International Tax

Spain Tax Alert

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Rules governing advance payment of corporate income tax modified

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Legislation (Royal Decree Law 2/2016) published in Spain's official gazette on 30 September 2016 introduces tax measures aimed at reducing the public deficit; in particular, changes to the requirement for certain companies to make advance payments of corporate income tax.

The new rules, which are applicable only to companies whose turnover exceeds EUR 10 million during the previous 12-month period, include (i) an increased rate to calculate the advance payment of corporate income tax; and (ii) a minimum advance payment to be calculated on the basis of a different formula.

The rules are effective for fiscal years beginning on or after 1 January 2016 and apply to prepayments due in October 2016 and thereafter.

Background

Corporate taxpayers in Spain must make three estimated payments of income tax during the year (April, October and December), on account of final payment to be made at the time the annual tax return is submitted.

In this regard, taxpayers whose turnover exceeds EUR 6 million during the previous 12-month period generally are required to make advance payments of corporate income tax based on taxable income generated from the beginning of the tax period to the end of the prepayment period (i.e. from the beginning of the tax period to 31 March (prepayment for April), 30 September (prepayment for October) and 30 November (prepayment for December), applying a rate which, before the new decree, was equal to 5/7 of the applicable tax rate (the corporate tax rate, which generally is 25% as from 1 January 2016, resulting an effective rate of 17%).

Companies with turnover under EUR 10 million during the previous 12-month period are not affected by the new rules (i.e. they will continue making advance payments according to the above described rules.

Increased rates applicable to advance payments

The rate for companies with turnover exceeding EUR 10 million during the previous 12-month period that make advance payments based on net taxable income are increased from 5/7 of the applicable tax rate to 19/20, so that the applicable general rate to calculate the advance payment is increased from 17% to 24%.

Minimum advance payment

Under the amended rules, companies with turnover exceeding EUR 10 million during the previous 12-month period are required to calculate a minimum advance payment calculated on the basis of their positive accounting result. In particular, they will have to pay 23% of the positive accounting result recorded in the company's income statement (profit and loss statement) for the period covering the relevant advance payment (i.e. the first three, nine or 11 months of the current taxable year), if this amount is greater than that resulting from the general formula based on the net taxable income described above.

For these purposes, the only deduction allowed from the accounting result will be for prior advance payments for the same fiscal year. The relevant rate applicable on the accounting result will be 25% (instead of 23%) for financial entities and certain companies engaged in the exploration and exploitation of hydrocarbons that are taxed at the increased corporate income tax rate of 30%.

In computing the amount of the advance payment based on the positive accounting result, any income derived from debt waivers arising from a creditors' agreement must be excluded from the positive accounting result, unless this income is included—in whole or in part—in the taxable income for the period based on specific rules. Similarly, income derived from the conversion of a debt into share capital that is not included in taxable income must be excluded from the positive accounting result.

This minimum advance payment requirement does not apply to Spanish real estate investment trusts, and special rules or exclusions may apply for certain entities (e.g. partially exempt entities, entities that receive credits for rendering public services or entities that are taxed at special reduced rates).

Comments

The new measures, which are intended to be permanent, are aimed at reducing the public deficit to bring it in line with EU objectives (the government estimates that it should be able to collect additional payments of approximately EUR 8,300 millon in 2016). However, the government has informally stated that new advance payment rules could be abolished in the future once the public deficit falls below 3%.