

January 2022

Tax

INFORMATIVE NOTE ON THE JUDGMENT OF THE CJEU REGARDING THE SPANISH FORM 720 ON THE DECLARATION OF ASSETS AND RIGHTS ABROAD

SUMMARY

The Court of Justice of the European Union has issued a judgment on Form 720 in which it declares that Spanish legislation fails to comply with EU law. The CJEU considers that the restrictions and penalties contained in Form 720 are disproportionate and may discourage the acquisition of assets abroad and interfere with the movement of capital within the Union.

Today, January 27, 2022, the Court of Justice of the European Union (Case C-788/19 European Commission vs. Kingdom of Spain) has issued the long-awaited judgment on Form 720 in which it declares that that Spanish legislation fails to comply with EU law for the following reasons:

- *“by providing that the failure to comply with or the partial or late compliance with the obligation to provide information concerning assets and rights located abroad entails the taxation of undeclared income corresponding to the value of those assets as ‘unjustified capital gains’, with no possibility, in practice, of benefiting from limitation;*
- *by subjecting the failure to comply with or the partial or late compliance with the obligation to provide information concerning assets or rights located abroad to a proportional fine of 150% of the tax calculated on amounts corresponding to the value of those assets or those rights, which may be applied concurrently with flat-rate fines, and*
- *by subjecting the failure to comply with or the partial or late compliance with the obligation to provide information concerning assets or rights located abroad to flat-rate fines the amount of which is disproportionate to the penalties imposed in respect of similar infringements in a purely national context and the total amount of which is not capped”*

The Judgment affirms that the consequences associated with the failure to comply with, or the partial or late compliance with the obligation to provide information put forth in Form 720 are *“of such seriousness” that “it goes beyond what is necessary to guarantee the effectiveness of fiscal supervision and to combat tax evasion and avoidance”*.

Regarding the penalty of 150% on the amount of the tax avoided (*“that rate not being expressed as a ceiling rate”*), the Judgment states, first, that any context in which it is imposed must respect *“the principle of proportionality”*, adding that the penalty of 150% derived from failure to comply with the declaration obligations of Form 720 caused *“disproportionate interference with the free movement of capital”*

Finally, and in relation to the flat-rate fines for (i) declaring incomplete, incorrect, or false information on Form 720, for (ii) not declaring the information, or for (iii) declaring the information out of time, the Judgment interprets that, since *“the amount of those*

flat-rate fines is disproportionate to the amount of the fines incurred by taxpayers " of "the General Tax Law", this determines the imposition of another "disproportionate restriction on the free movement of capital".

The Judgment, setting aside the limitations on its scope requested by the Advocate General, determines that the tax obligations linked to the failure to comply with the obligation to provide information imposed by Form 720 are contrary to the right to free movement of capital, which does not prevent the current persistence of the obligation to submit said Form, March 31 remaining as the deadline.

In the Tax Department of DWF-RCD we have extensive and significant experience in advising on tax adjustments and in everything related to the application of Form 720, as well as in combatting the disproportionate consequences arising from its non-compliance.

DO YOU HAVE ANY QUESTIONS?

From our Tax Area, we work to be able to offer you a response to any doubts that may arise from this change. If you have any questions, do not hesitate to contact us.

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