

4-2017 • SEPTEMBER 21, 2017

FORM 232. NEW REPORTING OBLIGATIONS IN RESPECT OF RELATED-PARTY TRANSACTIONS

The Ministry of Finance and the Civil Service has approved - by means of Order HFP/816/2017 of August 28, 2017 - Form 232, which is the information return in respect of related-party transactions and transactions and situations linked to countries or territories classed as tax havens.

Form 232, which comes into force for tax periods commencing in 2016, is composed of three information tables and regulates the scope and content of the information to be reported in respect of the following transactions and situations:

- 1) Transactions with related persons or entities (article 13.4 of the Corporate Income Tax Regulation (RIS)¹);
- 2) Transactions with related persons or entities in cases in which the reduction for revenues from certain intangible assets is applicable (article 23 and Transitional Provision 20 of the Corporate Income Tax Law (LIS)²); and
- 3) Transactions and situations linked to countries or territories classed as tax havens.

Form 232 is required to be filed by corporate income tax taxpayers and nonresident income tax taxpayers who operate through a permanent establishment, and entities under the pass-through regime formed abroad and with a presence in Spain, which perform any of the transactions or are in any of the situations referred to above.

Insofar as concerns the information to be provided on transactions performed with related persons or entities, the scope of this obligation has been modified, now including transactions which could not be subject to documentation obligations.

The taxpayer is required to file Form 232 when its related-party transactions with the same related person or entity exceed €250,000, based on arm's length values. This case (for which no distinction is drawn for calculation purposes between specific and non-specific transactions), was envisaged in the old Form 200 which has been replaced by Form 232.

The change introduced in this respect by the new Form 232 relates to cases in which the overall amount of transactions performed with the same related person or entity does not exceed €250,000. In such cases, the amount of the Specific Transactions performed must be analyzed, and these must be reported whenever the overall amount of transactions of this type taking place during the tax period exceeds €100,000. It should be noted that for the purposes of this calculation, the fact of the transactions having been performed with the same person or entity is of no relevance.

A practical example is provided below to show how this works in either case:

¹ Corporate Income Tax Regulation approved by Royal Decree 634/2015 of July 10, 2015.

² Corporate Income Tax Law 27/2014 of November 27, 2014.

³ The transactions classed as specific are those excluded from the provisions of article 18.3 of the LIS and article 16.5 of the RIS on simplified documentation content. These are: (i) transactions performed by personal income tax (IRPF) taxpayers in the pursuit of an economic activity to which the objective assessment method is applicable, with entities in which the taxpayer him/herself or his/her spouse, ascendant and descendant relations, either individually or overall, own 25 percent or more of capital stock or shareholders' equity; (ii) business transfer transactions; (iii) transactions for the transfer of securities or units representing stakes in the equity of any kind of entity not listed for trading on any regulated securities market; (iv) transactions for the transfer of real estate; and (v) transactions in respect of intangible assets.

Example 1:

A company performs transactions with a related party (A):

	Non-specific transactions	Specific transactions	Total
A	220,000 €	50,000 €	270,000 €

In this case, the transactions performed amount in total to more than €250,000, and the form is therefore required to be completed in respect of the total transactions performed, even if the specific transactions amount to less than €100,000.

If we change the amount of the transactions performed over the period and bring related parties B and C into the picture, the situation is as follows:

	Non-specific transactions	Specific transactions	Total
A	150,000 €	50,000 €	200,000 €
B	100,000 €	40,000 €	140,000 €
C	130,000 €	60,000 €	190,000 €
Total	150,000 €		

Although individually the limit of €250,000 is not exceeded in any case, the specific transactions must be analyzed. Assuming that they are all of the same type (e.g. transactions in respect of intangible assets), given that the limit of €100,000 is exceeded overall, these transactions must be reported in Form 232.

A special rule has also been introduced to prevent related-party transactions from being split up. Under this rule, even when the overall limits referred to above are not exceeded, there is still the obligation to report transactions of the same type and for which the same valuation method has been used, when the overall amount of such transactions for the tax period exceeds 50% of the entity's net revenues.

Example 2:

A company with net revenues of €150,000 for a particular tax period performs transactions with related companies A, B and C:

	Non-specific transactions	Specific transactions	Total
A	10,000 €	20,000 €	30,000 €
B	20,000 €	50,000 €	70,000 €
C	5,000 €	20,000 €	25,000 €
Total	35,000 €	90,000 €	
% of Net Revenues	23%	60%	

In no case does the total volume of transactions performed with any of the related entities exceed €250,000. Since this threshold is not exceeded, the weight of specific transactions must be considered. For the purposes of this example, let us assume that all the specific transactions are of the same type and have been valued using the same valuation method, without the limit of €100,000 being reached: were it not for the new special rule intended to prevent related-party transactions from being split up, these transactions would not be required to be reported in Form 232. Assuming that net revenues amount to €150,000, we find that these transactions account for more than 50% of the total and therefore, under the new rule introduced, these specific transactions must be reported in Form 232.

The same reasoning is applicable in respect of non-specific transactions of the same type and valued using the same method.

As for the content of the return, the information is the same as that required in previous tax periods in the corporate income tax return.

As regards exemptions from inclusion in this return, the following will continue to be exempt: (i) transactions taking place between entities forming part of the same consolidated tax group, (ii) transactions performed by Economic Interest Groupings and Joint Ventures (unless they opt to apply the regime referred to in article 22 of the LIS), and (iii) transactions taking place within the framework of a takeover bid or public offering.

It is obligatory to file Form 232 electronically, and to do so within the month following the date falling ten months after the end of the tax period to which the information to be supplied relates. In other words, for taxpayers whose tax period ends on December 31, the deadline for filing Form 232 is November 30 of the following year. As an exception, taxpayers with a tax period commencing in 2016 and ending before December 31, 2016 are also to file their Form 232 for 2016 during the month of November of 2017.

MORE INFORMATION: TAX DEPARTMENT

Follow us:



www.garrigues.com

This publication contains general information and does not constitute professional opinion or legal advice.
© Garrigues, all rights reserved. Exploitation, reproduction, distribution, public communication and transformation, total and partial, of this work, without written permission from Garrigues
Hermosilla 3 - 28001 Madrid - T +34 91 514 52 00