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Recent developments in international taxation: Spain

Pillar Two legislation has finally been enacted in Spain

The Spanish Congress approved Law 7/2024, of 20 December, establishing a complementary tax to guarantee an overall minimum level of taxation for large multinational and domestic groups. Law 7/2024 fulfils the European Union's Member States' commitment to transpose the Pillar Two EU Directive (2022/2523), which aims to ensure that large multinational enterprise groups and large-scale domestic groups with annual revenues of at least €750m in at least two of the last four tax periods are subject to a minimum effective taxation of 15 per cent.

Law 7/2024 includes an income inclusion rule and a qualified domestic minimum top-up tax (QDMTT) which take effect for tax periods beginning on or after 31 December 2023. Furthermore, it includes an undertaxed profits rule (UTPR), which generally takes effect for tax periods beginning on or after 31 December 2024. In addition, the legislation contains a transitional country-by-country reporting (CbCR) safe harbour, a safe harbour for QDMTT and a transitional UTPR safe harbour.

Several amendments have also been made to Law 27/2014, of 27 November, on corporate income tax (the 'CIT Law'), through Final Provision 8 of Law 7/2024 as described below.

Reintroduction of certain tax measures declared unconstitutional

On 18 January 2024, the Spanish Constitutional Court ruled that certain provisions of Royal Decree-Law 3/2016, of 2 December, were unconstitutional. However, those same measures were reintroduced through Law 7/2024:

- limitations on offsetting net operating losses and on applying double taxation credits for companies and tax groups with net revenues exceeding €20m in the previous year; and
- mandatory reversal – made in three years and in equal parts – of impairment losses on shares in other companies that would have been tax deductible in previous years and are pending reversal. This affects companies and tax groups that had partially or fully recovered the reversals made during the 2016–2020 tax periods at a rate of one-fifth each year, in accordance with RDL 3/2016.

Extension of the limitation on offsetting tax losses in tax groups

The 2023 temporary limitation on using tax losses generated in the tax period by the different group entities taxed under the CIT consolidation regime has been extended to the 2024 and 2025 tax periods.

This extension limits the 'automatic' offsetting of taxable profits and losses generated by the different group entities in the tax period, which is one of this tax regime's main features. As a result, only 50 per cent of the tax losses generated by the loss-making entities forming part of the tax group may be offset against the taxable profits of the profit-making entities of the tax group. Consequently, the CIT group's taxable base for tax periods 2024 and 2025 will be

calculated by adding 100 per cent of the individual taxable profits and 50 per cent of the individual tax-deductible losses.

The remaining 50 per cent of the individual tax losses generated in 2024 and 2025, which are excluded from the tax group's taxable income, will instead be used against the tax group's taxable income on a linear basis over a ten-year period beginning in 2025 and 2026.

New limitation of deductibility of net financial expenses applicable as of 2024 tax period
Pursuant to the IT Law, the annual deductible amount for net financing expenses is the greater of €1m or 30 per cent of the tax operating profit for the relevant tax period. Law 13/2023, of 24 May, established that, for tax periods beginning on or after 1 January 2024, the tax operating profit should no longer include income, expense or revenues which has not been included in the CIT taxable base or has benefitted from an exemption. This limitation will negatively impact holding companies because their operating profits would be reduced by the amount of tax-exempt dividends and capital gains. Consequently, the limit for financial expenses would be reduced.

Capitalisation reserve regime
Significant improvements have been made to the capitalisation reserve regime, a tax relief that encourages equity capitalisation and enables taxpayers to reduce their company's CIT taxable base by a percentage of the net equity's increase it has achieved during the tax period.

As of 2025, the general reduction percentage will increase from 15 per cent to 20 per cent. In addition, higher percentages (23 per cent, 26.5 per cent and 30 per cent) have been approved for companies and tax groups that reach certain workforce thresholds.

Increase in the marginal rate of the savings taxable base for Spanish tax resident individuals
The personal income tax (PIT) rate on annual savings (eg, dividends, interest and capital gains) exceeding €300,000 has increased from 28 per cent to 30 per cent.

Postponement of the obligation to adapt invoicing systems to the VERI*FACTU regulation
Royal Decree 254/2025 extends the deadline for adapting IT systems to the new VERI*FACTU electronic invoicing and reporting system. CIT taxpayers must adapt their systems by 1 January 2026 at the latest. All other taxpayers have until 1 July 2026 to comply. In addition, developers and distributors of invoicing systems must offer compliant products by 29 July 2025 at the latest. By that date, the Spanish Tax Administration must also have the service operational to receive billing records from compliant invoice issuance systems.

The scope of application excludes, among others, invoices issued from permanent establishments located abroad. Taxpayers who use the immediate supply of information (SII) system for VAT books are also excluded with respect to invoices issued by the recipient or third parties; the SII system provides sufficient traceability and control through direct reporting of invoice data. However, even when a third party physically issues the invoice, taxpayers who supply goods or services remain responsible for fulfilling the obligations set out in the VERI*FACTU Regulation and the Invoicing Regulation.

Mbappé Law for foreign investors moving to Madrid
Madrid Law 4/2024, of 20 November, introduces a new tax incentive for individuals, attracting the relocation of investors to the Autonomous Region of Madrid, effective as from 1 January 2024. The law allows individuals who have not been tax resident in Spain for the past five tax periods, and who become subject to PIT due to their relocation to the Autonomous Region of Madrid at any time on or after 1 January 2024, to benefit from a significant tax credit. This tax credit is available provided that the individuals acquire and maintain their tax residence in Madrid for at least six years.

The tax credit is set at 20 per cent of the acquisition value of certain Spanish or non-Spanish investments, including (1) debt securities, whether or not traded on regulated markets, and (2) shares and other equity type securities, subject to certain requirements. Generally, investments must be made in the calendar year in which the taxpayer becomes a Spanish tax resident subject to PIT in Madrid, or in the following calendar year. A key requirement is that the investments must be held for six years from the acquisition date. Early transfers are permitted only if the entire amount obtained is reinvested in eligible assets within one month.

The Mbappé regime is not compatible with the 'Impatriate Tax Regime' for relocated workers and investors.

Significant tax amendments in Catalonia applicable to the real estate sector
The Catalan regional government has enacted relevant tax changes through Decree-Law 5/2025, of 25 March, effective as from 27 June 2025. Among the most significant modifications to the transfer tax rates applicable on the acquisition of real estate are:

- the transfer tax rate has been increased for properties valued above €600,000;[1]
- a 20 per cent rate applies for the purchase of housing properties by large property holders,[2] unless certain exceptions apply; and
- a 20 per cent rate is set for an individual or a legal entity purchasing an entire residential building, regardless of whether it is divided into condominiums, unless certain exceptions apply.

In addition, the stamp duty rate applicable in cases where the VAT exemption is waived increases from 2.5 per cent to 3.5 per cent.

The tax courts' recent novel approach to the exchanges of shares transactions
Family groups often engage in transactions involving the transfer of operating company shares to holding entities. As long as these transactions are not seeking an undue tax advantage, they qualify for the tax neutrality regime. Recently, the Spanish Central Economic-Administrative Tribunal issued several binding resolutions that significantly impact these kinds of transactions.

According to the tax court, in certain cases these transactions lack valid economic justifications and are primarily executed to obtain a tax advantage, such as reducing or deferring the taxation of future dividend or capital gains, by taking advantage of the Spanish participation exemption regime. Under this regime, capital gains and dividends are taxed at an effective rate of 1.25 per cent, as opposed to the maximum rate of 30 per cent if the individual shareholder were to sell or distribute dividends directly.

Rather than regularising the deemed capital gain on the contribution of shares to the holding company during the contribution's tax period, the tax court concluded that this capital gain should be allocated to the individual when the holding company realises the tax benefit from the contribution. The same 'imputation' rule applies to distributions by the operating entities to the holding company of dividends out of retained earnings which existed at the time of the exchange of shares. As a result, the undue deferral tax advantage, in the words of the tax court, is deactivated.

These tax court resolutions have been appealed before the courts; eventually the Spanish Supreme Court and potentially the European Court of Justice (ECJ) will need to confirm the tax court's interpretation.

The 'double shot' doctrine in Spain

The Supreme Court has recently ruled on the 'double shot' doctrine, which allows the Tax Administration to issue a new tax assessment after a previous one has been annulled by a court or administrative body. This doctrine has evolved over time, distinguishing between annulments due to formal errors, which may allow for retroactive correction, and substantive errors, which may require a new act provided the Administration's authority is still valid. Two recent judgments from April 2024 (appeals 8287/2022 and 96/2023) confirm the Administration's right to issue a new assessment after annulment.

The Supreme Court identifies three main limits to the double shot doctrine: the statute of limitations, the prohibition of *reformatio in peius* (the new act cannot worsen the taxpayer's position beyond the original assessment), and the repetition of the same error.

Clearer guidelines would help define the scope of the 'new procedure' and address issues such as the application of default interest. While the Administration can issue a new act after annulment, it should be limited to correcting the identified errors rather than starting over as if nothing had happened.

The complex relationship between binding tax rulings and court decisions

Taxpayers may submit any matter arising from the application of the Spanish tax system to the relevant tax authorities. As long as the facts described in the request are accurate, the ruling is legally binding on the relevant tax authorities responsible for applying the taxes. Other taxpayers in the same situation may also rely on the binding nature of the ruling for the tax authorities.

However, the Spanish Supreme Court has issued decisions, such as those in the *Softonic* and *Credit Suisse* cases, that have introduced uncertainty regarding the actual value of these tax rulings. The court has allowed judicial bodies to deviate from established administrative criteria if the criteria are deemed incorrect or contradicted by subsequent case law. The court has even applied such changes retroactively.

This approach has the potential to undermine the protection of taxpayers' legitimate expectations. Taxpayers may be subject to tax reassessments based on evolving case law, even if they acted in accordance with the applicable administrative doctrine at the time. The court justifies this possibility by invoking the principle of the primacy of EU law. However, the court has not adequately addressed whether this practice could violate the general principles of legal certainty and the protection of legitimate expectations, both of which are recognised by the ECJ's jurisprudence.

[1] The tax rate is 10 per cent for properties valued up to €600,000, 11 per cent for those valued between €600,000 and €900,000, 12 per cent for those valued between €900,000 and €1.5m, and 13 per cent for those valued over €1.5m.

[2] 'Housing property' refers to a dwelling and up to two parking spaces, as well as a storage unit, all of which are acquired together and located within the same building or complex. 'Large property holder' is defined as an individual or a legal entity that owns more than 10 residential properties or properties with a built surface area of more than 1,500m^2 for residential use located in Catalonia. It also includes ownership of five or more urban residential properties located in an area with a strained housing market.