"Updated as of: 29/06/2023"

Instruction 4/2023, of 29 June, of the Directorate General of the Treasury, on special systems and incentives aimed at attracting talent and promoting entrepreneurship

The Bizkaia Provincial Council has been developing a strategy in recent years to make the Historical Territory of Bizkaia an international benchmark in terms of entrepreneurship, creation of technology-based companies, attraction of talent and development of productive activity, as a core element of a policy of intelligent, sustainable and inclusive economic growth that guarantees a greater degree of higher quality employment, as well as a level of economic activity that enables the medium and long-term sustainability of the public services that constitute a fundamental pillar of our Welfare State.

Within this strategy, measures have been developed to promote the creation of new companies with high growth potential, the development of a culture of entrepreneurship and the generation of quality economic activity, the strengthening of financial capacities and investment and the attraction of highly qualified and trained personnel that can be a distinctive element for the development of our economy.

Within the fiscal sphere, this strategy has led to the regulation of certain special systems in the field of Personal Income Tax, although with effects on Wealth Tax and Inheritance and Gift Tax; as well as a series of incentives for entrepreneurship and investment in activities related to the creation and development of talent, giving rise to the approval of what could be called a fiscal statute for entrepreneurship in the Historical Territory of Bizkaia, which includes many elements that should be clarified by means of an instruction from this Directorate-General of Finance.

This instruction also analyses certain measures in the field of Corporation Tax also aimed at promoting entrepreneurship contained in Provincial Regulation 6/2021, of 13 December, approving measures to promote economic reactivation, to encourage the voluntary application of the BATUZ system and other tax modifications, as well as certain adjustments derived from Provincial Regulation 8/2022, of 20 July, introducing certain tax modifications.

1. Special system for posted workers.

Firstly, it should be pointed out that the starting point for this special system is the transfer, with the transfer of tax residence to Bizkaia, of a non-resident person, as a result of the specially qualified work to be carried out within Spanish territory. These are natural persons who go from being non-residents, who would be taxed on the income obtained in Bizkaia by real obligation, to tax residents, obliged to pay tax by personal obligation, therefore, in principle, on all the income obtained regardless of their location, without prejudice precisely to the exemptions that are regulated and the application of the double taxation agreement that may be applicable.

It is important to note that the definition of specially qualified work has recently been extended by Provincial Regulation 6/2021, of 13 December, which approves measures to promote economic reactivation, to encourage the voluntary application of the BATUZ system and other tax modifications, and the duration has also been improved from six to eleven years.

Under this special system, 30% of the income derived from specially qualified work may be considered as exempt, and a series of expenses established by regulation which are considered to be linked to the posting may be deducted, up to a limit of 20% of the income derived from qualified work. The special system also regulates the exemption of income derived from assets located abroad (if they have already been effectively taxed). With regard to these assets located abroad, incentives are also regulated in the field of Wealth Tax, and not only for the relocated person but also for his or her spouse or common-law partner and for the members of the family unit (both for Personal Income Tax and Wealth Tax).

The special system does not only cover employees but also, as of 1 January 2022, self-employed persons. Thus, the amendment of Article 56.bis of Provincial Regulation 13/2013, of 5 December, operated by Article 1.Three of Provincial Regulation 6/2021, of 13 December, with effect from 1 January 2022, implies the extension of the subjective scope of implementation of the system by including self-employed persons.

The regulation of the system is contained in Article 56.bis of Provincial Regulation 13/2013, of 5 December, on Personal Income Tax and its regulatory development in Articles 1 to 3 of the Personal Income Tax Regulations, approved by Provincial Decree 47/2014, of 8 April, of the Bizkaia Provincial Council.

1.1. Acquisition of tax residence, specifically in Bizkaia, by a non-resident.

The first paragraph of Article 56.bis of the Provincial Regulation on Personal Income Tax (" Provincial Regulation on Tax" in this Section 1) stipulates that:

"1. Individuals who acquire their tax residence in Bizkaia as a result of moving to Spanish territory may choose to pay tax in accordance with the special system provided for in this Article (...)".

The requirements for joining the special system for displaced workers also include, in Article 56.bis.18 (b) of the Provincial Tax Regulation, the following:

"b) They have not been a tax resident in Spain during the 5 years prior to that in which they acquire tax residence as a result of their move to Spanish territory. In any case, it shall be necessary to have stayed abroad for a period of at least 5 years, from date to date".

1.1.1. Acquisition of tax residence in Spain.

Therefore, the application of the special system requires that the individuals concerned are not tax residents in Spain during the five years prior to the year in which they acquire their tax residence as a result of their move to Spanish territory.

In this respect, it should be recalled that tax residence in the domestic system is determined for the whole calendar year. Therefore, it will be necessary to establish the year in which tax residence is acquired and to analyse five years backwards whether or not the taxpayer was tax resident in Spain in each of those years (determining in those five years, again, tax residence for full calendar years).

In addition, to equalise the different taxpayers regardless of the date of their entry into Spanish territory, it will be necessary to have stayed abroad for a minimum period of five years, counted from date to date.

For these purposes, entries into Spanish territory that do not have consequences for the acquisition of tax residence are not prejudicial. This is the case, for example, of any holidays or trips for work purposes in the years prior to entry and acquisition of tax residence in Spain for the purpose of benefiting from the special system.

The determination of tax residence is determined in Bizkaia under Article 6 of Provincial Regulation 12/2013, of 5 December, on Non-resident Personal Income Tax, in accordance with any of the criteria set out therein:

1. Permanence during more than 183 days in a natural year. In order to determine this period of residence in Spanish territory, occasional absences will be taken into account, unless the taxpayer can prove that he or she is resident for tax purposes in another country. With regard to countries or territories considered to be tax havens, the tax authorities may require proof of residence in such locations for 183 days in the calendar year.

2. The main core or the basis of its activities or economic interests, directly or indirectly.

3. Applying the familial assumption, since it is presumed, in the absence of proof to the contrary, that the taxpayer have their habitual residence in Spanish territory when, in accordance with the above criteria, the spouse who is not legally separated and their dependent under-age children habitually reside in Spain.

In cases of double residence, in Spain and in another country, to determine tax residence, it will be necessary to refer to the tie-breaker rules of the possible double taxation agreement with the other country and the tie-breaker rules regulated there.

1.1.2. Tax residence in Bizkaia.

The acquisition of tax residence in Bizkaia is also a requirement to be able to apply the special system, since it is precisely a matter of applying a regulation, Article 56.bis of the Provincial Tax Regulation (and its regulatory development), which derives from being a tax resident in the Historical Territory of Bizkaia.

Once the tax residence in Spain has been determined, the residence in Biscay is determined by Article 3 of the Provincial Regulation 13/2013, of 5 December, on Personal Income Tax, which deals with the tax residence in Biscay as opposed to the rest of the provincial territories or the common system territory, according to the rules derived from the Economic Agreement, in this case rules of successive application, so that the former rule is applied in preference over the later one; 1) permanence, 2) main centre of interests, 3) last declared residence for the purposes of this tax.

The first and main criterion for tax residence in Bizkaia is the greater number of days or length of stay, and so a person is resident in Bizkaia when, while staying in the Basque Country for a greater number of days during the tax period, the number of days spent in Bizkaia is greater than the number of days spent in each of the other two Historical Territories of the Basque Country.

Persons resident in Spanish territory who do not stay in that territory for more than 183 days during the calendar year, but who have their main centre or the basis of their business or professional activities or economic interests in Spain, shall be considered to be resident in the Basque Country when the main centre or the basis of their business or professional activities or economic interests is located there, and specifically in Bizkaia when it is the territory of the said main centre or the basis of their business or professional activities or economic interests.

1.1.3. Other provincial or common territory tax residences prior to acquiring residence in Bizkaia.

It does not prevent the special system from being applied if the transfer that results in the acquisition of tax residence in Spain is firstly to a territory other than Bizkaia, provided that the corresponding requirements of the special system are met. In other words, provided that on the occasion of the initial move to Spanish territory, and if this had taken place directly to Bizkaia, the special system of Article 56.bis of the Provincial Tax Regulation could have been applied, as the requirements currently in force were met.

The maximum duration of the special system, eleven years, is calculated from the acquisition of residence in Spanish territory (not from the acquisition of tax residence in Bizkaia).

1.2. Duration of the special system and nature of the option.

1.2.1. Duration of special system.

The first paragraph of Article 56.bis of the Provincial Tax Regulation establishes the timescale of the special system for posted workers:

"(...) during the tax period in which the change of residence takes place and during the following ten tax periods, when, under the terms and with the requirements and conditions established by regulation, the following conditions are met".

Therefore, taxpayers may choose to be taxed under the special system during the tax period in which the change of residence takes place and for the following ten tax periods, i.e. eleven years, provided that they meet the regulated requirements in each year and decide to opt for the system.

1.2.2. Option on declaration deadline and annual nature of the option.

As provided in section 5 of Article 56.bis:

"5. For the purposes of the provisions of Article 105 of this Provincial Regulation, the application of the provisions of the previous section shall be considered as an option to be exercised with the filing of the return. The option exercised for a tax period may not be modified once the voluntary tax return period has ended".

Thus, the option for the special system is exercised during the tax return period and cannot be modified subsequently once the voluntary tax return period has ended.

Failure to notify the payer of the option to reduce the withholding rate regulated in Article 87.5.a) of the Tax Regulations does not prevent the system itself, provided that the option is exercised within the tax return period.

Article 3 of the Tax Regulations, in the wording resulting from Provincial Decree 43/2022, of 12 April, of the Bizkaia Provincial Council, which implements certain tax measures to boost economic activity, states that:

"Taxpayers whose change of residence to Spanish territory takes place as from 1 January 2022 may opt for the application of the special system for posted workers, referred to in Article 56.bis of the Provincial Tax Regulation, in any of the tax periods referred to in paragraph 1 thereof. However, those taxpayers who do not opt to apply the special system in the year in which the change of residence to Spanish territory takes place, but do so subsequently, may only apply it during the tax periods remaining until the end of the 10 tax periods following that in which the change of residence to Spanish territory took place which enabled them to apply the special system. For the purposes of the provisions of the first paragraph of this Article, and in accordance with the provisions of Article 105 of the Provincial Tax Regulations, the taxpayer must exercise the option to apply the special system for posted workers when filing the tax return for each of the tax years in which he or she wishes to apply it, without prejudice to the provisions of Article 77 of these Regulations".

Therefore, in accordance with this Article 3 of the Tax Regulations:

1. The option for the application of the special system must be exercised when filing the return corresponding to each of the tax years in which you wish to apply it, so that it constitutes an annual option to be exercised in each tax return period.

2. Taxpayers whose change of residence to Spanish territory takes place as from 1 January 2022 may opt to apply the special system in any of the tax periods within the eleven years of the maximum duration of the system, i.e. during the tax period in which the change of residence takes place and during the following ten tax periods.

3. However, taxpayers who do not opt to apply the special scheme in the year in which the change of residence to Spanish territory takes place, but do so subsequently, may only apply it during the tax periods remaining until the end of the ten tax periods following that in which the change of residence to Spanish territory took place which entitled them to apply the special system. In any case, the years in which the system is not chosen do not extend the maximum timescale of eleven years.

Therefore, on the one hand, not opting for the system in the first year of residence does not preclude opting in subsequent years and, on the other hand, opting in the first year of residence does not imply an obligation within the special scheme for subsequent years.

1.2.3. Simplified direct taxation.

Article 56.bis (4) of the Provincial Tax Regulation establishes that the following are not eligible: "make use of the simplified modality of the direct estimation method for the determination of the corresponding income from economic activities" those persons who have opted for the special system.

Given that Article 56.bis, paragraph 4, of the Provincial Tax Regulation excludes the simplified form of the direct assessment method if the special system is opted for during the tax return period, it can be concluded that the option for the special scheme excludes the prior option for the simplified form of the direct assessment method.

1.3. Movement linked to particularly skilled work and in certain areas.

1.3.1. Causal link between posting and skilled work.

In Article 56.bis.1() of the Provincial Regulation it establishes as a requirement that:

a) That the move to Spanish territory takes place for the performance of specially qualified work, related, directly and principally, to research and development, scientific, technical or financial, organisational, management, economic-financial control or commercial activities.

Therefore, as a general rule, trips that do not originate in the performance of these jobs will not qualify for the special system. The above is subject to qualification, for example; 1) the single transitory provision of the Provincial Decree 43/2022, of 12 April, which is also analysed in this Instruction, allows the option for taxpayers who acquired tax residency due to trips linked to work which at that time was not qualified by the current regulations as qualified work, but which was with the reform of the system, 2) incentives are regulated for the family unit of the posted worker.

Within the scope of personal income from work, this condition will be deemed to be fulfilled when an ordinary or special employment or statutory relationship is entered into with an employer in Spain, or when the posting is ordered by the employer and there is a letter of posting, and the taxpayer does not obtain income that would be classified as being obtained through a permanent establishment located in Spanish territory.

Logically, in the field of income from economic activities, when an economic activity is commenced or transferred which meets the requirements of being particularly qualified.

It is not detrimental to the existence of this causal relationship if the work is carried out as teleworking or remotely, provided that the rest of the requirements of the system are met, particularly in the context of relationships that result in personal income from work if the services are provided for a resident company or entity or a permanent establishment (in the terms analysed in section 1.5 below).

The move to Spanish territory must take place as a consequence of an employment contract, or the transfer or commencement of an activity, where applicable, which complies with all the regulated requirements (regardless of whether or not the special system is applied). Failure to comply with any of the requirements will make it impossible to opt for any of the theoretical maximum duration of eleven years. Therefore, if the conditions (contract or activity) under which the move to Spanish territory takes place do not meet the requirements currently laid down in Article 56 bis of the Provincial Tax Regulation and its implementing regulations, the special system cannot be applied, even if an employment contract is subsequently signed (or modified) or an activity is started which does meet them.

1.3.2. Direct and principal dedication to specially qualified work.

For the special system to apply, taxpayers must be engaged "directly and principally" in certain tasks in the company and this must correspond to a occupational category included in

contribution group 1 of the general social security system, and in the absence of application of that system to work equivalent to those occupational categories.

Directly and principally' means, in particular, that at least 85% of the working time or activity is devoted to one or more of the following activities: a) research and development, b) scientific and technical, c) financial, d) organisational, e) management, f) economic and financial control, and g) commercial.

The work to be carried out, as well as compliance with the 85% percentage must be analysed in each year, and failure to comply with this requirement in one year does not imply the loss in the future for other years in which it is complied with, although the year of non-compliance is taken into account in all cases for the purposes of calculating the maximum duration of the system.

In general terms, when the work is carried out on a self-employed basis, the analysis of whether the 85% of qualified work is complied with is based on the work actually carried out, which can be complied with on the basis of the nature or work carried out in the company itself, but also considering the services provided to the clients for whom the company's activity is intended.

1.3.3. Activities qualifying for the system: Work relating, directly and principally, to research and development, scientific, technical or financial, organisational, management, economic-financial control or commercial activities.

1. Research and development activities are those that comply with the provisions of Article 62.2 of the Provincial Corporation Tax Regulation.

   The reference to qualifying activities is to the type of activity to which the work of the posted person relates, and it is not a requirement that the entity for which the services are provided generates the deduction under Article 62 of the Provincial Corporation Tax Law, which is also consistent with the fact that the reference is to Article 62(2) of the Provincial Corporation Tax Law (and not to the whole of Article 62 of the Provincial Corporation Tax Law). Thus, for example, it is not necessary for qualified researchers to be exclusively engaged in research and development activities.

   So that it will be considered research and development:

   a) Basic research or original and planned enquiry aimed at discovering new knowledge and a better understanding in the scientific or technological field, unlinked to commercial or industrial purposes.

   b) Applied research or original and planned research aimed at the acquisition of new knowledge for the purpose of using that knowledge in the development of new products, processes or services or the significant improvement of existing ones.

   c) Experimental development or the materialisation of the results of the investigation applied to a plan, system or design for new products, processes or services, or the significant improvement thereof, as well as the creation of non-marketable prototypes and initial demonstration or pilot projects, provided that they cannot be converted or used for industrial applications or commercial exploitation.

   d) The conception, creation, combination and configuration of advanced software, by means of new theorems and algorithms or operating systems, languages, interfaces and applications intended for the development of new or substantially improved products, business processes or services; provided that it represents significant scientific or technological progress and its objective is to resolve a scientific or technical uncertainty in the field of informatics and computer science. Software intended to facilitate access to information society services for the disabled shall be assimilated to this concept when it is produced on a non-profit basis.

Where the progress and contribution to knowledge is in other fields of science and technology, the software may form part of basic research, applied research or experimental development actions, as the case may be, under the terms defined in this Article. Advanced software is excluded from the concept:

1. New uses of software without significant scientific or technological progress and contribution to knowledge.

2. Routine or customary activities related to the maintenance of the "software" or its updates.

For these purposes, the exclusions from the concept of research and development and technological innovation set out in Article 64 of the same Provincial Corporation Tax Law must also be taken into account.

2. Scientific and technical activities.

2.1. Those that comply with the provisions of Article 63.2 of the Provincial Corporation Tax Law, which regulates what is understood by technological innovation activities.

The reference is to the type of activity to which the work of the posted person relates, and it is not a requirement that the entity for which the services are provided generates the deduction under Article 63 of the Provincial Corporation Tax Law, which is also consistent with the fact that the reference is to section 2, in particular, of Article 63 of the Provincial Corporation Tax Law.

Technological innovation is that technological advance that allows the introduction of new or improved goods or services on the market, or the implantation of new or improved business processes in the company to contribute to its competitive advantage.

These effects, if considered new or improved to those goods, services or business processes whose characteristics or applications, from the technological point of view, will significantly differ from existing ones as a consequence of the use of new technologies or due to new uses or combinations of technologies that exist, in the terms that are legally established.

This activity will include the materialization of the new products or processes in a plan, sketch or design, as well as the preparation of feasibility studies and the creation of prototypes and initial demonstration projects or pilot projects, and textile manufacturers, including those that they can be converted or used for industrial applications or for commercial exploitation.

Also included are technological diagnosis activities aimed at identifying, defining and guiding advanced technological solutions carried out by Universities, Public Research Bodies or Technology Centres and Technological Innovation Support Centres, recognized and registered as such in accordance with Royal Decree 2093/2008, of December 19, which regulates the Technology Centres and Technological Innovation Support Centres at state level and creates the Register of such Centres, and by Entities integrated in the Basque Technology Network regulated in Decree 221/2002, of October 1, which updates the regulation bases of the Basque Science, Technology and Innovation Network, regardless of the results in which they culminate.

For these purposes, the exclusions from the concept of research and development and technological innovation set out in Article 64 of the same Provincial Corporation Tax Law must also be taken into account.

2.2. Those related to projects within the sphere of sustainable development and environmental protection and improvement whose purpose is one of those indicated in points a?) to e?) of Article 65.2.b) of the Provincial Corporation Tax Law.

The reference is to the type of activity to which the work of the seconded person relates, and it is not a requirement that the entity for which the services are provided generates the deduction under Article 65 of the Provincial Corporation Tax Law, which is also consistent with the fact that the reference is to points a?) to e?) of Article 65.2.b) of the Provincial Corporation Tax Law.

These are projects whose purpose is one or more of the following, within the sphere of sustainable development and environmental protection and improvement: a) Minimisation, reuse and recovery of waste. b) Sustainable mobility and transport. c) Environmental regeneration of natural areas as a result of the implementation of compensatory measures or other types of voluntary action. d) Minimisation of water consumption and its purification. e) Use of renewable energies and energy efficiency.

Article 37 of the Corporation Tax Law specifies the above concepts.

2.3. Those provided for entities that are considered "innovative companies", as they meet the requirements established in Article 2. 80.a) of Regulation (EU) number 651/2014, of the Commission, of 17 June 2014, related to the development of the products, services and processes referred to in said section.

In the case of services provided for innovative companies, the qualifying work, to certify that it is work directly and principally related to activities of a technical or scientific nature in this case, is any work provided to these entities.

Logically, however, it must be work that corresponds to a occupational category included in contribution group 1 of the general social security system, and in the absence of application of this general system, work equivalent to these occupational categories.

Under Article 2.80(a) of Commission Regulation (EU) 651/2014 of 17 June 2014, an "innovative company" is an enterprise:

a) which can demonstrate, through an assessment carried out by an external expert, that it will, in the foreseeable future, develop products, services or processes which are new or substantially improved compared with the state of the art in its sector and which carry a risk of technological or industrial failure; or

b) whose research and development costs represent at least 10% of its total operating costs for at least one of the three years preceding the grant of the aid or, in the case of a new company with no financial history, as audited in the current fiscal year, as certified by an external auditor.

Thus, this paragraph 2.3) will be complied with if the posting is for the purpose of providing services to entities complying with these points (a) or (b) (which in the case of point (b) may refer to at least one of the three years prior to the application of the special system under Article 56.bis. The fact that the entity, in subsequent years, may cease to be considered as an innovative company shall not prevent the displaced individual from continuing to apply the special scheme during the eleven years (1 plus 10) indicated.

2.4. Those provided for entities that fulfil the purpose of business promotion and reinforcement of productive activity referred to in Article 53.2(c) of the Provincial Corporation Tax Law. Specifically, companies implementing relevant business projects involving the development of new activities, products or markets, the

expansion or consolidation of existing ones or the creation of stable jobs will be deemed to fulfil this purpose.

For these purposes, the entity for which the worker provides services must justify the fulfilment of the purpose of business promotion and reinforcement of the productive activity resulting from its activity.

This section 2.4) will be complied with if the posting takes place in order to provide services to an entity which, at the time of the posting, meets the requirements referred to in Article 53.2(c)of the Provincial Corporation Tax Law.

Logically, the work must correspond to a professional category included in contribution group 1 of the general social security system, and in the absence of application of that general system to work equivalent to those occupational categories.

In accordance with the reference to Article 53.2.c) of the Provincial Corporation Tax Law, the companies in which the taxpayer carries out the work must meet the following requirements:

1. That they meet the requirements set out in Article 33(1) of the Provincial Corporation Tax Law, so that they must carry out business activities and be subject to, and not exempt from, Corporation Tax.

2. Not listed on an organised secondary market.

3. That they implement relevant business projects involving the development of new activities, products or markets, the expansion or consolidation of existing ones or the creation of stable jobs, which encounter difficulties in accessing capital markets due to the size, novelty or risk of the investments to be undertaken.

4. That they meet the requirements established in Article 13(3)(a)(c) of the Provincial Corporation Tax Law, that is: That they carry out an economic operation (defined in terms of Article 13., section 4, of the Provincial Corporation Tax Law) and that the average number of employees does not reach 250.

And, in short, that the taking of a shareholding by a possible investor in the company for which the displaced person comes to work, is likely to generate in that person (in the investor) the right to the incentive by means of Article 53.2(c) of the Provincial Corporation Tax Law.

Thus, as indicated above, this section 2.4) will be complied with if the secondment takes place to provide services to entities in respect of which, at the time of the secondment, a hypothetical investor could generate entitlement to the incentive under Article 53.2(c) of the Provincial Corporation Tax Law (as a result of his investment therein). The fact that the entity, in subsequent years, may cease to meet the requirements of Article 53.2(c) above, will not prevent the displaced individual from continuing to apply the special system during the eleven years (1 plus 10) indicated.

2.5. Those provided for entities that are in the initial stage of development of a new business project or in its development phase, provided that they are micro, small and medium-sized companies with high growth potential.

In the case of services rendered to these companies, the works that qualify to prove that they are works related, directly and principally, to activities of a technical or scientific nature in this case, are any services rendered to these entities.

Logically, however, it must be work that corresponds to a occupational category included in contribution group 1 of the general social security system, and in the absence of application of this general system, work equivalent to these occupational categories.

Within the field of income from business activities, this requirement can also be fulfilled if the individual entrepreneur himself is in the initial stage of development of a new business project or in its development phase, provided that these are micro, small and medium-sized enterprises with a high growth potential.

This section 2.5) is deemed to be fulfilled if the posting takes place to provide services to entities which, at the time of the posting, is in the initial stage of development of a new business project or in the development phase thereof, provided that they are micro, small and medium-sized enterprises with high growth potential. The fact that the entity, in subsequent years, may cease to meet the aforesaid conditions shall not prevent the displaced individual from continuing to apply the special system during the eleven years (1 plus 10) indicated.

3. With regard to activities of a financial nature, this shall include work provided for financial entities or work in the financial area provided for all types of entities, provided that in both cases said entities have published a sustainability report or non-financial management statement and this has been subject to verification by an independent expert.

   By providing this information, companies should rely on national frameworks, European Union frameworks, or international frameworks such as the United Nations Global Compact, the Guiding Principles on Business and Human Rights that implement the United Nations "Protect, Respect and Remedy" framework, the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the International Organization for Standardization (ISO) 26000, the International Labour Organization's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the GRI's Global Reporting Initiative (GRI Sustainability Reporting Standards), or other recognized international frameworks.

   The aforesaid sustainability report or non-financial management statement shall be published in each of the years in which the scheme referred to in this Article is applied by the taxpayer.

   As for financial activities, they should be directly and principally related to the financial area, regardless of the department or section where they work.

   As such, a job in a financial department of the entity but not involving tasks strictly related to the financial area would not qualify for the special system. On the contrary, a job which involves financial functions but which is attached to a department other than the finance department would be entitled to the application of the special scheme.

   Financial tasks include, inter alia, those related to: financial decision-making, accounting, financial analysis, obtaining financing, making investments, preparing and coordinating budgets, raising funds from the financial market, setting financial conditions of purchase and sale, as well as collection and payment policy and financial relations with third parties, dividend policy and self-financing, etc.

4. From 1 January 2022, the following are included as qualifying activities: organisational, management, economic and financial control or commercial activities. These activities have not been developed in accordance with regulations.

   In the case of organisational, economic-financial control, management and commercial activities, for reasons of consistency, activities ranging from strategic to operational management will qualify, but not any commercial or organisational activity.

It should be noted that the Directorate General of Finance will consider work carried out in these fields to be valid as long as it is qualified work that involves a certain degree of direction and control over these matters and over the other personnel who carry them out. In short, the work must involve the direction and control of organisational, managerial, economic-financial or commercial activities.

The functions of the directors in their non-executive capacity as such are not considered to be managerial.

1.3.4. Employment or commercial nature of the relationship.

Until December 31, 2021, it was necessarily required that the assignment had occurred as a consequence of an employment contract, as follows:

"(c) (...) consequence of an employment contract. This condition shall be deemed to be fulfilled when an ordinary or special employment or statutory relationship is entered into with an employer in Spain, or when the posting is ordered by the employer and there is a posting letter, and the taxpayer does not obtain income that would be classified as obtained through a permanent establishment located in Spanish territory".

But, moreover, from 1 January 2022, Article 56.bis (3) provides:

"3. The system provided for in this Article shall be applied independently of the employee's corresponding Social Security system, and where the employee is not covered by the general system, the functions equivalent to those corresponding to the aforesaid scheme shall apply".

From which it can be deduced that taxpayers who obtain income from personal work but are not included in the general Social Security system in accordance with labour (and social security) legislation can also apply the incentive since the regulatory change; for example, those who exercise the functions of direction and management involved in the performance of the position of director or administrator, or provide other services for a capital company, for profit and in a habitual, personal and direct manner, provided that they have effective control, direct or indirect, of the company. This would be the case, for example, for "corporate self-employed".

However, as from January 1, 2022, not only the social security system has been made more flexible, but also the taxation system itself of the displaced workers, specifically it is established that:

"3. (...) For these purposes, the system shall be applicable to the entrepreneurs referred to in Article 56 quater (3) of this Provincial Regulation who carry out the economic activity or who have shares or hold shares in the capital of the entity through which they carry it out, when the activity is carried out through a legal entity. 4. The tax treatment provided for in this Article shall also apply to taxpayers who carry out business activities on their own account, including those referred to in Article 56 quater(3) of this Provincial Regulation, or when the income they obtain therefrom is considered to be income from business activities under the provisions of this Provincial Regulation, provided that the requirements established in section 1 of this Article are met.

Therefore, it is possible to benefit from the special system if the specially qualified work is carried out through a self-employed activity that results in income from economic activities.

1.3.5. Occupational category.

Regardless of the nature of the income obtained, it must be specially qualified work, being considered as such those performed by workers with a occupational category included in Contribution Group 1 of the General Social Security System, in accordance with the provisions of the regulations in force for this purpose, directly and principally related to the activities qualifying for the system. However, a material (not formal) point of view is adopted and the special scheme will be applied independently of the employee's corresponding Social Security

System, and when it is not the general scheme, the functions equivalent to those corresponding to the aforesaid system will apply.

Therefore, in the cases referred to in Article 56.bis (3)(4) of the Provincial Tax Regulation, the requirement referred to in this section shall be deemed to be fulfilled when the taxpayers carry out duties equivalent to those of the professional categories included in Contribution Group 1 of the General Social Security System.

Taxpayers who are posted and carry out self-employed economic activities are excluded from complying with two requirements that are meaningless in view of the way in which they carry out their activities:

1. The existence of an employment contract as defined in Article 56.bis.1(c) of the Provincial Regulation. And this also excludes the impediment of obtaining income which would be classified as obtained through a permanent establishment located in Spanish territory.

2. The need for the work to be carried out for a resident company or entity or a permanent establishment in Spain of a non-resident entity, as stated in section e) of Article 56.bis.1 of the Provincial Regulation (which is analysed below for those who obtain income from personal work).

The persons referred to in Article 54.quater (3) of the Provincial Tax Regulation and who are classified as entrepreneurs because they hold shares or holdings in the share capital and obtain income from personal work are not excluded from complying with these requirements.

1.4. Localisation of work.

In order for the special system to apply, the work must be carried out principally and effectively in Spain:

"(d) That the work is effectively carried out in Spain. This condition shall be considered to be fulfilled even when part of the work is carried out abroad, provided that the sum of the remuneration corresponding to the aforementioned work, whether or not it is considered as income obtained in Spanish territory in accordance with Article 13(1)(c) of the Consolidated Text of the Non-resident Income Tax Regulation, does not exceed 15% of all the consideration for the work received in each calendar year. When, in virtue of the provisions of the employment contract, the taxpayer assumes duties in another company of the group, under the terms established in Article 42 of the Commercial Code, outside Spanish territory, the above limit shall be increased to 30%.

When the amount of the specific remuneration corresponding to the work carried out abroad cannot be accredited, for the calculation of the remuneration corresponding to such work, the days that the worker has actually been abroad shall be taken into consideration".

Therefore, there are two ways of calculating whether the work is actually performed in Spain; the first is linked to the specific remuneration received. And a second one is based on the number of days of physical presence in Spain or abroad.

It is indicated that it is irrelevant whether or not the income is considered to have been obtained in Spanish territory in accordance with Article 13(1)(c) of the Revised Text of the Non-resident Income Tax Regulation. Thus, it follows that the criterion for determining whether the aforesaid work is rendered in Spain is material, i.e., the physical presence in Spain to carry out the work.

Where the amount of specific remuneration for work carried out abroad cannot be substantiated, the amount of remuneration for work carried out abroad shall be calculated by taking into account the days on which the worker was actually posted abroad.

Therefore, for these purposes, non-working days (holidays, weekends or vacation periods) during which the worker remains abroad for private reasons prior to the start of the work, or once the work has been completed, are not computed, nor are vacation periods that the worker

enjoys abroad. As a result, the numerator includes the days spent abroad for work and services rendered there and the denominator includes the 365 days of the year (except for leap years).

This calculation is independent of the calculation made to determine whether the work is directly and principally qualified, which requires that at least 85% of the working time or the development of the activity be devoted to one or more of the following activities: a) research and development, b) scientific and technical, c) financial, d) organizational, e) management, f) economic-financial control and g) commercial. Specifically, this requirement will be verified with respect to the total of their work, regardless of where it is performed.

The work to be carried out in Spain to comply with the 85 or 70 percent percentage must be analysed in each year, although failure to comply with this requirement in one year does not imply the loss in the future for other years in which it is complied with, although the year of non-compliance is taken into account in any case for the purpose of calculating the maximum term of the system.

1.5. Work provided to resident entities or establishment in Spanish territory.

It is also a requirement, albeit only in the context of employment contracts or personal income from work, that:

"e) Such work must be carried out for a company or entity resident in Spain or for a permanent establishment located in Spain of an entity not resident in Spanish territory. This condition will be deemed to be met when the services are for the benefit of a company or entity resident in Spain or of a permanent establishment located in Spain of an entity not resident in Spanish territory. In the event that the posting has taken place within a group of companies, in the terms established in Article 42 of the Commercial Code, and exclusively for these purposes, it will be necessary for the worker to be hired by the company of the group resident in Spain or for a posting to Spanish territory to be ordered by the employer".

It is not detrimental to compliance with this requirement if the work of the posted persons generates value in a third party that is not resident or established in Spain, for example, when the client of the company that hires the worker is a company established abroad and receives the services or goods in that foreign country.

1.6. Specialities in the determination of the tax debt.

Under Article 56.bis.2 of the Provincial Tax Regulation, those who opt for the special system will determine the tax liability in accordance with the provisions of the Provincial Regulation, so that they will apply the general Personal Income Tax system with the special features regulated in the special system.

1.6.1. Partial exemption and deductible expenses in the employment relationship or defined economic activity.

In accordance with section a) and b) of Article 56.bis.2. of the Provincial Regulation:

"a) 30% of the full income derived from the employment relationship defined in section 1 above shall be exempt. b) Once the exemption referred to in the previous point has been applied, for the purposes of determining the net personal employment income, any other expenses arising as a result of the posting shall be considered deductible expenses in addition to those provided for in Article 22 of this Provincial Regulation, up to a limit of 20% of the full income obtained in the performance of the aforesaid job. The application of this expenditure, which shall be determined by regulation, shall be subject, in all cases, to documentary justification of the same".

<u>Full income derived from the defined employment relationship.</u>

The defined employment relationship is that regulated in Article 56.bis (1) of the Provincial Tax Regulation (without prejudice to the provisions of sections 3 and 4 of the same Article).

In addition, it is understood to include any severance, termination and similar payments (where applicable after applying the exemption with limits regulated for severance payments in Article 9(5) of the Provincial Tax Regulation) and other income associated with the termination of the relationship, such as non-competition clauses that may derive from the defined employment relationship.

It should be noted that obtaining exempt income does not preclude application of the special system, although it may influence the calculation of its incentives. Specifically, because exempt income will not give rise to the right to an additional partial exemption of 30% or the possibility of reducing income due to expenses arising as a result of travel up to a limit of 20% of the full income obtained in the performance of the aforesaid job. In short, it is not possible for negative income to be included in the tax base in this way.

Specifically, it is not impossible to apply Article 9.17 of the Provincial Tax Regulation, although this will not give rise to a duplication of incentives given the aforesaid calculation. The part exempted by application of Article 9.17 of the Provincial Regulation will not apply the partial exemption of 30% and will not be considered for the calculation of expenses up to 20%.

Likewise, income derived from the defined employment relationship is considered to be included in the income derived from temporary lay-offs, as there is no termination of the employment contract.

The 30% exemption percentage is applied to the full income derived from the defined employment relationship. Similarly, the 20% cent limit for deductible expenditure is calculated with respect to the same full income derived from the defined employment relationship.

Although there must be a causal link between the posting and the defined employment relationship or, where applicable, the income referred to in Article 56.bis (3)(4), this does not prevent changes of employment or activity provided that there is continuity and the interruptions are for short periods of time. Such continuity would not exist, for example, in cases where the person takes a "sabbatical" period of time.

When income is obtained from economic activities to which Article 56.bis of the Provincial Regulation applies, the partial exemption of 30% and the calculation of deductible expenditure (up to 20% of the income) will be calculated on the net income, under Articles 25 and 27 of the aforesaid Provincial Tax Regulation. Therefore, before applying the incentives of the special scheme for posted workers, capital gains and losses and the reduction for starting a business (both of which are regulated in Article 25 of the Provincial Regulation) must be taken into account.

<u>Percentages lower than 100%: Irregular income.</u>

Full income is calculated by application of Article 19 of the provincial tax regulation. Therefore, the full income from work is generally made up of the total income, under the provisions of Article 19 of the Provincial Regulation itself.

Company contributions to the various voluntary social welfare systems are included in the full income, even if they are subject to a reduction in the tax base under Articles 70 to 72 of the Provincial Tax Regulations.

However, on the one hand, exempt income does not form part of the scheme's incentive, as it is not included in the basis for calculating the 30% partial exemption and the deductible expenditure, as indicated above.

On the other hand, if the integration percentages of less than 100% regulated in Article 19.2 of the Provincial Regulation are applicable, Article 19 and the corresponding integration percentages of less than 100% should be applied first, and after carrying out this operation (on the resulting amount, therefore) the 30% should be deducted as exempt in application of Article 56.bis 2(a).

It should therefore be noted that although Articles 19.2 and 56.bis of the Provincial Regulation are compatible, the compatibility does not refer to the same amounts, since before applying Article 56.bis, Article 19.2 is applicable, which will already exclude reductions derived from integration percentages of less than 100%.

Full income includes monetary income and income paid in kind, even if Article 56.bis(2)(b) of the Provincial Regulation applies to them.

Full income includes income on account not passed on to the taxpayer.

Deductible expenditure.

Once the exemption of 30% of the full income obtained in the defined employment relationship has been applied, to determine the net personal employment income, other expenses arising as a result of the posting shall be considered deductible expenses in addition to those provided for in Article 22 of the Provincial Regulation, up to a limit of 20% of the full income obtained in the performance of the aforesaid job (i.e. this limit is calculated on the same amount to which the 30% exemption is applied, and not on the amount resulting from its application).

The following are considered to be deductible expenditure arising as a result of travel and are provided for in Article 1.4 of the Tax Regulations:

a) Travel and moving expenses necessary for the taxpayer's establishment in Bizkaia, as well as those of the members of their family unit. Expenses corresponding to trips to their country of origin shall be understood to be included in this section, up to a limit of two per year. In this respect, the deductible amount shall be that which corresponds to the price of the transport used to travel from Bizkaia to the aforesaid country of origin.

b) Expenditure arising from the schooling in Bizkaia of the taxpayer's descendants that give rise to the right to apply the deduction established in Article 79 of the Provincial Tax Regulation.

c) Expenditure for Basque and/or Spanish courses taken by the taxpayer or another member of his or her family unit.

d) Expenditure for the rental of the taxpayer's habitual residence in Bizkaia, as well as expenses arising from the contracting of services or supplies linked to the same".

In the event that the employer pays amounts to cover these additional expenditure, these amounts shall not be considered as remuneration in kind, up to a limit of 20% of the total income obtained in the performance of the aforesaid job.

To calculate the 20% limit within the total income, income in kind must also be taken into account, even if it forms part of the 30% which is exempt under the special system (point a) of Article 56.bis.2 of the Provincial Regulation.

And in both cases the maximum incentive, in terms of the income derived from the defined employment relationship itself, is 50% of the deductible expenditure. And in both cases, the maximum incentive, in terms of the income derived from the defined employment relationship itself, is 50% of the income.

The calculation of these deductible expenses is compatible with other deductions, such as personal deductions, such as that provided for in Article 79 of the Provincial Tax Regulations, for descendants, and that provided for in Article 80 of the same Provincial Regulations, for the payment of child maintenance annuities, and others such as that regulated in Article 86 for renting the habitual residence.

Schooling expenses include those paid to schools or even parents' associations for travel by public transport and canteens at the educational centre.

Expenses arising from the contracting of services or supplies linked to the dwelling are deductible even if the dwelling is not rented, but is owned under another title, for example, full ownership. The contracts may be of the taxpayer himself or of the community of owners, without prejudice to the need to prove and individualise the expenditure.

1.6.2. Exemption of income derived from assets located abroad.

Under Article 56.bis.2 (b) and (c) of the Provincial Regulation:

"c) Income derived from assets owned by the taxpayer located abroad shall be exempt provided that such income has been effectively taxed by a tax of an identical or analogous nature to this tax and it is not a country or territory considered to be a tax haven or non-taxable under the terms established in the 24th Additional Provision of the General Taxation Regulations of the Historical Territory of Biscay. d) The provisions of letter c) above shall also apply to the spouse or unmarried partner and to the members of the family unit of the taxpayer opting for this special scheme who acquire their tax residence in Bizkaia as a result of the posting and have not been resident in Spain during the 5 years prior to their posting to Spanish territory".

Therefore, income derived from assets owned by the taxpayer and his or her family unit (spouse, registered partner or minor children) located abroad will be exempt provided that:

1. Such income has been effectively taxed by a tax of an identical or analogous nature to personal income tax (IRPF), which will depend on any double taxation agreement applicable and on the regulations of the corresponding country, and

2. it is not a country or territory considered as a tax haven or non-tax haven under the terms established in the 24th Additional Provision of the General Tax Regulations of the Historical Territory of Bizkaia.

Taxpayers who apply the exemption provided for in this point shall not be entitled to the application of the deduction for international double taxation provided for in Article 92 of the Provincial Tax Regulation for the same income.

1.6.3. Withholdings.

Taxpayers who opt or are going to opt for the application of the provisions of Article 56.bis of the Provincial Tax Regulations may request the person or entity obliged to withhold tax to apply a 30% reduction on the corresponding withholding rate. This notification is independent of the option within the tax declaration period.

The basis of the withholding will be reduced by 30% of the defined ratio in the amounts exempt from the system.

1.7. Wealth Tax.

Exemption is provided for assets and rights located abroad, owned by taxpayers who have opted for the special system for posted workers referred to in Article 56 bis of the Personal Income Tax Regulations.

Unlike what is required for Personal Income Tax, it is not required that the assets and rights have been effectively taxed by a tax of an identical or analogous nature to Wealth Tax.

Taxpayers who apply the exemption provided for in this point shall not be entitled to the application of the deduction provided for in Article 34 of the Provincial Regulation on Wealth Tax in relation to the tax paid abroad for the same assets and rights.

The provisions of this section shall also apply to the spouse or registered partner of the members of the family unit referred to in Article 98 of the Personal Income Tax Regulation of the taxpayer who opts for this special system and acquires their tax residence in Bizkaia as a result

of the move and has not been resident in Spain for the 5 years prior to their move to Spanish territory.

Likewise, they shall not be entitled to the application of the deduction provided for in Article 34 of this Provincial Regulation for the same assets and rights.

1.8. Transitional law. Taxpayers who entered Spanish territory before 1 January 2022.

Between 1 January 2018, the date on which the special system was introduced into the Bizkaia tax system with a similar configuration to the current one, and 31 December 2021, the wording of Article 56.bis of the Provincial Regulation and Articles 1 to 3 of the Tax Regulations, and therefore the regulation of the special system, differed from the current wording, including the following differences:

a) The maximum duration of the system was six years, the year of acquisition of tax residence and the following five years. The current regulation has extended the duration to eleven years.

b) In addition, organisational, commercial, economic-financial control and management work has been introduced as particularly qualified work.

c) Self-employed workers are also allowed to qualify for the incentive.

The aforesaid improvements have been introduced by Provincial Regulation 6/2021, approving measures to promote economic recovery and Provincial Decree 43/2022, of 12 April, of the Bizkaia Provincial Council.

The sole transitional provision of Provincial Decree 43/2022, of 12 April, of the Bizkaia Provincial Council, which implements certain tax measures to boost economic activity, regulates the transitional system for posted workers, extending the period for those who had been enjoying the special system under the previous regulation and even allowing those who did not apply it to opt for the years remaining to complete the 10 periods from the one following the change of residence:

"One. Taxpayers who have been applying the special system for posted workers, as referred to in Article 56. bis of the Personal Income Tax Regulations in the wording in force on 31 December 2021 and who, on 1 January 2022, have not exhausted the period of duration thereof, may opt to apply the aforesaid special scheme in the wording in force on 1 January 2022 during the tax periods remaining to complete the 10 tax periods following the one in which the change of residence to Spanish territory that would entitle them to apply the scheme took place. Two. Likewise, taxpayers whose change of residence to Spanish territory has taken place as from 1 January 2017 and who have not applied the system established in Article 56.bis of the Provincial Tax Regulation, may exercise the option to apply this special system, provided that they meet the requirements for its application in force as from 1 January 2022, during the tax periods remaining until completing the 10 tax periods following the one in which the change of residence to Spanish territory took place".

Thus, on the one hand, the term of the special system is extended for those who could already benefit from it before the latest reforms and, on the other hand, those who did not comply with any requirement which, with the changes made (activity, method of carrying out the activity, etc.) has ceased to be such and now comply with the requirements of the special system, are allowed to opt for the remaining period of one plus ten years.

2. Specific remuneration in the field of entrepreneurship (Article 56.quater of the Personal Income Tax Regulation).

The special system for specific remuneration in the field of entrepreneurship presupposes the figure of the entrepreneur for its application, although it is extended to his employees, and allows the taxation of options for the acquisition of shares or holdings and other rights linked to the evolution of the value of the shares or holdings to be postponed until the time when the

return derived from these rights subsequently becomes payable, and specifically for options on shares or holdings it is postponed until the actual sale of the shares or holdings, and always with the classification of gain derived from the transfer of an asset.

Apart from this special system, the delivery of options on shares or holdings to the company's employees in their capacity as such as remuneration is classified as employment income:

-If the option is non-transferable inter vivos it does not generate income from work when it is granted and at the time of its exercise there will be no acquisition value.

In the case of non-transferable inter vivos call options, such earned income accrues when the beneficiary exercises his call option right. When they acquire the shares or units, therefore (unless they opt for settlement by differences).

This will give rise to an earned income quantifiable as the difference between the agreed acquisition value and the market value of the shares or units.

-If, on the other hand, the options are transferable, the earned income must be attributed at the time the options are granted. Subsequently, the income derived from the options is classified as capital gains or losses.

The system is supplemented by tax benefits in the area of wealth tax and inheritance and gift tax.

All these intermediate taxes are postponed by the special system; no income is generated, neither from employment nor capital gains, until the sale of the shares or holdings acquired with the options obtained.

In the case of other rights that do not involve the possibility of acquiring shares or holdings, the time at which they are actually paid for must be taken into account and not the time at which they are granted.

2.1. Subjective scope of implementation.

Section 1. of Article 56.quater of the Provincial Tax Regulation establishes at the beginning that:

"1. When the entrepreneurs referred to in section 3 of this Article determine that part of the income from work or economic activities which corresponds to them, or to the people they have employed in their activity or in the entities referred to in the aforesaid section, (...)".

Therefore, the special system refers to the entrepreneur but also to the employees of the entrepreneur or of the entity in which the entrepreneur participates. However, if there is no entrepreneur, understood as the person who undertakes a new activity, and as such is the one who promotes their own project, either directly or by setting up a new company, the special system cannot be applied.

Concept of entrepreneur.

An entrepreneur is considered to be a person who carries out a new economic activity or who participates, directly or indirectly, in the incorporation of an entity that carries out a new economic activity by acquiring a share in its capital of no less than 10% and is personally involved in the development of the activity through an employment or service provision relationship with the entity.

Therefore, the activity can be carried out through personal work on one's own account, as an individual entrepreneur or professional (without prejudice to whether or not one has employees) or through involvement in an entity in the constitution of which the entrepreneur participates.

With regard to this second option, and to the extent that, as indicated above, the entrepreneur is required to participate in the incorporation of the entity, it should be specified that:

- A person shall not be considered an entrepreneur, for these purposes, when he/she enters the company after its incorporation, through the corresponding increase in share capital (it is irrelevant for these purposes whether this increase and entry into the company's capital takes place within the first 5 years of the incorporation of the company).

- Nor will a person who enters the capital of the company and acquires the minimum 10% shareholding through this type of remuneration scheme, i.e., for example, by exercising the option to acquire shares or holdings granted as remuneration, be considered to be an entrepreneur for these purposes.

The 10% shareholding requirement is not deemed not to have been met when the shareholding in the capital of the company of the entrepreneur is reduced below 10% as a result of subsequent capital increases that may occur as a result of the growth of the company's activity, as long as the company retains all the shares or holdings that originally represented a shareholding of no less than 10%.

2.2. Objective scope of implementation.

Article 56.quarter.1 establishes the objective scope of this special scheme, namely that part of the income from work or economic activities:

"(...) are materialised in the delivery of options for the acquisition of shares or holdings in the entity or other types of rights of economic content linked to the evolution of the value of the shares or holdings, the aforementioned remuneration shall not be considered as income from work or economic activities at the time of its recognition".

Furthermore, it is a requirement that the economic activity carried out by the entrepreneur on his own account or through an entity must be new.

2.2.1. Options on shares and other rights.

The special system refers to the granting of options for the acquisition of shares or holdings in the entity or other types of rights of economic content linked to the evolution of the value of the shares or holdings, both to entrepreneurs and to their employees, for the remuneration of their personal work as employees or economic activities.

2.2.2. New economic activity.

For the purposes of the provisions of this section, to determine whether a new economic activity is being carried out, the provisions of the second paragraph of Article 25(5) and the second and third paragraphs of Article 90(1) of both of the Personal Income Tax Regulations shall be taken into account.

Therefore, in accordance with the second paragraph of Article 25(5), it shall not be understood that the exercise of an economic activity is commenced when it has been previously carried out directly or indirectly by the taxpayer. It shall be understood that the taxpayer carries out the same activity when it is classified in the same group within the Rates of the Tax on Business Activities.

And in accordance with the second and third paragraphs of Article 90(1) of the Personal Income Tax Regulations, this requirement shall not be deemed to be met in the case of companies created as a result of a merger, spin-off, contribution of assets, global assignment of assets and liabilities, contributions of branches of activity, economic interest groupings, temporary joint ventures and any other form or operation that does not really and effectively imply the appearance of a new economic activity.

Cases in which the same activities have been carried out under another ownership shall not entitle the holder to the special system.

2.3. Timescale of implementation.

The tax treatment of the special system will be applicable to options on shares or holdings or other types of rights of economic content linked to the evolution of the value of the shares or holdings that are recognised in the first five years of the exercise of the economic activity by the entrepreneurs or from the incorporation of the entities referred to in Article 56.quater (3) of the Personal Income Tax Regulation. However, since the application of the special system postpones taxation until the time when the income derived from these rights subsequently becomes payable, and specifically for options on shares or holdings it is postponed until the sale of the shares or holdings themselves, the duration of the system is not limited in time.

2.4. Taxation under the special system for options and rights.

When entrepreneurs determine that part of the income from work or economic activities which corresponds to them, or to the people they have employed in their activity or in the entities through which they carry it out and in whose constitution the entrepreneur has participated, under the terms set out in Article 56. Quater (3) of the Provincial Personal Income Tax Regulations, take the form of the delivery of options for the acquisition of shares or holdings in the company or other types of rights of economic content linked to the evolution of the value of the shares or holdings, the aforementioned remuneration will not be considered as income from work or economic activities at the time of its recognition.

Therefore, the scope of implementation is fulfilled, no taxable income arises at the time of granting stock or stock options or other rights.

Instead, when the remuneration referred to in the previous paragraph is payable, the full amount received shall be considered as capital gains and shall be included and offset in the savings tax base under the provisions of Article 66.1.b) of the Personal Income Tax Regulations.

In particular, in the event that the remuneration referred to in the previous section takes the form of the delivery of options for the acquisition of shares or holdings in the company, no return shall be computed until the corresponding shares or holdings are transferred, and at that time, they shall have an acquisition value of 0 Euros, or, where applicable, the corresponding value depending on the amount paid for their acquisition, for the purposes of calculating the corresponding capital gain and its integration and offsetting in the savings tax base under the provisions of Article 66. 1.b) of the Provincial Personal Income Tax Regulation.

The above will logically be applicable when the shares and holdings are acquired, in the event that they are settled by differences, taxation will be charged at the time of their acquisition on the occasion of the settlement of the differences between the value of the shares or holdings and the value derived from the options granted.

2.5. Option to be exercised during the tax return period.

Exercising the option in the voluntary period will mean that income that would otherwise be taxed under the general tax system will postpone its effective taxation. Once the option has been exercised, it will have repercussions in subsequent tax years due to the configuration of the system itself.

2.6. Wealth Tax and Inheritance and Gift Tax.

Exempt from Wealth Tax and Inheritance Tax (limited to mortis causa) are the shares, holdings or rights of economic content referred to in Article 56. quater of the Provincial Regulation on Personal Income Tax. Economic rights include options on shares or holdings. Therefore, if options or other rights of economic content are granted, both these and any shares or holdings acquired subsequently will be exempt.

The exemption refers to options or rights (and to the shares or holdings derived from them) granted in the first five years of exercise of the economic activity by entrepreneurs or from the incorporation of the entities referred to in Article 56. Quater (3) of the Provincial Regulation on

Personal Income Tax. The exemption is applicable to the entrepreneur, as well as to the employees to whom the aforementioned rights or options were granted. This exemption has no time limit.

3. Deduction for investment in new or recently created micro, small or medium-sized enterprises, innovative or linked to the silver economy (Article 90 of the Personal Income Tax Regulations and Article 66.bis of the Corporation Tax Regulations).

IRPF and IS taxpayers may apply a deduction of 25% (and depending on the case, 35%) of the amounts paid for the subscription or acquisition of shares or holdings in companies that are considered micro-enterprises, small or medium-sized companies under the provisions of Article 13 of the Provincial Corporation Tax Regulations which carry out new economic activities, and may, in addition to the temporary contribution to the capital, contribute their business or professional knowledge appropriate for the development of the entity in which they invest, under the terms established in the investment agreement between the taxpayer and the entity.

Thus, personal participation and involvement in the company will not be detrimental to the application of the incentive.

Although the wording itself refers to amounts paid, this does not imply that monetary disbursements are required, and the contribution may be non-monetary (in kind).

3.1. Deduction rates.

The deduction establishes a rate of 25%, however, the rate will be 35% in the case of the subscription or acquisition of shares or holdings in innovative companies or those whose corporate purpose is directly linked to the silver economy, which are considered to be micro, small or medium-sized companies in accordance with the provisions of Article 13 of the Provincial Corporation Tax Regulation.

It is compatible to invest in companies and apply deductions at a rate of 25% and to invest in companies and apply deductions with a limit of 35%. However, the limit on the tax base is common.

In general it should be noted that it is possible to invest and apply the incentive for investments in more than one company.

Silver economy.

The corporate purpose of an entity shall be understood to be directly linked to the silver economy sector when it is directly aimed at the design, production and/or supply of goods and services adapted to the specific needs of the elderly, and in particular, within these areas, to the fields of health and care, communication, economic and financial advice, training and harnessing of talent, leisure and entertainment, safety, transport and housing.

For the direct linkage referred to in the previous paragraph to exist, the volume of the entity's income from the design, production and/or supply of goods and services adapted to the specific needs of the elderly (understood as those over 50 years of age, according to the European Commission's "The Silver Economy FINAL REPORT" of 2018) must represent at least 50% of the entity's total income volume. This must be met in the tax period in which the shares or participations entitling to the application of the deduction are acquired and, at least, in the 5 following tax periods.

Innovative companies.

Innovative enterprises shall be considered to be those which comply, in the exercise of taking the participation, with the provisions of Article 2(80) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

In Article 2(80) of Regulation 651/2014, it states that:

"80) "innovative company" means any company:

a) which can demonstrate, through an assessment carried out by an external expert, that it will, in the foreseeable future, develop products, services or processes which are new or substantially improved compared with the state of the art in its sector and which carry a risk of technological or industrial failure; or b) whose research and development costs represent at least 10% of its total operating costs for at least one of the three years preceding the grant of the aid or, in the case of a new company with no financial history, according to the audit of the current fiscal year, as certified by an external auditor;".

Thus, for the purposes of this deduction, an innovative company is understood to be one:

a) which can demonstrate, through an assessment carried out by an external expert, that it will, in the foreseeable future, develop products, services or processes which are new or substantially improved compared with the state of the art in its sector and which carry a risk of technological or industrial failure; or

b) whose research and development costs represent at least 10% of its total operating costs for at least one of the three years preceding the grant of the aid or, in the case of a new company with no financial history, as audited in the current fiscal year, as certified by an external auditor.

Therefore, the entity in which the investment is made must be able to demonstrate either of the two possible ways of being considered an innovative company, i.e. either by means of a report from an expert external to the company demonstrating that the entity is going to develop new or substantially technically improved products, services or processes that may be subject to technological or industrial failure, or by means of the external auditor's report certifying research and development costs that represent a minimum of 10% of its total operating costs.

In this regard, regarding the concept of external auditor, Law 22/2015, of 20 July, on the Auditing of Accounts, Article 3 of which states that:

"For the purposes of the provisions of this Law, the following definitions shall apply: (...) 3. Auditor: a natural person authorised to carry out audits of accounts by the Institute of Accounting and Auditing, under the provisions of Article 8.1, or by the competent authorities of a Member State of the European Union or of a third country. (...)". To which Article 8.1 of the same law adds that: "1. The auditing of accounts may be carried out by natural or legal persons who, meeting the conditions referred to in Articles 9 to 11, are registered in the Official Register of Auditors of the Institute of Accounting and Auditing of Accounts, and provide the financial guarantee referred to in Article 27. ( )".

Thus, for auditors to be able to carry out the activity of auditing accounts, it is necessary, in particular, for them to be registered as such in the Official Register of Auditors of the ICAC.

For its part, with regard to the concept of external expert referred to in Article 2(80) of Commission Regulation 651/2014, there is no official definition of the same in our tax legislation, nor in Community Regulation 651/2014 itself, although it seems reasonable to think that both regulations are seeking to require that this third party be a person outside the company, with which, therefore, This will be guaranteed in the event that the expert provides his or her services in a public entity, but we should not exclude per se that the expert cannot carry out his or her functions in the private sector, but in such a case this requirement of independence and lack of conflicts of interest should be reinforced.

3.2. Basis of the deduction.

The basis of the incentive shall be formed by the acquisition value of the shares or holdings acquired or subscribed within the tax period, without the acquisition value of the shares or holdings that imply a holding in the capital of the entity of more than 25%, taking into

consideration all the shares or holdings owned by the taxpayer and the persons or entities related to the same under the terms set out in Article 42.3 of the Provincial Corporation Tax Regulation.

For the purposes of calculating the percentage referred to in the previous paragraph, the direct or indirect shareholding of the taxpayer shall be taken into account, together with that held in the same entity by their spouse or common-law partner or any person linked to the taxpayer by kinship, in a straight or collateral line, by consanguinity or affinity, up to and including the second degree.

In summary, therefore, it is established that the acquisition value that implies a shareholding of more than 25% will not form part of the deduction base (those owned by related persons or entities, as well as those of the spouse or common-law partner or family relationship up to the 2nd degree are computed jointly), which means that it is permitted to acquire and own more than 25% of the entity (individually or jointly with the persons indicated in this provision) although a deduction is only generated up to that 25%.

In the event of an excess over 25%, a proportionality rule must be applied, and if the partners of the family group or related parties do not enter in the same financial year, the first rounds of financing exclude subsequent rounds of financing.

3.3. Limits on deductions in the field of Personal Income Tax.

Particularly in the area of Personal Income Tax, the maximum amount deductible in the tax period may not exceed 20% of the taxable base corresponding to the taxpayer, and the same funds may not be deductible in more than one person or entity.

Amounts not deducted because they exceed the limits laid down may be applied, within the limits laid down, in the tax returns for the tax periods ending in the five years immediately following and thereafter.

In the case of legal entities, the general application of Article 67 of the Provincial Corporation Tax Regulation corresponds, with the corresponding limits with regard to the quota, etc.

3.4. Requirements relating to the company.

3.4.1. Consideration as a micro, small or medium-sized company in accordance with the provisions of Article 13 of the Provincial Corporation Tax Regulation.

Under Article 13(3) of the Provincial Corporation Tax Regulation referring to medium-sized companies, which contains the most generous limits:

"3. For the purposes of this Provincial Regulation, a medium-sized enterprise shall be understood to be that which meets the following requirements:

a) That it carries out an economic operation.

b)That its assets do not exceed 43 million Euros, or that its volume of operations, as defined in the Economic Agreement with the Autonomous Community of the Basque Country, does not exceed 50 million Euros.

c) That the average number of employees does not reach 250.

d) That it is not owned directly or indirectly 25% or more by companies that do not meet any of the aforesaid requirements, except in the case of companies or venture capital funds to which the special system established in Chapter IV of Title VI of this Provincial Regulation is applicable, when the participation is a consequence of the fulfilment of the corporate purpose of the latter."

The aforesaid requirements must be met in the tax period immediately prior to that in which the tax accrues (as per Article 13(5) of the Provincial Corporation Tax Regulation).

Whether the company carries on an economic activity is measured in terms of Article 13(4) of the Provincial Corporation Tax Regulation, and in general, the figures are measured in accordance with Article 13 of the Provincial Tax Regulation.

3.4.2. New economic activity.

For this deduction to apply, the company must have the personal and material resources to carry out the new economic activity.

This requirement shall not be considered to be met in the case of companies created as a result of a merger, spin- off, contribution of assets, global transfer of assets and liabilities, contributions of branches of activity, groupings of economic interest, temporary joint ventures and any other form or operation that does not actually and effectively imply the emergence of a new economic activity.

The subscription or purchase of shares or holdings in an entity through which the same activity is carried out as that previously carried out through another ownership shall not give entitlement to the application of this deduction.

3.4.3. Legal form and unlisted.

The entity whose shares or participations are purchased or subscribed, with respect to which it is going to be applied, must take the form of Public Limited Company, Limited Liability Company, Cooperative, Labour Limited Company or Labour Limited Liability Company, under the terms provided in the consolidated text of the Capital Companies Law, approved by Royal Legislative Decree 1/2010, of July 2, and in Law 44/2015, of October 14, on Labour and Participated Companies, and not be admitted to trading in any organized market.

This requirement must be fulfilled during all the years of owning the share or holding and shall also be deemed to be fulfilled when acquiring or subscribing shares or holdings of entities resident abroad which have a legal form similar in nature to that of one of the aforementioned entities.

In the event of non-compliance, a subsequent regularisation shall be made in the year of non-compliance.

3.4.4. Excluded entities.

The deduction shall not apply to investments made in entities that are in any of the following situations:

a) Companies that are subject to a pending recovery order following a previous decision of the European Commission that has declared an aid illegal and incompatible with the internal market.

b) Companies in difficulty under the terms of Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

c) Companies which have surpassed or which will surpass on the issuance of the shares or units referred to in sections 1 and 2 of this Article the total amount of risk finance referred to in Article 21(9) of the Regulation referred to in the previous point.

3.5.Timescale: Time of entry into the company.

The shares or units in the entity must be acquired by the taxpayer, either at the time of incorporation, by means of a capital increase or acquired on the secondary (over-the-counter)

market within five years of incorporation, and remain in the assets of the entity for more than five years. The periods are to be calculated from date to date.

In the case of innovative companies, the shares or participations must be subscribed or acquired within seven years of incorporation, although this time limit is waived in the case of entities requiring an initial risk finance investment which, on the basis of a business plan drawn up with a view to entering a new geographic or product market, is more than 50% of their average annual turnover over the previous five years.

3.6. Procedural aspects: Certification, option, regularisation.

To take this deduction, it will be necessary to obtain a certificate issued by the entity whose shares or holdings have been subscribed or acquired, indicating compliance with the requirements demanded of said entity to be entitled to the corresponding deduction in the tax period in which the acquisition of these took place.

Additionally, in the case of innovative companies, the entity must provide documentary evidence of compliance with the requirements set out in Article 2(80) of Commission Regulation (EU) No 651/2014 of 17 June 2014.

The practice of the deduction regulated in this Article constitutes an option that must be exercised with the filing of the return, within the meaning of the provisions of Article 105 of this Provincial Regulation, and may not be amended once the voluntary return period has ended.

In the event of non-compliance with the requirements, the taxpayer must include, in the tax return corresponding to the tax period in which the non-compliance occurred, the amount derived from the deduction together with the corresponding late payment interest.

3.7. Exemptions in the transfer of shares or holdings (Article 34 of the Provincial Corporation Tax Regulation).

Within the field of corporation tax, Article 34 of the Provincial Corporation Tax Act states that "the provisions of this Article shall apply, regardless of the percentage holding" in cases of transfer of shares and holdings in entities in respect of which the taxpayer entity could apply the deduction established in Article 66 bis of the Provincial Corporation Tax Regulation.

The above paragraph should be understood to be applicable regardless of whether or not the deduction has actually been applied. Thus, for example, if in the year in which the shares or holdings now being transferred were acquired the deduction in question was not in force or the taxpayer was not subject to the provincial tax regulations by virtue of his residence, it is sufficient that the investment would have met the requirements of the current Article 66 bis of the NFIS if it had been in force at that time.

It should be taken into account that no provision is made in this regard in Article 33 of the same Provincial Corporation Tax Law in relation to the treatment of dividends or shares in the profits of the entity (so that for the purposes of applying the non-integration provided for in section 1 of the same, the requirement that the direct or indirect holding in the share capital of the entity be at least 5% must be met).

3.8. Exemptions on the transfer of shares or holdings (Article 42.g of the Provincial Tax Regulation).

Within the field of personal income tax, the aforesaid deduction is complemented by a partial or total exemption of the income derived from the disposal of shares or holdings in the company that entitles the person to the aforesaid deduction.

3.8.1. Modalities of exemptions in the sale of shares or participations.

Under Article 42(g) of the Personal Income Tax Law, 50% of the capital gains arising from the transfer of shares or holdings in entities for the acquisition of which the taxpayer could apply the

deduction established in Article 90 of the Tax Law, without taking into account for these purposes the provisions of paragraphs 3 and 7 of the aforesaid provision, are exempt; that is to say, without limit of 25% of participation in the capital of the entity or in relation to the taxpayer's net taxable income.

For the exemption to be implemented, the taxpayer must provide the certificate referred to in Article 90(6) of the Provincial Regulation.

The exemption will reach 100% of the capital gain in those cases in which the taxpayer reinvests the amount obtained in the transfer of the shares or holdings in the acquisition of other shares or holdings which in turn comply with the provisions of Article 90 of the Provincial Tax Regulation (without taking into account for these purposes the provisions of Article 90(3)(7) within a period not exceeding two years from the date of such transfer.

In this case, the deduction provided for in Article 90 of this Provincial Regulation may not be applied with respect to the shares or holdings in which the aforesaid reinvestment is made.

When the amount reinvested is less than the total amount received in the transfer, the provisions of the previous paragraph shall only apply to the proportional part of the capital gain corresponding to the amount reinvested.

Thus, since there is an unconditional exemption of 50 % and an exemption conditional on reinvestment of 100 %, it follows from both questions that the analysis can be separated into two parts.

An initial 50 % of the gain which will be exempt provided that the shares and holdings referred to in Article 90 of the Provincial Regulation are involved and a second 50% subject to the corresponding reinvestment, and this reinvestment must be 100% of the amount obtained for the total of this second 50% of the gain to qualify for exemption.

If it is the case that less than 100% of the amount obtained is reinvested, the exemption will be applicable to the proportional part of the second 50% of the capital gain.

Therefore, for example, if half of the total amount obtained is reinvested, the first 50% of the gain will be unconditionally exempt (provided, of course, that the companies referred to in Article 90 of the Provincial Regulation are involved) and 25% of the total gain will be exempt (in other words, half of the second 50%).

3.8.2. Non-compliance of the reinvestment. (Article 49.ter of the Personal Income Tax Regulation)

If during the two-year reinvestment period it is decided not to reinvest all or part of the amount of the transfer, 50% of the part of the income not included in the tax period in which it was obtained (or, where applicable, the proportional part corresponding to the amount of the transfer in respect of which it was decided not to reinvest) must be allocated to the year in which it is decided not to reinvest, adding 15% of the amount of the gain (in the proportion in which it was decided not to reinvest). Thus, the part of the gross tax liability corresponding to the income to be included in the tax base will be paid together with the said 15%, together with the tax liability corresponding to the tax period in which the decision is taken.

If the reinvestment period expires, the previous operation will be temporarily imputed to the year in which the period expires (without prejudice to the possibility of requesting special reinvestment plans due to duly justified supervening circumstances). In this case the income is therefore paid together with the tax liability for the tax period in which the reinvestment period expires.

3.8.3. Special reinvestment plans.

For the purposes of the application of the 100% exemption referred to in this point, the tax authorities may approve special reinvestment plans when specific circumstances so justify.

The circumstances referred to in the previous paragraph shall be deemed to exist when it is proven that, due to its economic characteristics, the investment must necessarily be made within a period longer than the generally established two years from the date of transfer, or in cases in which, due to duly justified supervening circumstances, the reinvestment process cannot be completed within the aforesaid period.

The application for approval of a special reinvestment plan shall comply with the procedure and requirements established by regulations, and must be submitted within six months before or after the transfer of the shares or holdings, except where it arises from supervening circumstances, in which case the application must be submitted before the end of the two-year period from the date of transfer established in general and must specify the part of the reinvestment made and the time plan necessary to complete it.

3.8.4. Compensation of capital losses.

In the event that the taxpayer obtains a capital loss as a result of the transfer and this loss derives from an arrangement with creditors (in the sense that it is caused by or related to the transfer, since the mere existence of an arrangement with creditors does not imply the existence of tax losses) or from other cases of liquidation of the entity, the offsetting of this loss is made more flexible:

1. In the first place, the provisions of Article 66.1.b) of the Provincial Regulation will be applied (as is the general rule), offsetting this loss against savings capital gains (those derived from transfers of capital items), and

2. secondly, the remaining negative balance may be offset against the positive balance resulting from the income provided for of Article 66(1)(a)of the Provincial Regulation on Personal Income Tax (that is, against the remaining income from the savings base)

3. In addition, if the result of the previous integration and compensation results in a negative balance, the amount may be offset against the positive balance resulting from the sum of the income provided for in letters a) and b) of Article 65 of the Personal Income Tax Regulation, which contains the income and allocations of the general base on the one hand and the income from economic activities on the other (also general base), obtained in the same tax period, up to a limit of 25% of the said positive balance.

4. If, after such offsets, a negative balance corresponding to the capital loss remains, its amount shall be offset in the following four years in the same order as in the year of generation.

The offsetting shall be carried out to the maximum amount permitted in each of the following financial years and may not be carried out outside the four-year period, by accumulation with the equity losses of subsequent financial years.

3.8.5. Transitional law.

When Article 42(g) of the Personal Income Tax Act on the exemption in the transfer of holdings linked to the deduction in Article 90 of the same Personal Income Tax Regulation was first introduced, a transitional system was regulated (in the Twenty-seventh Transitional Provision) which established that:

"The provisions of Article 42(g) of this Provincial Regulation shall be applicable to equity gains obtained in respect of shares or holdings purchased as from 1 January 2018".

Nonetheless the new exemption system introduced by Provincial Regulation 8/2022, of July 20, introducing certain tax amendments with effect from 1 January 2022 in Article 42(g), of Provincial Regulation 13/2013, of 5 December, has not been accompanied by any transitional system. So that if the shares, regardless of the time of acquisition, would have been susceptible to generate the current deduction (if the current Article 90 of the Provincial Regulation had been in force at the time of acquisition or if the taxpayer had been then subject to the provincial tax

regulation due to his residence), they will apply the new wording of Article 42(g) repeated. Therefore, it may also be applied to investments prior to 1 January 2018.

In this regard, and given the differences in the exemption system according to the wording of 42(g) in force since January 1, 2022, compared to the one introduced in 2018, it must be understood that the Twenty-Seventh Transitional Provision referred exclusively to the previous system (to the previous wording of 4(g), and that, for the current regulation, as indicated, there is no applicable transitional provision.

Therefore, with effect for tax periods commencing on or after 1 January 2022, the exemption shall, in general, be 50% of the capital gain arising on the transfer of shares or holdings in entities for the acquisition of which the taxpayer could apply the deduction established in Article 90 of this Provincial Regulation. Nonetheless, the exemption shall reach 100% of the capital gain in cases where the taxpayer reinvests the amount obtained on the transfer of such shares or holdings in the acquisition of other shares or holdings referred to in the aforesaid Article 90 of the same Provincial Regulation (without it being possible in this case to apply the deduction provided for therein, with respect to the shares or holdings in which the aforesaid reinvestment is made). All the above, regardless of when the transferred shares or holdings were acquired.

3.9. Wealth Tax and Inheritance and Gift Tax.

Exempt from Wealth Tax and Inheritance Tax (limited to mortis causa) are the shares and holdings in entities in respect of which the taxpayer may apply the deduction established in Article 90 of the Personal Income Tax Regulation, without taking into account for these purposes the provisions of paragraphs 3 and 7 of the said precept.

The foregoing should be understood as applicable regardless of whether the deduction had been effectively applied or not. Therefore, for example, if in the year in which the shares or holdings were acquired the deduction in question was not in force, it will be sufficient for that investment to have met the requirements of the current Article 66 bis of the NFIS if it had been in force at that time.

For this purpose, the taxpayer must provide the certification referred to in Article 90(6) of the Personal Income Tax Regulation.

3.10. Specific provisions in relation to asset-holding companies.

With effect for tax periods beginning on or after 1 January 2022, a specific provision is introduced in Article 14 of the Provincial Corporate Income Tax Regulation, relating to asset-holding companies.

In particular, and for the purpose of verifying compliance regarding the composition of the assets of the entity (i.e., if during at least ninety days of the tax period, more than half of its assets are made up of securities or if more than half of its assets are not assigned to economic activities), it is expressly established that shares and holdings in entities in respect of which the taxpayer meets the requirements established in Article 66 bis of the Provincial Regulation to apply the extraordinary deduction for investment in micro, small or medium-sized companies will not be computed as securities or as items not assigned to economic activities, without taking into account for these purposes the provisions of section 3 of the aforesaid provision (without this provision being limited, therefore, to only 25% of the shareholding).

The provisions of the preceding paragraph shall also apply to that part of the value of the shares or holdings corresponding to shares or holdings in entities with respect to which the taxpayer meets the requirements established in Article 66 bis of this Provincial Regulation to apply the special tax credit for investment in micro, small or medium-sized enterprises in cases where the shareholding is held through another entity or entities, without the provisions of section 3 of the aforesaid provision being taken into account for these purposes.

This should be understood to apply irrespective of whether or not the deduction was actually taken. Therefore, for example, if in the year in which the shares or holdings were acquired the

deduction in question was not in force, it will be sufficient for that investment to have met the requirements of the current Article 66 bis of the NFIS if it had been in force at that time.

To apply the provisions of the previous paragraph, the taxpayer shall provide the certificate referred to in Article 66 bis(6) of this Provincial Regulation.

4. Income from work obtained from the management of funds linked to entrepreneurship, innovation and the development of economic activity (Article 56.ter of the Personal Income Tax Law).

4.1. Rating as income from work.

Under Article 56.ter of the Provincial Tax Regulation, those derived from participations, shares or other rights that grant special economic rights in any type of Alternative Investment Fund of those defined in Directive 2011/61/EU of the European Parliament and of the Council, of June 8, 2011, on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) number 1060/2009 and (EU) number 1095/2010, whatever their form or legal nature, and tax residence always within the limits of the directives, obtained by the administrators, managers or employees of such entities or their managing entities or entities of their group. This income is known as "carried interest".

The remuneration derived from units, shares or other rights that grant special economic rights in any type of Alternative Investment Fund will be classified as income from personal work, apart from any other income derived from the relationship between managers, administrators or employees. This means that there may be other different types of income and this does not prevent the application of this special system.

Although the holdings, shares or "rights granting special economic rights" referred to must be held in the alternative investment fund (AIF) itself, Article 56.2 ter (b) of the Personal Income Tax Regulation allows them not to be held directly, stating that: "The provisions of this point shall apply to the entities referred to in section 1 of this Article in cases where they are holders of the participations, shares or rights".

Precisely for these cases in which the holdings, shares or special rights are held through other entities, Article 54 of the Provincial Corporation Tax Regulation establishes that: "11. Income from units, shares or other rights granting special economic rights in any type of Alternative Investment Fund as defined in Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/CE and 2009/65/CE and Regulations (CE) No 1060/2009 and (EU) No 1095/2010, to which the provisions of Article 56 ter of the Provincial Regulation on Personal Tax on Income, shall be included in the taxable income to the extent that the expenses corresponding to their attribution to the persons administering, managing or employed by them are recorded.

Therefore, in the cases referred to in Article 56 ter (2)(b), the natural person managing the fund does not receive the carried interest directly, but rather, in the first instance, the income in question is received by the company, which will not record the corresponding income until the expense corresponding to its attribution to the natural person administering, managing or employing the fund is recorded. So that, at company level, the receipt of this income has a neutral effect (it is not taxed), with all taxation being borne by the individual, in accordance with the provisions of article 56 ter of the NFIRPF.

Income derived from units, shares or other rights granting special economic rights in any type of AIF (the "carried interest") need not be received directly from the AIF itself, but may come from any of the entities referred to in Article 56 ter (2)(b).

The subjective scope refers to persons who are administrators (including members of the investment committee), managers or employees of the funds, the managers or entities of the group and the income can be derived from any of these entities (as indicated above).

4.2. Entities covered by the special system (Directive 2011/61/EU).

Article 4 of Directive 2011/61/EU defines the concept of Alternative Investment Fund (AIF) and differentiates it from Alternative Investment Fund Managers (AIFM):

"For the purposes of this Directive, the following definitions shall apply: (...) a) "AIF" means any collective investment undertaking and its investment compartments which: i) raises capital from a number of investors to invest it, in accordance with a defined investment policy, for the benefit of those investors, and ii) does not require authorisation in accordance with Article 5 of Directive 2009/65/EC; b) "AIFM" means any legal person whose regular business is to manage one or more AIFs; (...)".

Furthermore, it should be noted that the Explanatory Memorandum of Law 22/2014, of 12 November, clearly indicates that Private Equity Entities are considered Alternative Investment Funds:

"First of all, Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 has been adopted. This standard introduces for the first time a regulation within the European Union of alternative investment fund managers, which include, among others, free investment collective investment institutions (IICIL), or hedge funds in their usual designation. in English, the collective investment institutions of free investment collective investment institutions (IICICIL), real estate investment funds and companies and venture capital entities".

On the other hand, it is necessary to take into account the existing case law on investment funds resident in third countries (non-EU/EEA), in relation to the taxation in the Non-resident Income Tax on dividends received from resident entities, all of this in relation to the Community freedoms. In particular, in this regard, it is appropriate to refer to the recent Supreme Court ruling, number 460/2023, dated 11 April 2023. Therefore, in the event that we find ourselves with non-resident, non-EU vehicles, it will be necessary to analyse the legal nature of these vehicles and, in particular, the elements referred to by the Supreme Court in the aforementioned ruling, to assess whether they can be considered comparable or analogous to the AIFs referred to in the Directive, and, consequently, whether or not we can understand that we are within the scope of Article 56 ter of the NFIRPF.

4.3. 50% integration of the yields.

The income shall be included in the tax base at 50% of its amount where the following conditions are met:

a) The special economic rights of such units, shares or rights are conditional upon the remaining investors in the alternative investment entity obtaining a guaranteed minimum return as defined in the rules or by-laws of the alternative investment entity.

b) The units or special rights must be held for a minimum period of five years, unless they are liquidated early or lapse or are lost in whole or in part as a result of a change of management entity, in which case they must have been held continuously until such circumstances arise.

The provisions of this point shall be applicable to the entities referred to in paragraph 1 of Article 56.Ter in those cases in which they hold the ownership of the units, shares or rights.

It is not detrimental to the incentive that the units are not held when the income is obtained nor that the person is not already a manager, administrator or employee of the AIF at the time the income is received, provided that letters a) and b) are complied with, particularly the required time of holding the units or special rights.

In the case of special rights that are exhausted (extinguished) with the actual receipt of the return conditional on the investor's profitability, the maintenance period will be determined by the time elapsed from the moment of "delivery" of these rights and the moment in which the circumstances arise and the investor is entitled to the return, insofar as once the return has

been received, these rights would be exhausted, so that it would not be possible to consolidate the five years subsequently.

For the purposes of the provisions of Article 105 of the Personal Income Tax Regulations, the application in each tax period of the provisions of the previous section shall be considered as an option to be exercised with the filing of the tax return. The option exercised for a tax period may not be modified once the voluntary tax return period has ended.