

C/M/S/ Albiñana & Suárez de Lezo

TAX ALERT

Tax Alert – First special additional provision Royal Decree Law 12/2012

In this alert:

The tax repercussions of the recently approved Ministerial Order HAP/1182/2012, of 31 May, in development of the first additional provision of Royal Decree Law 12/2012, of 30 March, introducing a number of tax and administrative measures in an attempt to reduce the public deficit.

Order HAP/1182/2012 developing Royal Decree Law 12/2012, of 30 March, on the so-called "tax amnesty" (PDF in Spanish)

Dear reader,

We are pleased to send you this new alert as a continuation of the special April alert, on measures introduced by Royal Decree Law 12/2012 ("Royal Decree Law 12/2012"), and in view of the recent publication in the Spanish State Gazette of the Ministerial Order passing Form 750, governing the general conditions and procedure for submission of special tax declarations under the first additional provision of Royal Decree Law 12/2012, the so-called "tax amnesty".

We have prepared this Alert in order to summarise the key elements that must be taken into account in the context of this new development, in view of the urgency of fully understanding the tax implications and practical application of a voluntary tax regularisation. This will be applied with immediate effects and, in some cases, it may be advisable to do so prior to the end of the voluntary declaration period for Personal Income Tax (PIT) or Non-Resident Income Tax (NRIT) for the 2011 tax period.

As always, you will also find some of our own preliminary observations, and accordingly we advise the reader to interpret these with the necessary caution in view of the very recent nature of the new regulation.

The Tax Team at CMS Albiñana & Suarez de Lezo is confident that you will find this information useful and should you require any further information, or clarification on any point contained herein, please do not hesitate to contact us at any time.

Best wishes,

Víctor Hernán
Partner

Tax Law Department

CMS Albiñana & Suárez de Lezo.

Génova 27,
28804 Madrid

Telephone: +34 91 451 93 00

Víctor Hernán victor.hernan@cms-asl.com

Javier Lorite javier.lorite@cms-asl.com

Raúl Bañó raul.bano@cms-asl.com

María González maria.gonzález@cms-asl.com

Álvaro Ledesma alvaro.ledesma@cms-asl.com

Felipe Masa felipe.masa@cms-asl.com

Diego de Miguel diego.demiguel@cms-asl.com

Gonzalo Oliete gonzalo.olieta@cms-asl.com

Summary of content

Royal Decree Law 12/2012, following its amendment by Royal Decree 19/2012 of 25 May, on urgent measures to liberalise trade and certain services (PDF in Spanish)

- Two new sections, nos. 6 & 7, are included in first additional provision of Royal Decree Law 12/2012, in order to establish the value of assets or rights declared, for tax purposes, as well as certain preventive measures to ensure full taxation.

Order HAP/1182/2012, of 31 May, developing the first additional provision of Royal Decree Law 12/2012 (PDF in Spanish)

- Legal character of the special tax declaration (the "Declaration"), the effects thereof, declarants and assets to declare, and their value.
- Approval and submission of Form 750.
- Relevant deadlines.

Order HAP/1181/2012, de 31 May, approving Form 250, Special levy on foreign origin dividends and sources of income resulting from the transfer of securities representing equity of entities not domiciled in Spain (PDF in Spanish)

- Approval of Form 250 to be submitted within 25 days calendar days following accrual date. However, for accruals occurring prior to publication of the Order in the Spanish State Gazette, the deadline for submissions will be 25 June 2012

In-Depth Review

First additional provision of Royal Decree Law 12/2012 and Order HAP 1182/2012

Legal character of the special tax declaration

This Declaration figures within the self-assessment tax return although cannot be interpreted as conducive to self-assessment of a tax obligation accrued previously.

The data and information concerning the Declaration will be confidential, pursuant to Article 95 of the General Tax Law.

Observations

By being a self-assessed tax declaration, the State is entitled to check the data included therein and, where appropriate, order the necessary payments. The Tax Authority may, for example, check the value declared as acquisition value.

As regards its confidential nature, the special tax declaration upholds the same confidentiality standards as all other data obtained by the Tax Agency. In general, data, reports or background information obtained by the Tax Authority in the performance of its duties will be confidential. Data may be transferred third parties for the purposes of, among others, collaboration with: jurisdiction bodies or the Public Treasury in certain cases, other tax authorities, and the Labour and Social Security Inspectorate.

Taxpayers able to submit a Declaration

Provided no investigation or verification proceedings have been undertaken with respect to the assets or rights to be included in the Declaration, this may be submitted by the owners thereof, being taxpayers subject to Personal Income Tax (PIT), Corporate Income Tax (CIT) or Non-Resident Income Tax (NRIT).

When the legal titleholder of an asset does not have their tax domicile in Spain and is not the same as the real title holder, the latter may submit the Declaration on behalf of the former, provided that prior to 31 December 2013 it holds said legal title.

Observations

The second paragraph of the above point was introduced into the first additional provision of Royal Decree Law 12/2012 subsequent to publication in the State Gazette, via Royal Decree Law 19/2012. This allows opaque corporate structures, such as trusts, to be regularised, which are typical of common law jurisdictions, provided that they are dissolved or changed to constitute a direct holding or legal title of the assets or rights declared by the PIT, CIT or NRIT taxpayer.

Assets and rights subject to Declaration

All types of assets and rights in general acquired before 31 December 2010, provided their ownership corresponds to income either partially or totally undeclared in the PIT, CIT or NRIT returns, may be included in said Declaration.

Due to being cash funds, it must be stated that the declarant was title holder thereof on 31 December 2010, provided that prior to submission they have been deposited in an account opened with a credit institution domiciled in an EU member state or an EEA member state that has signed an treaty with Spain for the prevention of double taxation and a provision for the exchange of tax information.

Identification information must be included with the acquisition amount or values of assets to be included in the Declaration.

Observations

In the final wording of Order HAP/1182/2012, with regard to cash funds and the State of residence of the credit institution where the bank account must be opened, the intention of excluding countries such as Switzerland or Lichtenstein is clear.

As regards the identification of assets to be declared, Form 750 approved by Order HAP/1182/2012 only requires completion of the boxes corresponding to asset type, % ownership, identification details and location (for real estate property), country of location, date of acquisition and value.

Tax basis and value of assets and rights subject to the Declaration

The assets and rights shall be declared by their acquisition value which will be valid for PIT, CIT or NRIT purposes, as applicable, from the date of submission of the Declaration. However, when ownership of these partially corresponds to declared income, these shall maintain the tax value prior to submission of the Declaration.

Moreover, where acquisition value is greater than market value, for the purpose of future transfers, only losses or, where applicable, negative returns, will be accounted for, insofar as they exceed the difference between both values.

Being cash funds, the amounts shall be declared as total balance at 31 December 2010, in general terms. Larger balances existing prior to this date may be declared, provided the difference between both amounts had not been allocated to the acquisition of another asset or right subject to declaration.

Lastly, Royal Decree Law 19/2012 introduced a paragraph in clause 7 of First additional provision of Royal Decree Law 12/2012 to limit losses for impairment or transfer, as well as correction of the value of assets and rights subject to the Declaration, when the purchaser is a related individual or entity pursuant to Article 16 of the Corporate Income Tax Law.

Observations

As is mentioned in the preamble of Royal Decree Law 19/2012, with the aim of avoiding a "taxless" situation, but with the benefits of the corresponding levy, Royal Decree Law 12/2012, was amended to

allow for the possibility of including assets in the Declaration that had not been acquired exclusively with undeclared income.

In this regard, it is clear that with the wording of first additional provision of Royal Decree Law 12/2012, this regularisation process cannot be used to declare assets acquired from partially declared income which had accumulated significant gains since the acquisition thereof, in order to pay just 10 per cent on the undeclared part of the acquisition value and, moreover, benefit from the updated tax value for which there would be no tax gain, or even a tax loss, in the hypothetical case of a transfer subject to current PIT, CIT or NRIT rates.

Rate payable

PIT, CIT or NRIT taxpayers shall be obliged to pay 10% of the acquisition value or, where appropriate, the value superior thereto as indicated in the Declaration.

Relevant deadlines

The submission deadline is 30 November 2012.

Effects of Declaration

Submission of the Declaration will have the effects detailed below only for those persons or entities that make a declaration, and only with respect to PIT, CIT or NRIT, as applicable.

Undeclared income corresponding to assets included in the Declaration shall be understood as regularised, the deposited amount thus being exempt from sanctions, interest and surcharges.

The declared amount will be considered declared income and, consequently, may not be included or classed in future as unjustified capital gains.

A regularisation carried out in accordance with the established requisites shall exonerate the declaring party from all criminal liability, even if the sanction could have been classed as a criminal offence against the Public Treasury.

Observations

The submission of a Declaration will not affect other undeclared taxes on income, such as wealth tax, VAT or inheritance tax, nor shall it exonerate the declaring party from tax and criminal liability before third parties that may have participated in the creation of the regularised undeclared income prior to obtainment thereof by the declaring party.

As regards the relationship between the effects of the Declaration and Spanish Act 10/2010, of 28 April, on the prevention of money laundering and the financing of terrorism, please note that the Secretary General of the Treasury and Financial Policy issued a clarification memo to this end on 24 May in which it is confirmed that both regulations are fully compatible when undeclared income is the product of criminal activities or participation in criminal activities.

Please **contact us** with any comment or suggestion you may have in relation to this publication.

Should you wish to stop receiving information by e-mail, please click in this [link](#).

CMS Albiñana & Suárez de Lezo

Génova, 27

28004 Madrid

Spain

T: (34) 91 451 93 00

F: (34) 91 442 60 45

www.cms-asl.com [Disclaimer](#) [Privacy statement](#)