

Tax Law Department

January 2021

MAIN TAX INNOVATIONS INTRODUCED BY THE 2021 STATE BUDGET LAW

On 31 December 2020, Law 11/2020 on the General State Budget for 2021 (hereinafter "LGST2021") was published, introducing amendments to most of the State taxes. The most important of these are summarised below.

1.- PERSONAL INCOME TAX

With effect from 1 January 2021, and with indefinite validity, the following amendments have been made to the Personal Income Tax Law.

1.1.- Increase in the rates applicable to the General Base

A new section is added to the State part of the scale of tax rates that applies to the general taxable base: the part of the base that exceeds 300,000 euros will be taxed from 22.5% to 24.5%. This means that, if there were no regional scale of tax rates of its own, the maximum marginal rate would be 47%, as opposed to the 45% applicable until 31 December 2020.

The same modification has been made to the scale applicable to withholdings on account of labour income exceeding 300,000 euros, with the maximum withholding rate being 47%. Consequently, for the year 2021 the percentages of withholdings and payments on account applicable to recipients of income from work will be as follows:

Tax Base to determine the withholding rate. Up to	Withholding tax quote	Remaining base to determine the withholding rate. Up to	Tax rate
0,00 €	0.00 €	12,450.00 €	19.00%
12,450.00 €	2,365.50 €	4,750.00 €	24.00%
20,200.00 €	4,225.50 €	15,000.00 €	30.00%
35.200,00 €	8,725.50 €	24,800.00 €	37.00%
60,000.00 €	17,901.50 €	240,000.00 €	45.00%
300,000.00 €	125,901.50 €	Onwards	47.00%

1.2.- Increase in the tax rates applicable to the Savings Tax Base

The scale applicable to the State part of the Savings tax base is modified, adding a new bracket to the part of the base exceeding 200,000 euros, to which the tax rate of 13.00% will be applied. The same modification is introduced in the regional scale. Consequently, the new resulting scale is as follows:

Taxable base. Up to	Tax quote	Remaining taxable base. Up to	Tax rate
0.00 €	0.00 €	6,000.00 €	19%
6,000.00 €	1,140 €	44,000.00 €	21%
50,000.00 €	10,380 €	150,000.00 €	23%
200,000.00 €	44,880.00 €	Onwards	26%

1.3.- Increase in the scales applicable to “workers that have moved to Spanish territory”

In accordance with points 1.1 and 1.2, the scales applicable to “workers that have moved to Spanish territory” are amended as follows:

- The following scale is applied to the General tax base: a) Up to 600,000 euros: 24% and b) From 600,001 euros: 47% (until 31 December 2020 this last rate was 45%).
- The same scale of paragraph 1.2 is applied to the Savings tax base.

Likewise, the percentage of withholdings or payments on account on labour income is modified. Specifically, when labour income paid by the same payer during the calendar year exceeds 600,000 euros, the percentage of withholding applicable to the excess will be 47% (previously it was 45%).

1.4.- Lowering of the limits to the reduction for contributions to social welfare systems

The maximum annual amount of the contributions to social welfare systems (i.e. Pension Schemes) entitled to reduction is reduced to 2,000 euros.

However, the limit of 2,000 euros will be increased by another 8,000 euros (i.e., to 10,000 euros), when the increase comes from employer contributions.

The maximum annual limit of contributions with entitlement to reduction made to social security schemes for a spouse who has no income from work or economic activity or has an income of less than 8,000 euros per year is reduced to 1,000 euros.

And the annual limit is reduced to 2,000 euros for all reductions made by all persons who pay premiums for private insurance covering exclusively the risk of severe or major dependency in favour of the same contributor, including those of the contributor himself.

1.5.- Extension of the exclusionary limits of the “objective estimation method”

The quantitative limits that have been applied in previous financial years and which delimit the scope of application of the objective estimate method are also extended for the financial year 2021 considering:

- Volume of income in the immediately preceding year in excess of EUR 250,000 for all economic activities except agriculture, livestock farming and forestry. All operations will be taken into account, whether or not there is an obligation to issue an invoice. The operations in which there is an obligation to issue an invoice when the recipient is an entrepreneur, may not exceed 125,000 euros.
- Volume of income for all agricultural, forestry and livestock activities over 250,000 euros.
- Volume of purchases of goods and services in the immediately preceding year, excluding acquisitions of fixed assets, exceeding 250,000 euros.

2.- WEALTH TAX

The indefinite nature of the Wealth Tax is re-established and the tax rate applicable to the last section of the tariff is raised from 2.5% to 3.5% for wealths over 10,695,996.06 euros.

Given that the Wealth Tax is a tax assigned to the Autonomous Communities, this modification will only be applied in the absence of a specific scale approved by the corresponding Autonomous Community, which will be the one where the taxpayer resides, which will also have been able to establish its own tax reliefs (bonificaciones).

3.- CORPORATE INCOME TAX

The following amendments have been made to the Income Tax Law, effective for tax periods beginning on or after 1 January 2021 and for an indefinite period of time.

3.1.- Exemption on dividends and income derived from the transfer of securities representing the equity of entities resident and non-resident in Spanish territory

The possibility of applying the exemption provided for in Article 21 of the Income Tax Law is limited to dividends received from entities in which the taxpayer holds, directly and indirectly, at least 5% of its capital or net wealth, excluding cases where the acquisition value of the holding exceeds Euros 20 million.

However, for holdings acquired before 1 January 2021, a transitional regime is established, for a period of five years (i.e., until the tax period starting in 2025), in

which the aforementioned exemption may be applied provided that the other requirements for applying this exemption are met.

On the other hand, the effective exemption is limited to 95% because it excludes the amount of management fees, which are estimated at 5%.

However, this 95% limitation, applicable to dividends or profit-sharing, will not apply in the following circumstances:

- a) That the dividends **are received by an entity** whose net turnover for the immediately preceding tax period is less than 40 million euros and, in addition, (i) it is not an asset-holding entity, (ii) it is not part of a group within the meaning of Article 42 of the Commercial Code, (iii) it does not hold, prior to the incorporation of the subsidiary distributing the dividends, a direct or indirect participation in the capital or equity of another entity of 5% or more.
- b) That the dividends or profit participations **come from an entity** incorporated after 1 January 2021 in which it holds, directly and since its constitution, all the capital or net wealth.
- c) That the dividends or shares in profits are received in the tax periods ending in the three years immediately following the year in which the entity distributing them was incorporated.

3.2.- Limitation on the deductibility of financial expenses

Article 16 of the Corporate Income Tax Law establishes that deductible financial expenses may not exceed 30% of the operating profit for the year. And, until the entry into force of the LGST2021, financial income from stakes in equity instruments were taken into account for the calculation of this operating profit, provided that it corresponded to dividends received from entities in which either the percentage of direct or indirect ownership was at least 5%, or their acquisition value was over 20 million euros.

According to the amendment indicated in the first paragraph of section 3.1 above, the LGST2021 amends the regulation of this limitation and excludes from operating profit any financial income that corresponds to dividends or shares in the profits of entities when the acquisition value of the holdings is greater than Euro 20 million but the percentage of direct or indirect ownership is less than 5%. In other words, dividends or shares in profits will only be included in operating profit for the purposes of deducting financial expenses when the percentage of direct or indirect participation is at least 5%.

3.3.- Deduction to avoid international economic double taxation: dividends and shares in profits

The base of the deduction to avoid international economic double taxation (for dividends) regulated in Article 32 of the Corporate Income Tax Law is reduced up to a maximum of 5% of the income received (also taking into consideration non-deductible management expenses).

This limitation is also not applicable to entities with net turnover of less than Euros 40 million (under the same conditions and requirements as stated in the previous section).

3.4.- International tax transparency regime

As from the entry into force of the LGST2021, the amount of dividends and shares in profits that are not included in the tax base because they formed part of the positive income previously attributed, will be reduced by 5% as management expenses (except in those entities with a net turnover of less than Euros 40 million and with the same conditions and requirements indicated in the two previous sections).

On the other hand, when calculating the income derived from the transfer of the stake, 5% of undistributed profits will not be taken into account for the purposes of increasing the acquisition value.

3.5.- Deduction for investments in Spanish productions of feature films and short films and series

It is established that, for the application of this deduction, the required certificates are binding for the Spanish tax authorities regardless of their date of issue. On the other hand, the application of this deduction is extended to taxpayers who participate in the financing of such productions.

Likewise, it is established that the increased limit of the deduction to 50% of the quota is also applied (in addition to the deductions for R&D&i) for the deductions of cinematographic productions, audiovisual series and live performances musical arts when these deductions exceed 10% of the reduced total quota in the deductions to avoid international double taxation and the allowances.

4.- NON-RESIDENTS INCOME TAX

With effect from 1 January 2021, the following amendments are made to certain exempted income.

4.1.- Exemption of interest and capital gains for residents of the European Economic Area (EEA)

Exemption of interest and capital gains for EEA residents. The exemption is extended to (i) interest and other income derived from the transfer of own capital to third parties and (ii) capital gains derived from the transfer of movable property without a permanent establishment to EEA residents, where there is an effective exchange of tax information with EEA States.

4.2.- Restriction of the application of the exemption for dividends distributed to "parent companies" resident in the European Union, requiring a minimum percentage

In line with the amendments made to the Corporate Income Tax, the exemption relating to profits distributed by subsidiaries resident in Spain to their parent

companies resident in other Member States of the European Union or the European Economic Area, or to the permanent establishments of the latter located in the European Economic Area, has been modified, eliminating the possibility of accessing the exemption when the acquisition value of the shareholding exceeds Euros 20 million. The requirement for direct and indirect participation is at least 5%, provided that the other conditions set out in the Corporate Income Tax Law are met. This abolition will not be applicable during the years 2021, 2022, 2023, 2024 and 2025.

5.- VALUE ADDED TAX

5.1.- Tax rates

With effect from 1 January 2021, the tax rate applicable to soft drinks, juices and lemonades with added sugar or sweetener is increased to 21% (previously 10%).

5.2.- Limits for the application of the simplified arrangements and the special arrangements for agriculture, livestock and fisheries in 2021

In line with the transitional arrangements concerning the limits for the application of the objective estimate method for Personal Income Tax, the limits for the application of the simplified scheme (150, 000 euros) and the special VAT scheme for agriculture, livestock farming and fisheries (250,000 euros) are extended for 2021 and remain in force indefinitely.

6.- TAX ON INSURANCE PREMIUMS

The tax rate on insurance premiums is increased from 6% to 8%.

7.- IPREM, LEGAL INTEREST ON MONEY AND INTEREST ON ARREARS

From 1 January to 31 December 2021, the IPREM, the legal interest on money and the late payment interest are fixed as follows:

- Public Indicator of Income for Multiple Effects (IPREM): 18.83 euros per day; 64.90 euros per month and 6,778.80 euros per year
- Legal interest rate on money: 3%.
- Interest rate for late payment: 3.75%.