

# Finance and tax

July 2019



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## PERSONAL INCOME TAX (PIT)

### Special tax regime for individuals that move to Spain and become Spanish tax residents

Spain's General Directorate for Taxes ("DGT") has issued binding tax ruling V0088-19 addressing taxation in Spain of a taxpayer that opted for the impatriate regime.

Under this regime, the taxpayers are taxed only on Spanish-sourced income, except for employment income, which is taxed on a worldwide basis. There is a carve-out to this exception: income from salary corresponding to activities performed before or after the taxpayer moves to Spain is subject to tax only if it is sourced in Spain.

This issue is analyzed in the DGT's ruling: the employer was paid a salary for activities performed abroad in tax periods in which she was not a Spanish tax resident.

The DGT concluded that this income was not subject to tax in Spain because it had not resulted, directly or indirectly, from a personal activity carried out in Spain.

### Executive severance pay

In its order dated May 23, 2019, the Spanish Supreme Court admitted an appeal raising the issue of whether executives (top management) are entitled to minimum mandatory compensation of seven days' salary per year of employment (capped at six months' salary) when their employers cancel their contracts. If that were the case, the compensation paid to the executive should be exempt from PIT.

This same issue was raised in a previous cassation appeal, admitted by the Supreme Court (order dated October 25, 2017) and currently pending the court's decision.

## WEALTH TAX (WT)

### Application of regional legislation by non-EU taxpayers

The DGT has issued binding tax ruling V0676-19 on the applicability of the WT benefits under Spanish autonomous regional legislation to a taxpayer that is a resident of Mexico and owns real estate in the autonomous region of Madrid.

The DGT concluded that regional legislation does not apply to the taxpayer because he is a resident of a third country that is not part of the European Union (EU) or the European Economic Area (EEA). It concluded that only national legislation applies.

This same question has been raised in relation to Spanish inheritance and gift tax ("IGT"). In rulings V3151-18 and V3193-18, in line with the current criteria of the Spanish Supreme Court, the DGT acknowledged that, for there to be compliance with the EU principle of free movement of capital, tax benefits approved by the autonomous regions should apply to all non-residents, regardless of whether they reside in a Member State of the EU or the EEA, or in a third country.

However, although discrimination for the purposes of WT may also be contrary to the free movement of capital, the DGT has distanced itself from that interpretation in ruling V0676-19.



## INHERITANCE AND GIFT TAX

### Special tax regime for individuals that move to Spain and become Spanish tax residents

The DGT has issued ruling number V0293-19 concerning the legislation applicable to a gift whose beneficiary is a Spanish tax-resident individual who opted for the impatriate regime.

The DGT concluded that taxpayers subject to this special personal income tax regime must pay IGT on their worldwide income. Therefore, they must pay taxes on all assets and rights acquired for no consideration, whether *mortis causa* or *inter vivos*, irrespective of where they are located. The relevant legislation applies according to the legal connecting factors; thus, the legislation of the corresponding autonomous region applies.

## DISCLOSURE OBLIGATIONS ON ASSETS AND RIGHTS ABROAD

### Proceedings in Court of Justice of the European Union (CJEU)

The European Commission (EC) has referred Spain to the CJEU Union for imposing disproportionate fines for not meeting the obligation to report assets located abroad (Form 720).

The EC considers the fines for improper or late fulfillment of this legitimate obligation to report information as disproportionate and discriminatory.

## OTHER DEVELOPMENTS

### Supreme Court confirms annulment of charge on vacant or permanently unoccupied dwellings

Our Tax Litigation Practice advised a group of clients on an appeal to the Supreme Court that has led to its judgment of June 18, 2019, upholding the invalidation of charges on empty dwellings approved by Barcelona City Council in 2016.

Our team scored its first victory in the High Court of Justice of Catalonia in 2017. Barcelona City Council appealed this ruling in the Supreme Court, which led to our team filing the corresponding opposition.

Now, the Supreme Court has ruled in our favor and canceled the controversial taxes due to: (i) Barcelona City Council not having the power to impose such a tax, and (ii) a breach of the principle of tax legality.

In particular, the Supreme Court declared that Barcelona City Council chose a procedural method that cannot control nor review the interpretation of regional regulations. In addition, as a matter of annulment interest, the Supreme Court defined the interpretation of the principle of tax legality and its reach in establishing taxable events for municipal taxes.

The importance of this ruling surpasses the case studied by the Supreme Court, as it indirectly questions the legality of similar taxes approved by other city councils for the same taxable events, and opens up the possibility of recovering amounts required by city councils for the same or similar taxable concepts.



## Draft legislation transposing Council Directive (EU) 2018/822 of May 25 ("DAC 6")

Spain's Finance Ministry has started a public consultation procedure for a draft Royal Decree transposing Council Directive (EU) 2018/822 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable crossborder arrangements.

The main features of these disclosure obligations are:

- Reporting requirements covering crossborder tax planning arrangements handled by tax intermediaries and, where appropriate, taxpayers.
- Reportable arrangements must comply with certain hallmarks specified in the directive. Spanish proposed legislation includes several nuances.
- Quarterly reporting requirement for marketable arrangements and a yearly requirement for taxpayers to report on any arrangements subject to prior reporting they may have used.
- Specific penalties.

Click the link to read our legal flash on these tax developments:

[https://www.cuatrecasas.com/publications/legal\\_flash\\_spain\\_publishes\\_draft\\_legislation\\_transposing\\_council\\_directive\\_eu\\_2018822\\_of\\_25\\_may\\_intermediaries\\_directive.html](https://www.cuatrecasas.com/publications/legal_flash_spain_publishes_draft_legislation_transposing_council_directive_eu_2018822_of_25_may_intermediaries_directive.html)

## Catalonia: amendments to tax on idle assets

The regional government of Catalonia has approved Decree Law 8/2019, amending Act 6/2017 on the tax on idle assets of legal entities.

The wording of Act 6/2017 has been amended in relation to the classification of assets purportedly not involved in economic activity as idle assets.

The filing period for self-assessments of the tax is from June 1 to 30 of each year, except for 2017, 2018, and 2019, for which the self-assessments must be filed in October and November.

## Catalonia: stamp duty increase on loans and mortgages in Catalonia

The regional government of Catalonia has also approved Decree Law 12/2019, which increases the tax rate charged on notarization of public deeds for loans or mortgages from 1.5% to 2%, effective July 12.

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