Recent key developments in the area of Spanish financial regulation

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Royal Decree-Law on new tax and administrative measures aimed at the reduction of the public deficit (Real Decreto-ley 12/2012, published in the Spanish Official Gazette – Boletín Oficial del Estado – of March 31st, 2012)

This regulation establishes highly relevant tax modifications, especially regarding corporate income tax, personal income tax, taxes on tobacco products and taxes on the increase in urban land value. The Royal Decree-Law also stipulates a special tax return for certain incomes, in order to reduce the public deficit down to the limit established for 2012.

These are the main tax modifications in virtue of the aforementioned Royal Decree Law 12/2012:

A) Corporate Income Tax (CT)

Some relevant modifications, which affect the tax structure, are introduced for an unlimited period, while other measures are temporary in nature (and they will be in force only in 2012 and 2013). All the modifications foreseen allow for an advance in collection of tax income without increasing the global tax burden on taxpayers.

1. Reforms of CT for an unlimited period:

   a. Restrictions on the deduction of financial costs, which have been fully deductible hitherto.

   b. The regime of exemption related to transfer of shares in non-Spanish entities is modified in order to support the internationalization of Spanish companies.

   c. Ban on the freedom to decide on the depreciation of new elements of tangible fixed assets, in virtue of the Additional provision 11 of the Spanish Corporate Tax Law.

2. Temporary measures:

   a. Reduction in the depreciation rate, which is considered as deductible from goodwill – both for income generated in the acquisition of assets and liabilities and as well as income resulting from corporate restructuring operations.

   b. Reduction on the limits of applicable deductions on the quota of corporate income tax. As an exception, the deduction on reinvestment of extraordinary benefits will be included in the limit.

   c. Likewise, the period to compensate over-deductions not applied in the original financial year is extended. These deductions can be used during the tax periods over the following 15 years, except for RDI deductions.

   d. Establishment of a minimum amount in

fractionated payments by corporations whose turnover figures during the twelve preceding months are over 20 million Euros.

e. Special tax on foreign income repatriation.

B) Personal Income Tax

The tax is modified in accordance with the modifications on the Corporate Income Tax regarding the elimination of free depreciation without preserving employment.

C) Special tax return for the regularization of hidden assets

Taxpayers of personal income tax, corporate income tax or nonresidents' income tax owning goods or rights which do not correspond with the person's income as declared for these tax purposes, will have the possibility of submitting a special tax return in order to regularize their tax situation up to November 30th, 2012, provided that the Spanish tax administration has not started verification procedures. Together with the aforementioned tax return, 10% of the total amount or value of the goods or rights should be paid, which will state the non chargeability of administrative sanctions, interests or surcharges.

Royal Decree-Law of urgent measures for the protection of debtors with limited resources (Real Decreto-ley 6/2012, published in Spanish Official Gazette – Boletín Oficial del Estado – of March 10th, 2012)

This regulation establishes mechanisms for the protection of mortgage holders in critical situations or affected by foreclosures. More precisely, some general measures are applied to all mortgage loans and credit facilities, other measures are applied to debtors in the "exclusion threshold" and finally a code of good practices is foreseen.

A) General measures, which apply to all mortgage loans and credit facilities

The Royal Decree-Law (RD-l) foresees provisions on assistance to tenants contained in Royal Decree 2066/2008 which are extended to: (i) individuals who have lost their house as a consequence of court-based or out-of-court foreclosure proceedings after January 1st, 2012; and, (ii) individuals who enter into a rental agreement as a consequence of the application of the dation in payment mechanism under the Code of Good Practices.

The RD-l also introduces significant amendments to out-of-court foreclosure proceedings under the Mortgage Law and its implementing regulations with a view to bringing the rules on out-of-court auctions in line with those on court auctions under the Civil Procedure Law (out-of-court foreclosure proceedings have been simplified by requiring a single auction in which the starting price will be that stipulated in the mortgage deed).

It is provided that, within six months from the date of entry into force of the Royal Decree-Law, the government will approve the necessary regulations to simplify out-of-court sale proceedings, which include allowing online auctions.

B) Measures in force under which the debtor falls below what the Royal Decree-Law referred to as the "exclusion threshold".

To be considered under the exclusion threshold, certain requirements must be met (amongst others, they may not have any income from work or other economic activities). Furthermore, the purchase price of the property should not exceed a certain amount.

A limit on late-payment interest is placed for all mortgage credit facilities or loan agreements where the debtor falls within the exclusion threshold, such that the default interest does not exceed the amount of the stipulated interest payable on the loan, 2.5% over the outstanding loan principal.

With regard to fiscal matters, it should be stressed that the public deeds to formalize contractual novations of mortgage loans and credits that occur pursuant to the RDL, shall be exempt from the gradual rate for notarial documents for the purposes of the Tax on Property Transfers and Documented Legal Acts.

Likewise, in the case of dation in payment involving the usual place of residence pursuant to the RD-l, any capital gains that the debtors may generate shall be exempt from Income Tax ("Impuesto de la Renta de las Personas Físicas") and, for the purposes of the Municipal Tax on the Increase in Value of Urban Land ("Impuesto Municipal sobre el Incremento de Valor de los Terrenos de Naturaleza Urbana"), the institution that acquires the property shall be the taxable person to substitute the taxpayer, without the substitute being entitled to seek the amount of the tax liabilities paid from the taxpayer.

C) Code of good practices.

It is foreseen, a Code of Good Practices, which includes different measures that apply to debtors who prove that they fall within the exclusion threshold but only if the lender has acceded to the Code.

Firstly, the Code of Good Practices aims to achieve a viable restructuring of the mortgage loan prior to foreclosure (by the establishment of a grace period of 4 years for repayment, a reduction in the applicable interest rate to Euribor + 0.25% for the grace period; and the extension of the total repayment period up to 40 years from the date the loan was granted). This measure is obligatory for lenders that have accepted the Code.

Secondly, even if after these measures are accounted for, the debtor is still unable to repay the loan, it is suggested that the lender offers the debtor a release from obligations using the following methods: (i) 25% reduction; (ii) a reduction equivalent to the difference between the repaid principal and the total loaned principal in the same proportion as the number of installments paid by the debtor bears to the total installments owed; (iii) a reduction equivalent to half of the difference between the current value of the residential property and the value resulting from the initial appraisal value minus twice the difference from the loan granted.

If after the conclusion of 12 months from the date on which the restructuring was requested, and despite the restructuring and the additional measures accepted by the lender, the situation continues to be unviable for the debtor (because the monthly loan repayments are above 60% of the total income received by the family unit), the debtor may request the dation in payment of his principal residence, which the lender is obliged to accept.

Finally, the RDL establishes a special application of the Urban Leases Act ("Ley de Arrendamientos Urbanos") to regulate certain aspects of those leases signed as the result of applying the Code of Good Practices.

Mechanism to regularize payments to suppliers of Regional and Local Governments (Royal Decree-Law 4/2012, published in the Spanish Official Gazette – Boletín Oficial del Estado – of February 24th, 2012; and Royal Decree-Law 7/2012, published in the Spanish Official Gazette – Boletín Oficial del Estado – of March 10th, 2012)

The Spanish government has approved a Suppliers Plan through the Royal Decree-law 4/2012 of February 24th. The plan is an agile mechanism for payments and cancellation of debts owed by Local Governments (Ayuntamientos) and Regional Governments (Comunidades Autónomas). More precisely, this regulation states the obligations regarding information by Local Governments and the necessary procedures to establish a financing mechanism to regularize the payments due to suppliers of Local Governments. Regional Governments can adhere to this mechanism and the measures would be extended to their suppliers.

On the other hand, the Royal Decree-law 7/2012 of March 9th has regulated the conditions for the outturn in payments of outstanding obligations in Local Authorities and, if applicable, in Regional Governments. For these purposes, a Fund for the Financing of Payments to Suppliers (FFPP) has been created in order to establish the conditions leading to collection of sufficient financial funds to finance the outstanding obligations due to suppliers.

These regulations are completed with other binding texts, such as agreements of the Executive Committee of the Government for Economic Issues, of the Fiscal and Financial Policy Board, or the Order HAP/537/2012 of March 9th approving the schemes of individual certification, the application scheme and the adjustment plan system in virtue of Royal Decree-Law 4/2012 of February 24th, which sets out the obligations of information and procedures required for the establishment of a financing mechanism for the payment of suppliers of local entities.

The basic features of the mechanism are as follows:

a) Local Governments must submit to the Ministry of Finance and Public Administration a certified list of arrears to suppliers. The list shall include the fallen due, chargeable and contingent arrears prior to January 1st, 2012, and under the Law on Contracts of the Public Sector.

b) The suppliers included in this list shall adhere to the terms of mechanism. As of that moment, the Local Government will regularize their payments due or use the established mechanism.

c) The payments will be administered through a non-financial Fund, especially designed for this purpose under the State Secretariat for Economic Affairs and Enterprise Support of the Ministry of Economy and Competitiveness. Some functions will be monitored by the Ministry of Finance and Public Administration.

d) Regarding the financing of the Fund, the General State Budget will provide up to 6 billion Euros. From this amount, 1.5 billion will be payable in 2012. Furthermore, the fund will have to possibility of raising funds in national and international capital markets.

e) The Local Governments shall design an Adjustment Plan. If the plan is approved by the Ministry of Finance and Public Administration, then the Local Government will take out a loan. If the plan is not approved, then the Fund will finance the arrear, with the Local Government's tax contribution to the state as a guarantee.

f) The Spanish Official Credit Institute will act as a payment agent, managing and monitoring the operations under Royal Decree-Law 7/2012.