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Global Tax Alert

Spain releases 2019 State Budget Bill

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Executive summary

On 16 January 2019, the State Budget Bill (the Budget Bill) for Fiscal Year (FY) 2019 was published in the *Spanish Parliament Official Gazette*. The Budget Bill, which was approved by the Spanish Council of Ministers on 11 January 2019, will now follow the parliamentary discussion and approval process.

The Budget Bill includes most of the tax measures set forth in the Budget plan published on 15 October 2018 (see EY Global Tax Alert, *Spanish Council of Ministers approves anti-tax evasion Bill proposal which includes implementation of ATAD and creation of Digital Services Tax and Financial Transactions Tax*, dated 19 October 2018).

Detailed discussion

Background

On 15 October 2018, a State Budget Plan was agreed between the Spanish Government and the largest political party supporting the Government.

The text of the State Budget plan was reviewed by the European Commission which advised that the measures included could impact the agreements reached in the Stability and Growth Pact.

Building a better working world

After months of negotiations with the other political forces in the Spanish Parliament, the Government decided to move forward and approved the Budget Bill in the Council of Ministers held on 11 January 2019 and the Bill was submitted to the Congress on 16 January 2018. It is still uncertain whether the Government currently has the support to get this Budget Bill approved by both the Congress and the Senate and, if so, what the final wording of all the relevant measures included therein will be.

Tax measures included

The Budget Bill includes a number of tax measures, mainly aimed at increasing the tax revenues for FY 2019.

A description of the tax measures included in the Budget Bill which could have a greatest impact on multinational groups having Spanish operations, if they were finally approved, are summarized below.

Amendments to the participation exemption regime for dividends, capital gains and income derived through permanent establishments

The exemption for dividend and capital gains from domestic and foreign subsidiaries would be limited to a 95% of the income (it is worth noting that the requirements which need to be complied with for the participation exemption regime to be applicable have not been amended). This 5% reduction is achieved by treating 5% of the income as non-deductible expenses.

Given that the standard Corporate Income Tax (CIT) rate in Spain is set at 25%, the effective tax rate on dividends and capital gains derived by Spanish companies would be 1.25%.

As a result of this amendment, all other provisions dealing with the avoidance of double taxation (or making reference thereto) foreseen in the CIT Law have been amended accordingly. For example, among others, the tax credit to avoid double taxation for dividends and capital gains received by Spanish entities. Note that as per the draft Budget Bill, the Spanish holding company (ETVE) regime is not expected to be amended with respect to the taxation of the income derived by the non-Spanish resident shareholders.

The exemption for any income derived through a foreign permanent establishment is also limited to 95%.

Introduction of a Minimum Tax for CIT purposes

To increase the tax revenues, the Government announced the introduction of a Minimum Tax as per which CIT taxpayers would be subject to the higher of (i) such Minimum Tax, or (ii) the final tax due under CIT generally applicable rules.

In accordance with the Budget Bill, this Minimum Tax would only apply to Spanish entities and permanent establishments with turnover higher than €20 million during the last 12 months, or to entities or permanent establishments that belong to a consolidated tax group, regardless of their (or the group's) turnover.

As per the rules currently included in the Budget Bill, the Minimum Tax will be calculated over the taxable base, at a rate of 15%. An 18% rate will apply to companies subject to a CIT rate of 30%, namely financial entities and oil and gas companies, and a 10% for newly incorporated entities subject to a CIT rate of 15%.

The only tax credits which can be applied to reduce the tax quota below the Minimum Tax are the so-called "bonificaciones." Other tax credits can only reduce the tax due down to the amount of the Minimum Tax.

The following entities are excluded from the scope of application of the Minimum Tax:

- Entities included in the scope of application of Law 49/2002 of 23 December, on the tax regime of non-profit organizations and of tax incentives for patronage
- Entities subject to a CIT rate of 1% (such as collective investment institutions including real estate investment funds)
- Pension funds
- Spanish Real Estate Investment Trusts – REITs (*SOCIMI*)

Other CIT measures

The draft Budget Bill includes other tax measures, among others:

- The CIT rate for small companies with turnover that does not exceed €1 million is reduced down to 23%.
- The tax rate applicable to the calculation of the CIT interim payments is set at 24%.

- The rate applicable for the calculation of the minimum CIT interim payment -which is calculated over the accounting result (including any exempt dividend and capital gains) – is increased to 24%. This minimum CIT interim payment is applicable for companies with turnover during the 12 months prior to the beginning of the relevant FY higher than €10 million.

Amendments to REITs regime (*SOCIMI*)

The Bill includes the following amendments to the REITs (*SOCIMI*) regime:

- A special 15% tax (which is considered part of the SOCIMI's CIT liability) would apply over undistributed profits derived by the SOCIMI. This tax would accrue on the date in which the results for a given year are approved and must be paid within two months from the accrual.
- The 19% special tax applicable to the SOMICI for dividends distributed to and capital gains derived by shareholders holding 5% or more in the SOCIMI, and which are taxed at a rate lower than 10%, is reduced to 4.75% when those dividends have been subject to the special 15% tax.
- Spanish CIT taxpayers owning shares in a SOCIMI are entitled to apply the participation exemption regime over 50% of the income (dividends and/or capital gains) corresponding to undistributed profits which have been subject to the special 15% tax (40% for financial entities and oil and gas companies).
- SOCIMIs would need to disclose in their financial statements information on the dividends that have been subject to this special 15% tax.

As a general rule, CIT amendments, as per the above, would apply to fiscal years beginning on or after 1 January 2019 and which have not concluded when the Budget Bill enters into force.

Other tax amendments

The Budget Bill also proposes amendments to other taxes such as Personal Income Tax, Value Added Tax (VAT), Special Taxes and Local Taxes.

For instance, the Personal Income Tax State tax rates for salary income exceeding €130,000 and €300,000 are increased (to 24.5% and 26.5% respectively, from the previously applicable 22.5%); the tax rate for savings income higher than €140,000 is also increased (to 27%). For VAT purposes, the tax rates applicable to certain products are amended.

Next steps and practical implications

As anticipated, the Budget Bill was sent to Congress and now it needs to go through the legislative procedure for approval. It is still uncertain whether the Government has sufficient support to approve the Budget Bill or whether, in the course of negotiation of the Budget Bill, some or all of the specific tax measures discussed above may be fully or partially redrafted.

Multinational groups with a Spanish holding company structure for all or part of their international operations may consider reviewing it if the amendments to the participation exemption regime are finally approved.

EY will closely monitor the parliamentary procedure and issue new tax alerts if and when any developments on these tax measures are known.

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