

PROVINCIAL DECREE 65/2018 of 22 May of the Provincial Council of Bizkaia developing certain aspects of the tax treatment of certain European funds and the tax measures for fostering innovation, the financing of economic activities and productive capitalisation. (1)

Title I of Provincial Regulation 2/2018 of 21 March characterising certain European long-term investment funds for tax purposes and amending the Provincial Regulations on Personal Income Tax, Property Tax, Corporation Tax, Capital Transfer Tax and Stamp Duty, Inheritance and Gift Tax, the tax framework of cooperatives and the General Tax Code of the Historical Territory of Bizkaia establishes the tax treatment for certain European investment funds intended to foster innovation, the financing of economic activities and productive capitalisation and implements incentives to involve the private sector in the pursuit of the goals thereof under the framework of the Europe 2020 Strategy.

That Strategy establishes that the core of Europe 2020 should comprise three mutually reinforcing priorities and provide a vision of Europe's social market economy for the 21st century. Those priorities are:

- Smart growth: developing an economy based on knowledge and innovation, which means consolidating knowledge and innovation as drivers for future growth. But to be successful this must be combined with entrepreneurial spirit, financing and priority attention for the needs of users and for market opportunities.
- Sustainable growth: promoting a more resource-efficient, greener and more competitive economy that can take advantage of Europe's leading position in the race to develop new processes and technologies, speed up the development of smart networks in the EU and build on the competitive edge enjoyed by our corporations and SMEs, support economic, social and territorial cohesion and help consumers to make the most effective use of resources.
- Inclusive growth: fostering a high-employment economy, investing in qualifications, fighting poverty and modernising labour markets, training and social protection systems to help people to anticipate and manage change and build a cohesive society, guaranteeing access to equal opportunities and thus further economic, social and territorial cohesion.

Concurrently, one of the priorities of the Provincial Council of Bizkaia in the current mandate of the General Assembly of Bizkaia is to ensure the development of economic activity, create wealth and jobs and see that the territory develops in a smart, inclusive, sustainable fashion in accordance with the main goals of the Europe 2020 Strategy, as set out in the Bizkaia Goazen 2030 project.

Both long-term strategies are clearly based on the same goals and evidence the same governing principles, so the regulation in Title I of the said Provincial Regulation is conducive to the best possible outcome, as it combines the financial instruments established by the European Parliament and the Council with the commitment of the undertaking by the Provincial Council of Bizkaia to developing the financing of economic activity, to the productive capitalisation of the fabric of business, and to strengthening technological research, development and innovation activities.

(1) This text is meant purely as a documentation tool and has no legal effect. The Provincial Council of Bizkaia does not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the corresponding official journal.



It is clear that the creation and implementation of the aforesaid European financial instruments and of the economic policies of the Provincial Council of Bizkaia itself require the establishment of the most suitable tax treatment for the new circumstances. This entails updating the various taxes in which the Economic Agreement recognises the regulatory autonomy of the Historical Territories.

The engagement of citizens in the funding of the said goals is another priority, since society must ultimately mobilise its savings if the main collective goals are to be attained and greater welfare is to result. To encourage public engagement in the financing of technological innovation and business capitalisation projects with a view to furthering economic activity in association with European funds for promoting investment, for promoting economic activity and for promoting productive capitalisation, the said Provincial Regulation establishes a number of tax incentives in the main direct taxes levied on taxpayers.

Articles 4, 5 and 6 of the said Provincial Regulation set out the characterisation for tax purposes of the European long-term investment funds that cater for the purposes and meet the requirements set out therein and in Article 80 of Provincial Regulation 11/2013 of 5 December on Corporation Tax. For its part, Article 7 states that “European funds that meet the requirements set out in Articles 4, 5 and 6 above and wish to apply the taxation measures envisaged in Chapter IV of this Title of the regulation must advise the tax authorities accordingly before marketing begins or within the three months prior to the commencement of the first tax period in which they wish to apply the said tax measures, on the terms set out in the relevant regulations”.

It further establishes that “The tax authorities will check that the requirements set out in the three previous articles of this Title are met and will acknowledge each fund as a European fund for fostering innovation, a European fund for fostering the funding of economic activities or a European fund for fostering productive capitalisation, as relevant, by means of a resolution of the Directorate General for Internal Revenue, which resolution will be published to make it public knowledge”.

Finally, the said article establishes that “The European funds referred to in the foregoing subsection must regularly provide information to the tax authorities as and when set out in the relevant regulations concerning their compliance with the requirements set out in articles 4, 5 and 6 of this Provincial Regulation”.

Articles 8 - 10 of Provincial Regulation 2/2018 of 21 March amend the provincial regulations governing personal income tax, property tax and inheritance and gift tax to incorporate tax incentives to permit public/private cooperation in meeting the needs for innovation and financing of business activities, and Article 11 of the Provincial Regulation concludes by establishing that “For the tax measures contained in this chapter to be applied, taxpayers must provide documentary proof as relevant. Regulations will be drawn up to specify the obligations of information in regard to the stakes in funds referred to in Articles 4, 5 and 6 of this Provincial Regulation and the deposits at banks which are to be used to acquire stakes in European funds for fostering innovation. Fulfilment of those obligations may be required, as the case may be, via the financial institutions that hold the deposits which entitle taxpayers to apply the tax measures envisaged in this Provincial Regulation”.

The Provincial Council of Bizkaia must therefore exercise the regulatory powers established in the said articles in order to regulate the procedure and the requirements for recognising European funds



for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation and to establish the obligations of information referred to. That is the purpose of this Provincial Decree.

It is also necessary to develop certain issues concerned with fulfilment of the requirements for the application of the tax treatments established for those funds, and with cases of nonfulfilment of obligations set for each party involved in the process of investment via same, in the case of both direct investment and investment via credit institutions.

This Provincial Decree is processed in accordance with the provisions of Act 4/2005 of 18 February on the equality of women and men of the Autonomous Community of the Basque Country, Provincial Decree 141/2013 of 19 November of the Provincial Council of Bizkaia on prior assessment of impact from a gender perspective and Provincial Decree 2/2017 of 17 January of the Provincial Council of Bizkaia regulating the procedure for drawing up general provisions at the Provincial Council of Bizkaia.

In view of the foregoing, at the proposal of the Provincial Councillor for Revenue and Finance, and after due deliberation and approval by the Governing Cabinet of this Provincial Council in its meeting on May 22, 2018,

I RULE AS FOLLOWS:

Article 1. Procedure for acknowledging the nature of European funds for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation.

1. Pursuant to the provisions of Subsection 1 of Article 7 of Provincial Regulation 2/2018 of 21 March, the notification to be submitted to the tax authorities by European funds that meet the requirements set out in Articles 4, 5 and 6 that wish to apply the tax measures envisaged in Chapter IV of Title I of the said Provincial Regulation must be submitted as per the procedure set out in Article 45 of the Regulations on Corporation Tax approved by Provincial Decree 203/2013 of 23 December of the Provincial Council of Bizkaia, with the special cases envisaged therein.
2. The notification must contain the following data:
 - a) Identification of the long-term investment fund by which it is submitted.
 - b) The documentation submitted to the relevant authority for ELTIF as provided for in Subsection 1 of Article 5 of Regulation (EU) 2015/760 of the European Parliament and the Council of 29 April 2015 on European long-term investment funds.
 - c) The notification of authorisation as an ELTIF by the competent authority as referred to in Article 6 of Regulation (EU) 2015/760 of the European Parliament and the Council of 29 April 2015 on European long-term investment funds.
 - d) An affidavit signed by the manager of the ELTIF attesting to compliance with the requirements set out in Subsection 2 of Article 80 of Provincial Regulation 11/2013 of 5 December on Corporation Tax.



- e) The prospectus and, as relevant, the key information document referred to in Article 23 of Regulation (EU) 2015/760 of the European Parliament and the Council of 29 April 2015 on European long-term investment funds, plus documentation attesting to compliance with the requirements of Articles 4, 5 or 6 of Provincial Regulation 2/2018 of 21 March, as relevant.
- 3. The notification must be submitted to the Subdirectorate for Coordination and Technical Assistance.
- 4. Acknowledgement of the nature of European funds for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation as envisaged in Article 7 of Provincial Regulation 2/2018 of 21 March will be published in the Official Gazette of Bizkaia.

The Revenue and Finance Department will also keep an up-to-date list on the website of the Provincial Council of Bizkaia of those European long-term investment funds which are acknowledged to be European funds for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation.

Article 2. Obligations of information for European funds for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation.

- 1. The funds referred to in Articles 4, 5 and 6 of Provincial Regulation 2/2018 of 21 March must meet the obligations of information set out in Article 50.2 and Article 53 of the Regulation by which the formal tax obligations in the Historical Territory of Bizkaia are regulated, as approved by Provincial Decree 205/2008 of 22 December of the Provincial Council of Bizkaia.
- 2. Along with the information that must be provided as per the foregoing subsection, in each tax year funds acknowledged to be European funds for fostering innovation, European funds for fostering the financing of economic activities or European funds for fostering productive capitalisation must provide a report in the terms established by the Provincial Councillor for Revenue and Finance containing information on compliance with the requirements established in Article 4, 5 or 6, respectively, of Provincial Regulation 2/2018 of 21 March as relevant, and making reference to the resolution of the Directorate General for Revenue by which the nature of each fund is acknowledged for tax purposes.

Article 3. Obligations of information for stakeholders in European funds for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation.

- 1. Taxpayers who wish to avail themselves of the exemptions or reductions in the taxable base envisaged in subsections Twelve and Thirteen of Article 5 of Provincial Regulation 2/2013 of 27 February on Property Tax must attach to their self-assessment for the said tax documentary proof of compliance with the requirements set in the said subsections for entitlement to the said exemptions or reductions in taxable base.
- 2. Taxpayers who wish to avail themselves of the exemption envisaged in Subsection 7 of Article 12 of Provincial Regulation 4/2015 of 25 March on Inheritance and Gift Tax must attach to their self-assessment or return for the said tax documentary proof of compliance with the requirements set in the said subsections for entitlement to the said exemption.



Article 4. Deadline for allocating contributions made to European funds for fostering innovation, European funds for fostering the financing of economic activities and European funds for fostering productive capitalisation.

1. Those European funds which are acknowledged to be European funds for fostering innovation, European funds for fostering the financing of economic activities or European funds for fostering productive capitalisation may apply for an extension to the deadline set in the past paragraph of Articles 4, 5 or 6 of Provincial Regulation 2/2018 of 21 March, as relevant, in cases when duly proven supervening circumstances prevent the full allocation of the contributions paid out to the purposes envisaged in Articles 4, 5 or 6 of the said Provincial Regulation, respectively, within the periods indicated.
2. Applications for extensions must be submitted as per the procedure set out in Article 45 of the Regulations on Corporation Tax approved by Provincial Decree 203/213 of 23 December of the Provincial Council of Bizkaia, with the special cases envisaged herein.
3. The applications referred to in the foregoing subsection must contain the following data:
 - a) Amount of the contributions paid out by stakeholders which are not expected to be able to be allocated to the relevant purpose within the ordinary periods referred to in Subsection 1 above.
 - b) Evidence of the supervening circumstances that render it impossible to meet the deadlines indicated.
 - c) A reasoned estimate of the time required to allocate the contributions paid out to the purposes of the fund, taking into account the supervening circumstances that underlie the application for the extension.
4. The application must be submitted to the Subdirectorate for Coordination and Technical Assistance within one month as from the time when the supervening circumstances that underlie the application for the extension become known, and in any event at least three months prior to the expiry of the ordinary period referred to in Subsection 1 above.
5. The Directorate General for Revenue will issue a ruling on the application submitted within three months. Should no notification of a ruling be issued within that time the application will be understood to have been rejected.

Article 5. Sums deposited at credit institutions for the purpose of acquiring stakes in European funds for fostering innovation.

For the purposes indicated in Subsection 3 of Article 90a of the Provincial Regulation on Personal Income Tax, the following rules apply:

- a) The obligation of credit institutions to allocate the sums deposited by taxpayers to the acquisition of stakes in European funds for fostering innovation will not be considered as breached if the acquisition of such stakes on the part of credit institutions takes place within one year as from the date on which the sums are deposited by the taxpayers.
- b) If a European fund for fostering innovation breaches any of the requirements envisaged in Article 4 of Provincial Regulation 2/2018 of 21 March and that breach does not affect all the contributions made, it will be understood initially to affect those persons who hold a direct



stake in the fund. Only if the sum involved in the breach exceeds the amounts paid out as indicated in the form of direct stakes will the breach be understood to affect taxpayers who have deposited sums at credit institutions in accounts intended for the acquisition of stakes in the said funds.

Breaches will be understood to have been committed proportionally by each stakeholder or, as the case may be, by each depositing party, taking into account the rule set out in the foregoing paragraph.

Article 6. Amendment of the Regulations governing formal tax obligations in the Historical Territory of Bizkaia, approved by Provincial Decree 205/2008 of 22 December of the Provincial Council of Bizkaia.

The following changes are made to the Regulations governing formal tax obligations in the Historical Territory of Bizkaia, approved by Provincial Decree 205/2008 of 22 December of the Provincial Council of Bizkaia.

One Subsection 2 of Article 50 is reworded to read as follows:

"2. Companies that manage collective investment institutions, European venture capital funds, European social entrepreneurship funds and European long-term investment funds, marketers in Spain and representatives of management companies that operate under the framework of freedom to provide services must provide the tax authorities with an annual statement indicating the given names and surnames, trade names or complete names and tax identification numbers of the individuals and entities that hold shares and stakes as of 31 December in the capital stock or equity of the relevant collective investment institutions or European venture capital funds, European social entrepreneurship funds or European long-term investment funds.

Information must also be provided on the number and type of shares and stakes that they hold and, if relevant, the compartment to which they belong and their net asset value as of 31 December. In the case of cross-border marketing of shares or stakes in Spanish investment institutions or European venture capital funds, European social entrepreneurship funds or European long-term investment funds, the obligation to provide information will lie with the foreign marketing entity that appears as the holder, on account of non-resident third parties, of such shares or stakes, in line with the provisions of the Sole Additional Provision to the Regulations on Income Tax for Non-residents approved by Provincial Decree 48/2014 of 15 April, without prejudice to the liability of the management company or investment society in regard to the tax authorities as provided for in the said Sole Additional Provision.

In the case of shares or stakes in collective investment institutions admitted for trading on a secondary market or organised securities trading, the obligation to provide information referred to in the foregoing paragraph will lie with the entity with which the shares or stakes are deposited."

Two Letter (a) of Subsection 1 of Article 53 is reworded to read as follows:

"a) Attesting officers, companies that manage collective investment institutions, European venture capital funds, European social entrepreneurship funds and European long-term investment funds, marketers of stakes in investment funds and specialised credit institutions, securities agencies and brokers, other financial intermediaries and any physical or legal person, as per the provisions of the provincial regulations governing Personal Income Tax, Corporation Tax, Income Tax for Non-Residents and other regulations containing provisions of a similar nature."

Article 7. Amendment of the Regulations for Personal Income Tax approved by Provincial Decree 47/2014 of 8 April of the Provincial Council of Bizkaia.

Subsection 2 of Article 117 of the Regulations for Personal Income Tax approved by Provincial Decree 47/2014 of 8 April of the Provincial Council of Bizkaia is reworded as follows:

"2. Credit institutions must submit the following between January 1 and 31 of the following year:

a) An informative statement on home-savings accounts including the following data:



- a) Full names and tax ID numbers of holders of home-savings accounts.
 - b) Percentage of the home-savings account held by each taxpayer.
 - c) Date on which each home-savings account was opened.
 - d) Initial and final balance of home-savings accounts in each financial year.
 - e) Any other details required on the form approved for this purpose.
- b) An informative statement on deposits intended for the acquisition of European funds for fostering innovation, including the following data:
- a) Full names and tax ID numbers of holders of the deposits.
 - b) Percentage of the deposit held by each taxpayer.
 - c) Date on which the deposit was opened.
 - d) Sums withdrawn by taxpayers prior to the expiry of the holding period established in Subsection 3 of Article 90a of Provincial Regulation 13/2013 of 5 December on personal income tax.
 - e) Any other details required on the form approved for this purpose.

Along with the information that credit institutions are required to provide pursuant to this letter (b), they must also provide a list of the stakes in European funds for fostering innovation acquired by them to which all sums deposited with them have been allocated, and the stakes in such funds which have been transferred or refunded prior to the expiry of the holding period referred to in letter (d') above. In both cases, reference must be made to the resolutions of the Directorate General for Revenue by which the funds in question are acknowledged to be European funds for fostering innovation.”

FINAL PROVISION

One. Power to draw up regulations.

The Provincial Councillor for Revenue and Finance is empowered to draw up such provisions as may be necessary for the implementation and application of this Provincial Decree.

Two. Entry into force.

This Provincial Decree will enter into force on the day following its publication in the Official Gazette of Bizkaia.

Bilbao, May 22, 2018

Provincial Councillor for Revenue and Finance

JOSÉ MARÍA IRUARRIZAGA ARTARAZ

The Chair of the Provincial Council

UNAI REMENTERIA IMAZ