

Recent key developments in the area of Spanish financial regulation

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Royal Decree on the legal framework applicable to electronic money institutions (Royal Decree 778/2012), published in the Official State Gazette on May 5th, 2012)

Following the issuance of an opinion by the European Commission calling on six EU countries (including Spain) to update their national legislation to comply with Directive 2009/110/EC on electronic money, this Royal Decree was published on May 5th, completing the transposition of the aforementioned Directive and implementing the Law on electronic money.

The Royal Decree defines the legal framework applicable to electronic money institutions and sets out some of the provisions of the general legislation governing the issuance of electronic money.

Broadly, the main points of the Royal Decree are:

- a) Details of the requirements to be met when creating electronic money institutions (EMIs): authorisation and registration, requirements in order to conduct business, requirements of an application to set up an EMI, etc.
- b) The regulations governing Spanish EMIs' cross-border activities and the branches of foreign EMIs in Spain.

- c) The establishment of guarantee and equity requirements applicable to EMIs.
- d) The constitution of a system of prudential supervision and sanctions applicable to EMIs.

The Royal Decree ends by confirming the repeal of the previous EMI regulation.

Bank of Spain Circular on requirements for Spanish residents to report economic transactions and foreign financial asset and liability balances (Circular 472012, published in the Official State Gazette on May 4th, 2012)

This Circular aims to adapt the Bank of Spain's regulations to the latest amendments made to the reporting rules on foreign economic transactions.

The points covered by the Circular are:

- **Obligation to report.** This applies to legal and natural persons (public and private) resident in Spain (other than payment service providers on the Bank of Spain's official registers) who conduct transactions with non-residents or hold assets and liabilities abroad.
- **Frequency and content.** Spanish tax residents are required to send information to the

Bank of Spain on a monthly, quarterly or annual basis, depending on the amount, regarding transactions for values of over a million euros conducted on their own behalf with non-residents, whatever the nature of the transaction or form of settlement, and the balances and variations in foreign assets and liabilities. The Bank of Spain may require more frequent reports.

- **Submission.** The information is to be sent to the Bank of Spain's Statistics Department electronically.

The new reporting system established by the Circular will come into force on 1st January 2013, although it will coexist with the existing system until December 2013.

Special tax return

Royal Decree-Law 12/2012, March 30th, 2012, introducing various fiscal and administrative measures to reduce the public deficit (published in the Official State Gazette on March 31st, 2012), opened the way for tax payers liable for income tax, corporation tax and non-residents' income tax to voluntarily regularise their tax situation by submitting a special tax return including any assets and rights undeclared on December 31st, 2010.

Royal Decree-Law 19/2012, May 25th, 2012, on urgent measures to deregulate commerce and certain services (published in the Official State Gazette on May 26th, 2012), amended Royal Decree-Law 12/2012 in order to:

- i. Allow the declaration of assets and rights acquired with a combination of declared and undeclared income.
- ii. Regulate the effects of a possible future change in ownership of the assets and rights declared.

- iii. Include cases in which the beneficial owner of the assets or rights concerned is not the holder of the legal title to them.

Finally, Order HAP/1182/2012, May 31st, 2012 (published in the Official State Gazette on June 4th, 2012), approved Form 750, which is to be used to make this special tax return, and clarified a number of points on which doubts remained.

The main features of the special tax return, as governed by the successive Royal Decree-Laws and the recently published Order, are:

- **Nature.** The special tax return takes the form of a self-assessment, which means it can be checked and verified by the tax authorities.
- **Party filing the return.** Tax payers liable for personal income tax, corporation tax, and non-residents' income tax who are the holders of assets or rights undeclared on December 31st, 2010, may submit a special tax return.
- **Object of regularisation.** A special tax return may be submitted with respect to any asset or right, ownership of which has yielded income not declared for personal income tax, corporation tax, and non-residents' income tax.
- **Amount to declare.** The assets or rights included in the return are to be declared at acquisition value, except in the case of money deposited in credit institutions, which is to be declared at the total value of the balance on December 31st, 2010, or at the end of the tax period (always before March 31st, 2012).
- **Tax due.** 10% of the declared value.
- **Effect of regularisation.** Filing a special tax return regularises the tax status of the income declared for the purposes of these taxes, but does not regularise **the position regarding any other taxes.**

- **Form for return.** Form 780, which must be submitted online. The return can be filed in person or through a representative. The deadline is November 30th, 2012.

Special tax on the repatriation of foreign dividends and income

Royal-Decree Law 12/2012, March 30th, 2012, established a special tax on income from abroad to allow dividends and income from the sale of shares to be returned to Spain. This applies to dividends and income accruing prior to November 30th, 2012, relating to entities that, while conducting business abroad, are located in no-tax territories or tax havens, preventing them from applying the regime of exemptions established in the Corporate Tax Law.

For this purpose, a new provision was added to the Corporate Tax Law, by virtue of which the aforementioned dividends and income from the sale of shares could be omitted from the tax liability for the corporate tax by application instead of a special tax of 8%, accruing as of the date of the resolution of the shareholders' meeting to distribute profits or the date of change of ownership of the shareholding.

As a result, Order HAP/1181/2012 was published in the Official State Gazette on June 4th, 2012, approving Form 250, which can be submitted by institutions deciding to avail themselves of the 15th additional provision of the Corporate Tax Law.

The main features of this form are:

- **Parties filing the return.** Entities subject to corporate tax receiving dividends or income from the sale of shareholdings in entities located in no-tax territories or tax havens which do not wish to include this income in their tax base for corporate tax but prefer to apply this special rate instead.

- **Amount to declare.** The total amount of the dividends or share in profits accrued. Any value impairment to the shareholding that may derive from the distribution of profits covered by this special tax shall not be tax deductible.

- **Tax rate.** 8%.

- **Form for return.** Form 250, which will be available solely in electronic format for online filing.

The filing and payment of the self-assessment must be within 25 calendar days of the accrual date. Nevertheless, for accruals prior to the publication of the aforementioned Order (June 4th, 2012), the filing and payment of this self-assessment shall be within 25 calendar days of the date of this Order's coming into force, i.e. by June 29th, 2012.