RocaJunyent Informs

Tax Law Department
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On 21 November last, the Congress of Deputies approved the Bill establishing a *Complementary Tax to guarantee a global minimum level of taxation for multinational groups and large national groups*. This Bill will continue its parliamentary procedure in the Senate, returning to Congress for final approval probably at the end of December.

This is an important legal provision, a consequence of the implementation in Spain of what is known as Pillar II of Action 1 of the BEPS Project, led by the OECD, which started remotely in 2008 and has been gradually developing since then. However, this legislative initiative has been more widely publicised in the media, not because of the tax itself, but because the government has taken advantage of its parliamentary processing to incorporate, by means of numerous amendments to the legal text, relevant modifications to other tax regulations, thus affecting taxes such as corporate income tax, personal income tax and excise duties, among others, and even incorporating the creation of new taxes. The parliamentary process has been intense, with meetings of the Finance

Committee ending in the early hours of the morning and heated debates between the different parliamentary groups.

We will deal with these modifications in this Alert, leaving the complex Complementary Tax for a much more detailed analysis once its legal regulation has been definitively approved. It is now appropriate to rank those "additional" elements offered by the legislative initiative, as some of them are immediately, and even retroactively, applicable. To do so, we will use a classic scheme, tax by tax, ranking those provisions that will come into force in 2024. We will also include at the end a brief reference to the provisions that have not been approved by Congress.

<u>Corporate income tax</u>

This is the tax figure that has undergone the greatest changes. They can be grouped as follows:

1.- Re-establishment in 2024 of the collection measures of RDL 13/2016

The ruling of the Constitutional Court of 19 January of this year annulled certain precepts of RDL 3/2016 as unconstitutional. Given that their unconstitutionality derived from the incorrectness of the legal instrument used, the Royal Decree-Law, they could be restored simply by being approved by means of an ordinary Law. This has been done on this occasion.

There are two measures:

- Reinstatement of an old acquaintance, Additional Provision 15 of Law 27/2014 (Corporate Income Tax Law, hereinafter LIS), which limits the offsetting of tax losses for those entities or consolidated tax groups that exceed €20 million in turnover. The wording is identical to that declared unconstitutional, with two compensation limits of 25% or 50% of the taxable base for the year, depending on whether or not turnover exceeded €60m. Similarly, it includes the 50% limitation on international double taxation, regulated by Articles 31 and 31 of the LIS, and the 50% limitation on double taxation deductions arising from the previous legislation, in accordance with Transitional Provision 23.

- Reversal of impairment losses on equity investments that were deductible before 1 January 2013. It should be recalled that such impairments should normally be reversed if the shareholding in question recovers its book value. If this did not happen, there was no effect on corporate income tax. However, RDL 3/2016 made it compulsory to reverse for tax purposes and in any case such impairments by fifths over 5 years, from 2016 to 2020. This measure was incorporated into Transitional Provision 16 of the LIS with effect from the publication of the RDL. Its declaration of unconstitutionality has consequences that are difficult to establish if the taxpayer did not seek the rectification of their tax returns for all or some of the years 2016 to 2020. However, if such rectification was promoted and the rectification was ongoing or in court, this could result in significant refunds in favour of the appellants. Precisely in order to offset these refunds, the measure is recovered, albeit with some nuances:

    - The reversal is to take place by third parties in the course of the financial years beginning in the years 2024 to 2026.
    - They may be offset without limitation against tax loss carryforwards from years beginning before 1 January 2021.

The application of this rule will raise serious doubts for those taxpayers who, because they have not submitted the rectification of their self-assessments for the years 2016 to 2020, maintained and paid the reversion required by RDL 3/2016, but who are currently under inspection. The application of the regulations by the inspection bodies will have to be closely monitored.

2.- Extension of the rule limiting the aggregation of negative bases in consolidation.

This provision, incorporated into Law 27/2014 by means of Additional Provision 19, had a temporary validity, limited to the financial year 2023. We all bet that this would not be the case and unfortunately we have won the bet. The measure is extended for the financial years beginning in 2024 and 2025.

3.- Capitalisation reserve

This tax benefit undergoes important and positive changes for tax years starting on or after 1 January 2025:

- The percentage reduction applicable to the amount of the increase in Own Funds is increased. Generally at 20%, but with the possibility of being higher, tying it to the creation of employment by the entity. This would be the table:

Reduction due to decapitalisation reserve	Increase	New reduction	Currrent reduction
In a general basis		20.00%	15.00%
Increase in the average number of staff compared to the average number of staff in the previous year	>=2% and <=5%	23.00%	15.00%
	>5% and <=10%	26.50%	15.00%
	>10%	30.00%	15.00%

- The reduction limit applicable to the tax base is doubled to 20% in general and to 25% for micro-enterprises, understood as those entities with a turnover of less than 1 million euros in the previous year.

Following this amendment, together with the amendment introduced in 2024 raising the reduction percentage to 15% and shortening the period of unavailability from five to three years, the Capitalisation Reserve will become much more attractive, and it is foreseeable that more companies will decide to make use of this incentive.

4.- General tax rate

The general tax rate of 25% remains unchanged, but it does change significantly for small and micro-enterprises. The rate applicable to newly created entities and start-ups remains unchanged, while the rate applicable to the cooperative results of tax-sheltered cooperatives is reduced. The following table sets out the rates and the timetable for their application:

Tax rate: General, Small and micro-enterprises	Art 29.1 and 2 Rates		Transitional Arrangements: Transitional Provision 44				
Smal enterprises	New rate	Current	2025	2026	2027	2028	2029
Companies with < 1M EUR turnover:	20%	25%	24%	23%	22%	21%	20%
• Taxable income 0 to 50K EUR	17%	23%	21%	19%	17%		
• Taxable income > 50K EUR	20%	23%	22%	21%	20%		
Newly created entities	15%	15%					
Emerging companies	15%	15%					
Fiscally protected co-operatives	-3 points	20%					

In line with the above reductions, the rule on minimum taxation (article 30.Bis of the LIS) has been adapted and, in view of the scope of application of the reduced rates, it will only be applicable to small or micro-enterprises taxed under the tax consolidation regime.

Personal income tax

Three provisions affecting the regulation of this tax are introduced:

1.- Taxation of the taxable amount of the savings tax base

Finally, after intense debates between the parliamentary groups, the savings rate is modified, without altering its brackets, but raising the maximum marginal tax rate (from 300,000.00 euros) to 30%, one point more than that presented by the Socialist Group (read the Ministry of Finance) in its amendment. This amendment will come into force for the tax period 2025 and subsequent years.

2.- Income from artistic activities

This modification is the result of an amendment presented by SUMAR which, we fear, will have much more impact than it seems to appear, as many non-artistic groups will probably demand its application to the taxation of their income.

A Sixtieth Additional Provision is added to the text of the Personal Income Tax Act introducing a new case of irregular income and, consequently, of income entitled to a 30% reduction. These are the outlines of its regulation:

- It applies to both earned income and income from economic activities.
- Within the above categories, only those deriving from artistic activities are applicable. The following are understood as such:

    - Those made by authors of literary, artistic or scientific works;
    - Those carried out under the special employment relationship specific to artists working in the performing, audiovisual and musical arts, if they are employed by others, or the same activities if they are self-employed, but which would have been regulated by this type of employment relationship if they had been carried out by others;
    - Those carried out by persons with technical or auxiliary activities necessary for the development of the performing, audiovisual and musical arts.
    - Those carried out on own account under headings 851, 852, 853, 853, 861, 862, 864 and 869 of the second section and groupings 01, 02, 03 and 05 of the third section of the IAE tariffs.

- It does not depend on the period of generation of the yield but on its comparison with the yields of previous years, so that if in a given tax period the gross yield obtained exceeds the average of the last three tax periods by more than 130%, the excess can be reduced by 30%.
- The basis for the reduction may not exceed 150,000.00 euros.

3.- Refund of personal income tax for previous periods for benefits from mutual societies

The ruling handed down on 11 December 2023 by our Supreme Court confirmed the application of a 25% reduction in the amount of public retirement pensions whose origin lay, in part, in contributions made to Mutual Social Welfare Funds that were integrated into the Social Security system. This decision gave rise to a large number of applications for the refund of contributions paid for personal income tax in non-prescribed years. The regulation now approved instructs the AEAT to organise a serial and specific refund scheme to facilitate and channel such refunds for the periods 2019 onwards. This will mean the paralysis of the refund procedures already initiated, which will be channelled towards the new procedure. We will have to be attentive to this reality as it may affect many people, especially in Communities such as Catalonia or Madrid, where mutualism had a remarkable relevance.

Value Added Tax

This tax does not undergo notable modifications. However, a set of measures aimed at preventing and pursuing tax fraud arising from the exit of products subject to the tax on hydrocarbons (mainly petrol and diesel fuel) from the temporary storage or customs warehousing regimes has been introduced. These measures consist of:

- The last depositor of the product, or the depositary if he is the owner, is established as the taxpayer of the operation assimilated to importation which involves the removal of the product from the warehouse for its introduction into the territory of application of the tax.
- The aforementioned operators are obliged to guarantee the payment of the VAT that will accrue on the subsequent taxable and non-tax exempt supply of the product extracted from the warehouse. Operators who are recognised as authorised economic operators or reliable operators, in accordance with the requirements set out in the Annex to the Law, are exempted from this guarantee.
- It establishes the obligation of monthly declaration and, therefore, subjection to the SII of entrepreneurs who extract the products from the aforementioned deposits.

In addition, and in a clear programmatic approach, the Government is urged to make its best efforts, in its representation before the EU institutions, to amend Directive 2006/112/EC, which regulates VAT, incorporating the non-exemption of short-term rentals of dwellings. This is a current debate in the European Union, considering short-term rentals of less than 30 days, which aims to subject accommodation services provided through digital platforms to VAT. The approved provision guarantees to the Parliament what the Spanish position will be in this debate.

Excise duties

Various measures affecting excise duties have been adopted. Let us rank the most relevant ones:

- The most relevant measure is the creation of the Tax on Liquids for Electronic Cigarettes and other Tobacco-related Products. Such a measure is justified by the health effects of such products, equating these products, in a way, to Tobacco. The introduction of this new taxation figure makes it necessary to make a series of changes to all the tax regulations, Law and Regulation, in order to take into account its existence.

- Measures are established to improve the control of the circulation and possession of products subject to excise duty, essentially aimed at increasing the control of mineral oils circulating in the European Union with documentation relating to other similar products, not subject to excise duty, which end up being marketed in Spain as automotive mineral oils.

<u>Taxation of net interest income and commissions of certain financial institutions</u>

This tax, together with the so-called "Tax on Electricity", has largely been at the centre of the parliamentary debate. This is evidenced by the fact that the tax was rejected in the Finance Committee and finally approved in the plenary session of Congress.

This tax replaces the "non-tax public property benefit" which preceded it on a transitional basis under the name of "Temporary levy on credit institutions and financial credit establishments". The new tax largely takes over the structure and magnitudes of the levy, making it permanent and incorporating certain important modifications:

- Unlike the levy, which only affected credit institutions and financial credit institutions whose interest and commission income exceeded 800 million, the new tax affects all institutions engaged in the taxed activity;
- A minimum exemption or reduction of the tax base of EUR 100 million is established;
- The single rate of 4.8% is replaced by a scale ranging from 0% to 7%;
- A reduction of the tax payable by 25% of the corporate income tax or non-resident income tax liability is allowed for establishments of non-resident entities;
- Taxation is adjusted to the indicator of the taxpayer's return on total assets when this is lower than the reference value of 0.7 per cent.

<u>Miscellaneous other standards adopted</u>

1.- Economic-Tax Regime of the Canary Islands

Article 27.4 of Law 19/1994, which regulates the materialisation of investments from the Reserve for Investments in the Canary Islands, is modified, giving new regulation to the section.

2.- General Tax Law

Article 150 of this regulation incorporates a new case of "long" duration of inspection proceedings when the purpose of the procedure is the verification of Complementary Tax.

3.- General Chart of Accounts and Rules on the Formulation of Consolidated Accounts

Both rules are amended in order to adapt their contents to the new reality of the Complementary Tax.

4.- Public e-invoicing solution

Law 56/2007, of 28 December, on Measures to Promote the Information Society, is amended, urging the AEAT to develop a public invoicing solution that provides companies with an invoicing platform in line with the requirements established by the new invoicing regulations.

5.- Entry into force

For all those provisions that do not have a specific rule regulating their entry into force, the Law foresees their entry into force on the day following their publication in the BOE.

Miscellaneous rules that have NOT been adopted

It is worth ranking some of the measures that were announced by the parliamentary groups that form part of the government and were not approved in the Congress of Deputies, in an attempt to avoid possible confusion:

1.- The creation of a Large Inheritance Tax was rejected, which would have meant an absolute clean slate of the autonomous regulation currently in force (SUMAR amendment);

2.- The abolition of the current exemption from Insurance Premium Tax for health care and health insurance (SUMAR amendment) was rejected;

3.- The equalisation of the tax rates in the Hydrocarbon Tax between petrol and diesel fuel from the 15th April (amendment by the Socialist Group) was rejected;

4.- The abolition of the current 1% tax rate applicable to companies and real estate investment funds was rejected, as well as the abolition of the special regime applicable to SOCIMIs (SUMAR amendment);

5.- The adjustment of some precepts in the Large Fortunes Tax (SUMAR amendment) was rejected;

6.- The frontal attack on different tax rules (IRPF and IS) that SUMAR defended in order to toughen the tax treatment of tourist flats and seasonal rentals was rejected;

7.- The abolition of the VAT exemption for private education was rejected, as well as the reduction of the VAT rate applicable to hairdressing services (SUMAR amendment).