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Labour and Fiscal Law Departments

**FIRM AND FINAL JUDGMENT CONFIRMS SPANISH WITHHOLDING TAX
EXEMPTION FOR SENIOR EXECUTIVE DISMISSAL COMPENSATION**

Judgment No. 1528/2019 handed down by Court 2, Supreme Court Administrative Law Division ("TS - Tribunal Supremo"), has confirmed that **compensation received by executives asked to step down by the business owner**, quantified according to Article 11.1 Royal Decree 1382/1985, of 1 August, governing the special employment relationship applicable to senior executives ("**RD**") as seven days' salary for each year of service up to a maximum equivalence of six months' salary unless otherwise agreed, **is exempt from Spanish Withholding Tax ("IRPF")** because compensation paid in instances of senior executive dismissals is compulsory.

The legal grounds given by the TS as the basis for this ruling are particularly noteworthy and analyse provisions of Article 7.e) IRPF Act in order to decide whether or not compensation paid to senior executives employed subject to senior executive contracts and laid off by business owners should be deemed exempt from IRPF. The TS considers Royal Decree ("**RD**") Article 11.1 applies to rulings on the compulsory nature of the aforementioned dismissal payments and especially as the compulsory nature of the payments was established in legislation implementing the Workers' Statute (i.e. the aforementioned RD in this case).

Division Three maintains, therefore, that case law established in the other TS Divisions can be perfectly transferred to Administrative Law cases and that, on that basis, it is essential to recall that *Judgment No. 3088/2014 handed down by the Plenary Session TS Companies Division, Court Four*, confirmed the compulsory nature of the 'seven days per year of service' compensation for senior executives employed under contractual arrangements with express covenants excluding dismissal compensation.

This TS Division Three ruling represents a departure from criteria applied up until now by the Spanish Tax Authorities ("**DGT - Dirección General de Tributos**"), which has always ruled preferentially considering such compensation taxable without exemption and had upheld that applicable law did not recognise compulsory limits established either in the Workers' Statute or in implementing legislation. The aforesaid criteria had also previously been upheld by TS Division Three in multiple earlier pronouncements.

All in all, **the new TS ruling settles the dispute on this issue and (at least partly) ends the judicial uncertainty that existed previously** (highlighted in *AJ June 2017* review), brought about as the result of contradictory pronouncements from the Supreme Court Division Three, the National High Court and the DGT position. Nevertheless, despite the aforesaid Judgment (now firm and final), one cannot entirely guarantee that disputes with the DGT will not continue on tax liability in relation to the *tax free* nature of compensation payable to

dismissed executives employed under the special senior executive employment regime (both when senior executives are asked to leave and, similarly, for unfair dismissals). Quite the opposite, many voices are already insisting applicable criteria remain unchanged, with a significant number of nuances yet to be hammered out.