European Tax Newsalert

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Spain

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Spain 2012 budget includes significant corporate tax changes

On March 30, 2012, the Spanish government announced the 2012 budget. At the same time, the government approved Royal Decree-Law 12/2012, which introduces a number of relevant changes in the corporate tax area, including new limitations on the deductibility of interest expense.

Interest-capping rule

Following a trend started by other European governments, the Spanish government has introduced an interest-capping rule that replaces the existing thin capitalization provisions. The new interest-capping rule, which will apply to both related- and unrelated-party debt, limits tax relief for net interest expense to 30 percent of the taxpayer's earnings before interest, taxes, depreciation, and amortization ("EBITDA"), with some adjustments. For entities that are part of a tax consolidated group, this 30-percent limit will apply to the EBITDA of the group.

Interest disallowed under the interest-capping rule can be carried forward 18 years (similarly to tax net operating losses). If interest expense in a given year is below the 30-percent limit, the new rule allows the unused capacity to be carried forward five years.

The interest-capping rule will not apply if:

- The net interest expense does not exceed EUR 1 million;
- The taxpayer is not part of a group of companies (as defined in Spanish company law); or
- The taxpayer is a credit institution.

New anti-debt-push-down rule

Over the past few years, the Spanish tax authorities in a number of cases have relied on the general anti-avoidance rules to challenge the deductibility of interest expenses connected to intra-group acquisitions of shares.

The Royal Decree-Law now includes specific language to deny the deductibility of interest from indebtedness with group companies, whether resident in Spain or not, when the debt has been used to acquire shares in other group companies, unless the taxpayer is able to prove there are valid economic reasons for the transaction.

As examples of potentially non-tax-driven transactions, the Explanatory Memorandum cites group restructurings directly connected to an acquisition from a third party or cases in which there is true management in Spain of the entities acquired.

Relaxation of participation exemption rules

Under the previous participation exemption rules, all requirements had to be met in each year of ownership for the gains on the disposal of shares in non-resident companies to be exempt from tax. This was an all-or-nothing test -- the entire gain would be taxable if the taxpayer failed to meet any of the requirements in a single year. To make the regime more flexible, the government has introduced a proportionality test that will allow the capital gain to be exempt from tax on a pro-rata basis when the requirements of the regime have been met in some years but not in others.

An additional temporary measure applies to dividends and capital gains deriving from subsidiaries located in tax havens or low-tax jurisdictions but that otherwise meet the requirements of the participation exemption regime. A Spanish company that receives dividends and capital gains from those subsidiaries will have the option of exempting such dividends and gains from corporate income tax by paying a special levy of 8 percent. This temporary measure is effective only through the 2012 year.

Voluntary tax disclosure process

The government also has approved a voluntary tax disclosure process that will allow individual and corporate taxpayers with previously unreported assets to waive any past tax liability (including interest and penalties) by filing a special tax return and paying a special levy of 10 percent of the acquisition cost of those assets. The deadline for filing this return and remitting the funds to the Treasury is November 30, 2012.

Free tax depreciation limited to small companies

All corporate taxpayers since 2011 have been allowed to freely depreciate for tax purposes tangible assets and real estate acquired for business use. This tax benefit has been repealed. Free tax depreciation will continue to be available only to small companies that create new jobs. The Royal Decree-Law includes a number of transitory provisions for investments made prior to the entry into force of the new measures that have not been fully depreciated.

Other temporary measures

To increase corporate income tax revenue, the Royal Decree-Law temporarily defers some tax deductions and credits. For tax years starting in 2012 and 2013:

- Goodwill must be amortised for tax purposes at a rate of one percent per year (the standard rate being five percent);
- The tax credit limitation in a given year has been reduced from 35 percent to 25 percent of a year's tax liability (excess credits can be carried forward);
- For entities with a turnover of EUR20 million or more, advance corporate income tax payments may not be lower than 8 percent of accounting profit (4 percent for corporations obtaining at least 85 percent of revenue from exempt income).

Entry into force

The Royal Decree-Law entered into force on March 31, 2012, but most of the above tax changes will apply retroactively to tax years beginning on or after January 1, 2012.

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