CORPORATE TAXATION

Recent developments for Spanish corporate taxpayers

The final weeks of 2024 have been used to pass many tax measures that are relevant for both domestic and foreign investors.

Spain | Legal Flash | January 2025

KEY ASPECTS

- Adoption of the OECD’s Pillar Two legislation through a new *Impuesto Complementario*.
- Reintroduction of corporate income tax measures declared unconstitutional. These measures include limitations to the use of net operating losses and double tax credits, as well as a fictional reversal of deductible impairment losses on shares.
- Limitations introduced in 2023 on offsetting tax losses within consolidated groups extends to 2024 and 2025.
- Significant changes to the capitalization reserve have been approved.
- Renewal or creation of new taxes for certain companies and products.

Pillar Two legislation is finally enacted in Spain

Spanish law now includes the new tax (*Impuesto Complementario*) that develops OECD's Pillar Two and transposes the EU Directive approved in 2022. It has been implemented through new legislation published in the official gazette at the end of December 2024, although it will apply to tax periods starting on December 31, 2023 onwards given that it does not pose constitutional problems in Spain.

This tax is aligned with the OECD's scheme, so it aims to guarantee a 15% effective tax rate in each jurisdiction for corporate groups with a turnover exceeding €750 million in at least two of the previous four periods.

It includes not only the GloBE Rules (the Income Inclusion Rule, *Impuesto Complementario Primario*; and the Under-Taxed Profits Rule, *Impuesto Complementario Secundario*), but also a Qualified Domestic Minimum Top-Up Tax (QDMTT or *Impuesto Complementario Nacional*). The three of them share the same basics for calculation; in particular, the same rules for identifying the applicable accounting standard and the option to benefit from transitional safe harbors.

Reintroducing tax measures declared unconstitutional

In January 2024, the Spanish Constitutional Court ruled that certain measures included of the corporate income tax ("CIT") and approved by Royal Decree-Legislative ("RDL") 3/2016 were unconstitutional because they were approved through an RDL instead of an ordinary Act. These measures had significantly increased the tax rates of many companies and tax groups in recent years, which now seek to obtain a refund.

In view of the tax revenue loss resulting from the nullification of these CIT measures, the same measures have been reintroduced through an Act—remedying the declared unconstitutionality—effective for financial years beginning in 2024 that have not ended as of December 22, 2024.

Specifically, the approved changes include:

- Greater limitations on offsetting negative tax bases and on the application of double taxation credits (national and international) for companies and tax groups with net revenues exceeding €20 million in the previous year.
- Mandatory reversal—made in three years and in equal parts—of impairment losses on shares in other companies that would have been tax deductible in previous years and are pending reversal. This measure will affect companies and tax groups that partially or fully recover the reversal made between 2016–2020 at a rate of one fifth each year in line with RDL 3/2016.

Temporary extension on limit on offsetting tax losses in tax groups

In 2023, a specific limit was introduced on offsetting tax losses of entities integrating a tax group of companies taxed under the CIT consolidation regime (see our Legal Flash | New tax measures approved in Spain for 2022 and 2023). In particular, if a company derived losses in 2023, the group could only use 50% of those losses.

This measure has been extended to 2024 and 2025 tax periods.

Note that losses not used in 2024 and 2025 can be recovered over a 10-year period (2025–2034 for those lost in 2024, and 2026–2035 for those lost in 2025).

Capitalization reserve

Significant improvements have been made to the capitalization reserve regime, a tax relief seeking to encourage equity capitalization and enable taxpayers to reduce their company's CIT tax base by a percentage of the increase in net equity it has achieved during the year.

From 2025, the general reduction percentage will increase from 15% to 20%. In addition, higher percentages have been approved (23%, 26.5% and 30%)—applying to the increase in net equity—for companies and tax groups that reach certain thresholds involving the average headcount for the year.

Other developments and new corporate taxes

Other significant measures have been approved including:

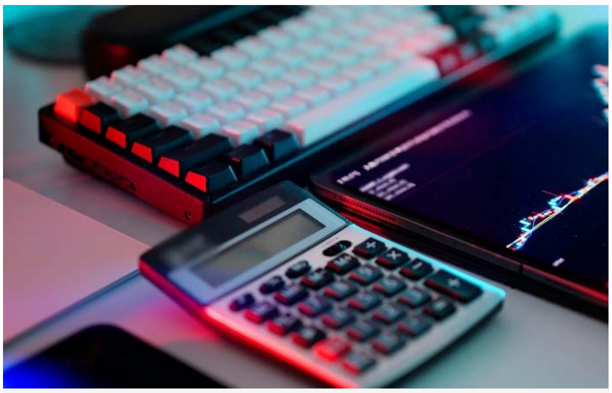
- A new tax on interest margins and commissions of financial institutions for tax periods starting in 2024, 2025 and 2026.

  This new tax replaces the previous tax introduced in 2023 and 2024 for credit institutions and financial establishments operating in Spain.

- A new temporary energy tax in 2025, which replaces a previous temporary tax introduced in 2023 and 2024 to the main operators of electricity, natural gas, fuels and liquefied petroleum gases whose net revenue exceeds certain thresholds.

  The new tax has been approved through an RDL that must be voted on in the Spanish Congress to be validated or repealed and that could lead to the processing of a bill modifying what has been approved.

- A new special manufacturing tax on liquids for electronic cigarettes and other tobacco-related products, effective from April 1, 2024.



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