# Anti-Money Laundering Newsletter

Main new legislation and news in relation to Anti-Money Laundering and combating Terrorism Financing (AML/TF) - 1Q22

GARRIGUES

Spain

February 2022

# 1. Bank of Spain's new register for virtual currency exchange and custodian wallet providers now fully up and running

## Individuals or legal entities will have to be registered where the services linked to virtual currencies are located in Spain.

Last October, the register for providers engaged in exchange services between virtual and fiat currencies and custodian wallet providers was put in place. This register was required in additional provision two of Law 10/2010, introduced by Royal Decree-Law 7/2021, of April 27, 2021.

Individuals or legal entities need to be registered where the supply of virtual currency exchange services or custodian wallet services, the establishment or the management of their services are in Spain, no matter where the customers for their services are located. There is also a requirement to register both providers not under the supervision of a competent authority, along with regulated institutions that provide these services and are already registered on government registers kept by the competent authority.

The registration of legal entities must be done electronically through the Bank of Spain's electronic register, using any of the authentication systems that are accepted by the Bank of Spain.

To be entered on the register, the necessary forms have to be filed together with the other documents required. The features of this process are:

- There are specific forms to be completed for each type of service, exchange or custodian wallet: CRIPTO01 (virtual currency exchange activities) or form CRIPTO03 (custodian services).

- In both cases form CRIPTO05 has to be completed, relating to the statement of commercial and professional good repute, for both the applicant, and if applicable, for the individuals actually managing the institution.

- And together with the forms, they have to submit: a no-criminal-record certificate; identity documents; **anti-money laundering and counter-terrorist financing manual**; **and risk self-assessment**.

After taking part in these registration procedures, our firm has determined that the registration process has the following participants:

- the Bank of Spain, which will supervise the registration obligation, along with the suitability of the applicant and of its managing body, through good repute questionnaires, which will be accompanied by a no-criminal-record certificate;

- And Sepblac, which will be responsible for a detailed review of the AML/CTF procedures filed and the risk assessment, paying particular attention to the flows of funds. Importantly, Sepblac's approval is required to be properly registered on the register.

In needs to be noted from a practical standpoint that the Bank of Spain has three months to issue a decision in the procedure and therefore to carry out the registration of the entity or individual. That said, the Bank of Spain usually sends out requests for additional information which halt the procedure, making it last longer than 3 months.

Besides, in our view it is crucial to start the process as soon as possible, because Royal Decree-Law 7/2021, of April 27, 2021 allowed nine months from the day it came into force in which to register any crypto service providers already operating in Spain on its entry into force, which means that these entities or individuals required to be entered on the Bank of Spain's cryptocurrency register only had until January 29 to fulfill their obligation without becoming liable to a penalty. We have seen that a large number of applications for registration were filed in the final weeks of 2021 and so far in 2022.

# 2. Legislation and publications of official bodies

## 2.1 European Banking Authority (EBA) publishes opinion on 'de-risking' and its impact on financial services

The EBA has published (January 5, 2022) its **opinion on 'de-risking"** assessing the impact of credit institutions reducing the risk to which certain categories of customers are exposed, no longer driven by the specific ML/TF risks of each of their members, but rather the cost that the steps involved in monitoring each of them  De-risking refers to decisions not to establish or to end business relationships with certain categories of customers, due to the ML/TF risk associated with that entire category without carrying out a study of the profile of each individual customer in that category.

The EBA has placed the spotlight on those practices as a factor conditioning access for everyone to financial services provided within the European Union. Institutions' non-acceptance of risk in certain cases can cause financial exclusion of customers, sectors or even legitimate jurisdictions. It can similarly have an adverse effect on competition and on financial stability.

Although the decision not to establish or to end a business relationship with a customer may be in line with article 14.4 of Directive (EU) 2015/849, which requires customers not to be onboarded where the institution does not have reasonable assurance of the source of their funds, the EBA says that de-risking of certain customers, as well as of entire categories of customers without due consideration of individual customers' risk profiles, can be unwarranted by the EU AML legislation and a sign of ineffective ML/TF risk management.

The EBA's overall conclusions on these practices were as follows:

(i) De-risking practices affect specific segments of the financial sector, including banks, payment institutions or electronic money institutions, as well as various categories of individuals that can be associated with higher risk, for example asylum seekers from high ML/TF risk jurisdictions or not-for-profit organizations. De-risking can lead to adverse economic outcomes for entities and to the financial exclusion of individuals.

(ii) At EU level, de-risking has a detrimental effect on the achievement of the EU's objectives in relation to fighting financial crime, which promote financial inclusion and competition in the single market. If a member state's banks are being financially excluded, it can have an impact on the stability of that country's financial system.

(iii) The EBA identified a number of drivers of institutions' decisions to de-risk: they may arise where the institutions lack the relevant knowledge or expertise to assess the risks associated with specific business models or where the cost of compliance exceeds profits.

(iv) The EBA notes that de-risking may come into conflict with provisions in EU law on other matters, in particular with Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, Directive (EU) 2014/92 on access to payment accounts with basic features and Directive (EU) 2015/2366 on payment services in the internal market.

In relation to Directive (EU) 2014/92, the EBA notes that:

(a) While article 16 of that Directive creates a right for customers who are legally resident in the Union to obtain a basic payment account, it also provides that this right applies only to the extent that institutions can comply with their AML/CTF obligations. No clarification is provided on the interaction between these two requirements.

(b) It also mentions that whereas article 19 of the Directive 2014/92 provides that consumers must be given the grounds and the justification for a decision to terminate the contract for a payment account with basic features, this right to be told can be in conflict with the requirements in the AML/CTF legislation that prohibit tipping off.

The EBA takes the view that to address unwarranted de-risking and promote sound ML/TF risk management, further action by competent authorities is required, and encourages them to:

(a) engage more actively with institutions that de-risk, and with users of financial services that are particularly affected by de-risking to create awareness of the rights and responsibilities of both institutions and their customers and set out in practical terms what each can do to facilitate legitimate customers' access to financial services;

(b) remind credit and financial institutions that, if the end of a relationship with a customer is warranted by the outcome of their assessment of ML/TF risk, they can opt to offer only basic financial products and services.

## 2.2 Sepblac issues clarification note on measures adopted by financial institutions in compliance with their AML/CTF obligations related to refusal, blocking or cancellation of accounts or products

As obliged entities under the AML/CTF legislation, financial institutions are required to apply adequate due diligence measures to their customers from the standpoint of the assigned level of risk. Where they cannot adequately apply due diligence, financial institutions cannot execute transactions or establish business relationships with the customer or must end a previously established relationship.

On this subject, Sepblac recently published a clarification note in relation to the measures adopted by financial institutions in compliance with their AML/CTF obligations. In its note, which may be read here, Sepblac stresses that the information contained in the files created and managed by Sepblac is treated as confidential and has a restricted nature. Therefore, under no circumstances is information on individual customers provided to financial institutions, and hence Sepblac is not involved in the decisions that financial institutions may take when refusing to open or enter contracts for accounts or products, blocking them or proceeding, if necessary, to cancel them, as provided by their customer acceptance and risk management policies.

The Bank of Spain, in conjunction with Sepblac, notes that "neither the decision to apply restrictive measures or their practical implementation should be made without involving a proportionality judgment taking account of all the various interests at play. The aim is to prevent practices or omissions with a minimum amount of relevance in relation to anti-money laundering decisions from

being able to carry the imposition of extremely harsh restrictive measures for the interested parties, where they are considered individually or simply as a result of belonging to a specific category".

Moreover, the 2020 Annual Report of the Bank of Spain's Claims Service underlines the common criteria for good practices drawn up by the Bank of Spain and Sepblac on the application of AML/CTF regulations when adopting blocking measures or canceling customer relationships, which started to apply on the publication date of that report. We have picked out the following:

- Information that has to be provided to the parties concerned regarding blocked or canceled relationships: the general principle should be to provide "beforehand or immediately, general reasons" explaining why the measure was adopted, with specific citation of Law 10/2010, unless the obliged entity considers that in the specific case concerned there are special confidentiality reasons for not doing so.

- "Any generalized or routine implementation of due diligence measures should be combined with a **certain degree of flexibility in their application**", to allow any special circumstances associated with each specific case to be considered, including, for example, impediments arising from the customer's state of health or the distance of the place where they reside.

- The application of restrictive measures to transactions with a customer "should not result in the indefinite freezing of funds", but rather, after a reasonable amount of time, the institution should make them available to the competent authority or to their owner, or else state the reasons for acting differently in the specific case concerned.

- Where information has not been updated regarding the **issue of a Spanish national identity card following its expiry**, it is not deemed proportionate to adopt restrictive measures, unless the institution expressly submits that, due to the length of time that has passed or due to other circumstances relating to the case, the proof of identity held for the interested party may no longer be sufficient. The same occurs in relation to residence permits.

- It is not deemed to be proportionate to adopt restrictive measures of this type in relation to individuals for failing to produce the customer's personal income tax return where no transactions of a significant size for which justification is considered necessary have occurred previously.

- "Where the valid terms of office of representatives of owners' associations expire, a reasonable management of ML risks posed by customers of this type recommends, together with a minor case law ruling, that their appointments must be deemed tacitly renewed. Therefore, the adoption of restrictive measures would only be required if there were reasons to believe that those appointments could have been withdrawn, new representatives have been appointed or material discrepancies exist over this matter within the association concerned".

- Where there are loans or other lending products with outstanding payments, it is deemed proportionate to allow the reasonable transactions needed to attend to them, unless the institution finds and expresses that, in the specific case concerned, it has to block transactions completely.

- In relation to denial of access to the basic payment account for AML/CTF reasons, the Bank of Spain, under a joint interpretation of Royal Decree-Law 19/2017 and of Law 10/2010, will not deliver a decision against the institution: "where the institutions identify and state —and are able to produce proof to the Bank of Spain of — the existence of a real and actual ML/TF risk; and where that same institution has cancelled business relationships with the potential customer within the two year period immediately preceding the petition" by reference to compliance with their AML/CTF obligations.

## 2.3 Bank of Spain to review suitability of institutions' directors if it identifies indications of money laundering or terrorist financing

In November 2021, Royal Decree 970/2021, amending Law 10/2014, on regulation, supervision and solvency of credit institutions, was approved. This royal decree toughens the anti-money laundering rules, in addition to giving the Bank of Spain the power to remove banks' directors, and withdraw their suitability status, where there are reasonable indications or a greater risk of money laundering or terrorist financing transactions.

The assessment of fulfillment of suitability and good repute requirements by directors must be done by the Bank of Spain or, if necessary, by the European Central Bank "where, in the presence of founded indications, it becomes necessary to assess whether the suitability requirement continues to be fulfilled in relation to serving members, especially where there are reasonable indications to suspect that money laundering or terrorist financing transactions are being, are being attempted to be, have been or have been attempted to be, conducted, or that there is a greater risk of those transactions being conducted in relation to that institution, financial holding company or mixed financial holding company".

The supervisor will assess the implementation of anti-money laundering measures to determine the bank's risk profile, with could result in an insufficient system of controls determining an increase in capital requirements.

The new provisions state that if, as a result of a review of the corporate governance systems, of the business model or of the activities of an institution, the Bank of Spain finds "reasonable indications to presume that, in relation to that institution, money laundering or terrorist financing transactions are being, are being attempted to be, have been or have been attempted to be conducted or that the risk that this will occur has increased materially", it must notify the EBA and Sepblac immediately.

## 2.4 The European Union plans to implement crypto-asset rules

The European Union plans to implement a regulatory framework to put in place uniform rules on the provision of services related to cryptocurrencies and the risk that may be associated with them. These plans notably include:

(i) The proposal for a MICA Regulation (Markets in Crypto-Assets) Regulation having a subject-matter based on providing rules on transparency, disclosure, authorization and supervision for entities or individuals issuing cryptocurrencies or providing services related to cryptocurrencies.

The provisions in the proposal for a MICA Regulation will be applicable to the following services:

- custody and administration of cryptocurrencies;
- operation of a trading platform for cryptocurrencies;
- exchange of cryptocurrencies for fiat currency;
- exchange of cryptocurrencies for other cryptocurrencies;
- execution of orders for cryptocurrencies on behalf of third parties;
- placing of cryptocurrencies;

- reception and transmission of orders for cryptocurrencies;
- and providing advice on cryptocurrencies.

Adopting a regulation will be a means of creating a common regulatory framework throughout the European Union, with which it is sought to provide legal certainty to all participants in the cryptocurrency market, by setting out a single authorization system for service providers and a set of uniform rules directly applicable in all EU countries.

Although this legislation has yet to be approved, Spanish lawmakers have decided to step in ahead of it coming into force and to define "providers engaged in exchange services between virtual currencies and fiat currencies" as any entity that engages in any of the activities included in the foregoing list, and besides being subject to the AML legislation, they will also have to be registered on the register of providers engaged in exchange services, managed by the Bank of Spain.

(ii) Adding to the proposals for legislation submitted by the Commission on July 20, 2021 in relation to AML/CTF, in December 2021, the European Council agreed on its negotiating mandate regarding the transparency of transfers of cryptocurrencies. In this proposal an obligation is imposed on crypto-asset providers to collect full information about the sender and beneficiary of transfers of virtual assets.

The mandate's purpose is to ensure the traceability of transactions conducted with cryptocurrencies and prevent any type of suspicious transaction. The mandate defines transfers of cryptocurrencies as any transaction with the aim of moving virtual assets of this type from one account to another, irrespective of whether the originator and the beneficiary are the same person.

(iii) In November 2021, to tackle the various pitfalls associated with digital finance, the Council unveiled a number of proposals including a regulation on markets in crypto-assets and regulation on digital operational resilience.

These measures have the dual aim of harnessing the innovative potential of crypto-assets and ICT while preserving financial stability and protecting investors and managing the potential risks that may arise from the uptake of new technologies. Digital operational resilience is defined as the ability of a financial institution to adapt its operational integrity and reliability from a technological perspective, while preserving the security of the network.

## 2.5 FATF updates its Guidance for a Risk-Based Approach for Virtual Assets and Virtual Asset Service Providers

The Financial Action Task Force (FATF) published its Guidance for a Risk-Based Approach for Virtual Assets and Virtual Asset Service Providers in October 2021. With their latest update, the FATF models recommend that countries assess and manage risks related to the activities and financial providers of virtual assets. The institution notes that this is a rapidly evolving sector, requiring ongoing monitoring, and recommends the putting in place of prior licensing or registration rules for these entities, along with their supervision by the competent national authorities. Virtual asset providers are subject to the same relevant measures as the FATF considers necessary for the supervision of other financial institutions.

The aim of the FATF's Guidance is to help countries and virtual asset service providers in understanding their AML/CTF obligations.

It includes updates focusing on the following key areas:

(i) Clarifying the definitions of virtual assets and activities falling within the definition of "exchange between virtual assets and fiat currencies".

(ii) Guidance on how the FATF standards apply to transactions involving virtual assets.

(iii) Additional guidance on the risks and the available tools to countries to address the ML/TF risks for peer-to-peer transactions.

(iv) Updated guidance on the licensing and registration of providers.

(v) Additional guidance for the public and private sectors on implementation of the travel rule, namely, the requirement to include information on the parties participating in each transaction with virtual assets.

(vi) Principles of information sharing and cooperation amongst provider supervisors.

The Guidance provides a summary of the sections and the key changes made in the 2021 update.

## 2.6 The European Union seeks to restrict use of financial passporting by banks to establish their activities in other member states

On October 27, 2021, the European Union agreed to move forward with the implementation of the Basel III agreement. With this aim, it decided to adopt a review of two key pieces of EU banking legislation, and to approve a new legislative proposal.

This legislative package includes a **review** of the system of access to banking activities for third country institutions by setting up **branches in member states**. The proposal to amend Directive 2013/36/EU includes a **harmonization** of the **requirements** for setting up branches.

To date, there has not been a harmonized regulatory framework in the European Union on the establishment of branches in the EU by financial institutions from third countries. This meant in practice that they could provide banking services in the European Union through branches in member countries with more lenient rules.

The European Commission now intends to **restrict** use of **financial passporting**, because it is a common practice for banks now to use branches in countries such as Luxembourg or Ireland to operate from there, even though their nerve centers are in other countries.

This measure, together with the other proposals included in the Banking Package 2021, will follow the ordinary legislative procedure, so the next step is debate and approval by the European Parliament and the Council.

## 2.7 ISO whistleblowing management systems standard published

In October 2021, ISO 37002:2021, the standard on whistleblowing management systems, was published. The aim of this standard is to perfect the systems for reporting breaches at companies.

It originates from Directive 2019/1937 on the protection of persons who report breaches of Union law, which is aimed at encouraging the identification of breaches and action when they are observed.

This links up with the requirement for obliged entities under the AML/CTF legislation to have an internal whistleblowing channel for AML/CTF matters also, which their employees, managers or agents can use to report any relevant information on possible wrongdoing. This AML/CTF whistleblowing channel may be included in any internal whistleblowing channels that entitles already have in place. They will moreover be required to adopt the necessary measure to protect employees, managers or agents reporting breaches from retaliation, discrimination and any other types of unfair treatment.

In relation to this, the new ISO 37002:2021 standard includes guidance on how these whistleblowing channels should work:

(i) Personnel training on how to act if they observe any potential wrongdoing.

(ii) Classification of communications in order from the highest to the lowest risk.

(iii) The whistleblowing system will have to determine how reports may be submitted.

On top of this, the system will also have to produce specific investigation rules, as well as appropriate protection and monitoring measures for the whistleblower and any individuals related to the report.

## 2.8 Ministry of Justice releases new declaration of beneficial ownership form to be filed with the commercial registry alongside financial statements

On July 26, 2021, the Official State Gazette published Order JUS/794/2021 of July 22, 2022, approving the new forms for filing financial statements with the commercial registry, including the new beneficial ownership declaration form.

The Fourth Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing requires the creation in every EU member state of a beneficial ownership register. This same requirement is contained in the Fifth Directive (EU) 2018/843.

The form to be filed with the commercial registry is contained in Order JUS/319/2018, of March 21, 2022. In 2021, Order JUS/794/2021 set out three new provisions in relation to the currently valid form:

- Inclusion, in the application to file the financial statement forms, of the issue date of the auditor's report, mentioning the type of audit -voluntary or mandatory- conducted and the registration number on the Official Auditors' Register of the auditor or audit firm that issued the report.

- Disclosure of non-financial information.

- On an exceptional and transitional basis, the filing form for the 2020 financial statements had to contain a COVID-19 statement, specifically mentioning the impact of the state of emergency due to the pandemic on businesses.

# 3. High risk jurisdictions for AML/CTF purposes

## 3.1 The EU removes Anguilla, Dominica and Seychelles from list of non-cooperative jurisdictions

In October 2021, the European Union decided to remove Anguilla, Dominica and Seychelles from its tax haven blacklist. These countries had been added to the list because they did not fulfill the EU's tax transparency standards regarding the exchange of information.

They have now been placed on the tax haven greylist, consisting of states that do not meet the European standards, but have committed to change their legislation.

Nine jurisdictions remain on the EU list of non-cooperative jurisdictions: **American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.**

In 2017 it was determined that the Council would review its list of non-cooperative jurisdictions to promote good governance worldwide in relation to tax and information to the member states.

The criteria for inclusion on the list are in step with international tax rules and are centered on tax transparency, fair taxation and preventing base erosion and profit shifting. The Council works with countries that fail to fulfill these standards, supervises their progress, and regularly updates this list.

# 4. International sanctions regime

## 4.1 The European Council prolongs the sanctions regime against unauthorized drilling activities in the Eastern Mediterranean by one year

Following a review of the restrictive measures in response to Turkey's unauthorized drilling activities in the Eastern Mediterranean, the Council has adopted a decision to extend the regime until November 12, 2022.

The European Union will remain able to impose targeted restricted measures such as an asset freeze for listed persons and entitles in relation to unauthorized drilling activities, as well as a ban on travel to the EU for listed persons. In addition, EU individuals and entities are forbidden from making funds available to those listed.

This decision will be under review and will be renewed or amended if the Council deems that its objectives have not been met.

## 4.2 The European Union imposes sanctions against Belarus for attack against Polish border

The foreign affairs ministers of the various EU countries have approved a set of sanctions against Belarus for human rights abuses and an instrumentalization of migrants.

On December 2, 2021, the Council adopted the fifth package of sanctions including restricted measures on a further seventeen individuals and eleven entities, targeting prominent members of the judicial branch and propaganda outlets that contribute to the continued repression of civil society, democratic opposition, independent media outlets and journalists, and high-ranking political officials and companies that have helped incite and organize illegal border crossing for political purposes.

This package of sanctions consists of an asset freeze or a ban on making funds available to the listed entities, and for individuals, a ban on traveling to other member states.

The conflict started in October 2021, when the Belarus authorities facilitated the entry of immigrants from the Middle East and Africa. Once in Belarus, they were allowed by the Belarus authorities to travel to the Polish border, which they only had to cross.

## 4.3 The European Union imposes new sanctions against persons linked to Nicaraguan regime

In January 2022, the European Union imposed sanctions on seven individuals and three entities linked to the regime in Nicaragua. The new listings include family members of President Daniel Ortega, and Vice-President Rosario Murillo. In addition, the National Police, the Supreme Electoral Council and the company overseeing telecommunications and postal services have also been listed.

They are believed to be responsible for human rights abuses, including repression of civil society, supporting the fraudulent presidential and parliamentary elections and undermining democracy and the rule of law.

The imposed measures notably include a travel ban, preventing them from entering or transiting through EU territories as well as an asset freeze throughout the EU. The European Union has also forbidden its citizens and companies from making funds available to them.

The first sanctions against Nicaragua date back to 2019. Later, in view of the continuing instability, in May 2020, the European Union again adopted restrictive measures against six individuals. On November 8, 2021, the High Representative for Foreign Affairs and Security Policy issued a declaration in which he underlined that the elections held on November 7, 2021 had taken place without democratic guarantees.

## 4.4 The European Union keeps in place economic sanctions on Russia over the situation in Ukraine until July 31, 2022

The European Union has prolonged the sanctions on Russia until July 31, 2022. This decision stems from the latest assessment of the Minsk Agreements, after concluding that Russia has not complied with full implementation of those agreements.

The European Council adopted the economic sanctions in response to the illegal annexation of Crimea and Sebastopol and resulting destabilization of Ukraine. On top of these, the European Union has decided to impose new sanctions on the Russian regime, notably including diplomatic measures, individual restrictive measures, including an asset freeze and travel restrictions, in addition to specific restrictions on economic relations with Crimea and Sebastopol.

These sanctions have been added to the existing economic sanctions adopted by the EU, such as limiting access to EU primary and secondary capital markets for certain Russian banks and companies, or imposing a direct or indirect import, export or transfer ban for military defense equipment or curtailing Russian access to certain sensitive technologies and services that can be used in the Russian energy industry, such as for oil production and exploration.

# 5. Judgments

## 5.1 Advocate General at European Court of Justice supports Luxembourg's public register of beneficial owners

The conclusions of the Advocate General at the Court of Justice of the European Union issued on January 20 support the public register of beneficial owners created in Luxembourg as an anti-money laundering measure, by taking the view that it does not affect people's privacy.

The Advocate General has therefore confirmed the validity of the rules on public access to information on the beneficial owners of Luxembourg companies. This register came into operation in 2019 to increase the supervision of companies in the country, in line with European rules.

He noted however that the member states are required to limit public access to their registers of beneficial owners where, in exceptional circumstances, the disclosure of that information may expose the beneficial owner to a disproportionate risk of breach of fundamental rights as contained in the EU Charter of Fundamental Rights.

## 5.2 The European Court of Justice holds Spanish 720 form contrary to European Law

On January 27, the CJEU delivered a judgment in case C-788-19, finding that the tax obligation of Spanish tax residents to file an annual information return on their assets or rights located abroad, known as **Form 720** as defined in the General Taxation Law, is precluded by EU law and that the consequences determined for failing to comply with this obligation are disproportionate (see our alert).

The court held that Spain has failed to meet its obligations in relation to the principle free movement of capital, as result of the filing of that form, and the related penalties for failing to file it, giving rise to a difference in treatment among tax residents in that country according to where their assets are located. According to the CJEU, the requirement to fulfill this tax obligation could deter residents in Spain from investing in other member states, which, in the court's opinion, is a restriction on the free movement of capital.

The CJEU explains in its judgment that a consequence of failure to comply or imperfect or late compliance with the obligation means that the unreported income relating to the value of those assets will be regarded "**unjustified capital gains",** without the taxable person being able to rely on expiry of the obligation. It also noted that besides having an effect of "non-applicability of any limitation period", the measure adopted by the Spanish legislature also allows the tax authorities to call into question a statute of limitations benefiting the taxpayer which had already expired, something that is precluded by the fundamental requirement of legal certainty.

Moreover, the CJEU affirmed that the penalties laid down for failing to failure to comply with the obligation to provide information are disproportionate and that it is unlawful for the law to create an unlawful situation in which the statute of limitations is not applicable in relation to goods and rights abroad simply as a result of failure to comply with a formal obligation.

## Team:

**Luis de la Peña**

Luis.de.la.pena@garrigues.com

**Pilar Cruz-Guzmán**

pilar.cruz-guzman@garrigues.com

**Maria Luz Gómez**

marialuz.gomez@garrigues.com

Follow us:

GARRIGUES



Hermosilla, 3
28001 Madrid Spain
**T** +34 91 514 52 00 - **F** +34 91 399 24 08

**garrigues.com**