IDEAS FOR OPTIMISING 2021 PERSONAL INCOME TAX FOR SPANISH TAX RESIDENTS

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The Tax Department of Augusta Abogados would like to share with you some ideas regarding the Personal Income Tax in order to optimize your taxation.

Offsetting of capital gains with incurred losses

Capital gains arising on the transfer of any kind of asset would be included in the Taxable Base of the financial and capital gains income and would be taxed at rates ranging from 19% to 26%. However, capital gains can be offset against capital losses arising during the year. In addition, the Personal Income Tax Law allows the compensation of negative outstanding balances originated in the four years preceding the year in which a transfer with a positive capital gain has been taken place.

If the capital losses exceed capital gains, 25% of the excess may be offset with other income generated in the Taxable Base of the financial and capital gains income with other financial income (dividends, interests, etc).

Applicable benefits to taxpayers older than 65 years

- Taxpayers over the age of 65 may exclude from taxation any capital gains arising upon the transfer of assets (real estate other than the usual residence, shares, rights, etc.), provided that the amount (total or partial) obtained by the transfer is invested within six months in an insured life annuity with the limit of 240.000.-€.

- Those individuals over 65 years old who transfer their habitual residence will be exempt from income tax for the capital gain they obtain.

Consequently, those taxpayers that are close to turning 65 by 12/31/2020, could consider to defer this type of transactions in order take advantage of the beforementioned tax benefits.

Pension Funds contributions

The Taxable Base of the Personal Income Tax can be reduced with contributions made to pension funds, corporate social security plans, insured social security plans, mutual social security companies and, to the premiums paid to private insurance that exclusively covers the risk of severe or great dependence. The limit of the reduction is the lowest of the following amounts:

- € 2,000
- 30% of the sum of income from work and economic activities received during the year.

This limit shall be increased to € 8,000 provided that the contribution is made by the employer.

It is also possible to reduce the General Income Tax Base in the contributions made to the spouse's social welfare systems with the maximum limit of € 1,000 per year. This reduction would be applicable when the net income from work or economic activity of his spouse is less than € 8,000 per year.

It is also possible to reduce the income Tax Base with contributions made to pension plans in favor of individual's with physical disabilities equal to or greater than 65%, or mental disabilities equal to or greater than 33%, with a maximum limit of € 10,000 per year. The person making the contribution needs to be a family member or a guardianship of the disabled person. However, if the disabled person makes these contributions, the reduction cannot exceed € 24,250.

Finally, the General Budget Bill for 2022 contemplates a reduction of the maximum amount to be reduced from € 2,000 to € 1,500). Nevertheless, the reduction increases from € 8,000 to € 8,500 if the contribution is made by the employer.

Pension Plan Redemption

When a pension plan is redeemed, the amount obtained is taxed as work income in the general Income Tax Base. Therefore, it is taxed at the marginal rate.

Consequently, it will be more advantageous to redeem the pension fund in a year in which low work income and/or low income from an economic activity has been obtained.

Premiums paid to a dependency insurance

The taxpayer and his relatives up to the third degree who make contributions to a private insurance plan that exclusively covers the risk of severe or great dependence, may reduce the Taxable Base of the Personal Income Tax, provided that the total amount of reductions does not exceed € 2,000 per year.

Taxpayers with real estate rental income

Taxpayers who have rented property must declare the income obtained and pay taxes as income from real estate capital. However, some expenses may be deducted from the income obtained (including amounts paid for interest and financing costs, community fees if paid by the landlord, maintenance expenses, amortization of the property, property tax, garbage fees, doubtful balances, and other professional services expenses).

The Personal Income Tax Law establishes a tax incentive for the rental of property destined to the tenant's habitual residence. In these cases, the landlord may apply a 60% reduction on the net income paid by the tenant (income minus expenses), which means that only 40% of the net income is effectively taxed. This reduction will only apply if the taxpayer has voluntarily included the profit in his tax return.

Exemption for reinvestment of the habitual abode

The capital gain obtained upon the transfer of the habitual abode may be exempt if it is reinvested in the acquisition of a new habitual residence (within 2 years prior to or after such transfer). A residence would be considered as permanent residence if the taxpayer lives there for a continuous period of 3 years. A change of the personal circumstances of the individual (I.e. divorce, legal separation or transfer for work purposes, etc) would not be taken into considerations for the computation of the two years period.

It should be noted that, when the state of alert for the COVID-19 health crisis was declared, the days between 14 March and 30 May 2020 will not be considered for the purpose of calculating the two years of the reinvestment period.

Partial exemption of income derived from the transfer of certain real estate properties

The capital gain arising upon the transfer real estate property that had been acquired from May 12th , 2012 and until December 31, 2012, may be 50 % exempt.

Investment in start-up companies

Taxpayers may deduct from their Personal Income tax the 30% of the amounts paid upon the purchase of shares in newly created companies that meet certain requirements. This benefit has with a maximum deduction base of € 60,000 per year. This deduction it is not compatible if the newly created companies' deduction of an autonomous community is used for the same amount paid. However, those deductions could be applied if they are used for different amounts.

It should be noted that the Draft Bill to promote the start-up ecosystem envisages modifying this deduction by increasing the deduction rate from 30% to 40% and the maximum base from €60,000 to €100,000.

Exemption for reinvestment in the case of transfer of shares of newly created companies

Subject to certain limitations, the Personal Income Tax Law provides an exemption for reinvestment of capital gains arising on the transfer of shares which the deduction for investment in new or recently created companies had been applied. The exemption may be total or partial, provided that the total amount obtained from the transfer of the shares is reinvested in the acquisition of shares in the aforementioned entities under the conditions determined by regulations.

Deduction upon gifts

The 10% of the amounts donated to foundations and associations of declared public utility not included in the Law 49/2002 would be tax deductible against the Personal Income Tax liability of the taxpayer.

Regarding donations made to non-profit organizations included in the Law 49/2002, taxpayers may deduct from their tax liability the 80% of the first 150.-€ donated and 35% of the remaining amount over 150.-€. This last percentage will be 40% in the case of multi-year donations, that is, if it had made donations for an amount equal to or greater than the same entity in the two previous years.

Transfers between investment funds

Transfers between investment funds can be made without arising any capital gain, deferring the payment of taxes until the final reimbursement.

This tax deferment will not apply to ETFs.

Capital gains from the transfer of an asset acquired before December 31, 1994

The capital gain obtained from the transfer of an asset acquired before December 31, 1994 may be reduced by applying the reduction coefficients established in the corresponding regulation.

Long-term savings plans "Plan de Ahorro 5"

Investing in a Long-Term Savings Plan can be interesting, since the income obtained will be exempt from income tax. These investments can be instrumentalized as follows:

- In an Individual Long Term Life Insurance (SIALP)
- Long-term Individual Savings Accounts (CIALP)

This tax benefit requires the fulfillment of certain requirements. Thus, the maximum annual contribution cannot exceed 5.000.-€, a permanence of 5 years is required since the first contribution was made. This means that the contributions cannot be disposed during that period and the plans must be made effective after 5 years, for the total and in the form of capital, never in the form of income.

This benefit is lost if the capital is disposed before the end of the 5 years period or if the maximum yearly amount of contributions is exceeded.

Deduction for investment in habitual residence

Although the deduction for investment in a habitual residence was eliminated in January 2013, those taxpayers who still have the right to apply it -those who acquired their habitual residence prior to December 31, 2012 and did apply the deduction- may deduct 15 percent of the amounts paid during the fiscal year for the acquisition or rehabilitation of a home, with a maximum deduction base of 9.040.-€.

In the cases in which the property was acquired with a mortgage loan, if the amounts destined during the year for the payment of the mortgage do not reach the maximum amount of the deduction base, It could be of interest to redeem the loan before December 31st until reaching that amount (€ 9,040), since this way the deduction will be fully used.

Employee Health Insurance

If the company provides health insurance to an employee, it will be exempt from income tax with an annual limit of € 500. This coverage can also be extended to the spouse and children, with an exemption up to € 500 for each of the insured persons. If any of the family members are disabled, the non-taxable income in kind is extended to € 1,500 for each of them.

Health insurance for a self-employed individual

Regarding a self-employed individual that determines the activity net income in direct estimation, the individual may also deduct the health insurance premiums paid in the part corresponding to its own coverage and his/her spouse and children under twenty-five years of age living with the individual. There is a maximum limit of € 500 for each of the persons indicated above or € 1,500 for each of them with a disability.

Habitual residence of a self-employed individual

Self-employed individuals who partially assign their usual residence to their own economic activity, can deduct the expenses for supplies (such as water, gas, electricity, telephone and internet) in the amount that results from applying 30 percent of the existing proportion between the square meters of the house destined to the activity with respect to its total surface, unless a higher or lower percentage is proven.

Living expenses of a self-employed individual

Self-employed individuals may deduct, for the determination of the net income of the economic activity in direct estimation, the maintenance costs that meet the following requirements:

- The expenses need to be linked to the individual.
- The expenses need to be related in the development of the economic activity.
- The expenses need to be incurred in catering and hotel establishments.
- The expenses need to be paid using any electronic method of payment.

The deductible amount for this concept would have as a daily limit the same amounts established that for employee's maintenance expenses in the Income Tax Regulations. In general terms, the deductible amount is € 26.67 per day if the expense is incurred in Spain or € 48.08 if it is incurred abroad. Those amounts would double if, as a result of the trip, the individual overnights. Please bear in mind that, those are maximum amounts. This means that, if the incurred expenses were lower, only that amount would be exempted from taxation.

Deduction for investment in new elements of tangible fixed assets or real estate investments that are assigned to the economic activity

Taxpayers who carry out an economic activity and have acquired in 2021 new tangible assets or real estate properties assigned to the activity, may apply a deduction of 5% of the net income of the activity of the year 2020 and 2021 that has been assigned to the investment.

Deduction of expenses for geographical mobility

Unemployed taxpayers who accept a job that requires them to move their habitual residence to a new municipality will have an additional deductible expense of a maximum of € 2,000.

Maternity or Paternity Benefit

Maternity or paternity benefits received will be exempt from income tax.

Deduction for contributions to political parties

Taxpayers may deduct from their tax liability 20% of the membership fees of political parties, federations, coalitions and groupings of electors, with a maximum deduction base of € 600 per year.

Contributions to protected assets of persons with disabilities

Contributions made to protected assets of persons with disabilities made by the spouse, relatives in a direct line or collateral up to the third degree, or those who were responsible for him or her under a guardianship or foster care regime, will entitle the contributor to reduce the Tax base, with the limit of € 10,.000 per year.

Please do not hesitate to contact us should you have any doubt or need some advice regarding a particular situation.

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