RocaJunyent Informs

Tax Law Department
12 March 2024

Main changes in tax legislation introduced by various regulations in December 2023

However, in December 2023, several tax-related regulations were approved, introducing changes to several taxes and creating new obligations in the procedures and IT systems of entrepreneurs and professionals.

The amendments introduced in some cases are effective for the financial year 2023 itself, without, in contrast to what happened at the end of 2022, creating new taxes or tax levies with retroactive effect.

On this occasion, these are either pending regulatory developments on aspects previously modified by law, or extensions of special regimes or existing incentives such as those associated with investments and actions that generate energy savings, or, in some cases, such as the modifications to the so-called "Patronage Law", favourable technical modifications are incorporated which, in part, will be applicable with effect from 2023.

In other cases the amendments will take effect in 2024 or 2025.

Of particular importance is the creation of new requirements for entrepreneurs' invoicing systems and procedures, which will affect taxpayers not covered by the Automatic Information Exchange System (SII), and which will be complemented by what is known as the "electronic invoice", the regulatory standard for which is currently being processed.

Also noteworthy for their relevance are the regulatory development that had been pending since the modification at the end of 2022 of the personal income tax impatriate regime or "Beckham regime", and the expected improvements in the regulation governing the tax regime applicable to non-profit organisations and collaboration agreements (colloquially known as the "Patronage Law").

While these are the most far-reaching changes, there are many other changes to the main taxes.

We will try to summarise the content of all of them in this Tax Alert.

Finally, we cannot fail to mention the publication on 27 December 2023 of the Preliminary Draft Law establishing a supplementary tax to ensure an overall minimum level of taxation for multinational groups and large domestic groups (Pillar 2).

On that date, the public information procedure was initiated and the text is currently being processed by the corresponding consultative bodies.

This will constitute a very significant modification in the Spanish tax system, affecting entities that form part of multinational and national groups with a turnover of at least 750 million euros, and is expected to be transposed into Spanish law within this year in compliance with the provisions of EU Directive 2022/2523.

In due course, we will provide you with the most relevant information.

The new requirements to be adopted by the computer programmes that support the invoicing processes of entrepreneurs and professionals, and the standardisation of invoicing record formats contained in Royal Decree 1007/2023 of 5 December, which approves the regulations governing them.

Introduction:

The main aspects of the new requirements to be imposed on invoicing software for entrepreneurs and professionals, regulated in the regulation approved by Royal Decree 1007/2023, hereinafter referred to as the Regulation, are set out below.

Although, as we will see later, this obligation will not be enforceable until 2025, given the impact it may have on entrepreneurs and professionals who are not registered with the Immediate Information Supply or SII, it is advisable to examine its content in advance in order to be able to adapt the invoicing systems of companies and professionals to the new requirements.

This standard regulates the requirements to be met by computerised invoicing systems (in transactions between entrepreneurs with private individuals (B2C), with entrepreneurs (B2B) and with administrations (B2G)) with regard to their integrity, conservation, accessibility, legibility, traceability and unalterability, thus avoiding the use of so-called "dual-use software".

The aim is to ensure that all commercial transactions are accompanied by an invoice and an annotation to prevent subsequent alteration, allowing, where appropriate, the simultaneous or subsequent submission of this information to the Tax Administration.

In turn, these systems will make it possible to advance in the digitalisation of companies and improve the assistance services provided by the Tax Agency to taxpayers, facilitating the preparation of tax books and tax forms.

The scope of the Regulation is different from, but compatible with, the Draft Regulation on electronic invoicing, or more precisely on the sending of electronic invoices, applicable only to business-to-business (B2B) transactions, which is currently being processed.

1. **Object and territorial scope:**

1. The Regulation defines the technical requirements and specifications to be met by computerised invoicing systems for those who carry out economic activities in order to guarantee the integrity, conservation, accessibility and legibility of the invoicing records without alterations of which no records remain. For these purposes, invoices are understood to be both complete and simplified invoices.

2. Therefore, it is required that the entrepreneur uses a computerised invoicing system (*invoicing software*) in his activity and does not apply in other cases, e.g. when there is no computerised invoicing system and the entrepreneur issues invoices through a mere Word or Excel document support, or on paper.

3. Applicable throughout Spain, without prejudice to the foral territories that will have their own specific adaptation (in Vizcaya, Guipúzcoa and Álava the system known as "ticket bai" is being applied) and regions with special regulations such as the Canary Islands, Ceuta and Melilla, with these regulations being applied to all those whose domicile is in common territory.

2. Subjective Scope:

The Regulation applies to:

1. Corporate Income Tax (IS) taxpayers, except exempt entities, or partially exempt entities; in this case it will only be applied to operations that generate taxable and non-taxable income.

2. Personal Income Tax (IRPF) taxpayers who carry out economic activities. Therefore, those who carry out the activity of renting property when this generates income from real estate capital, among others, are not obliged to pay this tax.

3. Non-Resident Income Tax (IRNR) taxpayers with a permanent establishment (PE) in Spain.

4. Entities under the income attribution system carrying out economic activities

5. Producers and marketers of computerised invoicing systems.

6. Its application is excluded for taxpayers registered for the SII. As the SII is compulsory for entrepreneurs with a turnover of more than €6 million, as well as for those using the VAT group scheme or the REDEME, in general terms, the new obligation regulated in the Regulation will apply to entrepreneurs with a turnover of **less than €6 million,** unless for other reasons they have opted for the SII.

7. It also excludes specific operations under certain special VAT tax regimes, and certain operations authorised by the Tax Management Department in specific economic sectors, as detailed in the following section.

3. Objective scope:

It applies to computerised invoicing systems used by obliged taxpayers.
It shall in no case apply to the following operations:

a) Taxpayers who pay VAT under the special tax regime for agriculture, livestock and fisheries on transactions involving the issuing of receipts.
b) Taxpayers under the equivalence surcharge and simplified VAT regime.
c) Those that the Management Department authorises not to issue an invoice.
d) A certain amount of electricity billing.
e) Those documented in invoices for transactions carried out through PEs abroad.

4. Technical requirements for computerised billing systems:

Taxpayers using computerised invoicing systems have two options:

a) Use a billing system that meets the following technical requirements (this would be the so-called "private IT system"):

- They must ensure the integrity and subsequent unalterability of billing records.

- Ensure the traceability of the products, which must be chained in order to verify their traceability, and must be dated.

- Ensure its preservation, readability and accessibility, with download, dump and secure archiving procedures and the possibility of exporting the data to external storage.

- To have an automatic event log.

- The system should decouple access to tax-relevant information from other, if any, non-tax sensitive information.

- The registration and cancellation billing records must have special characteristics, which are detailed in the regulatory rule.

- This means that each invoice generates a unique fingerprint (alphanumeric code) that links it to certain elements of previous invoices, so that an alteration to any invoice alters the fingerprint.

- The registration and cancellation records must be signed electronically; this is the second security element, which will not be necessary in the case of voluntary submission of data to the Tax Agency.

Use the computer application developed for this purpose by the Tax Administration, which is the so-called "public computer system"**.**

5. Certification of IT systems:

- The producer of the system is the one who must certify that the system complies with the regulations, and will do so by means of a responsible declaration that the system complies with the provisions of the General Tax Law, the Regulation and the specifications of the Ministerial Order that is pending approval.

- This declaration must be made in writing and be visible on the system itself, so that it can be seen by the marketer and user. This declaration may be requested by the customer or by the AEAT, as the case may be, and must include the data referring to the computer system that allows its characteristics and identification, the identification data of the system producer, the date and place of the signature to be known.

6. Verification of compliance with the obligation by the Tax Administration.

- The Administration may appear at the location of the system to demand full and immediate access to billing records, event records and secure copies, as well as the downloading, downloading or copying and consultation of the data.

- It may also request and obtain copies of the billing records kept, which must be provided in electronic format, and may also request from producers or marketers the information necessary to verify compliance with the requirements set out in this Regulation.

7. Possibility of forwarding billing records:

- Systems that comply with the requirements of this Regulation may voluntarily submit all invoicing records to the AEAT automatically and securely by electronic means.
- Such transmission must be continuous and instantaneous and shall be considered as "verifiable invoice issuing systems" or "veri factu" system.
- In such cases the Administration shall not require the copying of the records in question.
- If this option is chosen, there is also no obligation to sign the records electronically, and it is sufficient that the fingerprint or hash is calculated.
- The option to opt for this system is made at the start of the systematic submission of invoicing records to the AEAT, and must be maintained at least until the end of the calendar year.
- In turn, the recipient may voluntarily inform the AEAT of the data contained in the QR code of the invoice. In "veri factu" cases, the recipient may verify whether the invoice has been sent by the issuer to the AEAT.

8. Other highlights:

- By 1 July 2025, the possibility of integrating the invoicing records generated and sent to the AEAT by means of the "Verifiable Invoice Issuing Systems or "veri factu" will be developed.

- The recipients of invoices whose information has been sent by "Verifiable Invoice Issuing Systems" will be able to verify the information on these invoices received online and download this information to integrate it into their record books.
- The Invoicing Regulation is amended in some legal aspects to include in the full invoice or simplify the QR code.
- This Regulation focuses exclusively on ensuring that the IT systems supporting the invoicing processes comply with certain technical requirements, with accounting processes of entrepreneurs and professionals, as well as their management processes, being outside its regulatory scope.

9. Validity and Timeframe for Implementation:

- As a general rule, the Regulation enters into force on 7 December 2023, i.e. the day after its publication.
- Producers and marketers of systems have a period of 9 months from the entry into force of the Ministerial Order currently pending development, which will detail additional technical aspects in this regard.
- However, taxpayers must adapt their systems to the features of this Regulation by 1 July 2025.
- In the case of IT systems included in multiannual maintenance contracts, contracted before the end of the nine-month period, they must be adapted by 1 July 2025.
- Lastly, the AEAT, within a maximum period of nine months from the entry into force of the implementing Ministerial Order, shall have available at its headquarters the service for receiving the invoicing records sent by the "Verifiable Invoice Issuing Systems" or "veri factu".

<u>Novelties introduced in different taxes through Royal Decree 1008/2023 of 5 December and Royal Decree-Law 8/2023 of 27 December.</u>

1. Personal income tax individuals:

With effect from 7 December 2023, the following amendments to the Personal Income Tax Regulations (RIRPF) are introduced for an indefinite period of time.

1.1. Exemption of earned income derived from the delivery of shares or holdings to workers:

This exemption is modified to adjust its content to the amendments introduced in the Personal Income Tax Act (LIRPF) with regard to the exemption of employment income from the delivery of shares or holdings to employees of emerging companies, raising the amount of the exemption from 12,000 to 50,000 euros per year, and in this case the obligation for the offer to be made under the same conditions for all employees of the company does not apply.

1.2. Deduction for maternity:

The content of the maternity deduction is adjusted to reflect the recent legal amendments, whereby the group of beneficiaries is extended to include mothers who at the time of the birth of the child were receiving unemployment benefits or were registered in the corresponding Social Security or mutual insurance scheme or who, at any time after the birth, were registered in the corresponding Social Security or mutual insurance scheme with a minimum period of 30 days of contributions, eliminating the limitation to the contributions accrued in the tax period.

In addition, the application of the rule in situations of adoption, permanent fostering or delegation of guardianship for cohabitation is clarified. In these cases, the date of registration in the Civil Register or, where applicable, the date of the judicial or administrative decision will be considered instead of the date of birth of the child. Likewise, the procedure is established for the practice of the deduction for maternity and its advance payment, and for the application of the increase of said deduction.

1.3. Deduction for works to improve the energy efficiency of dwellings:

The temporary scope of application of the deduction for works to improve the energy efficiency of dwellings has been extended for a further year, meaning that works carried out until 31 December 2024 will give the right to apply the following deductions:

- Deduction of 20% of the amounts paid from 6 October 2021 (entry into force of Royal Decree-Law 19/2021) until 31 December 2024 for work carried out during that period to reduce the heating and cooling demand of the main residence or any other property owned and leased for use as a dwelling or which is in the expectation of being leased and rented before 31 December 2025.
- Deduction of 40% of the amounts paid from 6 October 2021 to 31 December 2024 for work carried out during that period to improve the consumption of non-renewable primary energy in the main residence or any other property owned by the owner which is leased for use as a dwelling or which is in the expectation of being leased and which is leased before 31 December 2025.
- Deduction of 60% of the amounts paid by taxpayers owning dwellings (including parking spaces and storage rooms acquired with them) located in buildings of predominantly residential use for energy refurbishment work carried out from 6 October 2021 to 31 December 2025, resulting in an improvement in the energy efficiency of the building in which the dwelling is located.

Any of these three deductions will be applied in the tax period in which the energy efficiency certificate issued after the works have been carried out (certifying compliance with the requirements for its application) is issued; in any case, this certificate must be issued before 1 January 2025, for the 20% and 40% deductions, and before 1 January 2026, for the 60% deduction.

1.4. Obligation to declare:

A legal obligation to file a tax return is introduced for all individuals who have been registered at any time during the tax period as self-employed workers (either in the Special Scheme for Self-Employed or Self-Employed Workers, or in the Special Social Security Scheme for Sea Workers), without any minimum exemption amount. This measure is adopted in coordination with the new contribution rates of the self-employed regime applicable from 2023, which establish progressive quotas depending on the income of the self-employed.

The lower threshold for exclusion from the obligation to declare in the case of earned income from more than one payer is increased from 14,000 to 15,000 euros per year.

1.5. Withholding tax rate on earned income derived from the production of literary, artistic or scientific works :

As in the Personal Income Tax Act, it is established that the withholding percentage on income from work derived from the production of literary, artistic or scientific works will be 7 per cent, subject to prior signed notification by the recipient that the requirements are met, when the volume of such full income corresponding to the immediately preceding financial year is less than 15,000 euros and represents more than 75 per cent of the sum of the full income from economic activities and from work obtained by the taxpayer in that financial year.

1.6. Intellectual property retention rate:

It is specified that the rate of withholding tax on intellectual property, regardless of its classification, shall be 15 per cent, except where the above-mentioned 7 per cent withholding tax rate applies.

1.7. In relation to the objective estimation method:

1.7.1. Extension of the limits of the objective assessment method:

Extension, for the financial year 2024, of the quantitative limits that delimit the scope of application of the objective assessment method.

In this regard, the limit for exclusion from application of the objective assessment method is maintained for those taxpayers whose total income from all their economic activities or whose volume of purchases of goods and services, excluding fixed asset acquisitions, exceeds the amount of €250.250,000 in the previous year (instead of the €150,000 provided for in the Personal Income Tax Act) or when the volume of gross income in the immediately preceding year corresponding to transactions for which they are obliged to issue an invoice exceeds €125,000 (instead of the €75,000 provided for in the Personal Income Tax Act).

1.7.2. Deadlines for renunciation and revocation of objective assessment in 2024:

It is established that renunciations and revocations of the objective assessment scheme to take effect for the financial year 2024 may be made from 22 December 2023 to 31 January 2024.

1.8. Reduction of payments on account applicable in the 2023 tax period to income obtained on the island of La Palma:

The Personal Income Tax Regulations are adjusted with regard to payments on account to incorporate the deduction for income obtained on the island of La Palma during the 2023 tax period. It is established that, in this period, the references to Ceuta and Melilla in Title VII of the regulation (payments on account) will also be interpreted as references to the island of La Palma.

1.9. Special regime applicable to workers, professionals, entrepreneurs and investors posted to Spanish territory -the impatriate regime- (Chapter I of Title VIII -Arts. 113 to 119- RIRPF) .

As a result of the amendments implemented in the Personal Income Tax Law (LIRPF) by Law 28/2022, of 21 December, on the promotion of the start-up ecosystem, which extended the scope of the impatriate regime, commonly known as the "Beckham regime", to new scenarios such as, among others, those linked to teleworking, innovative entrepreneurs, highly qualified professionals or taxpayers engaged in training, research, development and innovation activities, as well as accompanying family members, various amendments have been made to the section of the Personal Income Tax Regulations governing this special regime to bring it into line with current legislation.

1.9.1. Scope :

Issues delegated by the Law are developed and, in general, references are made to Law 14/2013 on support for entrepreneurs and their internationalisation, in aspects relating to entry and residence permits.

Thus, it defines what is understood by entrepreneurial economic activity that gives access to apply this regime, and specifically when it is innovative and/or has a special economic interest for Spain, backed by a favourable report issued by the National Innovation Company, SME (ENISA), as stipulated in Article 70 of Law 14/2013. To this end, it is necessary to have the residence permit for the business activity prior to the move to Spanish territory, although, in the case of residents of the European Union, they must have a mandatory ENISA report upon arrival in Spain.

Issues delegated by the Act are developed in terms of the definition of highly qualified professionals who (i) provide services to start-up companies or (ii) carry out training, research and development and innovation activities (accounting for more than 40% of the total business, professional and personal work income).

Specifically, it is clarified that highly qualified professionals are those who meet the requirements specified in Article 71 of Law 14/2013, which refer to minimum qualifications or accreditable professional experience.

Training, research, development and innovation activities shall be considered to be those in which the requirements established in letters a), b), c) and d) of paragraph 1 of Article 72 of the aforementioned Law are met, including research, scientific and technical personnel working in scientific research, development and technological innovation in business entities or R&D&I centres in Spain, researchers covered by agreements with research organisations, or professors contracted by higher education institutions and research centres or business schools in Spain.

In turn, the exceptions to the exclusion from the regime for obtaining income that qualifies as a permanent establishment are specified, specifically, only entrepreneurial economic activities, the provision of services to start-up companies or participation in training, research, development and innovation activities are exempted.

Finally, it is clarified that family members of the taxpayer under the special regime may move to Spanish territory before or after the taxpayer, provided that they do not acquire tax residence in Spain before the first tax period in which the special regime applies, if earlier, or that the special regime has not ended, if later.

1.9.2. Content of the special tax regime for non-resident income tax:

It is specified that withholding tax may only be levied on income from professional activities and not on income from business activities to which the system is applicable. In this case, the applicable withholding rate must be stated on the invoice.

In turn, both entrepreneurs and professionals must keep a record book of income and expenses and keep invoices.

1.9.3. Duration, term and exercise of the option:

With regard to family members joining the taxpayer who also opt for the special regime, in accordance with the provisions of the Law, they will lose the benefits of this regime in the year in which the taxpayer who bases the application of the impatriate regime ceases to apply them.

It is specified that the exercise of the option for taxpayers who do not have to register with the Social Security is 6 months from the start of the activity.

As far as family members are concerned, the deadline will be the longer of the one foreseen for the main taxpayer and 6 months from their entry into Spain.

With regard to the deadline for exercising the option, and due to the delay in the approval of the communication model for the new cases of the impatriate regime, a transitional provision is included that establishes the deadline for exercising the option for those taxpayers who acquire their tax residence in Spain during the 2023 tax period due to a move to Spanish territory made in 2022 or in 2023 before the entry into force of the Ministerial Order approving the new communication model. Specifically, this period will be six months from the date of entry into force of said order, unless article 116 of the Personal Income Tax Regulations grants a longer period. In addition, it is clarified that workers or administrators who were already subject to the special regime may also exercise the option for this regime before the date of entry into force of the aforementioned order.

Finally, it is specified that, with regard to these family members, the relationship, age and/or disability situation will be referred to that existing at the time of exercising the option for this regime.

1.9.4. Waiver of the scheme and exclusion from the scheme:

Specifically, in relation to family members who join the taxpayer who also opts for the special regime, it is established how to opt out or opt out of the regime individually or collectively.

In the event of non-compliance with the requirements of the main taxpayer, it is regulated that the effects for all are from the tax period of non-compliance, although the payer must already make the withholdings according to the procedure and rates foreseen for the general IRPF.

1.9.5. Communications to the tax authorities and accreditation of the scheme:

It regulates the documentation required to support the communication in the case of the application of the special regime for impatriates by taxpayers, specifically regulating this documentation in relation to the new legal cases of access to it.

2. Solidarity Tax on Large Fortunes (ISGF):

2.1 Time scope:

The tax is extended until the revision of property taxation in the context of the reform of the regional financing system takes place.

As a result, the Autonomous Community of Madrid has eliminated the general 100% rebate on Wealth Tax (hereinafter IP) that it had been applying while the ISGF is in force.

Instead, the taxpayer may apply a regional rebate determined by the difference, if any, between the total gross tax liability for IP after applying the joint IRPF-IP limit (limit of 60% of the IRPF taxable base), and the gross tax liability corresponding to the ISGF, once the joint limit has also been applied. In this way, the tax cost for IP is not higher than that which would result from the application of the ISGF and this revenue is generated in the Autonomous Community of Madrid.

Other autonomous communities such as Andalusia, Galicia and Cantabria have adapted modifications to their PI regulations for the same purpose.

2.2 Exempt minimum:

It is established that the taxable base of the tax will be reduced, as a minimum exemption, by 700,000 euros, eliminating the reference to the personal obligation with effect from the entry into force of Law 38/2022. Therefore, this minimum exemption will be applicable to all taxpayers, regardless of whether or not they are resident in Spain, which enables non-residents to request the rectification of the tax assessments corresponding to the 2022 tax year (in which it was not foreseen that they could apply this minimum exemption).

3. Formal obligation to file Personal Income Tax (IRPF) and Wealth Tax (IP) returns and the Temporary Solidarity Tax on Large Fortunes (ISGF):

Contrary to the criteria established by the Supreme Court in a recent ruling on the matter, it regulates the possibility of establishing the obligation for individual taxpayers to file personal income tax returns by electronic means, provided that the Tax Administration ensures personalised attention to taxpayers who require assistance to complete their tax returns by electronic means.

4. Corporate income tax (IS)

4.1. Exceptions to the obligation to withhold and pay on account scheme (art. 61 e) RIS)

A technical amendment is made, replacing references to provisions of financial regulations already repealed by the corresponding articles of the financial regulations currently in force.

In addition, interest received by the central counterparty and its members from collateral established in accordance with the provisions of Law 6/2023 of 17 March on Securities Markets and Investment Services, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on over-the-counter derivatives, central counterparties and trade repositories, as well as the central counterparty's internal rules are exempt from withholding or payment on account.

Likewise, a similar withholding exclusion is established for interest generated by entities managing payment systems recognised under Law 41/1999, of 12 November, on payment and securities settlement systems, and by entities participating in the latter, arising from guarantees constituted within the aforementioned regulatory framework.

4.2. Freedom of depreciation:

The possibility of free amortisation is extended for a further year:

(i) Investments in installations for the self-consumption of electricity using energy from renewable sources, and

(ii) Installations for own consumption thermal use using energy from renewable sources, which replace installations using energy from non-renewable fossil fuel sources.

For this purpose, the new facilities must be brought into operation in the year 2024 and, as previously provided, the total average workforce of the entity must be maintained in relation to the average workforce of the previous twelve months during the 24 months following the starting date of the tax period in which the items acquired are brought into operation, subject to a limit of €500,000 per investment.

4.3. Relevant additional issues:

4.3.1. Limitation of negative individual bases in consolidated group in 2024.

In relation to tax consolidation groups, the extraordinary measure approved for 2023, which limited to 50% the offsetting of the individual negative tax bases of the entities forming part of this group to 50%, has not been extended and will be integrated in equal parts in each of the first ten years starting from 2024 onwards.

However, it should be noted that at the date of publication of this Alert, the socialist party has introduced an amendment in the Congress of Deputies, in the process of processing a regulation with the status of Law, which would extend the extraordinary measure introduced for the period 2023 to 2024.[1]

4.3.2. Effects of the Ruling of the Constitutional Court of 18 January 2024 (question of unconstitutionality 2577/2023) with respect to certain measures of Royal Decree Law 3/2016.

For the financial year 2023, various measures imposed by Royal Decree-Law 3/2016 and declared unconstitutional by the Judgment of 18 January 2024 will no longer be applicable in the self-assessment of the IS.

Thus, entities whose turnover in the previous year exceeds EUR 20 million and EUR 60 million, may offset previous tax losses up to 70% of the positive tax base, a limitation that applies in general to IS taxpayers, instead of having this right of offsetting limited to 50% and 25% respectively.

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[1] This is an amendment to the draft law adopting measures to deal with the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of drought (from Royal Decree-Law 8/2023 of 27 December).

The limitations to the deduction for international and domestic double taxation introduced by Royal Decree Law 3/2016 will not apply in the positive period 2023.

However, through the same amendment mentioned in the previous point, the Socialist Party proposes to reintroduce in the Corporate Income Tax Act, with effect from 2024, the measures limiting the offsetting of tax losses and the application of deductions, which were declared null and void by the Constitutional Court in the aforementioned ruling.

5. Value Added Tax (VAT):

5.1. Simplified regime and deadlines for renunciation and revocation:

The extended limits for the application of the simplified regime and the special regime for agriculture, livestock and fisheries provided for in art. 122 LIVA are extended for the financial year 2024.

In this sense, those entrepreneurs or professionals whose volume of income or whose acquisitions and imports of goods and services for the whole of their business or professional activities, excluding those relating to fixed assets, have exceeded the amount of €250,000 in the immediately preceding year (instead of the €150,000 initially envisaged in the LIVA) will not be able to apply these regimes.

At the same time, it is established that renunciations and revocations of the simplified regime and the special regime for agriculture, livestock and fisheries that are to take effect for the financial year 2024 may be made from 22 December 2023 to 31 January 2024.

5.2. Tax rates:

Firstly, they are extended for the first half of the financial year 2024 (until 30 June 2024):

- The application of the 0% tax rate and the 0% equivalence surcharge to basic food products: bread, bread flour, milk, cheese, eggs, fruit, vegetables, pulses, tubers and cereals.
- The application of the 5% tax rate and the 0.62% equivalence surcharge to pasta and olive and seed oils.
- The application of the 10% rate to supplies, imports and intra-Community acquisitions of pellets, briquettes and firewood, and ecological substitutes for natural gas from biomass and intended for heating systems.

Secondly, the application of the reduced rate of 10% to supplies, imports and intra-Community acquisitions of natural gas is also extended, but in this case until 31 March 2024, and to supplies, imports and intra-Community acquisitions of electricity until 31 December 2024 (instead of the 5% applicable until 31 December 2023).

6. Electricity taxes:

Royal Decree-Law 17/2021 set the rate of the Special Tax on Electricity at 0.5% (effective from September 2021), now it is established that from the first quarter of 2024 this rate will be 2.5% and during the second quarter it will be 3.8%.

In addition, it establishes a minimum tax of €0.5 per megawatt-hour when the electricity supplied or consumed is used for industrial purposes, on vessels berthed in port that do not have the status of private pleasure craft or in rail transport, or €1 per megawatt-hour when the electricity supplied or consumed is used for other purposes.

In addition, Royal Decree-Law 12/2021 suspended the tax on the value of electricity production from the third quarter of 2021 but, in view of the reduction in the price of electricity in recent months, it has been agreed that for 2024 the taxable base of the tax will be made up of the total amount that the taxpayer is entitled to receive for the production and incorporation into the electricity system of electricity, measured in power plant busbars, for each installation, minus half of the remuneration corresponding to the electricity incorporated into the system during the first calendar quarter, and minus a quarter of the remuneration corresponding to the electricity incorporated into the system during the second calendar quarter.

These same calculations will also be applied when determining the taxable base of the tax instalments.

7. Tax on the increase in value of urban land:

The amounts of the maximum coefficients applicable to the value of the land are updated according to the period of generation of the increase in value, for the determination of the taxable base of the Tax on the Increase in Value of Urban Land.

With effect from 1 January 2024, the maximum amounts of the coefficients to be applied to the value of the land at the time of accrual, according to the period of generation of the increase in value, will be as follows (article 107.4 of the revised text of the Ley Reguladora de las Haciendas Locales):

Periodo de generación	Coeficiente
Inferior a 1 año.	0,15
1 año.	0,15
2 años.	0,14
3 años.	0,14
4 años.	0,16
5 años.	0,18
6 años.	0,19
7 años.	0,20
8 años.	0,19
9 años.	0,15
10 años.	0,12
11 años.	0,10
12 años.	0,09
13 años.	0,09
14 años.	0,09
15 años.	0,09
16 años.	0,10
17 años.	0,13
18 años.	0,17
19 años.	0,23
Igual o superior a 20 años.	0,40

8. Temporary energy levies and levies on credit institutions and financial credit institutions:

The levies approved for banks and the energy sector by Law 38/2022 of 27 December are extended for the financial year 2024, without prejudice to the General State Budget Law establishing for the financial year 2024 an incentive that will be applicable in the energy sector for strategic investments made as from 1 January 2024, and revises the configuration of both levies for their integration into the tax system in the financial year 2024 itself, which will be arranged or agreed, respectively, with the Autonomous Community of the Basque Country and the Autonomous Community of Navarre.

9. Economic and fiscal regime of the Canary Islands.

9.1. Reserve for investments:

The temporary references contained in Article 27(11) and Article 29(1) and (2) of Law 19/1994 of 6 July 1994 amending the Economic and Fiscal Regime of the Canary Islands are deleted, referring directly to the European Union rules that give them legal support, in particular Commission Regulation (EU) 651/2014 of 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (so that when the validity of the European rule is extended, the validity of the national rule will also be automatically extended, without the need for the latter to be reviewed periodically). In this respect:

a) In paragraph 11 of article 27, relating to advance investments that are considered as materialisation of the reserve for investments in the Canary Islands, the time limit that prevents these investments from being carried out against allocations after the financial year 2023 is eliminated, allowing these advance investments to be carried out against profits obtained within the period of validity of Regulation (EU) 651/2014 (up to 31 December 2026).
b) In Article 29(1) and (2), which provided for:

(i) The validity of the Canary Islands Special Zone (ZEC) until 2027 is now extended until 31 January 2032 (i.e. for the 6 years immediately following the end of the validity of Regulation (EU) 651/2014).

(ii) The authorisation for entry in the Official Register of Entities is extended by reference to the period of validity of Regulation (EU) 651/2014 (until 31 December 2026) or its successor regulation, if applicable.

<u>Main amendments to Law 49/2002 of 23 December 2002 on the tax regime for non-profit organisations and tax incentives for patronage ("Law 49/2002" or "Ley del Mecenazgo"), introduced by Royal Decree 6/2023 of 19 December.</u>

1. Technical improvements:

Article 3 of Law 49/2002 lists the requirements that an entity must meet in order to be considered a "non-profit entity" and to qualify for and apply the special tax regime provided for in subsequent articles.

The "defence of animals" is now added to the general interest purposes that these entities may pursue.

It is added the nuance that non-profit entities can develop their general interest purposes directly, but also indirectly, for example, through agreements with other non-profit entities.

This indirect formula was already accepted by the Directorate General for Taxation, although it imposes a double requirement, which is presumably still in force, (i) that the activity is carried out through other entities to which Law 49/2002 is applicable and (ii) that it is not a mere transfer of funds to these entities, but that active monitoring and control work is carried out in the execution of projects and the specific destination of the funds provided.

It is added that civil liability insurance taken out by the not-for-profit entity for the benefit of trustees, statutory representatives and members of the governing bodies shall not be considered as remuneration for the positions, provided that they only cover risks arising from the performance of such positions in the entity.

2. Tax incentives for patronage:

2.1 Improvements to deduction rates:

- In the case of **individuals** (personal income tax deduction):
  - The generally applicable deduction rate is raised (from 35% to 40%) and the amount of micro-sponsorship is increased from 150 to 250 euros to which the 80% rate applies.
  - In turn, for recurring donations to the same entity, the number of years in which donations to the same entity for an amount equal to or greater than that of the previous year must be made is reduced from four to three in order to qualify for the 5-point increase in the deduction percentage to 45%.
- As regards **legal persons** (deduction in IS):
  - The deduction rate is also increased from 35 % to 40 %.
  - At the same time, the number of years during which the donor or contributor must make donations to the same entity for an amount equal to or greater than that of the immediately preceding year is reduced from four to three years in order to apply the 10-point increase in the deduction percentage (to 50%).

- The limit on the taxable base for the period for the purpose of determining the basis of deduction is increased to 15% (previously 10%).
- This increase is also applicable in the case of IRNR taxpayers operating in Spanish territory without a permanent establishment, who may apply this deduction in the tax returns they file for taxable events occurring within one year from the date of the gift, donation or contribution.

2.2 Honourable mention or recognition:

It is established that the irrevocable, pure and simple nature of donations, gifts and contributions is not lost in those cases in which the donor could receive an honourable mention or reputational recognition, merely as a donor, provided that it has no economic relevance, so that it cannot be considered a consideration.

However, on the other hand, the amount that the donor may receive is limited to 15% of the value of the donation, gift or contribution made, and a maximum limit of 25,000 euros is established.

2.3 Amendments to the partnership agreements:

2.3.1 In-kind financial assistance and services in the partnership agreements:

This includes the possibility of financial aid in kind and also in the form of services provided that they are carried out within the scope of the activity carried out by the collaborator.

2.3.2. Dissemination of participation in the partnership agreements:

A new feature is that the collaborator is allowed to publicise participation in these agreements.

2.3.3. Exemption of income generated by financial aid in collaboration agreements:

The exemption of positive income deriving from this financial aid is expressly included.

2.4 Transfer of movable or immovable property:

The transfer of the use of movable or immovable property without consideration is included as a specific type of donation that can generate the deduction provided for in Law 49/2002, of 23 December, since, although it could be considered as a donation of rights, on many occasions the lack of an express mention prevented these transfers from being made effectively.

In line with this, the valuation of such assignment for the purposes of the deduction base is specified, indicating that the amount of the expenses incurred by the assignor in relation to such assets during the period of assignment must be taken into account, provided that they would be considered tax-deductible expenses if they had been assigned for consideration and are other than taxes and interest on borrowed capital and other financing expenses, as well as being duly accounted for when the assignor is obliged to do so.

2.4.1 List of economic holdings exempt from IS:

The list of economic holdings is updated. For example, actions for the socio-occupational integration of people at risk of social exclusion and "high skills education" activities are added; and, with regard to research, development and innovation economic holdings, the range of R&D activities that may be exempt is broadened and, for the first time, innovation activities that meet the definitions set out in the Income Tax Law and are not expressly excluded are included.

2.5 Tax on the increase in value of urban land:

Finally, with regard to the incentives applicable to local taxes, in addition to updating the appropriate regulatory reference to the current Royal Legislative Decree 2/2004 of 5 March, an additional clarification is introduced, which is that in the case of transfers of land or the constitution or transfer of real rights of enjoyment limiting the ownership of the same, carried out for valuable consideration by a non-profit organisation, although the exemption is conditional on such land meeting the requirements for exemption in IBI, made for valuable consideration by a non-profit entity, although the exemption is conditional on the land meeting the requirements for IBI exemption, it is now specified that these requirements must be met at the time of accrual of the tax and regardless of the use to which the acquirer assigns the land.

3. Entry into force:

Royal Decree-Law 6/2023, of 19 December, came into force, in general, on the day following its publication in the Official State Gazette, i.e. 21 December 2023, although in relation to the tax incentives for patronage, its entry into force is 1 January 2024.