“Last regulatory amendment: 10/10/2026”

PROVINCIAL DECREE 101/2005, of 21 June, developing the procedures relating to written tax consultations, preliminary tax proposals and anti-avoidance clauses (BOB, Official Gazette of Bizkaia, 30 June)

The approval of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia 2/2005, of 10 March, has entailed a comprehensive renewal and updating of our general tax regulations, producing an in-depth review of the structure and procedural rules to be applied by the Tax Administration in the exercise of its functions.

In the area of collaboration between the Tax Administration and taxpayers to facilitate compliance with their tax obligations, the new General Provincial Regulation on Taxation has reinforced traditional mechanisms such as consultations, extending their binding effects with respect to third parties, and has introduced other new mechanisms to reinforce taxpayers' legal security, such as preliminary tax proposals, which allow taxpayers to ask the Administration for prior knowledge of certain particularly complex operations, determining their effects on the quantification of the tax debt in a binding manner.

In another area of issues, the new General Provincial Regulation on Taxation has modified one of the most controversial concepts of the existing regulation to date, which is tax fraud, replacing it with a new concept, the anti-avoidance clause, which makes it possible to respond to those conducts that seek to avoid the tax burden by using artificial or improper legal transactions to achieve the intended result.

By virtue thereof, at the proposal of the Provincial Councillor for Treasury and Finances and following deliberation and approval by Bizkaia Provincial Council at its meeting of 21 June 2005,

I HEREBY DECREE:

CHAPTER I
WRITTEN TAX CONSULTATIONS AND PRELIMINARY TAX PROPOSALS

Article 1. Scope of application.

Written tax consultations and preliminary tax proposals may be submitted to the Provincial Tax Administration of the Historical Territory of Bizkaia regarding taxable events and tax obligations when, in accordance with the provisions of the Economic Agreement, they are in any of the following situations:

a) The regulations of the Historical Territory of Bizkaia are applicable to them.

b) The competence for inspection corresponds to the bodies of the Provincial Tax Administration of the Historical Territory of Bizkaia.

c) In others related to the exercise of the powers of the provincial tax administration in its relations with the taxpayer.

SECTION 1
WRITTEN TAX CONSULTATIONS

Article 2. Entitled to submit.

1. Taxpayers are entitled to submit written tax consultations with regard to cases that directly affect their particular tax situation or those legal acts or transactions in which they take part without this entailing the creation of a tax obligation for them.

2. Bodies or entities that meet the following requirements are also entitled to do so:

   a) Corporations or associations whose purpose is to defend or represent certain collective interests or those of their members or associates, when they deal with matters that directly affect the generality of their members or associates.

   b) They do not have the legal form of a commercial company.

   In particular, the Chamber of Commerce, Industry and Navigation of Bilbao, the Bar Association of the Lordship of Bizkaia, the Basque Association of Economists, associations of tax advisors, professional associations, trade unions, employers' associations, as well as other organisations or entities that are recognised as having legal standing by means of a request addressed to the Secretariat for Coordination and Technical Assistance, accompanied by proof of compliance with the above requirements, will be entitled to submit tax consultations.

3. Those entitled to submit tax consultations may do so on their own behalf or through a representative, in which case it will be necessary at the time of submitting the corresponding consultation to accredit representation in accordance with the provisions of section 2 of article 45 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia.

Article 3. Submission of the consultation letter.

1. Consultations shall be submitted in writing to the Secretariat for Coordination and Technical Assistance of the Directorate-General of the Treasury, in which, with regard to the matter addressed, they shall be expressed clearly and to the necessary extent:

   a) The background and circumstances of the case.

   b) The purpose of the consultation, indicating the specific tax provision the application of which raises doubts for the enquirer and, where appropriate, the interpretation of the same.

   c) Other data, elements and documents that may contribute to the formation of the Tax Administration's judgement.

   d) Where the enquiry concerns the existence of a permanent establishment, a cross-border transaction or the tax residence of an individual, the applicant must expressly indicate that this is the subject of the enquiry, without prejudice to the competent tax authority making its own assessment when responding to the enquiry. The following information must also be provided:

      a') The applicant’s tax identification number issued by their state of residence, where the applicant is resident in another state.

b') Details of the corporate group or tax group to which the applicant belongs, where applicable.

c') Description of the business activity or transactions or series of transactions carried out or to be carried out. In any event, such description shall be carried out in full compliance with the regulations on business, industrial or professional secrecy and public interest.

d') States that may be affected by the transaction or operation under consultation.

e') Identification of any persons resident in other states who may be affected by the response to the enquiry, together with their tax identification numbers issued by their respective states of residence.

f') Other information that may be required by the applicable mutual assistance regulations.

2. The document shall also state the name, surname(s), company name, tax domicile, tax identification number of the enquirer and, where appropriate, of the person representing them, as well as the place, date and signature of the natural person making the consultation in their own name or in representation of the taxpayer.

3. If the consultation is made through a representative, the consultation document shall be accompanied by a copy of the justification of the representation.

4. If the consultation document does not meet the requirements indicated in sections 1 and 2 above, the interested party shall be requested to rectify the deficiency or attach the necessary documents within a period of ten days. If they fail to do so, their document may be filed away without further processing.

Article 4. Processing of the consultation.

1. Once the consultation document has been received, the Secretariat for Coordination and Technical Assistance will request, where appropriate, from the interested party the documentation deemed necessary to provide the corresponding reply and may request reports from other bodies of the Tax Administration or any other agencies it deems relevant to form the criterion applicable to the case in question.

2. In those cases in which it is considered appropriate due to the novelty of the issue raised, in view of the need to review or unify already established criteria or when the importance of the reply makes it advisable, the proposed reply will be submitted to the Tax Doctrine Commission of the Provincial Treasury of Bizkaia.

3. In those cases in which, in accordance with the provisions of the Economic Agreement or the Autonomous Community regulations on tax harmonisation, coordination and collaboration, the consultation must be referred to other bodies, the Secretariat for Coordination and Technical Assistance shall forward the consultation and the proposed reply to the Technical Secretariat-General for the corresponding procedures to be carried out, informing the enquirer of such referral, which shall suspend the procedure during the processing of the consultation.

The period of suspension referred to in the previous paragraph shall not be counted for the purposes of the maximum six-month ruling period established in section 5 of Article 85 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia.

Article 5. Reply to the consultation.

1. The Secretariat for Coordination and Technical Assistance will forward the proposed reply to the question raised, specifying its nature and effects, to the Directorate-General of the Treasury for its ruling.

2. The reply agreed by the Directorate-General of the Treasury will be notified to the enquirer without the lack of a reply within the period established in section 5 of Article 85 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia implying acceptance of the criteria expressed by the enquirer in the consultation document or determining binding effects for the Tax Administration.

   Once this period has elapsed without a reply, the Tax Administration is not exempted from expressly resolving the consultation made, which it must do in any case.

   However, and until such time as the reply is notified, if the taxpayer applies the criteria set forth in the consultation document, they will not be liable for any tax infringements that may arise from the application of the aforementioned criteria.

3. The competent body shall be obliged to reply by applying the criteria expressed in replies to those consultations made previously in which there is identity between the facts and circumstances and those of the consultation being replied to, unless it justifies the modification of the applicable administrative doctrine in a reasoned manner.

Article 6. Effects of the reply.

1. The replies to tax consultations that meet the requirements set forth in article 85 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia will have binding effects on the taxpayer for the Tax Administration in accordance with the provisions of article 86 of the same, otherwise they will have exclusively informative effects.

   Likewise, the replies to consultations made by taxpayers with regard to those acts or legal transactions in which they take part without this entailing the creation of a tax obligation for them and those that have been made through a representative when the justification of the power of attorney is not provided, will have exclusively informative effects.

2. The criteria expressed in written tax consultations that produce binding effects must be applied by the bodies responsible for the application of taxes to any taxpayer under the terms provided for in the last paragraph of section 1 of article 86 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia.

Article 7. Dismissal of consultations.

1. The following consultations will be dismissed:

   a) Those formulated with respect to taxable events or tax obligations not included in article 1 of this Provincial Decree.

   b) Those formulated by persons who are not entitled to do so in accordance with the provisions of article 2 of this Provincial Decree, in particular those that raise general doubts about the application or interpretation of tax regulations.

c) Those formulated within the period referred to in section 2 of article 85 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia, when they are formulated after a procedure, appeal or claim has been initiated by the Tax Administration with regard to the tax obligation in question.

d) Those whose defects have not been rectified after the requirement referred to in section 4 of article 3 of this Provincial Decree.

2. The decision to dismiss the consultation shall be taken by the Secretariat for Coordination and Technical Assistance and notified to the enquirer. No appeal or claim of any kind may be lodged against the decision.

SECTION 2
PRELIMINARY TAX PROPOSALS

Article 8. Those entitled to submit proposals.

1. Taxpayers are entitled to submit preliminary tax proposals in relation to the following operations, when their individual tax situation is directly affected:

a) Corporate restructuring operations, understood as such those defined for the purposes of the special Corporate Income Tax regime for mergers, demergers, contributions of assets and exchanges of securities, or similar, as well as the formation of tax groups.

b) Reorganisation operations of the assets of natural persons.

c) Operations involving other Tax Administrations or which have an international dimension.

d) Investment projects corresponding to natural persons carrying out business or professional activities or to entities, provided that the amount of the investments exceeds 450,000 euros.

e) Transactions that generate the right to the application of deductions or allowances in Personal Income Tax, Corporate Income Tax or Non-Resident Income Tax, when the amount of the deduction or allowance exceeds 250,000 euros.

f) Legal operations or transactions exceeding the sum of 600,000 euros.

2. Preliminary tax proposals may also be submitted in cases other than those established in the previous section, when expressly authorised by the Tax Administration at the request of the taxpayer, by means of a written document in which the description of the operation to be carried out and the reasons why it is a particularly important or complex operation are stated. The Secretariat for Coordination and Technical Assistance will decide on the authorisation, weighing up the concurrence of the special transcendence or complexity with regard to the structure and economic dimensions of the taxpayer and the transcendence that the proposed operation may have on the amount of their tax obligations, without the possibility of lodging any appeals or claims.

3. Those entitled to submit tax consultations may do so on their own behalf or through a representative, in which case it will be necessary at the time of submitting the corresponding application to accredit representation in accordance with the provisions of section 2 of article 45 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia.

Article 9. Submission of the proposal.

1. Preliminary tax proposals shall be submitted to the Tax Authorities before the taxable event occurs and, in the case of taxes with a tax period, before the end of the tax period in which the content of the proposal is to be applied.

2. Preliminary tax proposals shall be submitted in writing to the Secretariat for Coordination and Technical Assistance of the Directorate-General of the Treasury, accompanied by the following documents:

   a) The background and circumstances of the case, providing an understanding of the reasons for the operation and its consequences and outcome.

   b) The specific quantification of the impact on the tax liability of the operation in question or, where this is not sufficiently clear at the time of submission of the proposal, the criteria for establishing this impact.

   c) The tax items and tax periods affected by the operation in respect of which the preliminary tax proposal is submitted, as well as the impact of the operation on each of them.

   d) Other data, elements and documents that may contribute to the formation of the Tax Administration's judgement.

   e) In the event that the preliminary tax proposal or the ruling thereto is to be the subject of an exchange of information with other States or international or supranational entities by virtue of a mutual assistance instrument, this circumstance shall be expressly stated, without prejudice to the ex officio assessment by the Tax Administration competent to rule on the procedure, and the following information shall also be included:

      I) Identification of the corporate or tax group to which the entity submitting the preliminary tax proposal belongs, if applicable, including the tax identification numbers or equivalent codes, if applicable, of all non-resident entities concerned.

      II) Description of the business activity or transactions or series of transactions carried out or to be carried out. In any case, such description shall be made in full compliance with the regulations on commercial, industrial or professional secrecy and the public interest.

      III) States that may be affected by the transaction or operation subject to the proposal.

      IV) Persons resident in other States who may be affected by the ruling on the procedure.

      V) Other data required by the applicable mutual assistance regulations.

3. The document shall also state the name, surname(s), company name, tax domicile, tax identification number of the taxpayer and, where appropriate, of the person representing them, as well as the place, date and signature of the natural person submitting the proposal in their own name or in representation of the taxpayer.

   Likewise, if the proposal is submitted through a representative, the consultation document shall be accompanied by a justification of the representation.

4. If the preliminary tax proposal does not meet the requirements indicated in the above sections, the interested party shall be requested to rectify the deficiency or attach the

necessary documents within a period of ten days. If they fail to do so, their document shall be filed away without further processing.

Article 10. Processing of the proposal.

1. Once the preliminary tax proposal has been received, the Secretariat for Coordination and Technical Assistance will request, where appropriate, from the interested party the documentation deemed necessary to issue the corresponding ruling, including the technical or financial reports it deems necessary, and may request reports from other bodies of the Tax Administration or any other agencies it deems relevant to form the criterion applicable to the case in question.

2. The ruling proposal drawn up by the Secretariat for Coordination and Technical Assistance will be submitted to the Tax Doctrine Commission of the Provincial Treasury of Bizkaia, unless essentially similar cases have been resolved previously or the applicable interpretative criteria do not raise new issues.

Article 11. Ruling.

1. The Secretariat for Coordination and Technical Assistance will forward the proposed reply to the Directorate-General of the Treasury for its ruling.

2. The aforementioned ruling may agree, in a justified manner, with the effects regulated in article 90 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia, to approve or reject the proposal submitted by the taxpayer.

3. The ruling adopted by the Directorate-General of the Treasury will be notified to the enquirer without the lack of a reply within the period referred to in section 4 of Article 89 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia implying acceptance of the criteria and quantification expressed by the taxpayer in their proposal or determining binding effects for the Tax Administration.

   Once this period has elapsed without notification of the ruling, the Tax Administration is not exempted from expressly deciding on the proposal made, which it must do in any case.

   However, and until such time as the ruling is notified, if the taxpayer applies the criteria set forth in the preliminary tax proposal document, they will not be liable for any tax infringements that may arise from the application of the aforementioned criteria.

4. In the event that other Tax Administrations are involved, the provisions of section 3 of article 4 of this Provincial Decree shall apply.

Article 12. Dismissal of proposals.

1. The following preliminary tax proposals will be dismissed:

   a) Those formulated with respect to taxable events or tax obligations not included in article 1 of this Provincial Decree.

   b) Those formulated by persons who are not legitimised to do so in accordance with the provisions of article 8 of this Provincial Decree.

   c) Those whose defects have not been rectified after the requirement referred to in section 4 of article 9 of this Provincial Decree.

d) Those not submitted before the taxable event occurs and, in the case of taxes with a tax period, before the end of the tax period in which the content of the proposal is to be applied.

2. The decision to dismiss the consultation shall be taken by the Secretariat for Coordination and Technical Assistance and notified to the enquirer. No appeal or claim of any kind may be lodged against the decision.

CHAPTER II
ANTI-AVOIDANCE CLAUSE

Article 13. Collegiate body.

The competent body for issuing the ruling on the declaration of avoidance in the conduct of the taxpayer referred to in section 3 of article 163 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia shall be the Tax Doctrine Commission of the Provincial Treasury of Bizkaia.

Article 14. Procedure for the application of the anti-avoidance clause.

1. The procedure shall be initiated ex officio by agreement of the competent body depending on the tax application procedure in question, at the proposal of the official in charge of processing it, which shall be accompanied by a report containing at least the following information:

   a) The facts, acts or legal transactions carried out.

   b) The legal or economic effects produced.

   c) The justification of the concurrence in the facts, acts or transactions carried out of the circumstances referred to in section 1 of article 14 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia.

2. The agreement adopted together with the report and other documents of interest shall be notified to the taxpayer and other interested parties, if any, who shall have a common period of fifteen days in which to submit any allegations and documents they deem appropriate and to provide or propose the evidence they deem appropriate.

3. Once the allegations have been received and, where appropriate, the corresponding evidence has been taken, the file will be sent to the Secretariat for Coordination and Technical Assistance for subsequent submission to the Tax Doctrine Commission of the Provincial Treasury of Bizkaia, accompanied by a reasoned proposal for resolution and the settlement proposal that may result from the same.

4. Once the file has been received, the Tax Doctrine Commission of the Provincial Treasury of Bizkaia may request the competent tax application body to extend the report issued in relation to the aspects it considers necessary for the preparation of the ruling, in which case the file will be made available again to the interested parties so that, within a common period of fifteen days, they may present their allegations and provide the documents that are appropriate to their rights.

5. The ruling must be issued by the Tax Doctrine Commission within the period established in section 4 of article 163 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia, counting from the receipt of the initial file or, where appropriate, the extended file, declaring the applicability or non-applicability of the anti-avoidance clause, which must be communicated to the interested party and to the competent body so that the corresponding tax application procedure may continue to be processed.

ADDITIONAL PROVISIONS

One. Tax Doctrine Commission of the Provincial Treasury of Bizkaia.

The composition and operating rules of the Tax Doctrine Commission of the Provincial Treasury of Bizkaia shall be regulated by Provincial Order of the Provincial Councillor for Treasury and Finances.

Two. Amendment of the Regulations on the Organic Structure of the Department of Treasury and Finances, approved by Provincial Decree 38/2004, of 16 March.

One. Number 4 of article 41 of the Regulations on the Organic Structure of the Department of Treasury and Finances, approved by Provincial Decree 38/2004, of 16 March, is amended and shall be worded as follows:

> «4. The study, processing and drafting of proposals for replies or rulings in relation to written tax consultations and preliminary tax proposals submitted by taxpayers»

Two. Numbers 11 to 13 of article 41 of the Regulations on the Organic Structure of the Department of Treasury and Finances, approved by Provincial Decree 38/2004, of 16 March, are amended and shall be worded as follows:

> «11. The processing of files in which the application of the anti-avoidance clause regulated in article 14 of the General Provincial Regulation on Taxation of the Historical Territory of Bizkaia is proposed.
>
> 12. The design and management of the internal control actions on the operation of the other bodies dependent on the Department of Treasury and Finances in the exercise of their functions insofar as they refer to procedures for the application of taxes or the imposition of penalties, under the terms established in the Internal Control Regulations of the Provincial Treasury of Bizkaia.
>
> 13. Technical assistance to the Director General of the Treasury and the promotion of the coordination of actions between the Tax Management, Inspection and Collection Sub-Directorates, as well as any other functions entrusted to it by the Director General of the Treasury.»

Three. Qualified Preliminary Tax Proposals.

1. In the cases referred to in the third additional provision of the Corporate Income Tax Regulations, the Tax Authorities shall process a prior qualified preliminary tax proposal in accordance with the rules set forth in this additional provision.

2. The taxpayer who carries out the operations referred to in section 1 of the third additional provision of the Corporate Income Tax Regulations shall be entitled to submit the prior qualified preliminary tax proposal.

   In the case of taxpayers who pay Corporate Income Tax under the special tax consolidation regime, the parent entity is entitled to submit the prior qualified taxation proposal.

   For the purposes of the provisions of this section, the provisions of section 3 of article 8 of this Provincial Decree shall apply.

3. Qualified preliminary tax proposals shall be submitted within a period that ends three months after the end of the tax period for which they are to take effect.

   However, in the case referred to in section 5 of article 53 of the Provincial Tax Regulation, the deadline for submitting the qualified preliminary tax proposal shall be extended until the end of the period established for approving the annual accounts for the financial year against whose positive accounting result the Special Reserve for the promotion of entrepreneurship and the reinforcement of productive activity has been allocated.

4. The document through which the qualified preliminary tax proposal is submitted shall include the facts and be accompanied by the documentation required in each case by virtue of the third additional provision of the Corporate Income Tax Regulations, in addition to the information referred to in section 2 of article 9 of this Provincial Decree as far as they are relevant.

5. Qualified preliminary tax proposals which do not meet the requirements set forth in sections 2, 3 and 4 of this additional provision shall be dismissed without further action.

6. The rules set forth in section 1 of article 10 of this Provincial Decree shall apply to the processing of qualified preliminary tax proposals.

   The Tax Doctrine Service shall prepare a report to the Director General of the Treasury analysing the elements of fact and law that are relevant to the resolution of the qualified preliminary tax proposal, without this report constituting a proposal for a ruling.

7. The Director General of the Treasury shall decide on the approval or rejection of the qualified preliminary tax proposal submitted by the taxpayer, stating the reasons for the decision.

   If the period of three months has elapsed from the submission of the qualified preliminary tax proposal without an express decision having been made, the proposal shall be deemed to have been rejected.

8. The taxpayer may not apply in their self-assessment the precepts for which authorisation is required by means of the approval of a qualified preliminary tax proposal until they have received notification of approval of the aforementioned proposal.

9. Notwithstanding the provisions of article 128 of the Provincial Regulation on Corporate Income Tax and articles 48 and 49 of the Corporate Income Tax Regulations, when, on the date of expiry of the deadline for filing the self-assessment tax return, a qualified preliminary tax proposal submitted by the taxpayer for the purposes of the provisions of section 5 of article 53 of the Provincial Income Tax Regulation has not been ruled on, the taxpayer shall have a period of one month from the date of notification of the Ruling by the Director General of the Treasury approving their proposal to file a supplementary self-assessment of Corporate Income Tax for the purposes of exercising the option to apply the correction in the application of the result provided for in article 53 of the Provincial Regulation on Corporate Income Tax, in which case it shall be understood that they are exercising it within the voluntary tax return period for the purposes of the provisions of the aforementioned article 128 of the Provincial Regulation on Corporate Income Tax.

TRANSITIONAL PROVISIONS

One. Previously submitted written tax consultations.

1. The provisions of this Provincial Decree shall not apply to written tax consultations submitted prior to the entry into force of General Provincial Regulation on Taxation of the Historical Territory of Bizkaia 2/2005, of 10 March, which shall continue to be processed in accordance with the procedures in force at the time they were submitted.

2. Written tax consultations submitted after the entry into force of the aforementioned Provincial Regulation shall be governed by the provisions of this Provincial Decree, even when they refer to taxable events or tax obligations accrued prior to that date.

Two. Fraud proceedings.

The provisions of the regulations implementing article 24 of General Provincial Regulation on Taxation of the Historical Territory of Bizkaia 3/1986, of 26 March shall continue to apply to acts or transactions carried out prior to the entry into force of General Provincial Regulation on Taxation of the Historical Territory of Bizkaia 2/2005, of 10 March, regardless of the date on which the procedure for the application of the taxes in which this circumstance is found to exist.

REPEALING PROVISION

Sole Provision. Regulatory repeal.

On the entry into force of this Provincial Decree, any provisions of equal or lower rank that oppose or contradict what is established herein shall be repealed, and in particular, Provincial Decree 74/1997, of 13 May, establishing the procedure for the declaration of tax fraud.

FINAL PROVISIONS

One. Regulatory empowerment.

The Provincial Councillor for Treasury and Finances is authorised to issue the regulations that may be necessary for the development and application of this Provincial Decree.

Two. Entry into force.

This Provincial Decree shall enter into force on 1 July 2005.

Bilbao, 21 June 2005.

Provincial Councillor for Treasury and Finances,

JOSE MARIA IRUARRIZAGA ARTARAZ

General Deputy,

JOSE LUIS BILBAO EGUREN