

TAX ALERT

February 2013

New Reporting Obligation of Foreign Assets and Rights

Within the new anti-fraud legislative framework recently launched by the Spanish Government, the Royal Decree 1558/2012 establishes the obligation to annually report the assets and rights located abroad to the Spanish Tax Authorities.

The deadline for filling the reports (Form 720) will be April 30th, 2013¹ and must be filled online by an entity or person authorised or certified to do so.

- Persons and entities subject to the obligation

The Royal Decree subjects all natural or legal persons resident in Spain and permanent establishments in Spain of non-resident entities to the obligation to disclose their foreign assets.

It is important to point out that, reportedly, that taxpayers subject to the Special Personal Income Tax regime for impatriates are not subject to this obligation.

- Assets and rights

The law distinguishes three categories of assets to be declared: accounts, values and property.

a. Values:

- (i) Securities and rights representing ownership in any type of legal entity.
- (ii) Securities representing the transfer of own equity to third parties.
- (iii) Securities transferred in order to be managed by any type of legal instrument, including fiduciary agreements and trusts, which although lacking legal entity are entitled to operate in the course of trade.

¹ For subsequent years, March 31st of the year following that for which the information must be reported.

The law extends these obligations to:

- The natural person who ultimately owns or controls, directly or indirectly, a percentage higher than 25% of the capital or voting rights of a legal person, or by other means exercising control, direct or indirect of the management of a legal person. An exception is a company listed on a regulated market in the European Union or third country's equivalent.
- The person or persons who hold or exercise control of 25% or more of the property of a legal instrument, or the person who administers or distributes funds or when beneficiaries are yet to be determined, the class of persons in benefit of which is set up or operates.

(iv) Insurance in which the individual is the policyholder.

(v) Life-long or temporary annuities.

These obligations - (i) to (v) - extend not only for positions at December 31st, but to any individual who became holder at any time during the year.

b. Accounts:

- (i) Accounts located abroad, in financial entities, in which the taxpayer is the titleholder, or in which he or she is a representative, authorised person, or beneficiary, or in which he or she has disposal powers.

This obligation is also extended to those who were titleholders, representatives, authorised persons, beneficial owners or in which he or she had disposal powers of foreign accounts at any time throughout the year for which the information must be reported.

c. Property:

- (i) Real estate located abroad and/or associated property rights.

- Exceptions

These provisions will not apply and, therefore, there will be no reporting obligation for those:

- Assets or rights whose value is lower than EUR 50,000 (considered in the aggregate for each group of assets listed above).
- Legal and other entities, as well as non-resident's permanent establishments in Spain will not have to declare the accounts, securities, shares, insurance,

incomes, or properties legally and individually recognized in their accounts, on an itemized and detailed basis.

- Individuals who carry on an economic activity and keep their accounts in accordance with the Commercial Code. They will not have to declare accounts and properties that are itemized and detailed in their accounting records.

The following year, the information returns should be filed only if:

- the values of assets or rights already reported have increased (unless the increase does not exceed EUR 20,000); or
- in certain cases where the ownership of those assets or rights is relinquished.

- Penalties

The Royal Decree provides that filing incomplete, inaccurate or incorrect reports will be considered as an infringement to Spanish tax duties, involving penalties of €5,000 per each piece or set of data omitted, with a minimum of €10,000.

In the case of missing the deadline, that is the aforementioned April 30th (in future years March 31st), the penalty will be €100 per each piece or set of data relating to each asset taken on an individual basis according to its class, with a minimum of €1,500.

In the event of failure to file, the undeclared income arising from the asset will be deemed to occur in the last non-prescribed tax year – four years in most cases. This effectively abolishes the statute of limitations. The consequences of not complying with these obligations will result in:

- Taxation applying the standard Personal Income Tax rates where the top rate could be over 50% (even if the income would normally have been taxed under the savings income regime).
- Late payment interest for the last four years.
- Penalties, which can be as high as 150% of the total tax due on the asset.
- A fine of €5,000 per each piece of unreported data, with a minimum of €10,000.