

This past 22 September, Law 35/2015, of 21 September, was published in Spain's Official State Gazette, (*Boletín Oficial del Estado*). This Law represents a partial modification of Law 58/2003, of 17 September, General Tax Law. The regulation entered into force this past 23 September; any procedure initiated from this day onward is affected by the new regulations.

This latest modification corresponds to the tax reform carried out by the Government during the past two years, with the reform of the local taxes and those ceded to the Autonomous Communities still pending.

The most significant innovations presented in the General Tax Law are the following:

A. New tax period limitation rules

New right to audit closed fiscal years is granted to the Spanish Revenue (four years from the date of tax point or from the end of the accounting period). This right implies that the Spanish Tax Revenue can audit closed tax years that have tax effect in fiscal years that have not yet prescribed. As an example, auditing closed fiscal periods that generated losses to be carried forward or other tax assets that are applied a posteriori.

This redrafting of the above mentioned articles involves increasing the burden of management and the conservation of documentation during a considerable number of years (it even could involve decades).

Also, a new criteria for the interruption of the limitation of tax periods is introduced. Interruption of a tax could imply the interruption of another "related tax obligations" of the taxable person.

By related tax obligations we need to understand those in which some or any of their elements is affected or determined as a result of those that correspond to another obligation or different period. This could provoke, for example, that after a tax audit of VAT where we are required to increase the output VAT, that in turn would interrupt the Corporate Income Tax since the first Spanish Tax Revenue amendment (in VAT) will affect the second one (it will increase the tax base in Corporate Income Tax).

B. Innovations in Tax Audit procedures

The period for tax audits procedures is increased from 12 to 18 months (for companies that have been audited or groups of companies, to 27 months, regardless of the complexity of the subject). This increase in the periods is complemented by the disappearance of the scenario of unjustified interruption during more than six months (up until now, when an inspection was detained without reasonable or just cause for more than six months, the inspection continued, but the periods of prescription of the taxation were not paralyzed until the next inspection action).

C. Publication of the list of debtors

Another innovation included is the annual publication of a list of debtors whose total amount of tax debts and penalties as of 31 December of each year is in excess of 1,000,000 euros.

The information will include the identification of the debtor (business name or names and surnames plus tax identification number) and the amount of the debts and of the sanctions.

For the 2016 fiscal period, the situation of debtors as of 31 July 2015 will be taken into account.

D. Interpretation of the tax regulation (abuse of law)

Until the entry into force of the present regulations, the conflict in the application of the tax laws could not involve the imposition of sanction. However, under the current modification, these actions can involve sanctions. The term “conflict in the application of the tax laws” would correspond to the term in English “tax shelter”, a contrived scheme to avoid or reduce a liability to taxation by a forced interpretation of the Law.

The conflict in the application of the tax laws, or regulations, should not be confused with the concept “simulación” stipulated in the Spanish General Tax Law. This term refers to artificial schemes which create circumstances under which no tax or minimal tax is levied. Under these schemes the legal form of an arrangement does not correspond with their substance, and they do involve the imposition of sanction.