

# Key Legal Issues for non Spanish Insurance Companies in Spain

(Insurance Law - Taxes - Regulatory Law)

SEGUNDO RUIZ RODRÍGUEZ



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*This book is dedicated to the clients of LEGSE Abogados*

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# Introduction

First of all, I would like to point out what this book is not. It is not a systematic and extensive study about all the legal matters concerning insurance in Spain. It is not a doctrinal essay about mere theoretical issues or a simple guide to superficial matters. However, this book is a practical and an in-depth study of some difficult and specific legal subjects which are key in the development of insurance business in Spain for a non Spanish insurance company, above all if its headquarters are within the EEA. How do we know that these are the key issues? Why do we think it is a practical study? The answer is simple: it is based on several reports that we have prepared over a period of 15 years, responding to some habitual questions asked by non Spanish insurance companies, clients of ours.

LEGSE Abogados (founded in 1994) is a law firm renowned for its expertise which focuses on Insurance Law. So, as an example, we are the *Insurance Ombudsman* of several insurance companies, as well as lawyers of other important ones. LEGSE Abogados created FIDES Abogados to run tax representation of insurance companies in FoS –Freedom of Services–. FIDES Abogados is the tax representative of twenty nine European Companies operating in FoS in Spain. These contracts imply that we have been providing them with all the services they have needed from a lawyer: general information and updates on tax and legal compliance requirements, to review new product literature (policy wording), to ensure compliance with Spanish laws and regulations, etc. This experience ensures that this book is a practical and an in-depth study on these key issues.

On purely practical grounds, we have decided to publish it in English. This book is aimed above all at non Spanish insurance companies and brokers who operate or are thinking of operating in Spain. Obviously, for these and for all the practitioners (Spanish and non Spanish lawyers, actuaries, tax advisors and consultants in general) who advise



them, the availability of this kind of information in English is very important. In Spain there is no similar study published in this language.

I am indebted to Seila Fernández, Lawyer at LEGSE Abogados and Doctor of Law, for her assistance in this endeavor.

I hope this book will prove to be a useful and practical guide.

SEGUNDO RUIZ RODRÍGUEZ

April 2013

# Key Legal Issues For Non Spanish Insurance Companies In Spain

SEGUNDO RUIZ RODRÍGUEZ

SUMARIO: 1. INSURANCE REGULATIONS. 2. INFORMATION REQUIREMENTS BEFORE AND AFTER THE CONCLUSION OF THE CONTRACT. 3. LIMITING CLAUSES, LANGUAGE AND PAYMENT OF PREMIUM. 4. NOMINATION OF PERSON/S TO BENEFIT FROM A POLICY (LIFE). 5. SPANISH LIFE INSURANCE TAXATION. *a. Personal Income Tax and Withholdings. b. Inheritance Tax. c. Wealth Tax. d. Other Taxes or Surcharges. e. Some practical questions and their answers. f. Special tax treatment for Unit Linked products. g. Tax and surcharge reporting.* 6. SPANISH NON LIFE INSURANCE TAXATION AND SURCHARGES. 7. PENALTIES AND INTEREST TAX. NEW TAX FRAUD PREVENTION ACT. 8. REGISTRY OF INSURANCE POLICIES COVERING DEATH RISK. *a. Reporting chart. b. Some practical questions and their answers.* 9. DATA PROTECTION ISSUES. 10. PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING RELATED TO LIFE INSURANCE COMPANIES IN FOS OR WITH BRANCHES IN SPAIN. 11. SOME ISSUES ABOUT REGULATORY LAW. *a. Insurance companies in Spain, with legal head office in other European Economic Area Member States (EEA Companies). Insurance Transfers. Intervention measures. How to operate in Freedom of Services in Spain. How to establish a branch in Spain. b. Insurance companies in Spain, with legal head office in third party countries (Non EEA Companies). Insurance Transfers. Revoking administrative authorization.* 12. RULES ON INTERNATIONAL INSURANCE LAW.

## 1. INSURANCE REGULATIONS

– *Ley 50/1980, 17 de octubre, de Contrato de Seguro* –LCS– (Insurance Contract Act), which in the absence of a specifically applicable Law, governs the various insurance formulas. Articles 2 and 44 of this Act establish that its stipulations are mandatory for all insurance contracts with the exception of contracts covering large risks as defined in article 107.2 or where the Act itself provides otherwise.

Article 107 and concordant norms of the Insurance Contract Act establish the rules on International Private Law, specifying the law applicable to each contract.

The laws and regulations apply equally to Spanish domestic life insurance companies and those European Economic Area (EEA) insurance companies which provide life insurance contracts in Spain through FoS (freedom of services) or through a branch. Therefore, in the absence of a specifically applicable Act, the various insurance formulas will be governed by the provisions of the Insurance Contract Act.

If the policyholder is a Spanish citizen or a person with residence in Spain, the Spanish Insurance Contract Act must be applied. However, in the case that policyholders are citizens of the EEA, they can agree with the insurer to apply the Law corresponding to the policyholder's nationality. Therefore, if the policyholder and the insurer agree to apply the Law of the policyholder's nationality, the Spanish Insurance Contract Act must not be applied according to article 108.1(a).

Spanish Law will also apply to collective life insurance contracts concluded in compliance with or as a result of work subject to Spanish Law.

In relation to Non Life Insurances, generally speaking, the Spanish Insurance Contract Act will apply to all property and casualty insurance contracts with risks located on Spanish soil in which the policyholder's normal place of abode in the event of a natural person, or registered offices or head office in the event of bodies corporate, are located in Spain. It will also apply where the contract is mandatory pursuant to Spanish legislation. Parties to insurance contracts covering large risks will be free to choose the Law applicable thereto.

– *Real Decreto Legislativo 6/2004, 29 de octubre, que aprueba el Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados* –TRLOSSP– (Administration and Supervision of the Private Insurance Act), which governs the insurance practice in Spain. This Law is mainly applicable to the Spanish insurers. For regulatory purposes, foreign insurers must comply principally with their national Law.

The Bureau of Insurance (*Dirección General de Seguros y Fondos de Pensiones*– DGSFP), which forms part of the Ministry of Economy, is responsible for ensuring compliance with the legislation and can impose penalties on companies which fail to comply with their regulatory obligations. In addition, the Bureau of Insurance regularly issues "criteria" which aims to clarify the meaning of the provisions of the Insurance

Contract Act. These criteria are important to demonstrate the Bureau of Insurance's opinion about an unclear issue.

Articles 53, 60 and 81 specify the information which must be given to policyholders.

These two Laws (Contract and Supervision) will be studied in depth in the following chapters.

– *Real Decreto 2486/1988, 20 de noviembre, que aprueba el Reglamento de Ordenación y Supervisión de los Seguros Privados* –ROSSP– (Administration and Supervision of Private Insurance Development Regulation) which implements the rules of Administration and Supervision of the Private Insurance Act.

One of the most prominent aspects of this Spanish regulation is that it performs in detail the obligation to inform policyholders applicable to both life and non-life insurance contracts (more detailed information must be provided in the case of life insurance. An additional distinction is drawn between individual and collective life insurance).

Finally, in recent years, Spanish legislation has reinforced the means for protecting the rights of the policyholder and the life insured. In this regard, the provisions in effect require companies to inform their customers of the various types of internal and external actions that may be taken in the event of a claim.

– *Ley 20/2005, 14 de noviembre, de creación del Registro de Pólizas con Cobertura de Fallecimiento* (Registry of Insurance Policies Covering Death Risk Act). This Act institutes a Public Registry in which all life and accident insurance contracts that include death coverage must be registered, unless otherwise stipulated in article 4.2 of this Law.

This Act requires undertakings to notify this Registry of the existence of these kind of policies and some details included therein (data identifying the life assured, the insurer and the insurance contract) via Internet. The obligation to supply this information applies to both Spanish insurance companies and non Spanish companies with registered offices in other European Economic Area countries conducting business in the life or accident classes in Spain under the right of establishment or freedom to provide services.

– *Ley 26/2006, de 17 de julio, de Mediación de Seguros y Reaseguros Privados* –LMSR– (Distribution of Private Insurance and Reinsurance Policies Act). Insurance intermediaries are regulated under this Insurance Distribution Act. According to this Law, a broker is a different

kind of intermediary than an agent. Insurance brokers must be fully independent of the insurer. Brokers' advice must be facilitated on the basis of an objective analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation in accordance with professional criteria, regarding which insurance contract would be adequate to meet the client's needs. However, an agent must operate with only one insurer (with exceptions), and they need not give independent advice.

An insurance company which appoints an insurance agent is liable for the actions of the agent in selling the insurance. Because of this, some insurers only operate through brokers. It is principally a regulatory responsibility. However, in some cases, if it is possible to prove "*culpa in vigilando*" or "*culpa in eligendo*" of the insurance company, they could legally pursue the appointing party, –insurance company–, for compensation and damages (very few cases in Spain).

The Distribution of the Private Insurance and Reinsurance Policies Act has devoted its first part to the intermediaries' general rules, including prohibitions and obligations:

Prohibitions:

1. to carry out the activity related to variable premium mutual insurance companies and variable premium cooperatives;
2. to assume directly or indirectly the risk covered;
3. to realize the activity in favor of companies that do not obey the legal requirements for acting in Spain or transgressing the granted authorization;
4. to impose directly or indirectly the insurance contract's execution;
5. to add an extra charge on the premium receipt issued by the insurance company;
6. to sign a contract in the name of the client without his consent.

Obligations:

1. to offer truthful and sufficient information about the insurance contract (promotion, offer and subscription);
2. to be the depository of all the amounts received from their client;
3. to mention in all commercial documents their inscription register number and their identification name;

4. before beginning activity, the intermediary must be registered in the special administrative register of the Bureau of Insurance;
5. the bank-insurance operators should inform the client that the advice they provide is intended for dealing with an insurance contract and no other financial instrument;
6. brokers (natural or legal), the intermediaries' branches and EEA intermediaries who act in Spain in FoS, should deal with and resolve the client claims related to their interests and rights;
7. brokers (natural or legal) and intermediaries resident in other EEA Member States who act in Spain in FoS or FoE should have a Client Attention Service Department (having full independence to guarantee autonomy in order to avoid conflicts of interest) to deal with and to solve their customer claims.

– *Real Decreto Legislativo 7/2004, 29 de octubre, que aprueba el Texto Refundido del Estatuto Legal del Consorcio de Compensación de Seguros*, (Compensation Pool Act).

Other important Spanish laws applicable to insurance are:

– *Real Decreto 1/2007, 16 de noviembre, que aprueba el Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios* (Defence of Consumers and Users Act). Insurance companies must abide by the provisions of this Act.

– *Ley 13/1996, 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social* (Spanish Official Gazette 31 December, 1996). Insurance premiums are levied at 6% (the Insurance Premium Tax). However, this tax will be exempt, according to article 12 of this Act in the following insurance operations: compulsory social insurance and collective insurance as an alternative to pensions plans; life insurance as stated under Title II of Insurance Contract Act; capitalization based on actuarial techniques; reinsurance policies; bail insurance; export credit insurance and combined agrarian insurance; international transport of merchandise or passengers; insurance relating to ships and airplanes used for international transport; health insurance and insurance pension scheme.

## 2. INFORMATION REQUIREMENTS BEFORE AND AFTER THE CONCLUSION OF THE CONTRACT

The minimum content of insurance policies is established by article 8 of the Insurance Contract Act:

- Name and surname or corporate name of the contracting parties and their addresses, as well as the designation of the insured and of the beneficiary, when applicable.
- The concept in which it is insured.
- Nature of the risk covered.
- Designation of the insured objects and their location.
- Insured sum or scope of coverage.
- Premium amount, surcharges and taxes.
- Maturity of the premiums, place and form of payment.
- Duration of the contract, stating the day and time when it effectively starts and terminates.
- Name and type of insurance mediator, if intervening in the contract.

In addition, article 104 of the Administration and Supervision of Private Insurance Development Regulation sets out the information that the insurer in general must provide to the policyholder, in writing, before underwriting the policy:

- Applicable legislation.
- Internal or external claim proceedings.
- The country where the insurance company or the branch has its registered office and its corresponding address.

In relation to life insurance, article 105 of the ROSSP sets out the information that the insurer must provide to the policyholder before underwriting the policy. This information is known as *Nota Informativa* –Information Note– and must contain at least the following when applicable:

- Name of the insurance company and legal form.
- Registered office address of the entity and, where appropriate, of the branch which has been established in Spain.
- Definition of guarantees and options offered.
- Duration of the contract.
- Conditions for termination.
- Conditions, terms and maturities of the premiums. Insurance in which the policyholder assumes the investment risk will specify

the amount, basis of calculation and timing of all the charges applicable to the operation.

- Method of calculation and allocation of shares in profits.
- Indication of surrender values and reduction coverage scheme in the case of premium payment default.
- Premiums for each benefit, if necessary.
- For contracts with variable capital, definition of accounting units and indication of the assets.
- Details and deadline for exercising the right of unilateral termination.
- Tax treatment.

The fourteenth additional provision of the Sustainable Economy Act stated a new wording for the third paragraph of article 60 of the TRLOSSP. Its purpose was to guarantee a more transparent and effective regulation in the insurance market and to provide protection for the insurance consumer. With the exception of life products where the power to modify investments allocated to the policy is granted to the policyholder, life insurers must give information about the expected profitability of each policy.

In Unit Linked Life Insurance contracts, additionally, the policyholder must be informed prior to signing the contract that the amount due to be received will depend on financial market fluctuations beyond the control of the insurer and that the historical results are not indicators of future results.

Referring to the length of the cancellation/cool off period (life insurance) and what must be repaid to the policyholder in such a case, it is necessary to take into account article 83(a) of the Insurance Contract Act, which states:

*«the policyholder in an individual insurance contract for a period exceeding six months who has stipulated the contract on the life of their own or a third party has the unilateral power to terminate the contract without giving any reason and without penalties within 30 days after the date on which the insurer delivered the policy or certificate of provisional coverage.*

*An exception to this unilateral right of termination of an insurance contract is when the policyholder bears the investment risk, as well as contracts which their covered return is a function of the fluctuations of the investments assigned to them».*

In Spain, when the policyholder exercises his right to cancel the



policy within this cool off period, the insurance company refunds the entire premium paid, with no charges deducted.

On an annual basis, the life insurance policyholder must receive information on the status of their participation in profits, as well as any modifications that occur in the information provided at the time of signing the contract.

Should the insured's date of birth be incorrectly stated, the insurer can only contest the contract if their real age at the time when the contract comes into force is outside the established admissible limits. If their age should not be outside the admissible limits but the insurance company has collected premiums that are lower than they should have been, it shall reduce the benefit payment in proportion to the premium collected. By contrast, if the premiums collected are greater than those which should have been paid, the insurer shall return to the policyholder the part of the premium which has been overcharged without interest.

Finally, in relation to non life insurances, it is necessary to point out that:

- Article 130.2 of Administration and Supervision of the Private Insurance Development Regulation stipulates that land motor vehicle liability (excluding transporter liability) insurance contracts concluded under freedom to provide services must include the name of the representative for automobile insurance, referred to in article 86.2 of the Administration and Supervision of the Private Insurance Act.
- For legal expenses insurance, article 76(f) of the Insurance Contract Act provides that the policy must explicitly list the rights acknowledged to the insured under articles 76(d) and 76(e) of that Act: namely, their right to freely choose their attorney and barrister for their representation and defence in whatsoever manner of proceedings and in particular in the event of conflicting interests between the parties of the contract.

### **3. LIMITING CLAUSES, LANGUAGE AND PAYMENT OF PREMIUM**

The information must be disclosed in a particular or prescribed format only in the case of clauses limiting the rights of the insured, which must be highlighted in the policy and expressly accepted and signed by the policyholder. This is one of the most important and controversial

issues in Spanish Insurance Law, because under Spanish legislation there is not a clear and exact definition of what a *limitative clause* is.

There have been a large number of judgments against insurers for not complying in full with this legal requirement. In this sense, Judgment of the Supreme Court (STS), Chamber 1, on 1 March 2007, says that *«These Chambers, are distinguishing the clauses limiting the rights of the policyholder – which are subject to being specifically accepted in writing by the policyholder (...) Consequently, we are faced with some clauses limiting rights, applying a reduction of the concept of total invalidity to major invalidity (...), in compliance with the provisions of article 3 of the Insurance Contract Act for the clause to be specially separated and specifically accepted in writing, which has not been the case with the disputed clauses, hence they cannot be recognised as effective»*.

The language of the insurance contract must be redacted at the discretion of the policyholder, according to article 8 of the Insurance Contract Act, in any of the official Spanish languages in the Spanish Region where that is formalized. At the policyholder's request, it must be written in another language, in accordance with Directive 92/96 of the Council of the European Union, 10 November, 1992.

In practice, even companies which sell thousands of policies in Spain do not have their contracts of insurance in all five of Spain's official languages. If a policyholder asks for a contract of insurance written in any other four official languages, the insurance company will usually give him in a PDF document a version in the proposed language.

Besides, article 108 of the Insurance Contract Act establishes that *«when the contract is signed by non Spanish policyholder, the Spanish Insurance Contract Act does not apply if policyholder and insurer agree to apply the Law of the policyholder's nationality»*.

Some companies issue insurance documents both in Spanish and English simultaneously. In case of conflict, the Spanish version will prevail.

In life insurances, where a policyholder is in arrears with the payment of his premium, according to article 95 of the Insurance Contract Act, it would not apply the paragraph two of article 15 on non-payment of premium (terminated without any value). The non-payment of the premium will produce reduction of the policy, in agreement with the table of values inserted into the policy. So, non-payment of premium (i.e. policyholder is in arrears with the payment of his premium) does

not result in contract cancellation. The non-payment of the premium will reduce the amount payable by the insurer.

The policyholder is entitled to rehabilitation of the policy, at any time before the death of the insured, in agreement with the conditions set out in the policy.

#### **4. NOMINATION OF PERSON/S TO BENEFIT FROM A POLICY (LIFE)**

If a policyholder wants to nominate a person as a beneficiary of the policy, the policyholder does not need to obtain that person's written permission to be a beneficiary. The nomination can be made without the beneficiary's knowledge.

Beneficiary does not have any rights in the policy during its term. Any rights only crystallise on the death of the life assured.

The latter bequest of the beneficiary revokes the earlier nomination when it is put in writing. The policyholder can revoke the beneficiary's without the beneficiary's permission as long as he/she is not an irrevocable beneficiary (something very usual with life policies linked to mortgages, where the beneficiary is the bank). Article 87 of the Insurance Contract Act, which rules on the policyholder's rights, establishes that «the policyholder can revoke the beneficiary at any time, except under the condition that the policyholder has renounced expressly and in writing this power».

The policyholder can assign a beneficiary to the policy and modify the beneficiary designation without the consent of the insurer, with a subsequent written declaration sent to the insurer or set out in a last will and testament.

If at the time of death of the policyholder, there is no tangible designated beneficiary nor any rules by which to determine this, the capital will be considered part of the policyholder's assets.

In the event of the generic designation of children of a person as beneficiaries, all descendants with the right to inherit will be considered as children.

Should the designation be in favour of the heirs with no further specification, all those meeting this condition with respect to the policyholder at the time of the death of the life insured shall be considered as such.

The designation of a spouse as beneficiary shall assign this condition to the party who is indeed the spouse at the time of the death of the life insured.

Beneficiaries who are heirs shall retain this condition even if they renounce the inheritance.

If the designation is in favour of various beneficiaries, the provision agreed will be distributed, without prejudice to any specific clause to the contrary, in equal parts. When in favour of heirs, distribution will take place proportionally to the inheritance share, unless specified to the contrary. Any part not acquired by a beneficiary will go towards increasing that of the others.

When a policyholder wants to transfer his/her legal ownership of the policy to a third party (for example, a security for a loan), according to article 99 of Insurance Contract Act, the legal requirements are:

- It is necessary that there is not an irrevocable beneficiary.
- The policyholder must inform the insurer about the transfer of his/her legal ownership in the policy to a third party.

For the payment of the covered benefit in the case of death, the beneficiary will have to give due proof of identity and of their right or status as beneficiary. In addition, the insurers in Spain usually ask for the following documentation:

1. Death certificate of the insured.
2. Certificate from the doctor who attended the insured, stating the cause, evolution and nature of the illness or accident which caused the death of the insured or, where appropriate, statements from judicial inquiries or documents which certify death by accident.
3. Certificate from the Register of Wills, a copy of the last Will or Notarial Declaration of Heirs Certificate or Court Record of Declaration of Heirs, as appropriate.
4. Self-assessment payment of Inheritance Tax (or obtaining a certificate from the Tax Authorities stating that they are exempt of this payment).

## **5. SPANISH LIFE INSURANCE TAXATION**

### **a. PERSONAL INCOME TAX AND WITHHOLDINGS**

Income Tax is raised in two parts: the majority is raised by the

central government, with a smaller percentage being raised at a regional level by the Autonomous Regions in which the taxpayer is living.

Spanish Personal Income Tax Act (35/2006, 28 November) provides a general classification of income originating from capitalisation operations and life or disability insurance contracts as returns on investments, except when tax is to be applied as income from salaries, inheritance or donations.

The income obtained will only be taxed when the provision is collected upon termination of the contract or surrender of the policy. This return on investment will be calculated as the difference between the capital received and the amount of premiums paid. Classification as return on investment results in it being subject to the general obligation of withholding tax or advance taxation, at the rate of 21% at the time of collection. In any case, we have to distinguish between withholdings (insurer's obligation) and the personal income tax (obligation of the policyholder). The withholdings are always 21% on the gain. This amount must be withheld by the insurance company.

The policyholder must declare these gains on his Personal Income Tax return. Spanish Savings Tax has been increased substantially. This is part of the measures announced in the Royal Decree-Law 20/2011, 30 December, which are designed to help with the reduction in the budget deficit. Other changes include increases in personal income tax. The increase in savings tax has been put into effect for the years 2012 and 2013, but experience tells us once introduced, they are not often reduced back to the original rate later, at least, in a short time.

The new rates of tax on taxable savings income in Spain in 2013 are as follows:

Gains	2011 Rate	2012/2013 Rate
0-6,000 Euros	19%	21%
6,000-24,000 Euros	21%	25%
+24,000 Euros	21%	27%

The increase ranges from a 10% increase up to 6,000 Euros and a whopping 28% increase if the policyholder has above 24,000 Euros of taxable savings gains/income. Usually (but not always the case; see category «f» of this chapter) policies are taxed only on withdrawals, not automatically each year.

In any case, the income tax is an obligation of the policyholder.

Obviously, they can deduct the withholdings previously paid by the insurance company to the Tax Authorities. Therefore, the insurer must only focus on the 21% of the withholdings.

Nevertheless, it must be taken into account that income deriving from life insurance contracts which arrange for pension contributions to be paid by companies on behalf of their employees is classified as, and treated as, income from employment, with a different tax treatment.

Another issue is when a life or temporary annuity is received. In order to determine the part of each income or annual pension considered as return on investment, a fixed percentage is applied to each annuity received, which will vary according to the age of beneficiary at the time the income is earned (if it is a lifetime annuity) or the duration of the income (if it is temporary).

The date on which the contingency covered occurs (disability, death, etc.) determines the right to receive the provision as the time at which the specified income is constituted, regardless of when it is effectively started to be received.

If the life annuity is constituted on the life of two people (joint life policies), the age of the youngest annuity holder will be considered, at the time the provision is constituted, as the age of the receiver.

#### b. INHERITANCE TAX

Inheritance tax is a complex issue in Spain. In some Regions it is exempt when the beneficiaries are the children or the spouse. In any case, inheritance tax is an obligation of the beneficiaries. Insurers only need the beneficiary to give them the "*liquidación*" (liquidation) (return duly signed by the Spanish Tax Authorities) of the inheritance tax. This must be done because the insurance company and the beneficiary are jointly responsible for this payment before the Spanish Authorities. The insurance company can inform the policyholder that it is possible to pay this tax in several installments. In order to get the proof of tax payment, the beneficiary does not have to wait until the end of the year, they can pay (or obtaining a certificate from the Tax Authorities stating that they are exempt of this payment) the inheritance tax immediately after the death of the life insured person.

The life insurer must still require this form if the beneficiaries are not Spanish nationals/citizens (for example, the client would be a British national living in Spain but whose beneficiaries would still be in

the UK). This is a «Spanish policy» and Spanish legislation establishes that, even though the beneficiary would be in another country, it is necessary to liquidate the Inheritance Tax in Spain.

If the Region in which the beneficiary lives has an Inheritance Tax exemption in their favour, the life insurer should require a certificate from the Tax Authorities to confirm Inheritance Tax is not applicable for this beneficiary.

Spanish Inheritance Tax is applicable to non-residents only in relation to assets and/or rights located in Spain, but some forms of tax relief are not applicable to non-residents. This position may alter following the issue of a «reasoned opinion» by the European Commission requesting that Spain makes available the same exemptions to both Spanish residents and non-residents.

In the event of a death claim, the death benefit must be paid directly to designated beneficiaries. The policyholder's age has no impact on the tax treatment of benefits.

#### c. WEALTH TAX

As a tax measure to reduce the Spanish public deficit, the net Wealth Tax has now been temporally re-established by Royal Decree-Law 13/2011, 16 September, for the years of 2011 and 2012 and hence must be included in the corresponding tax declarations of 2012 and 2013.

Some key data concerning wealth tax:

- The tax exemption for habitual residence has been lifted to 300,000 Euros.
- For individuals with the obligation to contribute, the minimum exempt limit has been increased to 700,000 Euros.
- If the policyholder has to pay this tax, they must do it from the 24<sup>th</sup> April to the 26<sup>th</sup> June of the following year.
- The individual policyholders are responsible for paying their own tax and the insurance company has no obligation to calculate or deduct the tax, only to inform them about the surrender value.
- Taxpayers: all Spanish individuals are taxable on their wealth, including those goods and rights situated in the Spanish territory



and wealth abroad. This tax is also applicable to non-residents with wealth located in Spain.

- Tax rate: although the tax is assigned to the Autonomous Regions in Spain, the maximum rate is 2.5% on the tax base.
- The Spanish Wealth Tax is assigned to the Autonomous Regions, thus it is necessary to focus on the development of the Royal Decree-Law by their own regulations. In this regard, Madrid is not really affected by the Spanish Wealth Tax due to the exemptions which have been implemented.

Concerning life insurers, it should be acknowledged that the surrender value of the life policies is considered «wealth» by this Law. Therefore, the policyholders must be informed as to the cash value of each policy on 31<sup>st</sup> December, of each year. In the case of annuities, the policyholder has to be informed about the capitalization value on the same date.

There is no annual investment return tax or similar tax on investment gains within a qualifying policy if there is no surrender, with the exception of Wealth Tax.

The only tax payable on the value of the policy is the Wealth Tax. Personal Income Tax is applied on gains, not on the value.

#### d. OTHER TAXES OR SURCHARGES

There is no tax or other charges payable on the life insurance premiums for a qualifying policy where the premium is paid by an individual or corporate entity resident in Spain, as long as this contract does not refer exclusively or primarily to death coverage. If it refers to death coverage, below we show the obligatory surcharges and the forms which should be used to make declarations to the Compensation Pool for those branches of coverage defined in article 6 of the Administration and Supervision of Private Insurance Act.

NAME	CONSORCIO SURCHARGE	FORM
LIFE-Death coverage	R.E. Direct damage to persons	10
LIFE-Death is not the principal coverage	NOT SUBJECT	
LIFE with Disablement or disability coverage If it is the result of an accident	R.E. Direct damage to persons	10
	Liquidating activity	50



NAME	CONSORCIO SURCHARGE	FORM
LIFE with Disablement or disability coverage If it is the result of illness	Liquidating activity	50

The policyholder does not receive tax relief on premiums that they pay into the policy.

There is no tax or charge payable, for example, Investment Tax, on any growth in the value of the policy during the term of the policy as long as they are qualifying funds, in agreement with article 14 of the Spanish Personal Income Tax Act above mentioned and there is no surrender.

The Insurance Premium Tax for insurances will be exempt, according to article 12 of the Act 13/1996, in the following insurance operations: compulsory social insurance and collective insurance as an alternative to pensions plans; life insurance as stated under Title II of Insurance Contract Act; capitalization based on actuarial techniques and reinsurances policies.

e. SOME PRACTICAL QUESTIONS AND THEIR ANSWERS

– Gift and Inheritance Tax

1. *«What happens if there is no beneficiary in the case of death stated within the policy?»*

This is a difficult matter because an individual policy without beneficiaries is not a habitual situation. In any case, according to the Spanish Law, in this case (no beneficiaries) the insured capital goes to the policyholder (or to his estate, if he is deceased. This estate will be divided later between the heirs). So, it would be taxed in the same manner as if the policy were totally surrendered. Therefore, it is not necessary to require a certificate from the Tax Authorities stating that Inheritance Tax does not need to be paid or a completed form (Liquidation) signed by the Spanish Tax Authorities confirming that Inheritance Tax has been paid. The insurance company does not pay the heirs, the payment goes to the policyholder.

– Withholdings

1. *«Could you please inform us about the Spanish withholding tax rate retained on "outbonds" dividends, i.e. dividends paid by a Spanish company to a non-resident shareholder?»*

As a general rule, withholding tax rate retained on dividends by a Spanish company to a non-resident shareholder is 21% but it is important to know if there is a double taxation treaty and if so, the conditions of that treaty.

2. *«We have a client who took out a Spanish policy. He has now moved to Germany. He has requested a partial surrender. Do we need a tax clearance certificate for partial surrenders? If we do not receive the tax clearance certificate, do we apply the 24.75% Non-Resident Withholding tax on the gain only?»*

If a policy is signed in Spain by a Spanish resident, and they become resident of another country, you would have to withhold 24.75% with the exception of that the policyholder should ask you to apply for an exemption due to a Double Taxation Treaty (DTT) between Spain and the country of the new residence. If the policyholder wants to take advantage of this exemption, he would have to send a certificate to the insurance company proving his residency in another country. This certificate has to be sent on an annual basis, and you will need to require a new certificate each year to keep applying the exemption. The insurance company cannot deny the exemption of the 24.75% withholdings if the policyholder proves the new tax residence and if there is a DTT between the two countries which permits this exemption.

3. *«Our main business is annuities and I believe all the Spanish related business will be this. Given this, and that there is no surrender involved with such business, does that mean that the requirements upon us will be minimal? As I understand it, forms 128 and 188 will not apply, and form 10 will be a nil return»*

Annuities are a special case. Forms 128 and 188 (withholdings) will apply but in a different way: depending on if they are temporary or life annuities and depending on the age of the beneficiary, important reductions could be applied on the basis of contribution.

– Various inquiries

1. *«Could you please clarify the position in relation to beneficiaries who are non-residents? Do we apply the non-resident withholding tax or do we pay free of withholding tax (on the basis that the beneficiary tax is between him and his country of tax residence)? If a Spanish Resident Life Assured dies (under a Spanish policy) and the beneficiary is a UK*

*resident do we have to withhold tax at 24.75%? If a UK Resident Life Assured dies (under a Spanish policy) and the beneficiary is a UK resident do we have to withhold tax at 24.75%?»*

You do not have to withhold any amount. This is a «death case», therefore you have to take into account the Inheritance Tax (in which there are not any withholdings), not the Income Tax (with withholdings).

2. *«Can you confirm that both Spanish residents and non-Spanish residents must submit to the insurance company this liquidación (of the Inheritance Tax) from the Spanish Tax Authorities?»*

We confirm that the insurance company should require from both Spanish residents and non-Spanish residents this liquidation (or a certificate from the Tax Authorities stating the exemption of this payment). All the insurance companies do this. You must take into account that you are jointly responsible with the beneficiary for this payment before the Spanish Authorities. If the beneficiary fails to pay, you are responsible for payment.

3. *«We have been asked to accept a case for a Spanish resident which utilises the "**Beckham Law**" (Royal Decree 687/2005). Please can you confirm whether you have any concerns with the suggested approach and in particular is the Insurance Company still obliged to deduct withholding tax on an annual basis for this non tax compliant product in Spain, even though the policyholders will be utilising the provisions of Royal Decree 687/2005?»*

As a general rule (it is necessary to take into account the corresponding DTT), according to "**Beckham Law**" (Royal Decree 687/2005), they may opt to be a tax resident in their country. So, the insurance company would not still be obliged to deduct Withholding Tax on an annual basis in Spain.

The general conditions for applying for this special regime are regulated in the article 9.5 of Royal Decree 3/2004, which approves the Personal Income Tax Act, and in the Royal Decree 687/2005. According to this legislation, individuals who become Spanish tax residents due to their transfer to Spanish territory may opt to be taxed as non residents if they comply with the following conditions:

- They have not been residents in Spain during the previous 10 years.

- The transfer is the consequence of a work contract. This condition is understood to be complied with when a labor relationship, whether ordinary or special, is initiated with an employer in Spain, or when the transfer has been ordered by the employer and the corresponding letter of assignment exists.
- The work is effectively performed in Spain. This condition is understood to be complied with even though part of the work is performed abroad, provided that the remuneration received by the employee transferred to Spain for their work performed abroad does not exceed 15% of their total work remuneration in the calendar year. In certain cases, this limit could be increased to 30% if the employee carries out functions in another company of the group.

When it is not possible to give proof of the remuneration amount corresponding to the work performed abroad, it should be calculated in proportion to the number of days effectively spent abroad.

The work must be performed for a Spanish resident company or entity or a permanent establishment in Spain. This condition is understood to be complied with when the services performed benefit a Spanish resident company or entity.

#### f. SPECIAL TAX TREATMENT FOR UNIT LINKED PRODUCTS

If the Unit Linked qualifies under the Spanish Law, the policyholder would be taxed at the time he takes withdrawals and/or the full surrender, by the difference between the amounts received from the insurance entity and the premium paid.

Should the Unit Linked not qualify under the Spanish Law, a special rule for the imputation of income for Spanish tax purposes would apply. In this regard, the policyholder would be subject to the Spanish Personal Income Tax Act by the difference between the value of the policy at the beginning and at the end of the tax year.

It would qualify under the Spanish Law, and would benefit from the deferral of income tax until a partial of total surrender had been done, providing the policy meets one of the following two conditions stated in article 14.2(h) of the Spanish Personal Income Tax Act:

1. Power to modify investments allocated to the policy is not granted to the policyholder.

2. The provisions of the policy must be invested in the following assets only:
  - a) Shares or units of collective investment institutions, predetermined in the contracts provided they are collective investments adapted to the Spanish Law 35/2003, 4 November, or to the Council Directive 85/611/ECC, 20 December, 2005.
  - b) Assets registered separately on the balance sheet of the insurance entity and complying with the following:
    - Assets must be suitable according to the Administration and Supervision of the Private Insurance Act (article 50), excluding real estate assets and real rights on those.
    - The assets must be suitably diversified according to the Spanish Insurance Supervision regulations.
    - The policyholder must only be able to select among different separate classes of assets. They must not be involved in determining the underlying assets of that investment.
    - All the above conditions must be fulfilled for the full duration of the contract.

It is also necessary to take into account that in Spain, we use a FIFO –First In First Out– method regarding premiums (with the exception of annuities). It is the only method permitted by Law. Below we have included an example of how the FIFO method operates:

Total Premiums Paid: 5,000 Euros.

Surrender Value of Policy Year 5: 6,000 Euros.

Partial Surrender amount: 3,000 Euros.

Since the partial surrender amount is 50% of the full surrender value we allocate 50% of premium paid.

Portion of Premium surrendered (50% of 5,000 Euros)	2,500 Euros
Amount Received (50% of 6,000 Euros) Partial Surrender Value	3,000 Euros
Taxable Amount (3,000-2,500 Euros)	500 Euros
Withholdings 21%	105 Euros

FIFO (First In First Out) method.

E.g. the client has paid the following premiums.

Premiums Paid	Year 1	1,000 Euros
	Year 2	1,000 Euros
	Year 3	1,000 Euros
	Year 4	1,000 Euros
	Year 5	1,000 Euros
	TOTAL	5,000 Euros

The portion of premiums surrendered is considered to be the first premiums paid, ie Premiums paid year 1, 2, and 3; totaling 2,500 Euros. So we end up with:

Premiums, after partial surrender	Year 1	0
	Year 2	0
	Year 3	500 Euros
	Year 4	1,000 Euros
	Year 5	1,000 Euros
	TOTAL Premium	2,500 Euros

In Spain, all the charges must be included in the concept of "*primas*" (premiums). That is why when we calculate the difference between the premiums paid and the amount received upon surrender by the policyholder, we only deduct the premiums from the surrender value. There is no fixed term required for a qualifying policy, in other words it can be issued on a whole-of-life basis.

As it has been explained, it would qualify under the Spanish Law, and would benefit from the deferral of income tax until a partial or total surrender had been made, providing the policy meets one of the two conditions stated in article 14.2(h) of the Spanish Personal Income Tax Act. Number 2, b of this article establishes suitable assets, according to the Administration and Supervision of the Private Insurance Act. Article 50 of this Law regulates the investment of provisions on eligible assets for investment of technical provisions. The investments of each pool of assets must comply with the limits established for diversification and dispersion of insurance contracts by Administration and Supervision of the Private Insurance Act and other rules that complete them.

The article includes a clause list about assets and rights that are suitable for covering technical reserves and the possibility to include

other assets when they meet the conditions established by the Ministry of Economy for being considered suitable for covering technical reserves. These assets and rights are the following:

- Fixed and variable income derived from negotiable securities and rights of any kind, including those giving entitlement to their subscription or acquisition, if they have been admitted to trading on markets regulated within the scope of the Organization for Economic Co-operation and Development (OECD) and can be traded in a generalized, and impersonal manner on a financial market and others when issued or guaranteed by international bodies to which a Member State of the European Economic Area belongs.
- Structured financial assets (composed of a combination of two or more assets or derivatives or a combination of both that are instrumented through a single legal act).

(Markets established within the scope of the Organization for Economic Co-operation and Development (OECD) that meet the conditions laid down in European Directive on Markets in Financial Instruments shall be considered regulated markets, as shall any others that may be determined by the Spanish Regulatory Authorities. In no case shall securities and rights issued by the insurance company itself be admitted).

- Fixed-income securities when collateral or an unconditional joint and several guarantees have been provided by a credit institution or insurance has been provided by an insurance company authorized to operate through an establishment in a Member State of the European Economic Area, or the securities have been issued by any such companies; the shares in the issuing company are traded on a regulated market; or collateral or an unconditional guarantee has been provided by an entity whose shares are traded on a regulated market.
- Financing provided to the State, Autonomous Regions, Local Authorities, public sector companies or public entities in the European Economic Area, whether or not instrumented in negotiable securities, and whether in the form of financing provided by the insurance company or credit rights acquired by the insurance company after provided the financing, provided their soundness (security) is guaranteed either by the standing of the borrower or by the guarantees provided.



- The financial instruments like shares and participations in collective investment institutions established in the European Economic Area and subject to coordination in accordance with Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to «Collective Investment Organizations in Transferable Securities» (UCITS) or regulated by the Collective Investment Institutions Act 35/2003 and subordinate legislation; in venture capital companies regulated by Spanish legislation and others which meet some specific conditions (their exclusive corporate object must be to carry on the business of venture capital companies; the shares or participations must have been issued by companies with head office in a member State of OECD), not considered as a tax haven; There must be no restrictions on the transfer of the shares or participations in such institutions; The issuer must be obliged to have its annual accounts audited by an independent external auditor, and at the time of the investment must have a favorable opinion on the last complete financial period).

In collective investment institutions in real estate established in the European Economic Area, provided they are subject to authorization and supervision by a regulatory authority of a Member State of the European Economic Area.

- Mortgage market assets and rights, including mortgage-backed securities issued by companies established in the European Economic Area and traded on regulated markets within the scope of the Organization for Economic Co-operation and Development (OECD).
- Bills of exchange and promissory notes, when these are drawn, accepted, endorsed without a liability clause or guaranteed by credit institutions authorized to operate through an establishment in a Member State of the European Economic Area.
- Shares in credit institutions, investment firms and insurance and reinsurance companies to the extent that they are subject to authorization and supervision by a regulatory authority in a Member State of the European Economic Area.
- Registered shares and participations in companies whose exclusive business is the management of assets on behalf of insurance companies and pension funds, when at least 90% of the capital is held by one or more insurance companies or pension funds.



- Real estate and rights in rem. The property must meet all the following requirements: a) It must be rural land or urban land or land for development; b) It must be located in the territory of a Member State of the European Economic Area and be registered in the Property Registry in the name of the insurance company; d) It must have been valued in accordance with the specific rules approved by the Ministry of Economy; f) In the case of mortgaged property where the mortgage affects several assets, the liability of each one must be individualized; g) It must be insured for fire and other damage to the building.
- Mortgages, provided they are first mortgages and are on properties that meet the requirements set out in the preceding section. All the requirements of mortgage legislation must also be met.
- Pledges, provided the asset pledged is in itself suitable for covering technical reserves.
- Loans and credit facilities or parts thereof provided to companies domiciled in a Member State of the European Economic Area whose shares are admitted to trading on a market regulated within the scope of the Organization for Economic Co-operation and Development (OECD) and loans or credit facilities guaranteed by a credit institution or insurance company, provided that in both cases they are authorized to operate through an establishment in a Member State of the European Economic Area and the balances held by insurance companies in respect of predetermined– or fixed rate cash-flow swaps with financial institutions.
- Credit rights against reinsurers for their participation in the provision of services, to the extent that no deposits have been received in respect of these.
- Deposits in ceding company by reason of accepted reinsurance operations.
- Credit rights against the Public Treasury for Corporate Income Tax assessments and Withholding Tax relating to earnings on investments for covering technical reserves and for other taxes duly paid, net of any obligations accrued by the insurance company with the Public Treasury.
- Credit rights in respect of interest, income and dividends accrued but not yet payable, as well as those that are due and payable and pending receipt but are likely to be paid, provided that in all cases they derive from suitable assets.

- Recovery of claims in the fields of credit and bond insurance.
- Cash, bank notes and coins traded on the money markets of the Organization for Economic Co-operation and Development (OECD).
- Deposits in credit institutions authorized to operate through an establishment in a Member State of the European Economic Area.
- Current account notes that are not defective and that are drawn or guaranteed by credit institutions authorized to operate through an establishment in a Member State of the European Economic Area.

g. TAX AND SURCHARGE REPORTING

The life insurer is obliged to calculate and withhold the amount of the Spanish tax withholdings on any withdrawals or full surrenders (if there are any gains) and remit this amount to the Spanish Tax Authorities (if they operate in FoS, via their Tax Representative in Spain). The gain or loss on the proceeds of a life insurance policy as a result of a withdrawal or full surrender in a particular tax year must be declared by the policyholder in their next Personal Income Tax return. The current Withholding Tax rate that the insurer should apply to the gains made on all life insurance policies held by residents of Spain in the event of a withdrawal or full surrender is 21%, effective from 1<sup>st</sup> January, 2012 (as a new tax measure to reduce the Spanish public deficit, the Personal Income Tax has recently been temporarily modified by Royal Decree, 30 December, 2011, for the years 2012 and 2013. The rates of the withholdings have been increased from 19% to 21%).

In addition to that, insurers have Statutory Reporting Requirements to the Compensation Pool –extraordinary risks– in relation to the surcharges which we will explain below.

The forms that the insurance companies are obligated to fill in are the following (see each form in the Annex of this book).

With respect to Tax Authorities, the principal forms to fill in are:

– Monthly Form 128: (withholdings on the gains when a policy is partially or totally surrendered or when the policyholder receives «annuities»). The information to be sent by the insurance company is the following:

- Policyholder name,

- Residential town,
- NIE/NIF and withholding tax.

This information is enough to prepare both Forms 128 and 188.

– Annual Form 188 (an annual summary of the Form 128): every year from the 1<sup>st</sup> to 31<sup>st</sup> January.

In continuation, please find below an example of the information which must be sent monthly to the Tax Representative for declaring all of the taxes and surcharges stated previously.

Policyholder Name	Policyholder Residence Town	NIF/NIE	Tax Withheld
John Smith	Madrid	00000000T	10,1 Euros

Annuities are a special case. Forms 128 and 188 (withholdings) will apply but in a different way: depending on if they are temporary or life annuities and depending on the age of the beneficiary, we could apply important reductions on the basis of contribution. In relation to the form 189, if these products do not really have the surrender possibility, it will not apply.

– Annual Form 189 (surrender value of the policies on 31<sup>st</sup> December). This Form must be filed, from the 1<sup>st</sup> to 31<sup>st</sup> of March of the following year, with this information included:

- Name and surname of the policyholder, NIE/NIF and residence town.
- Insurance surrender value on 31<sup>st</sup> December, of the previous year.

– Annual Form 210. It must be filed between the 1<sup>st</sup> to 20<sup>th</sup> of January of the year following accrual of the income –premiums sold in Spain– in question. The self-assessment form filed applies exemptions (in the case of a double taxation agreement) provided for under Spanish law due to the taxpayer's residence status. For its application, it is necessary to submit a residence certificate. This residence certificate must be issued by the tax authorities of their country of residence, justifying this exemption. Said certificate must expressly state that the taxpayer is a resident within the meaning of the agreement. Residence certificates will be valid for one year after the date of issue.

– Form 216 (for non residents): must be declared only when a resident in Spain changes their country of residence and there is a surrender.

The Compensation Pool is a compensation scheme for damages caused by extraordinary events (severe floods, gales and hailstorms, earthquakes, etc). It is characteristic of the Spanish system to define the catastrophic risks that are covered in consideration by the enormous potential loss that could be generated, but without conditioning the protection if there are occurrences that affect a great number of insured people or a wide expanse of territory, nor in the case of substantial damages that could lead to the event as being described as catastrophic. It is possible that the event might only affect a sole policyholder, who would have full rights to being indemnified but which on the other hand, would not require the public authorities to issue an official declaration that there has been a catastrophe or that there is a catastrophic area. The coverage is automatic once one of the covered events has occurred. The Compensation Pool forms part of the Ministry of Economy and is a public entity inspired on the principle of compensation whose aim is to cover these extraordinary risks. For financing this body, the Law lays down the surcharge on the Extraordinary Risks Insurance, personal damage (life and accidents), property (direct material damage) and loss of profits. With respect to Compensation Pool:

- Form 10. It is always necessary to declare a monthly Form 10, but information need not be declare on policies with a small percentage of death risk coverage.

## 6. SPANISH NON LIFE INSURANCE TAXATION AND SURCHARGES

Non Life Taxation is not as complex as Life Taxation. However, it is necessary to study above all the Compensation Pool surcharges due to their casuistic regulations.

With respect to Tax Authorities, the principal forms to fill in are:

- Monthly Form 430 (insurance premiums: 6% of the premium paid).
- Annual Form 480 (an annual summary of the Form 430): it must be declared every year from the 1<sup>st</sup> to 31<sup>st</sup> January.
- Annual Form 210: the same as that in Life Taxation, *vid.* previous page.

With respect to Compensation Pool:

– Form 10 (Extraordinary risks): to be declared on a monthly basis. The rates on the insured capital are:

- dwellings and dwelling communities: 0,08 per thousand;
- offices: 0,12 per thousand;
- business, shopping centers, department stores and the rest of simple risks: 0,18 per thousand;
- industrial risks: 0,21 per thousand;
- motor vehicles: fixed amount according to type of vehicle (for private cars, 3,50 Euros per vehicle, trucks 17,60 Euros, industrial vehicles 14,60 Euros);
- civil works: different rates according to type, i.e. from 0,28 per thousand for motorways, roads and railways, tubes and pipes 1,25 per thousand, bridges 1,03 per thousand, 1,63 per thousand for non-sport ports.
- Form 11 (Business interruption, monthly):
  - dwellings and dwelling communities: 0,05 per thousand;
  - Rest of risks: 0,025 per thousand.
- Form 50 (Winding up charge, quaterly): 0,015 per thousand.

Below, obligatory surcharges and the forms are summarized, which should be used to make declarations to the Compensation Pool for those branches of coverage defined in article 6 of Administration and Supervision of Private Insurance Regulation Act.

Branch	Name	Consorcio surcharge	Form
01	ACCIDENTS	R.E. Direct damage to persons	10
		Liquidating activity	50
02	ILLNESS (Including health care)	Liquidating activity	50
03	LAND VEHICLES (P.B.) (not railways)	R.E. Direct damage to persons	10
		Liquidating activity	50
04	RAILWAY VEHICLES (P.B.)	R.E. Direct damage to persons	10
		Liquidating activity	50
05	AIRCRAFT	Liquidating activity	50
06	LACUSTRINE, MARITIME AND RIVER CRAFT	Liquidating activity	50

Branch	Name	Consorcio surcharge	Form
07	MERCHANDISE AND OTHER ITEMS BEING TRANSPORTED (including luggage)	Liquidating activity	50
08	FIRE AND NATURAL ELEMENTS (P.B.)	R.E. Direct damage to persons	10
		Liquidating activity	50
09	OTHER DAMAGE TO GOODS (including hail, freezing and theft) and Agricultural Insurance (excluding Combined Agricultural Insurance) (P.B.)	R.E. Direct damage to persons	10
		Liquidating activity	50
10	CIVIL LIABILITY ARISING FROM ROAD TRAFFIC	S.O.A.	20
		Liquidating activity	50
11	CIVIL LIABILITY ARISING FROM AIR TRAFFIC	Liquidating activity	50
12	CIVIL LIABILITY ARISING FROM THE USE OF LACUSTRINE, MARITIME AND RIVER CRAFT	Liquidating activity	50
13	GENERAL CIVIL LIABILITY	Liquidating activity	50
14	CREDIT	Liquidating activity	50
15	GUARANTEE COVERAGE	Liquidating activity	50
16	DIFFERENT PECUNIARY DAMAGES the cause of which originates from Fire, Theft, Explosion, Atmospheric Phenomena, Machinery Breakdown	R.E. Loss of Profits	11
		Liquidating activity	50
17	LEGAL DEFENCE	Liquidating activity	50
18	ASSISTANCE	Liquidating activity	50
20	DEATH	Liquidating activity	50

## 7. PENALTIES AND INTEREST TAX. NEW TAX FRAUD PREVENTION ACT

Anyone missing a Spanish tax deadline risks running up penalties and other additional costs as well as the tax payable. The system is multi-layered and we have just detailed some of the basics below. In

essence, the system punishes the late payer with increasing intensity as time passes and additional charges amount, if the late returns are not made voluntarily. Below, basic late reporting penalties are summarized:

<b>VOLUNTARY LATE RETURN</b>	
within 3 months	5% of due tax
within 3-6 months	10% of due tax
within 6-12 months	15% of due tax

<b>NON-VOLUNTARY LATE RETURN</b>	
<b>Enforced surcharge</b>	5% or 10% or 20%
<b>Penalty</b>	Minor infraction, 50% of due tax Serious infraction, 50-100% of due tax Very serious infraction, 100-150% of due tax
<b>Interest</b>	Will vary depending on legal specific circumstances

The minor penalty is normally applied if there has been no effort on the part of the taxpayer to deliberately conceal income or if the amount of the tax and penalties is less than 3,000 Euros.

The higher penalties apply when forged documents, false accounting and outright fraud have been used to under-declare tax. The higher the proportion of the income fraudulently concealed, the higher the penalty.

– Additional interest charge for payments more than 1 year late: 5% (2012).

– Penalties for late reporting where no tax is due: 100 Euros (200 Euros if the Tax Office has prompted the tax payer to make a return).

The new Act 7/2012, 29 October, which came into force in December of last year, combines new measures designed to directly impact on areas where fraud is commonly most prevalent with other measures that enhance collection. One of the most ambitious measures consists of limiting the use of cash for certain transactions. The legislative experience in other EU countries, such as France and Italy, has been taken into consideration in this regard. The use of cash will no longer be per-

mitted for payments equal to or greater than 2,500 Euros in which at least one business owner or professional is involved. This limit will not be applicable to payments or deposits made with credit entities.

Anyone found in breach of this limit will face penalties of 25% of the value of the payment made in cash. Both the payer and the payee of the payment will be jointly liable for such breaches of the law and the authorities may bring an action against either party. Should the offence be reported by one of the parties involved in the transaction, the Spanish Treasury will refrain from applying a penalty to that party if the offence was voluntarily reported to the Spanish Tax Office.

Furthermore, the new legislation requires all taxpayers to provide information on any accounts and capital located overseas of which they are the holders, beneficiaries or authorized users. This includes all forms of securities, shares or accounts held with financial entities, as well as capital or life insurance and real estate.

Failure to comply with this new requirement to provide information will lead to a system of penalties based on five thousand Euros per datum or series of data omitted, with a minimum of ten thousand Euros. Furthermore, income that is uncovered but has not been declared will be considered in the most recent tax period still applicable by law.

## **8. REGISTRY OF INSURANCE POLICIES COVERING DEATH RISK**

The Registry of Insurance Policies Covering Death Risk (Ministry of Justice) was introduced in Spain by Act 20/2005. The objective of this Law is to record insured persons with a policy providing death coverage, including details of each policy and of any deletions or modifications of relevant data. The purpose of this Registry is to ensure that beneficiaries can find out about all the policies signed in their favour. For this reason, the insurance companies must inform this Registry of any life and accident insurances with death coverage that they have in Spain. The Registry receives information from insurers on the policies covering death and makes this accessible to the parties concerned in the event of the death of the life insured, by means of certificates similar to the Last Will and testament, also issued by the Registry.

It is mandatory to update the Registry on a weekly basis, even if the insurance company does not have newly insured people that week. A sample chart has been included below highlighting the information required. The insurance company needs an IT system which transforms



this information into the format required by the Registry (if the non Spanish company does not have this specific IT system, its Tax Representative can probably provide this service. *LEGSE Abogados* offers this service to their clients). Once the information is sent, the beneficiaries will be able to consult this Registry upon the death of the life assured and see the policies that exist.

a. **REPORTING CHART**

In the chart included below, there are 7 columns:

1. Type of operation to be carried out:

- *Inscripción*: newly insured (Registration).
- *Modificación*: eg, change of the date on which the policy will end (Rectification).
- *Cancelación*: eg, the policyholder asks for a total surrender of the policy (Cancellation).

2. Policy number.

Every insurance policy must have a policy number. In order to distinguish between individual policies and group policies, as well as between each insured person within a group policy, in the last case, additional numbers are added.

If the policy is an individual policy, the policy number is followed by the number 0.

If it is a group policy, it is necessary to add the number of the individual certificate of each life insured within the group policy. Therefore the policy number must be recorded in one of the following manners:

Example 1 – Individual policy: Policy number 3330

Example 2 – Group policy: Policy number 333

Number of the insured is the last number of the following example:

- John Smith: 3331
- Pedro Gómez: 3332

3. First name of the life or accident insured.

4. Surname of the life or accident insured.

5. NIF/NIE. All insured persons must have either an NIF (identifi-

cation number for Spanish people) or an NIE (identification number for non Spanish residents in Spain). If a non Spanish person does not have an NIE, they are not legally registered as a Spanish resident and therefore are not qualified to sign a policy sold by a company which operates in FoS (Freedom of Services) in Spain. The tax ID number of the life assured is required:

- For Spanish citizens: the NIF (*Número de Identificación Fiscal*/Tax Identification Number) with 8 ciphers + one letter (9 «spaces»).
- For resident foreigners: the NIE (*Número de Identidad de Extranjero*/Foreigner Identification Number) with 1 letter + 7 ciphers + 1 letter (9 «spaces»).

6. Beginning date of policy. The date format is *yyyymmdd*.

7. Ending date of policy. If the policy does not have an end date, the number 0 should be inserted. The date format is *yyyymmdd*.

The IT system of the Registry is very sensitive and only accepts information sent in capital letters.

Without a valid tax ID number (NIF/NIE) it is not possible to pay taxes (withholdings) or to inform the Registry (about the life insured). In both cases, the systems (for paying the taxes or informing the Registry) would refuse the data.

See sample chart below,

Type of operation	Policy number	Name of life insured	Surname of life insured	NIF/NIE	Date of beginning	Date of ending
Inscripción	C1026179F	JOHN	SMITH	X1111111M	20091002	0
Modificación	C1026179F	PETER	JONES	X2222222N	20091002	0
Cancelación	C1026099H	JAMES	SMITH	12345678O	20091013	20091201

b. SOME PRACTICAL QUESTIONS AND THEIR ANSWERS

1. «Should all life assured residents in Spain (regardless of whether they are the policyholder or not) be declared?»

All life assured residents in Spain (regardless of whether they are the policyholder or not) must be declared.

2. «Do we need to declare beneficiaries?»

The beneficiaries need not be declared.

3. «Do we need to report on policies where a death claim has been made

*against the policy, even if the identity of the beneficiary of the policy and the policyholder are the same?»*

You need to report on policies where a death claim has been made against the policy, unless the identity of the beneficiary of the policy and the policyholder are the same.

4. *«We do not have to report on a life assured where the policyholder and beneficiary are the same, but what happens if the life assured is a different person to the policyholder and beneficiary?»*

The Law does not make any exception. It only says that if the policyholder and beneficiary are the same person, it is not necessary to report (article number 4.2 (b) of the Law 20/2005). It should be taken into account that, according to the Spanish Law, the life assured must accept to be the Life Assured on policies where the policyholder and the Life Assured are not the same person. So, they also were informed of the existence of this policy.

## **9. DATA PROTECTION ISSUES**

Article 25.4 Administration and Supervision of the Private Insurance Act says insurance companies can establish common files containing personal data for the purposes of claim settlement, compilation of actuarial statistics to value and select risks and studies on insurance techniques. The transfer of data to such files will not be subject to the prior consent of the persons concerned, who must, however, be informed of the possible transfer of their personal data to such common files for the purposes specified. These notices must explicitly indicate name of the person or organization responsible in order to enable data subjects to exercise their rights of access, rectification and cancellation provided by Law.

Common files may also be established to prevent insurance fraud, for which the consent of the person concerned will not be necessary. When their data is entered for the first time, however, data subjects must be notified of the name of the person or organization in charge of the file and the manners in which they may exercise their rights of access, rectification and cancellation.

In any case, processing of health-related data will be subject to the explicit consent of the person concerned.

The creation of the above files will be subject to prior notification

to DGSFP specifying the organization responsible for the file and the type of data contained therein, as well as to the Data Protection Agency.

The data protection legislation that will be applicable to an insurance company which operates in Spain in FoS is its national legislation because this insurance company does not have permanent establishment in Spain. There might be a problem with the time limit of keeping records of the data established in the Spanish Anti-Money Laundering Bill (applicable to life insurance products): the period to keep all documents related to any life insurance investment operation is 10 years, according to article 2 and 25 of Act 10/2010, 28 April, Spanish Anti-Money Laundering Bill. The problem could be if the domestic Data Protection Act of the insurance company which operates in FoS requires keeping records for a shorter period. Therefore, if this situation should arise, it is necessary to check if the domestic Data Protection Act allows the possibility of extending the time limit of archiving data, in accordance with the requirements of other specific laws (in this case, the Spanish Anti-Money Laundering Bill). In Spain, our Data Protection Act allows this possibility.

#### **10. PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING RELATED TO LIFE INSURANCE COMPANIES IN FOS OR WITH BRANCHES IN SPAIN**

The following legislation is the framework within which all businesses under the risk of being an instrument of money laundering or terrorist financing in Spain:

- Directive 2005/60/CE of the European Parliament and the Council, 26 October, on the prevention of the use of the financial system for money laundering and terrorist financing and Directive 2006/70/EC, 1 August, laying down detailed rules for implementing Directive 2005/60/EC.

- Spanish Legislation (culminating in Act 10/2010, 28 April, on Prevention of Money Laundering (AML) and Terrorist Financing).

According to this legislation (especially article 2 of Act 10/2010), life insurance companies authorized to operate in FoS or with branches in Spain are obligated subjects to Spanish regulations. Obviously, this means they must implement the measures required by the law in Spain, in addition to the legal AML requirements of its country. Their main AML obligations in Spain are:

- To establish procedures for prevention and appropriate bodies of internal control and communication in order to know how to prevent and deter operations related to money laundering.
- To train the staff on knowledge of the rules on prevention of money laundering.
- To define a catalog of suspicious transactions and to detect and analyze possible suspicious transactions.
- To ensure confidentiality and preservation of documents.
- An authorized representative of the insurance company (a director or high positioned manager) must be appointed to manage and deal with SEPBLAC (Spanish Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences) as well as deliver the Monthly Operations Statement or fill in a negative statement every six months if there are no suspicious operations. This representative must name a Spanish person (this could be a lawyer of LEGSE Abogados) to act on his/her behalf in Spain filling in these statements and dealing directly with SEPBLAC.
- To conduct an annual audit, according to the Spanish Law, of the procedures and internal control bodies and communication by an outside expert. These audits should be conducted by professional experts that must show evidence of adequate training and experience, and be included in the registry kept by the SEPBLAC.

The AML advisory and consulting service of LEGSE Abogados can help to answer all questions, concerns or solve any problems that may arise regarding prevention of money laundering in Spain and as well as advise how to comply fully with the requirements according to AML Spanish regulations.

### **Possible penalties**

For serious violations, the company could be penalized with an amount which will go from a minimum of 60,000 Euros up to a maximum equal to the greater of the following figures:

- 1% of equity capital of the entity
- the economic substance of the transaction, plus 50%
- 150,000 Euros

Directors and managers could be penalized with a minimum of

3,000 Euros and a maximum of 60,000 Euros including a temporary suspension for a period not exceeding one year.

For very serious violations, the company could be penalized with an amount which will go from a minimum of 150,000 Euros up to a maximum equal to the greater of the following figures:

- 5% of the entity own resources
- twice the economic substance of the transaction
- 1.5 million Euros

Revocation of the administrative authorization to operate could be applied for very serious violations.

Directors and managers could be penalized with an amount between 60,000 Euros and 600,000 Euros and penalized with disqualification from office for 10 years in the entities subject to this Act.

#### **Spanish Legislation on prevention of money laundering and terrorism financing Scheme**

- Act 10/2010, 28 April, on Prevention of Money Laundering and Terrorist Financing.
- Resolution of September 10, 2008, the Directorate General of Treasury and Finance, which publishes the agreement of July 14, 2008, the Commission for the Prevention of Money Laundering and Monetary Offences, which determine the jurisdictions that set requirements equivalent to those of Spanish legislation to prevent money laundering.
- EHA/114/2008, Order of January 29, governing the fulfillment of certain obligations of notaries in the field of prevention of money laundering.
- EHA/2444/2007, Order of July 31, which develops the Regulations of Act 19/1993, 28 December, on certain measures to prevent money laundering, approved by Royal Decree 925/1995, 9 June, in relation to the external audit report on the procedures and internal control and communication bodies to prevent.
- EHA/2619/2006, Order of July 28, developing certain obligations to prevent money laundering by the obligated entities that perform activities of currency exchange and international money transfer.
- EHA/2963/2005, Order of September 20, governing the centrali-

zed body on Prevention of Money Laundering for the General Council of Notaries.

- Royal Decree 54/2005, 21 January, amending the Regulations of Act 19/1993, 28 December, on certain measures to prevent money laundering, approved by Royal Decree 925/1995, 9 June, and other standards regulating banking, financing and insurance.
- Act 19/2003, 4 July, on the legal regime of movements of capital and economic transactions abroad.
- Royal Decree 925/1995, 9 June, which approves the Regulation of Law 19/1993 on certain measures to prevent money laundering.
- Act 12/2003, 21 May, on measures to blocking the financing of terrorism.

## **11. SOME ISSUES ABOUT REGULATORY LAW**

### **a. INSURANCE COMPANIES IN SPAIN, WITH LEGAL HEAD OFFICE IN OTHER EUROPEAN ECONOMIC AREA MEMBER STATES (EEA COMPANIES)**

Insurance companies whose head office is in an EEA Member State other than Spain and which have obtained authorisation to operate in their Home Member State, may go about their business in Spain under the regime of right of establishment or under the regime of the freedom to provide services, in compliance with provisions established in the general interests and provisions regulating and supervising insurance companies and particularly those protecting the policyholder, as shall be applicable. They must present all documentation proving compliance in Spain with all applicable Spanish provisions to the Ministry of Economy within the same terms as Spanish insurance entities (article 78.2 of the Administration and Supervision of the Private Insurance Act).

If the Bureau of Insurance (DGSFP) should find that any of the insurance companies referred to in the previous paragraph fail to comply with applicable Spanish provisions, a request will be made for them to make the appropriate changes in order to ensure due compliance. Failure to do so will result in DGSFP informing the supervisory authority of the Home Member State to check that all steps are taken to ensure that the insurance entity terminates the irregular situation.

### **Insurance Transfers**

According to article 79 of the TRLOSSP, when Spain is the Member



State of the commitment or location of risk, the Ministry of Economy must approve any transfer of insurance contract portfolios from one insurance entity legally residing in another EEA Member State. Equally, the Ministry of Economy must also be consulted when the transferor is a branch established in Spain of an insurance entity with their legal head office in a different EEA Member State. Finally, when the transferee is a Spanish insurance entity, the Ministry must certify that the transferee has sufficient solvency.

The Ministry of Economy must state its criterion within three months upon receiving the application for conformity, request for opinion or certification submitted by the Home Member State of the transferor insurance entity. If the term has expired and no ruling has been issued in this respect, conformity will be considered approved, the requested opinion positive and the certification issued.

When the Home Member State of the transferor authorises the transfer, the Ministry of Economy must make public the transfer if Spain is the Member State of the commitment or risk location.

### **Intervention measures**

When the supervisory authority of an insurance entity domiciled in an EEA Member State other than Spain, operating therein under the regime of the right of establishment or the regime of the freedom of services, revokes administrative authorisation, DGSFP will prohibit this insurance entity from contracting new insurance under both regimes. In this case, and with a view to safeguarding the interests of the insured parties, DGSFP may, in collaboration with the mentioned authority, take all special control measures considered necessary (Art. 80.1 TRLOSP).

Insurance entities domiciled in another EEA Member State which operate in Spain under the regime of the right of establishment or the regime of the freedom to provide services are subject to the penalising power of the Ministry of Economy.

If an insurance entity domiciled in a different Member State has been subjected to a special control measure taken by the supervisory authority of said Member State, pertaining to prohibition of operations, DGSFP should request that the same step be taken with regards to the assets of the insurance entity situated in Spain, specifying those which must be concerned by it.

With respect to an insurance entity with head office in an EEA Member State other than Spain, including its branches in Spain or in



other EEA Member States, liquidation or controlled administration proceedings should be brought, this means that proceedings will have the same effect in Spain as in the EEA Member State in which the measure was adopted or proceedings brought.

DGSFP may ask the Supervisory Authorities of other EEA Member States for information on the situation and development of liquidation proceedings involving entities subject to the supervision of said authorities.

### **How to operate in Freedom of Services in Spain**

First of all, it should be taken into account that foreign insurers which start to operate in Spain under freedom of services can only carry out their business when they have appointed a tax representative for Spain and received notification stating that their Insurance Authorities have communicated to the Spanish Insurance Authorities the aim of the insurer to operate in Spain under FoS basis.

According to article 85 of the Administration and Supervision of the Private Insurance Act, the Insurance Authorities from the European State of residence of an insurance entity located within the European Economic Area must communicate to the Spanish Regulator the aim of the insurer to operate in Spain, jointly with the information requested by the Spanish Authorities (e.g. summary of the types of insurance to be sold, name of the fiscal representative, etc).

The term depends on what the Law of the insurance company nationality states. For example, in Spain, in the case that a Spanish insurer wants to operate in another member state in the EEA, this must be communicated by the Spanish Insurance Authorities to the Authorities of this member state in a period no longer than one month.

On a different matter, the insurance company must have a NIF in Spain. It is a number given by the Tax Authorities for tax purposes. In the case that the insurance company does not have one, its tax representative in Spain can acquire one for them. The process is very simple. The following documentation is necessary:

- Certificate of acknowledgement (written up by a Notary), giving credit of the existence of the insurance company in other country. This certification must be duly stamped with the Hague Apostille. A sworn translation of the certification is required if it is not in Spanish.

- Power of attorney which must authorize a person in asking the Spanish Tax Authorities for an insurance company NIF.

With these documents it is possible to fill in a 036 Form and to request the NIF from the Spanish Tax Authorities.

## **How to establish a branch in Spain**

### *Required deposits*

On the assumption that minimum capital requirements are determined by the home jurisdiction, there are no requirements to maintain any nominal capital or deposits in the branch country when it is an EEA insurance company.

### *Statutory Reporting Requirements*

*Branches* of foreign companies (non EEA countries) have to submit accounts in respect to their business in the host country. Within the EEA, this does not apply to branches of insurance companies having their head office in an EEA Member country. Insurance companies having their head office within the EEA have to submit to the Supervisory Bureau of their home country a report on their insurance business written in another EU Member country but not to the local Supervisory Bureau (in this case, Spain) on a regular basis. It is unlikely that submissions will be required on an irregular basis but the Spanish Insurance Authorities can require submissions in limited circumstances.

### *Staffing levels*

There is no minimum staffing requirement for an EEA insurer operating from a branch in Spain. However, significant new provisions have been introduced in the legislation on protection for the users of financial services in recent years, which means that, on specific occasions, a Client Attention Service Department will need to be established to deal with claims/complaints. In the insurance area, for instance, article 62.2 of the Administration and Supervision of the Private Insurance Act stipulates that the protection provided by public authorities in the field of private insurance will be governed by the existing legislation on the protection for users of financial services contained in *Act 44/2002, 22 November, about measures for reforming the financial system* and the rules for its implementation. The procedures for implementing the provisions for protecting the insured contained in the above mentioned Act are laid down in *Real Decree 303/2004, 20 February*, and in the *Order ECO 734/2004, 11 March, concerning the Client Attention Service Department of Financial Entities*.

The said Order specifies the procedures for implementing the provisions of article 63 of the Administration and Supervision of the Private Insurance Act for insurers that require financial institutions and services to create Client Attention Service Department and envisage the possibility of appointing a Client's Ombudsman. The purpose of all said devices is to respond to and settle any complaints that may be lodged by the users of financial services in the defense of their interests and legally acknowledged rights.

Consequently, the branches in Spain (not the companies who operate in FoS) are required to create a Client Attention Service Department for all policyholders. Insurers with registered offices in the European Economic Area and conducting business in Spain under freedom of services are likewise obliged to respond to and settle their Clients' complaints, but they are not required to create Client Attention Service Department in Spain. In any case, the branches could outsource this Client Service.

*Chief Agent/Representative/Reporting Officer/Manager*

A branch of an EEA insurer must have a Chief Agent/Representative/Reporting Officer/Manager but there is no requirement for the Chief Agent/Representative/Reporting Officer/Manager to be ordinarily resident in the branch location. The only condition is that this Representative has sufficient powers under Spanish Law to act on behalf of the entity.

*The line between FoS and Branches*

The line between FoS and Branches is that for a branch to be established there must be a permanent office managed by staff of this insurance company or by an independent person but with sufficient powers under Spanish Law to act on behalf of the entity (article 83 of the Administration and Supervision of the Private Insurance Act). If there is not this kind of permanent office, they can operate in FoS, through a Tax Representative. It must be taken into account that a branch must declare Corporate Income Tax in Spain (a company which operates in FoS does not).

b. INSURANCE COMPANIES IN SPAIN, WITH LEGAL HEAD OFFICE IN THIRD PARTY COUNTRIES (NON EEA COMPANIES)

The Ministry of Economy may grant administrative authorization to insurance companies domiciled in third party countries, which are not members of the EEA, to establish branches in Spain with a view of

exercising their insurance business. Such companies must have been duly authorized, no less than five years earlier in their countries, to operate in the insurance classes in which they wish to operate in Spain and must bring a certificate of the supervisory authority of their country, proving that they comply with its legislation, particularly as concerns solvency margins.

A general branch must be established with the corporate purpose limited to the insurance business and with permanent residence in Spain. This branch must keep the accounts and documentation of the business to be developed. A provision must also be established and maintained in the Spanish branch, of no less than the share capital or minimum mutual provision required (9,015,181.57 Euros in life insurance branches) of Spanish insurance companies; this will be referred to as the permanent provision of the central head office.

A Representative or Agent must also be appointed, with domicile and residence in Spain. This representative must obtain prior approval by DGSFP, which may deny approval or, as applicable, revoke it in compliance with the principle of reciprocity or due to failure to meet the requirements needed for those holding administrative roles in insurance companies as demanded by the law.

Once administrative authorization has been granted, the branch and its Universal Representative will be registered on the administrative registry of insurance companies.

The branch may go about its insurance business in Spain as long as its risks are always located and commitments made in Spain (article 88 TRLOSSP).

### **Insurance Transfers**

The transfer of a portfolio in which these branches are involved as transferors or transferees will only be permitted when the transferee is a Spanish insurance entity or an insurance entity domiciled in a different EEA Member State, a branch established in Spain of an insurance entity domiciled in a different EEA Member State or third party country or, lastly, a branch established in other EEA Member States of a Spanish insurance entity or insurance entity domiciled in any of the other Member States. In all these cases, transfers of portfolios will be subject to the provisions of the TRLOSSP and, as applicable, prior to granting administrative authorization, will require the certification of the Authority of the Member State of the transferee, stating that it has, considering the

transfer, the necessary solvency margin; this certificate must be issued within three months of receipt of the request made by DGSFP and will be considered as having compliance issued if, once these terms have expired, the certificate is not issued. If the transferee is an insurance entity domiciled, or branch established, in a different EEA Member State, parties contracting insurance will have the right to terminate insurance contracts affected by the transfer.

Transfers of portfolios will only be admitted to a branch in Spain of insurance companies domiciled in third party countries when the transferor is a Spanish insurance entity or a branch established in Spain of insurance companies domiciled in other EEA Member States or third party countries. If the transferor is a Spanish insurance entity or a branch in Spain of insurance companies domiciled in third party countries, portfolio transfers will be in compliance with the provisions of the TRLOSSP.

### **Revoking administrative authorization**

Causes for revoking administrative authorization granted to a branch of an insurance entity domiciled in a non EEA Member State are the same as the causes of dissolution of a Spanish insurance entity. Moreover, the government can revoke authorization to these branches in application of the principle of reciprocity or when extraordinary circumstances of national interest should so dictate.

The need to safeguard the interests of insured parties, beneficiaries, damaged parties or other insurance companies is, in any case, respected in the liquidation affecting branches of foreign companies domiciled in non EEA Member States whose central head office has been dissolved.

## **12. RULES ON INTERNATIONAL INSURANCE LAW**

According to article 107 of the Insurance Contract Act, Spanish Law pertaining to insurance contracts shall apply to insurance against damages (non life insurances) when referring to risks located on Spanish territory if:

- the policyholder has their main residence in Spain and is a natural person,
- being a legal entity, with corporate domicile (or administrative or managerial head office) in Spain,

- the contract is stipulated in fulfilment of an obligation to be insured required by Spanish law.

In cases where large risks are insured, parties to the insurance contract may choose the applicable law.

Apart from these cases, the law applicable to the insurance contract covering damages will be determined in compliance with special rules:

- When risks are located on Spanish soil and the policyholder does not have their main residence, corporate domicile or administrative or managerial head office there, the parties may choose between the application of Spanish law or the law of the State in which the policyholder has said residence, corporate domicile or effective address.
- If the policyholder is a business person or professional and the contract covers risks connected with their business in different European Economic Area States, the parties may choose between the laws of any of the States in which the risks are located or that in which the policyholder has their residence, corporate domicile or administrative or managerial head office.
- When the coverage of risks located on Spanish soil is limited to losses that may occur in an EEA Member State other than Spain, the parties may choose the law of that State.

In relation to Life Insurances, article 108.1(a) establishes that if the policyholder is a Spanish citizen or a person with residence in Spain, the Spanish Insurance Contract Act must be applied. However, in the case that policyholders are citizens of the EEA, they can agree with the insurer to apply the Law corresponding to the policyholder's nationality. Therefore, if the policyholder and the insurer agree to apply the Law of the policyholder's nationality, the Spanish Insurance Contract Act must not be applied.

Spanish Law will also apply to collective life insurance contracts concluded in compliance with or as a result of work subject to Spanish Law.



# **Annexes**






## Annex 1

### **Main tax forms to be completed by life insurance companies**

- a) Form 128 «Income or return on investment capital derived from capitalisation operations and life or disability insurance contracts»
- b) Form 188 «Income or return on investment capital derived from capitalisation operations and life or disability insurance contracts. (Annual Summary)»
- c) Form 189 «Annual information regarding, securities, insurances and rents»
- d) Form 210 «Non-resident Income Tax»
- e) Form 210 «Non-resident Income Tax. Instructions»
- f) Form 216 «Non-resident Income Tax»

## Annex 1



**Agencia Tributaria**  
Teléfono: 901 33 55 33  
www.agenciatributaria.es

**Impuesto sobre la Renta de las Personas Físicas**  
**Impuesto sobre Sociedades. Impuesto sobre la Renta de no Residentes (establecimientos permanentes)**  
**Retenciones e ingresos a cuenta**  
 Rentas o rendimientos del capital mobiliario procedentes de operaciones de capitalización y de contratos de seguro de vida o invalidez  
**Autoliquidación periódica**

**Modelo**  
**128**

**Ayuda**

**Castellano**   **Català**   **Galego**   **Valencià**   **Rellenar Formulario**

**Declarante (1)**

Espacio reservado para la etiqueta identificativa

Si la declaración es negativa y no dispone de etiquetas, consigne a continuación sus datos identificativos


NIF:

Apellidos y nombre o razón social:

Devengo (2)

Ejercicio .....    Periodo .....

128461436590 3



**Liquidación (3)**

**Retenciones e ingresos a cuenta:**

Nº de perceptores ..... 01    04

Base de las retenciones e ingresos a cuenta ..... 02    05

Retenciones e ingresos a cuenta ..... 03

A deducir (exclusivamente en caso de declaración complementaria)

Resultados a ingresar de anteriores declaraciones por el mismo concepto, ejercicio y periodo ..... 06

Resultado a ingresar ( 03 - 06 ) ..... 07

**Ingreso (4)**

Ingreso efectuado a favor del Tesoro público: Cuenta restringida de colaboración en la recaudación de la AEAT de declaraciones-liquidaciones o autoliquidaciones especiales

Importe del ingreso ..... I  (casilla 07)

Forma de pago: ☐ En efectivo   ☐ E.C. adeudado en cuenta

Código cuenta cliente (CCC)

Entidad	Sucursal	DC	Número de cuenta

**Firma (7)**

....., a ..... de ..... de .....

Firma:

**Negativa (5)**

☐ Declaración negativa

**Complementaria (6)**

Si esta declaración es complementaria de otra declaración anterior correspondiente al mismo concepto, ejercicio y periodo, indíquelo marcando con una "X" esta casilla

☐ Declaración complementaria

En este caso, consigne a continuación el número de justificante identificativo de la declaración anterior.

Nº de justificante:

Este documento no será válido sin la certificación mecánica o, en su defecto, firma autorizada

**Rellenar Formulario**

**Castellano**   **Català**   **Galego**   **Valencià**

Ejemplar para el declarante

/er. 1.0/2010

## Annex 1. Main tax forms to be completed by life insurance...



**Agencia Tributaria**

Delegación de

Administración de  Código Administración

**RESUMEN ANUAL DE RETENCIONES E INGRESOS A CUENTA DEL IRPF, DEL IMPUESTO SOBRE SOCIEDADES Y DEL IMPUESTO SOBRE LA RENTA DE NO RESIDENTES (ESTABLECIMIENTOS PERMANENTES)**

Rentas o rendimientos del capital mobiliario procedentes de operaciones de capitalización y de contratos de seguro de vida o invalidez

**Resumen anual**

Modelo

**188**

**Declarante**

Espacio reservado para la etiqueta identificativa  
(si no dispone de etiquetas, haga constar a continuación sus datos identificativos, así como los de su domicilio fiscal)

NIF  TELÉFONO DE CONTACTO

APELLIDOS Y NOMBRE, DENOMINACIÓN O RAZÓN SOCIAL

**DOMICILIO FISCAL**

Calle/Plaza/Avenida  Número

Municipio  Provincia  Cód. postal



### Ejercicio y modalidad de presentación

Ejercicio .....

Modalidad de presentación:

Impreso ..... ☐

Soporte ..... ☐

### Declaración complementaria o sustitutiva

Si la presentación de esta declaración tiene por objeto incluir percepciones que, debiendo haber figurado en otra declaración del mismo ejercicio presentada anteriormente, hubieran sido completamente omitidas en la misma, marque con una "X" la casilla "Declaración complementaria".

Quando la presentación de esta declaración tenga por objeto anular y sustituir completamente a otra declaración anterior del mismo ejercicio en la cual se hubieran consignado datos inexactos o erróneos, indique su carácter de declaración sustitutiva marcando con una "X" la casilla correspondiente.

En caso de declaraciones sustitutivas, se hará constar a continuación el número identificativo de la declaración anterior que se sustituye mediante la nueva.

Declaración complementaria... ☐

Declaración sustitutiva ..... ☐

Número identificativo de la declaración anterior ....  1 8 9

### Resumen de los datos incluidos en la declaración

N.º Total de Perceptores

01

04

Base retenciones e ingresos a cuenta

02

05

Retenciones e ingresos a cuenta

03

### Fecha y firma

Fecha:

Firma:

Fdo.: D/D.ª

Cargo o empleo:

### Espacio reservado para la Administración

Hoja-resumen. Ejemplar para el interesado



**Retenciones e ingresos a cuenta IRPF, Impuesto sobre Sociedades e Impuesto sobre la Renta de no Residentes (establecimientos permanentes)** **Relación de perceptores**

Modelo  
**188**

**Datos identificativos de esta hoja**

NIF del declarante	Ejercicio	Hoja n.º

189461410615 6



**Perceptor 1**

NIF perceptor	NIF representante	Apellidos y nombre, razón social o denominación del perceptor		Provincia (Código)
Modalidad	Rentas o rendimientos cap. mob.	Reducciones (D. T.ª cuarta Ley 35/2006)	Ejercicio devengo	Base retenciones e ingresos a cuenta
% retención	Retenciones e ingresos a cuenta	Clave	Información adicional	

**Perceptor 2**

NIF perceptor	NIF representante	Apellidos y nombre, razón social o denominación del perceptor		Provincia (Código)
Modalidad	Rentas o rendimientos cap. mob.	Reducciones (D. T.ª cuarta Ley 35/2006)	Ejercicio devengo	Base retenciones e ingresos a cuenta
% retención	Retenciones e ingresos a cuenta	Clave	Información adicional	

**Perceptor 3**

NIF perceptor	NIF representante	Apellidos y nombre, razón social o denominación del perceptor		Provincia (Código)
Modalidad	Rentas o rendimientos cap. mob.	Reducciones (D. T.ª cuarta Ley 35/2006)	Ejercicio devengo	Base retenciones e ingresos a cuenta
% retención	Retenciones e ingresos a cuenta	Clave	Información adicional	

**Perceptor 4**

NIF perceptor	NIF representante	Apellidos y nombre, razón social o denominación del perceptor		Provincia (Código)
Modalidad	Rentas o rendimientos cap. mob.	Reducciones (D. T.ª cuarta Ley 35/2006)	Ejercicio devengo	Base retenciones e ingresos a cuenta
% retención	Retenciones e ingresos a cuenta	Clave	Información adicional	

**Perceptor 5**

NIF perceptor	NIF representante	Apellidos y nombre, razón social o denominación del perceptor		Provincia (Código)
Modalidad	Rentas o rendimientos cap. mob.	Reducciones (D. T.ª cuarta Ley 35/2006)	Ejercicio devengo	Base retenciones e ingresos a cuenta
% retención	Retenciones e ingresos a cuenta	Clave	Información adicional	

**Total de la hoja**

<p>Consigne en estas dos casillas la suma de las bases de las retenciones e ingresos a cuenta y retenciones e ingresos a cuenta que figuren relacionados en esta hoja con signo positivo.</p> <p>Consigne en esta casilla la suma de las bases de las retenciones e ingresos a cuenta que figuren relacionados en esta hoja con signo negativo o cero.</p>	<p>Base retenciones e ingresos a cuenta</p> <p>Base retenciones e ingresos a cuenta</p>	<p>Retenciones e ingresos a cuenta</p> <p>Retenciones e ingresos a cuenta</p>

**Ejemplar para el interesado**

*Annex 1. Main tax forms to be completed by life insurance...*



MINISTERIO  
DE ECONOMÍA  
Y HACIENDA

**Agencia Tributaria**

Teléfono: 901 33 55 33  
www.agenciatributaria.es

Castellano   Català   Galego   Valencià

**Declaración informativa anual acerca de valores,  
seguros y rentas.**

Modelo  
**189**

**Declarante**

Espacio reservado para la etiqueta identificativa  
(si no dispone de etiquetas, haga constar a continuación sus datos identificativos)

180451902343 1



**Ejercicio**

Ejercicio .....

N.I.F.

DENOMINACIÓN O RAZÓN SOCIAL

TELÉFONO DE CONTACTO

**Declaración complementaria o sustitutiva**

Si la presentación de esta declaración tiene por objeto incluir datos que, debiendo haber figurado en otra declaración del mismo ejercicio presentada anteriormente, hubieran sido completamente omitidos en la misma, marque con una "X" la casilla "Declaración complementaria".

Cuando la presentación de esta declaración tenga por objeto anular y sustituir completamente a otra declaración anterior del mismo ejercicio en la cual se hubieran consignado datos inexactos o erróneos, indique su carácter de declaración sustitutiva marcando con una "X" la casilla correspondiente.

En ambos casos, se hará constar el número de 13 dígitos identificativos de la declaración del mismo ejercicio anteriormente presentada o el de la última de ellas, si se hubieran presentado varias.

Declaración complementaria ..... ☐      Número identificativo de la declaración anterior ....

Declaración sustitutiva ..... ☐

**Resumen de los datos incluidos en la declaración**

Nº Total de registros de declarados .....  01

Importe total valoración .....  02

**Fecha y firma**

Fecha:

Firma:

Fdo.: D/Dª.


Cargo o empleo:

**Espacio reservado para la Administración**

Castellano   Català   Galego   Valencià

Hoja-resumen. Ejemplar para el interesado

Castellano Català Galego Valencià



MINISTERIO  
DE ECONOMÍA  
Y HACIENDA

**Agencia Tributaria**

Teléfono: 901 33 55 33  
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Declaración informativa anual acerca de valores,  
seguros y rentas.

Modelo

**189**

**Declarante**

Espacio reservado para la etiqueta identificativa  
(si no dispone de etiquetas, haga constar a continuación sus datos identificativos)

180451902343 1



**Ejercicio**

Ejercicio .....

N.I.F.

DENOMINACIÓN O RAZÓN SOCIAL

TELÉFONO DE CONTACTO

**Declaración complementaria o sustitutiva**

Si la presentación de esta declaración tiene por objeto incluir datos que, debiendo haber figurado en otra declaración del mismo ejercicio presentada anteriormente, hubieran sido completamente omitidos en la misma, marque con una "X" la casilla "Declaración complementaria".

Cuando la presentación de esta declaración tenga por objeto anular y sustituir completamente a otra declaración anterior del mismo ejercicio en la cual se hubieran consignado datos inexactos o erróneos, indique su carácter de declaración sustitutiva marcando con una "X" la casilla correspondiente.

En ambos casos, se hará constar el número de 13 dígitos identificativos de la declaración del mismo ejercicio anteriormente presentada o el de la última de ellas, si se hubieran presentado varias.

Declaración complementaria .....       Número identificativo de la declaración anterior .....

Declaración sustitutiva .....

**Resumen de los datos incluidos en la declaración**

Nº Total de registros de declarados .....  01

Importe total valoración .....  02

**Fecha y firma**

Fecha:

Firma:

Fdo.: D/Dª. \_\_\_\_\_

Cargo o empleo: \_\_\_\_\_

**Espacio reservado para la Administración**

Castellano Català Galego Valencià

Hoja-resumen. Ejemplar para el interesado

Annex 1. Main tax forms to be completed by life insurance...



**Agencia Tributaria**

Delegación de Administración de Código

**Impuesto sobre la Renta de no Residentes**

No residentes sin establecimiento permanente

Modelo  
**210**  
DECLARACIÓN ORDINARIA

**Presentador**

Espacio reservado para la etiqueta identificativa



**Devengo**

Fecha de devengo

N.I.F. F/D APELLIDOS Y NOMBRE (por este orden) o RAZÓN SOCIAL

Calle/Plaza/Avda. Número Municipio Provincia Cód. Postal

Presenta la declaración en su condición de:

Contribuyente Representante del contribuyente Pagador Depositario Gestor Retenedor (sólo para declaración con solicitud de devolución)

S R P D G T

**Contribuyente**

N.I.F. F/D APELLIDOS Y NOMBRE (por este orden) o RAZÓN SOCIAL Código extranjero

Calle/Plaza/Avda. Número Municipio Provincia/País

**Representante del contribuyente**

N.I.F. F/D APELLIDOS Y NOMBRE (por este orden) o RAZÓN SOCIAL

Calle/Plaza/Avda. Número Municipio Provincia Cód. Postal

**Pagador/Retenedor**

N.I.F. F/D APELLIDOS Y NOMBRE (por este orden) o RAZÓN SOCIAL

Calle/Plaza/Avda. Número Municipio Provincia Cód. Postal

**Renta obtenida**

Situación del inmueble (para rentas de los tipos 01 y 02).

Código país Tipo renta Clave de divisa

1 2 3

**Determinación de la base imponible**

210 A General 210 B Ingresos con deducción de gastos (Art. 24.2 Ley IRNR)

Ingresos íntegros 5

Gastos de personal 6

Gastos de aprovisionamiento de materiales y de suministros 7

Base Imponible (5 - 6 - 7) 8

Base Imponible (En el caso de dividendos, consulte las instrucciones) 4

210 C Ganancias patrimoniales (excepto bienes inmuebles)

Fecha de adquisición 9

Valor de transmisión 10

Valor de adquisición 11

Diferencia (10 - 11) 12

Base Imponible 13

**Liquidación**

Tipo de gravamen (%) Enteros Decimales 14

Exención Ley IRNR 15

Exención Convenio 16

Límite Convenio 17

Cuota íntegra 18

Deducción por donativos 19

Retenciones/Ingresos a cuenta 20

Cuota diferencial 21

**Fecha y firma**

Fecha: Firma:

Ejemplar para el contribuyente-representante

Ver. 3.0/2008



# Key Legal Issues for non Spanish Insurance Companies in Spain



**Agencia Tributaria**

Delegación de Administración de \_\_\_\_\_ Código \_\_\_\_\_

**Impuesto sobre la Renta de no Residentes**

No residentes sin establecimiento permanente

**DOCUMENTO DE INGRESO O DEVOLUCIÓN**

**Modelo**

**210**

DECLARACIÓN ORDINARIA

**Presentador**

Espacio reservado para la etiqueta identificativa  
(Si no dispone de etiquetas, haga constar a continuación sus datos identificativos, así como los de su domicilio fiscal)

260473390624 1

**Devengo**

0 A

Fecha de devengo .....

N.I.F. \_\_\_\_\_ F/D \_\_\_\_\_ APELLIDOS Y NOMBRE O RAZÓN SOCIAL \_\_\_\_\_

Calle/Plaza/Avenida \_\_\_\_\_ Número \_\_\_\_\_ Esc. \_\_\_\_\_ Piso \_\_\_\_\_ Pta. \_\_\_\_\_ Teléfono \_\_\_\_\_

Código Postal \_\_\_\_\_ Municipio \_\_\_\_\_ Provincia \_\_\_\_\_ Código País \_\_\_\_\_

**Cuota Diferencial**

Cuota Diferencial ..... 21 .....

**Ingreso**

Ingreso efectuado a favor del **Tesoro Público**, cuenta restringida de la Agencia Estatal de Administración Tributaria por la **Recaudación de los Tributos**.

Forma de pago: ☐ En efectivo ☐ E.C. adeudo en cuenta

Importe: **I** .....

Código cuenta cliente (CCC) \_\_\_\_\_

Entidad Sucursal DC Número de cuenta

**Devolución**

**Certificación entidad bancaria**

Titular de la cuenta: N.I.F. ....

Fecha: .....

Sello de la entidad y firma: \_\_\_\_\_

Código cuenta cliente (CCC) \_\_\_\_\_

Entidad Sucursal DC Número de cuenta

Importe: **D** .....

**Sin ingreso ni devolución**

Si la autoliquidación resulta con CUOTA CERO, marque con una X este recuadro.

CUOTA CERO ☐

**Firma**

Fecha: .....

Firma: \_\_\_\_\_

☐ Contribuyente ☐ Representante ☐ Pagador

☐ Depositario ☐ Gestor ☐ Retenedor

## Annex 1. Main tax forms to be completed by life insurance...

Form  
**210**

### Instructions for filling in your self-assessment form

#### Non-resident Income Tax

Non-residents without permanent  
establishment.

**Important: All amounts required must be expressed in euros, placing the whole number in the left hand division of the corresponding boxes, and fractions (to two decimal points) on the right.**

Any mention in these instructions to the Tax Act and the Regulations refer to the consolidated text of the Non-resident Income Tax Act, passed by Legislative Royal Decree 5/2004 (Official State Gazette of 12 March) and the Regulations for application of this Tax, passed by the single article of Royal Decree 1776/2004 dated 30 July (Official State Gazette of 5 August).

#### • Obligation to declare

This self-assessment form should be used to file returns on income obtained without permanent establishment by taxpayers subject to non-resident income tax.

These same taxpayers are not bound to file self-assessed tax returns on income that has already been subject to the withholding established in article 31 of the Tax Act, nor on income subject to withholding but exempt from the same by virtue of article 14 of the Tax Act or an applicable agreement.

In particular, there is still the obligation to declare in the following cases of receiving income:

- Income subject to Non-Resident Income Tax but exempt from tax withholding and payment on account, in accordance with article 10.3 of the Tax Regulations. These include, for example, capital gains derived from the sale of shares.
- Natural persons. Income from urban buildings.
- Payments made by natural persons who are not withholders. For example, earnings obtained from property lets when the tenant is a natural person and pays the rent for purposes other than an economic activity.
- To request a refund for excess withholdings or payments on a account related to the tax levied.

These taxpayers are taxed separately for each total or partial taxable income accrued. Therefore, when bound to file a tax return, they must use this self-assessment form to declare each income separately.

In this way, they can declare any type of income (earnings, income from real estate, capital gains).

**Nevertheless, this self-assessment form can be used to declare several different incomes** obtained by a single taxpayer as a group, provided they have the same income type code, come from the same payer, and are subject to the same tax rate.

Furthermore, if these incomes derive from an asset or right, they must come from the same asset or right.

Concerning **income from the transfer of real estate assets**:

- In the event of a loss, taxpayers must also file this self-assessment form if they wish to exercise their right to receive a refund on withholdings already paid.
- If the real estate asset in question is jointly owned by a married couple in which both spouses are non-residents, a single tax return may be filed.

#### • Documentation

The following documentation must be submitted:

- **Residence certificates or forms:** When the self-assessment form filed applies exemptions provided for under Spanish law due to the taxpayer's residence status, it must be accompanied by a residence certificate issued by the tax authorities of their country of residence, justifying this exemption.

Nevertheless, when applying the exemptions established under article 14.1.k) and 14.1.l) of the consolidated text of the Non-Resident Income Tax Act, passed by Legislative Royal Decree 5/2004 of 5 March, pension funds or unit trust institutions subject to a specific supervisory system or administrative register, instead of justifying exemption by means of a certificate of residence the following documentation must be submitted:

- a) In the case of exemption under article 14.1.k), it is necessary to submit a statement signed by the representative of the pension fund stating their compliance with legal requirements, conforming to the form included under appendix VI of this Order.
- b) In the case of exemption under article 14.1.l), it is necessary to submit a certificate issued by the competent authority of the Member State where the institution is based, stating that said institution complies with the requirements established in Directive 2009/65/EC of the European Parliament and the Council, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). The relevant authority will be that designated as per article 97 of the above Directive.

When the self-assessment form is filed applying exemptions or reductions to the taxable amount due to tax limits established in a double taxation agreement signed by Spain, it is necessary to submit a certificate of residence for tax purposes issued by the corresponding tax authority justifying this entitlement. Said certificate must expressly state that the taxpayer is a resident within the meaning of the Agreement. However, when the self-assessment form is filed applying a tax limit established in an Agreement implemented by an Order that establishes the use of a specific form, this must be submitted instead of the aforementioned certificate.

When, pursuant to article 24.6 of the Tax Act, expenses are deducted for the purpose of establishing the taxable base due to the taxpayer being resident in another European Union Member State, it will be necessary to submit a certificate of residence for tax purposes in the corresponding State issued by the tax authority of said State.

Residence certificates and tax returns conforming to the form attached as appendix VI of the Order approving this form will be valid for one year after the date of issue. Nevertheless, residence certificates will have unlimited validity when the taxpayer is a foreign state, any political or administrative subdivision or corresponding local organisations of the same.

However, in the case of self-assessed tax returns filed by jointly responsible parties who act as trustees of securities, it will be sufficient for said trustees to keep on their files the residence certificates, self-assessment forms conforming to the form attached as appendix VI of the Order approving this form and the forms referred to above during the tax period of limitation, making the same available for inspection by the Spanish tax authorities.

- **Certificate of withholdings and payments on account:** When withholdings and payments on account are deducted from the tax levied, documents justifying the same must be submitted.
- **Document accrediting the identification and ownership of the bank account:** In the case of negative tax returns (refunds), it will be necessary to submit the document accrediting the identification and ownership of the bank account into which the refund is to be paid (see the section on 'Refunds' in the instructions included in the payment or refund document).

## Key Legal Issues for non Spanish Insurance Companies in Spain

### • Documentation (cont.)

- **Accrediting a representative:** When requesting the refund to be paid into an account held by the taxpayer's legal representative, a document accrediting the latter's status as representative must be submitted containing a clause empowering the aforementioned legal representative to receive the refund on behalf on the taxpayer.

### • Person performing the self-assessment

Generally speaking, this tax return can be filed by the taxpayer, their appointed representative or a jointly responsible party as defined in article 9 of the Tax Act. If the refund is requested on the grounds of withholdings paid in excess, it can also be filed by the party bound to withhold.

With regard to income from urban buildings or income from the transfer of real estate assets, the tax return can only be filed by the taxpayer or, in the case of jointly owned real estate, by a married couple, when both spouses are non-residents.

**"N.I.F.":** All natural persons who file tax returns in Spain are assigned a tax identification number (N.I.F.).

**"Surnames and name, or company name":**

Natural persons: The surname, the second surname (as applicable) and the name must be entered, in that order.

Legal persons and organisations: The full name of the company or organisation must be entered. Acronyms are not allowed.

Check the corresponding box according to whether the tax return is filed by the natural person or organisation identified in this section. If the person filing the tax return fulfils several of these conditions, check the boxes corresponding to all of them.

### • Accrual

Income is considered to be accrued when:

- Income, on the due date or the date of payment if earlier.
- Income obtained by natural persons, owners of urban buildings, the last day of the calendar year.
- Capital gains, when the change in the asset situation takes place. In the case of transfer of real estate, indicate the date on which the transfer took place.

#### **Group:**

Several different incomes earned by the same taxpayer may be grouped together provided they correspond to the same income type code, come from the same payer and are subject to the same tax rate.

Furthermore, if these incomes derive from an asset or right, they must come from the same asset or right.

Items in an income group can never be offset against each other.

If the result of the tax return is positive (payable), check this box if you choose to group income from a single calendar quarter. Indicate the calendar quarter (1T, 2T, 3T or 4T) and the financial year of filing in the 'period/year' box.

In the case of a zero charge or negative \*refund) tax return, check this box if you choose to group the income obtained during the calendar year in question. Enter '0A', zero A, and the year of filing in the 'period/year' box.

**Date of accrual:** When using this form to declare income from urban buildings, income from the transfer of real estate assets or any other separate source of income, enter the date of accrual of the income in question in 'day/month/year' format. In these cases, you must also enter '0A' and the accrual year in the 'period/year' box.

### • Income obtained

**Type of income (2):** Indicate the code from the accompanying list that corresponds to the type of income.

**Currency key (3):** Indicate the currency, from the attached list of currencies, used for payment.

### • Taxpayer

**"N.I.F.":** If the taxpayer has been assigned a Spanish tax identification number, (N.I.F.), enter it in this box.

**"F/J":** Use an F if the taxpayer is an individual and a J if it is a legal person or organisation.

**"Surnames and name or company name":**

Natural persons: The surname, the second surname (as applicable) and the name must be entered, in that order.

Legal persons and organisations: The full name of the company or organisation must be entered. Acronyms are not allowed.

**"N.I.F. in the country of residence":**

If the taxpayer has been assigned a tax identification number in their country or territory of residence, enter it in this box.

**"Date of birth":** If you have entered Fin the 'F/J' box, enter the taxpayer's date of birth (day/month/year).

**"Place of birth":** If you have entered F in the 'F/J' box, enter the taxpayer's place of birth. This section has two parts:

**"City":** Enter the town/city of birth, and as applicable, the corresponding province or region.

**"Country code":** Enter the country or territory code, from the attached list of codes, corresponding to the taxpayer's place of birth.

**"Tax residence: Country code" (1):** Enter the code, from the list of country codes attached, corresponding to the taxpayer's country or territory of residence for tax purposes.

**"Address in country of residence":** Enter the corresponding address in the country of residence, according to the following instructions.

**"Residence" (49):** Enter the taxpayer's address in their country of residence: Type of street (street, square, avenue, road...), name of the street, house number or, as applicable, kilometre reference.

**"Additional residence information" (50):** If necessary, include any additional information needed to complete the address details.

**"Town/City" (51):** Enter the name of the town or city of residence.

**"Post Code (ZIP)" (53):** Enter the post code for the address.

**"Province/Region/State" (54):** If so required in order to correctly identify the residence, enter the name of the province, region, state, department or any other political or administrative subdivision.

**"Country Code" (56):** Enter the code, from the list of country or territory codes attached, corresponding to the address.

## Annex I. Main tax forms to be completed by life insurance...

### \* Taxpayer (cont.)

#### "Land line and mobile telephone" (57) and (58):

In the interests of efficiency in settling any queries that may arise during processing, enter the landline and mobile telephone numbers (57) and (58) where the taxpayer can easily be reached during normal office hours.

### \* Taxpayer's representative or, where applicable, residence in Spanish territory for the purpose of notifications

If the taxpayer has appointed a representative before the Spanish tax authorities to deal with their obligations regarding this tax, enter their name in this box. In the absence of a representative, if the taxpayer has an address in Spain where they can receive notifications, enter the address here.

The taxpayer is bound to appointing a representative in the cases provided for in article 10 of the Tax Act. In all other cases, such appointment is voluntary.

**"N.I.F.":** Enter the representative's tax identification number.

**"F/J":** Enter F if the representative is a natural person, and J if they are a legal person or organisation.

#### **"Surnames and name or company name":**

Natural persons: The surname, the second surname (as applicable) and the name must be entered, in that order.

Legal persons and organisations: The full name of the company or organisation must be entered. Acronyms are not allowed.

#### **"Representative":**

**Legal:** Check this box if you use this section to enter the details of the legal representative.

**Voluntary:** Check this box if you use this section to enter the details of the voluntarily appointed legal representative.

**"Residence":** Enter the details of the residence in question, in accordance with the following instructions.

**(31).** Type of street.

Enter the type of street: Street, square, avenue, roundabout, road, alley, pedestrian street, parade, etc.

**(33).** Type of numbering.

Enter the corresponding type of number: Number (NÚM), kilometre (KM), no number (S/N), etc.

**(34).** House number.

The number of the house, or the kilometre reference, if applicable.

**(35).** Number qualifier.

As applicable, enter the number qualifier (BIS, duplicate -DUP-, modern-MOD-, old-ANT-, etc.) or the kilometre reference (metres).

**(41).** Additional residence information.

As applicable, enter any additional details required to identify the residence (for example: Urbanización El Alcotán, Edificio La Peñota, Residencial El Valle, Polígono Miralcampo, etc.).

**(42).** Town/City.

In this box, enter the name of the town or city if different from the municipality.

**(46) and (47).** Landline and mobile telephone numbers.

In the interest of efficiency in settling any queries that may arise during processing, enter the landline and mobile telephone numbers (46) and (47) where the taxpayer can easily be reached during normal office hours.

### \* Payer/Withholder/Issuer/Property purchaser

In the case of income, enter the details of the party paying said income.

When stating net gains subject to withholding, enter the details of the withholder in this box.

When stating assignment of securities, enter the issuer's details in this box.

In the case of income from the transfer of real estate assets, enter the details of the purchaser of the property in question in this box. When there are several purchasers, enter the name of the purchaser given as owner on form 211 for the payment of the withholding.

**Warning:** Do not fill in this section when this self-assessment form is used to declare 'income from urban buildings' (income type 02) or 'complementary tax' (income type 27).

### \* Location of the property (only for income types 01, 02 and 28)

When using this tax return to declare 'earnings from urban buildings', 'income from leased or sublet buildings' or 'capital gains from the transfer of real estate assets', enter the details of the building in this section.

See instructions on 'residence' in the 'representative' section.

**Property register reference (60):** Enter the property register reference. You will find this on your property tax (IBI) receipt. You can also get the property register reference from the online office of the Property Registry, '<http://www.sedecatastro.gob.es>', or by telephone, calling the Property Registry Direct Line (902 37 36 35).

### \* Calculation of the taxable base

**Sections I, R, G and H are individual options and only one, that which corresponds to the type of income in question, may be used on each tax return. The lower section, "Settlement" ("Liquidación"), is common to all sections.**

Generally speaking, pursuant to the provisions of article 44 of the Tax Act, the Special Tax on Real Estate Assets of Non-Resident organisations is a deductible expense for reaching the taxable base.

## • 210 I Eligible income from real estate

Section 210 I must only be used to declare earnings from urban buildings used by natural persons for their own enjoyment.

**Taxable base [4]:** Enter the result of applying one of the percentage amounts below, whichever corresponds, to the property register value of the building.

Applicable percentage:

- Buildings whose property register value has been reviewed or changed with effect from 1 January 1994 ..... 1.1%
- Other buildings ..... 2%

No expenses may be deducted from the resulting amount.

The resulting amount is understood to refer to the full calendar year. The number of days is proportionally reduced when ownership has not been throughout the entire year or when it has been rented for part of the year.

If at the date of accrual of the tax (31 December) the buildings have no property register value, or the owner has not been notified of this, the taxable base of the same is calculated as 50% of that calculated for the purposes of wealth tax. This amount is the greater of the following: The price, consideration or cost price of the property, or the value of the same established by the administration for other taxes. In these cases, the percentage shall be 1.1%.

In the case of buildings under construction and in cases in which the building cannot be used for town planning reasons, no income whatsoever shall be considered.

In the case of time-sharing, the tax is payable by the holder of the right in rem, distributing the property register value on the basis of the annual period of use. If, at the time of accrual of the tax, the building has no property register value, or none has been notified to the owner, the purchase price of the right to use will be taken as the taxable base. The taxation of property income for owners of property time-share rights shall not apply when the duration is no longer than two weeks a year.

If the building is owned by several natural persons, the income from the building or usufruct is considered obtained by each owner, proportional to their ownership share.

See example in the 'Settlement' section.

## • 210 R Income

Section 210 R is used to declare any type of income. Article 24 of the Tax Act differentiates the following systems:

### 1. General System (article 24.1 of the Tax Act)

Pre-tax earnings (5): Enter the pre-tax income obtained.

Dividend exemption (annual limit €1,500) [6]:

Article 14.1.j) of the Tax Act establishes an exemption of **up to €1,500 on dividends** obtained **during the calendar year**. Said income must fulfil the following conditions:

- Obtained since 1 January 2007.
- By natural persons.
- Natural persons resident in another European Union Member State or in countries or territories where a valid tax exchange information system is in place (mainly, countries which have signed a double taxation agreement with Spain, with an exchange of information clause ).
- Income not obtained through countries or territories listed as tax havens.
- Income and profit-sharing included under article 7.y of Act 35/2006, of 28 November.

The exemption may be applied in a single tax return or various, but any income obtained in a single calendar year may never, in total, exceed the €1,500 limit. See example in the 'Settlement' section.

Deductible expenses (7): No expenses may be deducted.

Taxable base (8): Enter the amount shown in box (5), except when declaring income from which the corresponding exemption will be deducted (box 6).

### 2. Economic activities from which expenses can be deducted (article 24.2 of the Tax Act)

Pre-tax earnings (5): Enter the pre-tax income amount

Deductible expenses (7): Only the following expenses can be deducted, which must fulfil the conditions established in article 5 of the Tax Regulations:

- Staff expenses
- Provisions
- Supplies

Taxable base (8): Being the difference between the amount entered in box (5) and box (7).

### 3. Taxpayers resident in other European Union Member States (article 24.6 of the Tax Act)

Pre-tax earnings (5): Enter the pre-tax income amount.

Dividend exemption (annual limit €1,500) [6]: See instructions for this box in the General System section.

Deductible expenses (7): Expenses for each income category listed in Act 35/2006 on Personal Income Tax may be deducted from income obtained since 1 January 2010, provided the taxpayer accredits that these are directly linked to income obtained in Spain, and can accredit a direct and indissoluble link to the activity pursued in Spain

Taxable base (8): Being the difference between the amount entered in box (5) and that in box (7), except when declaring income from which the corresponding exemption is to be deducted (box 6).

## • 210 H Income from the transfer of real estate assets

Section 210 H is used to declare income from the transfer of real estate assets. Any profit obtained from the transfer of real estate assets is subject to tax. The profit is the difference between the transmission value and the purchase value.

**"C/O":** Mark "C" in this box in the case of a single tax return filed by both spouses. In other cases an "O" should be entered.

Then, enter their percentage share of the ownership of the building.

**"Spouse":** In the case of a single tax return filed by both spouses, enter the identification details of one spouse in the 'taxpayer' box and those of the other spouse in the 'spouse' box. In these cases, the respective ownership shares, as a percentage, must be entered in the corresponding boxes.

**Transfer value [9]:** Enter the amount for which the asset has been transferred, after deducting any expenses and taxes inherent to the transfer and paid by the transferor.

## Annex I. Main tax forms to be completed by life insurance...

### • 210 H Income from the transfer of real estate assets (cont.)

**Cost price (current) (10):** Enter the price at which the asset transferred was purchased, adding any expenses and taxes attached to the purchase, excluding interest, that have been paid by the current transferor. The revaluation rate corresponding to the year the asset was purchased are applied to this value. These rates are established each year in the General State Budget Act. The resulting value is deducted, as applicable, from the mandatory depreciations applied. This depreciation will be updated according the relevant year.

**Difference (11):** Being the difference between the amount entered in box (9) and that in box (10).  $[(11) = (9) - (10)]$ .

**Net gains (12):**

#### A) General system:

If the transferor is an organisation or legal person, whatever the date of transfer, or a natural person who purchased the asset on or after 31 December 1994, the 'net gain' (box (12) must coincide with the amount entered in box (11), 'difference'.

#### B) Transitory system (Single DT TRLRNR, according to Act 35/2006, of 28 November; BOE of 29)

##### Only applicable if the transferor is a natural person who purchased the asset before 31 December 1994.

In these cases, only the fractional part of the capital gains generated before 20 January 2006 will be susceptible to reduction. Enter in box (12) "net gains" the result of subtracting the corresponding reduction from the amount entered in the 'difference' box. The following rules must be followed:

##### Rule 1. Calculating the capital gains portion generated before 20/01/2006

The fractional part of the capital gain susceptible to reduction is determined by the proportion of the number of days elapsed from the date of acquisition up to 19 January 2006 with respect to the total number of days elapsed from the date of acquisition to the date of transfer.

##### Rule 2. Calculating the reduction

To determine the reduction amount, apply a reduction of 11.11% to the capital gains portion susceptible to reduction for each year (must be more than 2 years) the asset has been owned by the taxpayer since the year of acquisition and until 31-12-1996; the result is rounded up.

The following table shows the percentages by which capital gains susceptible to reduction can be reduced on the basis of the length of time the asset had been owned by the taxpayer at 31-12-1996.

Years to 31/12/1996	Date of acquisition	Reduction percentages
2	31/12/1994 to 31/12/1996	0.00%
3	31/12/1993 to 31/12/1996	11.11%
4	30/12/1994 to 31/12/1996	22.22%
5	31/12/1992 to 31/12/1996	33.33%
6	30/12/1993 to 31/12/1996	44.44%
7	31/12/1991 to 31/12/1996	55.55%
8	30/12/1992 to 31/12/1996	66.66%
9	31/12/1990 to 31/12/1996	77.77%
10	30/12/1991 to 31/12/1996	88.88%
From 11	31/12/1989 to 31/12/1996	100.00%
	31/12/1988 to 31/12/1996	
	31/12/1987 to 31/12/1996	
	31/12/1986 to 31/12/1996	
	Until 30/12/1986	

##### Rule 3. Calculating "net gains"

The result of subtracting the foregoing reduction from the amount entered in box (11) "difference" is entered in box (12) "net gains".

**Example: transfer of a building on 31 December 2011, cost price €200,000, purchased on 1 January 1991 for a revalued (1) equivalent price of €120,000**

Transmission value, ..... €200,000  
Revalued cost price (1) ..... €120,000  
Capital gains ..... €80,000

Period (days) elapsed between the date of purchase and date of sale ..... 7,665 days  
Period (days) elapsed between the date of purchase and 19-01-2006 ..... 5,498 days  
Portion of capital gains susceptible to reduction (2) ..... €57,382.90  
No. of years of ownership at 31-12-1996 ..... 6 years  
Reduction by abatement coefficients (3) ..... €25,500.97  
Reduced capital gain (4) ..... 54,499.03 Euro

(1) Calculated by applying the corresponding revaluation coefficient to the cost price, according to the year the building was purchased, established in the General State Budget Act for 2011.

(2)  $(5,498 / 7,665) \times 80,000 = €57,382.90$

(3)  $57,382.90 \times 44.44\% = €25,500.97$

(4)  $80,000 - 25,500.97 = €54,499.03$

If the transferor (natural person) purchased the property on two separate dates or the property has been renovated, calculations must be made as if there were two net gains, with reduction rates applied to different ownership periods and different revaluation rates. For this purpose, boxes (13), (14), (15) and (16) must be calculated separately.

**Taxable base (17):** Enter the amount shown in box 12 (net gains) or, as applicable, the sum of (12) and (16).

**Date of purchase/renovation or 2nd purchase:** Indicate the date of purchase, and when applicable, that of renovation or 2nd purchase.

State the day, month and calendar year. For example: 29 September 2011 is written 29/09/2011.

**Form 211 receipt number:** Enter the number printed in the top right hand corner of the copy of form 211 handed over by the purchaser to the non-resident transferor.

## 210 G Capital gains (except real estate)

Section 210 G is used to declare capital gains, **except those deriving from real estate assets declared in section H.**

**Taxable base (18):**

### A) General system:

If the transferor is an **organisation or legal person, whatever the date of acquisition, or a natural person who purchased the property after 31 December 1994**, the tax base will be the difference between the sale price and cost price of the asset in question.

The transmission value will be the sale value net of expenses and taxes inherent to the transfer that have been paid by the transferor.

The cost price will be the amount paid for the asset in question, plus the expenses and taxes inherent to the acquisition, excluding interest, paid by the current transferor.

### B) Transitory system: (Single DT TRLIRNR, according to Act 35/2006, of 28 November; Official State Gazette of 29)

**Only applicable if the transferor is a natural person who purchased the asset before 31 December 1994.**

In these cases, only the fractional part of the capital gains generated before 20 January 2006 will be susceptible to reduction. Enter in the taxable base box the result of subtracting the corresponding reduction from the difference between the cost price and the sale price. The following rules must be followed:

#### Rule 1. Calculating the capital gains portion generated before 20/01/2006:

##### Rule 1.A) Transferred asset: Shares traded on any regulated market and shares in the capital of a unit trust institution.

There are two possible cases that may arise:

- If the transmission value is equal to or higher than that established for 2005 wealth tax purposes: The capital gains generated before 20 January 2006 is the difference between the value established for 2005 wealth tax purposes and the cost price. A reduction may be applied to the resulting amount.
- If the transmission value is lower than that established for 2005 wealth tax purposes: The entire capital gains are taken to have been generated prior to 20 January 2006. This means that a reduction may be applied to the entire amount of capital gains.

#### IMPORTANT NOTE:

*In the case of shares traded on regulated markets, the value established for 2005 wealth tax purposes can be obtained from Order EHA/492/2006, of 17 February (Official State Gazette of 27). For shares in unit trust institutions, the value established for 2005 wealth tax purposes is their cash value at 31 December 2005.*

##### Rule 1.B) Transferred asset: Other transferred assets.

This is subject to a proportional calculation on the basis of the number of days elapsed between the date of acquisition of the asset and 19 January 2006, on the one hand, and the total number of days elapsed between the date of acquisition and that of transfer, on the other. For example: if, up to 19-1-2006, 5,700 day have elapsed, and up to the date of transfer 7,500 days have elapsed, then a reduction may be applied to 76% (5,700/7,500) of the difference between the cost price and the sale price.

#### Rule 2. Calculating the reduction:

To determine the amount of the reduction, the corresponding reduction percentages from the following table are applied to the portion of net gain susceptible to reduction:

- Shares traded on official secondary markets, except for shares representing capital stock in Investment Companies: 25% reduction for each year (more than 2) the asset has been owned by the taxpayer since the date of acquisition and until 31-12-1996. The number is rounded up.
- Other assets: This includes, for example, shares or stockholdings in investment funds or investment companies. The applicable reduction is 14.28% for each year (more than 2) the asset has been owned by the taxpayer since the date of acquisition and up to 31-12-1996. The number is rounded up.

#### Rule 3. Calculating the taxable base:

In box (18) "taxable base" enter the result of subtracting the foregoing reduction from the difference between the cost price and sale price

## Settlement

**Exemptions (19) and (20):** When claiming an exemption, check the box corresponding to the type of exemption and enter zero in box (21) "tax rate", except in the case of an exemption provided for in article 14.1.I) of the Tax Act (dividends and similar obtained without permanent establishment by unit trust institutions regulated under Directive 2009/65/EC), in which case enter 1% (article 28.5 of the Corporation Tax Act). When applying the income exemption (limited to €1,500 per year) provided for in article 14.1.J) of the Tax Act, do not check box 19, but deduct the amount directly from the pre-tax income entered in box [6].

**Tax Rate Law IRNR (21):** Having determined the taxable base for one of the foregoing sections, according to the type of income in question, the tax rate established in article 25 of the Tax Act corresponding to this income is applied (see information sheet). If the tax rate is fractional (1.5%) write 1 5 0.

**Full amount due (22):** Will be calculated applying the tax rate to the taxable base. It can never be negative. When the quantity shown as the taxable base is negative, the gross amount will be entered as zero.

**Deductions for donations (23):** Donations made are tax-deductible under the terms of the Personal Income Tax Act.

**Amount due Law IRNR (24):** Being the difference between boxes (22) and (23).

**Agreement percentage (25):** If the applicable Agreement establishes a tax limit, generally for income, interest and levies, enter said limit, expressed as a percentage, in this box.

**Agreement limit (26):** Generally, in Agreements, tax limits are established as a percentage of the pre-tax income. Generally speaking, the value to be entered in this box is obtained by applying the Agreement percentage (box 25) to the amount entered in box 5 "Pre-tax income", unless the Agreement in question establishes that the percentage should be applied to a different amount.

**Reduction due to Agreement (27):** The taxpayer is only entitled to a reduction on the tax amount if the amount in box (26) "Agreement limit" is lower than that in box (24) "Amount due Law IRNR", taking into account the tax limit established in the Agreement. The reduction amount is the difference between boxes (24) and (26).

**Reduced amount due (28):** Being the difference between boxes (24) and (27).

**Withholdings/payments on account (29):** Enter any withholdings made and other payments on account.

**Previous deposit/refund (30):** Only in the event of a supplementary tax return. To determine the amount to be assigned to box (31) enter the result of the tax return originally filed for this income, but only if the previous tax return was positive (to pay), or if the corresponding refund has already been received.



## Annex 1. Main tax forms to be completed by life insurance...

### • Settlement (cont.)

If the original tax return was positive, enter in this box the positive amount of the same, preceded by a minus sign (-).

As applicable, also enter in this box the tax payable in the IRNR settlement made by the tax authorities in relation to the original tax return and that has already been notified prior to filing this supplementary tax return.

If the tax authorities agreed to pay a refund resulting from the original IRNR tax return, enter in this box the refund amount agreed by the authorities prior to filing this supplementary tax return, preceded by a plus sign (+).

Do not fill in this box if no refund has been received at the time of filing this supplementary tax return.

**Result of the self-assessment (31):** Enter in this box the result of the tax return:

If this is a positive amount, it will be payable upon filing the tax return.

If it is negative, this will be the refund to be received upon filing the tax return, and must be preceded by a minus sign (-).

**Examples:**

#### Example 1: Dividends.

A dividend of €2,500 obtained on 25 June 2011 by a natural person resident in Brazil. A withholding of 19% has been made (€475). The double taxation Agreement establishes a tax limit of 15% of the pre-tax dividend amount. The annual exemption limit of €1,500 is applied to this tax return.

Determination of the taxable base

210 R Income (General System):

Pre-tax earnings (5): 2.500

Dividend exemption applied (6): 1.500

Deductible expenses (7): 0

Taxable base (8): 1.000

Settlement:

Tax Rate Law IRNR (21): 19%

Full amount due (22): 190 (1,000 x 19%)

Amount due Law IRNR (24): 190

Agreement percentage (%) (25): 15%

Agreement limit (26): 375 (2,500 x 15%)

Reduction due to Agreement (27): 0 (The Agreement limit exceeds the Amount due Law IRNR).

Reduced amount due (28): 190

Withholdings/payments on account (29): 475

Result of the self-assessment (31): - 285 (190 - 475)

#### Example 2: Fixed asset income.

A taxpayer resident in Portugal owns an apartment in Malaga that was purchased in 2001 for €130,000, including expenses and taxes. The rateable (land register) value of the apartment, revalued post 1 January 1994, for 2011 is €60,100. In 2011, the apartment was not rented.

In 2011, the taxpayer is liable for the following tax on accrued income:

Determination of the taxable base

210 I Income from real estate:

Taxable base [4] = 60,100 x 1.1% = 661.1

Settlement:

Tax rate Law IRNR (%) [21]: 24%

Full amount due (22): 158.67 (661.1 x 24%)

Deductions for donations (23): 0

Amount due Law IRNR (22) - (23): 158,67

Reduced amount due (28): 158.67 (1)

Withholdings/payments on account (29): 0

Result of the self-assessment (31): 158,67

(1) Boxes (25), (26) and (27) are not completed because, generally speaking, in the case of income from real estate, double taxation agreements assign tax authority to the state in which the property is located, with no tax limit.

### • Supplementary

If this tax return supplements one previously filed, check the 'Supplementary tax return' box.

Generally speaking, after having filed the tax return, if mistakes or oversights resulting in a lower payment than that legally due appear, or a claim for a refund in excess of the correct amount are detected, a supplementary tax return must be filed to rectify the tax situation.

The supplementary tax return must include all mandatory details and any new or modified amounts together with those already correctly filed on the original form.

In the case of supplementary tax returns, box (3) must be filled in, and the receipt number of the original tax return in question must be supplied.

### • Date and signature

Enter the date and signature in the space reserved for this purpose.

This tax return must be signed by the person filing the return or their representative.

In the case of a single tax return filed by both spouses and the property transferred is jointly owned by both non-resident spouses, both spouses must sign the tax return.



## Information Sheet-. Tax rates

- Generally (see table):

Year of return	2011	2012-2013
Tax rate	24%	24.75%

- Pensions and similar benefits

Average rate resulting from applying the following tax scale:

$$\text{Average rate} = \frac{\text{Charge}}{\text{Annual pension amount}} \times 100$$

Annual pension payment, up to Euros	Charge - Euros	Rest of pension, up to - Euros	Rate applicable - Percent
0	0	12.000	8
12.000	960	6.700	30
18.700	2.970	from	40

- Interest and other income obtained the transfer of own assets to third parties (see table):

Year of return	2011	2012-2013
Tax rate	19%	21%

- Dividends and other income deriving from shares in company equity (see table):

Year of return	2011	2012-2013
Tax rate	19%	21%

- Income from transfer or disposal of shares representing the capital of unit trust institutions (see table):

Year of return	2011	2012-2013
Tax rate	19%	21%

- Other capital gains other than the above declared at the time of transferring assets (see table):

Year of return	2011	2012-2013
Tax rate	19%	21%

- Earnings from work carried out by natural persons not resident in Spanish territory by virtue of a fixed length contract for seasonal workers, in accordance with the provisions of labour laws..... 2%
- Earnings from work carried out by natural persons not resident in Spanish territory, provided that they are not income taxpayers, who provide services in Diplomatic Missions and Spanish Consular Representations abroad, when there are no specific rules deriving from International Treaties to which Spain is party ..... 8%
- Royalties between associate companies, paid to a company resident in an EU Member State or to permanent establishment of said company in another EU Member State, provided certain conditions are fulfilled:

Up to 30-06-2011	From 1-07-2011
10%	0%

- Earnings deriving from reinsurance operations ..... 1.5%
- Shipping or air transport organisations based abroad, whose ships or aircraft touch Spanish territory ..... 4%
- Supplementary taxation (article 19.2 Law IRNR) (see table):

Year of return	2011	2012-2013
Tax rate	19%	21%

## Annex 1. Main tax forms to be completed by life insurance...

Form  
**210**

### Instructions for filing in your self-assessment form

**Non-resident Income Tax**  
Non-residents without permanent establishment.  
PAYMENT OR REFUND DOCUMENT.

**Important:** All amounts required must be expressed in euros, placing the whole number in the left hand division of the corresponding boxes, and fractions (to two decimal points) on the right.

#### • Where to file the return

##### Positive tax returns:

- a) The tax return may be filed and paid in any organisation collaborating in tax collection management located in Spain (banks, savings banks or co-operative banks). Generally, once the self-assessed tax return has been submitted to the collaborating organisation, there is no need for it to be placed in an envelope or sent to the Tax Agency.

When, pursuant to article 7 of the Ministerial Order approving this form, specific **documentation** must be attached to the tax return, this must be placed in the return envelope, the receipt number obtained after printing the return must be affixed to the envelope, which will then be handed in to the collaborating organisation, from where it will be sent to the Tax Agency.

- b) From 1 March 2011, taxes may be paid through a foreign bank under the procedure described in the 'payment' section of these instructions. When, pursuant to article 7 of the Ministerial Order approving this form, specific **documentation** must be attached to the tax return, this, together with the 'for the collaborating organisation/administration' copy of the deposit/refund document, will be sent in an ordinary envelope, addressed to the corresponding authority. The number of the self-assessment form (210 form) should be printed on the envelope, together with the name and address of the competent authority.

##### Tax returns without deposit or refund (zero charge):

The 'for the collaborating organisation/administration' copy of the deposit/refund document, and any corresponding documentation, if required, must be handed in personally or sent by registered post to the competent Tax Agency office or administration attached to the same, or delivered to the corresponding Large Taxpayers Central Office or Large Corporation Management Unit if filed by taxpayers assigned to these units.

##### Negative tax returns (refund):

The 'for the collaborating organisation/administration' copy of the deposit/refund document, and any corresponding documentation, if required, must be handed in personally or sent by registered post to the competent Tax Agency office or administration attached to the same, or delivered to the corresponding Large Taxpayers Central Office or Large Corporation Management Unit if filed by taxpayers assigned to these units.

#### • Criteria for determining jurisdiction

The following rules are applied for the purpose of determining the jurisdiction of territorial tax agency office, except in the case of positive tax returns filed and paid at foreign banks:

- **For earnings from real estate, income from urban buildings or gains from the transfer of real estate:** The tax agency where the property is located will have jurisdiction.
- **In all other cases:**
  - a) If the tax return is filed by a **representative**: The tax agency office corresponding to the tax address of the representative will have jurisdiction.
  - b) If the tax return is filed by a **jointly responsible party**: The tax agency office corresponding to the tax address of said jointly responsible party will have jurisdiction.
  - c) In the case of a **negative tax return filed by a withholder**: The tax agency office corresponding to the tax address of the withholder will have jurisdiction..
  - d) If the tax return is filed by **the taxpayer**: The tax agency office corresponding to the taxpayer's tax address will have jurisdiction.. In the absence of a Representative:
    - 1) In the case of income: The tax agency corresponding to the payer's tax address.
    - 2) In the case of capital gains, if these are subject to withholdings, the tax agency corresponding to the withholder's tax address; if not subject to withholding, the tax agency corresponding to the tax address of the trustee or manager of the assets or rights or, failing that, the Madrid branch of the Tax Agency.

**However, the Large Taxpayers Central Office and Large Corporation Management Units will have jurisdiction** in the case of tax returns filed by taxpayers assigned to these organisations in the case of returns filed by the taxpayer, and in accordance with paragraph d) above, the representative, jointly responsible party or withholder that determine jurisdiction is a taxpayer assigned to the foregoing office or units.

**In the case of positive tax returns paid through a foreign bank, the authority assigned by means of a jurisdiction resolution will have jurisdiction.**

#### • Filing deadline

The period for filing and paying, as applicable, tax returns depends on the type of income in question and is as follows:

- a) **Income from the transfer of real estate:** Irrespective of the result, self-assessments for income from the transfer of real estate must be filed within three months after the one-month period subsequent to the date of transfer (date of accrual) of the asset has elapsed.
- b) **Income from real estate located in Spain:** The tax return must be filed within the calendar year following the date of accrual (31 December of each year).
- c) **Other income:**
  - 1. Positive tax returns (to pay): Tax returns must be filed and paid within the first twenty calendar days of April, July, October and January for income accrued in the quarter preceding these dates.
  - 2. Zero charge tax returns: These must be filed between 1 and 20 January of the year following accrual of the income in question.
  - 3. Negative tax returns (refund): These must be filed from 1 February of the year following accrual of the income in question and within four years following the end of the period for filing and paying withholdings. This is applicable to all self-assessed tax returns, irrespective of whether the refund derives from

### Filing period (cont.)

the internal rules of a particular double taxation Agreement, and even if a shorter period is stipulated in the implementing Order of the Agreement. The deadline for filing the self-assessment will be understood to conclude on the date it is filed.

### Person performing the self-assessment

**"N.I.F.":** The tax return must contain the tax identification number (N.I.F.) assigned in Spain to the party filing the tax return.

**"Surnames and name or company name":**

Natural persons: The surname, the second surname (as applicable) and the name must be entered, in that order.

Legal persons and organisations: The full name of the company or organisation must be entered. Acronyms are not allowed.

### Accrual

Income is considered to be accrued when:

- Income, on the due date or the date of payment if earlier.
- Income obtained by natural persons, owners of urban buildings, the last day of the calendar year.
- Capital gains, when the change in the asset situation takes place. In the case of transfer of real estate, indicate the date on which the transfer took place.

**Group:**

Several different incomes earned by the same taxpayer may be grouped together provided they correspond to the same income type code, come from the same payer and are subject to the same tax rate.

Furthermore, if these incomes derive from an asset or right, they must come from the same asset or right.

Items in an income group can never be offset against each other.

If the tax return is positive (to pay), check this box when choosing to group the income accrued in a single calendar quarter. Indicate the calendar quarter (1T, 2T, 3T or 4T) and the financial year of filing in the 'period/year' box.

In the case of a zero charge or negative tax return, check this box when choosing to group the income accrued during a calendar year. Enter '0A', zero A, and the year of filing in the 'period/year' box.

**Date of accrual:** When using this form to declare income from urban buildings, income from the transfer of real estate assets or any other separate source of income, enter the date of accrual of the income in question in 'day/month/year' format. In these cases, enter '0A' and the year corresponding to the date of accrual in the 'period/year' box.

### Result of the self-assessment

Enter the result of the tax return (box 31)). If this result is negative (refund), enter the number preceded by a minus sign (-).

### Payment

**Amount:** If the tax return is positive (to pay), enter the amount here (box 31)).

**Through a collaborating organisation located in Spain:**

The tax return may be filed and paid at any tax agency partner organisation located in Spain (banks, savings banks and co-operative banks).

**Through a foreign bank:**

From 1 March 2011, it will be possible the pay tax returns by bank transfer from a foreign bank, according to the following instructions:

From the Tax Agency Internet portal [www.agenciatributaria.es](http://www.agenciatributaria.es) fill in form 210 with the corresponding information, then print the form together and its corresponding payment document with its receipt number.

When filling in the form, remember the following:

- a) The party filing the tax return must be the taxpayer.
- b) The name of the foreign bank from which the transfer is made, and if applicable, the bank account, must be given.  
Following this, pay the amount resulting from the self-assessment by means of a bank transfer for the corresponding amount, in euros, from a foreign bank account.
- c) The transfer must be sent to the Banco de España account detailed on the Tax Agency web page.  
When making the transfer, the "beneficiary" of the same must be the receipt number of the payment document that was obtained when printing the tax return. This number must be followed by the words "AEAT" (Beneficiary: 250NNNNNNNNN-AEAT).  
Likewise, the "subject" field must also contain the receipt number of the payment document followed by the words "AEAT", a space, and then, in order to identify the sender, the words "NIF-" followed by the tax identification number assigned in Spain to the taxpayer. If said number has not been made available at the time of filing in the form, include the identification number that will be supplied at this time. This number is only valid for the purpose of filing this form. The NIF assigned in Spain, or failing that, the identification number assigned, must be used in the future when filing tax returns.  
(Subject: 250NNNNNNNNN-AEAT NIF-XXXXXXX)
- d) Once payment and the details of the transfer have been received, these are associated with the corresponding tax return by means of a receipt number.
- e) When, pursuant to article 7 of the Ministerial Order approving this form, specific **documentation** must be attached to the tax return, this, together with the "for the collaborating organisation/administration" copy of the deposit/refund document, will be sent in an ordinary envelope, addressed to the corresponding authority. The number of the self-assessment form (210 form) should be printed on the envelope, together with the name and address of the competent authority.

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## *Annex 1. Main tax forms to be completed by life insurance...*

### **• Rebate**

**Amount:** If the tax return is negative (refund), enter the amount here (box [31]).

Refunds will be paid by bank transfer to the account indicated in the deposit/refund document. The holder of said account may be one of the following:

- a) The party filing the tax return. However, if the tax return is filed by the taxpayers' representative, the refund may only be paid into an account held by the taxpayers' legally authorised representative.
- b) The taxpayer.

If the refund is to be paid into an account held by one of the parties filing the tax return in their capacity as jointly responsible party, withholder or legally authorised representative, the bank account must be held in Spain. However, if the bank account is held by the taxpayer, it may be opened either in a Spanish bank or, from 1 March 2012, in a foreign bank.

When the refund is to be paid by bank transfer, the corresponding account number must be supplied.

**NB:** As a temporary measure, until 1 March 2012, refunds may be paid to accounts held by the taxpayer's representative

**"Refund waiver":** This box should be checked if the taxpayer waives the refund.

### **• Nothing to pay or refund**

If neither refund nor payment apply, check the "zero charge" box.

### **• Date and signature**

Enter the signature and date in the space provided for this purpose.

The document must be signed by the party filing the tax return or their representative.

In the case of a single tax return filed by a both spouses, and the property transferred is jointly owned by both non-resident spouses, both must sign the tax return.

# Key Legal Issues for non Spanish Insurance Companies in Spain



**MINISTERIO DE ECONOMÍA Y HACIENDA**

**Agencia Tributaria**

Teléfono: 901 335 533  
www.agenciatributaria.es

**Impuesto sobre la Renta de no Residentes**

Rentas obtenidas sin mediación de establecimiento permanente  
RETENCIONES E INGRESOS A CUENTA  
DECLARACIÓN-DOCUMENTO DE INGRESO

**Modelo 216**

Ayuda

Castellano

Català

Galego

Valencià

Rellenar Formulario

**Declarante (1)**

Espacio reservado para la etiqueta identificativa

216455545704 1



**Devengo (2)**

Ejercicio  Período

Si la declaración es negativa y no dispone de etiquetas, consigne a continuación sus datos identificativos

N.I.F.  Apellidos y Nombre o Razón social

**Liquidación (3)**

	I Rentas sometidas a retención/ingreso a cuenta:	II Rentas no sometidas a retención/ingreso a cuenta:
N.º de rentas .....	01 <input style="width: 100px;" type="text"/>	04 <input style="width: 100px;" type="text"/>
Base de retenciones e ingresos a cuenta /Importe de las rentas .....	02 <input style="width: 100px;" type="text"/>	05 <input style="width: 100px;" type="text"/>
Retenciones e ingresos a cuenta .....	03 <input style="width: 100px;" type="text"/>	
A deducir (exclusivamente en caso de declaración complementaria):		
Resultado a ingresar de anteriores declaraciones por el mismo concepto, ejercicio y período .....	06 <input style="width: 100px;" type="text"/>	
<b>Resultado a ingresar (03 - 06) .....</b>	07 <input style="width: 100px;" type="text"/>	

**Ingreso (4)**

Ingreso efectuado a favor del **Tesoro Público**, cuenta restringida de colaboración en la recaudación de la AEAT de autoliquidaciones especiales.

**Importe del ingreso** I   
(casilla 07)

Forma de pago: ☐ En efectivo ☐ E.C. adeudo en cuenta

Código cuenta cliente (CCC)

Entidad	Sucursal	DC	Número de cuenta
<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>	<input style="width: 100px;" type="text"/>

**Negativa (5)**

☐ **Declaración negativa**

**Firma (7)**

Fecha:

Firma:

**Complementaria (6)**

Si esta declaración es complementaria de otra declaración anterior correspondiente al mismo concepto, ejercicio y período, indíquelo marcando con una "X" esta casilla.

☐ **Declaración complementaria**

En este caso, consigne a continuación el número de justificante identificativo de la declaración anterior.

N.º de justificante:

Este documento no será válido sin la certificación mecánica o, en su defecto, firma autorizada

Rellenar Formulario

Castellano

Català

Galego

Valencià


**Ejemplar para el declarante**

## Annex 2

### **Main tax forms to be completed by non life insurance companies (in addition to Form 210)**

- a) Form 430 «Insurance Premium Tax»
- b) Form 480 «Annual Summary Insurance Premium Tax»

## Annex 2

 <b>MINISTERIO DE ECONOMÍA Y HACIENDA</b>	 <b>Agencia Tributaria</b> Delegación <b>Administración</b> <small>Código de Administración</small> <div style="border: 1px solid black; width: 100px; height: 15px; margin-top: 2px;"></div>	<b>Impuesto sobre las Primas de Seguros</b> Declaración mensual	Modelo <div style="font-size: 2em; font-weight: bold; margin-top: 5px;">430</div>
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<b>Identificación (1)</b>	Espacio reservado para la etiqueta identificativa	<b>Devengo (2)</b>	Ejercicio ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> Período ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div>
			430458624476 1 
	N.I.F. ..... Apellidos y nombre o Denominación o Razón social ..... Calle, Plaza, Avda. .... Domicilio fiscal, nombre vía pública ..... Número ..... Esc. .... Piso .... Prta. .... Teléfono ..... Municipio ..... Código ..... Provincia ..... Código Postal .....		

<b>Sujeto Pasivo no residente (3)</b>	N.I.F. .... Denominación o Razón social ..... Dirección Postal ..... País ..... Clave País .....
---------------------------------------	---

<b>Liquidación (4)</b>	Base imponible ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> 1 Tipo impositivo ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> % 2 Cuota a ingresar ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> 3 Bonificaciones ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> 4 A deducir: (En caso de declaración complementaria, resultado a ingresar de declaraciones anteriores) ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> 5 Resultado a ingresar ( 3 - 4 - 5 ) ..... <div style="border: 1px solid black; width: 40px; height: 15px; display: inline-block;"></div> 6
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<b>Complementaria (5)</b>	Si esta declaración es complementaria de otra declaración anterior correspondiente al mismo concepto, ejercicio y período, indíquelo marcando con una "X" esta casilla. <div style="text-align: center; margin: 5px 0;"> <input type="checkbox"/> Declaración complementaria                 </div> En este caso, consigne a continuación el número de justificante identificativo de la declaración anterior. N.º de justificante <div style="border: 1px solid black; width: 100px; height: 15px; display: inline-block;"></div>
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<b>Firma (7)</b>	Fecha: ..... Firma del sujeto pasivo o representante fiscal .....
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<b>Ingreso (6)</b>	Ingreso efectuado a favor del TESORO PÚBLICO, cuenta restringida de colaboración en la recaudación de la A.E.A.T., de declaraciones-liquidaciones y autoliquidaciones. Forma de pago: <input type="checkbox"/> En efectivo <input type="checkbox"/> E.C. Adeudo en cuenta Importe: 1 <div style="border: 1px solid black; width: 100px; height: 15px; display: inline-block;"></div> <div style="text-align: center; margin-top: 5px;">Código cuenta cliente (CCC)</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; border-bottom: 1px solid black;">Entidad:</td> <td style="width: 33%; border-bottom: 1px solid black;">Oficina DC</td> <td style="width: 33%; border-bottom: 1px solid black;">Núm. de cuenta</td> </tr> <tr> <td style="border-bottom: 1px solid black;"></td> <td style="border-bottom: 1px solid black;"></td> <td style="border-bottom: 1px solid black;"></td> </tr> </table>	Entidad:	Oficina DC	Núm. de cuenta			
Entidad:	Oficina DC	Núm. de cuenta					

Este documento no será válido sin la certificación mecánica o, en su defecto, firma autorizada

**Ejemplar para el sujeto pasivo**

**Agencia Tributaria**  
 Delegación de   
 Administración de  Código Admón.

**Impuesto sobre las  
Primas de Seguros**

**Declaración Resumen anual en euros**

Modelo  
**480**

Identificación (1)		483458169140 5 																																																																																																													
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Municipio		País	Código Postal																																																																																																												
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<b>Sujeto Pasivo no residente (4)</b> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">N.I.F.</td> <td colspan="3" style="padding: 5px;">Denominación o Razón Social</td> </tr> <tr> <td style="padding: 5px;">Dirección Postal</td> <td style="padding: 5px;">País</td> <td colspan="2" style="padding: 5px;">Clave País</td> </tr> </table>				N.I.F.	Denominación o Razón Social			Dirección Postal	País	Clave País																																																																																																					
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style="text-align: center;">30</td></tr> <tr><td>Otros daños en los bienes (Robo u otros) .....</td><td style="text-align: center;">31</td><td style="text-align: center;">32</td><td style="text-align: center;">33</td></tr> <tr><td colspan="4">Responsabilidad Civil Vehículos terrestres automóviles:</td></tr> <tr><td>Seguro obligatorio .....</td><td style="text-align: center;">34</td><td style="text-align: center;">35</td><td style="text-align: center;">36</td></tr> <tr><td>Seguro voluntario .....</td><td style="text-align: center;">37</td><td style="text-align: center;">38</td><td style="text-align: center;">39</td></tr> <tr><td>Responsabilidad Civil en Vehículos aéreos .....</td><td style="text-align: center;">40</td><td style="text-align: center;">41</td><td style="text-align: center;">42</td></tr> <tr><td>Responsabilidad Civil en Vehículos marítimos, lacustres y fluviales .....</td><td style="text-align: center;">43</td><td style="text-align: center;">44</td><td style="text-align: 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Ver. 3.0/2008

Ejemplar para el sujeto pasivo





### Annex 3

## **Some relevant forms required by Spanish anti-money laundering regulations**

- a) Form 22 «Proposal to the Representative»
- b) Form 22-6 «Communication of Authorized Person»
- c) Form 22-7 «Communication of outside expert»
- d) Form 19 «Communication of suspicious transactions»

## Annex 3

### SEPBLAC

Servicio Ejecutivo de la Comisión de  
Prevención del Blanqueo de Capitales  
e Infracciones Monetarias

#### PROPUESTA DE NOMBRAMIENTO DE REPRESENTANTE (F22)

##### Datos del sujeto obligado

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre / Razón social	
Apellido 1 <sup>2</sup>	Apellido 2 <sup>2</sup>
Tipo de sujeto obligado <sup>3</sup>	
Código B.E. <sup>4</sup>	
Domicilio	
País	Provincia
Municipio	Código postal
Teléfono	Fax
Correo electrónico	

##### Datos del representante propuesto

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre	
Apellido 1	Apellido 2
Domicilio <sup>5</sup>	
País	Provincia
Municipio	Código postal
Teléfono	Fax
Correo electrónico	
Cargo de administración o dirección que ejerce	

##### Datos del representante que cesa en el cargo (si procede)

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre	
Apellido 1	Apellido 2

Firma:<sup>6</sup>

<sup>1</sup> CIF, DNI/NIF, Pasaporte, NIE, etc.

<sup>2</sup> A cumplimentar exclusivamente si el sujeto obligado es una persona física.

<sup>3</sup> Deberá seleccionarse entre los tipos recogidos en el artículo 2.1 de la Ley 10/2010.

<sup>4</sup> Código Banco de España (sólo en caso de entidades sujetas a registro en el Banco de España).

<sup>5</sup> Domicilio del centro de trabajo del representante.

<sup>6</sup> Firma de quien acredite los extremos señalados en el punto 2 de la página siguiente o, en su caso, del titular de la actividad.

## SEPBLAC

Según lo dispuesto en el artículo 26 de la Ley 10/2010 y en el artículo 12 del Reglamento de la Ley 19/1993, los sujetos obligados han de comunicar al Servicio Ejecutivo una propuesta de nombramiento de representante ante aquél. Las funciones del representante serán las señaladas en el artículo 26 de la Ley 10/2010 y la propuesta de nombramiento contendrá, por cada sujeto obligado, la siguiente documentación:

1. Propuesta de nombramiento (Formulario F22) firmada por quien acredite los extremos señalados en el punto 2 siguiente o, en su caso, por el titular de la actividad.
2. Documentación que acredite que el representante ha sido nombrado por el órgano de dirección del sujeto obligado (certificación del acuerdo del consejo de administración o de órgano equivalente).
3. Documentación que acredite suficientemente la firma de la persona nombrada como representante (por ejemplo, copia del Documento Nacional de Identidad).
4. Documentación que recoja una descripción detallada de la trayectoria profesional del representante propuesto (por ejemplo, *curriculum vitae*).

En aquellos casos en que los sujetos obligados sean empresarios o profesionales individuales, el representante será el titular de la actividad, remitiéndose únicamente al Servicio Ejecutivo la documentación señalada en los puntos 1 y 3 anteriores.

La documentación mencionada habrá de ser enviada en soporte papel a la dirección:

Sepblac  
Calle Alcalá, 48  
28014 Madrid

De acuerdo con el artículo 26 de la mencionada Ley, los sujetos obligados deberán aprobar y tener a disposición del Servicio Ejecutivo un manual adecuado, con información completa de las medidas de control interno establecidas y destinadas a prevenir e impedir operaciones relacionadas con el blanqueo de capitales o la financiación del terrorismo.

Dichas medidas de control interno podrán establecerse a nivel de grupo, de acuerdo con la definición recogida en su artículo 24.2.a), siempre que dicha decisión se comunique al Servicio Ejecutivo, con especificación de los sujetos obligados comprendidos dentro de la estructura del grupo. La comunicación de estos datos se hará por escrito en soporte papel a la dirección que figura más arriba y recogerá, en todo caso, la razón social y el número de documento identificativo (CIF) de los sujetos obligados que estén comprendidos en el grupo al que se aplique el manual, así como la fecha de entrada en vigor del mismo.

## SEPBLAC

Servicio Ejecutivo de la Comisión de  
Prevención del Blanqueo de Capitales  
e Infracciones Monetarias

### COMUNICACIÓN DE PERSONA AUTORIZADA (F22-6)

La persona que figura en "datos del representante", en su calidad de representante ante el Servicio Ejecutivo del sujeto obligado citado en "datos del sujeto obligado" autoriza a la persona cuyos datos se detallan en "datos de la persona autorizada", a firmar en su nombre cualquier escrito o comunicación al Servicio Ejecutivo que deba dirigirse en su condición de representante.

#### Datos del sujeto obligado

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre / Razón social	
Apellido 1 <sup>2</sup>	Apellido 2 <sup>2</sup>
Tipo de sujeto obligado <sup>3</sup>	

#### Datos del representante

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre	
Apellido 1	Apellido 2
Cargo de administración o dirección que ejerce	

#### Datos de la persona autorizada

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre	
Apellido 1	Apellido 2
Domicilio <sup>4</sup>	
País	Provincia
Municipio	Código postal
Teléfono	Fax
Correo electrónico	
Cargo	

En \_\_\_\_\_, a \_\_\_\_\_ de \_\_\_\_\_ de 20\_\_\_\_

Firma del representante:

Firma de la persona autorizada:

<sup>1</sup> CIF, DNI/NIF, Pasaporte, NIE, etc.

<sup>2</sup> A cumplimentar exclusivamente si el sujeto obligado es una persona física.

<sup>3</sup> Deberá seleccionarse entre los tipos recogidos en el artículo 2.1 de la Ley 10/2010.

<sup>4</sup> Domicilio del centro de trabajo de la persona autorizada.

## SEPBLAC

Por cada persona que se autorice o apodere y por cada sujeto obligado, pudiendo autorizarse hasta un máximo de dos personas por entidad, deberá enviarse la siguiente documentación:

1. Formulario F22-6 debidamente cumplimentado y firmado tanto por el representante como por la persona autorizada.
2. Documento que acredite suficientemente la firma de la persona autorizada (por ejemplo, copia del Documento Nacional de Identidad).

Toda la documentación se enviará en soporte papel a la dirección:

Sepblac  
Cl. Alcalá, 48  
28014 Madrid

La presente autorización se extiende exclusivamente al alcance señalado en el primer párrafo de la página anterior y tiene duración indefinida. Su revocación o extinción por cualquier causa se comunicarán inmediatamente al Servicio Ejecutivo mediante escrito en soporte papel firmado por el representante, surtiendo efectos desde la recepción de la comunicación por dicho Organismo.

## SEPBLAC

Servicio Ejecutivo de la Comisión de  
Prevención del Blanqueo de Capitales  
e Infracciones Monetarias

### COMUNICACIÓN DE ACTUACIÓN COMO EXPERTO EXTERNO (F22-7)

#### Datos de la persona física que pretende actuar como experto externo

Tipo de documento identificativo <sup>1</sup>	Nº de documento identificativo
Nombre <sup>2</sup>	
Apellido 1	Apellido 2
Domicilio <sup>3</sup>	
País	Provincia
Municipio	Código postal
Teléfono	Fax
Correo electrónico	

#### Datos de la persona jurídica en el marco de la cual actúa el experto externo (si procede)

Tipo de documento identificativo <sup>4</sup>	Nº de documento identificativo
Razón social	

Firma:<sup>5</sup>

Según lo dispuesto en el artículo 28.2 de la Ley 10/2010, quienes pretendan actuar como expertos externos deberán comunicarlo al Servicio Ejecutivo de la Comisión antes de iniciar su actividad. Para ello, cada experto externo deberá enviar al Servicio Ejecutivo un formulario F22-7 cumplimentado en soporte papel. La dirección de envío es la siguiente:

Sepblac  
Calle Alcalá, 48  
28014 Madrid

Asimismo, el mencionado artículo establece que quienes pretendan actuar como expertos externos informarán semestralmente al Servicio Ejecutivo de la relación de sujetos obligados cuyas medidas de control interno hayan examinado. En el sitio web del Sepblac (<http://www.sepblac.es> >> Sujetos obligados y expertos externos >> Expertos externos) encontrará descrito el procedimiento para el envío semestral de esta información.

<sup>1</sup> DNI/NIF, Pasaporte, NIE, etc.

<sup>2</sup> En este campo no se incluirán los apellidos.

<sup>3</sup> Domicilio del centro de trabajo del experto externo.

<sup>4</sup> CIF, etc.

<sup>5</sup> Firma del experto externo cuyos datos se comunican.

**COMUNICACIÓN DE OPERATIVA SOSPECHOSA POR INDICIO (F19-1)**  
**(Artículo 18 de la Ley 10/2010)**

Sujeto obligado	
Número de documento identificativo del sujeto obligado	
Nombre del representante	
Referencia de la comunicación	
Fecha de la comunicación	

Identificación de los intervinientes en las operaciones

Conocimiento de los intervinientes en las operaciones

Descripción de las operaciones

Indicios de blanqueo de capitales

Gestiones y comprobaciones realizadas

Documentación remitida (relación de documentos que se adjuntan)

El representante





# Information Pertaining to Legse-Fides Abogados

LEGSE Abogados is a law firm (founded in 1994) recognized for its expertise which focuses on providing legal services to international companies. The main areas of practice at this firm are Insurance and Banking, Corporate and Commercial, Labour Law, White Collar Crime, Prevention of Money Laundering and Litigation.

In 2004, LEGSE Abogados created FIDES Abogados, (of which LEGSE owns 95%), to manage tax representation of insurance companies in FoS. FIDES Abogados is the Tax Representative of twenty nine European Insurance Companies operating in FoS in Spain providing its clients with updates on tax compliance requirements, amendments to relevant legislation and also providing tax and legal information when required. Another important specialty of LEGSE Abogados in this area is to review the new product literature (insurances policies wording) to ensure it complies with Spanish law and regulations. It is remarkable that the joint invoicing of both firms in subjects related to Insurance Law places LEGSE-FIDES at one of the first positions in this sector on the Spanish legal services market. An example, in 2012 they managed 142 new legal proceedings related to life insurance. This signifies that this firm is the leader of Spain in terms of the number of judicial insurance proceedings handled of this kind.

The firm is still medium sized, which means it can guarantee a close working relationship between the client and the Head Manager of each legal area, as well as adding a personal touch to each lawyers' work. Furthermore, it is a firm that enjoys full independence from any other organization.

LEGSE Abogados, since its foundation, has put great importance on training, both that received by lawyers at the Firm, as well as through courses in which its lawyers participate as lecturers. In relation to the

latter, and on the subject of Insurance Law, LEGSE has participated for 18 years in various courses organized by ICEA (*Investigación Cooperativa de Entidades Aseguradoras*) and in the *Centro de Estudios Financieros* (CEF). In addition to the Insurance Law area, they have collaborated with different institutions on courses of other areas of Law: Master of Law, founded by the University of Rey Juan Carlos and by LEGSE Abogados; Business Law with the *Universidad Pontificia de Comillas, of Madrid* (ICADE) and with the *Centro de Estudios Financieros* (CEF); Tax Law with the *Cámara Oficial de Comercio e Industria of Madrid*.

They are aware that in an increasingly globalized world, a law firm should offer an international service. For increasing their international capacity, LEGSE Abogados is a member of the prestigious international network of independent law firms INTERLEGES, which is represented in twenty countries. Obviously, the standards to become a member of this network are very high. LEGSE believes that belonging to this network benefits their clients in different ways:

- INTERLEGES is an international source of information, ideas and organizational systems, which allows them to improve on the quality of the legal services provided to their clients.

- Its clients with presence on the international market can benefit from the defence of their interests with representatives of INTERLEGES available to them in the principal countries around the world (from an economical point of view).

- INTERLEGES provides LEGSE with an abundance of international clients needing legal assistance in Spain. This enhances their international expertise and provides excellent training for their lawyers.



