MINISTRY
OF FINANCE
AND PUBLIC ADMINISTRATIONS

PRESS OFFICE

Press release

The draft anti-fraud law is presented to Parliament

The Government is strengthening the measures to combat tax fraud

- Cash payments involving business owners or independent contractors are limited to €2,500.The Tax Authority will waive the sanction for the party reporting the case.
- All taxpayers are required to provide information about foreign accounts, securities or property. Undeclared income will be charged to the last open tax period.
- Business owners that invoice less than 50% of their operations to private individuals or those that earn more than 225,000 euros from other business owners or professionals are excluded from the modular system.
- The Tax Authority is strengthening VAT collection on property transfer transactions, imports and insolvency proceedings.
- The proposed law makes it easier to freeze funds and use other precautionary measures in order to ensure the payment of tax debts.

22 June 2012. The Council of Ministers today approved the presentation to Parliament of the Draft Bill to Modify Taxation and Budgetary Regulations and Amendments to Financial Legislation to Adapt it to the Intensification of Measures to Prevent and Combat Fraud. The proposed law, which the Council of Ministers was informed about on 13 April, reinforces the tax fraud prevention actions, one of the priorities of the Government's economic policy.

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After the public awareness stage, the text approved now incorporates various recommendations by experts referring to the modular system and the control of foreign income, among other aspects.

It combines new measures designed to directly impact traditional areas of tax evasion and others to strengthen the legal security of the tax system and enhance tax collection. The draft bill is the ideal complement to the extraordinary plan to regularise concealed income, approved on 30 March, which is intended to bring to light revenues from the black economy and incorporate them into the regular economy before 30 November.

One of the most ambitious measures in the draft bill to strengthen the process of combating fraud, studied today, is the limitation on the use of cash for certain transactions. This has taken into account legislation in neighbouring EU countries such as France and Italy. This means that transactions of €2,500 or more may not be paid in cash if they involve one or more business owners or independent contractors. This limitation will not apply to payments made through credit institutions.

Anyone failing to comply with this restriction will be liable to a fine of 25% of the value of the cash payment. The person making the payment and the recipient will be jointly responsible for this infringement, which means the Tax Office may take action against either of them. If the fraud is reported by one of the parties taking part in the transaction, the Tax Authority will not apply any sanction to this party if they inform the Tax Authority voluntarily.

SECURITIES ABROAD

The regulation also makes it obligatory for all taxpayers to provide information about any foreign-held accounts and securities, or that they are the beneficiaries of, or are authorised to draw on. This measure covers all kinds of shares, assets, bank accounts, securities and life insurance policies. It also affects real estate property. This is a new addition to the draft bill which the Government studied in April.

Failure to comply with the new obligation to provide this information incurs its own penalty regime, with fines of €5,000 for every piece of data or set of data omitted, at a minimum of €10,000. Also, undeclared income will be charged to the last open tax period. The scope of application is wider than

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in the text studied in April. As well as ownership, it also affects the holding and acquisition of assets or rights not included in the declaration.

MODULAR SYSTEM

The text also contains amendments affecting business owners included in the modular tax system. This means that business owners that invoice less than 50% of their transactions to private individuals will be excluded from the objective estimate system. This exclusion will only apply to business owners with total revenues of more than €50,000 per year. These include building work, plumbing, carpentry and road haulage.

It also excludes businesses obtaining revenues from other business owners or professionals of more than €225,000. This is also a new addition to the text studied in April.

In the case of transport and removals services, the exclusion will apply to revenues over €300,000, as in the case of agricultural and livestock operations.

GREATER COLLECTION CAPACITY

The Draft Bill also includes a range of measures designed to strengthen the Tax Authority's tax collection capacity, especially in cases in which taxpayers have attempted to evade their fiscal obligations by delaying their tax payments, creating legal obstacles or diluting their assets.

The text also eliminates the possibility of delaying or dividing credits in insolvency proceedings to prevent any artificial delay in the payment of public credit. A new area of subsidiary responsibility has also been introduced that applies to directors of companies without assets but with regular activity, which make recurrent self-assessments claiming no income for certain concepts, with fraudulent intent. Such administrators will be held liable for the tax debts owing or for the tax amounts that should be withheld for workers or contractors.

VAT fraud

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In the interests of increasing the collection capacity, the draft bill also intends to minimise VAT fraud through various measures. First, exclusion from the modular system will affect VAT as well as income tax.

Furthermore, investment by the party liable to pay this tax is recognised in cases where exemption from the VAT relating to certain real estate transactions is refused. This means the purchasing party may only deduct the associated VAT if they can show that they have paid in the VAT they have received. This avoids the potential dual loss for the Ministry of Finance in failing to receive the tax from the party selling the property and for the deduction of the VAT paid.

In cases of bankruptcy, the right to deduct the VAT payments made before filing for bankruptcy cannot be applied in subsequent settlements. The changes to VAT will also be applied to the general indirect Canary Islands tax (IGIC), in order to standardise the treatment in both systems.

Seizure of assets

The law modifies the system for seizing the goods and assets of credit institutions, so that it covers more than just the office or branch upon which the attachment proceedings were placed. It also prohibits the disposal of real estate in companies in which the shares equivalent to more than half of the share capital are subject to attachment proceedings.

With respect to the precautionary measures, the regulation has been amended to enable such measures to be taken at any time as they are deemed necessary. The Tax Authority will be entitled to take precautionary measures in criminal cases. Also, to ensure that debts are collected, the law increases the amount of the guarantee that must be paid in order to suspend the execution of a contested action, with this amount being sufficient to cover all the potential surcharges that could apply.

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