

Saving your money and your reputation

As public opposition to tax avoidance schemes hardens, companies' tax structures are coming under increasing scrutiny and could potentially lead to a public relations disaster that could damage their reputation

Everybody's talking about tax. Even the man and woman in the street, as recent public protests against Starbucks tax "arrangements" in Europe prove. Suddenly, businesses are not only concerned about the financial implications of their tax structures, but also the possible impact on their brand and reputation. Company boards are now liable for their organisation's tax structures, so directors are taking a keen interest in their intricacies.

This is all good news for law firms in Spain and Portugal as clients seek a better understanding of various tax regimes. Many firms are anticipating that the revenue generated by their tax practices will increase in the coming year. However, the market for legal services relating to tax is getting extremely competitive and law firms are fully aware of the threat posed by the 'Big Four' accountants as they battle for a share of what is an increasingly lucrative market.

There is definitely a more positive outlook among tax lawyers now than there was 12 months ago. "There's more optimism and better quality deals," says Deloitte international taxation partner Brian Leonard. "Now it's not just vulture venture capitalists looking for good deals, but investors that want to be solid business partners." Leonard adds that Spanish companies are continuing the trend of international expansion and that this is "providing fuel for the economy".

According to Carlos Rodríguez, partner at DLA Piper, multinational companies are, and will continue to



be, under the spotlight of tax authorities in Europe. Eduardo Gracia, Ashurst's Madrid managing partner, says that the reform of corporate laws means that company boards now have liability for tax affairs, and consequently companies will be "more conservative" when it comes to their tax structures.

However, Cuatrecasas, Gonçalves, Pereira partner Andrés Sánchez doubts that companies will alter their tax arrangements because company boards are liable for them: "This is instead a chance to go to the board of directors and try and convince them [with regard to tax structures]."

According to Uría Menéndez partner Rafael Fuster says changes in corporate governance rules concerning tax risks – as well as recent amendments to the Criminal Code – will not only mean that companies will become more risk conscious and risk averse, but will also result in more pressure being exerted on their legal advisers. "People in the street and the media are starting to talk about corporate tax – tax is becoming a matter of public record and corporate reputation and this is raising the profile of companies' tax function."

Personally liable

Gómez-Acebo & Pombo partner Javier Vinuesa adds that companies whose customers are consumers are now concerned that any issue with their tax could affect their sales. Meanwhile, BDO tax director Eugenio García says that proper transfer pricing documentation is now part of companies' corporate image. Allen & Övery partner Carlos Albiñana says there is now a greater concern among company directors about tax issues. "It's not simply a tick box approach anymore, they now want to know if they, personally, are exposed to any risk."

The Organisation for Economic

Co-operation and Development's base erosion and profit shifting (BEPS) initiative is currently casting a shadow over companies. The aim of the initiative is to combat company tax avoidance schemes and this is a concern for clients who now have doubts about the longevity of the tax structures they use. With regard to the issue of BEPS, Leonard says: "Clients are now saying, this strategy is fine for my business now, but will it still be appropriate in a few years' time?"

Rodríguez states the Spanish tax authorities are "widening the scope of their investigations". Meanwhile, Albiñana claims clients are concerned about whether or not the tax authorities will take a "reasonable approach" to tax laws especially in the international arena; taking into account the ongoing "joint efforts in various jurisdictions as well as some individual initiatives".

The situation must change

García says that the intention of initiatives such as BEPS is to harmonise tax at an international level. However, Gracia does not envisage the harmonisation of tax regimes across Europe, but he does anticipate "greater coordination of information-sharing". Fuster argues that for tax payers "it's about fairness, we cannot leave things as they were – international tax rules should change and result in taxpayers paying their fair share of taxes, but, at the same time, the rule of law should always be respected and taxpayers must be treated fairly".

Given this context, law firms are anticipating that their tax practices will grow. "There will be more business," says Gracia. "Clients want more information about tax structures." Sánchez says that, while transactional work will continue, one of the major demands from clients will be for compliance advice. "We have our criminal law department reviewing companies' procedures," he adds. Another challenge for law firms, according to Leonard is the need to "look for technological solutions". He adds: "You now need 'techies' and low cost centres which allow you to

provide economical solutions on a global basis." Fuster says his firm, Uría Menéndez, has experienced significant growth in its tax practice in recent years. "We've grown 50 per cent in seven years and we had 11 per cent revenue growth in the last year, and this trend will continue."

Gracia says that the rights of taxpayers are not currently at the top of the agenda. "It's all about how to secure collections, about the rights of the administrators – all the reforms in the last ten years have strengthened the rights of the tax authorities." Meanwhile, Vinuesa says that there is a need to modernise the tax litigation system. He advocates the use of arbitration

or mediation for solving tax disputes outside the tax courts. "An excellent opportunity to reshape the tax litigation framework would be the new general tax act, unfortunately, it is not in the agenda," he says.

García says that clients in other countries in Europe have an "enhanced relationship" with tax authorities. "This offers more security for businesses as they don't want tax treatments changing every year – there is fluent communication between tax authorities and the tax payers, tax payers say to the tax authority 'I will do this transaction, I have this interpretation of the law, I'm not looking for a binding ruling, I just want to confirm with you if this

transaction will be accepted in future tax audits.'" However, Leonard argues that, culturally, Spain is perhaps wary of relationships, which can become too personal. Meanwhile, Sánchez doubts whether in practice it is feasible for all clients to go to the tax authorities to explain their tax structures. Fuster says that what is needed is fairness. "You want fair rules for those paying taxes – the line is always moving, what is wrong? What is right?"

Doing more in-house

Rodríguez says there is increased pressure on rates and adds that clients are "trying to do as much as possible in-house". Sánchez

Spain: What are the biggest challenges facing tax lawyers?

"Practitioners must be aware of the trends and strategies followed in other countries, as these will be imported to our own jurisdiction sooner or later." **Carlos Albiñana, partner, Allen & Overy**

"Profitability, due to increased competition and pricing pressure." **Rodrigo Ogea, partner, Baker & McKenzie**

"Uncertainty. Clients ask for a legal framework that can be kept unaltered during the life of their investment." **Javier García-Pita, partner, Linklaters**

"We believe growth area in the tax department is potentially limitless – we intend to grow more than the growth of the firm as a whole." **Javier Fernández Cuenca, partner, Pérez-Llorca**

"The need to create or maintain a good reputation based on solid and excellent advice, flexibility and availability to increasingly demanding clients." **Javier Hernández Galante, partner, Ashurst**

"Price competition and hiring promising young lawyers despite it being very difficult to receive fair compensation from clients." **Victor Hernán, partner, CMS Albiñana & Suárez de Lezo**

"Clients want their tax advisors to be problem-solving and very involved in all decisions, so tax advisors need to be also good risk managers." **Javier Prieto, partner, Araoz & Rueda**

"The BEPS plan advanced substantially in 2014, with recommendations on the treatment of hybrid instruments, the fight against harmful tax practices and the abuse of tax treaties." **Luis Rodríguez-Ramos, partner, Ramón y Cajal**

"Clients should ask for our advice at the beginning of their endeavour, not in the middle or, worse, at the end of it – it is much easier to tax-plan everything from the start." **José María Moyano, partner, Adarve Abogados**

"Globalisation – competition in the local market can come from foreign law firms." **Luis Pérez, partner, Benow Partners**

"Changing advice to a more preventive model that seeks security

above savings." **Luis Trigo, managing partner, Broseta**

"Law firms must highlight the difference between the practice of law and the business of law, searching for the direct link between revenue and satisfied customers." **Cristina López-Ventureira, partner, Dutilh**

"Combating the current considerable legal uncertainty due to the regular legislative changes in taxation taking place in Spain." **Felipe Alonso, partner, GTA Villamagna Abogados**

"Strong competition with auditing firms, which are taking advantage of those areas in which they are traditionally stronger – such as transfer pricing, compliance and tax reviews – to offer additional services." **Miguel Ángel Sánchez, partner, Hogan Lovells**

"The creation and consolidation of consistent, technically acute, and highly experienced teams that can provide the clients with sensible, business-focused, and added-value tax advice." **Alberto Ruano, partner, King & Wood Mallesons**

"To get over and lead the clients' mentality concerning the crisis to increase the scope of the services demanded and raise fees." **Miguel Ángel Albaladejo, partner, Lener**

"Increasingly fierce competition obliges law firms to adopt special measures to offer diverse and specialised services." **José Blasi, senior associate, Monereo Meyer Marinel-Io Abogados**

"A decrease in fees charged, which in turn requires the firms to hire exclusively highly productive and qualified professionals that can cope with larger amounts of work." **Yago Martos, partner, Olleros**

"Helping clients adapt to changes in corporate and personal income tax laws." **Javier Zapata, head of tax, Rivero & Gustafson**

"The tax rulings acquire special significance vis-à-vis the tax authorities and previous agreements with them, APA ("Advanced Price Agreement)." **Isidro Del Saz, partner, Roca Junyent**

"The main challenge for 2015 lies in identifying the opportunities arising out of the new regulations." **Jorge Sarró, partner, Rousaud Costas Duran**



“All the reforms in the last ten years have strengthened the rights of the tax authorities.”
Eduardo Gracia
Ashurst

says there is an issue regarding the way in which law firms measure work they have done for clients. He adds: “How do we measure work in progress?” Leonard says there is a correlation between hours billed and risk in that the more time spent handling a matter, the more the associated risk is reduced. “For example, we have procedures such as ‘second partner’ reviews and client service assessments, which are essential in reducing risk and maximising quality control.”

Fuster says that law firms need to learn more from their clients. “We need to put the focus on the clients, talk more with them, learn from them, and understand better what their interests and priorities are – that’s the way to find where value lies and make a difference.” Leonard says success fees are not always viable, he argues: “How do you build success fees in tax litigation, when it takes so long?” Fuster’s solution is to not use “pure success fees”, but balance them with other fee arrangements. With clients showing an increasing tendency to do tax work in-house, Fuster says law firms will have to explain the benefit of using external advisers, for example, for complex tax litigation or for a second opinion on certain matters.

Leonard adds that, generally, the issue of tax is becoming more and more important to businesses as a whole. He says: “More and more people within organisations – and, in fact, people outside organizations, such as customers, are taking an active interest in companies’ tax affairs.”

Enforcing ‘up or out’ policy

Sánchez says: “We [lawyers] make a living from change – we have a new corporate income tax law, it’s a

fantastic opportunity to contact clients and alert them.” Fuster believes the big challenge is how you “build up and retain talent” and at the same time enforce an “up or out” policy.

Vinuesa believes a big opportunity for law firms is

“complexity”. He adds: “It’s easy to find complexity and this is where we want to focus, we want to avoid commoditised work.” Meanwhile, García says that tax structuring work in connection with inbound and outbound investments, transfer-pricing and ex-pat advice – such as creating proper compensation schemes for ex-pat employees as well as taking care of their personal and the companies’ compliance obligations – provide new opportunities for law firms. Silvia Paternain, Freshfields Bruckhaus Deringer partner and head of the firm’s global tax practice, says the volume of tax work in Spain is picking up as market sentiment has “completely changed”. She adds: “There was a lot of large restructurings in recent years, but now investors are buying all types of loans, not just non-performing loans.” Paternain says it is a busy market and that the increase in tax work correlates with increased activity in the market. “We have debt, equity deals and mergers, but we also still have restructurings – having restructuring and M&A work is optimal for lawyers.” Paternain says her firm’s tax practice has increased its revenue in the last year.

Clifford Chance partner Pablo Serrano de Haro says the tax environment is changing – with BEPS being an example of this – and it is a “major concern” of clients that they ensure they fulfil their obligations. He also notes that the tax authorities are “changing their approach and are no longer scared of international investors”. Serrano de Haro adds that, as transactions increase, so does the revenue of law firms’ tax departments: “The market is very active – we keep recruiting more lawyers, as we need more muscle.”

In addition, Serrano de Haro

remarks that the launch of listed SOCIMIs (Spanish real estate investment trusts) in 2014 attracted “huge interest from international investors and translated into record investment figures in the Spanish real estate sector, approximately € 2.6 billion”. Marta Esteban, counsel at Herbert Smith Freehills, says the new participation exemption regime has opened new alternatives for structuring transactions and has therefore created opportunities for law firms.

Portugal: The rise of tax arbitration

“The year 2014 was a milestone for the Portuguese economy,” says Vieira De Almeida partner Tiago Marreiros Moreira.

“There has been corporate income tax reform and there are also challenges in the financial markets following the collapse of Banco Espírito Santo (BES), meanwhile tax arbitration is beginning to be seen as an alternative to litigation.” Marreiros Moreira adds that there is a high level of expertise among arbitrators and, consequently, tax arbitration will speed up the settling of disputes. Morais Leitão, Galvão Teles, Soares Da Silva & Associados partner Francisco de Sousa da Câmara describes tax arbitration as a “breath of fresh air” in the field of dispute resolution. He adds: “It has introduced speed and the arbitrators are generally experienced, though it all depends on the arbitrators. Overall it’s a good system that is evolving – it can be improved with further interventions, including in relation to the automatic system appointing arbitrators by the ethics committee.”

Uría Menéndez - Proença de Carvalho partner Filipe Romão says that there have been a number of arbitrations that have made decisions on the same matter and that there is not a “mechanism to



avoid discrepancies between the decisions". However, he adds that the experience of tax arbitration has been good.

According to CMS Rui Pena & Arnaut partner Patrick Dewerbe says the advantage of arbitration is that "you get a decision in months rather than years". Dewerbe adds that the issue for lawyers is "should we appoint an arbitrator or rely on the Arbitration Centre (Centro de Arbitragem) to appoint one?" He says one issue is that a lot of ex-tax authority personnel join the centre's list of arbitrators.

Caiado Guerreiro partner Tiago Caiado Guerreiro says that arbitrators are badly paid, and that they should be remunerated in line with personnel working other forms of dispute resolution: "If you want quality people, you have to pay more." De Sousa da Câmara says that legislative and administrative efforts have been made to ensure that the arbitration system is, and is seen to be, fair. "Apart from this crucial aspect, clients particularly like the fact that arbitrations offer speedier resolution, with arbitrations resolving tax cases

in less than six months on average," he says. But Marreiros Moreira adds that it is important to "cherry-pick" which matters go to arbitration. "I wouldn't go to arbitration if I feel the risk of losing is high because you have limited mechanisms to appeal," he says.

Diogo Bernardo Monteiro, partner at F Castelo Branco & Associados, says the decision on whether or not to go to arbitration can depend on whether the basis of the case is "mere formalities". He adds: "Arbitration would look at the matter in hand, but when dealing with formalities, it is advisable to go to court." Dewerbe says that in an arbitration a case may be lost on formalities, "in some cases you should be able to approach the Arbitration Centre (Centro de Arbitragem) about this".

Monteiro says that, on the issue of whether the parties or the Arbitration Centre (Centro de Arbitragem) should appoint arbitrators, while there is a view that arbitrators become sensitive to both parties and try to reach a consensus, this does not apply to tax arbitration because there is "no compromise, it's

a win or lose situation".

Attracting foreign investors

Marreiros Moreira says that the challenge now is to create an environment that is attractive to foreign investors. He adds: "Corporate income tax reform has provided the tools that show the country is more willing to be competitive – now the economy is more open and there are new opportunities for different players, there are now private equity investors and Chinese investors." Caiado Guerreiro says the fact that Portugal is now attracting investment is a huge advantage for the nation's lawyers, who are offering good products at good prices.

Romão says that, in recent times, law firm practices in Portugal have "had it all". He continues: "We've had restructuring, acquisitions of distressed assets, new investment and wealth management, all this, along with arbitration has meant it has been an interesting year, full of activity." However, Caiado Guerreiro warns that, if no party has a majority in the forthcoming Portuguese elections, there may be a reduction

Tax in Portugal: How are clients' demands changing?

"Clients seem increasingly more concerned about getting quick, straightforward advice on very specific matters, rather than an extended analysis of the relevant tax framework." **Inês Pisco Bento, associate, Linklaters**

"Clients must be kept regularly informed, and we need to assure the existence of adequate corporate and tax structures, fully in line with clients' needs." **André Gonçalves, AAA Advogados**

"On cross-border work, clients are becoming more demanding in terms of expecting firms to coordinate the work with law firms and peers in other jurisdictions." **António Moura Portugal, partner, ABBC Advogados**

"Clients want to take part in the essential decisions about how legal services should be delivered – including staffing, planning, and so on – legal services is changing from a sellers' market into a buyers' market." **José Pedroso de Melo, associate, SRS Advogados**

"Interpreting clients' demands from an international perspective – our services frequently include not only the local or national scenario but also the international scope." **Carla Matos, associate, CCA Ontier**

"Due to timid growth in the national economy, clients are now turning to global solutions, expecting to benefit from tax incentives to export business." **Frederica Marques Pinto, head of tax, Raposo Bernardo**

"Clients increasingly want in-depth knowledge of the various solutions related to the Portuguese fiscal system, be it the general regime, the regime for non-habitual residents or the investment tax code." **Diogo Feio, counsel, Sérvulo & Associados**

"They are not changing – they always ask for clear and fast answers to their demands." **João Marques Pinto, counsel, pbb**

"Clients are more cost-conscious and demanding of quality, thus pushing us to improve our service with the goal of adding more value to their businesses." **Rogério M. Fernandes Ferreira, partner, RFF & Associados**

"Clients are now more aware of the risks arising from tax planning and seek more value added solutions instead of mere tax advice." **André Vasques Dias, partner, Macedo Vitorino & Associados**

"Corporate clients have to adjust to the new rules implemented by the tax reforms." **Vasco Carvalho Marques, partner, TFRA – Sociedade de Advogados**

"Law firms have to blend their traditional expertise with expertise once the purview of international tax consulting and accounting firms." **António Fernandes de Oliveira, tax lawyer, AFDO**

"Clients are more conservative in their internal tax strategy." **Henrique Nogueira Nunes, associate, Albuquerque & Associados**



“ It [tax arbitration] has introduced speed and the arbitrators are generally experienced. ”
Francisco de Sousa da Câmara Morais Leitão, Galvão Teles, Soares Da Silva & Associados

in international investment and the country could “lose stability”.

In 2014, there had been concerns about the ‘Big Four’ auditors providing increased competition for the nation’s law firms. However, fears were allayed when the Portuguese justice minister Paula Teixeira da Cruz said the creation of multidisciplinary firms of lawyers, auditors and consultants would be “not admissible” under revised rules for the Portuguese bar. However, lawyers describe the ‘Big Four’ as “hidden competitors” that are entering into the market. Monteiro says permitting multidisciplinary firms that included lawyers and auditors would not necessarily be a bad thing for Portugal’s law firms. Why? “We would then have to harmonise the tax rules applicable to law firms, we currently have to pay up to 35.5 per cent more tax [than the auditors],” he says.

Marreiros Moreira says that the entry of the ‘Big Four’ into the market will happen “sooner or later” and law firms will have to be prepared for it. But he adds that law firms have already made considerable progress in this respect. “Portuguese firms have done a terrific job picking up management skills and ‘soft’ skills.”

Improving accounting skills

Dewerbe says the opportunity for lawyers is that they are “much closer [than the auditors] to the strategic decisions of clients”. We need to increase our accounting skills – we need to understand the financial/accounting part of deals. Romão says changes to tax laws – such as the rules on “interest stripping” or tax credits related to deferred tax

assets – as well as the tax authorities approach, particularly relating to transfer-pricing, means that “financial and accounting skills are now even more important for tax lawyers”.

PLMJ partner Serena Cabrita Neto says “human skills” are also becoming even more important for tax lawyers: “It’s important to reach the client and listen to them,” she says.

According to Marreiros Moreira, the greatest challenge and opportunity for law firms is the “shift to an international model”. He adds: “We can help clients internationalize and we are able to compete in certain niche areas at an international level.” Caiado Guerreiro adds Portuguese firms are able to provide services internationally to clients “with no connection with our country, competing in the international legal market on price and quality and therefore reducing our dependence on the internal market”.

De Sousa da Câmara observes that the tax world is changing dramatically – domestically and internationally – and that firms and lawyers have to “comprehend and analyse these changes, help clients to stay aware and up-to-date, and strive to ensure tax justice”. Bernardo Monteiro says the challenge for law firms is to adapt to different jurisdictions. “There is also the knowledge challenge, things are changing all the time.”

Diogo Ortigão Ramos, partner at Cuatrecasas, Gonçalves Pereira and head of the firm’s Portuguese tax practice, says a big challenge for law firms is defining the market in which they want to focus on. He adds: “Should it be the domestic or cross-border market? Or both?” Other challenges include the fact that the courts do not resolve cases quickly and so clients sometimes are “not able to immediately perceive

the differences in quality of different firms operating in the market”.

Being able to say ‘no’

Cabrita Neto says the financial crisis “changed everything”. She adds: “Tax issues are now major issues for companies, we’re now dealing with CEOs and even shareholders.” Cabrita Neto adds clients want lower fees, success fees, and quick decisions, and being able to respond to these demands is the challenge for the “near future”. Dewerbe says that lawyers’ work now needs to be more cautious: “We cannot put clients at risk, we need to be able to say ‘no’”. Romão says the recovering Portuguese economy could put Portugal in a “good position to benefit from foreign investment”. He adds that law firms have an opportunity to increase their work, particularly in relation to BEPS and tax planning, which will become “more challenging”.

Pedro Pais de Almeida, partner at Abreu Advogados, says one of the biggest current opportunities for law firms is presented by the Portuguese Tax Authority concentrating its efforts on combating tax fraud and evasion, which is giving rise to a number of tax litigation cases. Clotilde Celorico Palma, consultant at Eduardo Paz Ferreira & Associados, says problems arising from the implementation of the tax reforms represents one of the biggest opportunity for law firms. “Perhaps tax administration is not prepared to deal with all these reforms,” she adds.

The tax environment in Spain and Portugal is changing rapidly, and consequently clients are becoming more anxious as they realise there is a great deal of uncertainty about how the international tax environment will change. But this uncertainty is something the most client-oriented firms can expect to benefit from as companies increasingly turn to their legal advisers in an effort to make sense of the evolving landscape.

Spanish companies biggest beneficiaries of fiscal reform

Changes to the corporate tax regime and an increase in inspections by the tax authorities will lead to an increase in work for law firms

Spain's fiscal reform, which took effect at the beginning of 2015 and lowers income and corporate taxes, will, above all, benefit Spanish holding companies, according to Juan Alberto Urrengoechea, a partner in tax law at Roca Junyent in Madrid.

The reform will lower the top rate of income tax depending on the autonomous region where the individual is resident. In Madrid, the top rate will drop from 52 per cent to 44.5 per cent this year, with the bottom rate falling to 21.2 per cent, meaning taxpayers will pay an average 12.5 per cent less on their income.

Corporate tax will be reduced from 30 per cent to 28 per cent this year, and to 25 per cent in 2016. Meanwhile, start-ups will benefit from a corporate tax rate of 15 per cent (limited to two fiscal years).

Under the new laws, which bring Spain in line with the Organisation for Economic Co-operation and Development's (OECD's) base erosion and profit shifting (BEPS) project, Spanish firms will no longer, for example, be penalised by being taxed twice when selling a stake in another company. "This is a hugely positive development," Urrengoechea says.

Tax revenue problems persist

But while the reform is good for business, it will not solve Spain's problem of raising tax revenues, leaving it to rely on its much-maligned measure of hiking VAT, which is currently at 21 per cent but only accounted for 5.5 per cent of the country's GDP in 2012.

The reform, which ushers in more cohesion among corporate income tax regimes at an international level, ensures greater transparency and eliminates double taxation. "This implies a big change, albeit not a necessary one," Urrengoechea says.

He adds: "The new law on companies provides a legal framework applicable to Spanish companies and foreign companies operating in Spain, while the second big impact is the OECD's BEPS project. The idea behind the BEPS project is to limit aggressive fiscal practices and the artificial

transfer of benefits from one country to another."

The reform will also help to increase transparency and certainty among investors by reducing disputes relating to international tax rules, as well as guaranteeing that a company's profits are taxed where the economic activity generating that profit takes place.

But the reform has positive and negative aspects, Urrengoechea says, as there will now be fewer opportunities for tax deduction, while the effect on foreign investors in Spain will be negligible. "Other legislative changes (that is, the Companies Act) mean that a board of directors will be responsible for a listed company's fiscal policies, which will lead to greater transparency and supervision, while implying an additional source of work for law firms counselling companies that require their fiscal policies to be in line with Spain's new legislation," he adds.

Urrengoechea argues, however, that the reform was not entirely necessary and that a partial modification of the laws would have sufficed. "But all fiscal reform is an instrument of political and economic legislation exercised by the government, and all the recent governments of Spain have wanted to leave their footprint in the form of a fiscal reform, which is why Spain undergoes a reform every few years."

Urrengoechea describes the latest fiscal reform as "the big one", and predicts it will create new opportunities for law firms.

The modifications to the country's legal framework mean that companies must adapt and seek legal advice, while the increase in foreign investment in Spain will likely translate into an increase in the number of mergers and acquisitions, which will in turn bring more clients to law firms.

The other opportunity for law firms is in litigation, he says. The country's fiscal authorities have increased their inspections, which will result in more litigation against the authorities with law firms needed to defend their clients' interests.



Juan Alberto Urrengoechea

Inheritance tax relief extended to non-residents

Following a European Court of Justice ruling, Spanish parliament changes tax regime so non-residents also receive inheritance and gift tax breaks



Miguel Ángel Albaladejo

In a recent judgment, the European Court of Justice (ECJ) ruled that Spain's inheritance and gift tax law is contrary to European Union (EU) law because the tax reliefs and reductions it offers are not available to non-resident tax payers, explains Lener tax partner Miguel Ángel Albaladejo.

In Spain there is a huge difference among autonomous communities, or regions, regarding inheritance and gift taxation, according to Albaladejo. "In some regions – for example, Madrid – tax payers have access to a 99 per cent tax credit that reduces the tax to almost zero," he says. "The dispute arises from the inability of non-residents to access these kind of regional tax credits."

Albaladejo adds the ECJ ruled that the difference between tax residents and non-residents for inheritance and gift tax purposes violates EU rules on the freedom of capital movement.

Consequently, in most cases, non-residents who paid inheritance and gift tax in Spain during the last four and a half years have the chance to claim taxes paid as an

"excess compared to a Spanish tax resident in equal situation", Albaladejo says. He adds: "In any case, the diversity of regimes that could be applicable depending on the personal circumstances of the deceased and the heir makes necessary a case by case analysis to evaluate if we have a relevant difference between resident and non-resident, under equal circumstances."

Albaladejo says although the European judgment should be directly applicable to claim taxes paid in the past, the Spanish parliament, within the framework of the tax reform for 2015, has made changes so that residents and non-residents have equal access to the relevant tax credits. Meanwhile, the wealth tax system has been amended to enable the application of the tax regime of the region where most assets are located.

The problem is these tax measures only affect EU residents and not non-EU residents. This is also contrary to the EU's position on the freedom of capital movement, which also applies to non-EU countries.

Tax will drive law firm expansion into new markets



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The increasingly international nature of the tax advice required by clients means that Portuguese firms will look to expand their offering to new foreign markets, according to Tiago Marreiros Moreira, partner at Vieira de Almeida.

"There is a clear trend for the

internationalisation of services," he says. "This means tax lawyers have to understand the domestic rules as well as developments in international rules."

Marreiros Moreira adds that this development represents a "huge step" for law firms. "The crisis made law firms think about how they could increase their market as well as their margins – there are Portuguese-speaking countries that need quality legal services and we can partner with local firms to provide quality services.

"But Portuguese firms will also look for opportunities in different markets where they feel they can bring some value-added."

Marreiros Moreira says clients are more focused on price, so they demand efficiency. He adds that clients now place a higher value on the service provided by their external legal advisers: "Clients demand value-added solutions more than just legal services – now taxation means more money in the pockets of clients, which makes our [lawyers'] role more important."



Tiago Marreiros Moreira
VdA

Portugal is 'high yield and low risk' for investors

Corporate tax reforms mean that the country is now much more attractive to foreign investors who have the opportunity to pick some high quality assets

Portugal now has the advantage of being a high yield, low risk location for investors, according to Tiago Caiado Guerreiro, partner at Caiado Guerreiro & Associados.

Meanwhile, as more investors show a keen interest in the country, so there is increasing pressure on law firms to adapt in order to meet the demands of such clients.

He says the country's corporate tax reforms have meant Portugal is now much more foreign investor-friendly. "The economy has opened up and created opportunities for foreign investors," Caiado Guerreiro says. "The country is now very competitive tax-wise and is more attractive in general and there are a lot of opportunities in terms of investment, yield, stability and quality of life."

Caiado Guerreiro adds that since the economy has opened up, some "very good assets" have become available. "Portugal has become a high yield, low risk place for investors," he adds.

In this environment, the challenge for law firms is to increase the quality of the services they provide and become more sensitive to the needs of clients, according to Caiado Guerreiro. He says: "Clients want quality, certainty, sharing of the risk and results, and they want them fast."



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Major changes to Portugal's corporation tax regime

Portuguese tax lawyers have had a busy start to 2015 due to the government introducing a raft of reforms that led to significant demand from clients for legal advice, according to Clotilde Celorico Palma from Eduardo Paz Ferreira & Associados in Lisbon.

Among the legislative changes were alterations to individual tax rules as well as a revamp of green taxes. The latter included the extension of carbon tax provisions to a number of new industry sectors, a vehicle tax based on carbon dioxide emissions, a new charge on plastic bags and tax breaks for electric and hybrid vehicles.

However, Celorico Palma says the most significant of the recent changes affect the corporation tax regime. "The corporation tax rate was cut from 25 per cent to 21 per cent, and this is set to drop further, to 19 per cent, next year," she explains. "There are other new provisions on corporate tax reporting, alterations to surcharges and other adjustments, as well as exemptions

and benefits such as a participation exemption and a patent box regime – while this is good news for businesses, the reforms also require a great deal of planning and advice."

Celorico Palma says that such regulatory reforms – as well as changes to reporting obligations – have led to clients requiring not just general tax advice but also compliance advice. She adds that, as the system is so complicated, companies must ensure they are following the correct procedures. These circumstances have led to an increase in tax disputes, which is also keeping lawyers busy.

"Many cases are going through the Tax Arbitration Court, which was established to provide an alternative route for tax disputes," she says. "The aim of the court is to have cases resolved within six months so the flow of cases is much heavier than the traditional courts." Celorico Palma concludes: "All of this means we expect our tax practice to remain busy this year."



Clotilde Celorico Palma

Government steps up fight against fraud

The introduction of a mass of new tax laws in Portugal means clients are increasingly calling on the assistance of legal advisers to avoid trouble with the tax authorities



Adelaide Moura

Portuguese tax lawyers need to become more agile to keep up with the rush of legislative changes that are threatening to cause headaches for clients, according to Adelaide Moura, partner at A.M.Moura Advogados in Lisbon.

Moura says the Portuguese authorities have introduced a swathe of new laws that has led to legislative evolution so rapid and widespread that lawyers face the challenge of ensuring they are continuously up-to-date with the impact of the changes. She adds: "The notorious adoption of international tax principles in Portugal and its increasingly close connection with accounting, an area where lawyers don't feel particularly comfortable, requires considerable expertise from the legal and tax consultants."

The new regulations affect both the corporate and individual tax regimes. The corporate reforms are seen as the most important as they aim to boost competitiveness and attract investment into the country. To this end, the government is cutting the corporate tax rate. Previously set at 25 per cent, it has now been dropped to 23 per cent, with a pledge that it could fall as low as 17 to 19 per cent, depending on the size of a business' income.

Other developments highlighted by Moura include: an extension of the reporting period for tax losses; changes related to tax amortisation and depreciation of intangible assets, investment property and non-consumable biological assets; a reduction in the deductibility limit of net financing expenses; a review of the transfer pricing regime; the establishment of a participation exemption regime replacing the previous concept of holding for tax purposes; and the creation of a 'patent box' regime. With regard to the 'patent box' system, Moura remarks: "Proceeds from the sale or temporary use of certain industrial property rights subject to registration, patents and industrial designs, compete for the determination of taxable income for half of their gross amount provided that certain requirements being met."

The volume of changes means

that law firms are starting to pick up an increasing number of instructions related to planning, permanent assistance, tax litigation and arbitration matters. Indeed, Moura claims that clients are more frequently requesting help to identify procedures to avoid problems with the tax authorities.

"Basically, clients are looking today for more preventive legal and tax advice in order to feel more prepared to respond when there are inspections from the tax authority or when there are additional tax charges," she says. This is resulting in a shift in demand for services as the issue becomes less about 'back-end' tax matters and more about 'front-end' measures that are more preventive in nature.

Litigation set to increase

Moura continues: "When there is a reaction from the tax authority that gives rise to the additional taxation of some operations, the taxpayer wants to react if they are not satisfied when they consider that the tax authority has ruled improperly due to special interpretations of the law." She adds: "Also, there are always clients looking for ways of saving on taxes especially at the level of regulated tax benefits and exemptions within the scope of investments and reinvestments."

There are also challenges ahead for individual tax clients too, including the changes to individual income tax and a new 'green tax' system, as well as the government's warning that it is poised to make tax avoidance enforcement a priority.

"The government plans significant strengthening of the fight against tax and customs fraud," Moura remarks. "This will require an improvement in lawyers' ability to provide clients with a full range of services as I anticipate that the amount of litigation will increase."

All this means Moura is expecting a busy year for her firm's tax practice. "The client is now more worried about the fulfilment of their tax obligations because failure is very expensive in terms of fines and interest," she concludes. "The boundary between mere negligence and willful misconduct is increasingly blurred."