

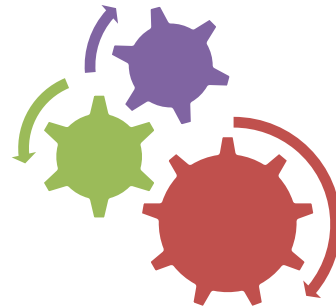
TAX OFFENCE IN THE 2015 REFORM OF THE GENERAL TAX LAW

Spain introduces new tax measures by amending the Spanish General Tax Law

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On September 22nd Spanish Official Gazette published the Law 34/2015 amending the Spanish General Tax Law (hereinafter GTL). Previously we published a white paper on this Web Page developing the main items regarding tax management, tax audit, list of debtors, etc.

This alert intends to highlight the main changes and new measures introduced by Law 34/2015 by the addition of the new Chapter VI to the General Tax Law titled “Tax actions and procedures in case of Offence against the Public Treasury”.



FORMER REGIME

Up until now, in the event of a possible Tax Offence against the Tax Treasury, the Spanish Tax Authorities had to paralyse tax audit procedures and transfer the case to the Spanish Courts. The reason lies in the Law Principal “*non bis in idem*”. That is, this system is aimed at avoiding double penalties issued by the Tax Authorities and the Spanish Courts.

Besides, this system avoids “double truth” cases. That means that Spanish Courts and Tax Authorities cannot arrive to two different decisions.

At last, under the former regime, a tax evader had a financial benefit by suspension of the tax liability or debt until Court decision. On the other hand, a normal tax payer in case of

appealing against the Tax Authorities’ assessment had to pay the liability or secure the tax debt.

CURRENT AND NEW REGIME

By adding the new Chapter VI to the Spanish General Tax Law, the tax procedure will be split into two different ways.

Items connected to possible Tax Offence against Spanish Treasury will be processed under provisions of the new Chapter VI.

Items not connected to possible Tax Offence against Spanish Treasury will be processed under the general regime.

CRITICAL REMARKS

The main problem with the new system is that when a Tax Offence is appreciated, Spanish Tax Authorities will issue a proposal of assessment linked to the offence. This proposal must be paid, and only when the Court releases its decision, final tax liability will be known, adjusting it with the first payment (paying or refunding the positive or negative difference).

This is probably one of the main conflictive points of this new Title VI, and in our opinion, it infringes the Spanish Constitutional Right of “due process of law”.

Furthermore, we consider that these provisions breach the Spanish Constitutional right of the “ability to pay principle” (The ability-to-pay principle in taxation maintains that taxes should be levied in accordance with a taxpayer's ability to pay. The theory is that individuals who earn more money can afford to pay more in taxes).

And finally, as conclusion, this Chapter VI and the whole amendment drafted by the Spanish Legislator is mainly focused on success in collecting taxes, putting aside constitutional and tax payer's basic rights. In summary, a new scenario which is going to require on the part of the taxpayer maximum diligence and pulchritude in the interpretation and compliance with the tax regulations in order to avoid being dragged into a process which could be highly detrimental to their interests.



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