GÓMEZ-ACEBO & POMBO

Spanish Tax Alert

New limitations on the tax deductibility of interest expenses

Tax Department of Gómez-Acebo & Pombo

The Draft Corporate Income Tax Bill issued last 23 June for public consultation, envisages some measures that may be of particular relevance in the context of transactions financed through particular types of financial instruments.

Thus, article 15 of the Draft Bill provides that, in the context of the Corporate Income Tax, expenses related to the following operations are not tax deductible:

— Profit sharing (participating) loans granted by entities belonging to the same group of companies within the meaning of article 42 of the Commercial Code.

— Expenses relating to controlled transactions when, as a result of a different tax status, do not generate an income, or otherwise, generate exempt income or income subject to a nominal tax rate below 10 %.

— Those financial instruments that represent corporate interests in the capital or equity of any kind of entities, and nevertheless, are considered for accounting purposes as financial liabilities. Tax legislation gives to these instruments the tax treatment applicable to any interests in the capital or equity of entities, such as may occur with non-voting shares or redeemable shares.

At the same time, a new limit is set for financial expenses accrued in the acquisition of shares or interests in the capital or equity of entities where a restructuring process takes place after the acquisition, or the acquired company joins the tax group.

Therefore, **as from 20 June 2014**, financial expenses on loans and other borrowed funds used to acquire entities will have the following treatment:

— In general, net financial expenses will be tax deductible up to the limit of 30 % of the year's operating profit.

— For these purposes, the financial expenses on debt incurred in the acquisition of shares in the capital or equity of any kind of entity will be tax deductible up to the additional limit of 30 % of the operating profit of the acquirer company, without including in its corresponding operating profit the activity of the acquired entity.

Likewise, the financial expenses on debt incurred in the acquisition of shares in the capital or equity of any kind of entity, where a restructuring process takes place after the purchase, whether or not the special tax regime provided in Part VII of Title VII of the Corporate Income Tax Act is applied, will be tax deductible up to the additional limit of 30 % of the operating profit of the acquirer company, without including in its corresponding operating profit the activity of the acquired entity.

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