



ASESORES  ABOGADOS  AUDITORES  ECONOMISTAS

Dear Client,

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## 1. FORMAL OBLIGATIONS

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### INFORMATIVE DECLARATION ON ASSETS AND RIGHTS ABROAD Form 720.

We inform you that the presentation of the **ANNUAL INFORMATIVE DECLARATION ON ASSETS AND RIGHTS LOCATED ABROAD**, form 720, corresponding to the year **2021** must be made **between January 1, 2022 and March 31, 2022**.

**Obligated to submit the declaration:**

- The natural and legal persons resident in Spanish territory, the permanent establishments in that territory of non-resident persons or entities and the entities referred to in article 35.4 of the LGT – recumbent inheritances, communities of property and others... **THAT HAVING SUBMITTED THE ANNUAL INFORMATIVE DECLARATION ON ASSETS AND RIGHTS LOCATED ABROAD, form 720, CORRESPONDING TO PREVIOUS YEARS**, has suffered in at least one of the three that make up the declaration, an **increase in the joint balances of the same, in more than € 20,000** with respect to the last declaration presented.

In any case, **the presentation of the declaration will be mandatory** for those assets already declared and with respect to which the taxpayer loses the condition that determined in his day the obligation to declare.

The natural and legal persons resident in Spanish territory, the permanent establishments in that territory of non-resident persons or entities and the entities referred to in article 35.4 of the LGT – recumbent inheritances, communities of property and others... **THAT HAVE ACQUIRED IN 2021 THE OBLIGATION TO PRESENT THE ANNUAL INFORMATIVE DECLARATION ON ASSETS AND RIGHTS LOCATED ABROAD, model 720**, due to the fact that **the set of assets and rights of each of the three blocks** of goods that make up the declaration individually considered exceeds **50,000 euros**. To calculate the aforementioned limit, the overall valuation of the assets must be taken into account regardless of the degree of participation of each obligor.

In the case of complying with one of the two previous sections, they must provide the tax administration, except in certain cases or exemptions, with the following information:

- A) **Information on accounts located abroad** opened in entities engaged in banking or credit traffic of which they are holders or beneficiaries or in which they appear as authorized or otherwise have the power of disposal.
- B) **Limit from which there is an obligation to declare:** If the value of the average balances or on December 31, 2020 has increased by more than 20,000 euros or has exceeded the amount of 50,000.00 euros.
- C) **Information on securities or rights representing the participation in the capital or own funds** of any type of legal entity, **on securities representing the transfer to third parties of own capital, on securities** contributed for management or administration to any legal instrument, including trusts and trusts or patrimonial masses that, despite lacking legal personality, may act in the traffic economic, **and on** the shares and participations in the share capital or patrimonial fund of collective investment undertakings, of which they are holders and are deposited or located abroad, **as well as** of the **life or disability insurance** of which they are policyholders and of the **annuities or temporary annuities** of those who are beneficiaries as a result of the delivery of a capital in money, movable or immovable property, contracted with entities established abroad.
- a. **Limit from which there is an obligation to declare:** If the value as of December 31, 2021 has increased by more than 20,000 euros or has exceeded the amount of 50,000.00 euros.
- D) **Information on immovable property** and rights to immovable property owned by you **located abroad. These obligations will be extended** to those who are considered real owners in accordance with article 4.2 of Law 10/2010 on the prevention of money laundering and the financing of terrorism.
- a. **Limit from which there is an obligation to declare:** If the joint value of the acquisition of real estate has increased by more than 20,000 euros or has exceeded the amount of 50,000.00 euros.

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## *2. MODEL 720 JUDGMENT CJEU. CASE C-788/19 (OBLIGATION TO PROVIDE INFORMATION IN TAX MATTERS)*

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In the Judgment of the CJEU, it states that Spain **has failed to comply with its obligations under the principle of free movement of capital** for the following reasons:

1. Because the imperfect or extemporaneous default or fulfillment has as a consequence the taxation of undeclared income corresponding to the value of those assets as "unjustified capital gains" without the possibility, in practice, of relying on the prescription;
2. **Because it punishes such behavior with a penalty of 150%** of the quota corresponding to that imputation of undeclared income, which can also be accumulated with fixed amount fines.
3. Finally, **because it punishes these breaches with non-limited fixed fines** that are not proportionate to the sanctions provided for in a purely national context.

In support of these conclusions, the CJEU states:

- a. That, although legislation may be justified to ensure the effectiveness of fiscal control and the fight against fraud, it goes beyond what is necessary.
- b. That the mere fact that **a resident has property or rights abroad cannot substantiate a general presumption of tax fraud or evasion**. Moreover, a rule that presumes the existence of fraudulent conduct solely because it does not meet the requirements established by the rule itself, without the possibility of destroying that presumption, goes beyond what is necessary for the indicated objective.
- c. Moreover, although the invocation of **the limitation period** as regards the acquisition of goods and rights **does not preclude possible fraud, it is not permissible that the Administration may challenge requirements already consummated, because that infringes the principle of legal certainty**. Although it is permissible for the legislature to regulate an extended limitation period in certain cases, it is not valid that the tax authorities can act without time limitation, even more so when this is established for cases of breaches of a formal obligation.

If you have obligation to submit this declaration form, you can start collecting the information and ask us for an appointment and we shall be pleased to assist you.

Yours sincerely,

ORTIN GARCIA GLOBAL CONSULTING S.L.