

Information note

Tax measures included in the General State Budget for 2021

9th December 2020

On 3rd December, the Congress of Deputies approved the General State Budget for 2021, incorporating important fiscal modifications. Thus, in the next few days the Budgets will be transferred to the Senate for their final approval.

The main tax measures that have been approved and will enter into force on 1st January 2021 are as follows:

1. Corporate Income Tax (“IS”)

With effect from the tax periods commencing on or after 1st January 2021 which have not ended at the entry into force of this Law and which are of indefinite duration, the following amendments are made:

- Amendment to the exemption on dividends and yields derived from the transfer of securities representing own funds provided for in Article 21 of the IS.

Firstly, the requirements for significant shareholdings necessary for the application of the exemption are modified, excluding from it those shareholdings whose tax value exceeds 20 million euros. Consequently, only holdings representing at least 5% of the entity's own funds will be eligible for exemption.

However, a transitional regime is established for holdings acquired before 1 January 2021, so that holdings with a tax value exceeding 20 million euros which do not meet the holding requirement may continue to qualify for exemption during the financial years 2021 to 2025.

In addition, holdings with a tax value of more than 20 million euros will be excluded from the method of calculating operating profit provided for in Article 16 of the IS for the deductibility of financial expenses, thus only those arising from holdings constituting at least 5% of the entity's share capital or own funds.

Secondly, the exemption percentage on dividends and capital gains derived from the transfer of these is reduced to 95% - previously the exemption was 100%. However, the exemption will be maintained at 100% in the following circumstances:

- The company receiving the dividends or shares:
 - Have had, in the previous financial year, a net turnover of less than 40 million euros.
 - Is not considered an asset-holding company.



- Does not form part, prior to the constitution of the entity issuing the dividends, of a group of companies, understanding as such that defined in article 42 of the Code of Commerce.
- Has not got, prior to the constitution of the entity issuing the dividends, a percentage of participation -direct or indirect- in the capital or in the equity of another entity equal to or greater than 5%.
- Dividends or shares in profits come from an entity incorporated after 1st January 2021, in which it holds, directly and since its incorporation, all the capital or equity.
- Dividends or shares in profits are received in the three years following the year in which the distributing entity was established.

The same limitation will apply to the deduction for international double taxation on dividends and participations provided for in Article 32 of the IS, reducing the effective amount of the deduction by 5%.

- Modification of the eliminations from the tax consolidation regime provided for in Article 64 of the IS.

Income to be included in the consolidated tax base due to the 95% limitation of the above-mentioned exemption will not be subject to tax elimination.

2. Personal Income Tax (“IRPF”)

With effect from 1st January 2021 and for an indefinite period, the following amendments are introduced:

- Increase in the tax rates applicable to both the general scale and the savings scale, amending Articles 63 and 66 of the Personal Income Tax Act

As for the general scale, a new section is added by which the applicable rate is increased by two percentage points (leaving a state tax rate of 24.5%) for income exceeding 300,000 euros. In this sense, if the regional taxes are maintained, the maximum personal income tax rate in the Community of Madrid will be 45.5% and that of Catalonia will be 50%.

The increase entails the consequent modification of the applicable withholdings, setting a new bracket for those recipients of income from work exceeding 300,000 euros whose withholding percentage will be 47%.

On the other hand, regarding the scale of savings, a new bracket is added by which the applicable tax rate is increased by 3 percentage points (leaving a total tax rate of 26%) for all those incomes over 200,000 euros.

- Increase in the tax rate for taxpayers paying tax under the special regime for posted workers, popularly known as the "Beckham Law".

Article 93 of the Personal Income Tax Act is amended. On the one hand, the tax rate is increased to 47% for income from work over 600,000 euros (previously it was 45%).

On the other hand, the tax rate is increased to 26% for income from savings over 200,000 euros (previously it was 23%).

- Modification of the limits on the reduction of the tax base for contributions to social security systems

Articles 51 and 52 of the Personal Income Tax Act are amended, reducing the amount of reductions arising from contributions to the participant's own pension plans to 2,000 euros (previously 8,000 euros). However, this limit will be maintained at 8,000 euros when the increase comes from a company contribution.

Likewise, the reduction for contributions made by a non-active spouse or with income from work or economic activity of less than 8,000 euros will also be reduced to 1,000 euros (previously 2,500 euros).

Similarly, the reduction limit will be reduced to 2,000 euros for those contributions paid into private insurance policies that only cover the risk of severe or great dependency in favour of the same contributor.

- Extension of the limits of the objective estimation method

The quantitative limits on the volume of income from the previous financial year are extended for the financial year 2021 for those taxpayers who apply the objective estimate method in the calculation of net income from economic activities.

3. Non-Resident Income Tax (“IRNR”)

With effect from the date of entry into force of this Act and for an indefinite period, the following amendments are made:

- Amendment of the requirements for the application of the exemption for profits distributed by subsidiary companies resident in Spain to non-resident parent companies.

As in the IS, income derived from holdings that do not represent at least 5% of the share capital or equity of the issuing institution will no longer qualify as exempt income, regardless of the acquisition value of the holdings.

In this respect, the transitional regime set out in the first correlative will also apply.

- Extension of the exemption of interest and other income obtained from the sale of own capital to third parties to the Member States of the European Economic Area.

An amendment is introduced to article 14.c) of the IPNR, by means of which interest and other income obtained by the transfer to third parties of own capital, as well as capital gains derived from real estate obtained without a permanent establishment by residents, not only from European Union member states, but also from a member state of the European Economic Area, will be considered tax-exempt income in Spanish territory, provided that there is an effective exchange of information with the latter, thus enabling exemption for residents of Iceland, Liechtenstein and Norway.

4. Wealth Tax (“IP”)

- Increase in the tax rate for taxable bases above 10,696,996.06 euros.

With effect from the effective date of this Law and for an indefinite period, the tax rate for taxable bases exceeding 10,696,996.06 euros will be increased by one percentage point, from 2.5 to 3.5%, provided that the state tariff is applicable.

5. Value Added Tax (“IVA”)

With effect from the entry into force of this Act and for an indefinite period, the following amendments are made:

- Increase in the tax rate on sweetened beverages.

The VAT rate on sweetened beverages, which was previously 10%, will be increased to 21% following the entry into force of the 2021 State Budget Law. However, when these are consumed in bars or restaurants, the tax rate will remain at 10%.

- Rule of use and effective operation in Spain: putting the Canary Islands, Ceuta and Melilla on an equal footing with the Community.

Following the amendment of section "Two" of Article 70 of the VAT Act, services provided by a company resident in Spanish territory will be deemed to have been supplied in Spain when, in accordance with the rules on location applicable to these services, they are not deemed to have been carried out either in the Community - as provided for in the current wording - or in the Canary Islands, Ceuta or Melilla, but their actual use or operation takes place in that territory.

For further information please contact:

Toni de Weest Prat Jorba
toni.prat@es.Andersen.com

Víctor Plaja
victor.plaja@es.Anderesen.com