

## **SPANISH TREASURY TIGHTENS THE SCREWS:** **AFTER TAX AMNESTY,** **REPORTING OF OVERSEAS ASSETS**



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As you all know, the filing period for the tax amnesty ended on the 30th of November. As a complementary measure to this, the Government, in its enthusiasm to prevent and fight against fraud, approved the Law 7/2012, of 29th of October (developed in the Royal Decree 1558/2012, of 15th of November), whereby a new tax requirement was formally established: the requirement for information about overseas assets. The law is extremely tough, both as regards the amount of information to be filed as to its penalty system.

In this post we will discuss “the day after” of the *tax amnesty*, as well as the new tax requirements facing us in relation to the prevention and fight against fraud:

**1.- What was the result of the *tax amnesty*? Did the Government collect the 2,500 million euros it was aiming to collect with this measure? Or was it a failure, as much of the media had originally predicted?**

When the Government made public the results of the revenue collected until the end of last July, a lot of the media described the measure as a failure given that only 50 million euros had been collected (of the envisaged total of 2,500 million euros). It is true, nevertheless, that since then there have been many regularisations, and the Government has not breathed a word about the amount finally collected. On the basis of information this law firm has had access to, while the Government did not manage to collect the proposed 2,500 million, the amount it did finally collect from Special Tax Returns (DTE) and supplementary tax returns was around 2,000 million euros, an amount not too far off the figure originally envisaged.

## 2.- What is the situation for those who didn't regularise?

Those who didn't avail themselves of the *tax amnesty* can file supplementary tax returns, and have until the 31st of March of this year to do so.

## 3.- What should those who didn't regularise their situation do?

3.1.- Obligation to inform the Bank of Spain: People who have a foreign bank account must inform the Bank of Spain of its existence, by filing form DD1.

3.2.- Registered holder, beneficial holder: People who hold an account overseas in the name of a holding company not resident in Spain and who have regularised their tax situation by filing the special tax return (DTE), and declaring they are the beneficial holder of this account, must now "turn into" the registered holders of the account by the 31st of December 2013. In other words, they must first put the account in the name of the beneficial holder, and then wind up the holding company.

3.3.- They will need to get and keep an account statement of their holdings, valued on the day on which they filed the Special Tax Return (DTE).

3.4.- Gather the information needed for the integration of earnings and capital gains and losses obtained overseas, in their next income tax return.

## 4.- What new obligations do we tax payers have as a result of the law of prevention and fight against fraud?

The requirement to regularise didn't end with the *tax amnesty*. Now there is the Law of prevention and fight against fraud, established in Law 7/2012, of 29th of October, and developed in the Royal Decree 1558/2012, of 15th of November. This law makes it compulsory for all persons, companies and other legal bodies to fill out and file annually an information report on the assets they hold overseas on the 31st of December each year.

4.1.- Tax return filing period: The first tax return must be filed by the 31st of March 2013 and must refer to the situation of each taxpayer on 31/12/2012. It must be filed by all taxpayers who own assets overseas acquired with money declared in Spain, including those who regularised their situation under the umbrella of the *tax amnesty* or by supplementary tax returns.

4.2.- Penalty system: Non compliance with this information requirement will be considered a very serious tax offence. The penalty system envisaged is extremely tough, as it does not take into account the economic situation of those who break the law, or the possible damage that the non filing of this report could cause. The penalties envisage a fixed financial penalty of €5,000 for every piece of information or set of data referring to the same account, with a minimum fine of €10,000 .

4.3.- Undeclared assets are not statute barred: Once the filing date for this information report has passed (31st of March 2013), the discovery by the Spanish Treasury of any overseas asset which has not been reported by its owner could be considered as a non justified wealth increase, a classification which would not be changed even if it had been acquired in a statute barred time period. Thus, the taxation on these discovered assets could reach up to 56% of their value, plus the interest for late payment, and a penalty which will be levied at its maximum rate, that is, at 150%.

If you would like any further information on this subject, we would ask you to look at our latest episode of **LEGAL TV** to which we invited **José M. Sánchez Alborch**, founder of Asesoría Financiera, S.A. and a tax specialist and authority on this subject. In the programme he deals with all the points discussed in this post. **Legal TV: Results of tax Amnesty** <http://bit.ly/13teiNk>

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