

European Tax Newsalert

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Spain further restricts tax loss carryforwards

On July 13, 2012, the Spanish government passed several measures to stabilize the budget and encourage competitiveness. The government approved Royal Decree-Law 20/2012 which introduced, among other measures, an additional restriction on tax loss carryforwards by large Spanish companies. This measure will apply to tax years commencing in 2012 and 2013.

Spanish Value Added Tax (VAT) rates will also increase effective September 1, 2012 (from 18 percent to 21 percent for the standard rate).

Below is a summary of the measures most relevant for US multinationals.

Additional restrictions on tax loss carryforwards

The new legislation adds restrictions¹ on tax loss carryforwards for fiscal years beginning during 2012 and 2013, up to:

- 50 percent of the tax base, for companies with a turnover of €20 million or more -but below €60 million - during the previous 12 months;
- 25 percent of the tax base, for companies with a turnover of at least €60 million during the previous 12 months.

This change could impact 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 and consider additional

¹ In fiscal years beginning during 2011, Spanish companies with turnover of €20 million or more in the previous 12 months could offset their tax loss carryforwards up to (i) 75 percent of the tax base, for companies with a turnover of €20 million or more but below €60 million or (ii) 50 percent of the tax base, for companies with turnover of at least €60 million.

analysis and scheduling when contemplating the potential recognition of deferred tax assets.

Interest-capping rule

As previously outlined in our [April 3, 2012 newsalert](#), for fiscal years commencing during and after 2012, as a general rule, the tax deductibility of net financial expenses is restricted to 30 percent of EBITDA.

However, under the initial regulation, approved in March 2012, this interest-capping rule did not apply to companies that were not part of a group of companies. The scope for applying the interest-capping rule has now been expanded to include companies that are not part of a group of companies.

This change could increase the number of companies whose current tax calculations are impacted due to an interest restriction arising where previously it was fully deductible. The change could also impact deferred tax calculations in situations where the excess interest can be carried forward to use in future periods.

Tax deduction limitations for intangible assets with indefinite useful lives

Effective for tax years beginning in 2012 and 2013, intangible assets with indefinite useful lives will be amortized at a reduced rate of two percent for tax purposes (versus the standard 10 percent).

New special repatriation tax on certain dividends and income derived from the sale of shares in non-resident companies

Royal Decree-Law 12/2012, approved March, 2012, introduced a temporary measure (only effective until November 30, 2012) applicable to dividends and capital gains derived from subsidiaries located in tax havens or low-tax jurisdictions. This measure applies where the holding in these subsidiaries would otherwise meet two of the three requirements of the participation exemption regime: (i) a holding requirement of a minimum 5 percent shareholding for at least one year, and (ii) that at least 85 percent of the subsidiary's income is derived from an active business carried out abroad. Under these circumstances a Spanish company that derives dividends or capital gains from these subsidiaries has the option of excluding these dividends/gains from the regular corporate income tax base by electing to pay a special levy of eight percent.

Royal Decree 20/2012 extends the new measure to exempt dividends and capital gains that only meet the above holding requirement. In this case, the special levy will apply at a 10 percent rate. This measure is available until November 30, 2012.

VAT

Following Royal Decree 20/2012, Spanish VAT rates will increase effective September 1, 2012 as follows:

- The general 18 percent VAT rate will increase to 21 percent.

- The reduced eight percent VAT rate will increase to 10 percent.

The reduced 4 percent VAT rate will not be subject to any modifications.

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