
Tax Advisory

An analysis of the Order HFP/816/2017, issued by the Ministry of Finance and Public Administrations on 28 August, which approved form 232 for reporting related party dealings and transactions and situations involving countries and territories deemed to be tax havens

August 2017

The Order HFP/816/2017, which was issued by the Ministry of Finance and Public Administrations and approved form 232 for the reporting of related party dealings and tax haven transactions, was published in the Spanish Official State Gazette on 28 August.

The information to be provided in this form is currently disclosed in the corporate tax form, and so the most important change introduced by this Order is the creation of a new tax form specifically for related party and tax haven transactions, with its own deadlines for filing.

A summary of the most important aspects of form 232 is given below:

i. Who is obliged to file form 232?

Taxpayers who are subject to corporate tax or non-resident income tax when the income is obtained through a permanent establishment, and entities incorporated abroad which apply the income allocation system and have a presence in Spain, are obliged to present this form if they perform the following transactions with related parties:

- Transactions with the same related person or entity, provided that the total amount of the transactions exceeds **€250,000**, according to the market value.

- Specific transactions executed with the same related person or entity, provided that the total amount of the same type of transactions exceeds **100,000 euros**, using the same valuation method as above. The following transactions should be declared when the threshold of 100.000 euros is exceeded:

- Transactions carried out by personal income taxpayers during the performance of an economic activity to which the objective estimation method is applied with entities in which they or their spouses, children or parents, whether individually or jointly, hold a stake which is equal to or higher than 25% of the share capital or stockholders' equity.
- Transactions involving the transfer of a business.
- Transactions involving the transfer of securities or equity stakes in any type of entity that is not traded on the organised markets of countries or territories deemed to be tax havens.
- Transactions involving the transfer of immovable property.
- Transactions involving intangible assets

- Transactions of the same type carried out with related individuals or entities when the total amount of the transactions **is greater than 50% of the net amount of the entity's turnover**, even if these transactions do not exceed the amounts given above.

However, notwithstanding the above, taxpayers who must file this tax return are not required to report the following related party transactions:

- Transactions carried out between companies that belong to the same consolidated tax group. The definition of companies that belong to the same consolidated tax group includes economic interest groupings and joint ventures, provided that they do not apply the tax regime established under Article 22 of the Corporate Tax Act.
- Transactions related to initial public offerings and public offerings.

It will also be mandatory for taxpayers to file form 232 if they apply the reduction applicable to revenues from certain **intangible assets**, as established in Article 23 of the Corporate Tax Act, when they have been assigned to related individuals or entities, or when they perform transactions or hold securities in **tax havens**, irrespective of the amount in question.

ii. What information must be reported?

The information to be reported in this new form is basically the same information that previously had to be filed in other tax forms. There are three main types of information:

- a. Information about transactions with related individuals or entities
 - Tax identification number of the related individual or entity.
 - Nature of the related individual or entity, whether they are an individual, legal person, or other type of entity.
 - Name and surnames or business name of the related individual or entity, and the nature of the relationship.
 - If the related entity is resident in Spain, it should provide the code of the province where it is resident. If the related entity is not resident in Spain for tax purposes, it should provide the code of the country of residence.
 - Type of transaction executed. One of the following options should be chosen: (i) acquisition or transfer of tangible assets; (ii) acquisition, transfer or assignment of the use of intangible assets; (iii) acquisition or transfer of financial assets which represent stockholders' equity; (iv) acquisition or transfer of credit rights and financial assets that represent debt; (v) financial transactions involving debt; (vi) services between related individuals or entities; (vii) cost allocation agreements for goods or services; (viii) leases and other income sources derived from the assignment of use of immovable property; (ix) interest from credits, loans, and other financial assets involving debt; (x) employment income, pensions, and pension fund contributions; and, (xi) other transactions.

-
- Classification of income or payment. This does not include netting across transactions.
 - The valuation method chosen from those established in Article 18.4 of the Corporate Tax Act.
 - Amount of the transaction (VAT not included).
- b. Information about transactions with related individuals or entities when they apply the reduction established in Article 23 of the Corporate Tax Act.
- Information identifying the parent company, namely the tax identification number and business name.
 - Each of the related parties should itemise the income to which the reduction is applied.
 - They should also provide the following information: (i) tax identification number of the related individual or entity; (ii) nature of the related individual or entity, whether they are an individual, legal person, or other type of entity; (iii) name and surnames or business name of the related individual or entity; (iv) if the related individual or entity is tax resident in Spain, they should provide the code of the province, while if they are not resident in Spain for tax purposes, they should provide the code of their country of residence; (v) type of relationship under the terms of Article 18 of the Corporate Tax Act; (vi) amount of the transaction (VAT not included).
- c. Information about transactions and situations involving tax havens.

In this section taxpayers must provide information about tax haven transactions, as well as information about security holdings held in tax havens.

The following information about tax haven transactions must be provided:

- A description of the transactions carried out with/for individuals or entities that are resident in tax havens, of the expenses for services relating to transactions performed directly or indirectly with individuals or entities resident in tax havens, and of any investments made or expenses incurred in a tax haven.
- Name and surnames, or corporate or business name of the individual or entity with/for whom the transactions are performed.
- Nature of the individual or entity, whether they are an individual, legal person, or other type of entity.
- Tax haven code.
- Information identifying the tax haven where the investment was made or the expense was incurred, or where the individual or entity with/for whom the transaction was made is resident.

- The cash amount of the transaction, the expenses incurred, or the investment made.

The following information should be reported for security holdings held in tax havens at the close of the tax period:

- Information identifying the specific circumstances: (i) equity interest holdings in entities resident in tax havens; (ii) security holdings in collection investment institutions which have been incorporated in a tax haven, and; (iii) fixed-interest security holdings that are traded on the secondary market of a tax haven.
- Corporate or business name of the investee company resident in a tax haven. In the case of fixed-interest security holdings, the corporate or business name of the issuer should also be provided.
- The applicable information identifying the tax haven, depending on the circumstances.
- Tax haven code.
- Acquisition value of the securities, which is taken to be the purchase price.
- Security holding percentage. This field should only be filled in for equity interest holdings in entities resident in tax havens, and security holdings in collection investment institutions which have been incorporated in a tax haven.

The form specifies that all amounts should be given in euros.

iii. Date on which it comes into force

Filing the 232 tax form for reporting related party dealings and transactions and situations involving tax havens became mandatory as from 31 August 2017, and should be presented for tax periods which started on or after 1 January 2016.

iv. Method and deadline for filing

The tax returns should be filed online, something which is becoming standard practice.

The deadline for filing the form is during the month after the ten months following the end of the tax period to which the information to be submitted refers. Thus, if the business year of the taxpayer coincides with the calendar year, the form should be filed in November of the following year.

Notwithstanding the above, and because the form has only recently been approved, the tax filing deadline for all tax periods which began in 2016 and ended before 31 December 2016, will be 1 to 30 November 2017.

For further information, you can contact the Tax department:

Madrid Office: +34 917 811 186

Barcelona Office: +34 933 620 545

Valencia Office: +34 963 527 546