

Resolution of February 6th, 2023, of the General Direction of the Tax State Administration Agency, in which approves the general guidelines of the Annual Tax and Customs Control Plan FOR 2023.

On February 27th, and as it is usual every year, the Annual Tax and Customs Control Plan for 2023 has been published in the BOE, with the general guidelines of the Tax Agency in order to prevent and fight tax fraud. In this document we intend to summarize the most relevant measures.

The Annual Tax and Customs Control Plan for 2023 (the “Annual Plan”) breaks down the actions that the Tax Agency will carry out throughout year 2023 and that has a double purpose: to improve voluntary tax compliance and to strengthen verification measures and investigation, especially for the fight against the most complex tax fraud. In this sense, the measures adopted for this purpose in the Annual Plan revolve around five main pillars:

1. Information and assistance.
2. Prevention of breaches.
3. Investigation and actions to verify tax and customs fraud.
4. Fraud control in collection phase.
5. Collaboration between the Tax Agency and the Tax Administrations of the Autonomous Communities.

1. Information and assistance

To promote voluntary compliance, the Annual Plan establishes the implementation of a new information and assistance model in which most of the services are provided in all channels (digital or face-to-face), along with a new application in order to request an appointment.

2. Prevention of breaches

Las actuaciones de la Agencia Tributaria para prevenir incumplimientos tributarios se enmarcan en los siguientes ámbitos:

- In terms of censuses, the intention is to reduce the number of non-filers through advertising campaigns during the declaration period and early control of the entry

of new taxpayers in the tax census, with the purpose that the actions of control are carried out on those active taxpayers who have not complied with their tax obligations.

- The purpose of improving the quality of international information on tax matters it is maintained, in order to improve transparency and consolidate the Exchange of information with the European Union and the OECD, as well as with the United States regarding FATCA.
- The control of actions regarding customs and special taxes are maintained.

3. Investigation and verification actions of tax and customs fraud

The priority lines of action in this area will be as follows:

1. **Information sources and technological advances in risk analysis**, based on existing information exchanges, for example, the “*Country by Country report*” cross-border mechanisms (“DAC 6”) or the automatic exchange of information on financial accounts (“CRS”).

Likewise, as of 2023, an international cooperation mechanism has been established in relation to the information obligation of digital platforms, with the aim of exchanging information for adequate taxation of operations carried out by electronic means (“DAC 7”).

2. **Control of internal taxes**, based on verification actions like:
 - a. **Multinational groups, large companies, and tax groups**. The main areas of action in this regard will focus on:
 - i. Anti-circumvention measures. Especially, the so-called hybrid asymmetries, international tax transparency, deduction of financial expenses or the abuse of Agreements.
 - ii. Transfer prices and transnational operations. Especially, in terms of corporate restructuring, valuation of transfers or intra-group assignments of intangible assets, deductions that can significantly erode the tax base and the existence of repeated losses.

- iii. Income tax for non-residents, with or without a permanent establishment. In particular, the distribution of dividends, payment of interest and fees to non-residents with a permanent establishment.
 - iv. Non-cooperative jurisdictions and preferential regimes.
 - v. Control over tax groups and entities, corporate tax and VAT.
- b. High net worth individuals, with a special focus on relevant assets that pretend to have their tax residence abroad, or on tax residents that use opaque structures to hide income assets. In addition, the massive use of the new information on properties and companies from the General Council of Notaries, among others, has been established to help detect opaque companies that own high-level residential properties, especially after the recent modification of article 5.one.b of Law 19/1991, of June 6th, on Wealth Tax.

In relation to the coordination between administrations, coordination between state and regional administrations are foreseen in order to regulate internal relocation behaviors of large assets.

- c. Concealment of business or professional activities and abusive use of companies. A series of measures have been established to fight against the underground economy, especially in terms of high risk business models.

An analysis of those companies controlled by a family group will be carried out in order to jointly evaluate the economic operations as well as the computer systems that allow accounting records to be altered, extending the controls to the companies that are dedicated to manufacture and commercialization.

In relation to the abusive use of companies, as it is usual, the Tax Agency will pay special attention to the use of interposed professional entities in order to reduce taxation. Likewise, interposition operations of legal persons will be

verified to remand income pending distribution by operating entities, even when reaching the verification of the special tax regime of non-monetary contributions that may have been made.

The impact on the economic activity of luxury goods, such as boats or high-end vehicles, and services related to the luxury sector by legal entities whose activity is not linked to their use or lease will also be controlled.

- d. Control of economic activities, in relation to certain sectors and taxes control:
- i. Regarding VAT. In relation to this tax, the actions will focus on verifying the proper compliance with the obligation of taxpayers under the SII system. The cases of use of companies for the purpose of accessing the right to deduct VAT amounts paid will also be controlled, especially when they are related to other entities whose activities do not generate such a right.
 - ii. Regarding Corporate Tax. In relation to this tax, the actions will focus on taxpayers who have repeatedly entered negative tax bases and deductions pending application in their returns. The use of associative structures, such as Economic Interest Groups, will also deserve special attention; especially in those cases in which they are used as mere vehicles to transfer tax benefits to third-party investors. Finally, the control of SOCIMIs and their participants will be promoted, especially in terms of compliance with the requirements for their constitution.
 - iii.
- e. Other control actions on compliance with internal regulations, among which the control of non-filing taxpayers of personal income tax, IS or VAT stands out. In particular, and without being exhaustive, the control of withholdings, transactions made in cash or virtual currencies and income obtained by non-resident artists and athletes.

- f. Other verification actions, among the ones that stand out, we have the control of refund requests and the review of correct compliance with the formal obligations imposed on taxpayers.

Once the pandemic period has been exceeded, it is expected to recover face-to-face visits made by the Tax Agency. Especially in the real estate construction sector in terms of rehabilitation and reforms.

Likewise, the face-to-face nature will also be prioritized in those cases where it is intended to identify the use of management and accounting software that allows the manipulation, alteration, omission, or concealment of billing data (dual-use software).

3. **Control of customs fraud, of Special and Environmental Taxes.** In relation to the new environmental taxes (Tax on Non-Reusable Plastic Packaging and Tax on the Deposit of Waste in Landfills), which entered into force on January 1st, 2023, compliance with the established formal obligations will be verified. In particular, the presentation of the Self-assessment Models.

4. Control of fraud in the collection phase.

Another of the basic lines of action will affect the collection phase, in which the promotion of the location of new assets susceptible to seizure actions stands out, with a special focus on crypto assets and virtual currencies, and the reinforcement of international cooperation for the collection of tax credits, as well as the permanent follow-up actions of the measures tending to the evaluation of collection risk, prosecute tax crime and smuggling, adopting measures in relation to the derivation of responsibility, and also adopting precautionary measures, and monitor apparent insolvencies .

5. Collaboration between the Tax Agency and the TAX Administrations of the Autonomous Communities

Lastly, collaboration with the Tax Administrations of the Autonomous Communities will continue to be strengthened; especially in terms of exchanging information with tax

implications with the purpose of improving the fight against tax fraud and the underground economy, among others.

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