

TAX NEWS

New regime for rectifying returns incorporated by Royal Decree 117/2024 published on 31 January 2024

Once the return has been submitted, the taxpayer realizes that the amount paid is lower than the amount that would have been appropriate, or that the amount requested to be refunded (or to be compensated) is higher than the amount that should have actually been claimed, the taxpayer has the right to correct the incident detected, by submitting what is known as a “complementary” return.

On the other hand, in those cases in which the submitted return is incorrect, either because the amount paid is higher than the amount actually due, or because a lower refund has been requested than what would have been due had the rules been correctly applied, the current system until now obliges the taxpayer to initiate a procedure whose resolution is at the expense of what the Spanish Tax Authorities may decide, bases on the evidence provided and the arguments put forward in defence of the requested rectification.

This system has resulted in a continuous rush of procedures, which has excessively complicated the relationship between taxpayers and the Spanish Tax Authorities, and has reduced the effectiveness of what should be an agile system for resolving incidents in the fulfilment of obligations by taxpayers.

Therefore, in order to incorporate into the legal system a procedure for direct correction of returns by taxpayers themselves, the legislator gave a charter in 2023 (Law 13/2023, of 24 May) to the rectifying returns, which now implemented through the approval of the regulatory measures that make such implementation possible.

The rectifying return is introduced as a new figure that seeks to simplify and speed up the process of rectifying returns in various taxes.



1. Scope of application

Recently, RD 117/2024, of January 30, 2024, was approved, which develops Law 13/2023 and modifies the regulations related to Personal Income Tax (PIT), Corporate Income Tax (CIT), Value Added Tax (VAT), Excise Duties (ED) and Tax on Fluorinated Greenhouse Gases (FGG), to introduce **the figure of the rectifying return in these taxes.**

However, the eleventh FD of said Royal Decree establishes that the new system will enter into force when the ministerial orders approving the corresponding returns forms do so.

2. Objective of the new regime

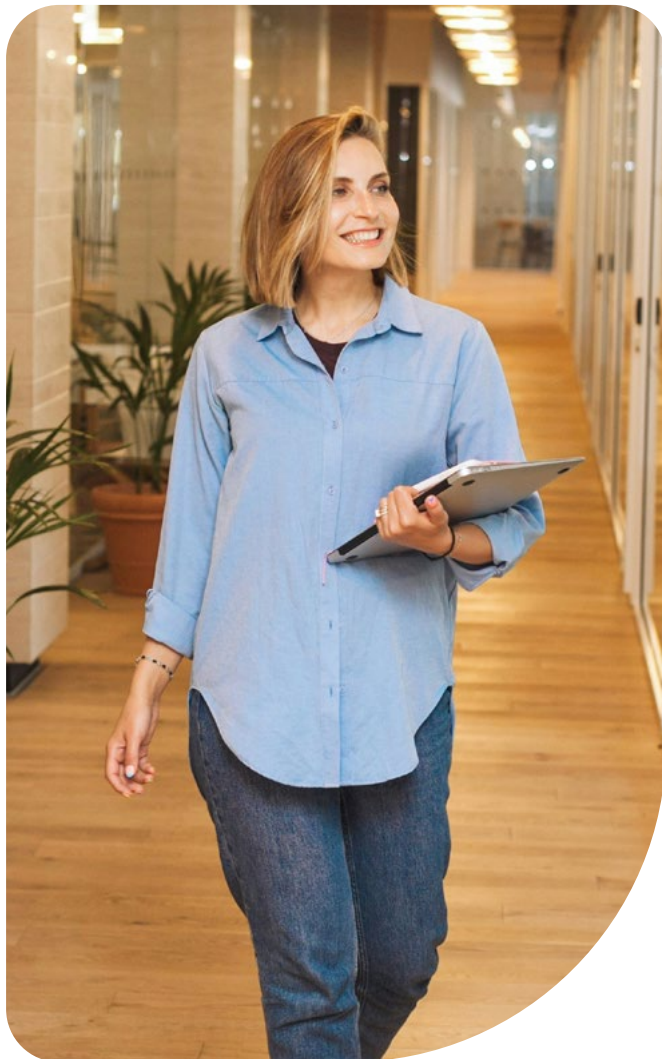
The rectifying return replaces the traditional dual system of complementary returns, for those cases in which there is a higher amount to be paid or a lower amount to be refunded, and requests for rectification for the rest of the cases, with a single system for the correction of returns.

In this sense, with the rectifying return, the taxpayer will be able to rectify, complete or modify a return previously submitted, regardless of the result of the same, without having to wait for an administrative resolution.

3. Fundamental aspects

The most relevant aspects of this new figure are:

- The submission of a rectifying return is mandatory for those taxpayers who wish to rectify, complete or modify a previous return.



- When the reason for the rectification is based on a possible infringement by the rule applied in the prior return of the precepts of another rule of higher legal, constitutional, EU law or of an international treaty or convention norm, the rectification can be requested through the rectification request procedure. However, if this reason coincides with others of a different nature, the taxpayer must file a rectifying return for the latter reasons.
- The rectifying return can be submitted within the limitation period of the Spanish Tax Authorities' right to determine the tax debt by means of assessment or the right to request the refund, as appropriate.
- The rectifying return must contain all the data that must be declared and others that can be established in the Ministerial Order of the form, such as: the reasons for the rectification, the data included in the return previously submitted that are not subject to modification, those that are subject to modification and those that are newly included.

The effects of submitting a rectifying return are as follows:

- In the event that the rectification results in an amount to be paid that is higher than that of the previous return or an amount to be refunded or offset that is lower than that previously settled, the complementary return regime will apply (art. 122.2 GTL).
- In all other cases:

If the rectification **results in an amount to be refunded**, the submission of the rectifying return will be understood as a request for the refund, which will be processed in accordance with the refund procedure initiated by return (articles 124 to 127 GTL).

If the rectification results in **a reduction of the amount to be paid from the previous return** and there is no amount to be refunded, the payment obligation will remain up to the limit of the amount to be paid resulting from the rectifying return.

If the debt resulting from the prior return is subject to deferral or instalments, with the submission of the rectifying return, it will be understood that the modification in the conditions of the deferral or instalment will be requested in accordance with art. 52.3 RGR.

- The submission of a rectifying return is not allowed for items that have already been regularised by means of a provisional or final assessment by the Administration.

4. Disadvantages for the taxpayer

Although this legal mandate could represent a reduction in obligations, as stated in the Explanatory Memorandum of the law, it can also lead to a new restriction on the rights of taxpayers, in cases where there is a disagreement with the criteria maintained by the Spanish Tax Authorities

In any case, pending that the passage of time confirms the benefits of the new system, we believe that the rectifying return is positive news for taxpayers and that it should help to reduce the litigiousness of always complex relationships (with the Spanish Tax Authorities).

However, assuming that, after the submission of such rectifying returns, it is likely that the STAs will initiate, in many cases, procedures to verify them, we recommend that the approach to such rectifications be made by taxpayers with the appropriate advice and provided with the documentary support that justifies the return that corrects the one previously filed.



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