

**NEW PENALTY REGIME FOR NOT FILING ANNUAL ACCOUNTS
WITH THE COMMERCIAL REGISTER**

On 30 January 2021, *Royal Decree 2/2021, of January 12th*, which approves the Regulations implementing Law 22/2015 of 20 July on Account Auditing (hereinafter RD 2/2021) was published in the Official State Gazette (BOE). The purpose of this Royal Decree is to give new impetus to **the penalty regime for failure to file the annual accounts with the Companies Registry within the established deadline.**

Article 279 of the Capital Companies Act (hereinafter, LSC) establishes that **company directors are obliged to file and deposit the annual accounts with the Companies Register of their domicile within one month of their approval.** Failure to comply with this obligation by the Board of Directors will result in the **closure of the register**, i.e. no document referring to the company may be registered in the Commercial Register as long as the non-compliance persists.

Furthermore, according to the provisions of art. 283 of the LSC, this failure to deposit the annual accounts may lead to the company being **fined between 1,200 and 60,000 euros** by the Spanish Accounting and Auditing Institute (ICAC), following the investigation of the disciplinary proceedings. The fine could also be increased to **300,000 euros when the company or group of companies had an annual turnover of more than 6,000,000 euros.**

However, in practice, the aforementioned fines were not usually applied, as they were only limited to the closure of the register.

The RD 2/2021 promotes and complements the penalty regime, introducing the following new features:

- The **commercial registrars of the domicile of the obligor** may be entrusted with the **management and proposal of a decision** on disciplinary proceedings for failure to comply with the obligation to deposit accounts.
- It is established that the period for resolving and notifying the decision in the sanctioning procedure will be **six months** starting from the agreement to initiate the procedure.
- In addition to the limits on the amounts of the aforementioned fines, new criteria are introduced to determine the amount of the sanction:
 - a) The penalty will be **0.5 per thousand of the total amount of the company's assets**, plus **0.5 per thousand of the sales figure** included in the last tax return filed with the tax authorities.



- b) If the previous tax return is not submitted, the penalty will be **2% of the company's share capital** according to the data recorded in the Commercial Register.
- c) If the tax return is submitted, but the result of applying the aforementioned percentages to the sum of the asset and sales figure is more than 2% of the share capital, the penalty will be quantified at the latter **reduced by 10%**.

After the entry into force of RD 2/2021, the penalty regime would be as follows:

Penalty regime for failure to deposit annual accounts	
Registration closure occurs	
Annual turnover	Fine per year
<6.000.000€	From 1.200€ to 60.000€
>6.000.000€	Up to 300.000€
Criteria for determining the penalty	Amount of the penalty
If the last tax return filed with the tax authorities is provided:	0.5 per thousand of assets+0.5 per thousand of sales
If the last declaration is not provided:	2% of share capital
If the last tax return is provided, but the result of applying the above percentages to assets and sales is more than 2%:	2% of share capital reduced by 10%

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