

## The Spanish Constitutional Court confirms minimum interim payment on account of Corporate Income Tax is unconstitutional

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### Executive summary

On 1 July 2020, the Spanish Constitutional Court issued a press release announcing the issuance of a decision declaring the minimum interim payment on account of the Spanish Corporate Income Tax (CIT) as contrary to the Spanish Constitution.

The press release anticipates that its effects will not be extended to those cases which have become firm due to not being challenged by the respective taxpayers.

The decision is expected to be made public after being conveyed to the parties.

### Detailed discussion

#### Background

In 2016 the Spanish Government approved a Royal Decree-Law introducing a new method for calculating interim payments on account of the Spanish CIT (the so-called "minimum interim payment").

This minimum interim payment, which was applicable to taxpayers with a turnover in the previous 12 months of at least €10 million, established a rate of 23% applicable to the accounting result without taking into consideration any book-to-tax adjustments.

### Content of the decision

The scope of Royal Decree-Laws is limited as per the Spanish Constitution so that it cannot be used to impact citizens' rights, duties and freedoms, which includes the duty to pay taxes.

In this decision the Spanish Constitutional Court confirms that this Royal Decree-Law introduces a significant amendment to the Spanish CIT which exceeds the scope of Royal Decree-Laws. As a result, this minimum interim payment is declared to be against the Constitution and, thus, is null and void.

In addition to this argument, the Spanish National High Court had also raised the issue of whether the interim payment could be in breach of the principle of economic capacity, but according to the press release this was not addressed in the decision.

As a result of this decision, taxpayers can claim compensation for the adverse financial effect suffered as a result of this minimum interim payment. This opportunity could be particularly relevant for holding companies which would have not been subject to interim payments otherwise due to their being entitled to the application of the participation exemption regime.

### Limitation of effects

The press release anticipates that the effects of this decision will not apply to those taxpayers for which payments under the minimum interim payment for fiscal years 2016 and 2017 have become firm due to the lack of challenge.

It is not certain what the cut-off date for filing claims based on this decision will be, but it is expected that it will be the date in which the decision is published in the Spanish *Official Gazette*. Such publication is expected to take place shortly.

## Next steps

As anticipated, taxpayers able to benefit from the effects of this decision need to act quickly and file a claim so that the interim payments do not become firm before the decision is published.

Taxpayers should work with their local tax professional to identify the potential impact this decision would have for them and file the relevant claims within this tight deadline.

For additional information with respect to this Alert, please contact the following:

**Ernst & Young Abogados, Madrid**

- ▶ Maximino Linares maximino.linaresgil@es.ey.com
- ▶ Teresa González mariateresa.gonzalezmartinez@es.ey.com

Ernst & Young LLP (United States), Spanish Tax Desk, New York

- ▶ Jose A. (Jano) Bustos [joseantonio.bustos@ey.com](mailto:joseantonio.bustos@ey.com)
- ▶ Isabel Hidalgo [isabel.hidalgo.galache1@ey.com](mailto:isabel.hidalgo.galache1@ey.com)

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