



The Court of Justice of the European Union has delivered its judgement concerning the Penalty Regime for the Informative Return on assets and rights located abroad (Form 720) finding it contrary to EU Law

The judgment of the Court of Justice of the European Union number C-788/19 of 27 January 2022 determines that the informative return on assets and rights located abroad (form 720) is contrary to European Union law and declares that Spain has failed to fulfil its obligations under the principle of free movement of capital, specifically in three respects:

- » Establishing that non-compliance or imperfect or extemporaneous 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.
- » Penalizing non-compliance or imperfect or extemporaneous compliance with the reporting obligation with a proportional fine of 150% of the tax calculated on amounts corresponding to the value of those assets or those rights held overseas.
- » Applying, for non-compliance or imperfect or extemporaneous compliance with the reporting obligation, fixed 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 (in the case of non-compliance with the reporting obligation, it applies a fixed pecuniary fine of 5,000 euros for each item of data or set of data, with a minimum of 10,000 euros/ In the case of late submission, a penalty of 100 euros for each item of data or set of data, with a minimum of 1,500 euros).

The judgment does not determine that Form 720 should not be filed as it remains in force but rather establishes that the sanctioning regime is contrary to European Union law, in breach of the obligation's incumbent upon Spain by virtue of the free movement of capital.

As the obligation to file 720 Form corresponding to the year 2021 is close, we will keep you posted of any communication from the Spanish Tax Authorities in relation to this matter.

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Please find attached a link to a press release of the Court of Justice of the European Union in relation to the judgment in case C-788/19: [EU Judgment in Case C-788/19 Commission v Spain \(tax information\) – INSIGHT EU MONITORING \(ieu-monitoring.com\)](#).



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