agreement must be adopted throughout 2022, with the company being liquidated in the following six months. The partners must reinvest by 31/07/2023 at the latest.

3. Deduction for investments in film productions, audio-visual series, and live performing arts and musical shows.

Those foreign productions that, since part of the production is developed in Spain, can enjoy the benefits established by Article 36.2 of the Law, have a series of certification and other requirements imposed on them in order for them to take advantage of the deduction.

Some of the pre-production requirements for which production contracts have been signed before 11/07/2021 are exempt. (Transitional Provision 42 Law).

4. International Fiscal Transparency (IFT)

The Special Regime for International Fiscal Transparency (Article 100 of Law 27/2014) is modified for the transposition into Spanish of Article 8 of the aforementioned ATAD Directive. Its most relevant milestones are:

- a. Incorporation of permanent establishments located outside Spain into the IFT. This entails taxing them for all types of income, if they do not have the structure of material and personal means required by Law, or the “unearned” income of the IFT itself in all cases, provided that the permanent establishment effectively taxes below 75% of the rate that would have been applied in Spain. The IFT takes precedence over the exemption of income earned outside Spain under Article 22 of the LIS (Corporation Tax Law), the reference of which is not effective taxation but a minimum nominal taxation of 10%. This is a relevant aspect that must be reviewed, as it comes into force in the 2021 fiscal year itself.
- b. Incorporation into “unearned” income of the activities of insurance, credit, financial leasing, and finance in general, when these are not developed as an economic activity.
- c. Incorporation into “unearned” income of transactions on goods and services carried out with related persons or entities in which non-resident entities or establishments “adds little or no economic value”.
- d. Disappearance of the exception of holding companies that were defined as companies that held shares equal to or greater than 5% in other non-resident entities and had the substance necessary for managing the shareholding. This is also a relevant fact that will require existing corporate structures to be reviewed.

The non-application of IFT is maintained for participants and permanent establishments resident or located in an EU State, and the exclusion is extended to those residents in another State that is part of the European Economic Area (EEA) Agreement. In both cases, the requirement for the existence of a valid economic reason is eliminated, with sufficient evidence of the performance of economic activities. The non-application of IFT to collective investment institutions regulated by Directive 2009/65/EC, constituted and domiciled in an EU State, is maintained.

5. Provisional deregistration from the index of entities

There is a requirement for the entity’s supposed insolvency before the State Public Treasury from which the provisional deregistration from the index of entities is derived.

The Notaries Law of 28/05/1862 is also amended, so notaries public must consult the list of revoked NIFs (Tax ID Numbers) to prevent any deed, minutes or policy being granted by entities whose tax identification number is revoked. They will also inform the Tax Administration of the identification of entities with their revoked NIF that may have intended to grant a public document.

B. Non-Resident Income Tax

The amendments introduced in this tax are as follows:

1. Representation before the Spanish Administration and responsibility of the representative (Articles 9.4 and 10)

With regard to the mandatory appointment by a non-resident of a representative before the Spanish Administration, the following is required:

- a. As a certainly relevant element, the exemption from said obligation for persons residing in an EU Member State or an EEA State, provided that there are, with respect to the latter, agreements for the exchange of information and mutual administrative assistance comparable to those existing within the EU.

In this case and in the case of legal entities, the action shall be understood directly with their designated representatives in their jurisdictions of incorporation or residence.

- b. Possibility of requiring the appointment of a representative in the event that the non-resident owns a real estate property in Spain.
- c. The two cases of joint and several liability for the designated representative in Spain are maintained.

2. Exit Tax (Article 18, numbers 5, 6, 7, and 8)

As we have commented with respect to the Corporation Tax, the new Exit Tax regulation is incorporated into the IRNR in its modality of income obtained through a permanent establishment. So, the transfer of equity items by a permanent establishment that ceases its activity or transfers its activity abroad (new situation) involves the taxation of its latent capital gains.

As with the Corporation Tax, a 5-year fractionation mechanism is established for the payment of the IRNR accrued by the latent capital gains of the elements transferred to another EU Member State, or the EEA with which there is an agreement of mutual assistance equivalent to that of the community.

Related to this legislative change, a new assumption is established of completion of the permanent establishment's tax period when it transfers its activity abroad (Article 20.2).

In a clear example of a deficiency in the legislative technique, Law 11/2021 has "eliminated" numbers 6 and 7 of this Article 18 that were incorporated by RDL 4/2021 precisely to transpose the ATAD Directive on the subject of hybrid structures. It is expected that this error will be corrected when the relevant errors are corrected.

C. Personal Income Tax

The IRPF is not undergoing major changes, and only a few very specific aspects of its regulations are affected (Law 35/2006):

1. Temporary allocation of the earnings derived from *unit linked* insurance (Article 14.2.h)

References to the sectoral insurance regulations, for both the Community and Spain, are updated.

2. Reduction applicable to earning from the lease of housing (Article 23.2)

The force of Law is granted to an administrative practice that is more than debatable, whereby the Administration had not been allowing the 60% reduction applicable to the earnings on real estate derived from the lease of houses, on net returns not declared by the taxpayer, or when lower income or higher expenses have been declared than those acceptable by the Administration. In such a case, the taxpayer is “punished” by being denied the right to a 60% reduction on the part of the earnings “undeclared” and “discovered” by the Administration.

3. Earnings from equity and Successional Agreements (Article 36)

For those acquisitions of *mortis causa* derived from succession agreements effective in the present (transfer of assets during life), such as the Catalan Succession Agreement (Art. 431-19.2 of the Civil Code of Catalonia), the non-taxation of the capital gain made manifest with the transfer of the assets object of the agreement is consolidated. However, this initiates a period of five years, or up to the date of death of the deceased, if this occurs earlier, in which case, if any of the assets have been transferred, the capital gain of the party favoured by the agreement (the inheritor) would be calculated, with the cost and date of acquisition being considered as those given by the deceased, with the acquirer thus being subject to those amounts of tax.

The First Transitory Provision of the Law establishes that this regime will only apply to transfers of property, which would have been acquired as a result of this type of successional agreement or contract, occurring after the entry into force of the Law (11/07/2021).

4. International Tax Transparency (Article 91)

As in the case of Corporation Tax and Non-Resident Income Tax, this special regime is adapted in the IRPF to the dictates of the ATAD Directive, with the specific characteristics of a tax that is levied on individuals.

5. Transfer of Investment Funds (Article 94 and Transitional Provision 36)

The impossibility of applying the transfer regime between collective investment institutions is clearly established when the source or destination institution is analogous to a quoted investment fund or companies of the same type as those provided for in Article 79 of Regulation 35/2003. In other words, investments in foreign listed collective investment institutions (ETFs) are handled in the same way as domestic ones.

Transitional Provision 36 states that this provision is not applicable to transfers of this type of institution acquired before 1 January 2022 provided that the institution to which the transfer is to be made is not one of this type.

6. Obligations to provide information regarding cryptocurrencies (Additional Provision 13)

For the first time in Spain the obligation is established for companies that provide deposit/custody services (wallets) for cryptocurrencies or that operate their transfer (exchangers) or that issue them for the first time (ICOs), to provide information to the Spanish Tax Administration. This will, of course, apply only to entities that perform this type of transaction and are resident in Spain or operate in Spain through a permanent establishment.

The content of the information will depend on the type of service provided and will be subject to the relevant regulations. However, in all cases, the reporting entity must identify the holder of the funds deposited, exchanged, or acquired on their issue.

In addition, as we will see later, the General Tax Law is amended, incorporating cryptocurrencies into the scope of the Form 720 declaration. So, information that is not provided by the operators, because they are not established in Spain, must be provided by the holders of the cryptocurrency by submitting their Form 720.

D. Inheritance and Gifts Tax

The regulations of this tax, Law 29/1987, abandon an almost 19th century-old concept, the concept of “real value”, which is replaced by “market value”. The reform is also intended to end the discussion regarding the valuation of properties, by creating a new administrative value, the “reference value”. Let’s look at the elements of the reform of this tax:

1. Market value *versus* real value (Article 9.2)

The Law abandons the concept of “real value” and replaces it with “market value”, which is understood to mean: “the most probable price for which an unencumbered item could be sold between independent parties”. So, from now on, when the Tax Law refers to the “value” of a good or right, it must be understood that this means its “market value”.

Unfortunately, taxpayers still stand by the value they declare, even when it is subsequently proven that it is higher than its “market value”.

2. Valuation of properties: the “reference value” (Article 9.3)

For real estate, a unique and clear administrative valuation criterion is chosen: the “reference value”. This will be determined by the Real Estate Tax Registry. It must be applied mandatorily in the returns to be filed by taxpayers and be respected by the Administration which may not submit it for verification. If taxpayers do not agree with the “reference value”, they must resort to the rectification of their self-assessment, not to determine whether the “reference value” is the market value of the property, but to clarify whether it has been correctly determined.

We are therefore faced with a new tax fiction created by the Administration. It seems that our legislator has not learned the lesson that our Constitutional Court has been teaching in recent years in its numerous judgements on Municipal Capital Gains [Incremento del Valor de los Terrenos de Naturaleza Urbana, IMIVTNU [Increased Value of Urban Terrain]].

3. Accumulated successional contracts and pacts (Article 30)

The new wording of Article 30 of the Law saves the existing inconsistency in the current Law that did not provide for the accumulation of some of the flow transferred as a result of successional contracts and pacts as a result of the handover of property during life.

4. Taxation derived from non-residential subjects and independent regulations (Additional Provision 2)

The wording of this provision has been improved, with its effects extending to all cases where the subjects are non-residential, though they do not reside in the EU or the EEA, and also, in certain cases, the properties are located in third countries. This implies the inclusion in the legal text of the doctrine consolidated by our Supreme Court.

E. Wealth Tax

Law 19/1991 regulating Wealth Tax is amended in only three of its precepts.

1. Valuing the properties by the Reference Value (Article 10.1)

If a real estate property has been transferred free of charge or lien, using its “Reference Value”, this will be taken into account from then on as one of the values to be considered for the future declaration of Property Tax.

2. Life insurance (Article 17)

Until now, and based on an oft repeated interpretation by the Directorate General of Taxes, non-temporary life insurance policies, the contracts of which did not grant the policyholder the right to recover the value of the policy, were not calculated in the taxable base of the Property Tax. This had made this kind of insurance, and “unit linked” policies in particular, an investment instrument that is not subject to the aforementioned tax.

The reform implies ending this interpretation through the regulations and, from now on, taxing policyholders for the mathematical value of the contract. It is dispensed with in the drafting of the multiple situations in which the different parties involved in the insurance contract may find themselves, because in certain cases the policyholder may not enjoy any right over the capital amounts of the insurance and yet, despite this, is subjected to taxation.

Likewise, the valuation of the right to receive certain temporary or life-long income is determined when it comes from life insurance, which will be the surrender value on the date of accrual, thus abandoning the criterion for valuation of the Tax on Wealth Transfers.

3. Taxation of non-residents (Additional Provision 4)

The application to non-resident taxpayers of the regulations of the Autonomous Community in which most of their assets are to be found in Spain extends to residents anywhere in the world, and the limitation of this treatment, which to date was granted only to EU and EEA residents, disappears. This is a logical provision, but one that can exacerbate the lack of neutrality of this tax in investment decisions in Spain by non-residents.

F. Tax on Wealth Transfers

With this tax, as happened with the Tax on Inherences and Donations, the novelty of the “reference value” is enshrined in the case of properties and the general criterion of the “real value” is replaced by the “market value”, with this regulation being introduced in Article 10.1 of its Consolidated Text.

The “reference value” becomes a minimum value below which the tax will not need to be paid in the case of real estate, even if the value agreed between the parties is lower than this. Discussion of the value will no longer be about whether or not the agreed value is the market value of the property, but rather whether the “reference value” has been calculated correctly. Similarly, if the declared value is the “reference value” or a higher value, there will be no verification by the Administration (Article 46).

No one can escape the fact that the size of this amount will become an essential element of any transfer in the real estate market, since the cost of the tax on the transaction will depend on it, in those cases where the Administration considers that the value of the property is higher than what the parties have agreed.

In line with this general change, different articles of the Consolidated Text that regulates the tax are subject to amendment, in order for this valuation criterion to be applied.

Consistent with the changes made to the ITP regulations, the case of no exemption regulated by Article 314 of the Consolidated Text of the Securities Market Law (former and famous article 108 of said Law) is adapted to the new criterion for valuation: market value instead of real value, for all types of assets, and “reference value” as the minimum value of the property.

G. Value Added Tax

The amendments introduced in Law 37/1992, which regulates VAT, are purely mechanisms for controlling and defining new cases of tax liability:

1. Parties responsible for import tax (Article 87.Three)

The assumption of liability applicable thus far to Customs Agents is updated, and any person or entity acting on behalf of the importer is now considered as such.

2. Regime of the Group of Entities (Article 163.Nonies)

A new case is configured of an offender in the group's dominant entity that reaches the offences committed because of lack of income of the aggregate tax debt, as well as the accreditation of amounts not owed to be offset or returned.

3. Regime of Deposit other than Customs (Appendix.Fifth)

The scope of the subsidiary liability of the holder of the deposit other than Customs is expanded with respect to the tax debt for VAT corresponding to the case of an operation similar to the import corresponding to the departure of the goods from the deposit.

In the case of products subject to Special Taxes on Alcohol and Derivative Beverages, and on Hydrocarbons, the holder's subsidiary responsibility for the deposit will disappear if the “extractor” of the goods is duly registered in the Registry of Extractors governed by regulations. The taxable person in a transaction similar to the importation corresponding to goods leaving the deposit is classified as the “extractor” of the goods.

H. Canary Islands General Indirect Tax

Law 20/1991, which regulates the Canary Islands Economic-Tax Regime, is subject to amendment in some aspects related to the regulation of the IGIC:

1. Subsidiary liability in the importation of goods (Article 21.Bis)

As with VAT, a general subsidiary liability is established for those acting in the name and on behalf of the importer.

2. Specific tax violations (Article 63)

The IGIC introduces the existing violation and penalty for VAT constituted by the delay in keeping the record books in the electronic branch [Suministro Inmediato de Información, SII (Immediate Information Provision)]

I. Special Taxes

There are two issues that are subject to amendment in Law 38/1992, on Special Taxes:

1. Tax Deposits

Apart from specifying the concept of Tax Deposit (Article 4.10), new cases of infringement and their corresponding penalties are regulated. Briefly, these would be the following:

- a. Higher losses than those established by the regulations, which can be verified by the Administration via inventory (Article 19.3).
- b. Failure to comply with the requirements and conditions established by the Law and its implementing regulations for the application of exemptions or reduced rates (Article 19.3).
- c. Specific regulation of the previous offender type for the special tax on Coal (Article 87.3 and 4).
- d. Likewise for the Special Electricity Tax (Article 103.2).

2. Special Tax on Certain Means of Transport (Article 70)

The 5th Additional Provision of Law 11/2021 amends the intervals of application of the tax rates of this tax, temporarily raising the CO₂ emission thresholds until 31/12/2021.

J. Smuggling

Organic Law 12/1995, on Suppression of Smuggling, is modified, adapting the classification of the administrative violation regulated by its Article 11.1 to the configuration of the crime of smuggling. With the new definition, the action classified as smuggling by Article 2 of the Law that is not considered constituting a crime, will become an administrative violation, since it will cover any defrauded amount.

Although from a simple reading of the precept it may seem that the adaptation is not relevant, it is, to the extent that the lack of sufficient guilt for the commission of a de facto crime entails the commission of an offence, even when it is simple negligence.

K. Entering constitutionally protected addresses

Article 8.6 of Law 29/1998, regulating Contentious-Administrative Jurisdiction, is modified, with the sole purpose of saving the doubtful validity of the actions, essentially of the Tax Inspection, consisting of entering premises and other constitutionally protected places under the authorisation of a contentious-administrative judge. Now, the jurisdiction of the Contentious-Administrative Courts is expressly established to authorise such entries. Note that nothing is said about the authorisation of records.

L. General Tax Law

Without a doubt, the strong focus of the reform falls on the amendment to the General Tax Law, Law 58/2003. We might say that this essentially occurs doubly: in the first place, the granting of new and greater powers to the Tax Administration; and, in the second place, the adoption of measures to promote voluntary tax regularisation by taxpayers, as well as the search for their conformity with the actions of the Administration.

We will start our analysis with this second block, with greater general interest. With respect to the first block of measures, we will limit ourselves to making a succinct list of cases.

Before referring to the adopted measures, we cannot fail to comment on the “voluntary” declaration of principles contained now in Article 3.1, last paragraph, of the General Tax Law under which the legislator condemns himself or herself to approving new tax amnesties. We will see how effective this programmatic statement is.

Measures to facilitate voluntary tax regularisation and reduce conflicts

These include the following measures

1. Reduction of surcharges on late filing of returns and self-assessments (Article 27.2)

The current surcharges for late submissions (5% up to 3 months late; 10% up to six months; 15% up to 12 months) disappear, and are replaced by a single minimum surcharge of 1% to which another 1% is added for each complete month of delay.

After 12 months, the surcharge becomes a fixed surcharge of 15%, instead of the current 20%, to which interest will be added as it has been so far, i.e., from the year of delay.

A 25% reduction will continue to be applied to the amounts resulting from the application of the new surcharges, conditional on the self-assessment income, or its deferment with bank guarantee, and the payment of the surcharges settled by the Administration.

One new aspect is that in certain circumstances, no surcharge will be applied to declarations submitted as regularisation of periods after the ones verified by the Administration, with the regularisation falling on facts identical to those regularised by the Administration in the verified periods, as long as the late self-assessments are submitted within 6 months after notification of the administrative settlement. It should be pointed out that this exception does not apply if the Administration has imposed a penalty in the regularisation of the periods verified.

The new regulations will be applicable from the entry into force of the Law, that is, from 11/07/2021. However, the rule itself establishes a transitional regime whereby the new surcharges will automatically apply to already enforceable surcharges that have not been confirmed. This supposes that those surcharges for which the appeal period (1 month from notification) has not ended on 11/07/2021, or which, having ended, have been challenged and the appeal is pending resolution, must be corrected by the Administration itself and established in accordance with the new regulations.

These surcharges shall not apply to customs declarations (Additional Provision 20).

2. Reduction of penalties for compliance and prompt payment (Article 188.1 and 3)

In order to encourage taxpayers' compliance with the regularisations made by the Administration, the reductions for compliance and prompt payment are subject to increase in the following terms:

- a. Reduction for conformity in the inspection records "with agreement": the reduction goes from 50% to 65%. This is an unusual type of inspection record, but there is no doubt that the Administration is committed to them, and this legislative amendment does no more than ratify this reality.

The reduction of the penalties imposed based on ordinary "records in conformity" is not affected and continues to be 30%.

- b. Reduction for "prompt payment": the reduction goes from 25% to 40%. This reduction is applicable to all types of records, except for "records with agreement".

As with surcharges, the Law establishes a transitional regime applicable to penalties that have not been confirmed, because their appeal period (1 month from their imposition) has not expired or to those where, having been challenged, the taxpayer withdraws its appeal, with certain conditions, before 1 January 2022.

3. Suspension of the periods of limitation because of COVID

The entry into force of the State of Emergency in 2020 entailed the suspension of multiple administrative procedures and, especially, the periods of limitation regarding tax debts. The effect of suspending the period of limitations meant adding a period of 74 or 78 days, according to the opinions, to the usual period of four years.

Law 11/2021 (Third Final Provision) amends RDL 11/2020, indicating that said suspension will operate only for those tax liabilities for which the statute of limitations would have normally ended before 01/07/2021. In other words, the IRPF 2016 for which the period of limitation would normally have ended on 30/06/2021, is extended until 16/09/2021. Whereas the period of limitation for Corporation Tax for the same period, 2016, ends on 25/07/2021, since it was no longer affected by the COVID suspension period.

New Powers of the Administration and Additional Rules on Coercion

As we said at the outset of this section, there are many approved rules intended to expand the powers of the Administration or establish mechanisms of greater coercion on taxpayers. We will proceed merely to listing them:

1. Failure to calculate default interest for the taxpayer because of delays incurred by the latter in the corresponding administrative procedure (Articles 26.2 and 31.2).
2. Obligation of manufacturers, marketers and users of management software to guarantee the integrity of data and the unalterability of records (Article 29.2.j).

There are two types of infraction associated with this obligation: the manufacture and marketing of software that does not meet the requirements of the Law, among which is its certification when it is mandatory by regulation (Article 201.Bis.1) and possession by its users of software that fails to comply with the requirements of the Law (Article 201.Bis.2)

Both the formal obligation and the offence come into force on 1 January 2022. However, taking into account the magnitude of the penalties and the practically universal nature of this obligation, it will be necessary to be very attentive to its regulatory development.

3. Possible adoption of precautionary measures in the event of requests for suspension of settlements by providing guarantees other than those involved in the automatic suspension, or appealing the exemption of the guarantee (Article 81.6).

In addition, continuity of executive actions if the request for suspension is submitted in the executive period (Article 233.9).

4. Extension of the “list of delinquent debtors to the Public Treasury” to those who have been declared jointly liable for the debt and reduction of its threshold from €1,000,000 to €600,000 (Article 95.bis).
5. Entrance to constitutionally protected addresses. As a reaction to the recent jurisprudence of our Supreme Court, it is clearly established that the entry may be judicially authorised even when the taxpayer has not been notified of the start of the inspection procedures (Article 113).
6. Deletion of the obligatory nature of the supplementary report on the inspection of nonconformity (Article 157).
7. No interruption of the executive procedure because of requests for deferment if it was rejected in the voluntary payment phase (Article 151.2).
8. No suspension of the voluntary payment period as a result of a declaration of insolvency (Article 161.2).
9. Classification of the dominant entity of a Group of Entities in the VAT (REGE) as the offender (Article 181.1.h). This reiterates what is already established by the VAT Law.
10. New penalties for late filing of customs declarations (Article 199.7).
11. Duplication of the period established for the start of a sanctioning procedure after notification of the liquidation that the penalty causes. This period goes from 3 to 6 months.

12. Impossibility of enjoying state aid by those who have enjoyed state aid that has been declared illegal with a pending recovery order, after a prior decision of the Commission, until such aid has been reimbursed (Article 260.4).
13. Tightening of the situation arising from the revocation of the NIF of a legal entity (Additional Provision 6).
14. Extension of the scope of Form 720, corresponding to the declaration of assets located abroad and to cryptocurrencies, and submission of their breach to the tough sanctioning regime of this form (Additional Provision 18).
15. Extension to 5 years of the obligation to keep documentation relating to the accounts under the ownership of non-residents within the framework of mutual assistance (Additional Provision 22).

M. Land Registry Law and “Reference Value”

The amendment to the Consolidated Text of the Property Registry Law, Royal Legislative Decree 1/2004, is diverse, combining procedural amendments together with the major contribution of Law 11/2021, the “reference value” of real estate.

As we have seen, the “reference value” is an objective value, determined according to administrative criteria. It will be determined by the Real Estate Tax Registry taking the following matters into account (Final Provision 3rd):

1. The market value will be limited.
2. It will be determined based on the information contained in the land registry and in accordance with the average values resulting from the annual market price report prepared by the Real Estate Tax Registry based on the values reported by the notaries in their participation in real estate transfer operations and the map of homogeneous values prepared in this regard.
3. In order for the “reference value” not to exceed the market value, a market reduction factor will be approved by Ministerial Order.
4. The “reference value” will be determined annually in a collective administrative procedure that will be carried out in the months of October to December.
5. The “reference value” will be queried through the Electronic Land Registry Office.

On a temporary basis (Temporary Provision 9th), the Law establishes a series of rules that will be applicable until the regulatory development of the Law has occurred. This, as was logical to expect, is based on the information of zone values available to the Land Registry. We will have to be very attentive to the assignment of values for this year 2021.

N. Local Treasuries: Tax on Business Activities

There are two new developments for this tax:

1. The exemption applicable to individual taxpayers is specified whether or not they are residents of Spain.

2. With regard to legal entities that are part of a group, an accuracy not existing to date is introduced, by providing that the amount of the turnover will be that of the group, even when it is not obliged to produce consolidated accounts. This breaks the doctrine of our Supreme Court, which in March 2018 considered the group's turnover inapplicable when it was not obliged to produce these.

O. Non-Cooperative Jurisdictions

Law 11/2021 implies the abandonment of the legal concept of "tax havens" and its replacement with the concept of "non-cooperative jurisdictions". In this regard, the 1st Additional Provision of Law 36/2006 is amended, which is also intended to prevent and combat fraud.

Non-cooperative jurisdictions are those determined by the corresponding Ministerial Order. The following are criteria in this regard:

1. They may be countries, territories within countries, as well as "harmful" tax regimes.
2. The list approved by the Ministerial Order may be updated according to three criteria:
 - a. The transparency of said countries or territories as regards tax matters. In this regard, the existence or non-existence of mutual assistance instruments for the exchange of information will be taken into account; the effectiveness thereof; the assessments of the Global Transparency Forum; or the effective exchange of information on beneficial owners within the scope of the regulations on the prevention of money laundering.
 - b. That they provide corporate vehicles or instruments in general for the attraction of benefits that do not correspond to the effective development of economic activities.
 - c. The existence of low or no taxation. This is not quantified.
 - d. With regard to harmful tax regimes, their update will be based on the Code of Conduct on the subject of corporate taxation of the EU and the OECD
3. If the Ministerial Order considers a State or a territory within a State to be a non-cooperative jurisdiction, or a certain tax regime of a State with which there is an agreement to avoid double taxation in force, the regulations on non-cooperative jurisdictions shall apply provided that this is not contrary to the provisions of the agreement. Logically, the convention, as an international treaty, takes precedence over what may be established by Spanish internal regulations.

Any change made by this provision requires that all references made by tax regulations to date be adapted to tax havens, to territories without an effective exchange of information, to low taxation territories, etc. All of them are now subsumed to the concept of non-cooperative jurisdiction and to the relationship that is approved of said jurisdictions.

Temporarily, until the Ministerial Order is approved with the list of non-cooperative jurisdictions, tax havens will be considered as such according to the list currently in force.

P. Limitation on Cash Payments

Law 7/2012, also on combatting fraud, introduced important limitations on cash payments in business transactions, as well as a specific regime of penalties and reporting for those who ignored such limitations. Law 11/2021 reinforces this limitation regime in the following terms:

1. The existing limits are reduced to €1,000.00 (previously €2,500.00) generally and to €10,000.00 (previously €15,000.00) for non-business individuals not domiciled in Spain.
2. The sanctioning procedure is specifically regulated to give it greater adaptability.
3. A 50% reduction is introduced in the amount of the penalty if it is paid before a resolution is issued in the sanctioning procedure.

Q. Canary Islands Economic-Tax Regime

Law 11/2021 (1st Final Provision) introduces some amendments, with effects for tax periods beginning on 01/01/2021, in the Special Regime linked to the Special Registry of Ships and Shipping Companies regulated by Law 19/1994, of the Financial-Tax Regime of the Canary Islands. It is essentially incorporated into the aforementioned Registry of Ships and Shipping Companies registered in other Member States of the EU and EEA that meet certain requirements, as well as some clarifications in the 90% bonus settlement scheme that constitutes the essence of the special regime.

Likewise, the 14th Additional Provision of the aforementioned Law is amended (Limits of deductions for investments in cinematographic productions, audio-visual series and live shows of the performing arts and musicals carried out in the Canary Islands), leaving it with the same wording of RDL 12/2021.

R. SOCIMI

Law 11/2021 introduces a brief but certainly relevant amendment to the tax regime applicable to these entities in their Corporation Tax, regulated by Law 11/2009. It should be remembered that these are entities that pay taxes at a rate of zero, although with exceptions. The amendment introduced (Article 9.4) involves the creation of a “special tax”, which will have the “consideration of the Corporation Tax share”, on profits not distributed by the company. These are its conditions:

1. Tax rate: 15%
2. Tax base: undistributed profits that have not been taxed by the general tax rate nor arise from income pending reinvestment.
3. Accrued at the time the shareholders’ meeting adopts the agreement for the application of results.
4. Self-assessment and deposit period: two months after the previous accrual.
5. Application of the new regulations for tax periods beginning 01/01/2021.
6. Obligation to mention these results in the company’s accounting reports (Article 11.1).

S. Other Non-Tax or Very Specific Provisions

Additionally, Law 11/2021 introduces amendments to different non-tax rules, so we will limit ourselves to listing these:

1. Law 13/2011 on Gaming Regulation.
2. The First and Second additional provisions of Law 11/2021 incorporate an exhaustive regulation for the control of the production and marketing of raw Tobacco, as well as the prohibition, within the scope of the Smuggling Law, to market in certain circumstances machines suitable for the manufacture of Tobacco products.
3. Third additional provision: Matching the tax regime of the Catalan Finance Institute and the Official Credit Institute.
4. Fourth additional provision: entrusts the Government to prepare an annual report on the shadow economy, broken down by territory, economic sector, and tax.