

Employment Update

Taxation of compensation paid under the post-contractual non-competition pact: binding consultation V2736-19 of 8 October 2019

7th January 2020

On the subject of the binding consultation V2736-19 of 8 October 2019

On October 8, 2019, the Subdirectorate General of Personal Income Taxes issued the Binding Consultation V2736-19, in relation to the taxation of the compensation received as a result of the non-competition agreement after the termination of the employment contract.

Thus, the controversy raised before said body consists in determining whether the 30% reduction provided for in Article 18.2 LIRPF 35/2006, applicable to irregular income generated in periods of more than two years, is applicable to the compensation received in application of the post-contractual non-competition agreement, signed for the maximum period of time provided for in the Workers' Statute, i.e. two years.

The response to this approach by the General Sub Directorate is to rule out the fact that the compensation agreed for post-contractual non-competition is considered to be the performance of work obtained in a notoriously irregular manner over time, since Article 12.1 of the RIRPF does not expressly provide for this in its various sections, among which, by way of example, are the amounts paid by the company to the workers for the mutually agreed termination of the employment relationship.

Therefore, the question arises and is thus limited to whether the compensation corresponding to the aforementioned agreement can be understood to have been generated over a period of more than two years, in order to analyse whether or not the aforementioned 30% reduction applies. To this end, on the one hand, the General Sub Directorate points out that it cannot be maintained that there was a prior generation period during which the compensation was generated, since it arose with the very act of termination of the employment relationship (dismissal), which put into effect the non-competition agreement signed between the company and the worker.

Furthermore, this body maintains that once the employment relationship has been terminated, it must be taken into consideration that the post-contractual non-competition obligation cannot have a duration of more than two years - the maximum provided for in Article 21.2 of the Constitutional Court - as stated by the constitutional chamber in its ruling on the unification of doctrine on 10 February 2009, all of which once again demonstrates the non-existence of a generation period of more than two years.

In short, the conclusion reached is clear in the sense that the 30% reduction provided for in article 18.2 of the LIRPF, is not applicable to the amounts paid by way of post-contractual non-competition agreement, as this does not have a duration of more than two years in accordance with work regulations, in addition to the fact that the obligation arises at the time of contractual extinction and not prior to it.



You can see the [Binding Consultation](#) for more information.

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