JOURNAL OF INTERNATIONAL AGING LAW & POLICY

VOLUME 6 FALL 2013

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FISCAL MEASURES ADOPTED IN THE KINGDOM OF SPAIN FOR THE PROTECTION OF PERSONS WITH SPECIAL NEEDS

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I. PRELIMINARY IDEAS

As we have developed in other works,[1] people with special needs, their families, and the society to which they belong, demand comprehensive answers from the authorities because only the complete exercise of their rights and obligations will allow them to feel full and free as citizens of Spain. In these preliminary ideas, in which we only seek to contextualize the purpose of the present study, we must start with the only possible conclusion: without the involvement of all actors that make up the fabric of our society we cannot offer a comprehensive response that goes beyond merely tranquilizing our consciences to the problems we face. From a legal angle and with a clear anchor in Articles 49 and 50 of the

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® The present work has been carried out within the framework of the Research project of National Plan *Las medidas fiscales como instrument de protección de la familia: personas con discapacidad versus dependencia. Evolución y efficiencia de las medidas estatales y autonómicas [Fiscal Measures as a Protective Instrument of the Family: Dependency versus Disability. Evolution and Efficiency of State and Regional Measures]*, DER2008-03166/JURI, financed by the Ministry of Science and Innovation, as well as members of the Research Group of Excellence of the Junta de Andalusia. *Análists interdisciplinar de los instrumentos de protección y promoción de las personas dependientes [Interdisciplinary Analysis of the Protective Instruments and Promotion of Dependent Persons]* P08.SEJ 04088.
[1] *See* Juan López Martinez & José M.Pérez Lara, *El estatuto patrimonial del discapacitado: Una necesidad, [The Heritage Status of the Disabled: A Need]* in *Revista de la Facultad de Derecho de la Universidad De Granada* 195 (2002) [hereinafter Martinez & Lara, *El estatuto patrimonial*]; *see also* Juan Lopez Martinez & Jose M.P. Lara, *La fiscalidad de las personas con discapacidad en la imposición directa estatal y autonómica [Taxation of People with Disabilities at the State and Regional Levels]*, in *Régimen jurídico de las personas con discapacidad en España y en Europa* Comares 225 (2006); Juan Lopez Martinez & Jose M.P. Lara, *Impuestos y Discapacidad*, *[Taxes and Disability]* in *Cuadernos de Aranzadi jurisprudencia tributaria* 24 (Cizur Menor (Navarra) Thomson-Aranzadi 2006) [hereinafter Martinez & Lara, *Impuestos y Discapacidad*].

Spanish Constitution— among others—a comprehensive system of care for people with special needs must be configured, from a global perspective. This has to be done with the active participation of the whole of society to try to achieve the three criteria established by the European Union itself when designing policies for its Member States: universality, high quality and financial viability.[2]

To build this integrated system, the first agent to act as a catalyst for these policies has to be the State itself both by constitutional mandate and by conviction, The Spanish State has traditionally used two mechanisms to meet the needs of groups with special needs: first, public financing, through the creation of a series of economic assistance, grants or transfers, directly or indirectly, to individuals, their families or institutions working to remove barriers of inequality in our society, and second a fiscal stimuli, through the tax system to achieve the so-called "extra-fiscal" purposes of taxes.

As specialists in this matter, our first analysis of the measures offered by public authorities for people with special needs focused on the performance of the fiscal instruments designed by public entities. We studied the set of measures that the tax system uses to address these needs, and we soon concluded that two features of these technical actions prevented a comprehensive and global response to the problem.

First, the measures offered by the public authorities have been designed to respond to what can be called a "historic haste." The measures fail to offer a structured and coordinated response either at the horizontal level, in the relationship of the public body with the people with special needs, or the vertical level, in the distribution of competences of the various local authorities and institutions that make up the State. Consequently, the distribution

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[2] Eur. Comm'n, *The Future of Health Care and Care for the Elderly: Guaranteeing Accessibility, Quality and Financial Viability*, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0723:EN:NOT (Dec. 5, 2001).

of the legal instruments analyzed, their lack of coordination, and their inadequacies continue to prevent the achievement of socially acceptable levels of protection. The mismatch between the goals pursued and the instruments and means provided to achieve the goals is also one of the main shortcomings.

Second, we soon came to the conclusion that a strictly fiscal answer to these problems is, by itself, insufficient to meet the objectives,[3] if only because of the very nature of tax institutions which act on financial capacity, actual or potential, and therefore are only relevant for persons, albeit with special needs, who have some source of income or assets available.

It is these constraints that have led us to structure this work by starting from the financial architecture of the Dependency System envisaged in Law 39/2006 of December 14[4] (the "Act") in relation with the tax consequences that arise from it, or that are the outcome of the implementation of the benefits system provided therein. We seek to present the basic structure of this type of measure since, in our view, this is the first serious attempt to address the problems under study and point in the right direction to construct the "System." For the same reasons, although in a very different direction, the focus of our study subsequently will be a

[3] Because, as we have noted elsewhere, while recognizing the importance of fiscal measures, to which extensive reference will be made later in the present work, the same, however complete and advanced they may be, cannot be the focus of solutions that are designed, not only because they are partial and sometimes misleading instruments to address the problem studied, but also because the tax law works on legal institutions provided for in other sectors of the legal order, which must first be restated in relation to the factual circumstances under review.
Martínez & Lara, *El estatuto patrimonial*, *supra* n. 1, at 195. And that is so, even though we cannot forget that the non-tax functions of taxes can solve many problems for people with special needs. In this sense, Jimenez-Reyna Rodriguez notes that fiscal measures have serious limitations to meet the objectives of social and economic policy, due to its complexity, the technical difficulties in adapting the ratio of benefits to the aims pursued and the possibilities of avoidance that all tax benefits bring with them. Diego Rodríguez.Rodríguez, *La discapacidad en el sistema tributario español [Disability in the Spanish Tax System]*, in *Colección Informes y textos legales* 10 (Madrid Escuela libre, 1997).
[4] Law to Promote Personal Autonomy and Care of Dependent Persons, 39/2006, 299 (BOE 2006).

simple explanation of the tax measures that have been enacted to assist people with special needs. This will show the long road that still has to be travelled, and their study should serve to develop our final considerations.

II. THE FINANCIAL ARCHITECTURE OF THE LAW OF DEPENDENCY

In order for protective systems to achieve sustainability over time as well as universality, all the territorial and institutional powers of the State, according to their respective competences, and all public and private stakeholders that are part of the fabric of our society have to be fully involved. This, in our view, was the proposal made by the legislature in establishing the financial architecture of the Act. Although it may have left room for improvement, this Act is an example of the direction that the public authorities must take if they want to put their words into actions and program active policies to assist people with special needs. [5] Indeed, in accordance with the architecture of the autonomous State of the Kingdom of Spain, with its seventeen autonomous communities with their extensive powers and obligations, the Act designed a system of joint financial responsibility and actions to implement the policies needed to achieve the different objectives. These take into account not only the three levels of territorial authorities that comprise it and its institutional administration but also demand special collaboration from the so-called third sector, which, as stated in the Preamble to the Act, must be placed on the fourth pillar of the welfare system to deal with situations of dependency.[6]

To achieve this goal, a System for autonomy and care for dependency has been created and aims principally at ensuring the

[5] This is why we have considered it opportune to include some brief references to its structure in a work we have intended should be more general.

[6] The Act defines the Third Sector as: private organizations arising from the social citizen initiative or under different modalities that meet criteria of solidarity, purposes of general interest and non profit, driving the recognition and exercise of social rights. (This is an unofficial translation of the Act.) *See* Law to Promote Personal Autonomy and Care of Dependent Persons, 39/2006, 299.

basic conditions and levels of protection envisaged in the Act under discussion. This system will serve as a channel for the participation of all public administrations, optimizing the public and private resources available. In our view, the transcendent step taken by this Act is to shape a subjective right grounded on the principles of universality, equity and accessibility, developing a comprehensive care model for the citizen who has the right to participate in "the System."

To achieve this ambitious goal, and to endow the "System" with sustainability, the Act provides three different levels of protection and develops a complex system of funding based on these levels and inter-governmental collaboration. In addition, the beneficiaries of the system contribute financially to the financing of services that comprise it, progressively and according to their financial capacity, taking into account the type of service received and its cost.

The first level, called minimum protection, has to observe the parameters referred to in Article 9 of the Act. The funding comes from central government, which, for this purpose, annually fixes the financial resources in the State's General Budget, according to the parameters established in Article 32 of the Act.

A second level of protection is set by the agreements referred to in Article 10 of the Act between the State and each autonomous community, which will establish the objectives, means, and resources for the implementation of services and benefits in addition to the minimum level of protection provided universally. These agreements govern the funding from each administration under the parameters laid down in Article 32 of the Act.

As a third level of protection each autonomous community can add financing from its own budget, as stated in Article 11 of the Act, and it may adopt rules for access and enjoyment as it deems appropriate. Additionally, the Act provides for the participation of local authorities in managing care services for dependency, according to the rules of each autonomous community, which are permitted to participate in the territorial council of the System, as clarified in Article 12 of the Act. Finally, in regard to the financial architecture, the Act envisages the participation of beneficiaries to help fund the system, depending on the type of benefits received, the cost of the services provided, and their personal financial situation. For such participation, as stated in Article 33 of the Act, the distinction between healthcare services and those of maintenance and board and lodging has to be taken into account.[7]

Each of the above rules considers the nature of the assistance, which may come in the form of services or financial help. The catalogue of services that appears in Article 15 must be given priority so that only if these services are not available under the agreements established in Article 10 will an economic benefit be provided as subsidiary. The amount of the subsidiary is calculated in relation to the costs of the services provided under the individual program referred to in Article 29 of the Act, depending on the parameters of Article 17, all provided that they are administered by an entity or accredited center for the care system.

Priority for access to services is determined by the degree and level of dependency, and the degree and level of the applicant's financial capacity. As provided in Article 14 of the Act, until the network of services is fully implemented, those in a situation of dependency who cannot access the services of the designated priority scheme will be entitled to the cash benefits

[7] It is the Territorial Council of the System that fixes the criteria of participation of the beneficiaries in the financing of the services received. These criteria have to be developed in the Agreements referred to in Article 33 of the Act, guaranteeing that no citizen shall be left outside the cover provided by the System for lack of financial resources.

referred to above. To this possibility of financial benefit, Article 18 of the Act adds another exceptional financial provision for non-professional caretakers or caretakers in the family, subject to appropriate living conditions and habitable housing as established in the individual program of care and attention, and provided that the caregiver meets the conditions specified in the reference order.

Article 19 of the Act provides financial assistance for people with a high degree of dependency to contribute to the recruitment of a personal assistant to facilitate access to education, work and a more independent life in the exercise of basic activities. However, it is important to bear in mind the provisions in Article 31 of the Act, which state that the amount of financial benefits received will be deducted from the amount under any similar scheme whose nature and purpose are set out in the public social security schemes.

Finally, we must take into account the terms of the third additional provision of the Act, which provides for grants to be accorded depending on budgetary provisions by the state administration and the autonomous communities, either to obtain technical assistance or instruments necessary for the normal development of ordinary life, or to facilitate accessibility and the necessary adaptations to the house, in order to help improve mobility at home.

This study is the first serious attempt to address the problems from the parameters of responsibility and sustainability required by the European Union. Although the Act is a momentous step in the right direction, the financial structure and competences have obvious shortcomings that can be resolved through the establishment of a "system" that does not exhaust all measures necessary to implement a comprehensive mechanism of protection, both objectively and subjectively.

III. TAX MEASURES TAKEN FOR THE PROTECTION OF INDIVIDUALS WITH SPECIAL NEEDS

To evaluate whether we have moved towards the construction of the “system”, the focus of this work has to be the presentation of a simple outline of the tax measures that were enacted to develop the Act or this "historical haste" which have become the tax measures taken to assist people with special needs.

Simple visualisation has to be sufficient to substantiate both our point of departure and our conclusion: only transversality and interdisciplinarity will form “the system.” Precisely because we still lack a comprehensive system for everyone with special needs, this section has to distinguish the tax measures adopted for dependent persons, for minors, for persons classified as elderly, and finally, for those suffering from disability.

The main tax provisions adopted for people with special needs are tax benefits such as exemptions, reductions, deductions, or bonuses that directly affect this group. To achieve the aims outlined in this study, we intend to gather schematically those provisions adopted relative to the Law on Personal Income Tax,[8] which is the one that most influences the personal circumstances of the members of these groups.[9] We must also consider the measures that the State legislation has established that are applicable to all taxpayers regardless of their tax residence. However, we cannot and should not ignore the measures established by the autonomous communities of a common system that apply to taxpayers residing in the respective communities, which, too often, are not sufficiently considered or balanced when

[8] Personal Income Tax and partial amendment of the laws on business taxes, income tax on non-residents and wealth tax hereinafter Personal Income Tax Law, 35/2006, 285 (BOE 2006) [hereinafter Personal Income Tax Law].

[9] The foregoing does not mean that we cannot find in this as in any other category of persons with special needs, other extra-fiscal actions in the rest of the taxes that make up the Spanish system, measures that cannot even be enumerated in a work like the present. *See* Martínez & Lara, *Impuestos y Discapacidad*, *supra* n. 1, at 24.

dealing with fiscal responsibility.[10] Thus the need arises for each to be presented separately.

1. Dependent Persons

- Exemption from tax of the public benefits linked to care in the family and personal assistance, arising from the Act.[11]

- Exemption from capital gains tax produced by the transfer of the habitual residence of people with severe or high dependency.[12]

- Reduction in the overall tax base for the premiums paid to private insurance companies to cover exclusively the risk of dependence or serious dependency, as provided in the Act.[13]

- Exemption of earned income for dependent persons for contributions from social security systems made in their favor, up to a maximum annual amount of three times the Public Income Index of Multiple Effects, obtained in the form of income. This limit is taken together with the income derived from contributions to protected assets that disabled individuals eligible for such benefits can receive.[14]

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[10] Obviously, we cannot even summarize in a work like the present the various measures adopted by the different autonomous communities. However, to illustrate what we want to show we have incorporated some of the most representative examples.

[11] Personal Income Tax Law, at art. 7x.

[12] *Id*. at art. 33.4.

[13] *Id*. at arts. 51, 52.

[14] *Id*. at art. 7w.

- Exemption of the amounts received through a reverse mortgage for people in a situation of severe or high dependency.[15]

2. *Minors*

- Exemption from taxes of financial benefits received from public institutions for the fostering of minors, whether in the simple mode, permanent or prior to adoption or the equivalent under the laws of the autonomous communities including fostering in compliance with a court order for the minor to live with a person or family as provided by Organic Law 5/2000, January 12, governing the criminal liability of minors.[16]

- Exemption from taxes on public benefits for birth, delivery, adoptions, dependent children, and orphans and public maternity benefits received from the autonomous communities or local authorities.[17]

- Exemption from taxes on public benefits and family allowances received from any public authority, whether linked to birth, adoption, fostering or care of minor children.[18]

- Increased minimum protected income for offspring less than three years of age.[19]

<u>Andalusia</u>:

- Tax deduction of EUR 50 per child under three years who is part of the taxpayer's household when the taxpayer

[15] *Id*. at additional provision 15.
[16] *Id*. at art. 7i.
[17] *Id*. at art. 7h.
[18] *Id*. at art. 7z.
[19] *Id*. at art. 57.2.

would be entitled to receive financial assistance for a child under three years when another child is born.[20]

- Tax deduction for domestic help.[21]

- Tax deduction for the single parent.[22]

Aragon:

- Tax deduction on the birth or adoption of a third or subsequent child.[23]

- Tax deduction on the birth or adoption of a second child, when it suffers a degree of disability equal or superior to 33 percent.[24]

Canary Islands:

- Tax deduction for each child born or adopted in the tax period who is part of the taxpayer's household.[25]

- Tax deduction for childcare expenses.[26]

Cantabria:

- The taxpayer who is required to make a tax return may deduct EUR 100 for each child under three years of age.[27]

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[20] RDL 1/2009, 177, art. 10 (BOJA 2009).
[21] *Id*. at art. 15.
[22] *Id*. at art. 13.
[23] RDL 1/2005, 128. art. 110-2 (BOA 2005).
[24] *Id*. at art. 110-3.
[25] RDL 1/2009, 77. art. 10 (BOC 2009).
[26] *Id*. at art. 12.
[27] RDL 62/2008, 128. art. 2 (BOC 2008).

- Tax deduction for care of children fostered in the family.[28]

Castile-La Mancha:

- Tax deduction of EUR 100 for each child born or adopted in the tax period, provided that the taxpayer is entitled to apply the minimum protected income for offspring under state law on personal income tax.[29]

Castile-Leon:

- Tax deduction for the birth or adoption of children during the tax period generating the right to apply the "minimum for descendent" provided that the taxpayer is entitled to apply the minimum protected income for offspring regulated in the state law on personal income tax.[30]

- Tax deduction for multiple births or simultaneous adoptions.[31]

- Tax deduction for taxpayers who, because of their work, whether self-employed or working for others, have to leave their children in the care of a person employed as a domestic worker or in daycare or childcare centers.[32]

- Taxpayers who, at the date of a chargeable event, have a child under 4 years of age to whom the minimum protected income for offspring is applicable as governed by the law on personal income tax, may deduct 30 percent of the amounts paid in the tax period to social security as

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[28] *Id*.
[29] L 9/2008, 127. art. 1 (BOE 2008).
[30] RDL 1/2008, 190. art. 4 (BOCYL 2008).
[31] *Id*. at art. 4a.
[32] *Id*. at art. 6.

contributions for a worker falling within the special scheme for domestic employees, with a ceiling of EUR 322.[33]

Catalonia:

- Tax deduction for the birth or adoption of a child.[34]

Madrid:

- Minimum protected income for offspring under three years.[35]
- Tax deduction for birth or adoption of children and multiple births or adoptions.[36]
- Tax deduction for care of children fostered in the family.[37]
- Tax deduction for education expenses.[38]

Valencia:

- Tax deduction for birth or adoption and multiple birth or adoption.[39]
- Tax deduction for 15 percent of the amounts paid during the taxable period in daycare and early childhood education

[33] *Id.*
[34] L 21/2001, 22. art.1.3 (BOE 2002).
[35] RDL 1/2001, arts.2, 4, 6, and 11 (Dec. 28, 2001).
[36] *Id.* at art.4.
[37] *Id.* at art. 6.
[38] *Id.* at art. 11.
[39] L 13/1997, art. 4 (Dec. 23, 1997).

up to a maximum of EUR 270 for each child under age 3 in the taxpayer's custody.[40]

- Tax deduction of EUR 418 for each child over three years and under five years.[41]

Extremadura:

- Tax deduction for multiple births.[42]

- Tax deduction for fostering a child.[43]

Galicia:

- Tax deduction for birth or adoption of children or multiple births.[44]

- Taxpayers who because of their work, whether self-employed or working for others, have to leave their children in the care of a person employed by the household or in daycare or child care may deduct 30 percent of the amounts paid in the period, up to a maximum of EUR 200.[45]

- Tax deduction of EUR 300 for each child in simple foster care, permanent, temporary or pre-adoptive administrative or judicial foster care, formalized by the competent organ for children of the autonomous government of Galicia, provided that they live with the child for more than 183 days during the tax period and have no family relationship.[46]

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[40] *Id.*
[41] *Id.*
[42] L 19/2010, 19. art. 7 (BOE 2011).
[43] *Id*. at art. 8.
[44] L 14/2004, art. 1 (Dec. 29, 2004).
[45] *Id.*
[46] L 15/2010, art. 1.2 (Dec. 28, 2010).

La Rioja:

- Tax deduction for birth and adoption of the second or subsequent child.[47]

Asturias:

- Tax deduction for multiple births.[48]
- Tax deduction for care of children fostered in the family.[49]

Murcia:

- Tax deduction for childcare expenses for children less than three years of age.[50]

3. Elderly Persons

- Exemption from tax on financial benefits received from public institutions for the placement of people over 65.[51]
- Financial assistance granted by public institutions for persons over 65 to finance their stay in residential care or day centers, provided the rest of their income does not exceed twice the public income index of multiple effects.[52]
- Exemption from capital gains produced by the transfer of the habitual residence of persons over 65.[53]

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[47] L 10/2010, art. 2 (Dec. 16, 2010).
[48] L 13/2010, art. 2 (Dec. 28, 2010).
[49] *Id.*
[50] RDL 1/2010, art. 1.3 (Nov. 13, 2010).
[51] Personal Income Tax Law, at art. 7i.
[52] *Id.*
[53] *Id.* at art. 33.4.

- Exemption of the amounts received through a reverse mortgage for people of the residence by persons over 65.[54]

- Reduction of taxes on employment income for workers over 65.[55]
- Minimum protected income due to the taxpayer's age.[56]

- Minimum protected income when an ascendant over the age of 65 lives with the taxpayer and has no annual income.[57]

<u>Andalusia</u>:

- Tax deduction of EUR 100 for each ascendant who lives with single parent families, where they are entitled to the application of the minimum protected income for ascendants over 75 years.[58]

<u>Aragon</u>:

- Tax deduction of EUR 150 for the care of persons over 75 provided that they live at least half the year with the taxpayer and their annual income, excluding tax-free income, does not exceed EUR 8,000. The sum of the general tax base and the minimum savings per taxpayer and all descendants of the family unit cannot exceed EUR 35,000.[59]

<u>Canary Islands</u>:

- Tax deduction of EUR 120 for taxpayers aged 65 or over.[60]

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[54] *Id*. at additional provision 15.
[55] *Id*. at art. 20.2.a.
[56] *Id*. at art.57.
[57] *Id*. at art. 59.
[58] RDL 1/2009, at art. 13.
[59] RDL 1/200X, art. 110-5 (Apr. 21, 200X).
[60] RDL 1/2009, at art. 11.

Cantabria:

- Tax deduction of 10 percent up to an annual limit of EUR 300 of the amounts paid in the tax period for renting out their residence by taxpayers aged 65 or over.[61]

- The taxpayer who must file a tax return may deduct EUR 100 for each ascendant over the age of seventy.[62]

Castile-La Mancha:

- Tax deduction of EUR 100 for taxpayers over the age of 75.[63]

- Tax deduction of EUR 100 for each ascendant over the age of 75 for whom the taxpayer is caring, when the taxpayer is eligible for the application of the minimum protected income for ascendants over 75 years provided for in state law on personal income tax.[64]

Catalonia:

- Tax deduction for rental of the taxpayer's habitual residence when the taxpayer is a widow or widower and aged sixty-five or over.[65]

[61] RDL 62/2008, at art. 1.1.
[62] *Id*. at art.1.2.
[63] L 9/2008, at art. 4.1
[64] *Id.* at art. 4.2.
[65] L 31/2002, art. 1.1 (Dec. 30, 2002).

Madrid Community:

- Taxpayers can deduct EUR 900 per person over sixty-five who lives with the taxpayer for more than one hundred eighty three days a year as a member of the family without making payment when it does not give rise to obtaining grants or subsidies from the Community of Madrid.[66]

Valencia Community:

- Tax deduction for ascendants over 75 years of age.[67]

Balearic Islands:

- Tax deduction of EUR 50 for the Balearic Islands residents aged 65 or over.[68]

Principality of Asturias:

- The taxpayer may deduct EUR 341 for every person over 65 who lives with him for more than 183 days a year as a member of his family without compensating him.[69]

4. *Persons with disabilities*

- Financial assistance received from public institutions for fostering people with disabilities.[70]

- The financial support granted by public institutions for people with disabilities with a degree of disability equal to or greater than 65 percent to finance their stay in residential or day care is exempt from tax, provided the rest of their

[66] RDL 1/2010, art. 7 (Oct. 21, 2010).
[67] L 6/2007, art. 4.1h (Dec. 23, 2007).
[68] L 6/2007, art. 3 (Dec. 27, 2007).
[69] L 13/2010, at art. 2.
[70] Personal Income Tax Law, at art. 7i.

income does not exceed twice the public income index of multiple effects.[71]

- Exemption from tax for the taxpayer of non-contributory family benefits received from social security for dependent children with disabilities.[72]

- Exemption from tax of benefits from social security or substitute institutions received as the result of permanent disability (total or high degree of invalidity) whatever the cause.[73]

- Exemption from tax of unemployment benefits in the form of a lump sum received by workers who are disabled to enable them to become self-employed.[74]

- Tax exemption for the benefits obtained in the form of disability payments corresponding to contributions to social security systems made in the taxpayer's favor, as well as employment income derived from contributions to protected capital, up to a maximum annual amount of three times the minimum wage.[75]

- Reduction for people with disabilities who receive income from work as active workers.[76]

- Reduced salary calculation as liable to tax for active workers who prove the need for help from third parties or

[71] *Id.*
[72] *Id*. at art. 7h.
[73] *Id*. at art. 7f–g.
[74] *Id*. at art. 7n.
[75] *Id*. at art. 7w.
[76] *Id*. at art. 20.3.

with reduced mobility, or a degree of disability equal to or greater than 65 percent.[77]

- In the system for determining salaries an objective assessment method shall quantify as liable to tax 60 percent of actual salary for salaried staff with a degree of disability equal to or higher than 33 percent, and if non-salaried, the calculation is 75 percent.

- Reduction for persons with disabilities whose net income results from the realization of economic activities.[78]

- Reduction of tax liability for persons with disabilities who effectively exercise an economic activity and who have an accredited need for help from third parties or with reduced mobility by at least 65 percent.

- Reduction in the tax base for contributions to social security systems (pensions, mutual welfare, secured pension plans, corporate pension plans, and dependency insurance) for persons with disabilities. The contribution must be made for people with a physical disability or sensory impairment equal to or greater than 65 percent or mental disability equal or greater than 33 percent, or with legally declared disability regardless of the degree.[79]

- Contributions to these social security systems in favor of persons with disabilities are not subject to inheritance and gift tax.[80]

- Reduction for contributions for protection of capital for persons with disabilities (physical or sensory disability equal to or greater than 65 percent or mental disability

[77] *Id*.
[78] *Id*. at art. 32.2.
[79] *Id*. at art. 53, additional provision 10.
[80] *Id*. at art. 53.3.

equal to or greater than 33 percent). The excess over the limits of the reductions will be taxed as inheritance and gift tax.[81]

- Minimum protected income for disability of the taxpayer.[82]

- Minimum protected income for disability of ascendant.[83]

- Minimum protected income for disability of offspring.[84]

- Minimum protected income for expenses for caring for each ascendant or descendant who needs help from other persons or with reduced mobility, or degree of disability equal to or greater than 65 percent.[85]

- Deduction in the amount of tax for works and installations made in the taxpayer's habitual residence required by reason of the disability of the taxpayer, spouse or any relative within the third degree including directly or collaterally, by consanguinity or affinity, who lives with him. It also applies to the co-owners of the property where the residence is located for works of modification of the common elements of the building to serve as a necessary step between the property and public access, as well as to the necessary installation of electronic devices to overcome barriers to sensory communication or promoting safety.[86]

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[81] *Id*. at art. 54.
[82] *Id*. at art. 60.1.
[83] *Id.* at art. 60.2.
[84] *Id.*
[85] *Id*. at art. 60.
[86] *Id*. at art. 68.4.

Andalusia:

- For the taxpayer's disability. Taxpayers who are legally considered as persons with a disability equal or greater than 65 percent are entitled to a deduction from personal income tax of EUR 100, provided that the sum of the taxable incomes and savings generally does not exceed EUR 19,000 in case of individual taxation or EUR 24,000 in case of joint taxation.[87]

- For the disability of ascendants or descendants. Taxpayers who are entitled to the application of minimum protected income for disability of descendants or ascendants in accordance with the applicable state law on personal income may deduct from the regional tax the amount of EUR 100 per person with disability, provided that the amount of taxable income and savings generally does not exceed EUR 80,000 in individual taxation or EUR 100,000 in case of joint taxation.[88]

- For care: when it is proven that people with disability need the help of third parties and have the right to the application of the minimum protected income for care costs according to state law on personal income tax, the taxpayer may deduct 15 percent of the amount paid to social security from the regional tax by way of a fixed fee of the employer's contribution in accordance with the provisions of the special provisions of the social security for fixed domestic workers with a limit of EUR 500 per taxpayer per year.[89]

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[87] RDL 1/2009, at art. 12.
[88] *Id*. at art. 14.1.
[89] *Id*. at art. 14.2.

- Taxpayers who are single parents at the date of accrual of the tax shall be entitled to apply a deduction of EUR 100 from regional personal income tax provided that the sum of the general tax base and savings does not exceed EUR 80,000 in individual taxation or EUR 100,000 in the case of joint taxation.[90]

Aragon:

- Tax deduction on the birth or adoption of a second child, who has a degree of disability equal to or greater than 33 percent.[91]

- Tax deduction of EUR 150 for the care of an ascendant or descendant with a degree of disability equal to or greater than 65 percent, irrespective of age as long as the person lives at least half the year with the taxpayer and the person's annual income, excluding exemptions, does not exceed EUR 8,000. The sum of the general tax base and of savings shall be reduced by the minimum per taxpayer and for all descendants of the family unit but cannot exceed EUR 35,000.[92]

Canary Islands:

- Taxpayers ordinarily residing in the Canary Islands who make a cash donation to their offspring or adopted children who are legally recognized as persons with disabilities exceeding 33 percent may deduct 2 percent of the amount donated from their regional tax up to EUR 480 per donee if

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[90] *Id*. at art. 13.
[91] RDL 1/2005, at art. 110.3.
[92] *Id*. at art. 110.5.

the donation is destined for the acquisition or rehabilitation of the main residence of the donee in the Canary Islands. If the degree of disability is not less than 65 percent the taxpayer may deduct 3 percent with a limit of EUR 720.[93]

- Tax deduction for each child born or adopted who has a physical or mental disability, or sensory impairment of more than 65 percent.[94]

- Tax deduction of EUR 300 for taxpayers with disabilities greater than 33 percent.[95]

- Tax deduction for large families when one of the spouses or offspring to whom the personal and family minimum protected income for tax applies has a degree of physical or mental disability or sensory impairment of at least 65 percent. The deduction will be EUR 500 and EUR 1,000 respectively.[96]

- Tax deduction of 0.75 percent for investment in works of adaptation of the habitual residence by persons with disabilities.[97]

<u>Cantabria</u>:

- Deduction of 10 percent up to EUR 300 of the amounts paid in the tax period for renting a principal residence when the taxpayer has a legally recognized physical, mental or sensory impairment with a degree of incapacity of at least 65 percent according to the schedule to which Article 148

[93] RDL 1/2009, at art. 9.
[94] *Id*. at art. 10.
[95] *Id*. at art. 11.
[96] *Id*. at art. 13.
[97] *Id*. at art. 14b.

of the Consolidated General Law on Social Security refers, approved by Royal Legislative Decree 1/1994, 20 June.[98]

- The taxpayer who must file a tax return may deduct EUR 100 for each ascendant or descendant legally recognized as having a physical, mental or sensory impairment of at least 65 percent and who lives with the taxpayer at least 183 days per year and whose income is no more than EUR 6,000.[99]

<u>Castile-La Mancha</u>:

- Tax deduction of EUR 300 for taxpayers with disabilities who have an accredited degree of disability equal to or above 65 percent and who are entitled to the application of the minimum protected income for disability of the taxpayer, as provided in the State Law on Personal Income Tax.[100]

- Tax deduction of EUR 200 for each ascendant or descendant with an accredited degree of disability equal to or above 65 percent if the taxpayer is entitled to the application of minimum protected income for disability of ascendants or descendants, respectively, established by the state law on personal income tax.[101]

- Tax deduction of 1 percent of the amount spent during the period in question for investment to make a residence suitable for persons with disabilities.[102]

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[98] RDL 62/2008, at art. 2.1.
[99] *Id.* at art. 2.2.
[100] L 9/2008, at art. 2.
[101] *Id.* at art. 3.
[102] *Id.* at art. 6.

Castile-Leon:

- Tax deduction of EUR 492 when either spouse or children to be computed to quantify for the minimum protected income for descendents regulated by the state law on personal income tax, has a degree of disability of at least 65 percent.[103]

- Deduction for the birth or adoption of children having a recognized degree of disability of at least 33 percent, generating entitlement to apply the minimum protected income for descendants regulated by the state law on personal income tax.[104]

- Tax deduction for taxpayers resident in Castile-Leon affected by disability.[105]

- Tax deduction for investment in environmental facilities and adaptation in the habitual residence for persons with disability.[106]

Catalonia:

- Deduction for rent paid for the habitual residence of the taxpayer with a degree of disability equal to or greater than 65 percent.[107]

- An increase in the percentage of the deduction for investment in the habitual residence to 6.45percent for taxpayers with a degree of disability equal to or greater than 65 percent.[108]

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[103] RDL 1/2008, at art. 3.
[104] *Id.* at art. 4.
[105] *Id.* at art. 7.
[106] *Id.* at art. 9b.
[107] L 31/2002, at art.1.
[108] *Id.*

- An increase in the percentage of deduction for adapting the habitual residence of persons with disabilities to 8.6 percent.[109]

Community of Madrid:

- Tax deduction of EUR 900 for each disabled person with a degree of disability equal to or greater than 33 percent living with the taxpayer for more than one hundred eighty three days a year as a member of the family without compensating the taxpayer when it does not result in obtaining grants or subsidies from the community of Madrid.[110]

- Tax deduction for the increased costs of borrowing funds for investment in a habitual residence resulting from higher interest rates.[111]

Valencia:

- Tax deduction for birth or adoption of a physical or sensory disabled child with a disability equal to or above 65 percent, or with a degree of mental disability equal to or greater than 33 percent.[112]

- Tax deduction of EUR 179 for disabled taxpayers, with a degree of disability equal or superior to 33 percent, aged 65 years and over.[113]

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[109] *Id.*
[110] RDL 1/2010, at art. 7.
[111] *Id.* at art. 10.
[112] L 13/1997, at art. 4.1c.
[113] *Id.* at art. 4.1g.

- Tax deduction for ascendants over 65 with physical or sensory impairment, with a degree of disability equal to or above 65 percent, or who are mentally handicapped with a degree of disability equal to or greater than 33 percent.[114]

- Tax deduction for amounts paid for the acquisition of a habitual residence for people with physical or sensory impairment with a degree of disability equal to or greater than 65 percent, or mental disability with a degree of disability equal to or greater than 33 percent.[115]

- Tax deduction for renting a habitual residence when the tenant is physically disabled or suffers from sensory impairment with a degree of disability of at least 65 percent, or mentally disabled with a degree of disability of at least 33 percent.[116]

- Tax deduction for the increase in the cost of borrowing funds to invest in the habitual residence resulting from higher interest rates on mortgage loans.[117]

<u>Extremadura</u>:

- Tax deduction for renting a habitual residence for disabled persons with a degree of disability equal to or above 65 percent.[118]

- Tax deduction of EUR 150 for every ascendant or descendant with a legally recognized physical, mental or sensory impairment with a degree of disability equal to or above 65 percent.[119]

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[114] *Id.* at art. 4.1h.
[115] *Id.* at art. 4.1l.
[116] *Id.* at art. 4.1n.
[117] *Id.* at art. 4.1s.
[118] RDL 19/2010, art. 4 (Dec. 12, 2010).
[119] *Id.* at art. 5.

- Tax deduction for domestic assistance.[120]

- Tax deduction for a single parent.[121]

- Tax deduction for improvement works in the habitual residence.[122]

Galicia:

- Tax deduction for large families when one of the spouses or children to whom the personal and family minimum applies has a degree of disability equal to or greater than 65 percent.[123]

- Tax deduction for taxpayers aged 65 and over affected by a degree of disability equal to or greater than 65 percent and requiring the help of third parties.[124]

Balearic Islands:

- Tax deduction of 15 percent of contributions paid during the tax period up to a maximum of EUR 300 for disabled taxpayers with a degree of disability equal to or greater than 65 percent.[125]

- Tax deductions for each taxpayer and, where applicable, for each member of the household living in the Balearic

[120] L 19/2010, at art. 2.
[121] *Id.* at art. 6.
[122] *Id.* at art. 9.
[123] L 14/2004, at art. 1.
[124] *Id.* at art. 4.
[125] L 6/2007, at art. 5.

Islands legally recognized as a person with physical, mental or sensory impairment.[126]

- Tax deduction for adaptation works for the habitual residence for people with disabilities.[127]

- Tax deduction for sums paid out as transfer taxes and documented legal acts, in the form of onerous transfer of property by reason of the acquisition of a habitual residence for a disabled person with a degree of disability equal to or greater than 65 percent.[128]

- Tax deduction for fees paid out as transfer taxes and documented legal acts during the purchase of a habitual residence for a disabled person with a degree of disability equal to or greater than 65 percent.[129]

- Tax Deduction for sums paid out as transfer taxes and documented legal acts during the purchase of a habitual residence qualified as protected by the Administration for a disabled person with a degree of disability equal to or greater than 65 percent.[130]

Asturias:

- Tax deduction for the purchase or adaptation of a habitual residence in the Principality of Asturias for taxpayers with disabilities.[131]

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[126] *Id.* at art. 6.
[127] L 1/2009, art. 2 (Feb. 25, 2009).
[128] *Id.* at art.3.
[129] *Id.* at art.4.
[130] *Id.* at art.6.
[131] L 13/2010, at art. 2.2.

- Tax deduction for the purchase or adaptation of a habitual residence for taxpayers who live with their spouses, ascendants or offspring with disabilities.[132]

- Tax deduction for single parents with adult children with disabilities.[133]

IV. BY WAY OF EPILOGUE

In conclusion, the fiscal stimulus measures, although absolutely necessary to address the problems under study, are by themselves clearly insufficient even when they do not mask the inability of public authorities to establish a proper system of protection for people with special needs. As we have mentioned, there are a number of reasons for this.

In part, it is because the measures taken have been drafted in "historic haste" at both state and autonomous community levels. In the state legislation, the measures set out are not sufficiently calibrated to ensure their sustainability as they apply to the different groups and situations of people with special needs. Indeed, because they developed unsystematically they are short-term solutions in nature and they lack internal consistency.

The measures taken at the regional level also present a number of issues. First, they create a lack of legal certainty due to constant changes in regulations so that it is difficult to know with certainty what the current text is, the extent to which it is applicable in a given tax period, and how funds may be allocated in the budget. This is exacerbated by the existing regulatory dispersal. Second, their limited effectiveness cannot pass without

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132 *Id.* at art. 3.
133 *Id.* at art. 12.

comment as in most cases, the deduction amounts are insignificant. Additionally, while the different protection systems cannot be classified, it is obvious that there are undesirable differences in the treatment different groups receive according to their tax residence in one autonomous community or another.

Moreover, assistance that relies exclusively on tax measures is clearly insufficient because its scope only benefits persons who, while having special needs, also have some source of income subject to taxation or available capital, leaving outside their protection precisely those with special needs who most require assistance.

Precisely for the reasons stated, when articulating the structure of this work, we chose to start, after a few lines explaining the Spanish context, by presenting the financial architecture offered by the law on dependency. This law attempts to involve all the powers of the state—territorial and institutional and all actors—both public and private—who are part of the fabric of our society. This signals a pathway directed to creating a system that provides comprehensive protection, a system which, with the necessary adaptations and regulatory developments, can exponentially improve the existing protection and is effective as well from the tax perspective.

However, we cannot ignore the fact that there are perspectives that remain to be analysed that are possibly the most important of the measures implemented from the fiscal point of view: their effectiveness, their level of efficiency, and sustainability. We fear greatly that the absence of such analysis[134] serves only to legitimize the deficiencies listed, which are tragically common to most of the measures discussed in this

[134] In this sense, we continue to work within the framework of the Research project of National Plan *Las medidas fiscales como instrumento de protección de la familia: personas con discapacidad versus dependencia. Evolución y eficiencia de las medidas estatales y autonómicas [Fiscal Measures as a Protective Instrument of the Family: Dependency versus Disability. Evolution and Efficiency of State and Regional Measures]*, which is financed by the Ministry of Science and Innovation.

"historical haste" and especially those included within the fiscal perspective. Indeed, save for some honourable exceptions,[135] few studies are oriented in this direction, and without their conclusions we can hardly build a true "system." A report on the economic effect of a law or a measure is not enough; there has to be an analysis of its effectiveness and efficiency, as well as a comprehensive costing of the package of measures to enable us to judge the overall sustainability of the "system" precisely so that it can exist. This is a clear demonstration of the need for interdisciplinary action, which will include the area of taxation, to guide these instruments towards providing a fiscal stimulus for families, caregivers, and private actors, to cooperate in the development of these essential functions. As we have tried to show, strictly sectorial measures are totally inadequate to achieve a comprehensive response to the problem under study, even in the legal field.

In a previous work,[136] we reflected on the use of two legal institutions that could contribute to advance the instruments of equality required by people with special needs: charitable and other foundations, and the so-called individualized dependence assistance. But in that work we enumerated the almost endless possible actions of the various branches of the legal system that, in coordination, could provide a comprehensive response to the situations analyzed.[137] We demanded action—as we still demand

[135] See the work of Martos García & Espín Marín, *Análisis económico tributario de la discapacidad en el IRRPF [Economic Analysis of Disability Tax in IRRPF]* (2002–2004).
[136] Martínez & Lara, *El estatuto patrimonial*, *supra* n. 1, at 195.
[137] Among many others, we should probably act on the very concept of family or household, so that the actions do not focus on the subject of allocation rules, or on ascendants or descendants, otherwise other situations of legal guardianship will arise. Survival situations for progenitors had to be contemplated as well as supervening or future disabilities to regulate the instruments that will enable architectural barriers to be removed. We also studied the non-physical barriers that could give the dependent person self-determination such as promoting policies of job placement or self-employment for the disabled or conciliating the work of non-professional caregivers. The policies of individual local authorities with competences in the matter should be coordinated; legislation and civil procedure governing the assets of the disabled themselves should be instituted. On successions

it—to establish a global framework that would ensure true compliance with the constitutional mandates that require protection of the groups analysed.

It would be extremely unfair if we concluded this epilogue stating that in the first decade of the new century there has been little progress on this matter in our country. On the contrary, many things have been done and they have been good. Chief among them, for example, are the law on the assets of the disabled just referred to; the reform of the law governing funds and pension plans; the legal regime of the reverse mortgage; or the great advance resulting from the implementation of the regulation of insurance on dependency. However, until progress is made on the interdisciplinarity and the transversality of the measures adopted;[138] even with new and better tools, we still lack the "system" and a transversal and interdisciplinary treatment that is able to build a comprehensive legal framework to provide the necessary assistance—on pre-established principles of universality, quality and sustainability—for people with special needs.

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and donations, the institution of guardianship should be reformed, allowing future planning. Procedural law on the declaration of disability should be studied in depth. Existing institutions should be introduced into the law of the autonomous communities such as self-guardianship or preventive guardianship.

[138] For further development of what we have only been able to point out here see our work Juan López Martínez & José M.Pérez Lara, *La protección trasversal e interdisciplinar de las personas con necesidades especiales. Un apunte desde el ordenamiento tributario [Transversal and Interdisciplinary Protection of Persons with Special Needs. A Note from the Tax System]*, in *Estudios sobre dependencia y discapacidad* (Aranzadi, Thomson Reuter 2011).