

TAX ALERT – CORPORATE TAX MEASURES

December 2016

CORPORATE TAX MEASURES INTRODUCED TO CONSOLIDATE PUBLIC FINANCES

On 3 December 2016, Royal Decree-Act 3/2016, dated 2 December, was published, which adopts several tax measures for the purpose of consolidating public finances together with other urgent social measures (hereinafter, “**RDL 3/2016**” or “**Royal Decree-Act**”).

By means of the aforementioned Royal Decree-Act, several tax measures have been introduced. In this regard, despite the fact that the tax measures mainly relate to Corporate Income Tax (hereinafter, “**CIT**”), there have been a number of changes concerning Excise Duties, Wealth Tax, Spanish General Tax Law as well as the updating of property cadastral values.

Regarding the CIT, the most significant tax measures adopted relate to the new limits applicable to the offsetting of tax losses carried forward and to deductions in order to avoid double taxation, the tax reversal of impairments on shares which were deductible for CIT purposes prior to 2013 and the restrictions to the tax deduction of losses that result from the transfer of shares.

In this regard, we would like to highlight the retroactive effect of some of the measures that shall be applicable to the complete fiscal year 2016 and also to the deferment of tax assets and tax deductions originated in previous tax periods.

The purpose of the current tax alert is to outline the main corporate tax changes that have been introduced, and to provide you with a general overview of the potential implications that result from said modifications.

Offsetting of tax losses

Regarding tax losses that are pending carryforward, as for tax periods starting from 1 January 2016, a new limit regarding tax losses pending carryforward shall apply to companies whose net turnover for CIT purposes during the 12-month period prior to the commencement of the tax period was at least 20 million Euros (i.e. large companies).

In this regard, the applicable limits shall be as follows:

- Companies whose net turnover for CIT purposes during the 12-month period prior to the beginning of the tax period was at least 20 million Euros however less than 60 million Euros may offset their corresponding tax losses pending carryforward up to 50% of their taxable base, prior to applying the capitalization reserve and the offsetting of tax losses.

- Companies whose net turnover for CIT purposes during the 12-month period prior to the date of commencement of the tax period exceeded 60 million Euros may offset their corresponding tax losses pending carryforward up to 25% of their taxable base, prior to applying the capitalization reserve and the offsetting of tax losses.

The limits will similarly apply to the offsetting of tax losses pending carryforward in relation to any entity at the moment of its integration within a tax group.

Finally, tax losses may be offset without limitation up to the amount of 1 million Euros.

Impairments on bad debt provisions and long-term contributions to employees which have generated deferred tax assets

By reason that the modifications enter into force for tax periods beginning from 1 January 2016, a new limit regarding impairments on bad debt provisions and long-term contributions to employees which have generated deferred tax assets (hereinafter, “DTAs”) pending offset shall be applicable in relation to the companies whose net turnover for CIT purposes during the 12-month period prior to the date of commencement of the tax period was at least 20 million Euros.

In this regard, the applicable limits shall be as follows:

- Companies whose net turnover for CIT purposes during the 12-month period prior to the beginning of the tax period was at least 20 million Euros however less than 60 million Euros may offset their DTAs up to 50% of their taxable base, prior to applying the capitalization reserve and the offsetting of tax losses.
- Companies whose net turnover for CIT purposes during the 12-month period prior to the date of commencement of the tax period exceeded 60 million Euros may offset their DTAs up to 25% of their taxable base, prior to applying the capitalization reserve and the offsetting of tax losses.

The aforementioned limits will similarly apply to both the DTAs concerning tax groups and the DTAs pending offset in relation to any entity at the moment of its integration within a tax group.

Limitation on the application of deductions to avoid double taxation

By reason that the modifications enter into force for tax periods beginning from 1 January 2016, a new limit shall be applicable for deductions in order to avoid double taxation for the companies whose net turnover for CIT purposes during the 12-month period prior to the date of commencement of the tax period was at least 20 million Euros.

In this regard, deductions to avoid double taxation that has been generated or that is pending offset, as well as any deductions to avoid double taxation that result from the application of

the controlled foreign entities rules, could be jointly deducted up to 50% of the tax quota of the entities subject to the terms set out hereinabove.

Reversal of impairments on shares tax deducted prior to fiscal year 2013

RDL 3/2016 introduces a tax measure, with effects as from tax periods beginning from 1 January 2016 onwards, by means of which impairment losses on shares held, which were deemed to be tax deductible for CIT purposes during tax periods prior to 1 January 2013, should be recaptured on an annual basis, and equally divided, during five tax periods, as from tax periods beginning in 2016.

Therefore, the aforementioned impairments shall amount to at least 20% per year as from tax period 2016.

Notwithstanding the foregoing, in the event that the shares were transferred during the aforementioned five fiscal years, the amount pending to be recaptured should be included in the taxable base of the CIT subject to the limit of the positive income obtained.

Restrictions to the tax deduction of losses deriving from the transfer of shares

RDL 3/2016 introduces several changes concerning the tax regime applicable to tax losses associated to the transfer of shares. In this regard, all of the modifications applicable to the transfer of shares will be applicable as from tax periods beginning from 1 January **2017** onwards.

In summary, the new regime would be as follows:

- Tax losses deriving from the transfer of shares representing at least 5% of the equity of the participant entity or when the acquisition value would be higher than 20 million Euros shall not be deemed to be tax deductible for CIT purposes.
- Additionally, tax losses that result from the transfer of shares corresponding to non-resident entities which had not been subject to a corporate income tax similar or analogous to the Spanish CIT with a nominal rate of at least 10%, shall not be deemed to be tax deductible for CIT purposes, although the shares represent at least 5% of the equity of the participant entity or when the acquisition value would be higher than 20 million Euros.

In this regard, the deductibility of the tax losses generated by virtue of the transfers outlined hereinabove will be recognised upon the closure of the participant entity, except when the closure thereof is the result of a restructuring transaction. Additionally, the referred tax losses should be decreased in the amount of the dividends received by the participant entity during the preceding 10 years providing that said dividends had not reduced the acquisition value of the shares and had been entitled to the tax exemption in order to avoid double taxation.

Tax losses resulting from the transfer of Permanent Establishments

In relation to Permanent Establishments (hereinafter, “**PE**”) it is noteworthy that as from 1 January 2017, tax losses obtained by reason of the transfer of the PE shall not be deemed to be tax deductible for CIT purposes. However, the mentioned tax losses the result of the closure of the PE shall be deemed to be tax deductible for CIT purposes, although tax losses must be reduced by the amount of the income previously obtained through the PE which had been subject to the tax exemption applicable to incomes obtained through the PE.

We hope you find this information useful.

Should you require any additional information, please do not hesitate to contact any of the following tax specialists:

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