Approval of tax form 232

New informative return on related-party transactions, transactions performed under the patent box regime and other tax haven-related scenarios

Tax Alert

August 2017

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30 August this year saw the publication in the Official State Gazette of Order HFP/816/2017, of 28 August, approving the informative tax return form 232 on related-party transactions and transactions and scenarios relating to countries or territories classified as tax havens.

Introduction

This new form must be used for tax periods commencing as of 1 January 2016 and constitutes a new corporate income tax (CIT) obligation.

In practical terms, the result is that the informative charts relating to the following transactions, which were formerly reported via the CIT return (form 200) are now to be reported in a new informative return: (i) transactions with related persons or entities in general, (ii) transactions related to countries or territories considered tax havens, and (iii) transactions with related persons or entities where the revenues from certain intangible assets are reduced per the patent box regime.

Tax form 232 will only be available in electronic format.

Persons required to file this return and transactions to be reported

Form 232 must be completed and filed by corporate income taxpayers and non-resident income taxpayers with a permanent establishment in Spain, and by foreign entities present in Spain and subject to the pass-through regime.

Nonetheless, the following circumstances must also exist, without which taxpayers will be under no obligation to complete this form:

a) Related-party transactions

Generally speaking, the obligation to file this form is subject to two quantitative limits or thresholds:

- In the case of transactions performed with the same related person or entity, where the consideration for all of such transactions in the same tax period exceeds Euros 250,000, based on their market value.

- In the case of "specific transactions" carried out in a given tax period (with one or more related parties) where the total amount of each of the following types of transactions exceeds Euros 100,000:

  - Transactions involving real estate
  - Transactions involving intangible assets
  - Business transfers
  - Transfers of shares not traded on regulated markets or admitted to trading on regulated markets located in tax havens
  - Transactions carried out between personal income taxpayers in the pursuit of an economic activity assessed according to the objective assessment method and entities in which such taxpayers or their spouses, ascendants or descendants hold at least a 25% stake.

> *The new form must be used for tax periods commencing as of 1 January 2016.*

The following exceptions apply in the above two scenarios:

- Transactions between entities of the same tax consolidation group
- Transactions carried out between Economic Interest Groupings (AIE)/Unincorporated Joint Ventures (UTE) and their members or other entities forming part of the same tax consolidation group as these (except where they are performed under the exemption regime for income obtained abroad via a permanent establishment)
- Transactions performed in the context of public offerings for the sale or purchase of securities.

In a new development applicable across the board as of 2016, taxpayers are required to report all related-party transactions carried out in the tax period where the total amount of such transactions exceeds 50% of the entity's turnover. In other words, if a taxpayer has a turnover of Euros 300,000, of which transactions totalling Euros 200,000 are carried out with one or more related parties, it must fulfil this new obligation even where it is not obliged to do so on the basis of the above thresholds.

Information relating to related-party transactions must be filed as follows:

- Separating transactions involving income from those involving payments (without netting)
- Distinguishing the different transactions according to the related-person or entity acting as counter-party, who/which must be duly identified, and
- In turn, grouping transactions by type (from among 11 different transaction types) and assessment method applied (in other words, transactions of different types with the same related person or entity, and transactions of the same type with the same related person or entity but assessed using different assessment methods, must be listed in separate records).

b) Patent Box regime

The form must be filed where the reduction of income from certain intangible assets is applied per article 23 of the CIT Law, as a result of the assignment thereof to related persons or entities (even within the tax consolidation group, where the profit or loss must be included in the group tax base as transactions are finally performed with third parties).
This information must be filed separately for each related person or entity.

c) Tax havens

Lastly, form 232 must be filed, and the information on transactions and scenarios relating to countries or territories considered tax havens submitted, by entities that have carried out transactions with such tax jurisdictions during the tax period (e.g. expenses for services, investments or other expenses) or which own securities connected with such jurisdictions that were held at the close date of the period for which the return is filed (in which case they should report the acquisition value thereof and differentiate between shares of issuers located there, shares in collective investment undertakings incorporated there and fixed income securities admitted to trading there).

Deadline for filing the new form 232

With the removal of this information from form 200, it has been decided that the filing deadline should not coincide with that set for the CIT return.

Form 232 must therefore be filed within one month of the end of the ten-month period immediately following the close of the tax period to which the information to be supplied relates. In other words, approximately four months after the filing deadline for the CIT return. Thus, when the period coincides with the calendar year, this form must be filed in November of the following year.

This means that taxpayers whose tax period ended on 31 December 2016 must file form 232 for 2016 in November this year.

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