Spain

Spain Amends Tax Laws to Limit Interest Deduction, Introduce Joint Audits

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On 25 May 2023, Spain enacted a law that amends the General Tax Law, together with other relevant tax measures that introduced changes to several tax laws. The main amendments are summarized below.

General Tax Law

A single system for the correction of self-assessments is established. The new mechanism that would allow taxpayers to rectify their self-assessments, will replace the current dual system of complementary self-assessment and rectification request. The new mechanism will need to be established in its own tax regulations and will allow taxpayers to rectify, complete or modify their self-assessment previously filed, regardless of its result, and without the need to wait for the administrative decision.

Furthermore, with effect from 1 January 2024, the new Law introduces the concept of joint audits to be conducted by Spanish tax authorities with other States. It is established that the audit proceedings will take place in a coordinated manner and that both the Spanish regulations and the regulations of the State in which the proceedings are carried out shall be followed, although, in any case, Spanish tax authorities' powers will be constrained by Spanish legislation.

Corporate income tax (CIT)

With effect from 1 January 2024, the CIT Law is amended to be aligned with the EU Anti-Tax Avoidance Directive 2016/1164 (2016) (ATAD) regarding the limitation on the interest deduction that allows companies to deduct their net financial expenses only up to 30% of their operating profit (EBITDA), with a minimum deduction of EUR 1 million, of which the implementation was exceptionally postponed until 31 December 2024, as permitted by the ATAD. For prior coverage *see* Government Proposes Set of Measures to Prevent and Fight Tax Fraud (5 November 2020).

The change now excludes from the concept of EBITDA, on which the 30% limit is calculated, expenses or income that have not been included in the taxable base of the CIT (e.g. qualifying exempt dividends, capital gains or income derived from permanent establishments). Accordingly, the amount of the interest deduction will be lower in cases where the company receives exempt income. The limitation shall not apply to the deductibility of financial expenses of credit institutions, insurance companies and certain asset securitization funds.

Non-resident income tax

The implementation of the EU Tax Dispute Resolution Directive (2017/1852) (the Directive) is completed. The new Law clarifies that (i) the agreement reached within the scope of the Directive shall apply regardless of the time limits provided for in domestic law, and (ii) members of the advisory commission or of the alternative resolution commission shall be considered as authorities for the purposes of the legal liabilities for breach of the duty of confidentiality that may arise under Spanish law.

For prior coverage *see* Government Approves Mutual Agreement Procedure Regulations (18 June 2021) and Implementation of directive on tax dispute resolution mechanisms in European Union – Royal Decree gazetted (10 February 2020).

The new Law was approved by Law 13/2023, of 24 May 2023, which was published in the Spanish Official Gazette on 25 May 2023, available here (as a PDF and in Spanish only). The amendments, unless otherwise established, entered into force on 26 May 2023.
