



GES NewsFlash

Spain — Foreign Asset Reporting Requirement

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Royal Decree 1558/2012 of 15 November, adapting the implementing provisions of general taxation law 58/2003 of 17 December, to European community and international legislation on mutual assistance introduces disclosure obligations concerning assets and rights located abroad and amends the regulations on direct taxation mutual agreement procedures, approved by Royal Decree 1794/2008, of 3 November.

1. Disclosure obligation concerning assets and rights located abroad

On 31 October 2012, Law 7/2012 of 29 October amends the tax and budgetary legislation and adapts financial legislation for the intensification of activities to prevent and combat fraud came into force.

A significant development introduced by this legislation is the new Additional Provision Eighteen of General Taxation Law 58/2003, which establishes an annual obligation to inform the tax authorities of assets and rights located abroad. This new development has been implemented by Royal Decree 1558/2012 described here.

1.1 Persons and entities obliged to declare/report

Individual taxpayers (considered as regular Spanish tax residents) and legal entities resident in Spain, permanent establishments in Spain of nonresident entities, and the entities indicated in Article 35.4 of the General Taxation Law¹.

1.2 Assets and rights that must be declared/reported

Three categories of assets are specified:

- a) Accounts located abroad, opened at institutions engaged in the banking or credit business, of which they are the holders, representatives, authorized persons, or beneficiaries or over which they have powers of disposal or are the beneficial owners thereof², although no remuneration has been received. The obligation is not limited to positions at 31 December but also extends to those who have been the holders, representatives, authorized persons, or beneficiaries of the aforementioned accounts; had powers of disposal over them; or have been the beneficial owners thereof at any time in the year to which the return refers.
- b) Securities or rights representing an interest in any type of legal entity, securities representing the transfer to third parties of own equity, and securities contributed for the management or administration thereof to any legal instrument “**including trusts (“fideicomisos”) or assets that, although they lack legal personality, may act in economic dealings**”. Likewise, shares or investments in collective investment undertakings, life or disability insurance of which they are holders, and temporary or life annuities of which they are beneficiaries. The obligation extends to both nominal and beneficial owners, should they be different, and not only to positions at 31 December, but also to any parties who became holders at any time during the year.
- c) Properties and rights over properties of which they were the owners or beneficial owners at any time in the year.

1.3 Information to be provided/reported

The following data, inter alia, must be reported:

- a) Accounts: Balance at 31 December and average balance in the last quarter; business or company name of the bank or credit institution and registered office; complete identification of the accounts and date of opening or cancellation thereof, as applicable.
- b) Securities, investments, insurance, and returns: Identification of the legal instrument or relationship involved, number and class of shares, and value at 31 December, or, as applicable, at the date of extinguishment of the ownership or legal relationship. The valuation shall be made in accordance with Wealth Tax rules.
- c) Properties: Identification of the property, type, location, date, acquisition value, and, as applicable, transfer value. In the case of timeshares or similar schemes, rights in terms of use and enjoyment, and bare ownership, valuation shall be made in accordance with Wealth Tax rules.

1.4 Exceptions

The obligation to declare will not apply in the following cases:

- 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. This exception does not extend to securities, shares, insurance, and incomes.
- Legal and other entities, as well as permanent establishments in Spain of nonresidents will not have to declare the accounts, securities, shares, insurance, incomes, or properties recognized in their accounts on an itemized and detailed basis.
- Accounts where, for the total accounts, neither the balance at 31 December nor the average balance in the last quarter exceeds €50,000.
- Securities, investments, insurance, and returns where, taking such assets as a whole, their value does not exceed €50,000.
- Properties where the value of properties, taken as a whole, does not exceed €50,000.

1.5 Period for filing the return

The information relating to 2012 must be reported between 1 February and 31 April 2013.

In general, the reported assets and rights must be declared once again in the following year if there has been an increase in their value of over €20,000 from the value reported in the previous return in the related asset category. Similarly, they must be declared in the period in which ownership thereof is cancelled or extinguished.

The form for the return was approved by ministerial order on 30 January 2013.

1.6 Consequences in the event of breach. Infringement/penalty scheme

Failure to file or filing incomplete or inaccurate informative returns or returns including false information are considered very serious infringements, involving penalties of €5,000 per each piece or set of data omitted, with a minimum of €10,000.

In the case of filing outside the deadline, 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 addition, it should be noted that Law 7/2012 introduced an amendment to Personal Income Tax Law 35/2006, whereby "*the holding, declaration or acquisition of assets or rights with respect to which the period established for the purposes of the disclosure obligation referred to in Additional Provision Eighteen of the General Taxation Law has not been observed shall be deemed to be unjustified capital gains and included in general taxable base for the oldest tax period of the periods that have not been prescribed and can be regularized.*"

It is of particular note that this legislation can be activated even if the obligation to declare assets abroad has been complied with outside the deadline.

In addition, the only exception allowed is cases where the taxpayer can evidence that the ownership of the assets or rights corresponds to income that had already been declared or to income obtained in tax periods in which the taxpayer was not considered to have such status (e.g., due to being a resident of another country). In other words, it will not be sufficient to demonstrate, as has been the case up until now, that the assets or rights were already held in prescribed periods.

2. Entry into force

Final Provision Three of Royal Decree 1558/2012 establishes that the obligations discussed in this **document will be required for the first time for reporting purposes in relation to 2012.**

Deloitte's view

- The Spanish Tax Authorities confirmed on 18 February 2013 through their webpage that the Foreign asset reporting obligation will only be applicable to regular Spanish tax resident individuals and not to those individuals who are taxed in Spain according to the special tax regime (so-called "Beckham's Law").
- As a consequence, assignees who were tax resident in Spain during year 2012, but taxed according to this special tax regime will not be obliged to file Form 720 (Foreign Asset Reporting Form). However, their spouses, if they were regular Spanish tax resident in 2012 might have this reporting obligation on his or her own.
- Since the noncompliance of the disclosure obligation could imply significant penalties, it is very advisable that this obligation is met.
- The information must be reported through the tax form 720, which was approved on 30 January 2013.

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¹ Article 35.4 of the General Taxation Law (LGT) refers to "inheritances in abeyance, community properties and other entities which, lacking legal personality, constitute an economic unit or separate assets capable of being taxed"

² "Beneficial owner" shall be the definition of such term provided for in Article 4.2 of Law 10/2010, of 28 April, on the Prevention of Money Laundering and the Financing of Terrorism, with respect to accounts held in the name of persons residing or established abroad.

In this respect, in accordance with the aforementioned provision, "beneficial owner" shall mean:

- a) The individual(s) on whose behalf there is an intention to establish a business relationship or enter into any transactions.
- b) The individual(s) who ultimately hold or control, either directly or indirectly, over 25% of the capital or voting rights of a legal entity or who, by other means, exercise direct or indirect control over the management of a legal entity. Companies that are listed on a regulated market of the European Union or equivalent third countries are excluded.
- c) The individuals(s) who are the holders of, or who exercise control over, at least 25 % of the assets of an instrument or legal entities that administer or distribute funds or, where the beneficiaries have yet to be designated, the category of persons for which benefit it has been created or for whom the legal entity or instrument principally acts.

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