

Barcelona, 10 March 2016

Dear Client,

On 7 March this year, the AEAT (Spanish Tax Administration Agency) published a report on the deductibility for Corporate Income Tax purposes of late payment interest arising from assessments made by the Tax Administration.

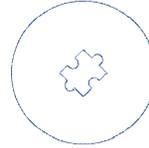
The deductibility of late payment interest has been a controversial subject in recent months. In its Resolution of May 2015, the Central Contentious-Administrative Court ('CCAC') ruled that late payment interest charges were not deductible when calculating the taxable base for Corporate Income Tax ('CIT'), echoing the arguments employed by the Supreme Court in its Judgement of 25 February 2010.

Nevertheless, the country's Directorate-General for Taxation ('DGT'), via Consultation V4080-15 of 21 December 2015, and contrary to the criteria established by the CCAC just a few months earlier, noted the compensatory and not confiscatory nature of late payment interest, thus classifying it as a tax-deductible finance cost.

In an attempt to clarify how Tax Agency bodies should proceed in a case such as this, where there are two binding pronouncements for the AEAT on the issue (one from the DGT and the other from the CCAC), the Subdirectorate General for Legal Planning and Assistance has issued the above-mentioned report.

The conclusions it reaches are as follows:

- Late payment interest contained in administrative assessments arising from verification procedures, of a compensatory nature, is not a deductible item for the purposes of calculating the CIT taxable base.



- Late payment interest associated with the suspension period of an appealed assessment, when the taxpayer's arguments are rejected or upheld only in part is, due to its financial nature, deductible for the purposes of calculating the CIT taxable base, in that it is regarded as equivalent to that on deferred payments.

However, we may well not have seen the end of this debate yet. The report quite clearly ignores an issue that appears highly relevant: the CCAC Resolution is based upon a Spanish Supreme Court Judgement of 25 February 2010 that, in turn, takes its criteria from another Judgement of the same Court of 24 October 1998, on the deductibility of such expenses in returns subject to Law 61/1978, and which argues, as the main grounds for rejecting the deductibility of said expenses, that they are not necessary, when the requirement for the necessity of the expense for its deductibility disappeared from the tax's provisions with the publication of the old Law 43/1995.

Additionally, the report appears to reject the deductibility of late payment interest in tax returns subject to the new Law 27/2014. This is all the more surprising, when the DGT is providing a reasonable interpretation of the new type of non-deductible expenses of Article 15.f), expenses contrary to the legal system, in the sense that this late payment interest is not contrary to the legal system, 'but rather, completely the opposite: they are an expense imposed thereby'.

So, if you receive an assessment for late payment interest, you need to give serious thought as to whether it is deductible for CIT purposes, as this debate has only just begun.

In addition to the professionals who normally work with your company, you are welcome to contact **Lorena Marquina, Xavier Latorre** or **Javier Aquilué**, who will be pleased to provide any clarification or further information you may require with regard to this circular.

Best regards,
AUDICONSULTORES

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