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TAX ALERT

Royal Decree-Law 3/2016, of December 2, which adopted the tax measures to consolidate public finance and other urgent social measures

1. CORPORATE INCOME TAX

Effective for Fiscal Years Beginning as of January 1, 2016

a) Reversion of the stock tax depreciations which were tax-deductible in tax periods prior to 2013.

A new regime is introduced to revert losses due to the stock tax depreciations which were tax-deductible in tax periods beginning before January 1, 2013, under the former regime governed by Article 12.3 of the Revised Text of the Corporate Income Tax Act. Under said regime, the reversion is added to the taxable base in equal measures over the next five tax periods beginning on January 1, 2016, unless the depreciated shares or quotas are transferred. In that situation, the pending reversion will be included in the same tax period as the transfer, with the limit of the positive income resulting from such transfer.

b) Limits on Large Companies

For taxpayers whose net turnover is at least € 20 million over the 12 months prior to the date on which the relevant tax period begins, the following limits are established in the compensation of losses carried forward and in the depreciation of credits under Article 11.12 of the Corporate Income Tax ("CIT") Act:

	Limit
INCEN* < € 20M	60%
INCEN: € 20M ≤ € 60M	50%
INCEN > € 60 M	25%

* INCEN = Net Business Volume

Furthermore, the application of tax credits related to international or internal double taxation generated or pending compensation is limited 50% of the total CIT tax due.

Effective for Fiscal Years Beginning as of January 1, 2017

a) Limits on the tax deductibility of tax depreciation of shares

Effective as of January 1, 2017, several articles are amended to regulate stock tax depreciation, in line with the amendment regarding double taxation contained in Article 21 of CIT Act ("participation exemption regime") relating to dividends and income arising from the transfer of shares of Spanish resident and non-resident companies.

On the one hand, **the stock tax depreciation which do not meet the requirements of Article 21 of the CIT Act¹** is not tax-deductible. However, negative income generated with the transfer of such shares will be tax-deductible.

On the other hand, **stock tax depreciation which meet the requirements of Article 21 of the CIT Act** is not tax deductible. This affects both shares in entities subject to the participation exemption regime and shares which do not meet the minimum taxation requirements to access such regime.

Likewise amended are the criteria for temporary attribution of **losses arising from the transfer of shares to a company of the same group of entities**. This provision affects only cases in which the losses arising from the transfer of the stake form part of the taxable base because the participation exemption regime is not applicable.

b) Amendments Regarding Double Taxation

A change is made in the tax treatment of losses arising from the transfer of shares which may be exempted due to the participation exemption regime stated in Article 21 of the CIT Act, establishing the non-deductibility of losses derived from transfers of shares in companies which may enjoy the participation exemption on the positive income. Excluded from the taxable base is any type of loss generated when transferring shares of companies located in tax havens or in low-tax territories.

Furthermore, a new point is that losses generated abroad from the transfer of a permanent establishment are not to be included in the taxable base.

The basis for this amendment is to be found in the Preamble of the Act, which, in keeping with comparative law, rules out the inclusion of any income, positive or negative, arising from the holding of shares in another company. The result of this amendment may be qualified as a true participation exemption regime.

¹ The requirements are the following: holding a stake of more than 5% or securities with a purchase price of at least € 20 million euros for one year; non-resident companies may not be resident in a tax haven during the tax period in which the transfer takes place, and the company must be subject to the equivalent of the Corporate Income Tax (of at least 10%) in its place of residence.

2. WEALTH TAX

The Wealth Tax is extended to Fiscal Year 2017, delaying the tax rebate of 100% until Fiscal Year 2018.

3. EXCISE DUTIES

Certain amendments are made to Law 38/1992, of December 28, on Excise Duties, increasing taxes imposed on alcoholic beverage and tobacco production.

4. GENERAL TAX ACT

For procedures beginning as of January 1, 2017, certain tax debts may not be paid in kind. Also, the taxpayer can no longer defer a list of tax debts, such as withholdings taxes, the VAT (except in certain circumstances), debts confirmed by a court of law or an administrative body, or installment payments of the Corporate Income Tax.

5. REAL ESTATE TAX

Update of Cadastral Values

New coefficients for the update of cadastral values have been introduced for 2017. These are contained in Article 32.2 of the Property Registry Act, depending on the year the establishment of value came into effect.

6. OTHER AMENDMENTS

6.1. Tax Regime for Cooperatives

Effective as of January 1, 2016, the compensation of losses for cooperatives is reduced, in line with the limitations on the offset of losses carried forward indicated above.

6.2. Stock-Listed Corporations Engaging in Real Estate Investment ("SOCIMI")

Effective as of January 1, 2017, while current legislation does not allow the participation exemption regime on dividends and income derived from transfer of shares, the new text specifies that the non-application of the exemption is related to positive income.

6.3. Suspension of Offsetting in the Canary Islands

Effective as of January 1, 2016, the suspension of offset due to the elimination of the General Tax on Business Traffic ("*IGTE*": abbreviation in Spanish) is made in terms of accrual and not only a suspension in terms of cash-flows arising from that.

Changes Introduced by Royal Decree 596/2016, for the modernization, improvement, and promotion of the use of electronic means in handling the Value-Added Tax

On December 6, 2016, the Official State Gazette ("*BOE*": abbreviation in Spanish) published Royal Decree 596/2016, for the modernization, improvement, and promotion of the use of electronic means in handling the Value-Added Tax ("VAT").

The decree amends: (i) the Regulations on the Value-Added Tax, approved by Royal Decree 1624/1992, of December 29; (ii) the General Regulations on tax inspection actions and procedures and the development of common rules in tax procedures, approved by Royal Decree 1065/2007, of July 27; and (iii) the Regulations on invoicing obligations, approved by Royal Decree 1619/2012, of November 30.

The Royal Decree introduces the Immediate Provision of Information ("*SII*": abbreviation in Spanish) system. It also amends other aspects, such as the regime for Travelers VAT refund and the general deadline for sending invoices between companies.

Below we shall analyze the main changes, which will come into effect on July 1, 2017.

1. IMMEDIATE PROVISION OF INFORMATION SYSTEM ("*SII*")

1.1. Content of the SII

The SII is a substantial change in the current system for handling the VAT; it involves keeping the VAT registration books through the Tax Agency (AEAT) electronic portal, supplying information on invoices almost immediately. The SII seeks to bring together the time of registering invoices and the time of effective completion of the underlying economic operation.

The taxpayers which apply the SII must handle the following Registry Books through the AEAT's electronic portal, including additional information:

- Registry Book of Issued Invoices
- Registry Book of Received Invoices
- Registry Book of Investment Goods
- Registry Book of Certain Intra-Community Operations

For this purpose, they must send the AEAT the details of the invoices, from which the different Registry Books will be kept almost in real time.

The system involves sending the same information as currently included in the VAT Registry Books and requires additional data contained in the invoices issued and received. It is important to point out that taxpayers are not required to send a copy of the invoices to the AEAT; rather, it is the data contained in them that must be sent.

Thus, besides the general information from the Registry Books (number, series, issue date, taxable event date, reception number, corporate name, Tax Identification Number ("NIF"), taxable base, VAT rate, VAT due, cash regime, etcetera.), the following information must be included:

- **Registry Book of Issued Invoices**

- (a) Type of invoice issued, indicating whether it is a complete invoice or a simplified one.
- (b) Identification that it is a correction of the Registry entry.
- (c) Description of the operations.
- (d) Corrective invoices must be identified as such. They must include reference to the invoice being corrected and any specifications which are altered.
- (e) For invoices issued to replace or exchange simplified invoices issued previously, reference will be included to the invoice being replaced or exchanged and any specifications replaced or changed.
- (f) The mentions in the invoicing regulations regarding exempted operations, invoices issued by the customer, reverse charge system, and certain special regimes (travel agency, cash regime, used goods, works of art, antiques, and collector's items).

Also to be included are mentions of reverse charge method for gold regime or intra-group operations within the scope of the VAT Grouping Special Regime.

- (g) VAT return period to which the operations registered are referred.
- (h) Indication that the operation is not subject to the VAT.
- (i) If the invoice has been issued by virtue of an authorization for invoicing under the Regulations on invoicing obligations, reference to the authorization granted must be included.

- **Registry Book of Received Invoices**

- (a) Number and series number (if any) shown on the invoice. It will replace the reception number used by those not included in the SII.
- (b) Indication of a correction in the Registry Book.
- (c) Description of the operations.

- (d) The mentions in the invoicing regulations regarding invoices issued by the customer, reverse charge system, and certain special regimes (travel agency, cash regime, used goods, works of art, antiques, and collector's items).
- (e) Deductible VAT amount for VAT return period in which the registration is made.
- (f) VAT return period to which the operations are referred. In case of imports, the accounting date of the operation will be reflected, along with the relevant Single Administrative Document ("*DUA*": abbreviation in Spanish) number.

The fields for registering the information provided will be approved by the Ministry of Finance and Public Administrations through the relevant Ministry Order.

Likewise, certain information with tax relevance (formerly included on Forms 340 and 347) must be provided.

1.2. Taxpayers

The SII will be applicable to taxpayers currently required to make monthly voluntary declarations for the VAT. These are the following:

- Those registered in the VAT Monthly Refund Registry ("*REDEME*").
- Major VAT payers (volume of more than € 6,010,121.04 for operations).
- Companies included in the VAT Grouping Special Regime ("*REGE*").

The system will also be applicable to taxpayers which voluntarily decide to choose it. They must so declare on Form 036, to be filed in November prior to the year in which it will take effect (for 2017, that will be in June).

1.3. Deadline for Sending Registers

• Invoices Issued

The deadline for sending the registers will be four calendar days from the issue of the invoice or from the date on which the accounting entry is made, unless they are invoices issued by the receiver or a third party, in which event the deadline will be eight calendar days. In either case, the information must be provided by the 16th day of the month following that in which the VAT for the operation to be registered is returned.

It must be borne in mind that in calculating the four or eight calendar day deadline, Saturdays, Sundays, and national holidays are excluded.

However, in the first six months during which the SII is in effect (July to December 2017), taxpayers will have a special deadline of eight days (for all registry books) to send the information.

- **Invoices Received**

The registers must be sent within four calendar days from the date of the accounting entry for the invoice and, in any event, by the 16th day of the month following the liquidation period in which the relevant operations are included.

For imports, the four calendar days must be counted from the accounting entry of the document which records the amount paid to Customs (the DUA) and, in any event, by the 16th day of the month following the liquidation period in which the relevant operations are included.

- **Intra-Community Operations**

For the intra-Community delivery of goods EU transfers, the deadline will be four calendar days from the beginning of transportation.

For intra-Community acquisitions, the deadline will be four calendar days from the reception of the goods.

- **Information on Investment Goods**

By the deadline for filing the last VAT return of the year (to January 30 of the year following that in which the goods were acquired).

1.4. Correction of Registry Entries

Any material errors in registry book notes must be corrected. This correction must take place at the end of the VAT return period for filing by means of a note or group of notes.

1.5. Other Implications of Taxpayers Included in the SII

- Reduction of formal obligations, elimination of filing Forms 340, 347, and 390 and of keeping the traditional VAT Registry Books.
- The AEAT and the taxpayer will have additional information, since the electronic portal has "declared" and "compared" Registry Books containing information provided by third parties using the SII system or by AEAT's data base.
- Extension of the deadline for periodic voluntary payments (Forms 303, 322, and 353) by 10 days, changing generally from the 20th to the 30th of each month, except February (deadline at the end of the month).

- Theoretical shorter VAT refund procedures, since the AEAT has the information almost in real time and greater information on the operations.
- Possibly less request of information procedures⁴, since many are requests for invoices or data contained in invoices to verify that they are the amounts declared on Forms 303 and 390.

1.6. Additional and Temporary Provisions

- Those required to apply the system must send the invoicing registers for the first semester of 2017 some time between July 1 and December 31, 2017.
- For the SII to be applicable from July 1, 2017 voluntarily, the application must be filed in the month of June 2017.
- The non-filing of Form 340 must be understood as from July 2017.
- The four calendar day deadline for providing the invoicing registers will be eight calendar days for:
 1. Invoices issued from July 1 to December 31, 2017.
 2. The invoices received and the DUA, the accounting entry of which is made from July 1 to December 31, 2017.
 3. The operations registered in the Registry Book for certain intra-Community operations, for which the transportation, or reception of the goods involved takes place from July 1 to December 31, 2017.

1.7. Other Changes Due to the SII

- **General Regulations on Tax Inspection Actions and Procedures**

Taxpayers included in the SII are exempted from filing Forms 340 and 347. The only exception is the Public Administrations, which must continue listing all persons and companies to which they have paid subsidies, help, or aid, unless they are included in other informative statements and coincide in content.

- **Regulations on Invoicing Obligations**

Persons and companies included in the SII whose invoices are prepared by third parties must present a census declaration (Form 036) informing the authorities of that option, the date from which it will be exercised, and any waiver of the option and the effective date if this system is no longer applied.

2. CHANGES OTHER THAN TO THE SII

2.1. Regulations on Invoicing Obligations: Deadline for Sending the Invoices

Effective as of January 1, 2017, the current one-month deadline for sending the invoices in case of B2B operations is modified. The invoices must be sent before the 16th day of the month following that in which the VAT for the operation has accrued.

2.2. Other changes

(i) Regulations on Invoicing Obligations: Invoicing of Certain Deliveries of Electrical Energy

(ii) Regime for Returns to Travelers

(iii) Limits on the Application of the Simplified Regime and the Special Regime for Agriculture, Stockbreeding, and Fishing for Fiscal Year 2017

We remain at your disposal for any consultation or clarification regarding this Alert, and we shall keep you informed of any future changes regarding these issues as they become available.