

Early wake-up call for tax form D-135

By Garland M. Baker

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This is an early wake-up call for all Ticos, expats, and anyone else with an inactive Costa Rican company. The equity tax form D-135 is due March 15. "Equity," is a fancy name for "net capital" or "net assets."

Most people who have heard about the D-135 think it is no big deal, and an easy file. It is not. Everyone filing the form will need to put some thought into what goes into the information presented. The tax department is using it to catch tax cheaters.

Here is some background:

- In the past, no one with an inactive company had to file a tax return. This changed with Law 9635 (legislation to strengthen public finances, called in Spanish the *plan fiscal*), which passed into law in 2018 and went into effect July 1, 2019.
- That law modified Article 2 of the income tax Law 7092 to read that all tax contributors be defined as, ". . . all legally constituted entities, independent of the fact they be active or inactive."
- Law 9635 also changed the fiscal periods to file tax returns to a calendar year with returns due March 15, starting in 2021.
- Tax regulation DGT-R-075-2019 changed the identification number of inactive companies to 960113, and mandated the D-135 as the form



to use to file a return. The regulation named it the *Declaración Patrimonial para Personas Jurídicas Inactivas*, which translates into English as the "declaration of equity for inactive tax entities."

People question, "why do I need to file a tax return, if I do not make any income. My company is inactive?" The answer is: the D-135 is not an income tax return, it is an informational return about a company's equity.

As the saying goes, the devil is in the details, and that is the crux of this matter. The devil is the tax department, and officials are looking for assets acquired with money that was not reported for tax purposes.

Remember, the RTBF everyone had to file last year? To refresh everyone's memory it is short for *Registro de Transparencia y Beneficiarios Finales*. The phrase translates into English as transparency and final beneficiaries register. It refers to the form that beneficial owners of legal entities, like a *sociedad anónima*,

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sociedad de responsabilidad limitada, *sociedad civil*, and others, had to file with the *Central Directo* (Direct Central) of the *Banco Central* (Central Bank).

Cross-referencing information from the D-135 with the data provided on the RTBF gives the tax department exactly what workers need to find tax dodgers.

Here is an example of what they are looking for:

- Bob and Carol came to Costa Rica years ago and bought a big piece of property. They put that asset in an inactive company. It originally cost \$50,000. They brought the money from their home country. The transaction would have made the book value of the company \$50,000 at the time.
- Over the years, they sold five lots at \$20,000 each for a profit of \$100,000, and put the money in the bank in certificates of deposits, and kept one big lot for themselves estimated to be worth their initial investment. This would make the inactive company now worth \$150,000.
- The tax department would question why no tax was ever paid on the \$100,000 in the inactive entity.
- Bob and Carol's argument would be that capital gains tax in Costa Rica did not exist until 2019 with the passage of Law 9635, and they do not owe tax. The tax department would argue selling five lots was a business and would want 30% tax of the increase in equity.

There it is: The reason for the D-135: Used as a cross-reference to the RTBF. It is a game

changer for Hacienda. Officials are looking for income that was accumulated on the equity line of a balance sheet.

All these numbers may not make sense to most people. For those with questions, they should seek out an accounting professional. Certified public accountant Kevin Chavarria said in a call that even he is a bit confused by all the information on social media over the past couple of weeks about the D-135. "Some people have distorted the facts. People usually leave things to the last minute, and now they are worried about what they need to put on the form.

A.M. Costa Rica and this writer are dedicated to providing the most accurate information regarding the filing of tax form D-135. A piece on Monday, Dec. 7, will analyze some pitfalls, focusing especially on how the D-135 will impact capital gains taxes in the future.

As a reminder, the Law 9416 RTBF form will be due again by the last day of April 2021. If the information for a company has not changed, refiling the document will be straightforward — at least the Central Bank promises it will be. Old information from the last filing will be copied to the new form, and if there is nothing to modify, it will be as easy as clicking "submit."

Editor's note: Garland M. Baker solves problems for expats in Costa Rica. He is a 48-year resident and naturalized citizen. Reach him at info@crexpertise.net. Baker has undertaken the research leading to his articles with A.M. Costa Rica. Find the collection at crexpertise.net. A free reprint is available at the end of each piece. Copyright 2020. Use without permission prohibited.

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