Spain:
Government amends corporate tax reform proposal

Spain is considering a broad-based tax reform package that, if approved, would apply as from 1 January 2015 (for prior coverage, see the alert dated 2 July 2014). As a second step in the legal procedure for the reform, the government has drafted an amended proposal that includes some modifications to the first draft. 


The most relevant proposed changes are the following.

Profit participating loans – Intragroup profit participating loans would be characterized as equity instruments (rather than debt) and, therefore, “interest” payments on such loans would be nondeductible. Under a new transitional regime, this treatment would not apply to participating loans granted before 20 June 2014.

Deductibility of financing expenses in leveraged buyouts – The earlier proposal included an additional limit on the deductibility of financial expenses related to leveraged buyout transactions. The amended proposal introduces changes relating to the additional limit:

- The additional limit would be 30% of the acquiring company’s operating profit, without taking into account the operating profit of any entity that merges or is included in the tax group within four years of the acquisition.
- In acquisitions where the acquiring entity is part of a consolidated tax group, the operating profit of the entire group would be required to be taken into account when calculating the additional limit.
- If the acquisition is financed with debt equal to up to 70% of the purchase price, there would be no additional limit during the tax period in which the shares are acquired. There also would be no additional limit during subsequent tax periods if the amount of the debt is decreased from the time of acquisition by 5% annually, until the debt reaches 30% of the acquisition price.

Participation exemption – The requirements to qualify for the participation exemption would be amended:

- With respect to participations in foreign companies, the controlled company would be required to be subject to, and not exempt from, a tax that is identical or similar to the Spanish corporate income tax, at a nominal rate of at least 10% (regardless of the application of any exemption, bonus, reduction or deduction).
- If the minimum participation threshold of 5% is not satisfied, the amount of the investment required for a Spanish company subject to the holding company (ETVE) regime to qualify for the participation exemption would be lowered from EUR 50 million (as previously proposed) to EUR 20 million.
- Intragroup profit participating loans would qualify as dividends or shares in profits exempt from tax.
- The transitional regime that would have allowed a partial exemption in 2015 and 2016 for disposals of shares in Spanish entities would be eliminated; thus, a full exemption would be available for these years.
- An alternative minimum participation (to the current 5% threshold) of EUR 20 million would be introduced to qualify for benefits under the EU parent-subsidiary directive.

Miscellaneous – The new definition of “related party” for transfer pricing purposes would not include a provision to deem parties to be related where decision-making power is (or may be) exercised.

The tax authorities would be granted the right to audit and review net operating losses (NOLs) for a period of 10 years from the time the NOLs arise (the existing standard review period under the statute of limitations is four years).

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