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Spain – European Commission Takes Aim at Overseas Assets Form 720

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On 24 November 2015, the European Commission announced the commencement of infringement proceedings against Spain, concerning Form 720, the form that tax resident individuals in Spain are required to declare assets and rights located abroad.¹ The Commission declared that the Form may be contrary to European Union (EU) law due to the fact that it “infringes Community rights,” the unwarranted statute of limitation period, and the sanctions applied for failing to comply are regarded as “disproportionate.”

Why This Matters

There may be opportunities for relief for individuals who have received sanctions if it is ultimately determined that Spain has acted contrary to EU law. At this point, however, it is too soon to know.

Background

Spain implemented new reporting obligations in connection with assets and rights located outside of Spain under Law 7/2012 of 29 October 2012 and subsequent regulations under Royal Decree 1558/2012 of 15 November 2012. (For prior coverage, see [Flash International Executive Alert 2012-219](#), 5 December 2012.)

The information return must be filed, among others, by individuals who are tax resident in Spain (including employees coming to work in Spain) who hold investments (immovable property, shares, savings deposits, etc.) overseas with a value of EUR 50,000 or more.

Why the Commission Has Launched Infringement Proceedings

The Commission’s decision to commence these proceedings is based on:

- 1 The establishment of disproportionate penalties for late filing of this return, as compared to the regulatory penalties applicable to domestic tax infringements;
- 2 The establishment of a different and longer statute-of-limitation period, which, in the case of unjustified capital gains, exceeds the generally applicable four-year term, as any such gains must be attributed to the last non-statute-barred year, subject to an additional penalty of 150 percent of the tax applicable to the undeclared overseas assets.

The Commission has given Spain two months to respond.

KPMG Note

Although it is too soon to predict how the proceedings will develop, they may ultimately conclude with the European Court of Justice declaring the reporting obligation contrary to EU law. This will be of particular interest to taxpayers who have incurred penalties as a result of infringement of this obligation (the legality of which now is questioned) as there may be refund opportunities if it is ultimately determined the measures are contrary to EU law.

Footnote:

1 The infringement proceeding is numbered 2014/4330 by the European Commission.

The Commission issued a letter dated 23 November 2015 announcing the proceeding (in Spanish). See: <http://www.ecestaticos.com/file/c5ddb3285865354b2f45cd7d2cacad04/1448308324.pdf>.

See the news report (in Spanish) "Bruselas expedienta a España por la declaración de bienes en el extranjero," at:

http://www.euractiv.es/noticias/Bruselas_expedienta_a_Espana_por_la_declaracion_de_bienes_en_el_extranjero-10978.html.

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This article is excerpted, with permission, from "[European Commission Commences Infringement Proceedings Against Spain in Respect of the Information Return on Assets and Rights Located Abroad \(Form 720\)](#)," (26 November 2015) a publication of the KPMG International member firm in Spain.

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