

## New disclosure regime for overseas transactions made by residents in Spain (Rules Instrument 4/2012)

Júlia Hernández and Rafael Nebot

Department of Commercial Law Gómez-Acebo & Pombo in Valencia

---

As of 1 January 2014, the earlier disclosure system for overseas transactions made by residents shall be without effect (by repeal, among others, of rules instruments 6/2000, of 31 October and 3 /2006, of 28 July, and of rule 1(4), 2(2), 3(2) and tables 2A and 2B of the annex to the Rules Instrument 2/2001, of 18 July), pursuant to the *Bank of Spain's Rules Instrument 4/2012, of 25 April, on rules for disclosure by non-residents in Spain of economic transactions and financial asset and liability balances* (hereinafter, the "**Rules Instrument**"), which came into force on 1 January 2013.

In turn, on 1 January 2014, the transitional regime imposed by the Rules Instrument, under which residents who were obliged to provide the information required under the previous system (mainly established in rules instrument 3/2006), must continue to provide and declare it, pursuant to said rules instruments, until 31 December 2013, and, in turn, must comply with the duties set out in the Rules Instrument.

The Rules Instrument establishes new disclosure duties for residents, through their direct declaration of certain information, instead of obtaining such information, as was the case with the previous system, through payment service providers.

Below we recall the main features of the new disclosure regime established by the Rules Instrument:

### 1. Duty to disclose

The duty to disclose shall be incumbent on the natural and legal persons (public or private) resident in Spain who or that conduct transactions

with non-residents or maintain overseas assets or liabilities.

- a. For the purpose of the present Rules Instrument, acts, business and operations involving - or resulting in - overseas collections, payments and/or transfers, as well as changes in accounts or in debtor or creditor financial positions, shall be regarded as "*transactions with non-residents*".
- b. Payment service providers registered on the official records of the Bank of Spain, which are those set out in article 4 of the Payment Services Act 16/2009 of 13 November, are excluded from this duty.

### 2. What information must they provide?

1. *Transactions for their own account with non-residents*, whatever their nature and regardless of how they are settled, i.e. whether settled by overseas transfers, crediting or debiting bank or inter-company accounts, compensations or cash payments.
2. *Balances and changes in overseas assets or liabilities*, whatever the form they take (bank or financial accounts, inter-company accounts, cash or securities deposits, shares in capital, debt instruments, derivatives, real estate, etc.).

### 3. When and how often must they disclose?

Below follows a table summarising the frequency and time limits for disclosure of the aforementioned information, according to the value

of overseas transactions during the year prior to that in which disclosure is required or to

asset and liability balances at 31 December of the year prior to disclosure<sup>1</sup>.

VALUE OF PREVIOUS YEAR'S OVERSEAS TRANSACTIONS OR BALANCES AT 31/12 ("X")	DISCLOSURE FREQUENCY	DISCLOSURE TIME LIMITS
$\text{€ X} \geq 300 \text{ M €}$	Monthly	Within 20 days following each calendar month
$300 \text{ M €} > \text{€ X} \geq 100 \text{ M €}$	Quarterly	Within 20 days following each calendar quarter
$100 \text{ M €} > \text{€ X} > 1 \text{ M €}$	Annually	Up to 20 January of the following year
$\text{€ X} \leq 1 \text{ M €}$	Only at the request of the Bank of Spain	Within 2 months from the date of request

Notwithstanding the above, there are some exceptions:

1. Where the value of transactions or balances does not exceed 50 million euros (**€ X ≤ 50 Million €**), a summarised annual declaration may be presented, containing only the opening and closing balances of overseas assets and liabilities, the total value of collection operations and the total value of payment transactions in the declared period.
2. The Bank of Spain may require those title holders whose declarations relevantly affect various headings of trade statistics or

the PDE<sup>2</sup> to declare with greater frequency than would apply pursuant to the provisions contained in the table. It may also require that the summarised annual declaration, to which point 1 above refers, is made without summarising, detailing the relevant transaction and balance items.

3. Residents who have not reached the declaration thresholds under sub-rule 1 of this rule in the previous year, but surpass it in the current year, shall be required to submit the declarations with the appropriate frequency from the time the these thresholds are surpassed<sup>3</sup>.

<sup>1</sup> For the purpose of calculating the values provided under this rule, transactions denominated in currencies other than the euro are translated into euros at the daily rate at the date in which these are made, and balances and changes at the last business day of the period applying the official exchanges, if any, and at the average baseline exchange in all other cases (rule 3(5) of the Rules Instrument).

<sup>2</sup> PDE: Excessive Deficit Protocol.

<sup>3</sup> The "Technical Applications" of the Rules Instruments published by the Bank of Spain (<https://sedeelectronica.bde.es/f/websede/content/SEC/Archivos/ATCircular42012.pdf>) provide that: "declarations may be made with greater frequency than which would apply, at the will of the declarant or as when so expressly required by the Bank of Spain."

More than one change of frequency, or a change of frequency to another of less frequency, i.e. neither from monthly to quarterly or annually, nor from quarterly to annually is allowed within the same fiscal year".

#### 4. Disclosure procedure

The information must be electronically submitted to the Bank of Spain's Department of Statistics in accordance with the formats, terms and requirements provided under the "technical applications" of this Rules Instrument.

#### 5. Penalties

Failure to comply with the described disclosure duties may entail, as was the case with the previous system, the imposition of penalties<sup>4</sup>. Below follows a summary of the types of violations and associated penalties:

TYPE	PENALTY	CONDUCT
VERY SERIOUS	<p><b>€ 30,000 &lt; X ≤ value of the undeclared transaction</b></p> <p>+ Public or private warning (elapses after 5 years from commission of the violation)</p>	<ul style="list-style-type: none"> <li>• Performance of prohibited acts, business, transactions or operations without seeking authorisation, when mandatory, or prior to granting or in breach of the terms of said authorisation.</li> <li>• Absence of truthfulness in the application for authorisation from the competent bodies, if deemed particularly relevant.</li> </ul>
SERIOUS	<p><b>€ 6,000 &lt; X ≤ 50% value of the undeclared transaction</b></p> <p>+ Public or private warning (elapses after 4 years)</p>	<ul style="list-style-type: none"> <li>• Absence of a declaration or truth, an omission or inaccuracy in the data contained in the declarations regarding transactions with a value in excess of 6,000,000 euros.</li> <li>• Non-compliance with the requests made.</li> </ul>
MINOR	<p><b>€ 3,000 &lt; X ≤ 25% value of the undeclared transaction</b></p> <p>+ <b>Public or private warning (elapses after 3 years)</b></p>	Absence of a declaration or truth, an omission or inaccuracy in the data contained in the declarations regarding transactions with a value NOT in excess of 6,000,000 euros.
	<b>€ 150 &lt; X ≤ € 300</b>	Late declaration: less than 6 months
	<b>€ 300 &lt; X ≤ € 600</b>	Late declaration: more than 6 months

<sup>4</sup> The applicable violations and penalties regime is contained in the Legal Regime of Capital Movements and Overseas Economic Transactions Act 19/2003, of 4 July.

Due to the described change of system, we recall *the duty of residents in Spain to meet throughout the year 2013 the disclosure duties under the two systems* (the earlier one, repealed on 31 December 2013, and the new one, which came into force on 1 January 2013) *and, from January 2014, only under the new system*. In turn, we recommend conducting a

monthly review and a review on 31 December for each year the value of transactions for your own account and the balances and changes in overseas assets and liabilities, to verify whether or not there is a duty to disclose and, if so, the frequency with which it must be performed. Please feel free to ask for our assistance in this respect.

---

"M" = Millions

*Declaration exemption increased from € 600,000 to € 1,000,000, unless requested by the Bank of Spain, with respect to the previous system.*

---

For further information please visit our website at [www.gomezacebo-pombo.com](http://www.gomezacebo-pombo.com) or send us an email to: [info@gomezacebo-pombo.com](mailto:info@gomezacebo-pombo.com)

---

Barcelona | Bilbao | Madrid | Málaga | Valencia | Vigo | Brussels | Lisbon | London | New York