Tax law developments in progress

Tax Alert

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On November 21, the Spanish Parliament's Lower House approved the Draft Law establishing a top-up tax for multinational enterprise groups and large-scale domestic groups, with 178 votes in favour and 171 against. This draft law has been expanded to include additional tax measures and has been renamed as follows:

"Draft Law establishing a **top-up tax** for multinational enterprise groups and large-scale domestic groups, a tax on the net interest and commission income of certain **financial institutions** and an excise duty on liquids for **e-cigarettes** and other **tobacco-related** products, and amending other tax laws".

During its passage through the Lower House, several amendments were introduced to the original text published on June 14, 2024, in the Official Gazette of the Spanish Parliament (link). Key developments include:

- **Committee Amendments:** On November 19, the Finance and Civil Service Committee approved several amendments, including compromise proposals.

- **Plenary Session Updates**: On November 21, additional amendments and technical corrections were incorporated during the plenary session.

The updated draft will now proceed to the Upper House for review. Below is a summary of the most relevant legislative developments, with certain measures set to take effect in 2024 and others in 2025.

Measures announced in recent days, such as the elimination of the REIT regime (Real Estate Investment Trust), the new tax on large inheritances, the new environmental solidarity tax on luxury goods, the elimination of the exemption from the tax on insurance premiums for health insurance and the increase in the hydrocarbons tax to align the price of diesel with petrol price, inter alia, are not included. The tax on energy is likewise excluded, although a commitment to implement it in separate legislation has emerged.

New domestic top-up tax, with amendments with respect to the Preliminary Draft

The main purpose of the Draft Law is to introduce into Spanish law the minimum domestic tax for large-scale multinational enterprise groups and domestic groups with revenues exceeding Euros 750 million. Aside from other, more technical changes to this tax, particularly salient among the amendments included in the Draft Law are:

- In the case of a tax inspection, the only taxable person affected will be the "substitute" taxpayer. The GTL is amended to the effect that tax inspection proceedings in relation to this tax may last up to 27 months (the duration already applicable to large companies and tax groups).

- Both the Spanish General Chart of Accounts and standards for the preparation of consolidated annual accounts are amended with regard to the recognition for accounting purposes of the minimum tax and the related information to be included in the annual accounts.

Amendments to corporate income tax ("CIT")

With respect to CIT, the following amendments are included:

- The measures first introduced under Royal Decree-Law 3/2016 are reinstated, subject to certain changes, for financial years commencing as of 1 January 2024:

  - The limits on the offset of **NOLs** are increased (the limits of 50% for entities with revenues of between Euros 20 million and 60 million and 25% for entities with revenues exceeding Euros 60 million, are reinstated, to replace the general limit of 70%).

  - New limits are introduced on the use of the **tax credit for double taxation** (applicable to entities with revenues exceeding Euros 20 million).

  - **Impairment losses** on holdings that were tax deductible prior to 1 January 2013 must be included in equal parts over at least the next three tax periods commencing as of 2024. In such cases, application of the increased limits to the offset of NOLs may be excluded in order to apply the general limit of 70%, in respect of NOLs dating back earlier than 2021. This measure will apply to taxpayers that have requested the rectification of their self-assessments for the fiscal years between 2016 and 2020.

- The 50% limit on the offset of individual tax losses incurred by the entities forming part of a tax consolidation group is extended to 2024 and 2025, with any adjustments to be reversed on a straight-line basis over the subsequent ten years.

- Effective for tax periods commencing on or after 1 January 2025, the capitalisation reserve will be increased from 15% to 20% - or up to a maximum of 30%, subject to an increase in the taxpayer's workforce.

  The maximum limit on the reduction of preliminary tax payable by the amounts allocated to the capitalisation reserve is increased from 10% to 20% (and 25% in the case of micro-enterprises).

- For years commencing on or after 1 January 2025, new reduced tax rates are envisaged for entities with revenues of less than Euros 1 million, starting at 17% (for the first Euros 50,000 of taxable income) and increasing to 20% for the remainder, as well as for small companies, albeit subject to a transitional regime.

  The minimum net tax payable under article 30 bis is amended accordingly, to adapt it to the new tax rates.

Amendments to personal income tax ("PIT")

The following amendments are included in relation to PIT:

- The tax rate applicable to savings income exceeding €300,000 is increased.

- The channel for processing refunds derived from contributions to mutual funds is modified.

- PIT reductions are established for both earned income and income from economic activities obtained in exceptional circumstances from artistic activities.

- Personal income tax credits for energy efficiency improvement works approved by the competent institutions of the Basque Country, per the provisions of the Economic Agreement, are deemed to be included in Component 2 "Housing rehabilitation and urban regeneration plan" of the Spanish Recovery, Transformation and Resilience Plan, provided they comply with the requirements and conditions established in the Plan itself and the Community regulatory framework to which it is subject.

Amendments to VAT

The following amendments are proposed in relation to VAT:

- Changes to VAT legislation are included to prevent fraud in the oil and gas sector.

- There is to be a push for amendment of the VAT Directive to make short-term rentals of residential properties in over-saturated areas subject to VAT, thereby implicating digital platforms. The Directive will be transposed as a matter of urgency.

- A public solution for the electronic invoicing obligation is to be developed.

Excise duties

A number of changes and a new tax are proposed in the field of excise duties:

- An "excise duty on liquids for e-cigarettes and vapers, nicotine pouches, and other nicotine products" is created.

- Changes to the tax on hydrocarbons are proposed, to tackle the "designer fuels" fraud in the oil and gas industry.

- Provision is also made for an increase in the excise duty on tobacco products.

New tax on financial institutions

For tax periods beginning on or after 1 January 2024, a new tax on the net interest and commission income of certain financial institutions is introduced to replace the temporary levy on credit and financial credit institutions.

This tax will be levied on the net interest and commission income of certain financial institutions, including foreign branches and financial credit establishments. The definitive text has yet to be published.

For the time being, the regulation of a possible tax on energy companies or the extension of the energy levy is not included in this regulatory package, although such matters are expected to be regulated in separate legislation.

Other measures approved

- Amendments to the Canary Islands' Reserve for Investments (RIC) to allow its use in subsidized housing projects for rental.

- The employer contribution for hiring in not-for-profit non-professional sports organisations is reduced.

- Updates to the General Social Security Law on disability benefits and employment compatibility.

Next steps

The Draft Law now moves to the Upper House for a 20-day urgent review. If no amendments are introduced, it will be published in the Official State Gazette. Otherwise, it will return to the Lower House for final approval.

Further amendments or adjustments are likely to be made in this phase before its enactment as a law and publication in the Official State Gazette.

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