Spain amends its General Tax Law

Executive summary
On 22 September 2015, Law 34/2015 partially amending the Spanish General Tax Law (the Law), was published in the Spanish Official Gazette.

The Law will enter into force on 12 October 2015 except for the obligation to keep specific electronic ledgers which will apply as from 1 January 2017.

This Alert covers the most relevant amendments introduced by the Law, many of which affect key issues such as the possibility to impose penalties under the application of certain general anti-avoidance rules (GAAR) – which formerly precluded penalties – and the strengthening of the powers and rights of the tax authorities.

Detailed analysis
Conflict in the application of tax law
A “conflict in the application of tax law” is deemed to exist when the taxable event is totally or partly avoided by means of the implementation of artificial instruments which eventually leads to the same result as the original transaction, but with less adverse tax costs or implications.

If a “conflict in the application of tax law” is deemed to exist, the tax authorities are entitled to apply the tax treatment which corresponds to the usual or appropriate acts or transactions which were unlawfully avoided.

To date penalties could not be imposed when a transaction was contested under the “conflict in the application of tax law” provisions (other GAAR already set forth that penalties may be applied). The Law introduces a new penalty for this specific anti-abuse provision in cases where a substantial equivalence is evidenced between the fact pattern deemed as a “conflict in the application of tax law” and the fact pattern described in the so-called “Consultation Commission report,” which is a report that will be prepared by the tax authorities and will include the administrative criteria issued on certain fact patterns. This report will be available to the public.
This amendment is partially retroactive since it will apply to transactions carried out during the current fiscal year to the extent a transaction is not closed by 12 October 2015.

**Statute of limitations**
The Spanish general statute of limitations is 4 years. However, under the new Corporate Income Tax (CIT) law which came into force on 1 January 2015, the statute of limitations period of CIT years in which an entity has generated losses and tax credits has been extended to 10 years. The Law now extends this provision to all other taxes.

Similarly, the Law extends the provisions already included in CIT legislation which enable the tax audit to review transactions implemented in statute-barred years where they produce effects in non-statute-barred periods to all taxes. In other words, the Spanish tax authorities are now allowed to scrutinize transactions performed in FYs closed to tax audits where these deploy effects in FYs open to tax audits.

These amendments will enter in force the same date as the Law and therefore apply to tax audits not finalized by 12 October 2015.

**Disclosure of relevant infringement of the tax obligations**
After prior notification to the relevant taxpayers, a list of taxpayers owing taxes or penalties over €1 million not timely and duly paid will be made public. Postponed or suspended debts and penalties will not be taken into consideration for the calculation of the above-mentioned threshold.

The first list will include debtors in the above situation as of 31 July 2015 and will be published during the last quarter of 2015.

**Extension of the duration of the tax audit procedure**
The current general 12-month limit for the duration of a tax audit is extended to 18 months and to 27 months for taxpayers who are obliged to audit their financial statements or form part of a tax consolidated group.

**New measures relating to European Union Law**
A new procedure has been put in place in order to execute the Decisions on the refund of State Aids in tax matters. A 10-year statute of limitation period is established for the tax authorities to determine and request the payment of the tax debt resulting from the execution of a recovery Decision.

The Law extends the entitlement to request a preliminary ruling before the Court of Justice of the European Union to the so-called tax courts (tribunales económico administrativos), establishing that in such case the procedure and the statute of limitations will be suspended until it is resolved.

**New information obligations in relation to financial accounts**
New information obligations are introduced as part of the implementation of Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. Among other measures, two new types of infringements are included in the Law in relation to the failure in the identification obligation of the residence of the individuals that hold or have the control of financial accounts.

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