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Tax Law Department

MAIN IMPACT OF COVID-19 ON PERSONAL INCOME TAX SELF-ASSESSMENT FOR 2020

The Firm has produced a list of the main impacts that COVID-19 will have on personal income tax self-assessment for 2020, the campaign for which begins tomorrow, 7 April, and which will affect, above all, the self-employed, tenants, workers subject to Temporary Regulation of Employment Plans (ERTEs) and those on sick leave. Therefore, Marisa Ramírez Prieto, one of our firm's senior lawyers, has addressed how benefits received by those who have been subject to an ERTE, those on sick leave caused by the virus, those with uncollected employment income, those with maternity deductions for female workers subject to an ERTE, those in receipt of the various benefits which the self-employed have been able to access, rental income, property income or deceased persons' income, among other circumstances, will be taxed:

WORKERS SUBJECT TO AN ERTE AND THOSE ON SICK LEAVE

1. IS UNEMPLOYMENT BENEFIT RECEIVED AS A RESULT OF AN ERTE DECLARATION TAXED?

Unemployment benefit received by persons employed on account of a third party as a result of the declaration of an ERTE is classified as income from employment and is not exempt from taxation under personal income tax. It is very important to bear this in mind for two reasons:

- Because the taxpayer who has received these benefits is now being paid from two sources: (i) the company and (ii) the State Public Employment Service (SEPE). The immediate consequence of being paid from two sources is the lowering of the limit over which you are required to declare, which drops from €22,000 to €14,000, if more than €1,500 has been received from the second source of payment.

- In general, SEPE has not carried out any withholdings for personal income tax liability from the benefits paid, which may result in a self-assessment from which tax will be payable.

This means that:

- Those workers who in 2020 have obtained income from work of less than €22,000, from a single source, are not obliged to present a tax declaration.
- On the other hand, those who have obtained the same amounts, but part of which has been from SEPE, as a result of having been subject to an ERTE, and where this amount has exceeded €1,500, are obliged to present a declaration.

2. DOES THE FACT THAT THE TAXPAYER HAS BEEN ON SICK LEAVE AS A RESULT OF COVID-19 AFFECT SELF-ASSESSMENT FOR PERSONAL INCOME TAX?

Yes, it can affect it, and negatively.

In this case, we may find that they are in the same situation as that described in the section above, because if the taxpayer has been absent on sick leave, receiving the corresponding benefits from the National Institute of Social Security (INSS) or a friendly society, and if it was more than €1,500, they will have received payment from at least two sources during the financial year 2020, the limit at which they are obliged to declare being lowered to €14,000.

3. IS THERE AN OBLIGATION TO MAKE A PERSONAL INCOME TAX DECLARATION IN 2020 FOR WORK FOR WHICH PAYMENT HAS NOT BEEN COLLECTED IN THAT YEAR, INCLUDING ANY BENEFITS RECEIVED FROM SEPE?

Generally speaking, any income from employment is attributed to the tax period during which it is payable to the person receiving it.

However, the Law on Personal Income Tax lays down two special rules for cases where income from employment has not been paid at the time when payment fell due:

- Where determining the right to collect payment or the amount of the latter is pending a judicial decision: in this case, the income shall be declared in the tax period during which the decision becomes final.
- Where there are justified circumstances not attributable to the taxpayer: in this case, the income from employment whose payment

has been delayed shall be declared in the year in which it was payable, via a supplementary self-assessment, without penalty or interest for late payment or surcharges of any kind.

This means that taxpayers who received employment income for 2020 (including SEPE benefits) in 2021 will have to declare it as part of their 2020 Personal Income Tax Declaration.

On the other hand, the income of taxpayers who have not received all or part of their income from employment because they were pending a court decision, for example, because they challenged the ERTE, will be declared in the Personal Income Tax return corresponding to the financial year in which the judicial decision became final.

4. DOES THE FACT THAT THE TAXPAYER WAS SUBJECT TO AN ERTE AFFECT THE MATERNITY DEDUCTION?

Women with children under the age of three, entitled to the application of the minimum due to descendants, where they carry out an activity on their own account or on account of another for which they are registered under the corresponding Social Security or friendly society regime, may see the tax differential for Personal Income Tax reduced by up to €100 per month for each child under the age of three.

However, a female worker's comprehensive ERTE status may also affect the maternity deduction given that in these cases the employment contract is suspended, and she is de-registered from Social Security. Therefore, the requirements for this deduction are not met.

However, this deduction will continue in cases of partial ERTE, resulting in a working day reduction and in which Social Security contributions are still paid.

5. IS THERE AN OBLIGATION TO CARRY OUT SELF-ASSESSMENT IF A MINIMUM VITAL INCOME PAYMENT HAS BEEN RECEIVED?

As indicated by the Tax Agency on its website, all taxpayers who have received a Minimum Vital Income Payment are required to submit a self-assessment declaration regarding that income, even if the aforesaid payments may be exempt.

SELF-EMPLOYMENT

6. HOW IS THE EXTRAORDINARY BENEFIT FOR THE CESSATION OF BUSINESS ACTIVITY FOR SELF-EMPLOYED WORKERS TAXED?

Self-employed persons who have benefited from the so-called extraordinary cessation of business activity benefit must include it in their self-assessment as employment income and, since it is considered as such, they may deduct, as other expenses and generally, €2,000.

7. HOW IS THE SELF-EMPLOYMENT FEE REFUND TAXED?

In the case of self-employed persons who have been exempted from or whose self-employment fee has been refunded, special care should be taken not to include these fees as a deductible expense for the financial year.

8. HOW ARE SUBSIDIES AND ASSISTANCE FROM THE AUTONOMOUS COMMUNITIES TAXED?

Subsidies and other assistance received by self-employed persons from the different autonomous communities are taxed as income from economic activities, provided that the legislation approving them has not established a different regime.

TENANTS

9. WHAT EFFECT DOES THE REDUCTION AND DEFERRAL OF INCOME FROM RENT DUE TO COVID HAVE?

If the rent reduction has been agreed between the parties, the landlord shall declare as income from real estate capital for the year 2020 the sum of the following two amounts: (i) the revenue accrued prior to the reduction and (ii) the new revenue accrued following the reduction agreed by the parties.

On the other hand, the expenses necessary for renting incurred throughout the entire period affected by the modification will be deductible. And, in the event that the agreed rent reduction has been total, there will be no income allocation for the months for which the landlord has not received any payments.

In cases involving the leasehold of property intended for housing, positive net income will be reduced by 60%.

On the other hand, if what has been agreed between the parties is a deferral of the rent payments, only the rental income that should have been paid in that period will be declared in 2020.

However, as in the case above, the landlord may deduct the costs incurred in 2020, without the allocation of property income and the 60% reduction in positive net income if the property has been earmarked for housing.

10. IS THERE AN OBLIGATION TO DECLARE RENT UNPAID BY TENANTS?

The Law on Personal Income Tax provides that capital income from property shall be allocated (declared) for the tax period in which they are enforceable by the person perceiving them. This means that, if there has been a non-payment of rent, without an agreement between the parties, the landlord will have to declare in 2020 the total amount of the rent that they should have received by contract (even if he has not collected it).

However, the landlord may deduct in the 2020 financial year the unpaid rent, as "doubtful loan" balances, provided that the following circumstances apply:

- That the tenant/debtor is in a situation of bankruptcy.

- Where between the time of each first attempt to collect rental income made by the landlord and the end of the tax period more than three months have elapsed (this period is only for the tax periods 2020 and 2021, following that it will be, once again, six months), and there would have been no credit renewal.

Should the debt be collected after its deduction as an expense, the landlord shall include it within the income for the year in which the collection took place and the costs incurred by the claim for eviction shall be deducted in the tax period in which they are met.

IMPUTED INCOME

11. FOR THE PURPOSES OF IMPUTING INCOME FROM PROPERTY CAN THE PERIOD OF THE STATE OF ALARM AND RESTRICTIONS ON MOVEMENT BE EXCLUDED FROM THE CALCULATION?

This issue has been resolved by the General Directorate of Taxes, which has concluded that the declaration of the state of alarm and the travel restrictions have had no effect on the imputation of income from properties

belonging to the owners of properties which do not constitute their habitual residence and are not rented out.

In the opinion of the General Directorate of Taxes, the imputation of property income does not take into account the effective use of the second home, but rather its availability in favour of its owner. The Law does not take into account any circumstances that may affect such use, such as illness, work or others determining the impossibility of using the second home, since the Law limits those cases in which imputing income from property is not appropriate only to the following taxed cases: where the property has been assigned to an economic activity, where the property generates capital income, where it is under construction and ineligible for use for reasons relating to urban development. In conclusion, no case of legal taxation would consider that the declaration of the state of alarm excludes the imputation of income.

DEATHS

12. ARE PEOPLE WHO DIED IN 2020 REQUIRED TO SUBMIT A PERSONAL INCOME TAX DECLARATION?

Although it may be painful for the loved ones of the nearly 500,000 people who passed away in 2020, they are also required to submit their Personal Income Tax declaration

for that year, provided that the income they received that year has exceeded the limits of the obligation to declare.

The amounts determining the existence of the obligation to present a tax declaration shall apply in full, irrespective of the number of days comprising the deceased person's tax period, and without the requirement to allocate any income throughout the year.

However, since it is impossible for deceased persons to submit this declaration, the obligation to do so passes to their heirs or legatees.

13. ARE THE TAX DEBTS OF DECEASED PERSONS PASSED ON TO THEIR HEIRS?

The General Tax Law stipulates that, upon the death of taxable persons, outstanding tax obligations (such as that arising from Personal Income Tax for 2020) will be passed on to the heirs, unless it is accepted for the benefit of inventory, in which case the heirs are liable for the deceased's debts to the extent covered by the legacy.

However, under no circumstances shall the taxpayer's penalties or obligations be transmitted unless notice of the transferral of liability agreement was delivered prior to death.

Consequently, barring these exceptions provided for in Law, the debts of the deceased are transmitted in the same state as they were at the time of the death of the obligor and the collection procedure will continue with their heirs and, where appropriate, legatees, with no more requirements than evidence of their death and notification to the successors, with requests for payment of the tax debt and outstanding costs accrued by the deceased.

Therefore, in the event that an instalment resulting from the Personal Income Tax self-assessment of a deceased person is payable, it will be his/her heirs who must present the declaration and pay the instalment resulting from it. However, this amount shall be counted as a debt when calculating the estate liable for Inheritance Tax.

On the other hand, if the resulting instalment were a refund, this right will be an asset to be included within the deceased's estate.

GENERAL ISSUES

14. WHEN AND WHERE SHOULD THE SELF-ASSESSMENT DECLARATION BE SUBMITTED?

Electronically (with a Cl@ve PIN reference number, an electronic certificate or an electronic National ID Document):

- From 7 April to 25 June 2021: if the balance is a payment and payment is to be made by direct debit.
- From 7 April to 30 June 2021: (i) if the balance is a refund and (ii) if the balance is to be made by a payment in, but not by direct debit.

Using **telephone support**, through the so-called 'We Call You Plan' (*'Plan le Llamamos'*), an appointment is required, it can be made from 4 May onwards:

- From 6 May to 25 June 2021: if the balance is a payment and payment is to be made by direct debit.
- From 6 May to 30 June 2021: (i) if the balance is a refund and (ii) if the balance is to be made by a payment in, but not by direct debit.

Through the face-to-face campaign for making declarations by prior appointment (this can be requested from 27 May), at the offices of the Tax Agency:

- From 2 June to 25 June 2021: if the balance is a payment and payment is to be made by direct debit.

- From 2 June to 30 June 2021: (i) if the balance is a refund and (ii) if the balance is to be made by a payment in, but not by direct debit.