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Spain – Taxation of Real Estate Capital Gain and Treaty Developments

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This *Flash International Executive Alert* highlights the following recent tax-related developments in Spain: (1) new tax-related incentives for the purchase of certain real estate and (2) changes to the tax treaty between Spain and Argentina. These developments may impact globally mobile employees in/from Spain and their multinational employers.

Royal Decree 18/2012

Royal Decree-Law 18/2012 was promulgated in Spain on 12 May 2012.[1] The statute affects several taxes (i.e., IRPF - the Personal Income Tax; IRNR - the Nonresidents Income Tax; and IS - the Corporate Tax).

Below we will focus on those measures impacting individuals.

Personal Income Tax

A new 37th Additional Provision to the Personal Income Tax Law ((PIT Law) Law 35/2006) has been introduced which is intended to stimulate the real estate market. It allows for a 50-percent tax exemption on the capital gain that arises following the sale of an urban property, as defined, that has been purchased between 12 May 2012 and 31 December 2012.

This exemption will not apply if the property is transferred to or acquired from a spouse, nor to/from any "blood" or "affinity" relative up to the second degree[2], nor to/from any entity in which the taxpayer or any of the aforementioned persons have an interest or direct control according to the provisions set out in article 42 of the Commercial Code.

In addition, when a property acquired between 12 May 2012 and 31 December 2012 constitutes the "habitual abode" of the taxpayer and it is subsequently sold, the 50-percent tax exemption may be taken concurrent with the exemption stated in article 38 of the PIT Law that provides an exemption for amounts (re)invested for purposes of acquiring a new habitual abode. For example, on 15 May 2012 Jose purchased a property that serves as his habitual abode for EUR 100,000. Four years later, Jose sells the property for EUR 200,000. Jose would have a EUR 100,000 capital gain. One month later, Jose purchases a new habitual abode for EUR 120,000, so Jose reinvests 60 percent of the EUR 200,000 in the purchase of his new habitual abode. Consequently, according to the exemption stated in article 38 of the PIT Law, 60 percent of the capital gain (i.e., EUR 60,000) will be not subject to taxation. And the capital gain exceeding the exempt amount (i.e., EUR 40,000) will be eligible for a 50-percent exemption from tax based on the above-mentioned 37th Additional Provision to the PIT Law, therefore EUR 20,000 will be exempt – the amount of capital gain that exceeds the reinvested amount thus is eligible for the 50-percent exemption.

Nonresident Income Tax

A new 3rd Additional Provision to the Nonresidents Income Tax Law (Royal Decree Law 5/2004) has been added that sets a 50-percent exemption on the capital gain obtained by taxpayers with no permanent establishment (PE) in Spain on the sale of real estate assets located in Spain that were acquired from 12 May 2012 to 31 December 2012.

As with the PIT Law, this exemption will not apply if the property is transmitted or acquired to/from a spouse, nor to/from any blood or affinity relative up to the second degree, as specified, nor to/from any entity in which the taxpayer or any of the aforementioned persons have an interest or direct control according to the provisions set out in article 42 of the Commercial Code.

Argentina Breaks with Spain Tax Agreement Avoiding Double Taxation

Argentina formally notified Spain at the end of June that it would terminate the double taxation treaty between Spain and Argentina (signed in 1992). The notification was published in Argentina`s official gazette (Boletín Oficial de la República Argentina) on 13 July 2012.

Generally, speaking, the termination of the treaty will make it more burdensome and raise costs for cross-border business. Among other consequences of this action, withholding tax on royalty and technical assistance payments as well as on cross-border interest payments will rise. In addition, there will no longer be relief from Argentina's wealth tax (a provision for relief was part of the treaty).

The termination of the treaty will enter into force on 1 January 2013.

Footnotes:

1 Real Decreto-ley 18/2012, *de 11 de mayo, sobre saneamiento y venta de los activos inmobiliarios del sector financiero*. See (in Spanish) *Boletín Oficial del Estado*, núm. 114 de 12 de mayo de 2012, at: http://www.boe.es/boe/dias/2012/05/12/pdfs/BOE-A-2012-6280.pdf .

2 A second-degree relative is defined as a blood relative that includes the person's grandparents, grandchildren, aunts, uncles, nephews, nieces, or half-siblings.

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