Updates to the 2023 corporate income tax return

Tax Alert

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Publication of the CIT and NRIT return forms for 2023

Ministry of Finance Order HAC/495/2024, approving the corporate income tax (CIT) and non-resident income tax (NRIT) return forms and related payment or refund documents for tax periods commenced between 1 January and 31 December 2023 has been published in the Official State Gazette (BOE).

The above Order publishes **tax form 200**: **CIT and NRIT return** and **tax form 220: CIT return - Tax consolidation regime for tax groups** and sets out the instructions regarding the filing and payment procedure as well as the requirements for electronic filing. Broadly speaking, the Order will enter into force on 1 July 2024.

As usual, the tax returns have been published along with the forms to be used to report additional information on:

- Adjustments to and deductions from the income statement involving amounts equal to or exceeding Euros 50,000 (Appendix III).
- Discounts in social security contributions for research personnel (Appendix IV).
- The Canary Islands investment reserve (Appendix V).
- The Balearic Islands investment reserve (a new form, included in Appendix VI).

CIT returns (forms 200 and 220) must be filed within 25 calendar days of the end of the six-month period following the conclusion of the tax period.

These forms reflect the recent legislative changes affecting the 2023 tax period, although they do not include a section relating to the new rectifying self-assessment procedure. CIT will therefore continue to be subject to the traditional procedure consisting of a supplementary self-assessment and request for rectification of the self-assessment, as appropriate.

Main legislative changes affecting tax periods commenced in 2023

We set out below some of the changes introduced to forms 200 and 220 in light of the amendments to CIT in 2023:

- **Effects of Constitutional Court Judgment 11/2024** of **18 January 2024**.

  This Constitutional Court (CC) Judgment declared certain provisions of Royal Decree-Law 3/2016 of 2 December 2016, introducing relevant CIT measures with effect from 2016 ("RD-Law 3/2016" or the "RDL"), to be unconstitutional. Specifically, the CC declared the following to be unconstitutional and ineffective:

  - The automatic reversal, in five equal amounts (between 2016 and 2020), of impairment losses on holdings that had been treated as CIT deductible under the above RDL.
  - The increase in the limit on the offset of tax losses and double taxation credits for entities or tax groups with revenues exceeding Euros 20 million.

    As a result of Judgment 11/2024, the increased limits on the offset of tax losses and tax credits for the avoidance of domestic and international double taxation introduced by RD-Law 3/2016 will not apply in the self-assessment for 2023.

- **New cases of unrestricted and accelerated depreciation**.

  A new scenario has been introduced for the unrestricted depreciation of investments in facilities that use renewable energies and replace other installations powered by non-renewable energy from fossil fuels. To qualify for the incentive, the relevant facilities must have been made available to the taxpayer as of 20 October 2022 and entered into operation in 2023. (RD-Law 18/2022).

  Elsewhere, the General State Budget Law for 2023 ("GSBL") provides for the possibility of applying **accelerated depreciation** to certain vehicles earmarked for economic activities and used for the first time in tax periods commencing in 2023, 2024 or 2025.

  Finally, effective 30 June 2023, the Royal Decree-Law 5/2023 extended the list of scenarios in which accelerated depreciation may be applied to include **investments in new electric vehicle charging stations** earmarked for economic activities and used for the first time in tax periods commencing in 2023, 2024 or 2025.

- **Reduced tax rates.**

  The Start-ups Law provides for a reduced tax rate of **15%** -rather than 25%- during the first tax period in which "start-ups" generate taxable income and in the following three tax periods, provided they continue to qualify as start-ups.

  Meanwhile, the GSBL for 2023 approved a reduced tax rate of **23%** for entities with revenues of less than Euros 1 million in the immediately preceding year.

  Both measures specify that the reduced tax rates will not apply to asset-holding companies.

- **New special tax regime for the Balearic Islands.**

  A new special tax regime for the Balearic Islands has been introduced for tax periods commencing between 1.1.2023 and 31.12.2028. It includes two measures:

  - **A reserve for investments in the Balearic Islands**, which will entitle taxpayers to reduce their CIT base.

  - **A special regime for industrial, agricultural, livestock and fishing companies**. Specifically, a 10% reduction is established for the portion of the gross tax payable that corresponds to income from the sale of tangible assets produced in the Balearic Islands in agricultural, livestock, industrial and fishing activities.

  The draft regulations implementing this special regime were published in March 2024 and are currently being processed. They are expected to be approved and published as a Royal Decree before corporate income tax returns are due to be filed.

- **Amendment of the Canary Islands Special Zone ("CISZ") regime.**

  The Canary Islands Special Zone regime has been amended for the purposes of determining the portion of the tax base of CISZ companies that is obtained from operations materially and effectively carried out within the geographic area of the CISZ to which the special 4% tax rate applies.

- **Temporary levies on energy and on credit and financial credit institutions**.

  Law 38/2022 created temporary levies on energy and on credit and financial credit institutions, formally establishing them as non-tax contributions for public purposes, which are not considered tax-deductible expenses for the purposes of determining the corporate income tax base.

- **Restriction on the offset of tax losses under the consolidated corporate income tax regime**.

  This is a temporary measure which is currently only applicable to years commencing in 2023 and which restricts the offset of tax losses incurred by the individual entities of tax groups in 2023, so that only 50% of such losses may be taken into consideration.

  The group tax base for 2023 must thus be calculated by aggregating the individual tax bases of the entities comprising it, and including: (i) 100% of taxable income and (ii) only 50% of tax losses.

  The amount not offset in 2023 as a result of this measure will be included in the group's tax base in ten equal amounts over the following ten tax periods, even if the entity that incurred such tax losses leaves the tax group.

  This system of including the tax losses in equal amounts over the course of ten years will not apply in the event of break-up of the tax group or forfeiture of tax group status, in which case any tax losses still available for offset must be included in the tax group's tax base in the last tax period in which the group is taxed under the consolidated regime.

  Note that Amendment 196 (presented by the Socialist Group) to the Draft Law deriving from RD-Law 8/2023, currently on its passage through parliament, proposes that this measure be extended to tax periods beginning in 2024.

- **Amendment of tax incentives for the cultural sector.**

  Effective for tax periods commencing as of 1 January 2023, significant improvements have been introduced to the tax credits for investments in Spanish productions (regulated in article 36.1 of the CIT Law) and investments in international productions (regulated in article 36.2 of the CIT Law).

  The maximum limit for the tax credits for both Spanish and international productions has been increased to Euros 20 million (from Euros 10 million under the former legislation) and Euros 10 million in the case of audiovisual series, for which the limit is determined based on the number of episodes produced.

  In the case of foreign film productions, the limit of Euros 100 thousand on the expenses of creative personnel eligible for inclusion in the tax credit base has been eliminated.

- **Other developments:**

  Non-cooperative jurisdictions

  The list of countries and territories considered non-cooperative jurisdictions, as provided for in article 1 of Royal Decree 1080/1991 of 5 July 1991, has been updated (and is now set out in Ministry of Finance and Civil Service Order HFP/115/2023).

  Identity of the beneficial owner of entities

  Law 13/2023 introduces a requirement on legal persons or entities to notify the tax authorities of the identity of their beneficial owners.

  Direct debit

  Ministry of Finance and Civil Service Order HFP/387/2023 provides for payment by means of direct debit where the account designated by the taxpayer for this purpose is held at an institution that does not hold collaborating institution status, provided the institution is included within the Single Euro Payments Area.

Main changes to forms 200 and 220

The most noteworthy changes to the corporate income tax return forms are as follows:

- **Form 200**

❖ New **options are included on page 1 of form 200**. Specifically:

  - **Members of economic interest groupings and temporary joint ventures.**

    A new option (00089) is available on page 1 of form 200 for indicating that the form concerns a member of an economic interest grouping (EIG) or unincorporated joint venture ("UTE" for its Spanish acronym).

    Changes have also been introduced to the table provided for completing the details of the special regime applicable to EIGs and UTEs.

    Completion of the details in the table on page 24 bis is voluntary for this tax period.

  - **Up-front investments in the reserve for investments in the Balearic Islands (box 0087).**

  - **Balearic Islands special regime (box 00086).**

  - **Reduced tax rate** of 23% for entities with revenues of less than Euros 1 million in the immediately preceding tax period (box 00088), and 15% for start-ups (box 00083).

❖ **Identity of beneficial owner**

  A new section F. **Identity of the beneficial owner of the entity** has been included on page 2 bis of form 200 where corporate taxpayers are to enter the particulars of their natural person beneficial owners.

❖ **Revenues for the twelve months prior to the date of commencement of the tax period.**

  The **table for reporting revenues** for the twelve months preceding the commencement of the tax period has been amended. It is now only necessary to indicate whether the entity has revenues of less than, or at least, Euros 20 million.

  In the case of cooperating entities, the requirement to include additional information continues to apply where they have revenues of at least Euros 20 million.

❖ **Adjustments to accounting income/loss**

The following changes have been made to the table for reporting the adjustments to accounting income/loss in the income statement (page 13):

✓ New boxes 00093 (increase) and 002971 (increase) have been created so that the **temporary levy on energy and on credit and financial credit institutions** may be included as a non-deductible expense.

✓ The description of boxes 00309 (increase) and 00310 (reduction) has been extended to include the adjustment to accounting income/loss for, inter alia, the new **unrestricted depreciation** scenario in respect of investments in facilities that use energy from renewable sources.

✓ Boxes 00775 (increase) and 00776 (reduction) have been created for adjustments to accounting income/loss arising from the **accelerated depreciation** regime for certain vehicles and new charging stations.

✓ **As regards the special regime for the Balearic Islands**, new boxes 00778 (increase) and 00813 (reduction) have been created for adjustments to accounting income/loss arising from the reserve for investments in the Balearic Islands (RIB).

Page 22 bis of form 200 includes a new table for including the details of the RIB for 2023, the amount provisioned with a charge to profit for 2023 and up-front investments.

New box 00815 on page 14, relating to the reduction for income obtained from the sale of tangible assets in the Balearic Islands.

❖ **New form (Appendix VI)**

A new form has been published in respect of the reserve for investments in the Balearic Islands, with information on the materialisation of up-front investments and the relevant financing system. This must be filed prior to the CIT return for the tax period in which the investments are made.

➢ **Form 222**

❖ New boxes are added to form 222 to enable taxpayers to record the 50% of individual tax losses not included in the group.

❖ The relevant boxes regarding the special regime for the Balearic Islands are also included.

Filing method

Taxpayers are required to file their self-assessments **online** using a recognised electronic certificate (article 2.a) of Ministry of Finance and Public Administrations Order HAP/2194/2013).

Filing deadline

As regards the deadline for filing the return:

- For entities whose tax period coincides with the calendar year, the filing period will generally run from 1 July until 25 July 2024, inclusive unless the taxpayer opts for payment by direct debit, in which case the deadline will be 22 July 2024.

  However, where the deadline falls on a non-business day (i.e. on a Saturday, Sunday or public holiday), the deadline is carried over to the next business day.

  25 July 2024 is a public holiday in Cantabria, Galicia, Madrid, Navarre and the Basque Country. Consequently, the deadline for filing the 2023 CIT return in these autonomous regions is extended until Friday, 26 July 2024.

- Entities in all other regions must file their returns within 25 calendar days of the end of the six-month period immediately following the conclusion of the tax period.

Taxpayers whose filing period began prior to the entry into force of this Order must file their returns within 25 calendar days of its effective date, unless they have opted to file their returns using the forms referred to in Ministry of Finance and Civil Service Order HFP/523/2023 of 22 May 2023, approving forms 200 and 220 applicable to tax periods commencing between 1 January and 31 December 2022, in which case they must file their returns within 25 calendar days of the end of the six-month period immediately following the conclusion of the tax period.

Form 220 is to be filed within the filing period established for the individual tax return of the tax group's representative or parent.

Lastly, it should be noted that the Order prescribes a specific deadline for permanent establishments and entities subject to the attribution of income regime incorporated abroad and operating in Spain (article 6.2 of the Order).

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