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## flash Alert

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### Spain – Tax Reform Law Enacted, with Many Changes to Taxation of Individuals

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After several months of debate and parliamentary discussions, Spain's tax reform law has been promulgated. The Law contains noteworthy changes affecting assignees to Spain and nonresidents in Spain. There are important amendments to the withholding tax regime, the impatriate tax regime, the Nonresident Income Tax, the Personal Income Tax, and the taxation of savings and capital gains. (We previously reported on the legislation, prior to its passage, in [Flash International Executive Alert 2014-089](#), 22 September 2014).)

The Law, *Ley 26/2014*, was published on 28 November 2014, in the *Boletín Oficial del Estado*, the country's official gazette.<sup>1</sup>

#### Why This Matters

The reforms introduced bring important changes for the taxation of earned income and the taxation of savings income and capital gains of individuals. The new rules for the impatriate tax regime will bring important changes to the taxation of assignees to Spain and will require analysis and careful planning in order to determine an assignee's eligibility (and liability) under the new rules.

Although the principle intentions of the legislation were to streamline and simplify Spain's tax rules and to reduce the effective burden of taxation, it is important to note that the reforms include modifications that on the whole offer a mixed bag of restrictions, scope broadening, increases, and reductions. The specific impact will depend on each taxpayer's particular set of circumstances. In those cases where an assignee's tax burden increases, the employer's international assignment-related costs could rise accordingly.

As a consequence, the changes introduced by the Law should be carefully analyzed to determine on a case-by-case basis their impact on an assignee and his or her employer.

The final version of the Law is not much changed from the initial draft proposed by the government (for prior coverage, see [Flash International Executive Alert 2014-089](#), 22 September 2014). However, the legislation as finally approved contains some modifications – a consequence of the discussions and proposals of the different political groups in parliament.

#### "Impatriate" Tax Regime (for Workers Seconded to Spanish Territory)

- According to the new rules, the requirement for the work to be carried out in Spain in order for the workers' earned income to be subject to tax in Spain is eliminated. In other words, in order to avail of the regime, the assignment does not need to be physically carried out in Spain.
- From 1 January 2015, all employment income obtained by the taxpayer will be considered as Spanish source income, irrespective of the place it is generated. However, other non-Spanish source income (that is, income which is not "employment income") will continue to fall outside the scope of Spanish taxation.

- The regime can be applied to board of directors members of an entity provided that the director has no holding in nor is deemed related to such entity (i.e., a non-asset-participating director). The new wording expressly extends the application to these type of taxpayers.
- Professional sports-persons are now excluded from applying the regime.
- The impatriate tax regime can apply to any taxpayer meeting the regime's requirements for participation irrespective of the kind of income obtained by the taxpayer. However, if that income exceeds EUR 600,000, taxation will be due at 45 percent (a rate of 24 percent applies if income does not exceed EUR 600,000). Currently, individuals with income in excess of EUR 600,000 cannot apply this tax regime.
- A new tax scale is introduced for any savings income obtained under this regime. As of 1 January 2015, investment income will be taxed at 19 percent up to EUR 6,000, at 21 percent from EUR 6,000 up to EUR 50,000, and at 23 percent on the amounts exceeding EUR 50,000.
- Special arrangements are available for those workers who opted for the regime before 1 January 2015 – a transitional regime might be applicable.

### **Nonresident Income Tax (NRIT)**

The new Law's changes to NRIT are designed to align Spanish regulations with European Union (EU) rules, to adapt the NRIT to changes introduced to Spain's Personal Income Tax, and to bring greater clarity.

As a rule, nonresident individuals and corporate entities are subject to NRIT only for income obtained in Spain. The main amendments introduced to the Nonresident Income Tax Law are set to take effect as of 1 January 2015.

- The NRIT will apply a general tax rate of 24 percent for nonresidents without a permanent establishment (PE) in Spain.
- Residents of the EU or an European Economic Area (EEA) member state, however, with which an effective exchange of tax information agreement is in force will be subject to a tax rate of 20 percent in 2015 and of 19 percent in 2016, provided that there is no other 'special' tax rate that applies.
- The tax rate imposed on dividends, interest, and capital gains obtained by nonresidents will be 20 percent in 2015 and 19 percent in 2016.
- The exemption applicable on the first EUR 1,500 of dividends received by recipients that are nonresident in Spain is eliminated.
- Rules for the assessment of the capital gains allocated to taxpayers resident in a member state of the EEA with which an effective exchange of tax information arrangement exists are now aligned with those applicable to Spanish resident taxpayers, provided they do not operate through a PE in Spain.
- Capital gains obtained by nonresidents in Spain who are resident in an EU/EEA country arising on the transfer of what was their main residence in Spain are now exempt provided that the amount obtained on the transfer is reinvested in the acquisition of a new main residence.

## Personal Tax Rates/Thresholds

- New tax scales are to be applied under the Personal Income Tax system. The new tax scales will be composed of five tax brackets (rather than the current seven) and lower rates will apply.
- Tax rates are lowered for 2015, ranging from a minimum marginal rate set at 20 percent for income up to EUR 12,450 (currently 24.75 percent) and 19 percent in 2016, to a maximum rate of 47 percent for income exceeding EUR 60,000 (currently set at 52 percent on income above EUR 300,000), and 45 percent in 2016.

In any case, the final tax rate applicable will depend on the taxpayer's Autonomous Territory of residence. These territories are entitled to establish their own tax scales, which could effectively raise the final tax rate applicable.

## Savings Income

A new tax scale composed of three brackets is introduced for the taxation of savings income.

Up to EUR	2015 rate	2016 rate
Up to 6,000	20% (currently 21%)	19%
6,000 to 50,000	22% (currently 25%*)	21%
50,000 or more	24% (currently 27%†)	23%

\* The 25% rate is currently applied from EUR 6,000 up to a tax base of EUR 24,000.

† The 27% rate is currently applied from a tax base of EUR 24,000.

This applies to bank interest, dividends, interest arising on life insurance policies, etc.

## Savings Income and Financial Taxation

- The EUR 1,500 / year dividend exemption is eliminated. All dividends received, therefore, will be taxable as of 1 January 2015.
- From 1 January 2015, capital gains and losses will be taxed according to the new rates approved for savings income, as described above, with no consideration as to the holding period. Please note that, currently, capital gains are subject to different tax rates depending on the holding period (maximum rate of 56 percent if held for less than a year).
- The transitional regime of "taper relief coefficients" applied to capital gains on assets not used for economic activities acquired prior to 31 December 1994 and transferred after 31 December 1996 is kept; although it is substantially modified. New changes maintain the application of the taper relief coefficients on a maximum amount of EUR 400,000, which must be assessed on the basis of the total value of the assets transferred and not on the capital gain obtained. This threshold will be used on an aggregate basis (over the life of all life transfers of the taxpayer) until the said amount is reached, then it disappears.
- In determining capital gains or loss of the asset/property, the acquisition cost is indexed by means of a coefficient which is published annually by the budget law, based on the year of acquisition. The annual updates have taken on board movements in the inflation rate. Those coefficients are to be eliminated as from 1 January 2015.

- From 1 January, capital gains and losses are permitted to be offset against investment income, along the lines of the new rules that apply to savings income. Offsets are capped at 10 percent for 2015, then at 15 percent in 2016, and 20 percent in 2017.
- A new exit tax is imposed on the unrealized gains arising on shares held or holdings in collective investment undertakings provided that the taxpayer ceases to be a tax resident of Spain. This new exit tax will only be triggered when the value of the holding exceeds EUR 4,000,000 (or EUR 1,000,000, if the holding represents more than 25 percent). However, special provisions are introduced for temporary secondments (in principle up to five years) for employment purposes, and for secondments to an EU/EEA country or to a country with which a double taxation treaty having an exchange of information clause is in force.
- Any capital gain obtained by taxpayers older than 65 will be exempt from taxation provided that the said gain is used to create an insured life annuity within the six months following the acquisition of said gain.
- Income generated from a new "*Long Term Savings Scheme*" will be exempt from taxation provided that it is accrued on bank accounts or individual insurance policies – with a guarantee of at least 85 percent of the capital deposited. However, to benefit from the exemption, investments in the scheme are limited to EUR 5,000 per year.
- Withholding tax rates applicable on investment income and capital gains are reduced to 20 percent for 2015 and to 19 percent for 2016.
- The transfer of preferential subscription rights in respect of shares will be considered as giving rise to capital gains and will be subject therefore to taxation on the value of the disposal (as of 2017 tax year).

### **Voluntary Disclosure of Non-Declared Overseas Public Pension Income**

There is a new voluntary disclosure regime through which Spanish tax residents can declare their non-declared foreign public pension income of the last four years, with no penalties or any surcharges for late payments.

Tax years open to regularization are 2010 to 2013, as previous years are already statute-barred for Spanish tax purposes. The program is officially approved and will be available until 30 June 2015.

#### **KPMG Note**

Many Spanish tax residents (whether Spanish nationals or foreign nationals) may have inadvertently failed to declare their foreign pension income in their tax returns. This new regime will permit them to regularize their tax affairs with impunity. In addition, taxpayers who had taken steps before this Law took effect to regularize their affairs concerning the reporting/declaration of undisclosed income, may see their late filing surcharges refunded to them.

## Work-Related Compensation/Income and Income from Economic Activities

- Severance payments are now tax exempt up to a new limit of EUR 180,000.
- Granting of share awards to employees remains tax-free to the employee up to a threshold of EUR 12,000, provided that the perquisite is offered according to the same conditions to all of the grantor's employees.
- Earned income accrued over more than two years or on an irregular basis enjoys an exemption of 30 percent (previously 40 percent). The annual EUR 300,000 limit and the limit for severance exceeding EUR 1,000,000 do not change.
- Tax treatment of pension plans has been modified accordingly:
  - Financial limits on contributions to private pension plans with favorable tax treatment have been reduced and unified. The tax-advantaged contributions are now limited to the lowest of the following:
    - i. EUR 8,000 per year (previous limit was set at EUR 10,000 as a rule, EUR 12,500 if the individual was over 55 years), or
    - ii. 30 percent of net employment or business income.
  - The amount of tax-exempt pension contributions on behalf of spouses deemed as low-income taxpayers (i.e., earned income or income from economic activities lower than EUR 8,000) has been increased to EUR 2,500 (previously EUR 2,000).
  - The tax exempt limit of contributions to cover private nursing care insurance premiums has been cut from EUR 10,000 to EUR 8,000.

## Withholdings

New withholding percentages are established for employment income as follows:

- Directors will be subject to withholding taxes of 37 percent in 2015 and 35 percent in 2016. However, withholding is to be applied at a rate of 19 percent in the case of companies with a turnover (value representing total sales) of less than EUR 100,000.
- Liberal professions (e.g., teachers, doctors, notaries, pharmacists, journalists, lawyers, etc.) will be subject to withholding tax at a rate of 19 percent in 2015 and 18 percent in 2016, or 15 percent for income of less than EUR 15,000, if it represents more than 75 percent of the total employment or business income of the year.

## Reduction for Income from Residential Leases

As of 1 January 2015, there will be only a single tax-exempt amount for any kind of rental income. The reduction applicable on the rental income from residential properties is set at 60 percent.

## Wealth Tax

Separate from the *Ley 26/2014*, the draft of the annual Budget Law envisages the extension of the application of the Wealth Tax to the 2015 tax year (the draft Budget Law has not yet been officially passed).

## Other Taxes

Please note that the tax reform has introduced other changes to Spain's tax system (i.e., to Corporate Income Tax, Value Added Tax, etc.) which are beyond the scope of this article.

### Footnote:

1 Please see, *Ley 26/2014, de 27 de noviembre, por la que se modifican la Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas, el texto refundido de la Ley del Impuesto sobre la Renta de no Residentes, aprobado por el Real Decreto Legislativo 5/2004, de 5 de marzo, y otras normas tributarias*, at: <http://www.boe.es/boe/dias/2014/11/28/pdfs/BOE-A-2014-12327.pdf> .

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The information contained in this newsletter was submitted by the KPMG International member firm in Spain. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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