

SPAIN

NEW CORPORATE INCOME TAX REGULATIONS

Introduction

On 1 January 2015 a series of changes were introduced to the Spanish Corporate Income Tax (CIT) Act, some of which relate to transfer pricing. This legislation will be complemented by a new set of CIT Regulations, which are expected to be approved at short notice. A draft version of these Regulations was already published on 18 March 2015 by the Spanish Ministry of Finance, and it clearly shows Spain's commitment to the recent OECD work on Base Erosion and Profit Shifting (BEPS).

Information and documentation requirements

Under the new rules, the information and documentation requirements focused on transfer pricing will be centred around three areas:

- Country-by-Country Reporting;
- Group documentation and taxpayer documentation;
- Information through the annual corporate income tax return.

All these elements are mandatory, but relief is available to smaller groups and, more particularly, to Small and Medium Enterprises (SMEs).

Country-by-Country Reporting

From fiscal year 2016 onwards, Spanish ultimate parent companies of multinational groups with a turnover of more than EUR 750 million will be required to file a Country-by-Country report with the Spanish tax authorities. This report must be lodged within 12 months after the end of the fiscal year, by means of a model to be published by the Spanish Tax Authorities.

The turnover threshold and the information to be presented by the ultimate parent are in line with the OECD recommendations. Therefore, the following must be provided:

- Group's gross income, segmented by related party and unrelated party income.
- Profit and loss before income tax or taxes of a similar nature.
- Income tax paid (on cash basis), including withholdings incurred.
- Income tax accrued, including withholding taxes.
- Capital and other shareholders' funds at the end date of the fiscal period.
- Average number of employees.
- Tangible assets and investment properties other than cash and cash equivalents.
- List of resident entities, including permanent establishments, and their core activities.
- Any other relevant information.

Master file and taxpayer file

The new CIT Regulations will again contain a very detailed definition of all the information blocks to be included in the annual transfer pricing documentation. Each of these elements is directly linked to specific tax penalties for non-compliance, which may be applicable in situations both with and without a transfer pricing adjustment. In the case of such an adjustment, the penalties should generally be expected to be at least twice as high.

The definitions of the mandatory content of the master file and taxpayer file have been adapted to those listed in Annexes I and II of the OECD's "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting" published in 2014. There are, however, some material differences, in particular with respect to additional information to be included on intangible assets and intangible-related transactions.

Documentation relief

The new legislation offers some documentation relief for taxpayers that belong to smaller groups with revenue of less than EUR 45 million. These companies must only provide the following:

- Description and amount of the controlled transactions;
- Identification details of taxpayer and the related parties;
- Transfer pricing method(s) selected;
- Comparables used and the arm's length value or range derived from the same.

The documentation obligations can be further reduced if the entity belongs to a qualifying SME, which must have a turnover of less than EUR 10 million. These companies may provide the above information through a specific tax form (to be published), and they do not need to present any comparables.

Information in the tax return

Taxpayers must provide specific details on related party transactions in the annual corporate income tax return. These details include the type(s) of transaction, the identification of the related counterparties, amounts, and the transfer pricing method applied and reported in the taxpayer file. This information obligation is only applicable to those transactions that are subject to the general documentation obligations, and which, following a predefined segmentation, exceed the amount of EUR 100,000.

Advance Pricing Agreements

The new CIT Act has also introduced some interesting changes to the Advance Pricing Agreement (APA) provisions. As was the case under the previous rules, these agreements may in principle be entered into for a maximum period that includes the current fiscal year and the following four years. However, whilst under the old provisions taxpayers could sometimes also include the previous fiscal year – when the presentation period for the corporate income tax return had not yet expired – the taxpayer may now request a full retrospective application of the APA to any fiscal year that is still open for tax inspection. This creates interesting planning opportunities and greatly improves the legal certainty of multinational groups that are active in Spain.

As a final point, it is worth mentioning that taxpayers may now also request an APA from the Tax Authorities to confirm:

- a) That certain intangibles to be exploited pertain to the categories provided by Spain's patent box regime, and
- b) That the proposed transfer price will be acceptable from an arm's length perspective.

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