

General guidelines of the Spanish Tax Agency 2016 Tax and Customs Control Plan

April 11, 2016

In brief

On February 23, 2016, the Spanish Tax Agency (STA) released the general guidelines of the 2016 Tax and Customs Control Plan (the Plan). The guidelines focus on action areas pertaining to fraud control and prevention.

The Plan groups the guidelines into three main pillars: (i) verification and investigation of tax and customs fraud, (ii) fraud in tax collection, and (iii) collaboration with tax administrations.

This year the Plan has especially focused on challenging the 'hidden economy,' addressing risk areas identified in the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) Action Plan, and preventing value-added tax (VAT) fraud.

In detail

Verification and investigation of tax and customs fraud

The fight against the hidden economy

In 2016, the STA will continue to maintain a coordinated strategy to combat 'hidden activities' by intensifying verification and investigation processes to achieve early identification of such activities. Specifically, the STA will increase the number of visits to the location of the taxpayer's business activities. Additionally, the STA will plan selective and nationwide coordinated actions to address fraudulent activities related to double use software.

These actions will complement the more conventional inspections carried out by the STA, with heightened attention to cash-intense businesses. It is further expected that information exchange tools between the Spanish tax administration and the on-site tax inspectors will be more thoroughly developed.

Control of hidden assets and income abroad

The STA will continue to implement measures to prevent shifting of income and hiding of assets abroad. These measures will take the form of non-transparent structures, with a focus on driving coordinated actions that improve the

exchange of information within the framework of international associations.

International tax planning

Pursuant to the Plan, the STA will ramp up efforts in addressing risk areas identified in the BEPS Action Plan, with a specific focus on the following:

- Transactions carried out by Spanish taxpayers through hybrid instruments or other 'aggressive' tax planning instruments, to avoid or to reduce the payment of taxes in Spain. Special attention will be paid when taxpayers take double advantage of

losses or expenses, or of losses generated through intragroup transfers.

- Leveraged acquisitions of shares, mainly when the purpose of the transaction is to generate financial expenses.
- Transactions performed within tax advantageous territories.
- Relevant external payments or complex transactions to which anti-tax avoidance rules apply. Special attention will be paid to intra-community dividends (i.e., dividends sourced in one Member State paid to another company resident in the EU) and royalties, as well as structures with ‘conduit companies.’
- Undetected permanent establishments of non-resident entities, especially from multinational groups.
- Activities performed by non-residents in Spain, with a special focus on changes of residence.
- Transfer pricing in complex business restructurings, services, and intangibles.
- Simultaneous or multilateral grandfathered actions in the international cooperation framework, allowing some activities or former rights to continue.

Lastly, the STA has indicated that it continues to embrace Advance Pricing Agreements (APA) to prevent fraud, provide legal certainty, and to reduce litigation.

Digital economy

In terms of the digital economy, the STA has prioritized the following proposed measures to fight fraud: (i)

analyse online information that may assist in discovering hidden activities, unreasonable profits, or the illicit trading of goods; (ii) analyse manufacturers and service providers that commercialise their goods or services on the internet; and (iii) encourage the use of the tools that are at the disposal of the STA by increasing information exchange through social network platforms.

High value services

The STA will continue to target professional activities that constitute ‘high value services.’ In particular, the STA will enhance the evaluation of wealth accumulation that is not consistent with historical tax returns.

Fight against VAT fraud

The fight against VAT-related fraud has continuously been a priority for the STA. The STA has announced that it will increasingly focus on fraudulent activities aimed at limiting the responsibility of company owners.

Control over operations, tax and legal regimes, taxpayers, and other specific activity sectors

Several tax and legal regimes as well as specific taxpayers will continue to be subject to controls. This will include certain taxpayers, such as companies with sizable operations and companies subject to a special VAT regime, as well as certain tax areas, such as tax credits and VAT refund requests, among others.

In terms of tax benefits, the Plan continues to emphasize the need for control. For example, manufacturers who have movement of merchandise supported by electronic documentation will be subject to heightened control.

Moreover, taxpayers subject to electricity and coal taxation, or otherwise operating under a specific license, also will be subject to heightened control.

The Plan also places an increased focus on taxpayers subject to environmental taxes, such as the ‘Green House Effect Taxes and Electricity Production Value Tax,’ encouraging compliance with taxation over other environmental aspects.

Customs control

The European Union Regulation 952/2013, of the European Parliament and the Council, will come into force on May 1, 2016, with a distinct focus on the granting of customs authorizations (and substitution or revocation). In this sense, a number of controls will be intensified (i.e., complete control over products subject to customs, as well as controls over imports).

Prevention and suppression of smuggling, drug trafficking, and money laundering

The STA’s Plan continues to reinforce the prevention and suppression of smuggling, drug trafficking, and money laundering, with reference to the aerial legislation amendment, which reinforces the fight against narco-trafficking.

Fraud in tax collection

In 2016, and pursuant to the Plan, the failure to pay taxes by way of fraud now will be made public. Fraud control will be focused on specific measures, such as managing outstanding debt of a higher number of taxpayers, intensifying the investigation activities and communications between tax collection departments, improving the timing of tax debt collection and revision of the deferment, and division of payment situations.

Collaboration between tax administrations

The information exchange system between the Spanish Central Administration and the Regional Administration will continue to be encouraged, especially through the 'Shared Only Census,' which contains relevant information about all taxpayers.

The takeaway

The 2016 Plan includes important measures to prevent and control fraud in the areas of verification and investigation of tax and customs fraud, fraud in tax collection, and collaboration with tax administrations.

It must be noted that a large number of the BEPS Actions already have been implemented in the Spanish regulations, including transfer pricing

documentation requirements. Aggressive tax planning will be especially investigated, and VAT fraud will represent a relevant control area.

In this context, multinational companies that operate in Spain should analyze and evaluate the possible contingencies that may arise from their current operational model. In addition, appropriate measures should be carried out with a view toward mitigating those risks.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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