

Legal Status

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Draft law of the general state budget for 2023



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On October 8, 2022, the General State Budget Draft Law for the year 2023 was published, introducing several changes in the tax legislation.

In a broad sense, the entry into effect of these new tax measures is foreseen for January 1st, 2023. Even so, it is necessary to warn that these updates may be subject to variation during the parliamentary process of the draft law.

The following document is an analysis of the most relevant amendments included in the General State Budget Draft Law for the year 2023.

1. Corporate Income Tax

A reduced tax rate of 23% will be applied to those companies that in the immediately preceding tax period have a net turnover not exceeding €1,000,000, provided that, such companies are not considered as holding companies within the meaning of the provisions of the IS regulations.

2. Personal Income Tax

- I. Increase in the tax rates applicable to the saving income tax base. Revenues over €200,000 will be taxed at 27% (an increase of one percentage point above the current rate) and revenues over €300,000 will be taxed at 28% (increasing from the current rate of 26% to 28%).

Savings taxable income	Tax to be paid	Remaining taxable income	Applicable rate
Up to euros	Euros	Up to euros	Percentage
0	0	6,000	19
6,000.01	1,140	50,000	21
50,000.01	10,380	200,000	23
200,000.01	44,880	300,000	27
300,000.01	71,880	Onwards	28

- II. Increase in the reduction for salary income. The amount of the reduction for salary income and the threshold from which it is applicable has raised, therefore, the amount of gross annual salary from which the tax is payable has increased to €15,000. All this will be considered for the purposes of withholdings on salaries as from February 2023.
- III. Reduction of the withholding applicable to income generated by intellectual property. The applicable rate is reduced from 15% to 7% when the volume of income from intellectual property is less than €15,000 and represents more than 75% of the salary income.
- IV. Modification of the limit of the obligation to declare. The minimum threshold is raised to €15,000 when the income comes from more than a single payer (i.e., employer).

3. Value Added Tax

- I. Modification of the taxable base due to non-recoverable credits. The deadline for modifying the taxable base, that is, for issuing rectifying invoices, will be extended from 3 to 6 months. In addition, the means for claiming the payment from debtors will be more flexible (the notarial requirement or judicial claim can be replaced by any other means that reliably certifies the claim for collection) and the taxable base for considering a credit as non-reconcilable will be reduced to €50.

On the other hand, in relation to bankruptcy credits, the modification of the VAT taxable base is allowed when the taxpayer is not established in the territory of application of VAT, nor in the Canary Islands, Ceuta or Melilla, as long as there is an insolvency process declared by a court of another Member State.

- II. Reduced tax rates. The tax rate for feminine hygiene products and some contraceptives is reduced to 4%.
- III. Closure clause (effective utilization criteria). This amendment harmonizes and adapts the Value Added Tax regulations to European Union regulations in order to eliminate possible cases of double taxation.

Specifically, the regulation will distinguish between services rendered to entrepreneurs and professionals and services rendered to non-entrepreneurs.

It is proposed to reduce the extent of the localization rule for services rendered, so that it will not apply in the case of services rendered to entrepreneurs, with the exception of the leasing of means of transport and services related to financial services and insurance.

On the other hand, the application of this criteria of effective utilization is extended for those who are not considered entrepreneurs, adding the services provided for in Article 69.2 of the Value Added Tax Law, classified as intangible services. The following, among others, will be considered as intangible services: advisory services, translation services and financial services.

- IV. Reverse change rule of the taxpayer. Two new cases are included in which the reverse change rule of the taxpayer operates in the Value Added Tax. These are the supply of plastic waste and scrap and the supply of waste, unusable articles of rags, twine, cords, ropes or strings.

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LITIGATION

Prospective increase in claims for annulment of personal guarantees in ICO credits



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In March 2020, a line of *Instituto de Crédito Oficial* [Spanish Corporate State-owned Entity] (ICO) guarantees was approved in favour of companies and the self-employed so that they could obtain financing from banks in order to alleviate the economic impact of covid-19. Many Spanish companies, especially SMEs, applied for and obtained this benefit.

The maturity date of the guaranteed financial operations was 30 June 2022, although the Council of Ministers agreed on 21 June 2022 to accept an extension of the maturity date if thus agreed between the provider and the borrower.

In any case, many of these loans have matured or are due to mature in the coming months, and given the current complex economic situation in the market, it seems likely that many of the borrowers will be unable to repay the loan and will enter bankruptcy proceedings.

In this situation, it would be logical for the financial institution to claim payment of the guaranteed part from the ICO, which in the

case of the self-employed and SMEs was 80%, and in the case of other companies 70%.

However, in many of these financial operations, in addition to the ICO guarantee, a personal guarantee was provided by the administrator or partner of the borrowing company. Furthermore, the ICO guarantee is usually a subsidiary guarantee that can only be claimed after attempting to collect the debt from the personal guarantor.

In this context, the doctrine has raised the possibility of these guarantors filing a lawsuit requesting the nullity of the personal guarantee, or at least the judicial declaration that their guarantee is limited to 20% or 30% of the credit, as opposed to 100%.

We summarize below the potential legal arguments for and against applying for the nullity of such personal guarantees:

In favour of nullity

- The public information on the website www.ico.es does not explain the issue that the ICO guarantee is subsidiary.
- The public information of the lending bank did not explain the issue that the ICO guarantee is subsidiary.
- The bank did not inform in any communication or document that the ICO guarantee is subsidiary.
- In view of the above, the guarantor's consent can be claimed to be void, as they may believe that they are only guaranteeing 20% or 30% because they are signing an operation called "ICO credit" where it is apparently clear that the State is guaranteeing the other 70% or 80%.

- In addition to this, the analogical application of the jurisprudential doctrine of nullity of personal guarantees of "*pólizas escoba*" [general insurance policies] can be invoked.

defend their respective arguments with creativity and strength.

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Against nullity

- Article 116 of Law 47/2003 regulates that guarantees granted by the State are presumed to be subsidiary, not joint and several. It is a regulation with the status of law, and thus it is public and mandatory.
- Guarantors are not consumers. They are persons linked to the borrowing company, who are presumed to have the capacity and knowledge of the business and of the documents they sign.
- The contracts state in writing that your personal guarantee is for 100% of the debt and is joint and several. They do not state that it is 20% or 30%.
- The jurisprudential doctrine of "*pólizas escoba*" is not applicable given that the elements of this concept are not found. In this case they are guarantees of specific operations, included in the specific loan or credit contract, and not a general guarantee of any operations of the company with the financial institution.

The issue is complex as there is no case law on this particular issue, so we do not know at this stage what interpretations the courts will give, and disparity is likely to be observed in the first rulings.

In any case, there is evidence that claims for nullity of these personal guarantees have already been filed, and it seems likely that they will increase in the coming months, which will force the lender and guarantor to

Product labeling in Spain



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The labeling of all products has two main functions: to provide objective, effective, truthful and sufficient information, and to identify the company responsible for the product, which may be the manufacturer, distributor, seller, packer, processor, importer or even the brand owner.

The importance of product labeling is given by the relationship between the information presented on the product and the consumer. Product labeling is not only mandatory, but also a right of every consumer or user.

The *“Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias”* [Royal Legislative Decree 1/2007, of November 16, 2007, approving the revised text of the General Law for the Defense of Consumers and Users and other complementary laws (LGDCU)] is the main regulation on consumer rights in Spain and defines minimum and mandatory information requirements for all products.

The LGDCU establishes that the label of a product must include all the truthful, effective and sufficient information that allows to know the product in depth before buying it,

without misleading buyers in terms of what they are buying, especially regarding the characteristics of the good or service and in particular about the following:

- a) Name and full address of the producer.
- b) Nature, composition and purpose.
- c) Quality, quantity, category or usual or commercial denomination, if any.
- d) Date of production or supply and batch, when required by regulations, recommended period for use or consumption or expiration date.
- e) Instructions or indications for its correct use or consumption, warnings and prospective risks.

Furthermore, the mandatory indications on the labeling and presentation of goods or services marketed in Spain must appear in Spanish, the official Spanish language of the State.

In general terms, it can be said that the content of a label is the responsibility of the entity that creates it, since it relates to a specific product to which it is associated. In this sense, if the label includes incorrect information regarding the description of the product, for example, in relation to price, quality, measure, composition, the affected consumer could claim against the selling entity.

Particularities of product labeling

Toys

According to European regulations and the *“Real Decreto 1205/2011, de 26 de agosto, sobre la seguridad de los juguetes”* [Royal Decree 1205/2011, of August 26, 2011, on the

safety of toys], toys should carry some minimum mandatory indications:

- The CE mark, which guarantees that the toy has been tested and complies with safety standards and that it contains instructions for use in Spanish.
- The product name and brand name.
- Manufacturers shall ensure that their toys bear a type, batch, serial or model number or other element allowing their identification.
- The trade name and a unique address of the manufacturer or importer.
- The instructions and warnings for use relating to the user (minimum and maximum age of users, maximum and minimum capacity and weight and/or the need for supervision).
- In the case of electrically operated toys, the label must specify their maximum power, the supply voltage they require and their energy consumption.
- All these data should be visible on the packaging or on the toy itself. Further to this, there are other warnings that often accompany certain toys and that should be taken into account.

Video games

The video game industry has had a voluntary system of classification by age (3, 7, 12, 16 and 18 years old) and content (violence, fear, games of chance, etc.) since 2003 for this type of interactive games: the PEGI Code (Pan-European Game Information), a system aimed at ensuring that the content of any given video game is in accordance with a specific age group. The content and recommended age of the games can be identified by means of the PEGI label attached to the video game.

Adherence to this Code is still voluntary, although more and more manufacturers are applying it to their products as in this way they contribute to creating a video game industry that is more transparent and safer for everyone. This system applies to more than thirty European countries.

Cosmetics

For this type of product, the inclusion on the packaging of a leaflet giving supplementary information and instructions for use is optional. However, pursuant to European regulations both on containers and packaging, the following data, among others, must appear in indelible characters, easily legible and visible to the user:

- Name of the product.
- The name or trade name and address or registered office of the manufacturer, or in the case of imported cosmetic products, the name or trade name and address or registered office of the person responsible for placing the product on the market established within the Community territory.
- The period of time after opening during which they may be used without any risk to the consumer. This information must be indicated by the drawing of an open jar, followed by the period in months and/or years.
- The particular precautions for use.
- The manufacturing batch number.
- The country of origin, in the case of products manufactured outside the European Union.
- The function of the product.
- The list of ingredients in descending order of importance.

- Quantity by weight or volume at the time of packaging, except for containers with less than 5 g/ml, free samples and single doses.

Textile products

Textile products placed on the market shall include certain information in their labeling, as contemplated in the Real Decreto 928/1987, de 5 de junio, relativo al etiquetado de composición de los productos textiles [Royal Decree 928/1987, of June 5, regarding the labeling of the composition of textile products]:

- Name or company name of the manufacturer, trader or importer and, its address.
- Textile products manufactured in Spain, the industrial registration number of the national manufacturer.
- For textile products imported from non-EU countries, the importer's tax identification number.
- The traders will be able to label the textile products with its own trademarks, to which they will have to add the data relative to their corporate name, CIF and domicile.
- Composition of the textile article.
- The separate labeling of the different parts of corsetry articles.
- Other indications relating to special compositions.

Footwear

The Real Decreto 1718/1995, de 27 de octubre, por el que se regula el etiquetado de los materiales utilizados en los componentes principales del calzado [Royal Decree 1718/1995, of October 27, 1995, which regulates the labeling of the materials used in

the main components of footwear] establishes that the label must state all the materials that are in contact with the foot and leg. The label must show the pictograms of these three parts of the footwear: the upper, the lining and insole (both together) and the sole.

Furthermore, the specific pictogram must be shown to indicate the footwear material: leather, coated leather, natural textiles and synthetic or non-woven textiles, or other materials.

Food

One of the main guarantees for consumers regarding food safety is its correct labeling. This will allow consumers to make a decision based on their needs and compare different products in the same kind.

The regulations governing food labeling serve consumers in order to identify:

- The characteristics of the food product purchased. In particular, its nature, identity, qualities, composition, quantity, duration, origin or provenance and method of manufacture or production.
- The properties or effects of a food product, especially those that it does not have. The particular characteristics of a food product, when all similar products possess these same characteristics.

As for mandatory food information, it includes:

List of ingredients

The label must contain the list of ingredients it contains and expressly include the word

"Ingredients" and then all the ingredients it contains. There are exceptions of food products that are not required to include such a list, for example milk, carbonated waters, or those foods that only have a single ingredient.

Expiration dates and minimum shelf life

- The "use by" date is the date shown on microbiologically highly perishable foods that may pose a health hazard if consumed after that period of time.
- The date of minimum durability of a food is the date until which the food retains its specific properties when properly stored. It is usually indicated by "best before...".

Designation of the food

The name can be established in three different ways:

- The legal name is that which is established in the European provisions which may be applicable, and in the absence of these, the laws or regulations of the Member State where the food is manufactured and sold.
- The usual name is that which is commonly accepted by consumers without the need for any additional clarification (e.g., Catalan sausage).
- The descriptive name is that which is sufficiently clear to enable consumers to know the nature of the food and to distinguish it from others (e.g., a prepared dish: stewed chicken with peas and boiled potatoes).

Nutritional information (composition and unit weight)

It refers to the presence of energy value and certain nutrients in the food. The nutrients to be mentioned are: proteins, carbohydrates,

fats, fiber, vitamins, cereals and their derivatives in addition to those in ANNEX XIII of "Regulation (EU) 1169/2011". The categories that usually do not include the nutritional information because they apply their own regulations are: food supplements, mineral water, products intended for particular groups of people and alcoholic beverages.

The "Regulation (EU) 1169/2011" also provides for the possibility of voluntary provision of nutrition information through other additional forms of presentation. Thus, it would be interesting to mention "Nutriscore." This is a type of front labeling for voluntary use, which facilitates the understanding of nutritional information for consumers while encouraging manufacturers to improve the composition of their products. It values both positive nutritional components (fruits, vegetables, fibers, olive oil, etc.) and negative ones (saturated fats, sugars, salt, etc.). However, this system is not used by many manufacturers as it does not take into account aspects such as the level of processing of the food.

Other necessary indications on food labeling

- Country of origin.
- Storage conditions.
- Conditions of use.
- Directions for use.
- The name or trade name and address of the food business operator.
- For beverages containing more than 1.2% alcohol by volume, the alcoholic strength shall be specified.
- The net quantity of the food.
- Mention of the lot.

Language on the labeling

The compulsory indications on the labeling of food products marketed in Spain shall be expressed in the official Spanish language of the State. The exception are traditional products elaborated and distributed exclusively within the scope of an Autonomous Community with its own official language.

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INTERNATIONAL

Amendments to the inpatriates Regime - “Beckham Law”



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On October 14th, the Proyecto de Ley de Fomento del Ecosistema de Empresas Emergentes [Start-up's Ecosystem Promotion Bill] was published in Boletín de las Cortes Generales [Spanish Parliament's Gazette]. This initiative is focused on supporting the development of emerging companies, also known as Start Ups.

In this context, the main focus is on those dedicated to digital economy and High-Tech oriented companies.

In terms of the project itself, one of its pillars of attracting talent from all over the world. In the same vein, the Bill contemplates an amendment to Article 93 of the Ley del Impuesto sobre la Renta de las Personas Físicas, [Individuals' Income Tax Law], which is the legal basis for the Inpatriates Regime, typically known as Beckham Law.

This colloquial name comes from the strategy once used by the Spanish government to attract elite football soccer players to play in La Liga de Fútbol Profesional competition, a scheme that helped project “La Liga” on the global basis, raising both its football profile and attracting media and public attention worldwide.

Is it worth noting that although this was the genesis of the regime, today, oddly enough, professional athletes are excluded from applying to obtain the benefits of the present regime.

The main advantages of the Inpatriates regime are:

- Flat income tax rate of 24% on the first 600,000 euros, thereafter, taxed at 47%
- Exemption of 700,000 euros from Wealth Tax.
- Non-obligation to file Foreign Assets Declaration
- Tax Free on capital gains on assets held abroad

This regime is highly convenient both for individuals who come to reside in Spain and for those who have a significant amount of capital gains, obtained outside Spain, with the possibility of realizing those profits without being subject to a taxation in Spain.

The current requirements for applying for this scheme are as follows:

- Moving to live in Spain based on an employment contract (Social Security contributions are required) or as an Administrator of the company in which the individual may not hold more than 25% of the company's shares.
- Not being a taxpayer in Spain for the last 10 years --Note that the assumption applies equally to Spanish and foreign nationals.
- The benefit extends for 5 years (fiscal years from January to December).

In the draft bill, a very interesting provision was included, which extended the duration of the regime for 10 years instead of the current 5, but unfortunately it was deleted in the current draft.

The most relevant amendments contained in the bill, which may be subject to further amendments in the Senate, are as follows:

- Reduction to 5 years of the period during which the applicant should not have been a taxpayer in Spain.
- In certain cases, moving to Spain is no longer required, long-distance work through home office will be allowed provided that, it is related to IT or digital economy issues.
- It allows the move to be carried out one year in advance. This was a recurrent problem, since, if the applicant had come to Spain previously to settle or in prospective terms, it could be objected that the person had not moved to Spain for the purpose of an employment contract.
- It extends the benefit of the regime to both the wife and children under the age of 25.

To conclude, if the bill is ratified by the Spanish Senate in its current form, it would bring some additional advantages, generating windows of opportunity for certain specific cases. We will have to wait for the possible ratification by the Senate, as well as its subsequent publication in the Official State Gazette (BOE) to start applying the potential benefits of the amendments shown in this article.

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