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New Order of the Ministry of Finance Regarding Tax Declaration Forms

Order HFP/1923/2016 (19 December) Ministry of Finance, BOE 21 December 2016

A year has passed since tax reforms were introduced with Act 26/2014 (27 November), which amended the Personal Income Tax (IRPF) Act 35/2006 (28 November), the amended text of the Non-Residents' Income Tax Act (IRNR), approved by Royal Legislative Decree 5/2004 (5 March) and other tax regulations. Practical application of the tax reforms has shown that there are certain features which need to be corrected or improved. For that reason, last December, Order HFP/1923/2016 was published in Spain's Official Gazette to include the main improvement in the different tax declaration forms under one set of regulations.

The most relevant amendments contained in the orders make reference to the following forms:

- **Form 181** declaration of loans and credits, and financial transactions relating to real estate:

  i) New information fields to include the information coming from transactions for repayment of interest unduly paid in preceding financial years (provided the said repayment does not constitute income subject to the beneficiary's income tax, contrary to what happens in the case of an excess received on the repaid amount).

  ii) The number of slots on the form has been recoded to comply with established IT designs.

- **Form 182** declaration of donations, gifts and bequests received and dispositions made:

  i) Until 2015, and for donations less than €150 a year, form 182 did not include information relating to whether a donation was recurring or not. Now a system has been established to identify whether, in the immediately preceding two tax periods recurrent gifts, donations and bequests have been made with the right to reduction in the tax return for Personal Income Tax (IRPF). So a new field has been included to demonstrate that the requirement has been met for the donation to be recurrent.

- **Form 184** annual declaration to be presented by companies under the income allocation system:

  i) The amount of deductible provisions and expenditure difficult to substantiate is included in the breakdown of expenditure deductible for calculating the return from the business activities carried out by companies under the income allocation system, improving the information available in order to complete the IRPF voluntary settlement of partners, members or stakeholders in those companies.

  ii) A new field has been introduced to inform whether the company has applied the principle of temporary allocation of the forward transactions or transactions with a deferred price to income arising from its business activities.

  iii) New fields are included in the register of hereditary, joint-ownership and participating shareholders so as to include information about the shareholder in relation to the properties giving rise to the returns on real property received through the company under the income allocation system.

- **Form 187** declaration of shares in the capital or assets of collective investment institutions and the annual summary of withholdings and payments on account of IRPF, Inheritance Tax (IS) and IRNR in relation to the income or capital gains obtained as a consequence of transfers or redemptions of the shares:

  i) It incorporates specific information codes in the case of workers relocated outside Spain.

  ii) Along with transactions relating to transfers and reimbursements from collective investment institutions, it includes the transactions arising from the new tax regime for 2017 onwards for the sale of subscription rights coming from securities that are considered to be capital gains subject to withholding.

  iii) This new information coming from the annual summary of withholdings advises using form 187 for its inclusion, although it will not come into force until 2018, in respect of the annual summary of withholdings on these transactions for the 2017 financial year.

- **Form 198** annual declarations of transactions with financial assets and other securities. The order modifies form 198 to give it greater content.

  Act 262014 (27 November), which amends the IRPF and other tax legislation, has introduced important new features into Spain's direct taxation system.

  Changes made to IRPF include modification of the tax system for returns from personal property and capital gains arising from capital decreases with repayment of contributions when it involves securities not admitted to official stock exchange listing. Therefore, until 31 December 2014, these transactions were taxed in the same way as securities admitted to official stock exchange listing, since the tax payable on such income could be deferred, as the amount received reduced the purchase value of the securities or shares until they were cancelled (any surplus was effectively considered as returns from personal property and capital gains).

As of 1 January 2015, the tax deferral system continued to be generally applied in the case of shares admitted to official stock exchange listing, although it was changed substantially for shares not admitted to listing.

In those cases, there may be immediate taxation of the income obtained, without deferral of the tax payable, to the extent that there has been an increase in the value of the equity of the shares corresponding to the last financial year ended prior to the date of paying the premium or returning contributions and their acquisition value (or the market value of the properties or rights received).

In this way, the amounts received in excess of the increase in equity would reduce the acquisition value of the shares; and any resulting excess would be taxed again as a capital gain. So, the value of the company's equity must be reduced in the amount of the reserves unavailable by law. If there is subsequently a distribution of profits corresponding to this type of unlisted share, their total value will reduce the acquisition value of the securities, up to the limit of the returns from capital or capital gains that may previously have been calculated, thereby avoiding double taxation of the same income.