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Tax News Regarding the Budget Act and Tax Measures Act 2013

05/03/2013

Last December 28th, 2012 the Official Spanish Gazette published the Act 16/2012 of December 27th by which several taxation measures intended for the consolidation of public finances and the push of the economic activity were established, and the Act 17/2012 of December, of the State General Budget for 2013.

We detail herein a brief summary of the main tax measures adopted.

1.- Personal Income Tax.

(i) Main residence:

Removal of the deduction for property investment in the main residence. Notwithstanding the latter, a transitional regime is established by which all taxpayers who purchased their main residence before December 31st, 2012 or taxpayers who satisfied amounts before the mentioned date for the construction, extension, restoring or performance of works due to disability in their residences shall continue applying the deduction for property investment.

(ii) Profits from games:

All prizes higher than 2.500 Euros gained through the State Lottery, Autonomous Community, Organización Nacional de Ciegos Españoles (Spanish National Organisation of Blind People), Spanish Red Cross and similar entities of European nature are subject to a levy of 20%, which had been exempted of taxation before 2013.

(iii) Transfer of equity elements generated in less than one year:

Gains and capital losses generated in less than one year will no longer be added at the savings base and shall become part of the general base of the income tax. Losses generated in less than one year shall offset other positive incomes of the general base, although with the limitation of 10%, which would otherwise be taxed at the marginal tax rates of the general base.

(iv) In kind remuneration:

The rule for the calculation of in kind remuneration resulting from the transfer of the residence to employees, when the residence is not owned by the company, has been amended. In this case, the in kind remuneration will be calculated by the amount of the rental cost assumed by the employer.

2.- Corporate Tax.

Regarding the Corporate Tax, the tax rate has not suffered any increase. However, the following aspects should be highlighted:

(i) Limitation to the tax-deductible depreciations:

For tax years beginning in 2013 and 2014, the accounting depreciation of intangible and tangible fixed assets and investment property will only be deductible up to 70% of the one that would have been tax-deductible in accordance with paragraphs 1 and 4 of article 11 of the Corporate Tax Act.

(ii) Maintenance or creation of employment:

The application of the reduced tax rate on the Corporate Tax for the maintenance or creation of employment for micro companies is extended for the year 2013.

(iii) Entities committed to real estate lease:

Specific criteria become more flexible and permit the application of the special tax regime of real estate lease, by reducing the minimum number required of properties (from 10 to 8) and the period of time that those must be leased, simultaneously the requirements of size are being removed.

(iv) Update of balances:

During the fiscal year 2013 all the companies shall be able to update the values of their assets. Thus the companies shall improve their equities, in exchange of a levy of 5% over such revaluation.

(v) Taxation of the compensation for dismissal or termination:

The expenses resulting from the common or special termination of the employment relationship or mercantile relationship exceeding, for each beneficiary, the amount of 1,000,000 Euros or, if this compensation is higher, the amount that is exempted in the Income Tax, will not be deductible

3.- Value Added Tax.

(i) Property:

The VAT for purchasing a property of new construction will be taxed from 4% to 10% in 2013. The Official Protected Housing is maintained at 4%, while properties that are not of

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(ii) Limitation to the non-exemption for finance leasing contracts:

The supply of real estate when exercising the purchase of finance leasing are deemed as non-exempt, but a minimum duration of 10 years to qualify the contracts as such for this purpose is established.

4.- Real estate Tax.

The city councils are authorized to levy with the real estate tax all the buildings classified as historical and artistic heritage subjected to economic activities.

5.- Wealth Tax.

The wealth tax is extended to January 1st, 2014. The Autonomous Communities retain the freedom to set bonuses on this tax.

6.- Non-residents Income Tax.

(i) In accordance with the provisions of the Income Tax, a special levy on lottery gains in relation to the Non-residents Income Tax is established.

(ii) The configuration of the special levy on real estate of non-resident entities will be modified, being subjected to this levy exclusively the entities which have their residence within a country or territory deemed as tax haven.

7.- Interest Rate of 2013.

The legal interest rate for money remains at 4%.
The interest rate for late payment: remains at 5%.

8.- Investment Listed Companies on Real Estate Market (SOCIMI).

Some aspects of the regulation of these companies have been amended in order to create a new investment vehicle aimed to the lease of real estate market, not only houses but any urban real estate.

The requirements for its application are more flexible and are summarized as follows:

(i) The holding of shares in the capital of other entities, resident or not within the Spanish territory, which have as main corporate purpose the acquisition of urban real estate for lease and which are subject to the same system as the SOCIMI is added.

(ii) The SOCIMI must have invested at least 80% of their asset value in real estate of urban nature intended for lease, in lands aimed to the development of real estate to be used for this purpose provided that the promotion starts within the three years following its acquisition, as well as participation in the share capital or equity of other SOCIMI.

(iii) This percentage will be calculated on the consolidated balance sheet in the event that the company is dominant of a group.

(iv) At least 80% of the income of the tax period corresponding to each fiscal year, excluding the ones resulting from the transfer of shares and the real estate involved to economic activities, must stem:

1. from the lease of real estate involved in economic activities, regardless the residence, and/or

2. from dividends or shares of profits resulting from investments involved to economic activities.

(v) The real estate that integrates the assets of the company must remain leased for at least three years. For the purposes of calculation the time that the property have been offered on lease, with a maximum of one year will be added.

(vi) The shares of the SOCIMI must be admitted to negotiation in a regulated market or in a Spanish multilateral trading system or in any other Member State of the European Union or the European Economic Area, or in a regulated market of any country or territory to which exists effective exchange of tax information, on an ongoing basis throughout the tax period.

(vii) The SOCIMI will have a minimum share capital of 5 million Euros.

The information contained in this note should not be regarded in itself as specific advice on the matter discussed, but only a first approach to the subject. Therefore it is highly recommended that the recipients of this note search professional advice about their particular case before taking specific measures or actions.

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