

Informative Note

Tax measures incorporated in the State Budget Law for 2021

4th January 2021

Law 11/2020 of 30th December on the General State Budget for 2021 (hereinafter, "LPGE") was published in the Official State Gazette of 31st December 2020.

The purpose of this Informative Note is to set out the main tax measures established by the LPGE, which have generally come into force as from 1st January 2021 and are of indefinite duration.

1. Corporation Tax

The following amendments are made to Law 27/2014, of 27th November, on Corporate Income Tax ("LIS"):

a) Amendment of the rules on the deductibility of financial expenses (Article 16 of the LIS)

Under this provision, the financial expenses deductible for the tax period may not exceed 30% of the operating profit (although net financial expenses amounting to 1 million euros are in any case deductible).

Until now, the calculation of this operating profit had to consider financial income from shareholdings in equity instruments, provided that they corresponded to dividends or shares in the profits of entities in which either the percentage of direct or indirect shareholding was at least 5% or their acquisition value exceeded 20 million euros.

However, with effect from the tax periods starting on or after 1st January 2021, the consideration of dividends or profit-sharing in the calculation of operating profit is limited to those deriving from holdings with a percentage of at least 5%, regardless of their acquisition value.

b) Modification of the exemption on dividends and positive income derived from the transfer of securities set down in Article 21 of the LIS

i) Until now, holdings in the share capital of the entity from which the profits or dividends originated, representing at least 5% of the entity's own funds, or holdings with an acquisition value more than 20 million euros.

- ii) However, with effect from tax periods beginning on or after 1st January 2021, only those holdings in the share capital of the entity from which the profits or dividends originate which represent at least 5% of the entity's equity may benefit from the exemption, regardless of their acquisition value.

Notwithstanding the forgoing, a transitional regime is established for those holdings that were acquired before 1st January 2021, so that such holdings - with a tax value of more than 20 million euros that do not comply with the holding percentage requirement - may continue to qualify for exemption during the financial years 2021 to 2025.

- iii) Additionally, the exemption percentage on dividends and capital gains derived from the transfer of securities is reduced by 5%, for non-deductible management expenses, from 100% to 95%.

According to the wording of the Law, this limitation to the exemption on dividends and positive income derived from the transfer of securities is applied cumulatively in the chains of holdings, regardless of the number of entities in which they have an indirect holding.

However, the full exemption (100%) continues to apply when the following circumstances occur cumulatively:

- The company receiving the dividends or shares:
 - The net turnover in the previous period did not exceed 40 million euros. Where the company is newly created, the amount of turnover will refer to the first tax period in which the activity is carried out. If the immediately preceding tax period had lasted less than a year, or if the activity had been carried on for a shorter period, the net turnover will be increased by one year.
 - It is not considered a patrimonial entity according to article 5.2 of the LIS.
 - Prior to the constitution of the issuing entity, it does not form part of a group of companies in accordance with the concept regulated in Article 42 of the Trading Code, regardless of its residence and the obligation to prepare consolidated annual accounts.
 - Prior to the incorporation of the issuing entity, it does not hold a direct or indirect interest of 5% or more in the capital or equity of another entity.
- The company distributing the dividend has been incorporated as from 1st January 2021.



- Dividends or shares in profits are received in the three tax periods following the year in which the entity distributing them is incorporated.

c) Modification of the deduction to avoid international economic double taxation: dividends and profit shares (Article 32 of the LIS)

In line with the provisions of Article 21 of the LIS, the application of the deduction to avoid international economic double taxation for dividends and profit shares removes the requirement that the acquisition value of the shareholding be greater than 20 million, limiting it to a direct or indirect holding of at least 5% in the capital of the non-resident entity.

Furthermore, the quantitative scope of the deduction is limited by reducing the basis for calculating the deduction to 5% of income received (also for non-deductible management expenses).

However, this 5% reduction will not be applicable to those entities with a net turnover of less than 40 million euros, in similar terms to those just explained to maintain the full exemption of Article 21 of the LIS.

d) Modification of the delitions from the tax consolidation regime (Article 64 of the LIS)

Under the tax consolidation regime, it is no longer possible to eliminate the 5% of dividends and income to be included in the consolidated tax base in line with the - already mentioned - reduction in the percentage of exemption of Article 21 of the LIS.

With this change, intra-group income of this nature is now subject to similar tax treatment to that which would apply if the entities forming part of the group did not apply the tax consolidation regime.

e) Modification of the deduction for investments in cinematographic productions, audio-visual series and live performances of the performing and musical arts (Article 36 of the LIS)

The subjective scope of the deduction is extended so that those involved in financing audio-visual projects can apply the tax incentive. To apply it, the following requirements must be met:

- (i) The funder must provide amounts of funding to cover all or part of the production costs.
- (ii) The funder shall not acquire intellectual property or other rights to the results of the production, which must in all cases be owned by the production company.



(iii) The contributions of the financier may be made at any stage of the production until the certificate of nationality is obtained.

(iv) The producer and the financier must sign a financing contract specifying, inter alia, the following points:

- Identity of the contributors involved in the production
- Description of the production.
- Production budget with a detailed description of the expenses and those to be incurred on Spanish territory.
- Method of financing production, specifying separately the amounts contributed by the producer, those contributed by the financier and those corresponding to subsidies and other support measures.
- Any other matters established by regulation.

The reimbursement of the amounts contributed will be made by means of the liquid deduction in instalments that will be agreed in the contract and in accordance with the provisions of Article 36.1 and 36.3 of the LIS.

The deduction by the financier shall be incompatible, in whole or in part, with that of the producer, and shall be calculated and applied as follows:

- The deduction will be calculated in the same way as for the producer, but with the limit resulting from multiplying the financing granted by 1.20. The excess may be applied by the producer.
- The deduction will be applied annually based on the contributions paid in each tax period.

Finally, with regard to the requirements for applying the deduction (by both the producer and the financier), and in particular the need for the production to obtain (i) the certificate of nationality and (ii) the certificate attesting to the cultural nature of its content, their link with Spanish cultural reality or their contribution to the enrichment of the cultural diversity of the cinematographic works shown in Spain, the LPGE states that those certificates will be binding on the competent tax authorities as regards the accreditation and application of the deduction and identification of the beneficiary producer, regardless of the time of their issue.

f) Amendment of the common rules applicable to deductions for investments provided for in Article 39 of the LIS

(i) In accordance with this provision, the deductions provided for in Chapter IV of Title VI of the LIS that are applied in the tax period may not exceed, jointly, 25% of the total tax liability



less the deductions to avoid international double taxation and the allowances). However, this limit is raised to 50% for deductions for R&D and innovation relating to expenditure and investments made in the tax period more than 10% of the total tax liability less double taxation and relief.

For tax periods beginning on or after 1st January 2021, this limit is also extended to include the deduction for investments in film productions, audio-visual series and live performances of the performing arts and music.

- (ii) In addition, the assets eligible for deduction must generally remain in operation for a period of five years from the date of acquisition, or during their useful life if less than five years (three years or their useful life if less in the case of movable assets).

It is now added that, in the case of cinematographic productions and audio-visual series, this requirement will be deemed to have been met if the production company maintains its percentage of ownership of the work for a 3-year period, without prejudice to its power to market all or part of its exploitation rights to third parties.

g) Amendment of the international tax transparency regime set out in Article 100 of the LIS

Until now, when an income was attributed to the tax base by application of the international tax transparency regime, dividends or profit shares corresponding to that previously attributed income were not counted.

However, with effect from tax periods commencing on or after 1st January 2021, 5% of such dividends and profit-sharing must be included as management expenses, except in the case of entities with a net turnover of less than Euros 40 million (under the same conditions and with the same requirements as those set out in the section on the amendment to Article 21 of the LIS).

Similarly, until now, to calculate the income derived from the transfer of holdings, the acquisition value was increased by the profits which, without effective distribution, corresponded to imputed income.

However, for tax periods starting on or after 1st January 2021, 5% of these undistributed profits will not be considered for the purpose of increasing the aforementioned acquisition value.

2. Non-Resident Income Tax

The following amendments are made to the Revised Text of the Non-Resident Income Tax Act, approved by Royal Legislative Decree 5/2004, of 5th March (hereinafter referred to as, "LIRNR"):



- a) Amendment of exemptions for interest and other income obtained from the transfer of own capital to third parties and for capital gains on the transfer of movable property without a permanent establishment (Article 14 of the LIRNR)

In accordance with the provisions of Article 14.1 c) of the LIRNR, residents of the European Union may apply an exemption for interest and other income derived from the transfer to third parties of equity capital and capital gains derived from the transfer of movable property without a permanent establishment, which are understood to have been obtained in Spanish territory.

As from 1st January 2021, these exemptions may be applied -in addition to residents of the European Union- by residents of any member state of the European Economic Area, if there is an effective exchange of information with them.

- b) Amendment of the exemption established in Article 14.1.h) of the LIRNR for profits distributed by subsidiary companies resident in Spain

In line with the amendment provided for in Article 21 of the LIS, the application of the exemption provided for in Article 14.1(h) of the LIRNR is limited to dividends from holdings representing at least 5% of the share capital or own funds of the issuing entity, regardless of their acquisition value, which is no longer a requirement for the application of the benefit of the exemption (previously it was allowed to apply the exemption to those holdings which, not amounting to 5% of the entity's own funds, had a tax value exceeding 20 million euros).

Without prejudice to the foregoing, a transitional regime is established, for a period of five years (that is to say, until the period beginning in 2025), for holdings acquired before 1st January 2021 with a tax value of more than 20 million euros, in respect of which the exemption may be applied in so far as the other conditions laid down in the rule for that purpose are fulfilled.

3. Personal Income Tax

The following amendments are made to Law 35/2006, of 28th November, on Personal Income Tax ("LIRPF"):

- a) Amendment of the tax rates applicable to the general scale and to the savings scale (Articles 63 and 66 of the LIRPF)

- (i) A new bracket is introduced in the general tax scale for income above EUR 300,000, increasing the taxation of the general base by two percentage points, resulting in a tax rate of 24.5%. Consequently, if there were no regional scale of taxation of its own, the maximum marginal rate would be 47% (as opposed to 45% until 2020).



This modification brings with it the corresponding change in the scale of deductions, with a new bracket being set for recipients of income from work of over 300,000 euros, whose percentage of deduction is now 47%.

- ii) In the savings scale, a new bracket is incorporated for incomes over 200,000 euros, increasing the applicable rate by 3 percentage points, resulting in a tax rate of 26%.

b) Modification of the rates of the "regime for inbound expatriates" (Article 93 of the LIRPF)

An amendment is made to the tax rates applicable to workers posted to Spanish territory, in the following terms:

- (ii) For income from employment above 600,000 euros, the tax rate is increased from 45% to 47%.
- (iii) For income from savings over 200,000 euros, the tax rate is increased from 23% to 26%.

c) Amendment of Articles 51 and 52 of the LIRPF on the limits of reduction in the taxable base of contributions to social welfare systems

- (i) The maximum annual limit on contributions to pension schemes made by the member himself with entitlement to reduction is reduced from EUR 8,000 to EUR 2,000. Nevertheless, this limit is increased by 8,000 euros (that is to say, up to 10,000 euros) when the increase comes from company contributions (for these purposes, the contributions made by the individual entrepreneur to employment pension plans or to mutual social provision associations, of which he is both the promoter and participant or member, as well as those made to company social provision plans or collective dependency insurance of which he is both the policy holder and the insured will be considered as company contributions).
- (ii) ii) The limits applicable to the contributions to the social welfare systems are reduced in the same terms.
- (iii) The maximum annual limit of contributions made by the non-active spouse or with income from work or economic activities of less than 8,000 euros with the right to reduction is reduced from 2,500 to 1,000 euros.
- (iv) The maximum annual limit for all reductions made by all persons who pay premiums for private insurance covering only the risk of severe or major dependency for the same contributor is reduced from 8,000 to 2,000 euros.

d) Extension of the limits excluding the Objective Evaluation Method (transitional provision 32 of the LIRPF)



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

4. Wealth Tax

The following amendments are made to Law 19/1991, of 6th June, on Wealth Tax (hereinafter "LIP"):

a) Change in tax rates (Article 66 of the LIP)

The tax rate for payable bases of at least 10,696,996.06 euros is increased by one percentage point from 2.5% to 3.5%.

b) Maintenance of the tax for an indefinite period

Royal Decree-Law 13/2011, of 16th September, which re-establishes the Wealth Tax, re-established the Wealth Tax on a temporary basis for the financial years 2011 and 2012 (after its practical elimination since 2008 through the application of a 100% rebate). This regime has been extended successively.

The LGPE establishes, with effect from 1st January 2021, the indefinite validity of the tax (by repealing the second paragraph of the sole article of Royal Decree Law 13/2011 of 16th September), thus avoiding the need to resort to annual extensions.

In any case, it should be borne in mind that these amendments have been introduced into State legislation and that some Autonomous Communities have made use of their regulatory powers by establishing specific allowances. Therefore, the specific regulations of the autonomous community where the taxpayer resides must be considered.

5. Value Added Tax

The following amendments are made to Law 37/1992 of 28th December 1992 on Value Added Tax (hereinafter, "LIVA"):

a) Amendment of article 70. Two of the LIVA on the rule of effective use and exploitation in Spain

Until now, services which, under the applicable rules on location, are not deemed to have been provided in the Community, but the actual use or exploitation of which takes place in



that territory, have been deemed to have been provided in Spain by a company resident in Spanish territory.

As from 1st January 2021, the objective scope of the "closing clause" in Article 70. Two of the LIVA, which attracts the location of certain services which are used or exploited in our territory, to put the Canary Islands, Ceuta and Melilla on an equal footing with the Community is modified.

- b) Increase in the tax rate for sweetened beverages (Article 91 of the LIVA)
The tax rate applied to soft drinks, juices and lemonades with added sugars or sweeteners is increased from 10% to 21%.
- c) Extension of the exclusionary limits of the simplified scheme (thirteenth transitional provision of the LIVA)

As in the case of personal income tax for the objective assessment scheme, the limits for the application of the simplified scheme (250,000 euros) and the special scheme for agriculture, livestock and fisheries (250,000 euros) are extended for 2021, with indefinite validity.

6. Excise Duty

The following amendments are made to Law 38/1992 of 28th December 1992 on Excise Duties (hereinafter, "LIIEE"):

- a) New exemptions from the tax on electricity (Article 94 of the LIIEE)
With effect from 1st January 2021, two new exemptions from the Electricity Tax are introduced:
 - (i) One in respect of electrical energy consumed on vessels that has been produced on board; and
 - (ii) another for the electrical energy supplied which is subject to compensation with the surplus hourly energy, in the mode of self-consumption with surpluses subject to compensation in accordance with the provisions of Royal Decree 244/2019, of 5th April, which regulates the administrative, technical and economic conditions of self-consumption of electrical energy
- b) New case of reduction in the tax base (Article 98 of the LIIEE)

A 100% reduction is included in the taxable base of the Electricity Tax on the amount of electricity supplied or consumed in rail transport.



c) New minimum rate of Electricity Tax (Article 99 of the LIIEE)

Finally, the minimum full quota of 0.5 euros per megawatt-hour (MWh) currently foreseen for electricity used for industrial purposes or on boats in port, which do not have the status of private pleasure craft, is extended to electricity used in rail transport.

7. Trade Tax

The following modifications are introduced in the Royal Legislative Decree 1175/1990, of 28th September, by which the Tariffs and the Instruction of the Trading Income are approved:

- a) The marketing of electricity and gas supplies, which until now had no specific classification, is classified under headings 151.6 and 152.2, with national, provincial and municipal quotas being established.
- b) A new heading 664.2 is created for the activity of supplying energy to electric vehicles through recharging points installed in any location, whether on public roads, at petrol stations, in public and private garages or at any other location of electric vehicles installed in establishments or premises. National and municipal quotas are established.
- c) Section 661.9 is added for large commercial premises not mainly devoted to clothing or food, calling it "other mixed or integrated commerce in large premises". A municipal quota is established.

8. Tax on asset transfers and legal documents

The following amendment is made to the scale of rates set out in Article 43 of the revised text of the Law on Transfer Tax and Stamp Duty, approved by Royal Legislative Decree 1/1993, of 24th September:

- The tax scale applicable to the restoration or transfer of property deeds is updated by 2%.

9. Insurance Premium Tax

The following modification is introduced in the tax rates of Article 12 of Law 13/1996, of 30th December, on Fiscal, Administrative and Social Order Measures:

- The tax rate is changed from 6% to 8%.

10. Fees

- The fixed amount rates of the State Treasury fees are increased by 1%, except for those created or updated from January 2019



- The fees on gambling are maintained.

11. Patronage Incentives

The following amendments are made to Law 49/2002, of 23rd December, on the tax regime for non-profit organisations and incentives for patronage (hereinafter, "Law 49/2002")

a) Modification of deductions for donations

As in previous years, the percentages and limits of deductions for donations regulated in Articles 19, 20 and 21 of Law 49/2002 (relating to Personal Income Tax, Corporate Income Tax and Non-Resident Income Tax) are improved by 5%, when these are made to the priority activities of patronage included in the additional provision sixty-six of the LPGE.

b) Declaration of various events of exceptional public interest for the purposes of the provisions of Law 49/2002

From the sixty-seventh additional provision to the ninety-seventh additional provision of the LPGE, the system of tax benefits and the duration of various events of exceptional public interest are established for the purposes of patronage incentives.

12. Interest on arrears and legal interest on money

Until 31st December 2021, the interest on tax arrears remains at 3.75% and the legal interest on money is set at 3%.

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