

**SECRETARY OF STATE  
OF FINANCE DIRECTORATE GENERAL OF TRIBUTES  
Binding Consultations**

<b>NUM-CONSULTATION</b>	V0069-11
<b>ORGAN</b>	SG of Taxes on Legal Entities
<b>DEPARTURE DATE</b>	1/18/2011
<b>NORMATIVE</b>	TRLIS / R. D Leg 4/2004, art 10.3.y 19.
<b>DESCRIPTION-FACTS</b>	<p>The consultant is a sports association whose purpose is the promotion, development and continued practice of physical activity and sports, being its main activity the <b>organization</b> of sports events. Company X is a company whose main activity is also the <b>organization</b> and development of sporting <b>events</b> , presentations of products of any kind and / or the elaboration of sports projects.</p> <p>Currently, company X is considering subscribing a joint account contract with the consultant by virtue of which company X would deliver to the consultant a certain amount for the development of a new activity, the latter assuming the exclusive address of the activity and participating both entities, in the agreed proportion, in the prosperous and adverse results of the aforementioned activity.</p>
<b>QUESTION-RAISED</b>	It is considered if the remuneration paid to company X, under the joint account contract, would be considered a tax deductible expense and if said remuneration would be subject to withholding.
<b>COMPLETE ANSWER</b>	<p>In accordance with the provisions of article 239 et seq. Of the Commercial Code, the contract of participation accounts can be defined as a collaboration contract between two subjects (it is always bilateral), under which one of them ("cuentapartícipe") it contributes property of its property, money or rights to another ("manager"), obliging itself to apply said contribution to a certain operation or operations or to a certain business or professional activity, which it will develop independently and in its own name, and, to inform, render accounts and give participation to the participating account in the resulting gains and losses.</p> <p>Article 10.3 of the consolidated text of the Corporate Income Tax Act (TRLIS), approved by Royal Legislative Decree 4/2004, of March 5, establishes that "in the direct estimation method, the tax base will be calculated, correcting, through the application of the precepts established in this law, the accounting result determined in accordance with the rules set forth in the Commercial Code, in the other laws relating to said determination and in the provisions issued in the development of said regulations. "</p> <p>Under the provisions of article 36.2 of the Commercial Code:</p> <p>"2. The elements of the profit and loss account and the statement reflecting changes in the net worth of the year are:</p> <p>(...)</p> <p>Expenses: Decreases in equity during the year, either in the form of outflows or decreases in the value of assets, or recognition or increase of liabilities, provided that they do not originate in distributions to partners or owners.</p> <p>(...) "</p> <p>Additionally, section 3 of the Conceptual Framework of Accounting, contained in the First Part of the General Accounting Plan (PGC), approved by Royal Decree 1514/2007, of November 16 (BOE of December 27), includes, among the accounting principles of obligatory application, the accrual principle according to which the effects of the transactions or economic events will be recorded when they occur, being imputed to the fiscal year to which the annual accounts refer, the expenses and the income that affect the same, independently from the date of payment or collection.</p> <p>In turn, following the provisions of paragraph 5 of the Conceptual Framework of the PGC, "the income and expenses accrued thereon shall be recorded in the period to which the annual accounts refer, establishing a correlation where applicable. between both, which in no case can lead to the registration of assets or liabilities that do not meet the definition of these. "</p>

On the other hand, Article 19 of the TRLIS includes both the principle of accrual, as a principle of temporary imputation, and, in an express manner, the principles of income and expense correlation and accounting entry, in the following terms:

"1. Income and expenses will be charged in the tax period in which they accrue, based on the actual flow of goods and services that they represent, regardless of when the monetary or financial flow occurs, respecting the proper correlation between and others.

(...)

3. The expenses that have not been charged to the profit and loss account or to a reserve account will be fiscally deductible if it is established by a legal or regulatory rule, except for what is foreseen with respect to the patrimonial elements that can be amortized. freely.

(...)." "

Por tanto, todo gasto contable será gasto fiscalmente deducible, a efectos del Impuesto sobre Sociedades, siempre que cumpla las condiciones legalmente establecidas, en términos de inscripción contable, imputación con arreglo a devengo, correlación de ingresos y gastos y justificación documental, siempre que no tenga la consideración de gasto fiscalmente no deducible por aplicación de algún precepto específico establecido en el TRLIS.

El TRLIS no contiene ningún precepto relativo a las cuentas en participación, por lo que las rentas, positivas o negativas, derivadas del negocio en participación deberán determinarse de acuerdo con lo establecido en la normativa mercantil.

A efectos contables, el partícipe gestor contabilizará como gasto el beneficio que corresponda a los partícipes no gestores en los términos señalados en el Plan General de Contabilidad, por lo que, a efectos del Impuesto sobre Sociedades, la retribución que la entidad consultante, como partícipe gestor, transfiera al partícipe no gestor, tendrá la consideración de gasto fiscalmente deducible en el ejercicio de su devengo.

Por último, el artículo 58.1 del Reglamento del Impuesto sobre Sociedades, aprobado por Real Decreto 1777/2004, de 30 de julio, establece: "1. Deberá practicarse retención, en concepto de pago a cuenta del Impuesto sobre Sociedades correspondiente al perceptor, respecto de:

a) Las rentas derivadas de la participación en fondos propios de cualquier tipo de entidad, de la cesión a terceros de capitales propios y las restantes rentas comprendidas en el artículo 25 de la Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas (LIRPF) y de modificación parcial de la Leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio.

El artículo 25.2 de la LIRPF dispone: "Tendrán la consideración de rendimientos íntegros de capital mobiliario los siguientes: (..)

2. Rendimientos obtenidos por la cesión a terceros de capitales propios.

Tienen esta consideración las contraprestaciones de todo tipo, cualquiera que sea su denominación o naturaleza, dinerarias o en especie, como los intereses y cualquier otra forma de retribución pactada como remuneración por tal cesión, así como las derivadas de la transmisión, reembolso, amortización, canje o conversión de cualquier clase de activos representativos de la captación y utilización de capitales ajenos."

According to these precepts, when the manager shares income to the non-managing shareholder in compliance with the contractual provisions, the latter (in the specific case raised by company X), obtains income derived from the transfer of own capital to third parties. which must be computed as income for the purpose of determining its tax base. The consulting entity, participant in the management of the joint account contract, must practice withholding on the income it pays to the non-managing shareholder, for the account of the joint account in accordance with the provisions of articles 62 and following of the RIS.

What I communicate to you with binding effects, in accordance with the provisions of section 1 of article 89 of Law 58/2003, of December 17, General Tax.