

# Newsflash

## EU Direct Tax Group

NF 2009 / 035



19 October 2009

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*The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.*

### Spanish Government submits formal proposal to align legislation on EU pension funds, calculation of taxable base of non-residents without a PE with EC law by 1 January 2010

On 9 October 2009, the Spanish Government submitted a Bill to parliament relating to some adaptations of the Spanish income tax legislation to EC Law, including the treatment of non resident EU based pension funds and the calculation of the taxable base of non residents without a PE in Spain. The Bill will normally enter into force on 1 January 2010.

The government Bill sets out a tax exemption on dividends distributed by Spanish entities to foreign EU pension funds (equivalent to pension funds formed under domestic law and under EU Directive 2003/41/EC, also known as the IORPs Directive, subject to certain conditions) or to PEs of said pension funds located in another EU Member State. The measure aims to end Spain's discriminatory taxation against foreign EU based pension funds in Spain. However, it should be noted that the Bill does not cover dividends distributed to EEA countries nor does it cover third countries.

This is a welcome new development, as the European Commission had referred Spain already to the ECJ in November 2008 for its non-compliance with EC Law in this respect. The Commission's action was based on a joint complaint filed by EFRP and PwC with the Commission in 2005 against Spain and a number of other EU Member States. EU Pension funds which have filed "protective" refund claims in Spain in a timely and correct manner should be affected positively by this change of legislation. To safeguard their rights for previous years and for the future, EU pension funds could consider filing protective refund requests in line with local statutory time limits. The same applies to non resident EEA and also third country pension funds in Spain, as the Commission will probably continue the procedure or start a new one against Spain regarding EEA and third country based pension funds.

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Regarding the changes to the calculation of the taxable base of non residents without a PE in Spain, at the moment, in Spain the non residents are taxed on a gross basis, without deduction of expenses. The modification of the rules aims to tax said income on a net basis (income less expenses) as if they were tax residents in Spain rather than on a gross basis. The deductibility of said expenses will be allowed to the extent that the taxpayer produces evidence that they are directly related to the income realised in Spain and that there is an underlying direct economic connection between such expenses and the activity carried out in Spain, provided that those non residents are residents of an EU Member State. This bill constitutes a relevant issue for EU non residents who might obtain income in Spain (e.g. royalties or others) as their final tax liability will improve.

For more detailed information, please do not hesitate to contact your local PwC contact person or a member of the EUDTG.

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