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The temporary Solidarity High Net Worth Tax and certain changes to the Wealth Tax are approved

On 29 September 2022, the Government presented its Fiscal Measures plan with the aim of ensuring "*social justice and economic efficiency*". The plan presented by the Minister of Finance and Public Administration sought to move towards a "*fairer*" tax system with an increase in contributions from wealthy individuals and large companies.

This plan was achieved through the inclusion of a series of amendments to the Draft Law establishing temporary energy levies and levies on credit institutions and financial credit establishments (the "**Draft Law**"), through which the Government proposed the introduction of a new tax to supplement the Wealth Tax ("**WT**") which exists at a state level and is not subject to transfer to the Autonomous Communities, called the Solidarity High Net Worth Tax ("**SHNWT**"), as well as an amendment of the Wealth Tax regulations concerning non-residents who hold shares in companies with a real estate component (the "**Amendment**").

Following the appropriate parliamentary procedure, on 21 December, the Draft Law (including the amendment) was approved in the Senate under the same terms proposed, and as such is expected to be published in the Official State Gazette in the next few days, entering into force before 2022 comes to a close.

We therefore refer to the Legal Briefing prepared on 11 November 2022 for the analysis and assessment of the SHNWT and the amendment introduced to the WT.

However, it should be noted that the SHNWT and the modification of the WT lend themselves to some ambiguity in terms of their interpretation, especially with regard to the consideration of companies with a real estate component and the method to calculate the limit to the total amount of personal income tax, WT and the SHNWT.

As a result, various parliamentary groups tabled amendments in the Senate:

- The Grupo Parlamentario Democrático (made up of the parliamentary groups Cs, Teruel Existe and the Partido Regionalista de Cantabria) presented an amendment to the modification of the WT Law which establishes that securities representing the equity of any entity - whether resident or not - not traded on organised markets, more than 50% of whose assets are directly or indirectly made up of real estate located in Spanish territory, will be considered to be located in Spanish territory.

  It seems that the aim of this amendment was to tax certain non-residents who did not pay WT simply because they own non-business real estate assets through companies. With the proposed (and eventually approved) wording, non-resident individuals who have invested in real estate assets in Spain through investment funds or any other type of vehicle over which they have no control, nor the power to exercise any rights over the real estate assets located in Spain, may end up falling under the literal wording of the provision and be taxed under the WT (and/or the SHNWT).

  The Grupo Parlamentario Democrático therefore proposed to exclude from this article the holdings in shareholders' equity of the following entities: (i) any types of entities which, in turn, have direct

or indirect holdings in entities represented by negotiable securities traded on organised markets, at least 50% of whose assets are made up, directly or indirectly, of real estate located in Spanish territory; and (ii) any types of entities in respect of which control is not or cannot be achieved in the terms provided for in Article 42 of the Commercial Code (generally, a holding of more than 50%).

Lastly, the amendment also specified that the qualification of immovable property should be the one given for this purpose by the VAT Law (e.g. to avoid administrative concessions being included).

- The GPERB Group (made up of Esquerra Republicana de Cataluña and Euskal Herria Bildu) also tabled an amendment to clarify how the joint limitation rule for personal income tax, WT and SHNWT should be applied.

  Specifically, the current wording establishes that when the sum of the total personal income tax, WT and SHNWT tax payments exceeds 60% of the personal income tax base, the SHNWT tax liability will be reduced until this limit is reached, although the reduction may not exceed 80% of the SHNWT tax liability prior to this reduction.

  The GPERB Group proposed that only the SHNWT tax liability should be taken into account for the calculation of the 60% and that only if the sum of the tax liability of the two taxes (WT and SHNWT) exceeds the aforementioned limit, the tax liability would be reduced to the limit indicated, with the reduction not exceeding 80%.

  The justification is that the Draft Law would mean that the potential amount to be paid in SHNWT would be reduced, something which would contribute to maintaining the differences in taxation between the Autonomous Communities that have subsidised the WT and those that have not, thus reducing the impact of the harmonisation sought. Thus, adding the WT share in the calculation of the excess would distort the outcome of the SHNWT.

Notwithstanding the above, none of these (or any other) amendments have been adopted. While it is not surprising that certain amendments are not adopted, it is surprising that no amendments have been adopted. It is very likely that the explanation is to be found in the current context in which we find ourselves. The approved regulation contained different figures and provisions whose approval before the end of 2022 was important for the proposing parliamentary groups. With regard to the SHNWT, its application was foreseen for the first two financial years in which it becomes due from the date of its entry into force. Insofar as the accrual occurs on 31 December, if the Law had been passed after that date, the SHNWT would take effect from 2023 and its retroactive application to 2022 would have violated the doctrine laid down by the Constitutional Court regarding the retroactivity of tax rules (there would be maximum retroactivity for all taxpayers).

If the amendments highlighted above had been adopted, the text would have had to return, together with a reasoned message, to the Congress of Deputies for possible ratification. The Congress of Deputies could then approve or reject the Senate's amendments by a simple majority of its members. This fact is not trivial, since according to the usual processing times, approval would certainly have been postponed until 2023, frustrating the application of the tax in 2022.

As a consequence of the foregoing, the amendments detailed in our Legal Briefing issued on 11 November 2022 present certain ambiguities and give rise to interpretative doubts that will surely lead to disagreements between taxpayers and the Tax Authorities.

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