Incentivising taxes

In Spain, the trend in recent years has not been the adoption of tax incentives but increasing tax revenues. Those that have been brought in have been questioned by lawyers as to whether other measures would have been more effective than those actually adopted.

Tax incentives for investment abroad have been closely eliminated in the Spanish legislation, some being considered as illegal State Aid in accordance with EU regulations, explains Javier Prieto Ruiz, Head of Tax at Araoz & Rueda. "Therefore, in general terms, there are no significant incentives for investment abroad."

The incentives that were put in place focused on reactivating the Spanish economy, mainly through the so-called 'Entrepreneurs Law'. This introduced a number of tax and social security incentives for small and medium businesses (SMEs), making life easier for numerous start-ups and small business ventures, say lawyers. The Law has allowed new investors worldwide to increase and focus their investment in new projects in Spain, guaranteeing them tax benefits that protect their investment portfolio, says Yago Martos Pérez, Head of Tax at Olleros Abogados.

The impact of the Law will really start bearing fruit this year, say lawyers, one in which the Government and international organisations have predicted the recovery of Spanish domestic consumption and the economy.

2013 also saw the incorporation of the first Banking Assets Funds and the listing of new Spanish REITs (SOCIMI). The FAB (Fondo de Activos Bancarios), a sort of partnership with the Spanish 'bad bank' (SAREB), benefits from a one percent CIT rate and foreign investors (including tax havens) can repatriate profits on a tax-free basis, explains Javier Fernández Cuenca, Tax and M&A Partner at Pérez-Llorca.

With regards to the banking sector, adds Pablo Serrano, Head of Tax at Clifford Chance Spain, regulations introduced in Spain to allow the conversion of deferred tax assets (DTAs) into enforceable credits against the Spanish administration, under certain circumstances, and to compute them as core capital under Basel III have also been very welcomed by the international investor.

The amendment of the SOCIMI regime has been well received in particular by international investors, especially since it bears many similarities to foreign REITs regimes such as France, the UK and US. Since the old regime was established in 2009, not a single SOCIMI had been set up, so lawyers are hopeful the new system will change this.

Spanish tax laws have been partially amended time and again in a very short period of time and this is something that is far from being helpful and clearly impacts on investors' opinion towards the legal certainty of the Spanish system, says Alvaro De La Via Head of Tax at Olswang Spain. "The system calls for a complete overhaul."