

**This is an unofficial translation for informational purposes only. The only legal binding text is the original Spanish version of the “Código de Buenas Prácticas Tributarias” approved by the Large Businesses Forum.**

## **Code of Best Tax Practices**

### **INTRODUCTION**

Companies play a very important role in society, not only as generators of employment and wealth, but as agents fostering development in the communities where they are located. Companies are aware of this and for some years they have been seeking to enhance their social responsibility, which involves following a series of conduct guidelines that go beyond respect for and strict compliance with laws and regulations, to take stances whereby they make an active and voluntary contribution to social, economic and environmental improvement.

The existence of an adequate taxation system is an outstanding element in a country's institutional framework, which justifies that citizens, social agents and authorities become actively involved in its development and effective application.

In line with this philosophy, this Code of Best Tax Practices contains recommendations voluntarily followed by the Tax Administration and companies, with the aim of improving the application of our tax system by raising legal certainty, reciprocal co-operation based on good faith and well-placed trust between the Tax Agency and companies, and the application of responsible tax policies in companies with the consent of the board of directors. These recommendations are flexible and not exhaustive, enabling the adopting firms the adaptation to their own characteristics.

Correct tax management by companies and greater legal certainty in tax matters, lead to sounder financial results, reducing risks, reputational risks included.

The principles of good faith and well-placed trust that legally govern the running of the Public Administration bodies are particularly relevant in today's tax system. Not only because its regulations are more demanding, but also because economic systems require companies, especially those with international branches, to follow more complicated operating procedures. In this scenario, appropriate management of the inherent risks in companies' fulfilment of their obligations to pay taxes demands greater mutual co-operation with the Tax Administration.

Even more so, when one of the main lines of action of the Tax Agency, as laid down in its governing regulations, is to provide the taxpayer with information and assistance. In addition to the guaranty of the full compliance of taxpayers'

rights in the performance of its activity, a modern tax Administration needs to be in closer proximity with companies, both as its main taxpayers and for their valuable role as tax collaborators. This proximity should not only feature a better and more detailed knowledge of what the taxpayer does, but it should also aim to assure the utmost publicity and lasting nature of its interpretative and performance criteria. In short, it is this commitment from the Tax Administration which should award taxpayers the necessary legal certainty and enable them to better and more effectively comply with their tax obligations. In view of this, therefore, tax management should not be considered a procedure performed between two opposing parties, but as collaboration for a shared purpose.

In this framework, the aim of the Code is to foster a relationship of reciprocal cooperation between the State Tax Administration Agency (hereinafter, Tax Agency) and the companies that subscribe it, a relationship based on the principles of transparency and mutual trust, which should therefore give rise to its development in agreement with the principles of good faith and loyalty between the parties, all of which will raise the effectiveness of Tax Administration monitoring and will lower the legal uncertainty to which companies may be exposed and lawsuits between the parties.

### **BEST TAX PRACTICES**

#### **1. TRANSPARENCY, GOOD FAITH AND CO-OPERATION WITH THE TAX AGENCY IN COMPANY TAX PRACTICE.**

1.1. All those practices which lead to a reduction in significant tax risks and the prevention of conducts liable to produce them are considered best practices which should be fostered by companies.

1.2. Companies will avoid the use structures of an opaque nature for taxation purposes, understanding the latter to be those which, by interposing instrumental companies through tax havens or states which do not cooperate with tax authorities, are designed to impede the Tax Agency from learning which company is ultimately responsible for activities or the actual holder of the goods or the rights involved.

1.3. Companies and the Tax Agency will collaborate in the detection and search for solutions concerning fraudulent tax practices which may occur in the markets where they are present, to eradicate those already existing and to prevent them from spreading.

1.4. The board of directors or its equivalent body will be informed about the tax policies applied by the company. Before drafting the annual accounts and filing the Corporate Income Tax return, the person responsible for tax affairs in the company will report to the board, directly or through the Audit Committee, on the policies followed during the year.

The above notwithstanding, in the event of operations or matters which need to be submitted for approval of the board of directors or its equivalent body, a report will be submitted on the tax outcomes of these when they represent a relevant factor.

### **2. TRANSPARENCY AND LEGAL CERTAINTY IN THE APPLICATION AND INTERPRETATION OF TAX REGULATIONS BY THE TAX AGENCY.**

2.1. The Tax Agency will endeavour in its actions to take account of administrative precedents and it will attempt to ensure that regulations are interpreted following the same criteria throughout the Tax Administration.

The Tax Agency will therefore apply the interpretation criteria deriving from administrative doctrine and jurisprudence. Where no such doctrine or jurisprudence exists, when doubts about the applicable criterion exist, it will request a report from the Directorate General for Taxes in the sphere of its powers.

The Directors of the Tax Agency Departments will report to the Standing Board of Directors of the Tax Agency on those interpretation criteria they aim to apply in their actions, whenever these refer to issues of particular significance or may cause considerable disputes with taxpayers and for which no criterion has been set by the Directorate General for Taxes, the Central Economic-Administrative Court or the Law Courts.

2.2. Notwithstanding the regulation applicable as regards interpretation and classification of tax regulations and the task of informing and assisting taxpayers, the Tax Agency will publish the criteria it applies in its control procedures whenever they may be applied generally.

2.3. The Tax Agency will set up adequate procedures to let those taxpayers with doubts about the tax treatment of certain transactions or operating procedures know about the criteria the Administration would apply in such transactions or operating procedures as swiftly as the case requires.

2.4. Taxpayers may file an explanatory appendix together with their tax returns, declaring the criteria they have followed in filing these together with the facts on which they are based, which, if the facts are true and the criteria are reasonably founded, the Tax Agency will take favourably into account for the purposes of laying down diligence, deceit or guilt as regards the Spanish General Tax Act.

2.5. The Tax Agency, in its application of the taxation system, guarantees the full exercise of taxpayers' rights.

### **3. REDUCTION OF LAWSUITS AND CONFLICT AVOIDANCE.**

3.1. The Tax Agency and companies aim to maintain relations that are constructive, transparent and based on mutual trust. To achieve this, both

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parties must endeavour to reduce conflicts resulting from interpretation of the applicable regulations, fostering use of the instruments provided for this purpose in the Tax Legal System.

3.2. The Tax Agency and companies will use all the possibilities provided by the contradictory nature of the audit procedure, enhancing agreement in all the phases in proceedings where it is feasible and using the following practices:

(1) The Tax Agency will inform the taxpayer as early as possible of the facts requiring regularisation, whereby, during the audit proceedings, the maximum possible exchange of opinion will be easier and the adjustment of company practices for the future will be enabled as quickly as possible.

(2) In the hearing prior to the audit settlement, the Tax Agency will notify the taxpayer of the facts impinging on the final regularisation proposal. Likewise, on request by the taxpayer, the Tax Agency will indicate the fundamental items susceptible to regularisation and it will offer a provisional estimate of the settlement amount resulting from the figures available at that time.

(3) The Tax Agency will include an appraisal of the taxpayer's declarations in the explanations of the decisions on which its regularisation proposal is based. In order to ensure that the declarations submitted are appropriately assessed, companies will attempt to inform the body processing the procedure as soon as they are filed, indicating where they are filed and sending a copy of them, preferably in electronic format.

Likewise, companies will endeavour to inform of requests for extensions to deadlines for filing declarations as soon as these are submitted, indicating where they are submitted.

(4) In audits to corporate groups, the Tax Agency will attend to the declarations which may be made against inquiries to subsidiary companies, prior to the consolidated settlement report.

(5) The Tax Agency will endeavour that all the relevant questions of fact to reach the settlement as well as the correlative probative activity are made known and suitably discussed during the audit proceedings prior to the signing of the decision report, or, if applicable, in the complementary actions agreed for this purpose.

(6) The Tax Agency and companies will foster agreements and consents within the audit procedure.

(7) Likewise, in the event of penalty proceedings being brought, it will endeavour that all the relevant questions of fact to instruct said proceedings are known and suitably discussed prior to the proceeding final ruling.

3.3. In order to reduce the indirect tax burden which fulfilment of certain obligations and certain procedures imply for the taxpayer, the Tax Agency will attempt to define as closely as possible the subject of the informative requests

and summary returns and it will attempt to limit the duration of the verification and investigation procedures to the time strictly necessary to be able to perform a suitable audit. For their part, companies will endeavour to provide the information and documentation requested by the Tax Agency, together with all that which may be relevant for undertaking the corresponding procedures in the quickest and most complete way possible.

### **APPENDIX**

## **SUBSCRIPTION TO THE CODE OF BEST TAX PRACTICES AND MONITORING OF ITS APPLICATION**

### **1. SUBJECTIVE SCOPE OF APPLICATION.**

This Code has been drawn up and approved by the Large Businesses Forum to foster a mutually co-operative relationship between the Tax Agency and the companies subscribing it.

The Code will be applied by the Tax Agency and by all the companies subscribing it, the parties being committed to its application and implementation within their respective scopes of authority. Nevertheless, the Tax Agency will apply section 2.3 on a gradual basis, in accordance with the number of companies subscribing to the Code.

### **2. SUBSCRIPTION PROCESS.**

The decision to subscribe to the Code of Best Tax Practices has to be formalised through an agreement from the Board of Directors or its equivalent body in the company, notification of which will be sent to the Tax Agency. The withdrawal from the Code will be notified in the same way.

Subscription and withdrawal will be for the Code as a whole. A partial subscription to or withdraw from specific sections is not admissible.

The Tax Agency may inform of which entities have subscribed to the Code, unless the company in question declares otherwise, through the Forum Technical Secretariat.

The annual corporate governance report of the companies subscribing to the Code should reflect that they are effectively complying with its contents. In the event of this topic not being included in the report, it will be understood that the entity has decided to renounce the Code, unless sufficient justification is given.

### **3. MONITORING COMMITTEE.**

The Plenary Session of the Large Businesses Forum will decide on the creation of a Monitoring Committee for the application of the Code of Best Tax Practices, which will comprise six members appointed annually, half of whom will be named by the Tax Agency and the other half by the companies belonging to the Forum. The Chairman will be one of the members appointed by the Tax Agency and the Secretary will be elected from among those appointed by the companies.

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The agreements reached by the Monitoring Committee will be by consensus among all its members.

The Large Businesses Forum is the framework within which the Tax Agency and Large Businesses should study and agree the inclusion of new questions into the Code and the interpretation of the recommendations it makes. One of the primordial purposes of the Monitoring Committee is to submit for its consideration both the interpretation issues it considers necessary and the opportunity of broaching new issues, notwithstanding other initiatives that may help to materialise and put the Code into practice.

The Monitoring Committee will convene on a general basis once every six months, however it may meet as often as is considered necessary by the Tax Agency or companies representatives.

The Monitoring Committee will act on the principles of transparency, mutual trust, good faith and loyalty which govern the Code of Best Tax Practices.

All the data, reports or past records of any kind submitted to the Monitoring Committee or obtained by it in the performance of its duties are to be considered confidential, its members being held to the strictest and fullest confidentiality regarding them.

The Monitoring Committee will not know the particular conditions of the companies subscribing to the Code, thus it cannot become involved in any ongoing tax proceedings.