Spanish Government announces extension of limitations to use NOLs and other tax measures and abolishes worthless stock deduction regime

Background

On 28 June 2013, the Spanish Government announced that it will extend the application of certain temporary measures to increase the collection of taxes through years 2014 and 2015. These measures affect the calculation of the Corporate Income tax interim payments, limit the use of NOLs, and limit the tax deduction of goodwill amortization.

The Government’s press release further announced that the worthless stock deduction regime will be abolished and that losses of foreign permanent establishments of Spanish companies may only be taken for tax purposes upon the transfer or closing down of the permanent establishment.

The relevant legislation has not been enacted yet. A more detailed Alert will follow once the bill is enacted. This Alert covers the key provisions announced in the press release.

Extension of measures to increase collection of taxes

Certain measures to increase tax revenue were introduced for tax years starting on or after 1 January 2012. These rules were originally put in place for years 2012 and 2013, but the Spanish Government has now announced that their application will be extended through years 2014 and 2015.

- Interim payments’ alternative minimum tax: generally, Spanish companies must file three Corporate Income tax interim payments. Large entities (i.e., companies with a turnover for VAT purposes that exceeds €6,010,121.04 in the 12 months before the beginning of the relevant fiscal year) calculate such interim payments
based on the taxable income of the relevant period. It has now been announced that the application of a mandatory minimum tax for large size entities (entities with a turnover in the 12 months prior to the beginning of the relevant fiscal year above €20 million), equal to 12% of their accounting profit in the relevant period, without the possibility to offset tax losses from previous periods, will be extended through 2014 and 2015.

- Limitations on the use of NOLs: large-size companies (as defined above) with a turnover in the 12 months prior to the beginning of the relevant fiscal year between €20 million and €60 million may only offset NOLs up to a maximum amount of 50% of the positive taxable base. When the company’s turnover in the prior period is above €60 million, the limitation is 25% of the positive taxable base. It is announced that this limitation will be in place until 2016.

- Goodwill amortization: goodwill amortization, generally deductible at an annual 5% maximum rate is reduced to 1% and the press release states that this reduced rate will be applicable in 2014 and 2015.

Worthless stock deduction

Spanish tax law provides for a worthless stock deduction regime which allows the taxpayer to take the deemed loss derived from the decline in the value of the shares of an entity belonging to the same group as the parent entity within certain limits as a book-to-tax adjustment. When the subsidiary regains its value, the amount previously taken as a tax expense becomes taxable. This provision applies in respect of shares in Spanish and non-Spanish resident entities.

The Government has announced that it plans to abolish this deduction. The press release is unclear as to the effective date upon which the change will come into force, but it could be inferred that the intended date is retroactive to 1 January 2013. It has been announced that the draft bill will contain a transitory period to deal with the recapture of past years deductions. The press release indicates that the distribution of dividends by the subsidiaries will trigger the claw back of prior year deductions; special attention should be paid to the particular wording that is finally given to this transitory regime.

Losses from a foreign permanent establishment

Spanish corporate tax law foresees that profits attributable to a non-Spanish permanent establishment may be exempted from Spanish corporate tax at the head office’s level, where certain requirements are complied with. This notwithstanding, losses incurred by such permanent establishments are deductible in Spain, subject to recapture.

The Government’s press release indicates that the possibility of taking the foreign permanent establishment’s losses to offset the Spanish head office’s tax base will be suppressed effective 2013 (this in order to align with the abolishment of the worthless stock deduction).

The loss will then be taken only upon transfer of the permanent establishment or when the same is closed down.

Impact

The package of measures announced aims at maintaining the tax revenue from Spanish large entities.

The extension of the interim payments alternative minimum tax, the NOL limitations and the reduced goodwill amortization had already been announced by the Government, albeit only for 2014.

The effects of the suppression of the worthless stock deduction and the ban to use losses generated by foreign permanent establishments as well as of the transitory regime might be significant and will need to be closely monitored.

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Endnotes

1  See Ernst & Young Tax Alerts *Temporary increase of the tax burden on large Spanish enterprises*, dated 26 August 2011; *Spain introduces amendments to domestic tax framework*, dated 6 April 2012 and *Spain introduces new tax measures to reduce public deficit*, dated 20 July 2012.
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