

COUNTRY-BY-COUNTRY REPORT RETURN (FORM 231)

The Official State Gazette of December 30 has included the publication of Order HFP/1978/2016, of December 28, approving form 231, “Country-by-Country Report Return”.

This is the form through which entities obliged to submit this information (“Country-by-Country Report”) must fulfill this obligation in Spain.

Let us recall that, basically, these entities are:

- (a) The ultimate Spanish parent companies of multinational groups;
- (b) The Spanish subsidiaries of groups whose ultimate parent (i) is not obliged to file this information in its country of residence, or (ii) resides in a country whose tax authorities have not signed the agreement for automatic exchange of tax information (provided that in both cases, the group has not designated a “surrogate” entity to fulfill this obligation in a country other than Spain); and
- (c) The Spanish subsidiaries that have been designated by their group to prepare and file this information with the Spanish tax agency (“surrogate” entities).

Moreover, any entity resident in Spain that forms part of a group obliged to file the Country-By-Country Report must also provide online (on the form established for the purpose a few days ago by the Tax Agency on its website) the identification, country or territory and status of the entity that prepares and files this information.

The information required is that set forth in article 14 of the Corporate Income Tax Regulations, and will include, with respect to the tax period of the parent, on an aggregate basis for each country or jurisdiction and in euros, information on:

- (i) The gross revenues of the group (making a distinction between those obtained with related entities or with third parties).
- (ii) Earnings before corporate income tax (or identical or analogous taxes) and the actual taxes of this kind paid and due (including withholdings).
- (iii) The capital stock figure and retained earnings at the end of the period.
- (iv) Average headcount.

- (v) Property, plant and equipment and investment property (other than cash and collection rights).
- (vi) List of resident entities (including permanent establishments and main activities pursued by each of them).

Any additional information deemed relevant can also be submitted.

This country-by-country report is required for tax periods commencing on or after January 1, 2016, and the period for filing it starts on the day after the end of the tax period to which the report refers and throughout the following 12 months. The filing must be done, in all cases, electronically.

Lastly, it should be recalled (the Order mentions this, as did the Corporate Income Tax Regulations) that this country-by-country report is an instrument that will make it possible to evaluate risks in the transfer pricing policy of a business group, but in no case can it serve as a basis for the tax authorities to make pricing adjustments.

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Hermosilla, 3 - 28001 Madrid (Spain) - T +34 91 514 52 00