International Bar Association (IBA)

Recent Developments in International taxation (2019)

Spain

GUADALUPE DÍAZ-SÚNICO

Tax partner. LENER (Barcelona)

guadalupediazsunico@lener.es

Spain recently underwent presidential elections (April 2019) and currently lacks of an elected president until political parties reach consensus for parliament's approval. This is due to the currently fragmented political scenario, with no clear majority voted party.

In this context, the tax agenda for 2019 promises to be active once the new government is formed.

Tax treaties/tax agreements

Spain – UK (Gibraltar)

In the Brexit context, Spain and the United Kingdom signed a new tax agreement on Gibraltar on March 2019 for cooperation on tax affairs between the competent tax authorities. This agreement is particularly important for cross-border workers and businesses with interests in Spain and Gibraltar.

The Agreement intends to suppress tax fraud and harmful tax practices deriving from Gibraltar's tax regime as well as to establish clear residence rules for individuals and companies with the purpose of solving potential residence conflicts.

Firstly, it foresees that, if and when Brexit occurs, the EU regulations on transparency, administrative cooperation, etc will still be applicable in the transitional period for Gibraltar and that Gibraltar will approve domestic regulations with similar content afterwards.

It also aims to improve the exchange of information between the two territories. This commits both Gibraltar and Spain to share tax data. It also provides for further forms of administrative assistance, including joint audits, assistance in collection of tax debts, and the serving or transfer of documents.

Residence rules are of key-importance considering that the residence tie-breaker rules foreseen in article 4 of the tax treaty between Spain and UK do not apply to Gibraltar.

In the case of individuals, it is worth highlighting that the agreement establishes that the Spanish nationals that move to Gibraltar after the agreement cannot become tax resident in Gibraltar and that the Spanish tax residents (not Spanish nationals) are subject to a quarantine of four years when moving their residence to Gibraltar.

In the case of companies managed in Gibraltar, they could be considered Spanish resident entities if they have a “significant relation” with Spain, as defined in the agreement (majority of assets located in Spain, etc).

Reciprocal double taxation relief measures are also established.

This agreement still needs to be passed by both, the UK and the Spanish parliament for entering into force.

Other tax treaties have been signed or entered into force in 2018-2019:

- New tax treaty between Spain and the *Republic of Azerbaijan*: published in the Spanish Official Gazette on January 25 2019.
- New tax treaty between Spain and the *Republic of Cape Verde*: published in the Spanish Official Gazette on September 7 2018.

Additionally, the following tax treaties have been renegotiated in 2018:

- Spain/Japan
- Spain/China
- Spain/Rumania
- Spain/Belgium
- Spain/Finland

Inheritance and Gift Tax (IGT)

Application of the tax benefits approved by the Spanish autonomous regions to non-EU residents (Directorate General for taxes, V3151-18 and V3193-18)

Two recent binding tax rulings from the Directorate General for taxes have ruled in favor of the application of the tax benefits approved by the Spanish autonomous regions in which the heirs are resident to non-EU residents, even when the current wording of the law does not foresee this possibility when the deceased and/or the heirs are non-EU residents (in these cases, Andorra and Russia, respectively). These rulings replicate the criteria of several judgements of the Spanish Supreme Court from 2018.

New 99% relief in Andalusia

Andalusia has recently passed a 99% tax relief for the IGT for heirs with direct kinship with the deceased (including adopted and non-married couples). This is a very important measure for non resident individuals migrating to Andalusia and becoming liable for IGT on the worldwide assets inherited or gifted to them.

Personal Income tax (PIT)

The Spanish expatriate regime (Supreme Court Judgement March 28 2019).

Spanish Personal Income tax rules foresee an exemption up to 60,000 euros per year for employees working abroad.

It is a very relevant tax benefit for Spanish residents working abroad, also applicable to those rendering services among different companies of the same multinational group.

The tax authorities have traditionally interpreted the requirements for applying the exemption in a very restrictive way. The Supreme Court judgement adds flexibility to these requirements enabling more individuals to have access to it.

RSU plans and migration to Spain (Directorate General for taxes, V0088-19)

The binding ruling states that cashing out Restricted Stock Units (RSU) plans after moving to Spain should not qualify as Spanish-source income if the awarding period occurred when the individual was not tax resident in Spain.

Non resident Income Tax (NRIT)

Unjustified discrimination for non-resident investment collective vehicles (Supreme Court Judgement March 27 2019).

The Supreme Court confirmed, in a case related to an Irish harmonized mutual fund, that non resident investment funds in Spain receive unjustified discriminatory treatment. Even when it referred to the Spanish regulations in force in 2008 and when the Irish fund judged was compliant with UCITs regulations, there are still similar restrictions in the Spanish domestic rules for nonresident non harmonized investment collective vehicles for which this judgement can be of interest.

Mandatory disclosure of assets and rights held abroad (form 720)

Since 2012, just after the tax amnesty, Spanish tax residents must annually disclose certain categories of assets and rights held abroad (such as real estate, bank accounts, shares, etc), once predetermined thresholds are exceeded. The penalties for failing to fulfill this formal obligation (and for late filing of the form) are extremely material.

The European Commission opened an infringement procedure against Spain (procedure 2014/4330) and concluded that

these penalties infringe the free movement of people and workers, the freedom of establishment, the freedom to render services and the free movement of capital for being disproportionate. Even when this reasoned opinion was issued in February 2017, it was not until recently that is was released to the public.

Wealth tax (WT)

The WT payers benefitted from a 100% relief since January 1 2008. However, due to the economic crisis, the Spanish government temporarily suspended this relief (and, therefore, reestablished the liability for this tax for 2011 and 2012. Since 2013, the 100% relief was supposed to be fully operative again. However, the temporary suspension of the application of this relief has been extended every year since then.

As in previous years, the Legal Royal Decree 27/2018 has ruled that the relief is still suspended for 2019. Consequently, since 2011, Spanish tax residents are liable for this tax on their worldwide wealth whereas the Spanish non-residents are liable for the Spanish-based assets they own. Madrid is currently the only Spanish region that is not levying WT.

There is an annual 700,000 euros exemption as well as a 100% exemption for the assets qualifying as family businesses, among other tax benefits. Additionally, the tax due can be reduced by 80% in certain circumstances.

Digital economy: the Spanish Digital Service Tax (DST) -bill proposal-

On January 18 2019, the DST bill was passed by the government and submitted to Parliament for approval. Due to the presidential elections, Parliament's activity has been suspended and the bill has not been yet approved.

The bill almost replicates the content of the EC proposal for a Directive on a common system of a digital services tax, dated March 31 2018 (2018/0073 CNS). Only big companies with a minimum worldwide turnover of 750 million euros and a "significant digital footprint" in Spain of more than 3 million euros are liable with this tax.

The target services can be generally categorized as: (i) online advertising; (ii) online intermediation; (iii) data transfer. The tax rate is set in 3% over the gross revenues arising in Spain out of these services (net of VAT). The nexus with Spain is set based on the geolocalization of the user's devices.

It is expressly defined as an "indirect" tax and, therefore, it is out of the scope of the tax treaties signed by Spain. Double taxation issues will most likely arise from its application. Although it is not expressly stated, there is consensus that this tax will be a deductible expense for corporate income tax purposes.

Even when the tax accrues transaction by transaction (similar to VAT), there is a quarterly obligation to file the corresponding return. There are new formal obligations applicable to the tax payers and a material penalty system for non compliance.

Once the bill obtains Parliament's approval, this tax can enter into force for 2019 onwards.

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