Spain enacts significant corporate tax changes

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In brief

The Spanish government, on September 27 and October 29, 2013, passed Laws 14/2013 and 16/2013, respectively, in an effort to support entrepreneurs and encourage economic activity. Among other measures, the laws renew the 'patent box' regime and restrict the impairment deduction for shareholding in other companies.

This newsalert summarizes the measures most relevant to US multinational corporations (MNCs).

In detail

Patent box regime

The new legislation increases the tax exemption for licensing qualifying intangible assets from 50% to 60% of the amount received. However, the 60% reduction now will be calculated on income net of related expenses; in contrast, the prior 50% exemption was calculated on gross licensing income. To qualify for the 60% reduction, MNCs generally must meet the following requirements:

- the licensor must develop at least 25% of the asset
- if the licensee is a related party, the payment for the use of the intangible cannot constitute a deductible expense for the licensor
- the licensee cannot reside in a tax haven.

One taxpayer-favorable change: the removal of a limitation on the benefits available when the prior year's income arising from the intangible exceeded six times the cost associated with its creation.

To achieve certainty, MNCs may wish to obtain an APA from the Spanish tax authorities that clarifies the amount of income and related expenses subject to the reduction. Companies also can confirm with the authorities whether a licensed asset qualifies for the regime.

These changes will apply to intangible license agreements signed on or after September 29, 2013.

Nondeductibility of impairment in other companies or losses of PEs

For tax years that begin on or after January1, 2013, MNCs may no longer deduct for tax purposes the impairment of investments held in other entities.

In addition, permanent establishment (PE) losses will not be deductible at the level of the Spanish 'head office' company except when the losses arise from the transfer or cessation of the PE's activity.

Extension of temporary measures

To increase corporate income tax revenue, Spain extended to tax years 2014 and 2015 some tax measures initially introduced for tax years 2012 and 2013. These include:

- Minimum installment payments:
  - 25% of the income qualifying for the participation exemption regime must be included in the taxable

base for purposes of calculating the installment payments (note that this does not affect a company's final tax liability for the year);

- Companies with gross income of at least EUR 20 million during the prior tax year are required to make advanced corporate income tax payments equal to 12% of the company's profit and loss (P&L) account for the first 3, 9 and 11 months of the calendar year. If at least 85% of a company's gross income consists of income exempt under the participation exemption rules, the advance corporate income tax payment is reduced to 6% of the company's P&L account.

- Restrictions on tax loss carryforward offsets:
  - 50% of the tax base for companies with a turnover between EUR 20 million and EUR 60 million during the previous 12 months;
  - 25% of the tax base for companies with a turnover of EUR 60 million or more during the previous 12 months.
- Goodwill will continue to be amortized for tax purposes at a rate of 1% per year;
- The tax credit limitation in a given year is reduced from 35% to 25% of that year's tax liability (excess credits may be carried forward).

The takeaway

These measures could affect the recognition of deferred tax assets with respect to losses, particularly for companies that are in an extended loss-making position. Companies should be aware of the potential impact of these changes in their tax liability.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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