

## TAX NEWS

# Tax measures for 2023

### 1. Introduction

During the last days of December, the following laws were published in the Spanish Official State Gazette passing different tax measures and taxes to be applied in fiscal year 2023 or, in some cases, in fiscal year 2022 itself:

- Law 28/2022, of 21 December, to promote the start-up ecosystem ("Startup Law")
- Law 31/2022, of 23 December, on the General State Budget for 2023 ("LPGE")
- Law 38/2022, of 27 December, for the establishment of temporary taxes on energy and on credit institutions and financial credit establishments and creating the temporary solidarity tax on large fortunes and amending certain tax rules.

We highlight below the main changes approved by the aforementioned laws, differentiating by type of tax.

### 2. Corporate Income Tax (CIT)

#### [Reduction of the general tax rate for entities with a net turnover of less than 1 million](#)

Effective for tax periods beginning on or after January 1, 2023, and effective without time limit, a reduced tax rate of 23% is introduced for entities with a net turnover of less than one million euros in the immediately preceding tax period, as long as they are not considered to be an asset-holding entity.

#### [Incentives for "start-ups" \(CIT and NRIT, in the case of Permanent Establishments\)](#)

The Startup Law, in force since December 23, 2022, establishes taxation at a 15% during the first tax year in which the startup (as defined in the law) obtains a positive taxable base and in the following three ones.

It also establishes that there is no obligation to make payments in advance during the first two tax years with a positive tax base.

Finally, provided that the company is up to date with its tax obligations, it may request a deferral of the payment of the instalments for the first two years with a positive tax base for a period of 12 and 6 months, respectively.

The law defines "start-up company" as a new legal typology comprising companies that, being newly created (or not older than 5 or 7 years, depending on the case), meet the requirements for the application of this regime. In short, they must (i) not distribute dividends, (ii) not be listed on a regulated market, (iii) not be the result of a corporate restructuring operation, be established in Spain, have 60% of their workforce employed in Spain and, most importantly, (iv) develop an innovative entrepreneurial project with a scalable business model, as defined in the law.

For the above purposes, it identifies as "innovative" those start-ups those whose "purpose is to solve a problem or improve an existing situation through the development of products, services or processes that are new or substantially improved compared to the state of the art and which entail a risk of technological, industrial or business model failure".

It is foreseen that, prior to this, and subject to an examination for which, although a series of factors to be taken into account are specified, a significant discretionary component is attributed to ENISA - although the application is understood to have been granted by positive silence after 3 months -, ENISA will assess and, where appropriate, certify that the required conditions are met and proceed with the mandatory registration as an entrepreneurial company in the Mercantile or Cooperative Registers.

#### [50% limitation on offsetting tax loss carryforwards \(NOLs\) in consolidated groups](#)

With effect for tax periods beginning in 2023, the tax base of the consolidated tax group will be determined by considering only 50% of the individual NOLs of each of the entities integrating the tax group.

For subsequent tax periods, the amount of individual NOLs not included in the tax base of the tax group by application of the above measure (i.e. the remaining 50% of individual NOLs) will be included in the tax base of the tax group in equal parts in each of the first ten tax periods starting on January 1 2024, even if any of the entities with individual NOLs is excluded from the group.

In the event of loss of the tax consolidation regime or extinction of the tax group, the amount of the individual NOLs pending of integration in the tax base of the group will be included in the last tax period in which the group is taxed under the tax consolidation regime.

#### [Deduction for investment in film productions, audiovisual series and live performances of performing arts and music.](#)

Effective for tax periods beginning on January 1, 2023, the deduction limits for investments in Spanish and foreign film productions and audiovisual series will be increased from €10 million to €20 million. In the case of audiovisual series, the deduction will be determined per episode and the limit will be 10 million euros for each episode produced.

On the other hand, with effect for tax periods beginning on January 1, 2021, it is allowed the application of this deduction for taxpayers who finance the costs of Spanish film productions, audiovisual series and live performing arts and music shows, when the amounts are contributed at any stage of production, before or after the producer incurs in the production costs and until the obtention of the corresponding certificates.

Within the amounts destined to finance all or part of the production costs, the expenses of obtaining copies, advertising and promotion in charge of the producer up to a limit of 30% of the production costs, are also included,

The amount of the deduction applied by the taxpayer participating in the financing must be taken into account for the purposes of applying the joint limit of 25%. This limit will be raised to 50% when the amount of the deduction which corresponds him is equal to or greater than 25% of his gross tax liability less deductions in order to avoid double international taxation and allowances.

The deduction shall not apply when the taxpayer who participates in the financing is related to the taxpayer that generates the right to the deduction.

### 3. Personal Income Tax (PIT).

#### [Increase in the amount of the reduction for obtaining earned income.](#)

Effective for tax year 2023, the amount of the reduction increases from €5,565.00 to €6,498.00 per year for taxpayers with net earned income of €14,047.50 or less (previously €13,115.00). The maximum threshold for the application of the reduction is increased from €16,825 to €19,747.50.

#### [Modifications to the withholding tax rate for specific incomes.](#)

The modification of the withholding tax rate resulting from the abovementioned increase in the amount of the reduction for earned income, will take effect from 1 February 2023.

Likewise, a reduced withholding tax rate of 7% (previously 15%) will apply to i) income derived from the production of literary, artistic or scientific works derived from the transfer of

exploitation rights; and ii) income derived from intellectual property; provided that, in both cases, the amount of such income in the previous year was less than €15,000.00 and it accounted for more than 75% of the taxpayer's total income from work and economic activities.

#### [Increase in the Capital Gains and Dividends tax rate and introduction of a new tranche.](#)

With effect from 1 January 2023, the tax rate for taxable capital gains and dividends income exceeding €200,000 is increased from 26% to 27% and a new tax bracket is introduced for taxable savings income exceeding € 300,000, which will be taxed at 28%.

The capital gains and dividends tax tranches, following the approved changes, are as follows:

Net savings taxable Income — Up to EURO	Full quota — Euros	Remaining savings tax base — Up to euros	Applicable type — Percentage
0	0	6.000	19%
6.000	1.140	44.000	21%
50.000	10.380	150.000	23%
200.000	44.880	100.000	27%
300.000	71.880	From now on	28%

In the same respect, the scale of taxation applicable to savings income included in the tax regime for workers posted to Spanish territory is modified.

#### [Increase in the reduction of income from economic activities in objective estimation system.](#)

An additional 5% reduction is included in the income from economic activities under the objective system estimation.

#### [Increase in the reduction for deductible expenses that are difficult to justify in the simplified direct estimation system.](#)

Business individuals taxed under the simplified direct estimation system may apply a reduction of 7% (previously 5%) for deductible expenses that are difficult to justify, up to a maximum limit of 2,000 euros.

#### [Taxation on “carried interest”](#)

Carried interest taxation is being regulated as of January 1, 2023. Carried interest, can be defined as the income obtained by directors, managers or employees of closed-end alternative investment entities and funds (including venture capital entities), or their managers or group entities, derived directly or indirectly from participations, shares or other rights, including success fees, which grant special economic rights in any of these entities.

It is confirmed that such income will be classified as income from employment, although it will only be subject to taxation at 50%, provided that the following requirements are met:

- The special economic rights are conditional on the remaining investors in the entity obtaining a minimum return, which will be defined in the regulations or bylaws of the entity.
- Participations, shares or rights, must be kept for at least 5 years, unless those are transferred mortis causa, or are liquidated in advance or become ineffective or are totally or partially lost as a consequence of the change of management entity, in which case they must have been maintained uninterrupted until such circumstances occur.

The 50% deduction will not be applicable when the economic rights come directly or indirectly from an entity resident in a country or territory qualified as a non-cooperative jurisdiction or with which there is no regulation on mutual assistance in the exchange of tax information

#### [Tax benefits related to “start-up companies”](#)

As of January 1, 2023:

- The exemption on the delivery to employees of shares or participations of the company itself or of other companies of the group, used to have an up to € 12,000 limit, now it is increased to € 50,000 in the case of emerging companies, and it is not necessary that the offer is made to all employees, since it is sufficient that they are granted within the general remuneration policy and contribute to the participation of the employees in the capital of the company. In the case of stock options, it is required that the company meets the requirements to be considered emerging at the time the option is granted.
- The income generated by the delivery of shares to employees of start-up companies will be deemed to have been obtained when any of the following circumstances occur: (i) the company is listed on the stock exchange or any multilateral trading system, (ii) the employee transfers his or her shareholding or (iii) 10 years elapse.
- A valuation rule is established for shares or participations delivered to employees of start-up companies, according to which the shares and participations will be valued at their subscription value by an independent third party in the last capital increase carried out in the preceding year. Otherwise, they will be valued according to market value.
- The quota deduction for investment in new or recently created companies is increased from 30% to 50%,

increasing the maximum base from 60,000 to 100,000 euros. This improvement is applied in general, although, in the case of emerging companies, the time period is extended from 5 to 7 years after incorporation and the maximum percentage of participation of 40% is not taken into account.

#### [Improvements in the tax regime for workers posted to Spanish territory \(Beckham Law\)](#)

Effective as of January 1, 2023:

- To benefit from the regime, it is required not to have been resident in Spain during the previous 5 years (as opposed to the 10 years required until now).
- The list of cases of movements to Spain that entitle to apply this regime is extended since, in addition to the existing ones, it will be applicable when:
  - When the employee carries out its functions remote working, without the need to be ordered by the employer, through the use of computer, telematic and other IT means and systems (this circumstance being understood to be fulfilled when there is a visa for teleworking of international character).





- Acquires the condition of administrator, regardless of its participation - unless it is an asset-holding entity in which it participates directly or indirectly in, at least, a 25% .
  - An activity qualified as entrepreneurial is carried out in Spain.
  - In the case of highly qualified professionals, they carry out in Spain an activity for emerging companies or carry out training, research, development and innovation activities, receiving remuneration that represents more than 40% of the total income from economic activity or work.
- The benefit is extended to the wife and children, under 25 years of age or disabled, or in the case of no marriage, the parent of these, provided that (i) they move to Spain before the end of the first tax period of application of the regime, (ii) they acquire their tax residence in Spain, (iii) they have not resided in Spain for the last 5 years and do not constitute a permanent establishment in Spain, and (iv) their income is lower than that of the taxpayer that has led to the application of the regime.

Finally, it should be noted that the time period for the application of the regime is not extended to 11 years but remains at the current 1+5 years.

#### 4. Wealth Tax (WT).

With effect from December 28, 2022, stocks representing the participation in the equity of any type of non-listed entity whose assets consist of at least 50%, directly or indirectly, of real estate located in Spanish territory will be considered as assets located in Spain.

Thus, taxpayers owning shares in a nonresident entity which, at the same time, is the direct or indirect owner of real estate located in Spain, become subject to the WT obligation for real estate.

#### 5. Temporary Solidarity Tax on Large Fortunes (TSTGF).

This new tax is configured as a complementary tax to the WT, which will not be subject to assignment to the Autonomous Communities and whose taxable event is the ownership by individuals of a net worth of more than 3 million euros as of December 31 of each year.

It will be applied throughout the national territory except in the Basque Country and Navarra.

It is accrued on December 31 of each year and will be applicable in the first two years in which it is accrued as from its entry into force, which took place on December 29, 2022. Therefore, it will be payable in 2022 and 2023. However, it is foreseen that it may be maintained at the end of the effective period.

The taxable base is determined by applying the WT rules, i.e., by the difference between the value of the assets and rights owned by the taxpayer and the charges and encumbrances of a real nature, when they reduce the value of the respective assets or rights, and the personal debts or obligations for which the taxpayer is liable.

Likewise, the cases of WT exemption are applicable, so the exemptions for the taxpayer's habitual dwelling, shares in a family business, and other usual cases of WT will be applicable.

An important change, derived from the modification of the WT regulations, lies in the consideration of assets located in Spain for the purposes of the WT and, therefore, of the Solidarity Tax, of the shares representing the participation in the equity of any type of non-listed entity whose assets consist of at least 50%, directly or indirectly, of real estate located in Spanish territory.

As far as taxpayers are concerned, it should be noted that non-residents who are not resident in another Member State of the European Union (unless they are resident in a State of the European Economic Area where mutual assistance regulations exist) must appoint a representative (individual or legal entity resident in Spain) before the end of the tax return period, unlike what happens in the WT, in which a representative must be appointed if acting in Spain through a permanent establishment, regardless of the taxpayer's residence.

Taxpayers under personal liability may reduce their taxable income by the minimum exempt amount of €700,000.

The tax scale established for the calculation of the tax liability is as follows:

Net Base €	Quota €	Remaining taxable income €	Applicable rate %
0,00	0,00	3.000.000,00	0,00
3.000.000,00	0,00	2.347.998,03	1,70
5.347.998,03	39.915,97	5.347.998,03	2,10
10.695.996,06	152.223,93	Onwards	3,50

As it happens in the WT, a joint limit will be applied in the new tax whereby the resulting gross tax liability, together with the personal income tax and WT tax liability, may not exceed 60% of the sum of the personal income tax bases, for taxpayers taxed under personal liability. If it is exceeded, the tax liability will be reduced up to this limit, with a maximum reduction of 80% of the tax liability of this temporary tax. In addition, the following may be deducted from the resulting tax liability:

- The taxes paid abroad in accordance with the WT regulations.
- The amount of Wealth Tax effectively paid.



## 6. Value Added Tax (VAT).

### [Modification of the taxable base in case of bad debts and of the requirements for VAT recovery.](#)

With effect from January 1, 2023 and indefinitely, it is allowed to amend the taxable base when a credit is declared non-recoverable as a result of an insolvency procedure declared by a court in another Member State, even if the recipient of the transactions is not established in the Spanish VAT Territory.

In addition, the requirements for the recovery of the tax are amended:

- The minimum amount of the taxable base of the transaction is lowered from €300 to €50 when the debtor recipient does not have the status of taxpayer of the tax.
- The resources to claim the collection from the debtor are extended (judicial claim, notarial requirement or any other means that accredits it reliably).
- The term for the issuance of the amendment invoice is extended from 3 to 6 months.

### [Modification of the special localization rule for certain services.](#)

The application of the special localization rule in transactions between businessmen or professionals (B2B) is limited to financial and insurance services and leasing services of means of transport. Therefore, the closing clause of Article 70.Two VAT Law can only be applied between taxable persons in cases



which, due to their nature, do not generate the right to the total deduction of tax installments (as well as for the leasing of vehicles).

On the other hand, in transactions with private individuals, the application of this special rule will be extended to intangible services (consulting, engineering, etc.) when it is proven that their consumption or effective exploitation is carried out in the Territory of Application of the Tax.

### [New cases of reversal of the taxpayer.](#)

With effect from January 1, 2023 and indefinitely in force, two new cases of reversal of the taxpayer are established for the supply of waste, scrap or plastic cuttings and for the supply of waste or unusable articles of rags, twine, rope or cordage, provided that they are made in favor of entrepreneurs and professionals.

On the other hand, leasing services of subject and non-exempt real estate, as well as intermediation services in the leasing of real estate carried out by non-established entrepreneurs or professionals, are excluded from the rule of inversion of the taxpayer.

### [Adaptation to EU e-commerce regulations.](#)

Effective as from January 1, 2023 and valid indefinitely, the application of the limit of €10,000 for intra-Community distance sales of Article 73 VAT Law is amended, removing such threshold if such sales are made, in whole or in part, from a Member State other than that of establishment.

### [Application of the reduced tax rate on feminine hygiene products and contraceptives.](#)

Pads, tampons, panty liners, condoms and other non-medical contraceptives are now taxed at a reduced rate of 4%.

### [Extension of the exemption regime.](#)

An exemption would be considered for deliveries, imports and intra-Community acquisitions of goods made by the armed forces of the Member States participating in activities within the framework of the common security and defense policy, whether for their own use, for the use of civilian personnel or for supplying their canteens and canteens.

## 7. Local taxes

### [Amendments to the Economic Activities Tax rates](#)

The rates for telephone services, coworking and other activities are modified.



## Update of the maximum coefficients to be applied for Tax on the Increase in Value of Urban Land

For the calculation of the Tax on the Increase in Value of Urban Land (the "municipal capital gains tax"), the coefficients to be applied to the value of the land are updated according to the period of generation. The new table with the updated coefficients applicable from 1 January 2023 is as follows:

Period of generation	Coefficient
<u>Less than 1 year</u>	0,15
<u>1 year</u>	0,15
<u>2 years</u>	0,14
<u>3 years</u>	0,15
<u>4 years</u>	0,17
<u>5 years</u>	0,18
<u>6 years</u>	0,19
<u>7 years</u>	0,18
<u>8 years</u>	0,15
<u>9 years</u>	0,12
<u>10 years</u>	0,10
<u>11 years</u>	0,09
<u>12 years</u>	0,09
<u>13 years</u>	0,09
<u>14 years</u>	0,09
<u>15 years</u>	0,10
<u>16 years</u>	0,13
<u>17 years</u>	0,17
<u>18 years</u>	0,23
<u>19 years</u>	0,29
<u>Equal to or more than 20 years</u>	0,45

## 8. Temporary levy on the energy sector

Taxpayers deemed to be a main operator in the energy sectors will have to pay a temporary energy levy during 2023 and 2024. However, an exemption will apply for taxpayer meeting any of the following conditions:

- They have a net turnover for the fiscal year 2019 of less than 1,000 million euros.
- That the net turnover corresponding to 2017, 2018 and 2019, derived from the activity that would have determined their consideration as main operator does not exceed 50% of the total net turnover amount.

The amount payable will result from applying a 1.2% rate to the turnover of the corresponding economic activity, as provided in the profit and loss account of the previous calendar year. 50% of this amount will be paid in advance during the first 20 calendar days of February and the remaining 50% must be paid during the first 20 calendar days of September.

This levy is not considered a deductible expense for CIT purposes and its amount cannot be passed on to third parties.





## 9. Temporary levy on credit institutions

A new levy is established for 2023 and 2024 to be paid by credit institutions and financial credit establishments operating in Spanish territory whose total interest and commission income for the year 2019 is equal to or greater than 800 million euros.

The amount payable will result from multiplying a 4.8% rate to the sum of the interest margin and the income and expenses for commissions derived from the activity carried out in Spain, as provided in the profit and loss account of the calendar year before the one to which the levy refers.

Special rules apply if the entity belongs to a tax group or a commercial group filing returns in the common and foral territory.

Payment must be made in the same way as for the temporary levy on the energy sector.

This levy does not either qualify as deductible expense for CIT purposes and its amount cannot be passed on to third parties.

## 10. Other tax measures

### [Interest for late payment and legal interest](#)

The interest for late payment for the year 2023 will be 4.0625%, compared to 3.75% in recent years, and the legal interest rate will be 3.25%, compared to 3% in recent years.



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