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LEGAL FLASH | TAX LAW

DECEMBER 2016

MAIN INNOVATIONS APPROVED UNDER ROYAL DECREE-LAW 3/2016, OF DECEMBER 2, ADOPTING TAX MEASURES

On December 3, 2016, the Official Gazette of the Spanish State published Royal Decree-Law 3/2016, adopting tax measures aimed at consolidating public finances ("RDL 3/2016").

The tax measures provided for in RDL 3/2016 are aimed at increasing the state's tax revenues and reducing the public deficit. In that regard, changes have been introduced mainly in the area of corporate income tax and wealth tax.

CORPORATE INCOME TAX

RDL 3/2016 introduces the following measures:

- New limits on application and set-off of tax credits with effect in tax periods starting from January 1, 2016:
    - New limit on set-off of tax losses of 50% of the tax base before application of the capitalization reserve, and set-off of tax losses for taxpayers whose net turnover for the 12 months preceding the start date of the tax period was at least €20 million, but less than €60 million, and a 25% limit on those tax losses where the net turnover exceeded €60 million. Where net turnover does not exceed €20 million, the 60% limit provided for 2016 and 70% for 2017 will remain in effect. The table below summarizes these applicable limits:

LIMITS ON SET-OFF OF TAX LOSSES: % OF PRIOR TAX BASE			
Net turnover	2015	**2016**	2017
Less than €20 million	100%	**60%**	70%
€20 million – €60 million	50%	**50%**	**50%**
More than €60 million	25%	**25%**	**25%**

A minimum amount for set-off, in a financial year, of €1 million is allowed in any of the three scenarios.

New limit on the use by taxpayers whose turnover exceeds €20 million of tax credits to avoid domestic and international double taxation (not applicable in the case of the tax exemption on dividends and capital gains regulated under article 21 of the Corporate Income Tax Act) of 50% of the tax quota. Any unused portion of the tax credit may be taken in future tax years, under the same terms and conditions and without a deadline.

- New mechanism for reversal of impairments of the value of stakes that were tax deductible in tax periods before 2013 and have not yet been reversed: RDL 3/2016 provides for a minimum compulsory annual reversal over the first five tax periods starting from January 1, 2016, of one-fifth of the amount of the impairment pending reversal. Reversals may involve larger amounts, in application of the general criteria established in Transitional Provision Sixteen. Therefore, the new provision accelerates the reversal of impairments, forcing reversal from 2016-2020 on a straight-line basis.[1]

  As impairment losses were no longer tax deductible for tax periods starting from January 1, 2013, this new limit does not apply to impairment losses from 2013.

- Non-deductibility of losses arising from the transfer of stakes and permanent establishments to which the participation exemption regime of article 21 of the Corporate Income Tax Act applies. This provision affects tax periods starting on January 1, 2017.

The limitation does not apply to the winding-up of the entity, despite being reduced by the amount of exempt dividends or those benefitting from a tax credit in the last 10 years, unless they reduced the acquisition value. Similar rules apply to the cessation of activity of a permanent establishment.

WEALTH TAX

Through RDL 3/2016, the government has formalized the extension of wealth tax to include 2017.

Each autonomous community has the authority to decide whether a total rebate applies to it, as in the case of Madrid, and the application of higher or lower exempt amounts and tax rates.

1 The limitations affecting the offset of tax losses would not apply when the impairment represented 90% of the tax losses during the fiscal year.

MAIN INNOVATIONS APPROVED UNDER ROYAL DECREE 596/2016, OF DECEMBER 2, ADOPTING MEASURES REGARDING THE MODERNIZATION AND IMPROVEMENT OF ELECTRONIC MEANS IN THE MANAGEMENT OF VALUE ADDED TAX ("VAT")

On December 6, the government published in the Official Gazette of the Spanish State Royal Decree 596/2016, of December 2, adopting measures regarding the modernization and improvement of electronic means in the management of VAT. The new system will be compulsory from July 1, 2017, for some VAT taxpayers. It involves the obligation to file VAT registration books electronically.

In this sense, taxpayers obliged to submit their VAT registration books through this system are those that have to submit their VAT returns monthly, namely:

- taxpayers whose volume of transactions in the last year exceeded €6,010,121.04;
- taxpayers included in the VAT monthly refund register (REDEME); and
- taxpayers that apply the VAT group regime.

The new regulation imposes short deadlines for electronic submission to the AEAT of the registration books, which implies keeping up to date VAT ledgers that guarantee immediate and online access to the information by the Spanish Tax Administration in real time.

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