

Tax on the payment of dividends in kind

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In its answer to query V3301-15 of 27 October, the Directorate-General for Taxation (hereinafter, the DG) examines the taxation of a transaction by which the querier intends to part pay in kind, with real estate property it owns, dividends to its shareholders. In its answer, the DG determines the tax consequences of such payment of dividends in kind (*in specie*), as regards both the company and its shareholders, from the perspective of: Corporate Income Tax; Transfer and Stamp Duty; Personal Income Tax; and Capital Gains Tax on Urban Land. Below follow the DG's main conclusions in this regard.

1. Corporate Income Tax

Regarding the corporate income tax and pursuant to art. 17 of Act 27/2014 of 27 November, the DG states that the property subject to the dividend payment must be appraised according to its normal market value - regarded as that which would have been agreed between independent parties -, with the transferor integrating in its tax base the difference between the market value of the transferred assets and their tax value.

2. Transfer and Stamp Duty

After examining arts. 7, 8, 10, 11 and 31 of the Transfer and Stamp Duty (Consolidation) Act, the DG concludes that the described transaction is covered by the duty's chargeable event, under the category of asset transfers for good and valuable consideration, without the standard exemption of art. 7(5) applying and with the shareholders who are to acquire the property being regarded as taxpayers.

Moreover, the DG recalls that the category of asset transfers for good and valuable consideration excludes the application of the variable tax liability of the notarial deed attracting stamp duty, as both tax rates are incompatible.

3. Personal Income Tax

In its examination of the tax consequences arising for shareholders from the payment of dividends in kind, the DG begins by recalling that, for the purposes of the personal income tax and in respect of the shareholders, dividends are treated as earnings from capital, subject to withholding, and then moves onto various aspects concerning the special features of a payment in kind.

First, the DG notes that the portion of dividend paid in kind must be appraised at market value, in accordance with the provisions of art. 43(1) of the Personal Income Tax Act, the property's purchase value for the purposes of future transfers being the market value at the time of delivery to the shareholder. As regards the determination of such value, and faced by a question as to the applicability of the value determined by a devolved region (*Comunidad Autónoma*) for the purpose of other taxes, the DG indicates that the relevant market value of the property is that which would match the agreed price for its sale between independent parties at the time of transfer, without, therefore, being able to state, in principle and in abstract terms, that said market value is the same as the aforementioned devolved region's.

Moreover, the calculation of the dividend in kind's gross income shall be performed adding to the aforementioned market value the payment on account determined according to the rules laid down in art. 103 of the Personal Income Tax's Regulations, unless passed on to the shareholder.

4. Capital Gains Tax on Urban Land

The DG, in view of the wording of art. 104(1) of the Local Government Finance (Consolidation) Act (abbrev. LRHL), recalls that the increase in value of urban land may have originated in any manner of transfer of ownership, both for good and valuable consideration and for profit, as well by the granting or transfer of real rights to enjoyment limiting ownership of said land. Therefore, if the querier transfers ownership of the property to its shareholders as payment of dividends, the chargeable event for that tax takes place and the increase in value of the

urban land that becomes apparent upon the transfer of ownership - for good and valuable consideration as given in payment of dividends - is taxed.

Moreover, in accordance with art. 106(1)(b) LRHL, the status of taxpayer is bestowed on the transferor company, which must record in the tax base, in accordance with art. 107 of the same Act, the increased value of the property stated at the time of accrual and undergone over a maximum period of 20 years. This value, as inferred from art. 107(2)(a) LRHL, will be the same as the cadastral value of the property at the time of accrual, applying to it the appropriate annual percentage based on the provisions of art. 107(4) of the same Act.

Once the tax base has been thus determined, the taxable income shall be determined applying, to such tax base, the tax rate set by the city or town council, rate that cannot be greater than 30 per cent.

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