IBERIAN LAWYER

TAX REPORT 2013

From ‘havens’ to ‘infernos’

An abstract from Iberian Lawyer
January / February 2013

For further information please contact

maricruz.taboada@iberianlegalgroup.com

www.iberianlawyer.com

From 'havens' to 'infernos'

Continuous reforms, increasingly aggressive tax authorities, and a Government that keeps changing the rules of the game mean that 2013 looks set to be another year of tax controversy and challenges for clients and law firms alike.

Como si España y Portugal no tuvieran suficiente con la crisis económica, la gota que colma el vaso tiene nombre de reforma fiscal. El reto al que se enfrentan las compañías con sus problemas de liquidez, refinanciamiento, etc. viene ahora exacerbado por las modificaciones fiscales que tienen un efecto directo en sus balances. El frenazo en la actividad económica y el consumo ha repercutido en los Gobiernos, que con su necesidad de contar con mayores ingresos han optado por presionar a las empresas incrementando los impuestos.

As if Spain and Portugal didn't have enough on their plates with the crisis, they must now contend with a wave of new tax reforms. Companies already choked by a lack of liquidity and financing are now feeling the vice-like grip of tax increases on their balance sheets.

There has been a decrease in the amount of taxes collected by the Iberian Governments, due to the decline in economic activity and consumption over the past few 'crisis' years. And, with a dire need of cash for the State, they are both going into 'tax overdrive'.

The resulting tax reforms, some expected others unexpected (almost overnight), has proved a big challenge for clients and law firms alike. The feeling among lawyers is that their respective Governments have been changing the rules while they are still playing the game.

But in amongst all this tax doom and gloom, the good news is that with all the reforms and ensuing issues, 2012 was a busy year for tax departments, and this looks set to continue.

Spanish austerity

With a high fiscal deficit to reduce, and a bailout to repay, the Government's austerity measures have caused a dramatic increase in the tax burden on Spanish individuals and companies.

2012 saw a record amount of new tax measures introduced, and while 2013 should be less of a rollercoaster ride, say lawyers, they feel that it will still be a year filled with tax controversy.

A painful increase in VAT rates from eight percent to ten percent (reduced rate) and 18 percent to 21 percent (normal rate) in less than three years and a hike in Personal Income Tax have sent citizens to the streets in protest. Personal Income Tax, generally at a maximum of 43 percent, is now 56 percent in Catalonia and 52 percent in Madrid. "The Government should concentrate on having more tax payers," says Sílvia Paternain Global Head of Tax at Freshfields, "rather than trying to squeeze more out of the ones it already has". They have even added a new tax of 20 percent on lottery winnings, something that has never been done before.

"An effective tax policy has been sacrificed for tax collection," says Víctor Hernán, Tax Partner at CMS Albiñana & Suárez de Lezo. Some of the measures are clearly intended to increase tax collection, including, among others, restrictions for the application of free depreciation, a rise in the rates for Corporate Income Tax payments-on-account, and an increase in withholding tax rates, explains Luis Rodríguez-Ramos, Tax Partner at Ramón y Cajal Abogados, as well as limits for the depreciation of the goodwill and new taxes applicable to the production of electricity.

The high fiscal deficit has also had a significant impact on tax because of recent anti-deferral measures, such as the limits on deductibility of some financial expenses, explains Sonia Velasco, Tax Partner at Cuatrecasas, Gonçalves Pereira in Spain, and other temporary measures (for 2012 and 2013), such as the limits on using tax losses and introducing high prepayment obligations for corporations that meet specific size criteria.

Not all the measures are collecting ones, however. There is one important regulation that provides for the updating of the value of tangible assets and real estate included in company balance sheets. This measure allows for the correction of the monetary depreciation of the assets and to put them at current values (the maximum being the market one), says Carlos López, Tax Partner at BDO Abogados y Asesores Tributarios. Nevertheless, this costs companies five percent of the net increase of assets' value.

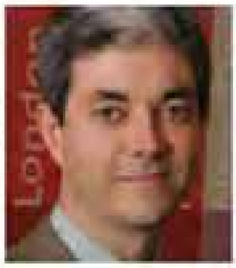
Also, in 2012, the Government announced new measures aiming at helping entrepreneurs and start-up companies, some of which are expected to be approved this year. This draft law contains administrative clauses that provide for measures to defer taxes during the first years of business until the company is consolidated.

REITs

One of the most significant developments, however, has been the new tax treatment of the Spanish real estate investment trust (REITs) – the so-called SOCIMIs. "The new REITs regime is the good news for this year," says Eduardo Gracia, Managing Partner and Head of Tax at Ashurst in Spain, "and there are potential opportunities there for law firms and clients alike going forward."

"The new REITs regime is the good news for this year, and there are potential opportunities there for law firms and clients alike going forward."

Eduardo Gracia, Madrid Managing Partner and Head of Tax, Ashurst



The applicable Corporate Income Tax rate is now zero percent for real estate lease and sale income (subject to certain conditions) while the dividends distributed by the SOCIMI are taxable at the level of the shareholders. "The former approach, applicable until the end of 2012, was that the SOCIMI would pay 19 percent Corporate Income Tax and its shareholders (except Spanish corporate shareholders) would basically be tax exempt," says Javier Fernández Cuenca, Tax Partner at Pérez-Llorca. This approach proved unsuccessful as, since their creation back in 2009, there is not a single one in place. The Government expects that eliminating the tax and transferring the tax burden to its shareholders will ease future creation of SOCIMIs.

The REITs regime is new, however, and therefore still untested, notes Jordi Domínguez, Head of Tax at Latham & Watkins in Spain. "Once clients start applying it, we will then be able to see from the tax authorities' approach whether the new tax framework accomplishes its purpose."

The challenges ahead

What worries lawyers most, however, is what lies ahead. The Spanish Government promises that its intention is to make the country attractive to both domestic and foreign investment, and is promising that the current tax increases are only temporary as its real intentions are to lower taxes once the crisis is over. However, the Government's statements do not instil confidence in the businesses, says Ramón Parcerisa, Head of Tax at Pintó Ruiz & Del Valle because it has repeatedly breached its promises.

Following a European trend, says Borja Escrivá de Romaní, M&A and Tax Partner at Deloitte Abogados, temporary tax measures intended to reduce State fiscal deficits might become permanent in the near future. And while the reforms are still ongoing, their clients still have the same needs.

But in amongst all this, 2012 was a good year for Spanish external tax departments. Much work stemmed from the tax amnesty enacted by the Government, which ended in November 2012, and the increase in tax inspections to both companies and high-net-worth individuals and ensuing litigation. And this is set to continue into 2013.

And although the tax amnesty has already finished, there are some new 2013 reporting provisions for individuals or companies owning assets outside Spain. While it is true that it is a mere compliance work, says Juan Alberto Urrengoechea, Tax Partner at Roca Junyent, it has a high level of complexity and banks and clients will likely require their services. "In fact, we have already detected such a necessity."

The big challenge for lawyers will be how to help their clients navigate such an unstable legal environment. "We are unable, as advisers, to give them any safety or security as to their tax obligations in the long-term," says Hernán at CMS Albiñana. And what any client wants at the moment is stability, especially when it comes to their long-term tax obligations and investments.

Portuguese bailout

The situation is no better in Portugal. To comply with the deficit requirements set forth by the Troika, says Rogério M. Fernandes Ferreira, Founding Partner of tax boutique Rogério Fernandes Ferreira & Associados, the 2013 Portuguese State Budget has been described as containing a "brutal" increase in taxes.

A big part of Portugal's budgetary adjustment under the bailout has depended on there being an increase in revenue, and this in turn has led to a massive rise in the tax burden to try to fulfil this.

The Government failed to contain public expenses in 2012 and improperly evaluated VAT revenue, which instead of a two-digit growth was negative, and then, for 2013, chose a tremendous tax increase ('enormous', was the word used by the Ministry), says João Espanha, a Founding Partner of Espanha & Associados, which relies mostly on the increase of Personal Income Tax. Tax on savings income and on capital gains was also increased, not to mention all sorts of special indirect taxes and an increase on immovable property tax due to the evaluation of real estate imposed by the Troika.

"Our creditors suggested that reductions of public expenditure should come essentially from cutting public expenses and only marginally by increasing taxes," says Tiago Caiado Guerreiro, Head of Tax at Caiado Guerreiro. Unfortunately the Government chose the opposite approach, and put enormous increases, most notable on Personal Income Tax and Corporate Income Tax.

The most significant change in relation to Personal Income Tax is that lower earners will now be caught in a higher tax bracket. In addition, individual taxpayers will be subject to an Extraordinary Surtax of 3.5 percent, says Tiago Marreiros Moreira, Tax Partner at Vieira de Almeida & Associados, and those falling in the higher

"To comply with the deficit requirements set forth by the Troika, the 2013 Portuguese State Budget has been described as containing a 'brutal' increase in taxes."
Rogério M. Fernandes Ferreira, Founding Partner, Rogério Fernandes Ferreira & Associados

brackets will also be subject to a Solidarity Surcharge of up to five percent. "The impact on middle class net income is expected to reduce domestic consumption levels, with an impact on day-by-day business and, in particular, small and medium enterprises."

At the same time, adds Caiado Guerreiro, the Government intends to lower corporate income tax to 10 percent. Currently at 31.5 percent – one of the least competitive in the EU – a comprehensive Corporate Income Tax reform has been announced, to be approved in 2013.

This will, among others, simplify the ancillary obligations for companies and taxpayers and review the international aspects of the system in order to encourage and capture foreign investment. Significant changes will be introduced to the Portuguese participation exemption regime, double taxation treaties and even transfer pricing rules, explains Samuel Almeida, Tax Partner at Miranda Correia Amendoeira & Associados. According to the Ministry of Finance, the main drivers of the reform will be publically announced in October 2013.

In effect, the Government is intending to make Portugal internationally visible, in a positive way, says Elsa Rodrigues, Head of Tax at Espanha & Associados, by establishing the lowest corporate income tax rate within the EU.

In order to do this, the Government has formed a special commission to prepare a wide revision of the Corporate Income Tax, says Tiago Soares Cardoso, Tax Partner at Sérvulo & Associados, and one of the measures in discussion is the creation of a reduced tax rate for major investments.

But the only way to conduct such a reform successfully without the loss of income, however, is to enlarge the number of corporate taxpayers in Portugal, says Miguel Teixeira De Abreu, Co-Head of Tax at Abreu Advogados. "That can be done either by fostering growth and foreign investment or by offering foreign investors a special regime for income flowing through Portugal, but not directed at it. For that, it must look at the Dutch, Swiss or Luxembourg regimes for guidance."

The proposal for a new code will be presented later this year to be implemented in 2014.

The Government has also been authorised to create a new VAT regime applicable to small businesses with a turnover of up to €500,000. According to the new regime, VAT will only be due by companies upon receipt of the amounts invoiced, explains Filipe Romão, Tax Partner at Uría Menéndez - Proença de Carvalho, and VAT will only be deductible by the acquirer when the respective invoices are paid.

Also, following the approval of the so-called 'Tobin Tax' in other EU States, the Government has also been authorised to submit a proposal for a new financial transactions tax involving securities, which may vary between 0.1 percent and 0.3 percent per transaction. And Real Estate Transfer Tax (IMT) will be extinguished as of 2016.

All of these changes reflect Portugal's need to maximise tax revenue for 2013 and take a stricter approach to the under-reporting of taxable income, explains Henrique Nogueira Nunes, Head of Tax at Albuquerque & Associados. "But the actual levels of taxation are unbearable in the long run and the internal confidence indicators in the economy register minimum levels."

Unfortunately, say lawyers, the predictions for a better 2013 in relation to tax are not looking good.

Incentivising Spain

Spain and Portugal are both in bitter need of investment, both foreign and domestic. While last year's fear that Spain would exit the Euro has diminished, lawyers believe it is still a factor that is putting off investors as it could mean around a 40 percent devaluation on their investment.

However, a key turn off is the lack of a stabilised tax environment in both countries, as investors have no certainty when it comes to pricing assets and cannot realistically invest without knowing their return. While the barriers to investment are slowly being curtailed, say lawyers, a lot could be done from the tax side to help that process.

While Spain has had many tax incentives over the years, for one reason or another the majority have been abolished – the Beckham Law for example. The abolishment or partial elimination of such tax incentives is mainly due to budgetary reasons, says Urrengoechea at Roca Junyent – the need for collecting more money through taxes.

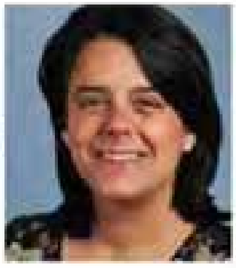
This feeling is echoed across the profession as lawyers believe that any new tax measures will not be aimed at enhancing investment, rather collection. The income of the tax authorities is reducing each year with the crisis, and that's even taking into consideration all the new tax measures introduced, says Pablo Serrano de Haro, Head of Tax at Clifford Chance in Spain. "We somehow need to help them in making a regulation that will make Spanish economy attractive for international investors."

Spain does however continue to have a very favourable holding regime, says Velasco at Cuatrecasas, Gonçalves Pereira, which in recent years has resulted in multinational groups opening new headquarters in Spain, enabling them to expand their presence in Europe, Latin America and North Africa. Executives moving to Spain also enjoy a tax rate of 24.75 percent on their income obtained in the country, and no taxation on any income considered to have been be earned abroad.

And Spain's new REITs regime, as well as trying to reactivate the real estate market, also simplifies the requirements needed to do business. "It is an example of where the tax authorities have listened to the market, understood what it needs and responded, and it will be very positive," adds Serrano de Haro at Clifford Chance. "Some international investors have already decided to invest in Spain instead of other countries due to our REIT regime."

Ultimately, however, the lack of a stable and effective legal framework is what is truly putting investors off, including local ones. "We need a tax law and system that incentivises Spanish companies to invest in Spain," says Paternain at Freshfields, and not just abroad.

> "We need a tax law and system that incentivises Spanish companies to invest in Spain, and not just abroad."
> Silvia Paternain, Global Head of Tax, Freshfields



Portugal's pull

Despite its austerity measures, Portugal continues to have a number of tax incentives aimed at attracting foreign investment. The Government is currently negotiating a tax incentive scheme with the EU Commission that is designed to encourage and promote investment, both foreign and domestic. Details are still unknown, but the general idea is a substantial reduction of Corporate Income Tax rates applicable to resident companies either producing or exporting tradable goods, or developing areas considered of high-added value.

Under the 2013 Budget, the Government was authorised to amend the Investment Support Tax Legal Framework in order to, among other things, create a tax incentive to the reinvestment of profits and capital increases the proceeds of which are invested in eligible assets, says André Dias, Tax Partner at Macedo Vitorino & Associados, consisting of a tax relief up to 10 percent of the investment.

Much has been debated about tax incentives, including the negotiation with the European Commission for a special 10 percent Corporate Income Tax rate applicable to certain new investments, says Diogo Bernardo Monteiro, Tax Partner at F Castelo Branco & Associados. "However, this possible tax incentive has been postponed indefinitely, until the outcome of the works of the commission responsible for reviewing Corporate Income Tax is known."

Portuguese legislation also sets out contract-based tax benefits (lower taxes or exemptions) for productive-investment and globalisation-oriented investment projects (the latter, for Portuguese companies), subject to certain conditions. And there are tax benefits applicable to companies investing in research and development, says Romão at Uría Menéndez - Proença de Carvalho, as well as an investment tax regime applicable to investing companies acting in certain sectors, such as agriculture, forestry, agribusiness, energy and tourism, mining and processing.

There is also a Tax Relief Regime on Contractual Investments (BFCIP), available for investment projects by foreign or domestic companies up to December 31st, 2020 with a minimum value of €5m. The project must be deemed relevant to the development of the national economy and reduction in regional inequalities, says João Magalhães Ramalho, Head of Tax at PLMJ, leading to the creation of jobs and helping boost technological innovation and national scientific research.

And the Special 2009 Tax Regime to Support Investments (RFAI2009) has been extended and now applies to relevant investments made up until December 31st, 2013 on fixed tangible and intangible assets.

But while there are incentives out there, the feeling

Client challenges

Things, however, aren't getting any easier for businesses. Currently, they are trying to cope with a significant increase in taxes, says Alberto Ruano, Tax Partner at SJ Berwin in Spain, amid a declining economy and a drastic reduction of their profits. Continuous and seemingly endless changes in tax regulations don't help, and the biggest challenge for clients is dealing with the new size of their tax bill, as they struggle with liquidity.

We also live in a whole new world where the complexity and pace of transactions have changed dramatically over the past few years. And the challenge lawyers face, says Federico Linares, Managing Partner and Head of Tax at Ernst & Young, is helping clients to do cross-border business in the most tax-efficient way possible.

This includes how to develop an appropriate and well-planned internationalisation strategy. "One of the most controversial issues this year will be the location of corporate profits," says Carlos Diéguez, Head of Tax at Broseta Abogados, "both from the perspective of the residence of the company obtaining those benefits, and from the transfer procedures used in financial transactions between companies in the same corporate group, but located in different countries."

The first challenge is not to lose sight of the tax function as a key driver to obtain efficiencies in times of base-broadening measures, says Fernando Castro Silva, Head of Tax at Garrigues in Lisbon. The second is to navigate the increasing complexity of the tax system and still implement tax-efficient business decisions, and the third to efficiently manage tax controversies and relationships with the authorities.

Businesses, therefore, are also facing the challenge of a significant increase in tax litigation, says Marreiros Moreira at Vieira de Almeida. Both in Portugal and Spain, this stems from the Government's collection drive, meaning that clients are experiencing a more aggressive attitude from the tax authorities, and the friction between the authorities and multinationals has brought an increase in litigation – a trend that lawyers expect to continue.

"The long term consequences of recent reforms are not positive," says Gracia at Ashurst. "And we are not seeing any legislation that is offering the tax authorities and the taxpayers the opportunity to negotiate with each other and come to a compromise and so avoiding long-lasting tax litigation."

Lawyers are also seeing relevant initiatives in the EU and OECD against what is considered illegitimate international tax planning. Structures that mean significant tax shifting are in the eye of the storm, says Javier Prieto Ruiz, Tax Partner at Araoz & Rueda, regardless of the fact that they were completely legal. The recent Starbucks case in the UK is an example, and multinationals will have to deal with this issue in the year ahead. The trend now with tax is not about whether it is 'legal', says Paternain at Freshfields, but whether it is moral or ethical.

Spanish companies are already feeling targeted by the press for not seemingly standing up to their tax responsibilities. But it is a myth that big Spanish corporates don't pay income tax, says Linares at Ernst & Young. "They do – just not in Spain."

The rules of the international tax planning game have therefore changed, and lawyers as advisers have a different profile. "Our roles have moved more towards pre-litigation than pure tax planning," says Rafael Fuster, Head of Tax at Uría Menéndez, "which is a problem but also an opportunity, and as professionals we just have to adapt to a different scenario."

"Voices from almost all different economic and political sectors are rising to demand new tax measures, which may also contribute to economic growth."
Gonçalo Bastos Lopes, Tax Partner, Cuatrecasas, Gonçalves Pereira

among lawyers is that they are very bureaucratic and complex to apply, and the continuous changes to tax codes are incompatible with the safety and stability that investors need.

Difficulties ahead

Businesses and tax advisers now face a big challenge, says Stella Raventós-Calvo, Tax Partner at Ecija, which is simply knowing how to comply with the continuous changes.

Fragmentation is a big issue, and there is no uniformity in Spain or across Europe. "We need fiscal unity and a common approach," says Fuster at Uría Menéndez. "This is key to enhance the efficiency of the tax system as a whole."

If there was more dialogue between the Spanish tax authorities, law firms and corporates, for example, then it could be a win-win situation. The authorities would collect more taxes and corporates could benefit from more legal certainty, says Javier Vinuesa Magnet, Tax Partner at Gómez-Acebo & Pombo in Spain, and although there is a new trend towards a higher interaction, there is still a lot of work to do.

However, the Spanish authorities have little tools to fight the deficit other than to raise taxes. So while they don't expect many changes, says José Ignacio Jiménez Blanco, Partner in charge of tax structured finance deals at KPMG Abogados, if the public deficit doesn't improve then it is likely that the Government will make further reforms. In addition, says Fernández Cuenca at Pérez-Llorca, it is likely that companies will have a hard time financing the anticipated new tax rates.

In Portugal, the tax increases are seen as having contributed in a substantial way to the current recession, says José Pedroso de Melo, Head of the Tax at CCA Advogados, as well as to the tax revenue shortfall from the beginning of 2012 onwards.

And despite the severe measures enacted, the recent budget starts showing that the huge increase of taxes is not giving rise to the expected increase of revenue, raising serious concerns as to the effectiveness of the tax policy followed so far. Voices from almost all different economic and political sectors are rising to demand new tax measures, says Gonçalo Bastos Lopes, Tax Partner at Cuatrecasas, Gonçalves Pereira in Lisbon, which may also contribute to economic growth.

The general feeling in Portugal, however, is that taxation levels in 2013 have been taken to the limit of social and economical tolerance, adds Tiago Mascarenhas, Tax Associate at Carlos Aguiar, Ferreira De Lima & Associados. "Portugal may now be referred to as a 'tax inferno' as opposed to a 'tax haven'."

Ultimately, we have to learn to live in a more unstable framework, says Ángel Calleja Crespo, M&A and Tax Partner at Garrigues in Spain, and somehow try to understand and anticipate what the legislators intend through their reforms and adapt to the changes in the market. And the advantage throughout all the reforms is that clients increasingly need their tax lawyers, adds Javier Garcia-Pita, Tax Partner at Linklaters.

2013, therefore maybe well be 'taxing', but at least it shows signs of being a busy year for tax departments.

The authorities

In Spain, there is a pressure on the tax system to generate new revenue, which is extremely difficult because market activity is low, says Jiménez Blanco at KPMG. "And authorities are taking an extreme position in many cases to make money but sometimes without enough support of the law."

The tax authorities are incentivised to charge, irrespective of the outcome of an eventual litigation against their assessment, as they get credit for it. And as transactions become increasingly complex, the likelihood of having different views about a specific issue is high and, in this context, tax authorities tend to act not as a judge but as a party, by applying restrictive interpretations, says Garcia-Pita, at Linklaters in Spain. "This often leads to a lack of alignment between the tax legislator (eg, trying to incentivise certain activity) and tax authorities applying the laws."

The tax inspection division in Portugal has been strengthened with more than 1,000 new tax inspectors to maximise the collection drive, and as a result, say lawyers, they have had a marked increase in demand for assistance with tax audits and tax litigation.

Portuguese tax authorities have never been as aggressive as they are now, says Sofia de Sousa Caetano, Senior Associate at Cardigos, with intensive tax audits and massive assessments within all areas of direct and indirect taxation. "On the other hand, due to the implementation of tax adjustments, tax enforcement and revenue collection have become, in some cases, a results-oriented 'milestone' for the authorities."

And the increase of tax inspections and collection efforts is expected to continue, says Bastos Lopes at Cuatrecasas, Gonçalves Pereira, which is good news as long as while they are combating illegitimate non-payment of taxes, tax authorities duly observe the legitimate rights of taxpayers.

However, one of the biggest challenges continues to be a tax administration that is often insensitive to the needs of tax payers in receiving prompt and clear answers to their questions on tax compliance, says Manuel Anselmo Torres, a Partner at Galhardo Vilão, Torres.

To tax or not to tax

International pressures adding weight to Spain's tax agenda mean complications for companies

When it comes to tax planning, companies in Spain need to look at developments outside of the country to understand the direction that Government policy may be heading, says Rafael Fuster, Head of Tax at Uría Menéndez.

"National governments may collect tax revenues, but they no longer have a monopoly on setting the tax agenda," says Fuster, "and they must think globally when setting tax rules and combating fraud. If business is global, so must be tax." The downturn has seen countries more closely align their tax agendas, he explains, and so more than ever companies need to understand the bigger picture.

It has brought greater scrutiny on tax collection, planning and avoidance, with companies receiving considerable negative attention, in places like the UK, for utilising entirely legitimate schemes that nonetheless dramatically reduce their national liability.

"Tax authorities in different countries are clearly being more stringent in applying the criteria they use to calculate what they believe is owed and are coming down much harder on those they perceive to be engaged in tax avoidance," says Fuster. "But they are also looking to prick the consciousness of companies – is the tax being paid 'fair' relative to the profits being made?"

Spain has already seen a number of major tax regime changes. But more significant is the renegotiation of international tax treaties, such as with the US, to encourage more inbound investment.

The Spanish Government, like many others, is looking to reduce the incentives to channel revenues out of the country and offer greater certainty to investors on the amounts that must be paid within.

"On a national level, policy is changing, but in addition to raising revenue, it is basically intended to bring Spain into line with developments elsewhere," says Fuster. "Across Europe and globally, companies are not likely to pay significantly more or less tax overall – it is instead more a question of where they pay it."

Rafael Fuster

La presión internacional ha afectado a la agenda fiscal española con más responsabilidades tributarias para las empresas. Rafael Fuster de Uría Menéndez afirma que al considerar un plan fiscal, las empresas deben analizar el impacto del mercado internacional en el desarrollo y reformas legislativas del país.

Testing the amnesty

The high-profile tax amnesty for individuals and companies based in Spain to declare offshore assets has received much criticism since it finished in November 2012, says Javier Morera, Tax Partner at Broseta.

The amnesty – which brought in around half the intended €2.5bn– saw the Government state that anyone declaring foreign assets would face a 10 percent tax for their total value.

"If individuals declared off shore assets through the ordinary voluntary disclosure procedure of filing complementary tax returns, they would only pay capital gains on the interest/gains and not the asset itself," he says. "So declaring in the amnesty would in many cases result in having to pay €100,000 whereas the traditional route could result in a 18-21 percent tax, but only on the interest/gains."

The Government redrafted the rules so that, under certain conditions, the 10 percent tax was on income from the past five years. Morera believes that while the amnesty may have not hit the target in terms of tax revenues collected, it was more than achieved in terms of offshore assets disclosed (more than €30,000m, versus a €25,000m target). As a result, overall Government tax revenues will improve.

Individuals who have not declared their assets will now face tougher consequences. The Government is making the process much tighter and people must declare all their foreign assets each year (for the first time, before April 30th) or risk the penalties.

"If in the future the Tax Authority discover undeclared foreign assets, they can tax them as a non-justified capital gains, ie at marginal tax rates (now over 50 percent) and charge fines of 150 percent on top," says Morera, "effectively meaning an investor loses everything as well as facing a potential imprisonment penalty if the unpaid tax exceeds €120,000 in a given year."

Javier Morera

La amnistía fiscal del Gobierno ha recibido grandes críticas, dice Javier Morera de Broseta. Esto ha ocasionado que el Gobierno haga el proceso más restrictivo y que a partir de ahora los contribuyentes deban declarar todos sus bienes en el extranjero o arriesgarse a pagar importantes multas.

Wealth generation

Taxing the rich may be a contentious issue in the crisis, but the Spanish Government has made its intentions clear in targeting high-net worth individuals

Isidro del Saz

La presión tributaria a los "ricos" es un tema contencioso en tiempos de crisis, pero el Gobierno español ha expresado sus intenciones de dirigirse a los individuos con rentas altas, dice Isidro del Saz de Roca Junyent.

In a bid to make the country move attractive for investment, the Spanish Government got rid of its long-standing wealth tax in 2008.

"This lasted just three years as it was reintroduced in 2011 as a supposedly 'temporary' measure, then renewed for 2012 and, more recently, 2013," says Isidro del Saz, Head of Roca Junyent's Madrid office.

The tax was intended to generate additional revenue following the economic crisis. It is applied to the assets of individuals in excess of €700,000 rather than income (considerably higher than the €108,000 previous rate). Assets include real estate, which does receive a discount, vehicles, intellectual property rights, jewellery and financial assets.

The 17 autonomous regions have the power to modify the amount to be paid, with the current tariffs mostly running between 0.2 and 2.5 percent.

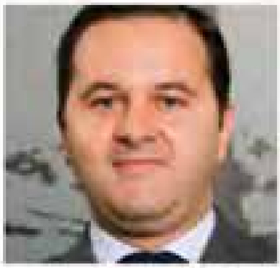
The current situation, however, says del Saz, has resulted in different regions choosing different regimes. Madrid, for example, has waived the tax entirely.

"The fact that the different regions can set different rates has led to tension," he explains. "High-net worth individuals can easily transfer their residency to avoid the liabilities." Individuals, however, still need to comply with the declaration process or face penalties of between 50 percent and 150 percent of the tax bill.

"While the tax is meant to be on an interim basis, the Government will have to decide if it wants to keep it or scrap it by the end of 2013," del Saz says. "The danger of too much taxation is that rich people will just decide not to declare their assets and pay the tax on them but, instead, just relocate abroad."

He warns that the decision to keep the tax or to set national rates runs the risk of driving away high-net worth individuals with the potential to invest in the country.

The attraction of tax



Tiago Marreiros Moreira

Portugal está intentando reubicarse como un centro de extranjeros nacionalizados, con "visas doradas" y beneficios fiscales a expatriados para atraer la inversión foránea, dice Tiago Marreiros de Vieira de Almeida.

Portugal is attempting to re-establish itself as a centre of foreign nationals. It has brought in new regimes for 'golden visas' and expatriates taxes to enhance its attraction as an investment centre, says Tiago Marreiros Moreira, Head of Tax at Vieira de Almeida & Associados.

Golden visas make it easier for foreign nationals to secure a Portuguese residence permit. Individuals from non-EU countries must fulfil certain obligations in order to qualify, he explains, notably, a capital transfer of more than €1,000,000, to create at least 30 jobs or to purchase a property worth over €500,000.

"Golden visas are for those willing to undertake investment activity for at least five years. Applicants only need to spend seven days in the first year in the country and 14 in the following two years, which is more attractive than other EU jurisdictions."

After five years, individuals can apply for full Portuguese citizenship and EU rights. Moreira says his firm has seen particular interest from China, Brazil, Russia and Angola, especially as foreign nationals can also benefit from the expatriates tax regime.

If you are not a Portuguese resident, have been a tax payer abroad for more than five years and relocate to the country, you can enjoy a flat tax rate of 20 percent (increased temporarily to 23.5 percent) on Portuguese source employment, business and professional services income – other Portuguese source income is subject to local tax rates. Foreign source income, such as pensions, employment, business, professional services or passive, is fully exempt if it is taxed or subject to tax at source.

"Golden visas and the expatriate tax regime are attractive to several types of people and investors," says Moreira. "Pensioners, high net worth individuals or high value-added employees looking for a friendly tax environment should definitely consider moving to Portugal."

Proposing a new corporate framework

The Portuguese Government's decision to convene a Committee to explore new corporate tax initiatives presents an opportunity for decisive change

The Committee's goal is to help bring Portugal in line with broader European tax rules and to take better account of the views of all the stakeholders in the system," says Miguel Teixeira de Abreu, Co-Head of Tax at Abreu Advogados. "This comes in the context of a Government acutely aware of public opposition to new tax rises and reducing the tax base in light of its obligations under the EU bailout."

Teixeira de Abreu highlights five measures that he believes will better equalise domestic and European norms, and have a positive impact on international investor confidence.

Among them is the elimination of double taxation on dividend and interest payments and an end to withholding tax on foreign loans, to encourage corporates to deploy more working capital. In addition, he favours the creation of a dedicated tax regime, to better encourage international investors to utilise Portugal as a conduit to the Lusophone world.

"When it comes to investments in Brazil, Angola and Mozambique we have a clear cultural advantage," Teixeira de Abreu says, "but a financial disadvantage, relative to the existing tax initiatives of countries like The Netherlands and Mauritius."

Also proposed is a new tax structure for venture capital and private equity funds, to promote more early stage investment, and new rules promoting the flow of capital within groups of companies by reducing the tax on intra-company transfers.

"Our sense is that a number of these measures are being seriously considered as they present untapped revenue pools or focus in encouraging new international investment," he adds.

Portugal has already seen significant change in the personal tax regime, including the introduction of 'Golden Visas' and a flat 20 percent rate for new resident foreign investors. Abreu's hope is that equally positive results can be achieved in the corporate arena.

Miguel Teixeira de Abreu

El Gobierno portugués ha tomado la decisión de crear un Comité dedicado a valorar nuevas iniciativas de tributos corporativos, lo cual puede resultar una oportunidad interesante para algunas empresas, dice Miguel Teixeira de Abreu de Abreu Advogados.

A welcome tax

An important new tax measure in Spain for 2013 is the legislation that will give companies a one-off possibility to re-evaluate their balance sheet, says Carlos López, Head of Tax at BDO Abogados y Asesores Tributarios.

As of January 1st, 2013, companies can now update or increase the value of assets with the limit of market value, while at the same time taking into account any corresponding depreciation – in the case of real estate, the depreciation of building, not the land.

While aiming to help companies with their internal financing, however, explains López, it is also a method of the Government collecting additional taxes, as companies must pay them a tax of five percent of the increase in value of the assets. Under the 1996 legislation, he adds, the tax was only three percent, which is the only real criticism against the new measure.

And this is a voluntary regime, explains López, so if companies don't comply there are no repercussions. "But clients are very eager to opt in, as it can prove very advantageous to improve their balance sheets."

Companies need to be very careful, however, he warns, as there are also potential risks and it is not always a good opportunity for them to increase the value.

"Given the crisis, many companies may not have the liquidity to pay the five percent tax which must be paid in July 2013, so it could potentially put them in a difficult situation."

With so many recent changes to legislation and increasing tax pressures, this new measure is, on balance, good news for companies, says López. To take advantage, however, they only have until June 30th, 2013 to do so, and would be advised to start the process as soon as possible.

Carlos López

Una medida clave en las reformas fiscales en España es la nueva ley que permite a las empresas re-evaluar sus balances en un régimen voluntario, afirma Carlos López de BDO Abogados.

GUIDE TO LEADING LAWYERS

António Moura Portugal, ABBC Sociedade de Advogados

Address:	Largo de S. Carlos 3, 1200-410 Lisbon		
Tel:	+351 21 358 36 20	**Fax:**	+351 21 315 94 34
Email:	a.portugal@abbc.pt	**Web:**	www.abbc.pt
Main practice areas:	Tax		

Alberto Ruano, SJ Berwin

Address:	Claudio Coello 37, 28001 Madrid		
Tel:	+34 91 426 00 50	**Fax:**	+34 91 426 00 66
Email:	alberto.ruano@sjberwin.com	**Web:**	www.sjberwin.com
Main practice areas:	International Taxation, Tax and Transfer Pricing		

Borja Escrivá de Romani, Deloitte Abogados

Address:	Plaza Pablo Ruiz Picasso s/n, Torre Picasso, 28020 Madrid		
Tel:	+34 91 514 50 00	**Fax:**	+34 91 524 51 80
Email:	bescriva@deloitte.es	**Web:**	www.deloittelegal.com
Main practice areas:	Tax and M&A		

Carlos Diéguez, Broseta Abogados

Address:	Fernando El Santo 15, 28010 Madrid		
Tel:	+34 91 432 31 44	**Fax:**	+34 91 432 32 55
Email:	cdieguez@broseta.com	**Web:**	www.broseta.com
Main practice areas:	International Taxation, Tax and Transfer Pricing		

Carlos López, BDO Abogados y Asesores Tributarios

Address:	Paseo Recoletos 37-41, 28004 Madrid		
Tel:	+34 91 436 41 95	**Fax:**	+34 91 436 41 93
Email:	carlos.lopez@bdo.es	**Web:**	www.bdo.es
Main practice areas:	International Tax, Tax and M&A		

Diogo Bernardo Monteiro, F. Castelo Branco & Associados

Address:	Avenida da Liberdade 249, 1, 1250-143 Lisbon		
Tel:	+351 21 358 75 00	**Fax:**	+351 21 358 75 01
Email:	dbm@fcblegal.com	**Web:**	www.fcblegal.com
Main practice areas:	Tax		

Filipe Romão, Uría Menéndez - Proença de Carvalho

Address:	Rua Duque de Palmela 23, 1250-097 Lisbon		
Tel:	+351 21 351 53 69	**Fax:**	+351 21 092 01 10
Email:	filipe.romao@uria.com	**Web:**	www.uria.com
Main practice areas:	Tax		

Sponsored section. A selection of law firms recommended within the internationally recognised directories and / or by clients.

GUIDE TO LEADING LAWYERS

Gonçalo Leite de Campos, Sérvulo & Associados

Address: Rua Garrett 64, 1200-204 Lisbon
Tel: +351 21 093 30 00 **Fax:** +351 21 093 30 01/02
Email: glc@servulo.com **Web:** www.servulo.com
Main practice areas: Tax

Isidro del Saz Cordero, Roca Junyent

Address: José Abascal 56, 7, 28003 Madrid
Tel: +34 91 781 97 60 **Fax:** +34 91 781 97 64
Email: i.delsaz@rocajunyent.com **Web:** www.rocajunyent.com
Main practice areas: Tax and Automotive

Javier Fernández Cuenca, Pérez-Llorca

Address: Alcalá 61, 28014 Madrid
Tel: +34 91 436 33 12 **Fax:** +34 91 436 04 30
Email: jfernandez@perezllorca.com **Web:** www.perezllorca.com
Main practice areas: Tax

Javier García-Pita, Linklaters

Address: Zurbarán 28, 28010 Madrid
Tel: +34 91 399 60 00 **Fax:** +34 91 399 60 01
Email: javier.garcia-pita@linklaters.com **Web:** www.linklaters.com
Main practice areas: Tax, M&A & Financial Products Structuring, Tax Audits and Reorganisations

Javier Prieto, Araoz & Rueda

Address: Paseo de la Castellana 164, 28046 Madrid
Tel: +34 91 319 02 33 **Fax:** +34 91 319 13 50
Email: prieto@araozyrueda.com **Web:** www.araozyrueda.com
Main practice areas: Tax

Javier Seijo, Gómez-Acebo & Pombo Abogados

Address: Castellana 216, 28046 Madrid
Tel: +34 91 582 91 00
Email: jseijo@gomezacebo-pombo.com **Web:** www.gomezacebo-pombo.com
Main practice areas: Tax, International Taxation and Financial Taxation

João Magalhães Ramalho, PLMJ – Sociedade de Advogados

Address: Avenida da Liberdade 224, Edifício Eurolex, 1250-148 Lisbon
Tel: +351 21 319 73 00 **Fax:** +351 21 319 74 00
Email: joao.magalhaesramalho@plmj.pt **Web:** www.plmj.com
Main practice areas: Tax

GUIDE TO LEADING LAWYERS

Miguel Teixeira de Abreu, Abreu Advogados

Address:	Avenida das Forças Armadas 125, 12, 1600-079 Lisbon		
Tel:	+351 21 723 18 00	**Fax:**	+351 21 723 18 99
Email:	miguel.t.abreu@abreuadvogados.com	**Web:**	www.abreuadvogados.com
Main practice areas:	Corporate & Commercial (Private Equity) and Tax		

Nuno Azevedo Neves, ABBC Sociedade de Advogados

Address:	Largo de S. Carlos 3, 1200-410 Lisbon		
Tel:	+351 21 358 36 20	**Fax:**	+351 21 315 94 34
Email:	n.neves@abbc.pt	**Web:**	www.abbc.pt
Main practice areas:	Tax		

Nuno da Cunha Barnabé, PLMJ – Sociedade de Advogados

Address:	Avenida da Liberdade 224, Edifício Eurolex, 1250-148 Lisbon		
Tel:	+351 21 319 73 00	**Fax:**	+351 21 319 74 00
Email:	nuno.cunhabarnabe@plmj.pt	**Web:**	www.plmj.com
Main practice areas:	Tax		

Rafael Fuster, Uría Menéndez

Address:	Plaza Rodrigo Uría, Príncipe de Vergara 187, 28002 Madrid		
Tel:	+34 91 586 03 84	**Fax:**	+34 91 586 03 76
Email:	rafael.fuster@uria.com	**Web:**	www.uria.com
Main practice areas:	Tax		

Serena Cabrita Neto, PLMJ – Sociedade de Advogados

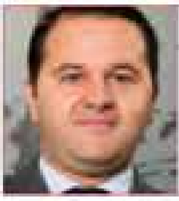
Address:	Avenida da Liberdade 224, Edifício Eurolex, 1250-148 Lisbon		
Tel:	+351 21 319 73 00	**Fax:**	+351 21 319 74 00
Email:	serena.cneto@plmj.pt	**Web:**	www.plmj.com
Main practice areas:	Tax		

Stella Raventos, Ecija Abogados

Address:	Avenida Diagonal 458, 8, 08006 Barcelona		
Tel:	+34 93 380 82 55	**Fax:**	+34 93 380 82 54
Email:	sraventos@ecija.com	**Web:**	www.ecija.com
Main practice areas:	Tax, Transfer Pricing and International Taxation		

Tiago Caiado Guerreiro, Caiado Guerreiro & Associados

Address:	Rua Castilho 39, 15, 1250-068 Lisbon		
Tel:	+351 21 371 70 00	**Fax:**	+351 21 371 70 01
Email:	tguerreiro@caiadoguerreiro.com	**Web:**	www.caiadoguerreiro.com
Main practice areas:	Tax and Foreign Direct Investment		



Tiago Marreiros Moreira, Vieira de Almeida & Associados

Address:	Avenida Duarte Pacheco 26, 1070-110 Lisbon		
Tel:	+351 21 311 34 00	**Fax:**	+351 21 311 34 06
Email:	tm@vda.pt	**Web:**	www.vda.pt
Main practice areas:	Tax and Transfer Pricing		

Sponsored section: A selection of law firms recommended within the internationally recognised directories and / or by clients.

Agenda Africa Forum 2013

IBERIAN LAWYER

New Investment Frontiers: Angola and Mozambique

London, Thursday April 11th, 2013

The Agenda Africa Forum 2013 will look at the key energy, natural resources and infrastructure opportunities emerging in Angola and Mozambique, the current and prospective regulatory frameworks, and help investors assess the similarities and differences businesses face in the two countries.

... Energy
Natural Resources ...
... Infrastructure

Past participants include:

Abreu Advogados, Actis, Allen & Overy, AVM Advogados, Baker & McKenzie, Banco BPI, BBC World, Berwin Leighton Paisner, Chatham House, Clifford Chance, Cuatrecasas Gonçalves Pereira, Elite International, Eversheds, F Castelo Branco & Asociados, Financial Times, Freshfields Bruckhaus Deringer, GALP, Gómez-Acebo & Pombo, Gowlings, Havrico Insurance, Ibero-American Business Network, King & Spalding, Latham & Watkins, Linklaters, Mergermarket, Miranda Correia Amendoeira, Morais Leitão Galvão Teles Soares da Silva, Nabas Legal, Olswang, PLMJ, Portuguese Chamber of Commerce UK, Renaissance Capital, Scott Wilson, Serra Lopes Cortes Martins, Sérvulo & Associados, Slaughter and May, SNR Denton, Títulos Atlântico, TozziniFreire, TRACERCO Billingham, Trinity International, Unisys, Vieira de Almeida, Vinson & Elkins, Watson Farley & Williams, White & Case.

Sponsor:

FCB&A
SOCIEDADE DE ADVOGADOS

In collaboration with:

mergermarket

PORTUGUESE CHAMBER

CHATHAM HOUSE

LOU CASTEOU

abc

LOU CASTEOU ACADEMY
Urbanization in Africa
Investing in New Cities

In-House Club
IBERIAN LAWYER

Further details please contact: Mari Cruz, maricruz.taboada@iberianlegalgroup.com

IBERIAN LAWYER

An abstract from Iberian Lawyer
January / February 2013
For further information please contact
maricruz.taboada@iberianlegalgroup.com
www.iberianlawyer.com