

Reform of the General Taxation Law by Law 34/2015

22 October 2015

Law 34/2015 of 21 September 2015 saw the introduction of far-reaching amendments to General Taxation Law 58/2003 of 17 December 2003 (GTL), the bulk of which entered into force on 12 October 2015. The main developments are as follows:

Law 34/2015 of 21 September 2015, partially amending General Taxation Law 58/2003, of 17 December 2003

- **New time limits for tax audit proceedings**

The duration of inspection proceedings is extended so that the tax auditors have **18 months** to process tax audit proceedings commencing as of 12 October 2015. This period is extended to **27 months** where any of the following objective circumstances exist:

- Where the taxpayer's annual turnover is equal to or greater than the threshold for the mandatory audit of its accounts.
- Where the taxpayer forms part of a group subject to the consolidated tax regime or the special regime governing groups of entities and such group is under tax audit.

This 27-month deadline will also apply where tax audit proceedings take in several related taxpayers and such deadline is applicable to any of them individually.

The reform does away with the concepts of unjustified interruptions of proceedings and delays attributable to the taxpayer, making way for objective scenarios in which proceedings may be extended for reasons attributable to the taxpayer. Nevertheless, the concept of justified interruptions, now called "specific grounds for stay" of proceedings, continues to apply.

These developments will apply to proceedings commencing as of 12 October 2015.

- **Penalties could be imposed in the event of conflict in the application of tax legislation (GAAR)**

Applicable to tax periods for which the filing period ends after 12 October 2015, the tax authorities **may penalise conduct regularised on the basis of a conflict in the application of tax law.**

Nevertheless, in order to be deemed to constitute an infringement, the authorities must evidence the existence of material similarity between the regularised conduct and other conduct in respect of which an administrative criterion has been established and made public prior to the commencement of the filing period for the pertinent tax return or self-assessment.

In any case, the tax authorities must evidence the existence of fault in the regularised conduct.

Broader powers of inspection and examination The new Law expressly provides for the **non-application of the statute of limitations to the authorities' right** to inspect elements of tax obligations that arose in statute-barred years, but which have consequences in years still open to tax audit. On no account do such powers entitle the authorities to assess statute-barred years.

Elsewhere, the LGT now incorporates the **ten-year** statute of limitations provided for in the Corporate Income Tax Law for the commencement of tax audit proceedings targeting tax loss carry forwards and unused tax credits. Once these ten years have elapsed, powers of inspection will be limited to taxpayers' self-assessments and accounting records, which taxpayers should therefore be careful to keep.

The foregoing will apply to any tax audit proceedings already underway on entry into force of the Law where no proposed assessment has yet been formalised.

- **New related obligations regime**

The Law defines as related obligations "*obligations any of the elements of which are affected or determined in light of those corresponding to another, different tax obligation or period*", always referring to the same taxpayer.

The main aspects of this new regulation are:

- Statute of limitations: generally speaking, the interruption of the **statute of limitations** on a tax obligation could have an effect on the statute of limitations governing related obligations (whether favourable or detrimental for the taxpayer).

- Enforcement of judgments: the existence of any related obligations when enforcing judgments, and enforcement proceedings will be extended to cover such obligations.

- **List of debtors**

The revised Law provides for the **individualised annual publication of lists of debtors**, taken to mean taxpayers with debts and/or penalties exceeding one million euros in respect of which the deadline for voluntary payment has finalized , unless such debts and/or penalties have been deferred

- **New procedure for the recovery of state aid affecting taxation**

Given that compliance with European Commission Decisions is mandatory in cases where State Aid is to be recovered, a **specific, and very detailed, procedure** is established for enforcement of such decisions by the Spanish authorities. In this connection, a distinction is drawn between: (i) ex officio procedures involving the adjustment of elements of the tax obligation affected by the decision; (ii) all other cases.

The procedure may be commenced even where the affected assessments are final.

- **Changes to procedures where there is evidence indicating a tax offence**

The administrative procedure for the assessment and collection of taxes is amended to reflect the provisions of Organic Law 7/2012 of 27 December 2012.

Until now, where evidence indicating a tax offence was found to exist, the tax audit proceedings were stayed upon referral of proceedings to the criminal jurisdiction. In future, the administrative bodies **will continue with the procedure** to assess and recover the tax debt, irrespective of the forwarding to the criminal jurisdiction or referral of the case file to the Public Prosecutor's Office, which will take place upon issue of the tax assessment.

To this end, two separate assessments will be raised: (i) a **provisional** assessment of the events or elements of the tax obligation that reveal the existence of a tax offence, which is subject to a specific procedure; (ii) another assessment of elements unrelated thereto.

- **Other developments**

The amended Law reduces the amount of certain **tax penalties**, while providing for new types of infringements.

The **economic-administrative claims procedure** is amended to expedite review proceedings in this jurisdiction and permit the electronic processing of such claims.

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