Press release

The BOE today publishes the text of the new law after the Parliamentary process

The most ambitious anti-fraud law in the history of democratic Spain comes into force

- Cash payments involving business owners or independent contractors are limited to €2,500. The Finance Ministry will waive sanctions for taxpayers who report fraud.
- 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.
- It will be easier to freeze funds and use other precautionary measures in order to ensure the payment of tax debts.
- There are tougher sanctions for resisting and obstructing inspection, ranging from 1,000 to 600,000 euros.

30 October 2012. The Official State Bulletin (BOE) today published the Law to Modify Taxation and Budgetary Regulations and Amendments to Financial Legislation to Adapt it to the Intensification of Measures to Prevent and Combat Fraud, after the Parliamentary process concluded.

EMAIL ADDRESS
secretaria.prensa@minhap.es

ALCALÁ, 9
28071 - MADRID
TEL: 91 595 80 71/2
FAX: 91 595 84 66

The new anti-fraud law will come into force tomorrow, except for Article Seven (on cash payments) which will come into force in 20 days' time. The law strengthens actions taken to prevent tax fraud, one of the priorities of the Government's economic policy. Indeed, together with the Draft Bill combating labour fraud and the reforms to the Penal Code, now before Parliament, this is the largest legal action taken to combat fraud and the underground economy.

The law now coming into force 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. One of the most ambitious measures limits the use of cash in 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, and real estate property.

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.

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. 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.

It also excludes businesses obtaining revenues from other business owners or professionals of more than €225,000.

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

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.

The law also toughens the sanctions for resistance, obstruction with excuses or refusal to allow inspections. The sanctions will range from a minimum of 1,000 euros to a maximum of 600,000 euros.

REGULARISATION PLAN

The new law is the perfect complement to the extraordinary plan to regularise concealed income, approved on 30 March. it is intended to bring to light revenues from the underground economy, and incorporate them into the regular economy. The voluntary regularisation period ends on 30 November.

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