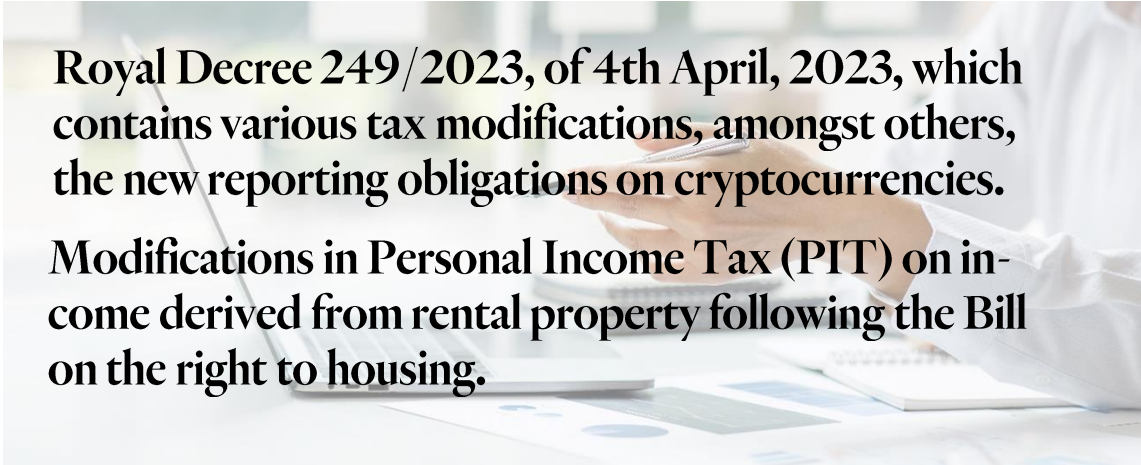


RocaJunyent Informs

Tax Law Department
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Royal Decree 249/2023, of 4th April, 2023, which contains various tax modifications, amongst others, the new reporting obligations on cryptocurrencies.

Modifications in Personal Income Tax (PIT) on income derived from rental property following the Bill on the right to housing.

In this information alert we will discuss two of the new recently approved legislative updates, in particular, we will concentrate on the **Royal Decree 249/2023, of 4th April** (RD 249/2023), which contains an array of different tax regulation amendments, of which most entered into force last April 25th; and on the other hand, on the Bill on the right to housing (BOCG 24th April 2023) which modifies the taxation of real estate capital gains from real estate intended for residential use (regulation which although not entered into force, is expected to become effective soon).

Amongst the amendments included in the Royal Decree 249/2023 which stand out for their interest, the following are noted:

Three new reporting obligations relating to the ownership of virtual currencies and the transactions which are affected by them

- **Reporting obligations for cryptocurrencies.** A communication requirement is definitively introduced concerning virtual currencies or cryptocurrencies which affect their holding and the transactions carried out with them.

This is implemented by means of the obligation imposed on custodians of private cryptographic keys and intermediaries to file form 172 (balance information on virtual currencies) or form 173 (information on transactions with virtual currencies), whilst, in the case of virtual currencies abroad, the requirement of filing form 721 is imposed on the owner themselves, authorised parties, or beneficiaries of such currencies. These statements will have to be submitted in the 2024 financial year, with regards to the information from the 2023 financial year (in the case of form 173 only transactions from 25th April 2023 until the end of the year). The Orders that develop such forms are still awaiting approval.

To this effect, virtual currencies are defined by reference to the provisions of the Law on the prevention of money laundering, that is, a digital representation of value not issued or guaranteed by a central bank or public authority, not necessarily associated with a legally established currency, and which does not possess legal status of currency or money, but is accepted as a form of exchange and may be electronically transferred, stored or negotiated.

In terms of its valuation, the policy draws on the valuation offered by the main trading platforms– whichever is used must be identified – or in its absence, a reasonable estimation of its value.

To continue, we explain in greater detail the scope of the new reporting obligations.

Form 172 (reporting obligation on virtual currencies balances)

- ☐ Regulated parties: Physical persons and resident entities and permanent establishments in the territory of persons or entities resident abroad which, provide services for i) safeguarding private cryptographic keys on behalf of third parties, ii) maintaining, storing and transferring virtual currencies, although said service is provided on a principal basis or in connection with another activity.
- ☐ Information to be provided: the identifying data of persons or entities (such as holders, authorised parties or beneficiaries) and the balances for each virtual currency, the type, the number of units and its valuation in euros as of December 31st.

Fiat currency balances held on behalf of third parties, who shall be identified, must also be reported.

If the currencies are no longer held in custody prior to 31st December of each year, the same information must be reported, but with reference to the date on which the previous circumstance occurred.

Form 173 (reporting obligation on operations with virtual currencies)

- ☐ Regulated parties: Physical persons and resident entities and permanent establishments in the territory of persons or entities resident abroad which, provide i) exchange services between virtual currencies and fiat currency or between different virtual currencies, ii) intermediaries in the execution of such transactions, iii) provide services in the safeguarding of private cryptographic keys on behalf of third parties, in order to maintain, store and transfer virtual currencies and iv) carry out initial offers of new virtual currencies with compensation in a virtual currency or fiat currency (known as ICOs), unless another party obliged to file this statement intervenes (which is who must carry it out).
- ☐ Those excluded from this obligation are those who are engaged exclusively in i) advice surrounding virtual currencies, ii) merely putting interested parties in contact, iii) simple handling of collection and payment orders in fiat currencies from those who provide exchange services and iv) safeguarding private cryptographic keys.
- ☐ Information to be provided: the identifying data of the subjects that carry out acquisition and transfer operations and for every operation, the type, date, the type and number of virtual currency units acquired, transmitted, exchanged or transferred, the value in euros and, in this case, the associated fees and expenses that the obligated subject will receive.

In the case of fiduciary consideration, this should be disclosed.

Form 721 (reporting obligation on virtual currencies balances based abroad)

- ☐ Regulated parties: Resident physical and legal persons, permanent establishments of non-resident persons or entities, entities from article 35.4 LGT and those who have been i) holders, ii) authorised parties, iii) beneficiaries of virtual currencies, iv) have had powers of disposition over these or v) have been actual holders at any point during the year even if they had lost such condition before.

Excluded from this reporting obligation are i) entities which enjoy full exemption from Corporate Tax (State, Bank of Spain, etc.), ii) entities or physical persons which develop economic activities that virtual currencies have registered in their

accounting in an individualised manner, and which are identified by their denomination, value and custodian entity and country in which they are situated.

☒ Information to be provided: The identification of the service provider of safe-guarding private cryptographic keys; complete identification of each type of virtual currency; balances of each type of virtual currency as of 31st December by units (or extinction if applicable) and its valuation in euros; and the trading platform, price tracking website, or place where the listing or value used has been obtained.

☒ Declaration threshold:

- (i) Provided that the virtual currencies balances valued in euros as of 31st December exceed, together, 50,000 euros. In the event of exceeding said limit, all virtual currencies must be reported. If it is not reached it should not be declared.
- (ii) The submission in the coming years, once this requirement has been fulfilled, will only be obligatory when i) the overall balance of virtual currencies increases by more than 20,000 euros with regards to what the submission in the previous statement determined and when ii) one ceases to be a holder, beneficiary or with the power to dispose of declared currencies.

Other PIT modifications, in relation to withholding tax and tax procedure

- **Changes in the fractionation and deferral of Personal Income Tax in the case of a non-payment of the first fraction of 60%.**

In order to benefit from the special fractionation in two instalments of PIT debt (first 60%, with 40% remaining), it will not only be necessary that the self-assessment is submitted in a timely manner, but also that 60% of the debt is paid on time.

In the event of a non-payment of said first fraction, the entirety of the debt will enter the executive period.

- **Exclusion of withholding tax for Personal Income Tax and Corporate Income Tax purposes, also in the case of the redemption or transfer of shares in certain collective investment institutions (IICs).**

As a step further in the homogenisation between certain Spanish and foreign collective investment institutions, initiated by Law 11/2021 of 9th July, the exclusion of the withholding tax requirement is now included in the event of the redemption or transfer of shares in IICs established abroad similar to listed funds and listed

variable capital investment entities (article 79 Law of IICs), if these foreign entities are listed in a regulated market or in a multilateral trading system, provided that such redemption or transfer is not carried out in a market located in a territory considered to be a non-cooperative jurisdiction (former “tax havens”).

- **Creation of the Registry of extractors of fiscal deposits of products included in the objective areas of the Taxes on Alcohol and Derived Beverages or on Hydrocarbons.**

The obligation to register in this Registry is regulated for people or entities that carry out this extraction which i) accrues Value Added Tax as a transaction assimilated to the delivery of goods -except for exempt transactions- and ii) involves the exit from the suspension regime to another fiscal deposit.

- **New requirement to obtain the certificate of being up to date with payments that waive the subsidiary responsibility in the case of contracting for works or services provided in the area of the principal activity.**

For the issuance of the certification of being up to date with the tax obligations, it will be necessary to have also submitted the corresponding self-assessments for special taxes and environmental taxes (fluorinated gases, non-reusable plastic containers, etc.).

- **Modifications in relation to proceedings.**

The regulation related to the payment of accrued interest in favour of taxpayers in the case of tax refunds agreed upon in the inspection process is modified. Suspension periods are excluded (the administrator has up to a maximum of 60 days for the inspection not to carry out actions or the taxpayer to not have to comply with requirements) and extension periods of actions (three months when the inspected party indicates that they do not have or will not provide certain documentation and they deliver it 9 months after the beginning of the inspection process, or 6 months if the delivery is carried out after the signing of the Act).

- **New situation whereby the Tax Administration may revoke the NIF (Tax Identification Number).**

Incompliance with the obligation of filing the annual accounts with the Commercial Register for four consecutive financial years is included as a new situation in which the tax identification number may be revoked. It may only be reinstated if it is found to have been rectified.

- **The reporting obligation for insurance companies of the value of the mathematical provision as of 31st December is established.**

Aligned with the new system of valuation that was established in the 2021 financial year for Wealth Tax purposes for life insurance policies in which the policyholder

has no redemption rights, the obligation of insurance companies to inform the Tax Agency of that value of the mathematical provision as of 31st December is enforced.

PIT modification in real estate capital gains on real estate property intended for residential use through the Law on the right to housing

In the Bill on the right to housing (BOCG 24th April 2023) PIT changes are introduced regarding the taxation of real estate capital gains on real estate property intended for residential use, in particular, in relation to applicable reductions on such incomes, from the general reduction of 60% (which will remain in force for contracts entered into before the introduction of this Law), to a general reduction of 50% and certain ones of 90%, 70% and 60% for new contracts. As we will see, some of these increased reductions are limited to property in stressed residential market areas (this will be defined by the resolution that the Ministry of Transport, Mobility and Urban Agenda passes), which results in the fact that outside of these zones, the reduction has been seen to decrease, moving from 60% to 50%.

- ☐ **90% reduction (in stressed residential market areas).** Only applicable to property located in residential market areas defined as stressed, and provided that the new rent contract has lowered the initial rent by 5% regarding the rent of the old contract, after applying, where applicable, the maximum rent update provided for in the regulation (see point ii) below in Common Rules).
- ☐ **70% reduction.** Applicable when one of the following circumstances is met:
 - (i) Leasing a property for the first time in a stressed residential market area and when the tenant is between 18 and 35 years old. If there are several tenants, a pro rata rule must apply.
 - (ii) When the tenant is a Public Administration or non-profit entity to which Law 49/2002 applies (non-profit entities) which are committed to i) social renting with rent below what is provided for in the rental subsidy programme, or ii) the accommodation of people in a vulnerable economic situation or iii) if it is a property under a public housing programme.
- ☐ **60% reduction.** With none of the previous points being applicable, the 60% reduction should be applied if refurbishment work had been carried out (in the sense of the PIT legislation) which would have been completed in the 2 years preceding the date of entry into the leasing contract.

Let us remember that such refurbishment work must have, as its main aim, the reconstruction of the property by means of consolidation and treatment of structures, facades or roofs and other similar work, provided that the cost exceeds i) either

25% of the acquisition price if the property was acquired in the two years immediately preceding the start of the work or ii) the market value that the property had at the start of the work. In both cases, without calculating the land value.

Also included as such are subsidised actions under the State Plan for the Promotion of Rental Housing, building refurbishment and urban regeneration and renovation.

Common Rules:

- (i) Requirements must be met upon entering into a contract and maintained in order to apply the reduction.
- (ii) No reduction is applicable if the limit is not respected for the updating of rents for new contracts as it is established by the Law on the Right to Housing.

More specifically, it consists of the fact that the landlord will not be able to raise the rent of the new leasing contract by more than the percentage fixed by the Competitiveness Guarantee Index (for 2024 a fixed rate of 3% is established), nor charge fees or expenses if they were not included in the previous contract.

On the other hand, it is possible to increase up to a maximum of 10% if in the preceding two years there has been i) refurbishment in the sense of the PIT, or ii) improvements in the property with non-renewable primary energy savings of 30%, or iii) a contract for a period of 10 years or more has been fixed.

On the other hand, for large holders or new contracts (not leased for the past 5 years), the specificity that in the new contract they must necessarily adapt to the reference index for the updating of contracts to be defined by the National Institute for Statistics is applicable.

- (iii) Remember that no reductions are applied to undeclared income (either via declaration of undisclosed income or unjustified expenditure).