Instances of Electronic Tax Administration

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Introduction

In the third module of the *Taxation and the Internet* course, after analysing the general aspects of electronic tax administration in the second module, we now look at the main instances of this electronic administration in relation to tax matters.

The first two sections focus on the main taxpayer information and assistance services conducted online. Regarding information services, we examine the legislative texts and administrative doctrine, publicity campaigns, tax enquiries and requests for tax information, the Informa program and an overview of real estate valuation. With respect to taxpayer assistance services, these include the preparation of tax returns by the Tax Administration, generation of draft tax returns and support software for completing tax returns.

In the third section, we look at online tax returns, which is one of the key taxpayer service activities carried out over the internet. This includes an analysis of both completing and presenting tax returns online and the procedure for online presentation and payment.

The fourth section deals with another important taxpayer assistance operation that is conducted online, electronic tax notifications. We examine the legislative framework with respect to electronic notifications, general requirements for the use of electronic notifications, means of electronic notification, executing electronic notifications, and compulsory electronic notifications.

Electronic invoicing, another of the main instances of electronic tax administration, is analysed in the fifth section. We analyse both the regulation of electronic invoicing in the European Union and relevant provisions in the Spanish legal system.

The sixth section examines the Immediate Supply of Information, which deals with the new VAT management system. This system involves keeping the registration books through the AEAT electronic headquarters and the almost immediate supply of invoice records.

Lastly, the seventh section focuses on the online submission of appeals in relation to tax matters. In this area, we look at the online procedures for filing petitions for reversal and for lodging financial administrative claims.

Objectives

The main learning objectives while studying this topic are as follows:

1. To identify the main actions performed by the Tax Administration online to keep taxpayers informed.

2. To gain insight into the key taxpayer assistance services that the Tax Administration must provide online.

3. To learn about the system that applies in the case of online tax returns, both in terms of its key elements and the procedure for online presentation and payment.

4. To know the regulations related to electronic tax notifications, particularly in relation to the general the requirements for executing them.

5. To understand the regulation of electronic invoicing in the European Union and the Spanish legal system, as well as the Immediate Supply of Information.

6. To learn the regulations about lodging appeals online in relation to tax matters.

1. Tax information operations over the internet

In view of the high degree of difficulty involved in fulfilling the substantive and formal obligations the legislation imposes on taxpayers, which, moreover, change excessively and are difficult to interpret, it is crucial that the Tax Administration informs taxpayers with respect to their rights and duties, and helps them to exercise and fulfil these rights and duties accordingly.

Recommended reading

A. M. Delgado García; R. Oliver Cuello (2004). *El deber de información y asistencia a los obligados tributarios*. Valencia: Tirant lo Blanch.

This situation may be challenging for taxpayers in general, for whom the indirect fiscal costs involved in getting professional advice on these matters may be excessive, while at the same time, these matters could turn out to be quite simple in the majority of cases. For this reason, the General Tax Act (LGT) art. 85 (along the same lines as RGGIT art. 62), establishes **the Administration's duty to inform and assist taxpayers** with respect to fulfilling their obligations and exercising their rights. The different information and assistance operations are regulated in LGT arts. 86 to 91, precepts that are developed in RGGIT arts. 63 to 78.

As a consequence, the Administration has an obligation to help taxpayers in this respect, a process in which technological resources have proven to be a highly effective tool. However, **the technological support and the use of electronic documents** involved in taxpayer assistance should not be considered to be designed only for taxpayers who have little experience in tax matters, but also for taxpayers who have greater economic and material wealth, who are subject to a diverse range of obligations.

Technological support in informative and assistance operations

In short, the objective of technological support for taxpayer assistance and information can be summarized in the following points: firstly, to provide taxpayers with clear information regarding the objective and method of fulfilling their tax obligations; secondly, enabling them also to perform the procedures required with the least inconvenience; and thirdly, to facilitate the process of tax return presentation.

Moreover, in most cases, this technological support for taxpayer assistance involves significant benefits for the Tax Administration: firstly, in terms of timely and exact fulfilment of obligations, as a sound knowledge of tax regulations contributes towards eliminating errors that taxpayers may otherwise make; secondly, with respect to receiving the fiscal information on the tax returns in a far more streamlined and effective way; and finally, in terms of reducing the subsequent verification tasks involved.

There follows an analysis of the main online information operations conducted by the **Spanish Tax Agency (AEAT)**, although the comments could be applied to any tax administration.

1.1. Legislative texts and administrative doctrine

In accordance with the terms of the LGT[1], during the first quarter of the year and by any means, the Treasury Department will publish the **updated texts** of state laws and royal decrees that have been subject to legislative amendment, as well as the list of the approved regulations. Moreover, it must regularly publish the response to **tax enquiries** and financial administrative **rulings** of the greatest significance and consequence.

(1)Art. 86 LGT.

The aim of these activities is to facilitate access not only in terms of tax legislation that is characterized by its complexity, constant changes, great length and, on occasions, dispersal, but also the administrative criteria that govern its interpretation in view of their practical importance.

1) Publication of updated legislative texts

To comply with the principle of legal certainty, stipulated in art. 9.3 of the Spanish Constitution, **it is important that taxpayers are aware of the tax regulations** in terms of all aspects that directly affect their individual tax situation, particularly in view of the degree of complexity of a tax system subject to constant change and the shortcomings of legal process on tax matters.

To achieve this, it is not enough simply to publicize the regulations in the State Gazette corresponding to the date on which the amendment takes effect, in compliance with the principle of formal publication of the regulations, but rather the current version of the tax legislation should be published regularly. With this in mind, LGT art. 86.1 requires the publication of the updated texts of state laws and royal decrees that have been subject to legislative amendment, as well as a list of the various regulations that have been approved. In accordance with the provisions of the General Tax Administration and Inspection Code (RGGIT)[2], such publications will be produced by the Tax Administration itself.

(2)Art. 63.1 RGGIT.

As a consequence, the **purpose** of the publications of tax legislation, of both the regulations approved and the current version of the amended legislative texts, is to respond to the need to facilitate taxpayers' understanding and identification of the current tax law, in order to preserve the principles of legal certainty and assurance, through processes of consolidation and collation of the amendments made in relation to tax matters, respectively.

The **period** within which the Treasury Department has to publish it is the first quarter of each year, in accordance with LGT art. 86.1. Establishing a time limit strengthens the taxpayers' legal certainty as it lets them know when, at the latest, the updated legislation will be published, thereby facilitating the decision-making process. However, this time limit appears to refer to the agreement and approval of the publication, not the publication itself, which may take place later, and in fact this is what happens in practice. The ideal situation would be for the publication to take place within the first quarter, preferably towards the beginning.

With respect to the **method** of its publication, the aforementioned precept stipulates that any medium may be used: internet, paper, CD-ROM, etc. In practice, the agreement and order to proceed with the publication are adopted by the General Technical Secretary of the Treasury Department and the agreement is published in the Treasury Department Gazette. Therefore, the dissemination is not as widespread as would be desirable.

Lastly, it is also stipulated, in line with the provisions of LPACAP art. 15 and LGT art. 34.1.d, that the state and regional administrations may establish any agreements that may be deemed necessary to regulate publications in the other **official languages** recognized in the Statutes of Autonomy.

2) Publication of responses to tax enquiries and financial administrative rulings

The LGT states that the Treasury Department must regularly publish the responses to **enquiries** and **financial administrative rulings** that are considered to be of the greatest significance and consequence[3].

(3)Art. 86.2 LGT.

Thus, it stipulates that responses to enquiries of the greatest significance and consequence must be published, in a publication that, once again, will be produced by the Tax Administration itself, in accordance with the provisions of the RGGIT[4].

(4)Art. 63.1 RGGIT.

The aim of this informative measure is to give taxpayers general access to, and knowledge of, the responses to the enquiries that should be publicized, in view of their significance and consequence.

The publication of enquiries and rulings

It should be noted that not all of the enquiries are published, but rather only those considered to be of the greatest significance and consequence. In fact, however, the website of the Treasury Department presents all of the responses issued by the General Tax Directorate and the General Directorate of Coordination of Regional Tax Authorities in the case of all tax enquiries since 1997, including both binding and non-binding responses, on the condition that they have not previously been published, in order to avoid repetition. As such, in practice, no selection is made in terms of the responses to be published.

Both the selection of the enquiries of the greatest significance and consequence and the means of publication, however, are exclusively the decision of the Treasury Department.

Meanwhile, it should be noted that not all of the rulings of the financial administrative courts are published, but rather only the rulings of the Central Financial Administrative Tribunal.

Moreover, it should be highlighted that the time limit for publication is not well defined, as the precept refers only to the requirement that the publication takes place 'regularly'. Neither does it stipulate the periodicity with which it should be conducted.

Lastly, it does not expressly state whether or not the publication should include the entire text of the enquiry or ruling. In any case, it is clear that, in the publication, the details that enable the people involved to be identified must be deleted, in relation to the provisions of LGT art. 87.2.

1.2. Publicity campaigns

Publicity campaigns for informative or merely awareness-raising purposes shall be organized by the Tax Administration itself and have a generalized nature. In other words, they are aimed at the whole collective of taxpayers or a particular section of them.

These campaigns can be run in two ways. Firstly, there are campaigns on the various media, such as the press, radio and television.

Secondly, there are campaigns based on sending personalized letters on a collective basis, information leaflets containing specific facts about the taxes for which taxpayers are liable, guides for completing tax returns and practical manuals for certain taxes (personal income tax, corporate tax or VAT).

1) Publicity campaigns

Using this method of **publicity campaigns**, general information is disseminated on a regular or occasional basis through various mass communication media, such as radio, press and television.

These campaigns disseminate purely informative content with respect to the start of tax return reporting periods (for instance, the annual campaign for personal income tax), new developments in tax matters and the calendar for fulfilling tax obligations (taxpayer calendar).

In addition, the AEAT makes use of these instruments to raise awareness with respect to the payment of taxes (using the resources obtained through taxes and achievements in the fight against fraud) and to promote the use of taxpayer information and assistance services (Renta Web, Immediate Supply of Information).

2) Information leaflets

The aim of **information leaflets** is to provide taxpayers with the greatest possible amount of information with respect to the taxes that they may be subject to. They are available in digital format at the websites of the tax administrations.

In this respect, it should be noted that, in some cases these leaflets contain general information and are sent to a broad collective of taxpayers (such as in the case of the taxpayer calendar), while, in other cases they contain more specific information, so are only sent to taxpayers who may be directly affected.

Moreover, such leaflets are available to all taxpayers via the website of the AEAT (in digital version), as well as in the offices of the AEAT administrations and delegations open to the public (in paper format).

In order to fulfil their objective effectively, information leaflets must uphold the following principles: formal clarity and legal accuracy of the content.

3) Practical guides and manuals and explanatory videos

The AEAT publishes **guides** to help taxpayers complete their tax returns (for instance, the guide for personal income tax, corporate tax and VAT), in which taxpayers are given instructions for completing the corresponding declarations.

In addition, **practical manuals** are also published (personal income tax or corporate tax) and practical guides (VAT), which are more extensive and in-depth than the guides mentioned above. These are designed for taxpayers that require a greater degree of information in order to complete their tax return, with numerous examples.

Both the guides and the practical manuals are available to all taxpayers in digital version via the website of the Tax Agency.

The **explanatory videos** prepared by the AEAT have the same informative purpose. In a simple and didactic way, tutorials on various tax areas are offered, such as presentation and payment of the most important tax returns and different procedures that can be carried out through the electronic headquarters. All videos are available on the AEAT website, as well as on the Tax Agency channel on YouTube.

1.3. Tax enquiries and requests for tax information

Tax enquiries are an issue that falls within the scope of the duty to inform and assist taxpayers, and this matter is regulated in LGT arts. 88 and 89 and in RGGIT arts. 65 to 68.

Changes in legislation

In the former General Tax Act of 1963, tax enquiries were regulated in LGT art. 107, a precept that was amended by legislators on two occasions, in the partial reforms of 1985 and 1995.

Taxpayers can make **enquiries** to the Tax Administration with respect to the tax system, classification or status that applies to them in each case.

The objective of tax enquiries

For instance, to find out what VAT rate applies to a certain transaction. Or whether a Corporate Tax exemption applies to a particular company.

Therefore, the enquiry basically focuses on material aspects, but may also extend to formal aspects. Meanwhile, the scope of enquiries can also cover legal matters such of points of fact, in which case these can often involve legal evaluations.

In other words, the object of the enquiry does not just refer to the interpretation of a tax regulation, but rather it also deals with the factual circumstances in each individual case, on which the competent body must make a ruling in order to respond to the enquiry. However, the enquiry cannot be posed in completely abstract or theoretical terms, but rather it must refer to a specific case. In contrast, an enquiry can be made regarding future events. Lastly, the fact that an enquiry about a certain matter has been made does not prevent another being posed on the same issue.

In accordance with LGT art. 88.2, written tax enquiries are to be made before the established time limit for exercising such rights, for the presentation of tax returns or self-assessments, or for fulfilment of other tax obligations.

With respect to the **method** of enquiry, they must be made in writing, duly documenting the background facts and the doubts raised, with the minimal content stipulated in RGGIT art. 66.1. It is the General Tax Directorate's responsibility to respond to them. RGGIT art. 66.5 allows the presentation of enquiries. However, the presentation must necessarily be made by said means when the taxpayers have the obligation to communicate with the Administration by electronic means.

If the request does not meet requirements in terms of content and, if applicable, accreditation of representation, the taxpayer will be asked to rectify the issue within 10 days from the day following the notification of the demand for rectification and, in the event that this demand if not satisfied, the enquiry is considered to be terminated and is then filed (RGGIT art. 66.7).

The maximum **time limit** for responding to tax enquiries is six months[5] and, while the procedure is processed, the taxpayer may be required to provide any documentation or information considered necessary in order to provide a response (RGGIT art. 67.1).

(5)LGT art. 88.6

Difference from verbal enquiries

Written tax enquiries involve a different legal procedure to enquiries made by telephone or to Tax Agency employees in the delegations and administrations. Fundamentally, this difference relates to the object, the time limit and binding effect.

They contain an **opinion of the Administration**; and, as such, there can be no direct appeal against them, without prejudice to the option of challenging the administrative acts cited in accordance with the response[6]. When the response to the tax enquiry involves a change of administrative criteria, the Tax Administration must explain the reason for such a change, in accordance with the terms of RGGIT art. 68.1.

(6)Art. 89.4 LGT.

Perhaps the most characteristic feature of written tax enquiries is the **binding effect** of the responses. The binding effect means that the Administration has an obligation to modify its activities in line with the terms indicated in its own response to the enquiry.

The binding effect

Specifically, the administrative bodies that are legally bound by the response are those responsible for the application of the taxes (they are not therefore, binding, for financial and administrative tribunals). Meanwhile, it should be highlighted that the binding effect of the response applies to the Administration. Therefore, the enquirer is not under any obligation to follow the guidelines indicated in the response.

If the enquirer deviates from the criteria indicated in a response to a binding enquiry, this does not imply the automatic application of tax penalties. Lastly, it should be noted that the effects of enquiries, whether or not they are binding, take force from the time of the response, and neither the enquiry nor the response affect the time limits stipulated in the regulations for fulfilling tax obligations.

The binding effect extends to all other taxpayers, as the institutions of the Tax Administration in charge of applying taxes must apply the criteria contained in written tax enquiries to any taxpayer, on the condition that the facts and circumstances in the case of this taxpayer are identical to those included in the response to the enquiry[7].

(7)Art. 89.1 LGT.

Meanwhile, the RGGIT regulates[8]**requests for tax information**, an activity that is not covered in the LGT. These are an actions requested by the taxpayer which can be communicated by any means (verbally or in writing).

(8)Art. 63.2 RGGIT.

When it is made **in writing**, this request must include the name and surnames or company name or full denomination and the fiscal identification number of the taxpayer, as well as the tax right or obligation that applies to the taxpayer with regard to which they are requesting the information.

The RGGIT sets out[9] the **procedure for processing** this type of written request. Firstly, it stipulates that, in cases in which the requests may require a response based on the documentation or the background facts in the competent body, the response will be made within three months, with reference to

(9)Art. 64 RGGIT.

the legislation applicable to the content of the request. Secondly, it states that, if the request is received by a Tax Administration that, in view of the content, is not the competent body in this case, it shall be forwarded to the competent Administration, with the interested party being notified to this effect.

With respect to the **content** of the response to the enquiry for information (including those related to withholdings, account deposits or implications), the RGGIT stipulates[10] that it must consist of the existing administrative criteria for the application of the tax legislation. If the response is not made within three months, this does not imply acceptance of the criteria expressed in the request.

[10] Art. 63.3 RGGIT.

Lastly, in terms of the **effects**, it should be noted that, firstly, no appeal can be made against the response and, secondly, if the taxpayer's conduct complies with the content of the written response to the request for information, the taxpayer is exempt from tax offence liability as indicated in LGT art. 179.2.d, in accordance with the provisions of RGGIT art. 63.3.

1.4. The Informa program

The Informa program gives taxpayers access to **basic written information** related to the application of the tax system both in terms of the different tax concepts and the procedures involved in tax administration.

It is a **database of enquiries and responses**, organized in terms of the different taxes, gathering all of the questions posed to the AEAT by the taxpayers and the corresponding responses. As such, it has become an efficient tool for disseminating the criteria held by the AEAT in this area. Meanwhile, if taxpayers cannot find the response to a particular question, they can forward the question to the server centre so that an immediate response is generated, which is then incorporated into the database.

This database serves several **purposes**. Firstly, it enables the AEAT to respond quickly and correctly to the questions posed by the public. Meanwhile, it guarantees the uniformity and standardization of criteria throughout the various tax delegations and administrations, promoting constant communication between the state and regional services of the AEAT. In addition, it enables responses to requests for information from staff that do not have a high level of tax training. Moreover, it facilitates the dissemination of administrative criteria. Finally, it enables taxpayers to ascertain the administrative criteria in relation to a particular topic.

The Informa program as a tool

Originally, this program was designed as a support service for the public assistance services of the AEAT. However, it has proven to be a valuable work tool for the rest of the

bodies within the Agency and access has progressively been given to various bodies outside of the AEAT (such as associations of tax administrators and consultants, financial institutions, universities and other public entities) and, eventually, to the general public.

In this respect, the database can be consulted in two ways: either directly in the administrations and delegations of the AEAT, or via the internet. Moreover, access has been given to various associations of tax administrators and consultants, and financial institutions.

However, despite the immediate nature and precision of the response, it should be noted that it simply covers basic tax information. Therefore, this database may not be able to provide a response to more specific and complex tax questions, and enquirers may have to resort to other tax information tools, such as written tax enquiries, for instance.

1.5. Information related to real estate valuation

In accordance with the LGT[11], taxpayers have the right to be informed of the **values of the real estate assets** that are going to be subject to acquisition or conveyance.

(11)Art. 34.n LGT.

This informative action is mentioned in LGT art. 85.2.d when it refers to "action prior to valuation" and is specified in greater detail in art. 90 of the same Act, which, in Section 1, stipulates that the information shall be provided, at the request of the interested party, by the Administration responsible for administering the corresponding taxes and in relation to the value of the real estate assets located in its territory under its jurisdictions that are going to be the object of acquisition or conveyance.

The **purpose** of this regulation is to equip taxpayers with instruments that enable them to ascertain the value that the Administration assigns to an asset in advance, thereby reinforcing the degree of legal certainty. This is a controversial issue in the field of taxation that generates a great deal of conflict in relation to the verification of values.

The **taxpayer entitled** to request such a valuation is the interested party, in accordance with LGT art. 90.1, a broad term that includes anybody who may in some way be affected by the resulting valuation, such as the potential buyers or sellers, for instance. However, the RGGIT places restrictions on this matter by referring to taxable parties[12].

(12)Art. 69.1 RGGIT.

In order to provide the information requested, no particular **time limit** is expressly stipulated in LGT art. 90, although RGGIT art. 69.6 indicates a time limit of three months. On this matter, the LGT states that a lack of response does not imply acceptance of the value which, if applicable, may have been included in the request of the interested party[13].

(13)Art. 90.3 LGT.

Effects of the information provided

As a new development, LGT art. 90.2 incorporates the binding effect for the Administration, in terms of the information provided, for a period of three months from the date of notification, on the condition that two requirements are met: that the request was made prior to the end of the period established for presenting the corresponding self-assessment or tax return; and that the information presented to the Administration is true and

sufficient. As well as these requirements, RGGIT art. 69.1, *in fine*, adds that information must have been provided by the Tax Administration that administers the tax applied to the acquisition or conveyance – information relating to real estate assets located within the territory under their jurisdiction. In view of the fact that this information does not have any binding effects on the interested party, they may or may not accept the value of which the Administration has notified them.

Meanwhile, by virtue of the same precept, the information provided under these terms by the Tax Administration does not prevent subsequent administrative verification of the declared points of fact and circumstances, with the exception of the performance of valuations. However, the taxpayer is exempt from tax offence liability if they follow the criteria stipulated by the Tax Administration.

Lastly, it should be noted that, in accordance with LGT art. 90.3, no appeal can be made against the information provided by the Administration. In contrast, appeals may be lodged against the ruling that is subsequently made in relation to this information.

1.6. Other information provided online

1) Information on the processing status of tax refunds

It is possible to consult the processing status of refunds for certain taxes, such as personal income tax, corporate tax and VAT. There are two methods of doing so: online or via the voice recognition units. As a requirement for accessing this information, a series of data must be provided by the taxpayer, such as their Fiscal Identification Number and information related to the tax return or self-assessment submitted.

2) Land registry information

As a result of the approval of the Resolution of 28 April 2003 of the General Land Registry Directorate, which approves the software programs and applications for making enquiries regarding land registry information and for obtaining electronic land registry certificates, the following information services are regulated: the free enquiry service for unprotected land registry information; the enquiry service for registered owners with respect to the information on their ownership registration; the enquiry service for public administrations and institutions, with regard to their areas of competence; and the enquiry service for notaries and property registrars.

3) Binding tariff information

At the request of the interested party, importer or exporter, customs authorities may issue a document containing the classification of goods, which is valid for any customs authority in the European Community, in accordance with the terms stipulated in arts. 33 and 34 of Regulation (EU) No 952/2013 of the European Parliament and of the Council, of 9 October 2013, which lays down the Union Customs Code.

Legal system of binding tariff information

A request for binding information must be made in writing and submitted to the customs authority. It is therefore an information service provided at the request of the taxpayer.

This information shall be binding on the customs authorities against the holder of the enquiry, with respect to the tariff classification or determination of the origin of the goods (art. 20.2 of the Modernized Customs Code), only in respect of goods for which customs formalities are completed after the date on which the decision takes effect. Meanwhile, the same precept stipulates that the rulings shall be binding on the holder of the decision against the customs authorities, only with effect from the date on which they receive, or are deemed to have received, notification of the decision.

In order to apply information of this type within the context of a particular customs procedure, the holder of the decision must be able to prove, in the case of binding tariff information, that the goods declared correspond in every respect to those described in the decision; and, in the case of binding origin information, that the goods in question and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the decision.

However, the binding effect of these rulings shall only be valid for a period of three years from the date on which the decision takes effect.

4) Other information provided by the AEAT online

Information may be requested in relation to the register of EU intrastate VAT operators either directly on the website of the AEAT or by enquiring at the offices of the delegations and administrations of the AEAT. Moreover, specialized **customs** information can be obtained online: the applicable TARIC integrated tariff, real-time information on a personal basis with respect to guarantees lodged with Customs and the available balance, air waybills, declarations submitted using the EDI system, outstanding settlements and the EDI-Compass system.

Meanwhile, specialized information can also be obtained for taxpayers who have to submit the Intrastat declaration, either at the Intrastat offices, via the free telephone service or online. In addition, statistical information on foreign trade is available online or via the free telephone service. Lastly, specialized information can also be accessed online for **large companies** in the corresponding regional departments of the AEAT's Central Administration Department of Large Companies or via the telephone service.

Furthermore, information can also be obtained online about **calls for tenders and auctions** organized by the AEAT in order to contract certain goods, and about staff selection processes.

It is also possible to consult **notifications** that have already been made online. As such, this does not refer to notifications made by online means, but rather notifications made by traditional means that can now be consulted on the internet. The information that the Tax Agency provides relates to the subject of the notification, the certificate number, date of issue and date of notification, with the option of viewing the image of the text and the proof of receipt, which requires a user certificate.

The AEAT's **virtual assistant** is also included among the information provided. The assistant, which can be accessed from the electronic headquarters, is an online support service that uses a chat to attend to taxpayers. Thus, the Tax

(14) LGT art. 87

Agency informs taxpayers of the existing administrative criteria for the application of tax regulations, facilitating, where appropriate, the consultation of such criteria[14].

Another key information provided is the **publication of comprehensive lists of debtors to the Treasury**, in accordance with the provisions of the LGT regarding the publicity of situations of relevant breach of tax obligations[15]. Indeed, such publication for debts or tax penalties is established when two circumstances are present:

(15)LGT art. 5 bis

- that the total amount of outstanding debts and penalties exceeds EUR 1,000,000 and
- that when said debts or penalties have not been paid by the end of the period for voluntary payment.

Lastly, it is also possible to access other **institutional information**, such as the structure of the AEAT, the locations of offices, times open to the public, AEAT reports, etc.

In this respect, it is worth highlighting the "open data" initiative by the AEAT, which seeks to **reuse information** contained in documents prepared or guarded by public sector administrations and organizations, by natural or legal persons or legal, for commercial or non-commercial purposes.

It must be taken into account that the Tax Agency has a large volume of reserved information that has not been declared and that, because of its impact and value, might be of top interest for citizens and businesses. This information, which is fundamentally statistical and referring to both the tax and customs fields, has been posted on the AEAT website for quite some time already. It involves allowing online access to the data catalogue of the Tax Agency, which includes data sets generated by the agency and that are reusable according to the general conditions of reuse.

Reuse of information

The regulations governing the reuse of information are, in essence, Directive 2003/98/EC, of 17 November 2003 on reuse of public sector information; Law 37/2007, of 16 November on reuse of public sector information; and RD 1495/2011, of 24 October 24, which further develops Law 37/2007, of 16 November on reuse of public sector information for the state-owned public sector.

As for the formats available for reuse, the AEAT website indicates that reuse is closely linked to eGovernment and the information society, and that therefore the best format for the provision of documents is the electronic one.

Regarding the conditions for the reuse of information, said information will be subject to various general conditions that ensure that its content is not altered or distorted. In this regard, the following general conditions for the reuse of documents apply:

- Distorting the meaning of the information is forbidden.
- The source of the documents subject to reuse should be cited, including the administrative body, agency or entity of the state-owned public sector in question.

- The date of the last update of the documents subject to reuse should be mentioned, provided that it was included in the original document.

- It cannot be indicated or hinted that the owner of the information being reused participates, sponsors or supports such reuse.

- Where appropriate, metadata on the date of update and relevant conditions for reuse in the document made available for reuse should be preserved and not altered or deleted.

2. Taxpayer assistance online

Taxpayer assistance, in accordance with the RGGIT[16], art. 77.1, covers the set of actions that the Tax Administration makes available to taxpayers in order to make it easier for them to exercise their rights and fulfil their obligations. These actions performed within the framework of taxpayer assistance include filling out tax returns, self-assessment and notification of data, as well as filling out draft tax returns.

(16)Art. 77.1 RGGIT.

Recommended reading

I. Rovira Ferrer (2011). *Los deberes de información y asistencia de la Administración tributaria en la sociedad de la información*. Barcelona: Bosch.

Therefore, the assistance services provided by the Tax Administration can be defined as the actions that **help taxpayers to fulfil their formal tax obligations** or to exercise their rights, within the framework of promoting voluntary fulfilment of tax obligations.

Objective of taxpayer assistance services

Through the provision of taxpayer assistance services, the Administration does not limit itself simply to providing certain information, but rather it undertakes administrative taxpayer support activities which, for the most part, focus on determining tax liability and completing the corresponding tax return by giving taxpayers access to technical, material and human resources. However, on occasions, the administrative support simply consists of providing online channels for taxpayers to complete a certain task that is not directly related to quantifying tax liability (for instance, the option of presenting financial administrative claims and appeals online).

Assistance for fulfilling tax obligations, according to the provisions of the RGGIT[17], may also be provided by **online means**. In each case, based on the resources available and the state of the applicable technology, the Tax Administration shall determine the scope of this assistance and the method and requirements with respect to its provision, as well as the circumstances in which this online assistance is automated.

(17)Art. 78.2 RGGIT.

The use of such means must be made available to the largest possible number of taxpayers. To this end, the support programs and services offered online, as applicable, are also offered by other means in the case of taxpayers who do not have access to the means indicated in this article, on the condition that this is possible in view of the technical means available[18].

(18)Art. 78.3 RGGIT.

2.1. Tax returns completed by the Administration

The RGGIT stipulates[19] that, when the assistance consists of **preparing tax returns**, self-assessments and communications of information at the request of the taxpayer, the actions of the Tax Administration shall consist of transcribing the data provided by the applicant and performing the corresponding calculations. On completion of the form, it is submitted for revision and the verification of the correct transcription of the information, and signed by the taxpayer, if considered necessary.

(19)Art. 77.2 RGGIT.

It should also be highlighted that, in accordance with the provisions of the RGGIT[20], the data, amounts and ratings contained in the tax returns, self-assessments and communications of information that have been created by the Administration are **not binding for the Administration** in terms of any verification and investigation activities that may be conducted subsequently.

(20)Art. 77.4 RGGIT.

One of the main taxpayer assistance services provided by the AEAT at a state level is the completion of tax returns using support software. In addition, at the regional level, there are many examples of this type of support and, to a lesser extent, it is provided by some local institutions.

At the state level, the tax returns prepared by the AEAT itself can be completed in various ways or locations: in the offices of the AEAT through the prior appointment system, i.e. in person, or by telephone.

The prior appointment system

This system has obvious benefits, such as enabling taxpayers to be attended to at the scheduled time and with shorter waiting times, which results in a better image and quality of service provided to the taxpayer. It also enables the necessary material and human resources to be planned effectively, as the number of people to be attended at each service point is known in advance. Moreover, it reduces the 'psychological pressure' that civil servants face in situations of accumulations of people waiting to be attended, thereby improving their working conditions.

Meanwhile, it should be noted that it would be useful for a copy of the documents and information provided by the taxpayers to be made, as a means of proof, in order to clear the Administration from any subsequent liability.

As mentioned earlier, this is not the route that the RGGIT takes, as it makes no reference of any document that presents all of the information provided by the taxpayer, but rather it simply states that "the actions of the Tax Administration shall consist of transcribing the data provided by the applicant and performing the corresponding calculations. On completion of the form, it is submitted for revision and the verification of the correct transcription of the information, and signed by the taxpayer, if they consider it necessary".

2.2. Generating the draft tax return

The RGGIT states that, in the cases and under the terms established by the regulations for each tax, taxpayer assistance may also take the form of a **draft tax return** being prepared by the Tax Administration at the request of the taxpayer. To do so, the Tax Administration will fill out the draft version with the relevant data in its possession required to complete the tax return, with the amount and rating supplied by the taxpayer themselves or by a third party that has to supply information of fiscal significance[21].

[21] Art. 77 RGGIT.

In the same way as in the case of tax returns being completed by the Administration, also in the case of preparing the draft tax return, RGGIT art. 77.4 states that the data, amounts and ratings contained in the draft tax return that have been communicated to the taxpayer are **not binding for the Administration** in terms of any verification and investigation activities that may be conducted subsequently.

As stated in RGGIT art. 77.3, it is the regulations on each particular tax that must establish the cases and terms under which taxpayers can request their draft tax returns. To date, this option has only been facilitated and developed in the case of personal income tax.

The draft tax return for Personal Income Tax

From 2003 onwards, in accordance with art. 80.bis of the Personal Income Tax Act that was in force at the time, it was stated that taxpayers liable for personal income tax could request that the Administration send them a draft tax return, for information purposes, on the condition that they only received certain types of income. When the taxpayer agreed with the draft tax return, they could sign and confirm it, which gave it the status of the final tax return for that tax. If the taxpayer did not agree with the draft version, they had to submit the tax return that they considered correct. Meanwhile, in cases in which the Tax Administration did not have access to all of the information required to generate the draft version, the relevant information that it did have was provided the taxpayer to facilitate the process of completing their tax return.

In this respect, art. 98.1 of the current Personal Income Tax Act (LIRPF), states that "taxpayers can request that the Administration sends them a draft tax return, for information purposes". Moreover, LIRPF art. 98.4 stipulates that "when the taxpayer considers that the draft tax return adequately reflects their fiscal situation for the purposes of this tax, they can sign or and confirm it, in accordance with the conditions established by the Ministry of Economy and the Treasury. In this case, the document will then be considered as the final tax return for this tax for the purposes stipulated in Section 1 of art. 97 of this Act" (which regulates the presentation of the self-assessment for Personal Income Tax).

The provisions of this LIRPF art. 98 are developed each year by Ministerial Decree, which establishes the circumstances and conditions under which the draft tax return for personal income tax can be requested, confirmed or rectified through online channels or by telephone.

2.3. Support software for completing tax returns

The RGGIT states that the Tax Administration can give taxpayers access to **support software for completing and presenting tax returns**, self-assessments and for communicating information. Within the scope of the State's jurisdiction, such software must comply with the decree of the Ministry of Economy and the Treasury, which approves the corresponding form. In addition, it can provide other support and assistance programs, within the framework of its duty and assistance to the taxpayers, in order to help them fulfil their tax obligations[22].

(22)Art. 78.1 RGGIT.

At a state level, these software programs are created by the AEAT and are used to complete tax returns. They are made **available to taxpayers free of charge on the website** of the AEAT. Having long been used in tax systems in developed countries, these programs provide taxpayers with a guarantee of certainty as they are created by the AEAT itself, and they generate a series of benefits for both taxpayers and the Administration.

In terms of taxpayers, the programs are an **important support tool** for completing their tax returns, which is not always a simple task given the complexity of the regulations and the tax system, as well as the obligation of the taxpayer to proceed with the settlement and quantification of their tax liability. Meanwhile, as these programs contain the administrative criteria for applying the taxes, they reduce or nearly eliminate calculation errors, and respect the limits set in the tax legislation.

Recommended reading

R. Oliver Cuello (2018). *Derechos de los contribuyentes en la gestión tributaria*. Pamplona: Aranzadi.

The interpretation of the regulations

As mentioned earlier, the incorporation of the administrative interpretation of the tax legislation within the software obviously must not prevent taxpayers from disagreeing with this interpretation. In the event that using these programs causes damages for the taxpayer, they can exercise their right to be compensated, with respect to the Tax Administration's state liability. These are circumstances of which most taxpayers are unaware, primarily due to the little or non-existent information that the Administration provides on the matter.

It should be remembered that the LGT **excludes liability for tax offences** in the event of technical shortcomings of the support software provided by the Tax Administration for fulfilling tax obligations[23]. Nothing is stipulated with respect to the requirement to pay interests for late payment or applicable charges, although, in our opinion, they should not be enforceable when the taxpayer, using one of these software programs developed by the Administration, is acting with due diligence and in good faith, placing their trust in the assistance given by the Administration. The financial consequences of shortcomings in the provision of taxpayer assistance, which is a duty of the Administration, should not fall upon the taxpayer.

(23)Art. 179.2.e LGT.

From the perspective of the Administration, using these software programs leads to **more streamlined processing of the resulting tax returns**, especially if the tax returns are directly recorded in the Administration's database, having been sent through electronic channels directly to the AEAT

Moreover, **these programs reduce the processes of verification and investigation**, as they practically eliminate calculation errors or mistakes in terms of applying the limits set by the corresponding regulations.

The programs generate the tax returns as PDF files, which can be saved on any digital device, enabling data processing to be streamlined significantly, as well as providing the option of sending them directly by online means and enabling the data to be scanned automatically when being recorded by the Administration.

In addition, as mentioned earlier, it should be remembered that these programs are also used by the Tax Administration and the partner institutions when completing certain tax returns on behalf of taxpayers.

At a state level, there are several software programs that provide support for preparing and presenting tax returns for the main taxes, which taxpayers can access via the AEAT's website.

PADRE

Of all of these programs, by far the most generalized, widespread and important program was PADRE (tax return support program, by its acronym in Spanish), the aim of which was to provide anonymous and free support for taxpayers preparing their tax returns in relation to personal income tax, right from the actual physical preparation through to evaluating the option of joint presentation in the case of taxpayers that form a family unit rather than on an individual basis in the case of personal income tax.

This support software for preparing the personal income tax return was characterized by its simplicity, as taxpayers did not need to make prior calculations, but rather simply enter the data required. In addition, it offered the option of incorporating the taxpayer's tax information that is in the possession of the Administration, in relation to the income from personal work, professional activity, movable capital and investment funds, for it to be entered directly and automatically in the tax return without the need for a user certificate. This last option was extremely useful as it also enabled all of the fields on the tax return form to be completed in all cases that require tax-related data.

PADRE could be accessed in various ways: directly at the AEAT, in its offices or mobile units, in other institutions and on the internet, downloading it from the AEAT's website.

Meanwhile, in view of the phenomenal increase in the number of taxpayers that used PADRE and the possibility of reaching saturation point in administrative offices for preparing tax returns, the AEAT had agreements in place with certain institutions, within the framework of social partnership established in LGT art. 92. Thus, the preparation of personal income tax returns using PADRE, as with various other assistance service, could be performed by a range of agents under the same conditions as the AEAT: tax collection partner institutions, chambers of commerce and the autonomous communities. In addition, several different associations were allowed to complete and submit tax returns on behalf of taxpayers using digital channels.

Since 2017, and in order to facilitate the preparation, modification and filing of tax returns in relation to personal income tax, the PADRE program is no longer used. Therefore, taxpayers do not need to download it and install it on their computers or devices. Instead, all operations relative to draft tax return

and tax and return can be carried out through the online service **Renta Web** (Spanish for Web Income), which is accessible from any browser. Taxpayers can access it through any of the identification or authentication systems: electronic certificate or electronic ID, PIN code or reference number.

Through the Renta Web online service, the data held by the Tax Administration is incorporated, processed and an income tax self-assessment is generated. All this is done virtually so that the taxpayer does not need to download and install any program on their computer or electronic device, which now also includes mobile phones or smartphones.

The Renta Web online service

The Renta Web service filing draft and income tax returns can be accessed via electronic certificate or electronic ID. This tool allows the taxpayer to generate the tax return with the data available to the AEAT, modify it or make a complementary tax return, if necessary. It can also be accessed by PIN code or reference number.

If this is the first time the service is accessed, the identification data of the declarant party and the other declarant parties in the family unit will be shown on the first screen. If it contains inaccurate data or any specific data has been omitted, it may have to be modified. It must be borne in mind that data relative to legal status, children or incompetent persons, subject to parental rights and duties, cannot be modified later.

In tax returns made with a spouse, if the taxpayer wishes to compare the tax due the different taxation options, either individual or joint, the reference number of the spouse or a PIN code authorizing access will be required. In this case, click on the “Validate authorization” button and type the reference or PIN for identification in the pop-up window, indicating the key code and the PIN code. If the data entered is correct, press "Confirm" to continue filing the tax return.

If, once the screen including identification data is completed, the application detects that additional tax data must be added to the return form, the next screens will have instructions to further add this information. In contrast, if no information is to be added prior to generating the return, the taxpayer will be granted access to the screen showing a summary of the tax due. In it, the taxpayer can verify the amount owed for each modality and fill out the form, if necessary.

By clicking on the “Continue filing the return” button, the taxpayer can access the different pages that make up the return form and check all the data entered before continuing completing the form. Before submitting the tax return form, the taxpayer must click “Validate” to ensure that no errors were made while completing the form.

The pop-up messages do not prevent taxpayers from submitting the return form and are simply to ensure completion of the form. However, if the message is an error, it must be corrected so that the return is considered valid at the time of submission. Once it has been verified that no errors are present, the taxpayer must click “Submit return form”. The modality of the tax return at the time of submission must be considered.

If the taxpayer is due a refund, the IBAN code of the bank account in which they want the refund to be made must be confirmed. If there were underpayments and the taxpayer owes revenue, they must select a payment method and click "Sign and send" to submit the return form. In joint declarations it will be necessary to indicate the reference or the PIN code obtained for the spouse so as to submit the tax return regardless of the type of access of the declarant. The reference number is specific to each individual declarant.

When the tax return has been submitted, a "Your submission was successful" message and a secure verification code will pop up. In addition, a PDF will be displayed including, on its first page, information relative to the submission (registration entry number, Secure Verification Code, receipt number, date and time of submission, and personal data of the declarant) and, on subsequent pages, the draft tax return submitted.

3. Online tax returns

3.1. Completing and presenting tax returns through electronic channels

The presentation of tax returns, self-assessments and fiscal notifications are stipulated in the LGT[24] as a formal tax obligation that can be performed by **online means**.

[24] Art. 29.2.c LGT.

This channel of communication with the Tax Administration has the following **benefits**, among others: reduction of the indirect tax burden, as the taxpayer finds the system for processing their tax returns easier; decreasing workload for the Administration in bureaucratic terms, as it avoids tasks in terms of registration, processing and paperwork generally; reduction in processing times for tax returns; and less time required to process and detect the evolution of economic variables, which enables better monitoring of tax collection overall and by sectors.

As a general rule, presenting tax returns online is **voluntary**, although, in certain circumstances and for particular taxpayers, using online means is **compulsory**, in accordance with the terms stipulated in the General Tax Act[25].

[25] Art. 98.4 LGT.

Compulsory online presentation of tax returns

According to LGT art. 98.4, within the scope of the State's jurisdiction, the Treasury can establish the circumstances and conditions in which taxpayers must compulsorily use electronic channels to submit their tax returns, self-assessments, communications, applications and any other document of fiscal significance. Moreover, RGGIT art. 30.2, *in fine*, of the states that, within the scope of the State's jurisdiction, the Ministry of the Economy and the Treasury shall approve the tax return forms that must be used for this purpose, the location and calendar for presenting tax returns, and the circumstances and conditions in which it is compulsory to submit them in a format that is directly readable by a computer or by online means.

Until recently, the online channel was only compulsory in certain circumstances that affected a limited number of taxpayers and particular taxes, primarily related to large companies. It is stipulated for large companies in terms of withholdings and account deposits in the case of personal income tax and monthly VAT self-assessments. In these circumstances, in view of the characteristics of these taxpayers and the volume of operations they have to conduct in relation to the Administration, it was decided to make the electronic or digital channel compulsory in these cases, in order to speed up the processing of procedures and achieve greater efficiency in the administration.

However, in recent years, new circumstances have been stipulated for compulsory online presentation of tax returns that significantly increase the number of taxpayers to which the compulsory effect applies. As such, compulsory presentation now has a considerable scope of application. Using the power stipulated in the aforementioned LGT art. 98.4, the first case of making online channels compulsory for the presentation of tax returns for taxpayers other than large companies is the obligation established by Order 1981/2005 of the Ministry of Economy and the Treasury, of 21 June, which approves form 576 of self-assessment for excise duty on certain means of transports. In this case, all taxpayers must

Recommended reading

A. M. Delgado García (2009). "La obligatoriedad de la presentación telemática de declaraciones tributarias". *Revista de information Fiscal* (no. 96).

make their presentations through online channels: both in the case of natural persons and organizations.

Meanwhile, certain tax returns related to excise duty on manufacture, tax on retail sales of particular hydrocarbons and transactions equivalent to import VAT must also compulsorily be submitted online (Order EHA/3548/2006, of 4 October, related to excise duties).

The Wealth Tax return must also be submitted electronically, in accordance with the provisions of Order HAP/2194/2013, of 22 November on the regulation of procedures and general conditions for the submission of certain income tax self-assessments, information returns, census returns, communications and refund requests of a tax nature.

Moreover, Order EHA/3398/2006, of 26 October, which stipulates measures for promoting and standardizing certain aspects related to the online presentation of tax returns, expanded the scope of application of compulsory online presentation in the case of certain annual summary and reporting declarations, considerably reducing the number of entries to report (specifically, to fifteen), based on which online presentation is made compulsory.

Meanwhile, in the case of declarations for Corporate Tax and Non-Resident Income Tax (permanent establishments and organizations under the income allocation system incorporated abroad with presence in Spanish territory), form 200, online presentation is compulsory for taxpayers registered at the AEAT's Central Delegation of Large Taxpayers or its Large Companies Administration Departments, as well as for all taxpayers with the legal form of anonymous companies or limited liability companies. Furthermore, the online presentation of tax returns for Corporate Tax in a consolidated tax return system for tax groups, using form 220, corresponding to the State Administration, is compulsory in all cases.

Furthermore, it is important to note the conditions for compulsory online presentation in the area of VAT. Order EHA/3786/2008, of 29 December, approved a new single form 303 for self-assessment for VAT that replaces all previous versions. The new form 303 for self-assessment for VAT must compulsorily be submitted online in the case of taxpayers whose settlement period coincides with the calendar months. For taxpayers whose settlement period coincides with the quarters of the year, online presentation online is voluntary, except in the case of entities with the legal form of anonymous company or limited liability company, which must compulsorily submit their tax returns electronically online.

The filing online of the modelo 303 (VAT self-assessment form) is also mandatory for public administrations, taxpayers affiliated to the *Delegación Central de Grandes Contribuyentes* (Spanish for Central Office of High-Income Taxpayers) or to one of the *Unidades de Gestión de Grandes Empresas* (Spanish for Corporate Management Units).

Lastly, it should be noted that presenting a tax return or self-assessment by non-electronic means when there is an obligation to do so constitutes a serious offence, penalized as a general rule with a fine of 250 euros (LGT art. 199, Sections 1, 2, 4 and 5).

On this issue, it should be noted that the provisions of the LGT[26] stipulate the obligation of taxpayers who must submit self-assessments or tax returns through online channels to **keep a copy of the programs, folders and files** generated that contain the original data on which the submitted accounting statements, self-assessments or tax returns are based.

[26] Art. 29.2.d LGT.

In relation to tax returns, they can both be submitted and, if applicable, **paid** online, as established in LGT art. 60.1, *in fine*, when it states that the tax legislation shall regulate the requirements and conditions with respect to which payments can be made using electronic, computerized and online techniques and means.

In addition, it is possible for taxpayers to pay self-assessment tax liabilities online, and for the Administration to settle debts itself this way.

Currently, **most of the state tax institutions** permit the online presentation and, if applicable, payment of tax returns or self assessments online, not only in relation to the performance of the taxable event, but also in the case of withholdings, account deposits and payments in instalments, and even reporting obligations. These include VAT, personal income tax, corporate tax, non-resident income tax and excise duties.

In accordance with Order HAP/800/2014, of 9 May, which establishes specific regulations on identification and authentication systems for electronic channels with the AEAT, the forms of identification and authentication accepted by the AEAT are the electronic national identity document and the advanced electronic signature systems that have been approved by the General State Administration.

Electronic signature

Article 3.1 of Law 59/2003, of 19 December, on electronic signatures, defines an electronic signature as the set of information in electronic form, consigned with others or associated to them, which can be used as a method of identifying the signatory. Alongside this general concept of electronic signature, the aforementioned Law (art. 3.2) defines a specific or qualified class of signature known as 'advanced electronic signature', which is characterized by imposing unique requirements in terms of security. This type of electronic signature enables the signatory to be identified, as well as detecting any modification of the signed data, which is uniquely binding for the signatory for the data contained therein, and which has been created through means that the signatory can keep under their exclusive control.

In tax matters, among other entities authorized by the AEAT, the Royal Mint of Spain holds the status of a certification authority, in accordance with the powers granted by art. 81, Section 1, Point b of Law 65/1997, of 30 December, on General State Budgets for 1998.

This institution currently issues X.509.V3 user certificates, based on Version 3 of Recommendation X.509 of the International Telecommunications Union, which contain, among other information, the identification of the user, the certificate number, date of issue and expiry of the certificate, the public key and the digital signature. Exclusive and non-transferable, these certificates can be used not only for the online presentation of tax returns, when the regulations stipulate this option or obligation, but also for other online communications with the Tax Administration.

Recommended reading

I. Rovira Ferrer (2011). "La firma electrónica en la Administración tributaria". *Revista de la contratación electrónica* (no. 112).

3.2. The procedure for online presentation and payment

Order HAP/2194/2013, of 22 November, which regulates the general procedures and conditions for presenting certain self-assessments and tax-related reporting Tax information returns, fiscal registrations, fiscal notifications and refund requests, implements the regulation of the online presentation of tax returns.

Recommended reading

R. Oliver Cuello (2014). "La presentación y el pago de declaraciones tributarias por vía telemática". *Revista de Internet, Derecho y Política* (no. 18).

In order to submit self-assessments with amounts payable by online means, the payment must be made in advance when it is not made by direct debit, obtaining a complete reference number that acts as proof of payment. In particular, in terms of the AEAT, the procedure to follow for this purpose is as follows.

Firstly, the tax declarant must **contact the tax collection partner institution** (financial institution), either in person at their offices or online (via the online banking service or the website of the AEAT, in which case it may be performed on an individual or a joint-reporting basis), in order to provide a series of information related to self-assessment with a result with amounts payable.

Payment of the payable amount by online means

Therefore, if taxpayers access the electronic headquarters of the AEAT (tax payments/self-assessments), they must select the specific declaration form required and the payment method that they are going to use: direct debit, or by credit or debit card (indicating the issuing institution in this case). In addition, the information of the self-assessment must be consigned, as well as the bank account or payment card details. All of the data entered must be signed with the user certificate, taking into account the fact that the holder of the certificate must be the same person as the holder of the bank account or card used for payment.

Meanwhile, online presentation is also possible in the case of self-assessments with an application for compensation, deferral or payment in instalments, simple acknowledgement of liability or an application for an entry in an AEAT fiscal current account, following the same procedure described above.

Secondly, once the amount deposited is processed, the partner institution or the institution at which the payment was deposited **assign the taxpayer the complete reference number**, which must later be included on the online presentation of the self-assessment. In addition, the aforementioned institution will issue or send the tax declarant a receipt (proof of payment) which clears them from liability to the Tax Administration and enables them to verify that the tax has been settled.

Obtaining the complete reference number

The complete reference number is generated digitally by an encoding system that unequivocally links the complete reference number to the amount payable.

However, it is not necessary to obtain a complete reference number in cases in which a deferral of the payment is made by setting up a direct debit for the amount payable. This deferred payment option is only available in the case of online presentations and it simplifies presentations on behalf of third parties as it does not require online payment.

In addition, if the result of the self-assessment is negative, with a request for a refund or waiver of the refund, logically, it is not necessary to obtain the aforementioned complete reference number, but rather the tax declarant contacts the AEAT directly via the website in order to proceed to the following phase of the online presentations procedure.

The third step consists in **the transfer of the income tax self-assessment** using any of the systems established in article 2.a of this Order. These systems are as follows:

1) An identification, authentication and electronic signature system using an authorized **electronic certificate** issued in accordance with the conditions established by Law 59/2003, of 19 December on electronic signature, and which is accepted by the AEAT.

2) As with taxpayers and natural persons (unless it is a case of mandatory electronic filing), submission can also be made through the ***sistema Clave***, which is the identification, authentication and electronic signature system common

to the entire Administrative Public Sector, regulated in Order PRE/1838/2014 on the right of citizens to deal with public services electronically through the use of agreed keys, which requires prior user registration.

If the declarant is a duly authorized social worker, submission will have to be made using their own authorized electronic certificate.

However, in the cases of submission of income tax self-assessments through the system provided for in article 2.c of this Order (**Tax ID number and reference number**), the taxpayer must obtain the Complete Reference Number directly from the collaborating entity directly and proceed to transfer the self-assessment by assigning the Tax ID number of the taxpayer or taxpayers, the Complete Reference Number and the reference number or numbers of the draft tax return or fiscal data previously provided by the Tax Agency.

As regards the tax returns in relation to personal income tax, it should also be borne in mind that, as indicated in article 2 of this Order, the filing of the tax return may also be made by **confirming the draft tax return**, in accordance with the procedure established in the annual Ministerial Decree for the approval of the tax model.

Therefore, in case of using a recognized **electronic certificate**, after obtaining the corresponding complete reference number if required, the tax declarant contacts the AEAT via the electronic headquarters in order to **present the tax return** on the same date on which the payment or, if applicable, the request for a refund was made. After accessing the tax return presentation section of the electronic headquarters, the corresponding tax return form and type must be selected (amount payable, refund due, amount to be offset, no activity, zero balance, direct debit to be paid, payment to be recorded in AEAT fiscal current account, application for deferral or payment in instalments, acknowledgement of liability, etc.), as well as the user certificate.

Next, the information required is entered on the form that appears on the screen, with the option of importing these details from a file if the tax return has been prepared with a support program, as well as the option of reading the complete reference number from a case file assigned by a partner institution. In the event that several self-assessments of the same type are to be sent, they can be submitted in batches.

Online presentation of the tax return

The online presentation of self-assessments must be performed on the same date as payment of the corresponding amount. As a consequence, a simultaneity appears between the payment and presentation of the self-assessment, as they both take place on the same day. In reality though, the payment is made first and the presentation follows.

However, in the event that the self-assessment cannot be presented the same day that the payment is made for technical reasons, it can be sent online within the four working days following the payment.

> With reference to this eventuality, it should be noted that the situation may arise in which payment has been made on the last day of the voluntary payment period but the self-assessment cannot be submitted within the aforementioned time limit, because the network is overloaded, due to problems with the server or some other technical problem. In this respect, we consider that the self-assessment can also be submitted within the four working days following the end of the voluntary payment period, without any legal consequence for the taxpayer.
>
> However, if the self-assessment is not submitted within this four-day period, the effects that this will have for the taxpayer must be considered. In such cases, as the payment has already been made, we understand that there has been no omission as far as payment is concerned, so no penalty can be applied for the offence indicated in LGT art. 191, nor can interest for late payment be charged by way of compensation. Nevertheless, failure to submit the self-assessments within the time limits established in the tax legislation does constitute a minor offence, as stipulated in LGT art. 198, as payment of the debt does not exempt the taxpayer from presenting the self-assessment.
>
> In this respect, it should be taken into account that there are various circumstances that exempt the tax declarant from liability in terms of tax offences, as stipulated in LGT art. 179.2. As such, if the tax declarant was subject to one of these circumstances, the Administration could not impose any penalty for a minor offence. Therefore, for instance, if the computer on which the tax declarant's user certificate is installed is destroyed, the cause for liability exemption on the basis of force majeure could apply, as indicated in point b of the aforementioned precept. Alternatively, the circumstances indicated in point d may be applied if the tax declarant operates with due diligence.

Next, taxpayers must **generate the electronic signature** to be able to send it. The tax declarant then submits the full tax return with the digital signature or, if applicable, digital signatures.

The fourth step, once the presentation has been accepted, is that the AEAT returns the tax return to the taxpayer on the screen or, if applicable, the **payment or refund document**, validated with a sixteen-character secure verification code, along with the date and time of presentation. Lastly, the tax declarant has to save and keep the tax return or documents that have been accepted and validated with the corresponding secure verification code.

Therefore, taxpayers who submit a tax return online have two proofs of receipt: one corresponding to the payment and the other related to the presentation of the tax return. Both discharge the taxpayer from liability with respect to the Tax Administration. This is why it is important that they are kept.

In the event that the submission is rejected, a description of the errors detected will be displayed. In this case, the errors should be corrected either in the entry form, with the aid program with which the file was generated, or by resubmitting the tax return if the error was caused by any other reason.

4. Electronic tax notifications

4.1. Legislative framework of electronic notifications

In terms of the application of taxes, the LGT refers to provisions contained in the general administrative regulations in relation to the system of tax notifications, without prejudice to the particular features regulated in the LGT itself[27].

(27)Arts. 109 to 112 LGT.

Regulation on this matter in the LGT

An in-depth analysis of the precepts reveal that the LGT does not regulate the execution of electronic notifications.

In contrast, in terms of financial administrative claims, Section 2 of the LGT's Sixteenth Additional Provision stipulates that electronic means can be used in the field of financial administrative claims "for notifications that must be made when the interested party has expressly indicated their preference for these means to be used".

Recommended reading

A. M. Delgado García (2017). "Las notificaciones electrónicas tributarias tras la reforma de la legislación administrativa básica". *Revista Técnica Tributaria* (no. 118).

The aforementioned legal regulation of tax notifications has been developed through the RGGIT. This rule has three precepts dedicated to notifications (arts. 114 to 115 bis). The last one indicates that the scheme for the practice of notifications by electronic means will be the one provided in the general administrative regulations with the specialties established by law and through regulations. The precept concludes by pointing out that, within the area of state jurisdictions by Order of the Ministry of Treasury and Public Administration, specialties in the delivery or issuance of notifications can be regulated electronically.

Therefore, in relation to electronic tax notifications, we must refer to the provisions of the LPACAP. This rule repeals the LAECSP, where this matter was regulated previously, as well as some of the provisions of the RAECSP[28].

(28)Sole Repealing Provision, LPACAP 2.b and 2.g

Regulation of electronic tax notifications in the LPACAP

LPACAP arts. 40 to 44 regulate the general scheme for notifications, with special reference to electronic notifications, which is subject to development by LPACAP art. 43. The importance of electronic notifications in the current regulation is already evident in LPAC art. 41 on general conditions for the delivery or issuance of notifications. The article stresses that notifications shall be delivered preferably by electronic means and, in any case, whenever it is mandatory that the data subject should receive them in this way. In this regard, LPACAP art. 43 regulates basic issues pertaining to the delivery of notifications by electronic means, such as the manner and timing of their issuance. Such issues will be analysed in detail in the following sections.

LPACAP art. 43 does not make an express reference to the regulatory development of this means of notification. However, it must be pointed out that, in the area of electronic notifications, several articles of the RAECSP, e.g. 37, 38 and 40, which have not been repealed by the LPACAP (sole repeal provi-

sion, LPACAP section 2.g) are still held in force. Therefore, these regulatory precepts are still in force and affect the following issues regarding electronic notifications:

- modification of the means of notification (RAECSP art. 37);
- notification by making the electronic document available through an electronic mailbox system (RAECSP art. 38), and
- notifications delivered through the electronic headquarters (RAECSP art. 40).

In addition, it must be pointed out that the electronic mailbox system (which goes by the Spanish acronym DEH), referred to in RAECSP art. 38, developed in Order PRE/878/2010, of 5 April, consists of a system available to all organs and public bodies linked to or dependent on the General State Administration that do not establish their own notification systems, as such notification is both voluntary and mandatory.

Finally, it must also be pointed out that the RAECSP provisions that are still held in force will cease to be so when the Royal decree by which the LPACAP provisions are developed is approved. This Royal decree, which is still in regulatory process, must develop several aspects relative to the performance and operation of the public sector by electronic means.

4.2. General requirements for executing electronic notifications

Authenticity, integrity, confidentiality, time reference and availability can be drawn, as **general requirements**, for the delivery of notifications by electronic means, in order to prove that the data subject or their representative have received the notification, as well as the date, identity of the person receiving the notification and content of the notified act.

In this respect, the LPACAP establishes that, regardless of the means used, notifications will be valid provided that they provide evidence of the following aspects of the notification[29]:

[(29)] Art. 41.1 LPACAP art. 41.1

- Effective delivery or availability.
- Reception or access to the notification by the data subject or their representative.
- Dates and time.
- Full content.
- Reliable identity of the sender and recipient thereof.

Finally, proof that the notification has been made will be incorporated into the file. It should be noted that these validity requirements are established regardless of the medium used, so they are applicable to both electronic and paper notifications, without the LPACAP making any distinctions at this point regarding general requirements for notifications.

In short, suitability of a means of notification basically depends on the fulfilment of certain formalities relative to recording, since the underlying problem is proof. However, it should be noted that recording is not required to be carried out reliably, so that the provision of notification services is not reserved to the public sector or to qualified operators.

In addition to these general requirements, for the notification to be served by electronic means, when the regulations do not impose the obligation to use such means, **consent by the data subject party** is required. For this purpose, LPACAP art. 41.1 provides that the concerned parties who are not obliged to receive electronic notifications may decide and inform the Public Administration at any moment in time, through the standardized models established to that end, that the successive notifications be delivered electronically or by other non-electronic means.

Given that notifications can be issued on paper or by electronic means, the LPACAP indicates that when the data subject is notified by different means, the standing date of notification will be that of the first received notification[30].

(30)LPACAP art. 41.7

Therefore, in principle, those citizens who are not obliged to receive electronic notifications may choose how to deal with administrations at all times, whether that involves electronic means or not. However, it should be borne in mind that LPACAP art. 41.1 establishes that notifications "will be delivered **preferably by electronic means**" (and by such means in case of subjects obliged to receive electronic notifications). Hence, it is established in that same precept that people who are not obliged to use such means may inform, at any moment in time, that notifications will be made electronically or by other non-electronic means.

In this way, the **revocable guarantee** of said consent is reinforced. Therefore, although there is an express preference for the use of electronic means for the delivery of notifications, at the same time the right of every person who is not obliged to receive electronic notifications to decide at any moment in time on the use of such means is conserved. It is down to said person to modify the medium chosen initially if they so wish.

In addition, with respect to regulating notifications on paper, the LPACAP establishes that these must be made available to the data subject in the electronic headquarters of the Administration or acting body so that they can access

(31)LPACAP art. 42

their content voluntarily. Also, the precept establishes that once such content is accessed, the data subject should be informed that, if desirable, such notifications can be issued electronically from this point onwards[31].

Regarding the **regulatory development** of this matter, the RAECSP, which is still in force with respect to this point[32], states that, in the context of the procedure, the data subject may require the corresponding body that successive notifications are not made electronically, except in cases where notification by electronic means is mandatory. In the request for modification of the preferred means of notification, both the means and place for the issuance of subsequent notifications must be indicated. Finally, the RAECSP clarifies that the change of means for the delivery of notifications will be effective for those notifications that are issued from the day following receipt of the request for modification in the registry of the public body issuing them.

(32) RAECSP art. 37

Regarding notifications, the LPACAP also distinguishes between the procedures initiated at the request of the data subject and those initiated *ex officio* and further reiterates the importance of consent to receive electronic notifications when the person is not obliged to do so. To this end, the following ways of initiation of procedures are distinguished[33]:

(33) LPACAP arts. 41.3 and 41.4

1) Procedures initiated at the request of the data subject. The notification will be made by the means indicated for that purpose by the data subject party. However, the notification will be electronic in cases where there is an obligation to deal with the Administration in this way. If it is not possible to make the notification in accordance with what is indicated in the application, it will be done in any place suited to such end and by any means that provides evidence that the data subject or their representative have received the notification, as well as the date, identity and content of the notified act.

2) Procedures initiated *ex officio*. The LPACAP notes that, for the sole purpose of its initiation, public administrations may collect, by consulting the databases of the National Statistics Institute, the data on the domicile of the data subject party listed in the municipal register.

Finally, within this section on general requirements for the delivery of electronic notifications, it is worth mentioning the **notification message** sent to the electronic device and/or the email address in order to indicate that it is not a condition for the validity of the notification.

The LPACAP indicates that the data subject can identify an electronic device and/ or an email address that will be used for sending notification messages, but not for the delivery of notifications as such. In these messages, the data subject is informed about the availability of a notification at the electronic headquarters of the corresponding Administration or agency or at the elec-

(34) LPACAP art. 41.6

tronic mailbox system. The LPACAP itself clarifies that these messages are not notifications and that, therefore, lack of delivery of said messages will not prevent the notification from being considered fully valid[34].

4.3. Means of electronic notification

The LPACAP establishes that **notifications by electronic means** will be delivered in the electronic headquarters of the Administration or via the electronic mailbox system, or by using both online services, as provided by each administration or body[35].

(35)LPACAP 43.1

Therefore, the electronic notification means contemplated by the LPACAP, which are both online services, would be the following two (the notification being also admitted through both): through the electronic headquarters and electronic mailbox system. The regulatory development of these electronic notification means is found in RAECSP arts. 38 and 40, respectively.

Notification by making the electronic document available via the **assigned email address** is regulated, as mentioned earlier, in RAECSP art. 38, which, in turn, is developed by the provisions of Order PRE/878/2010, of 5 April. On initial inspection, the regulation of the assigned email address suggests that the objective is not to create one single notification service, as it acknowledges that each public body and institution can establish its own electronic notification service.

The RAECSP imposes the following requirements with respect to the validity of the electronic notification systems using the email address assigned: accreditation of the date and time at which the notification was made available to the interested party; giving the interested party constant access to the emails via a website or any other means; accreditation of the date and the time at which the content was accessed; and, lastly, being equipped with authentication mechanisms that guarantee the exclusivity of use and the identity of the user[36].

(36)Art. 38.1 RAECSP.

The assigned email address

The assigned email address system is the responsibility of the Ministry of the Presidency and can be used by all of the public bodies and institutions that are related to or report to the General State Administration that have not established their own notification systems (arts. 38.2 and 2.1. of Order PRE 878/2010). Moreover, art. 2.2 of the aforementioned Order indicates that the service is provided by the Ministry of the Presidency itself, either directly or through the appointed provider (currently the State Postal and Telegraph Company).

As a general rule, the application to open the assigned email address, with its inclusion in the corresponding directory, is made at the request of the taxpayer (RAECSP art. 38.2, *in fine*, and art. 3.1 of Order PRE 787/2010), except in the case of the conditions under which, in accordance with the regulations, the use of electronic notifications is compulsory, in which case the address is automatically assigned by the Administration (RAECSP art. 38.3).

The period of validity of the assigned email address, according to the provisions of RAECSP art. 38.2 and art. 4.1 of Order PRE 878/2010, is unlimited when the use of electronic notifications is voluntary, except in cases in which the assignee requests its revocation, on the death of the natural person or under the conditions of termination of legal personality, when an administrative or legal ruling is made to this effect, or after a period of three years within which it has not been used to make any notifications (in which case, the email address in question is disabled, a fact of which the interested party must be notified).

As regards the identification and authentication of the notification, art. 5.2 of the Order PRE/878/2010 stipulates that authentication of the access to the content of the notified document must be performed via an approved electronic certificate. The confidentiality of the data in all of the communications, by virtue of the provisions of art. 6 of the aforementioned Order, is achieved through encoding mechanisms, such as the advanced electronic signature, indicated in art. 3.2 of Law 59/2003, of 19 December, on electronic signatures.

Lastly, RAECSP art. 40 indicates that a notification by online visit consists of access by the duly identified interested party to the content of the corresponding administrative action via the website of the public body or institution in question. However, in order for the online visit to be valid for the purposes of effective notification in accordance with LPACAP 43, it must meet two requirements: firstly, the interested party, prior to accessing its content, must have seen a warning of the effect that accessing the notification of the administrative action shall have: and secondly, the information system must leave a record of the access, with reference to the date and time.

4.4. The execution of electronic notification

In terms of **electronic notification** being executed, a distinction must be made between a notification being made available and the content of the notified act[37] being accessed..

[37] LPACAP art. 43.2

For all legal effects and purpose, electronic notification shall be deemed to have been effectuated at the moment when the **content is accessed**. In other words, notification is not deemed to have been made when the electronic notification is delivered to the inbox of the assigned email address, but rather at the time that the interested party opens the email and accesses the content of the notification (regardless of whether or not the interested party proceeds to read the specific content of the notification, either at that point or later).

However, the file will contain a record of both of these times (i.e. the date and time at which the email message is delivered and the date and time of the content of the notification being accessed by the interested party), based on the information sent by the email service provider to the administrative body, in accordance with the terms of art. 10.2 of Order PRE/878/2010.

As is well known, regulating the execution of notifications must guarantee the taxpayer's right to be notified of administrative acts and rulings that affect them without causing inability to defend oneself, as well as the principle of administrative efficacy, preventing behaviour that hinders administrative

activity in terms of executing the notification. As a result, initially, the criterion stipulated in the aforementioned LPACAP provision seems to be in conflict with the principle of receipt that takes precedence in all regulations with respect to notifications. In the case of electronic notifications, the principle of awareness appears to apply. However, this criterion is qualified to a large degree by the provision that, if the content of an email is not accessed within ten days of its receipt, it is deemed to be rejected.

In effect, if, with evidence of when the electronic notification had been made available, **ten calendar days** elapse without the content being accessed, the LPACAP stipulates that the notification has been rejected, both where the taxpayer has indicated their preference for electronic communication for the purposes of notifications and in the case of compulsory electronic notifications.

For these purposes, art. 10.2.d of Order PRE/878/2010 stipulates that the service provider of the email address in question must send the administrative body electronic certification that ten days have elapsed since the email was made available without the interested party accessing the content of the notification contained therein.

In relation to the issuance of the notification, it is important to note that for the sole purpose of satisfying the obligation to notify within the maximum duration of the proceedings, it is sufficient that the notification contains at least the full text of the resolution, as well as the attempt at notification duly accredited (LPACAP art. 40.4). In this regard, in relation to electronic notifications, the LPACAP indicates that t the obligation to notify within a reasonable time by making the notification available at the electronic headquarters of the Administration or acting body or at the electronic mailbox system will be satisfied[38].

(38) Art. 43.3 LPACAP art. 43.3

In terms of the **consequences of rejection** of the notification by the interested party or their representative, the LGT states[39] that the notification is deemed to have been executed and, unless expressly stated otherwise, if applicable, the procedure shall continue. Along the same lines, LPACAP art. 41.5 stipulates that, when the interested party or their representative rejects the notification of an administrative act, it must be recorded in the file, specifying the circumstances of the attempt at notification and the means through which it was done. After that, the formalities are completed effectuated and the procedure continues.

(39) Art. 111.2 LGT.

However, to protect the rights of the taxpayer, the effects of rejecting the notification shall be rescinded when, automatically or at the request of the recipient, the **technical or physical impossibility of accessing the content** can be demonstrated.

Technical or physical impossibility of access

The problem that may arise in this case involves determining when circumstances exist that technically or physically prevent access, in view of the fact that it is a legal concept lacking in definition. In our opinion, these circumstances could include either problems related to the email server or the certification service provider (a breakdown of the email server) or problems faced by the taxpayers themselves (such as a power cut or a broken computer).

However, the term 'technical or physical impossibility' does not cover every situation in which it has not physically been possible to access the inbox, but rather it is limited to circumstance in which it has not been possible to access the inbox due to physical reasons or, in other words, attributable to strictly objective physical circumstances that are specifically related to the email server or certification service provider involved in the notification process.

In relation to the above point, it should be noted that, for one of these causes to be used to determine technical or physical impossibility and, hence, an exception for being considered a rejection of the notification, the taxpayer has to prove these circumstances, which is a task that can sometimes be considerably complex. Moreover, this accreditation is normally performed a posteriori, upon review, in view of the fact that, as the ten-day period has elapsed, the notification will be deemed to have been rejected and executed for all legal effects.

In the analysis of all of these precepts, it should be stated that a special level of diligence is required from the taxpayer who voluntarily chooses to use electronic channels to receive electronic notifications, as they are responsible for constantly checking whether or not they receive notifications through this channel and accessing them to prevent the effects their potential rejection.

With this in mind, art. 10.1.g of Order PRE/878/2010 provides, among the functions of the assigned email address service provider, an optional recommendation to "give the interested parties access to the notifications via a messenger service or by any other means". In addition, it states that the service provider, when configuring the profile of the electronic inbox, may assign a personal email account to which messages are sent to notify the taxpayer, on a non-binding basis, that new notifications have been received from the AEAT.

4.5. Compulsory electronic notifications

In accordance with LPACAP art 41.1, as already mentioned, notifications will preferably be made electronically and, in any case, when it is mandatory that the data subject receives them by this means. By regulation, administrations may establish the **obligation to issue notifications electronically** for certain proceedings and for certain groups of natural persons who, on grounds of their economic, technical, professional dedication or other reasons, are accredited to have access to and availability of the necessary electronic means.

Recommended reading

Delgado García, A. M. (2011). "Las notificaciones tributarias practicadas obligatoriamente por medios electrónicos". *Revista Internet, Derecho y Política* (issue 12).

However, despite the preferential nature that the LPACAP grants to electronic notifications and the mandatory nature they have for certain subjects, the possibility of making such **notifications by non-electronic means** is established. The LPACAP refers in this respect to two cases[40]:

(40)LPACAP art.41.1

- When the notification is made on the occasion of the spontaneous presence of the data subject or their representative at the registration assistance offices and the said persons request the communication or personal notification at that moment in time.

- When, to ensure the effectiveness of the administrative action, a civil servant needs to issue the notification by hand at the administration in question.

On the other hand, exceptionally and mainly for technical reasons, the LPACAP establishes two cases of notifications that **cannot be delivered electronically**[41]:

(41) LPACAP art. 41.2

- Notifications in which the act to be notified is accompanied by elements that are not subject to conversion in electronic format.

- Notifications that contain means of payment in favour of the persons subject to the obligation, such as bank checks.

Consequently, as can be seen, the legislator aims to strengthen the electronic notification system beyond those persons that are obliged to receive them. In addition, the impossibility of delivering notifications by electronic means is limited to extremely exceptional cases.

In the **field of taxation**, with respect to the compulsory nature of the online presentation of certain tax returns, an area in which the Tax Administration has been a pioneer, online notifications in certain circumstances and for certain taxpayers have recently been made compulsory in our legislation. In principle, this is a measure that we consider positive in terms of the efficacy of tax administration, which strives to streamline the administrative processes and save a great deal of time and money for the administrations. However, it should be added that a detailed analysis is required as to whether or not it offers sufficient legal guarantees to prevent taxpayers' rights from being damaged.

In effect, **RD 1363/2010, of 29 October**, regulates the conditions for compulsory electronic notifications and administrative communications with relation to the AEAT, by enacting the provisions of RGGIT art. 115 bis, through the assigned email address system.

Lastly, it should be noted that, according to the provisions of art. 2 of RD 1363/2010, the AEAT shall execute electronic notifications by subscribing to the email notification system regulated in **Order PRE/878/2010**, of 5 April.

1) Objective scope of application

The objective scope of application of compulsory electronic notifications is generically outlined in RD 1363/2010, when it states that the objective of the legislative regulation is to establish the circumstances in which the people and entities indicated in art. 4 have an obligation to use electronic channels to receive the administrative communications and notifications made by the AEAT in the course of its duties[42].

(42)Art. 1 RD 1363/2010.

To be more precise, art. 3.1 of RD 1363/2010 refers to notifications made by the AEAT in the course of its activities and procedures in relation to taxation, customs and foreign trade statistics, as well as in terms of the fiscal administration of claims that may be lodged by or against other organizations and public administrations.

In addition, it should be noted that the compulsory notification system using the assigned email address only applies in proceedings **started by the Tax Administration** with respect to the taxpayer for whom electronic communication with the Tax Administration is compulsory. In effect, RD 1363/2010 states that in the case of notifications corresponding to procedures initiated at the request of the interested party, in which they or their representative has indicated a location for notifications other than the assigned email address of one of them, notifications shall be made to the location indicated by the interested party or their representative[43].

(43)Art. 3.5 RD 1363/2010.

Therefore, in procedures initiated at the request of the taxpayer, in accordance with the provisions of LGT art. 110.1, the taxpayer can select a preferred location for receiving notifications, which may be either an assigned email address or any other means. However, in any case, the choice of the specific means of notification is down to the taxpayer. This means that, in the case of the taxpayers that fall within the scope of application of compulsory electronic notifications, the notifications exercised by the AEAT can be made to different locations (and via different means), depending on whether the procedure was initiated by the Administration or at the request of the taxpayer. As such, the electronic channel is not the only means or location for executing the notifications of the AEAT issued to such taxpayers.

2) Subjective scope of application

As far as the subjective scope of application of compulsory electronic tax notifications is concerned, it is specified in art. 4 of the aforementioned RD 1363/2010.

In this respect, the obligation to receive electronic communications and notifications made by the AEAT applies to the following organizations whose Fiscal Identification Number starts with the letter A, B, N, W, U or V: anonymous companies, limited liability companies, organizations, and entities without legal personality and that do not have Spanish nationality, permanent estab-

(44)Art. 4.1 RD 1363/2010.

lishments and branches of entities that are non-resident in Spanish territory, unincorporated joint ventures, economic interest groupings, European economic interest groupings, pension funds, venture capital funds, investment funds, asset securitization funds, mortgage market regularization funds, mortgage securitization funds and investment guarantee funds[44].

As well as these organizations, the same requirement applies to other entities which, despite their personality or legal form, are subject to any of the following circumstances: they are registered in the Registry of Large Companies; they pay taxes under the tax consolidation regime for Corporate Tax; they pay taxes under the special entity group regime for VAT; they are registered for the monthly VAT refund (in the case that they include businesspeople or professionals who are natural persons); they have the authorization of the Customs department and the AEAT for the presentation of customs returns via the electronic data interchange system (EDI)[45].

(45)Art. 4.2 RD 1363/2010.

3) Inclusion and exclusion from the system

Other issues that require analysis related to the subjective scope of application of the compulsory electronic notification system are the inclusion and exclusion of taxpayers with respect to this system, taking into account that the email address has an unlimited period of validity and that taxpayers cannot unsubscribe from the system.

In relation to the procedure for **including** taxpayers on this system, it is stipulated that the AEAT must notify taxpayers of their inclusion on the assigned email address system via non-electronic means, at the location and in the ways indicated in LGT arts. 109 to 112. However, no stipulation is made[46] with respect to a definite time limit for notification of inclusion. However, in the case of being registered on the Taxpayers Register, for the sake of procedural economy, the notification of the inclusion can be sent together with the notification communicating the corresponding fiscal identification number.

(46)Art. 5 RD 1363/2010.

With respect to **exclusion** from this system, it is stipulated[47] that the taxpayer shall be excluded from the assigned email address system when they are no longer subject to the circumstances that led to their inclusion on the system, on the condition that this is expressly requested by a specific application submitted electronically to the website of the AEAT. Although it is not expressly stated in this precept, it is supposed that the taxpayer must indicate on the aforementioned application a location to which subsequent notifications must be made.

(47)Art. 4.3 RD 1363/2010.

4) Executing notifications

In relation to **executing** this type of notifications, it is stipulated that, once the taxpayer is included on the system, taxpayers themselves shall access the notifications in accordance with the method indicated in Order PRE/878/2010, of 5 April, which establishes the structure and procedure of the assigned email address system indicated in RAECSP art. 38.2, or via a link on the website of the AEAT, with the interested party identifying themselves through an electronic signature system, in accordance with the policy on electronic signatures and certificates in relation to the General State Administration[48].

(48)Art. 6 RD 1363/2010.

Specifically, the taxpayer accesses the **assigned email address** via a general point of access to the General State Administration (http://notificaciones.060.es), via the website of the AEAT (http://www.agenciatributaria.gob.es) or the website of the email service provider (http://www.correos.es), being able to access the content of the notifications (pending notification or already notified) at any time, by visiting the website of the AEAT.

From the regulations contained in Order PRE/878/2010 on the email system, it can be inferred that taxpayers who are registered in this system have a unique address associated to an electronic inbox in which the service provider deposits the notification sent by the AEAT.

Moreover, as well as by the taxpayer in question, the assigned email address can be accessed by a **third party who has been granted express powers** to receive online notifications from the AEAT. In this respect, it stipulates that, in the case of such powers being granted and duly recorded on the corresponding register, in order to receive electronic communications and notifications, the assigned email address can be accessed either by the interested party of by their representative, with the latter having been duly accredited using the corresponding electronic signature[49].

(49)Art. 6.3 RD 1363/2010.

As a result, not only does it permit the assigned email address to be accessed by the taxpayer themselves by using the corresponding electronic certificate, but also by their representative, on the condition that they have been granted express power of attorney to receive electronic tax notifications and use the appropriate electronic certificate. In this respect, it is also required that the power of attorney be recorded on the AEAT registry, regulated by the Resolution of the General Directorate of the AEAT dated 18 May 2010.

5. Electronic invoicing

Without doubt, **invoices** represent one of the Tax Administration's most useful information tools for exercising effective control in terms of compliance with tax obligations and, at the same time, invoices are also required for applying certain expenses and deductions, and to exercise the rights to charge and deduct VAT.

Recommended reading

J. J. Martos García (2011). "La integridad del contenido y la autenticidad de origen en la transmisión o puesta a disposición de la factura". *Revista Internet, Derecho y Política* (no. 12).

Electronic invoicing contributes towards a faster and more efficient application of the tax system, while also helping to reduce the indirect tax burden on taxpayers.

Meanwhile, it should not be forgotten that the invoice, as a document in which the object of a contract is established, is stipulated in commercial and tax law as one of the key documentary components.

The **obligation to invoice** that applies to businesspeople and professionals is stipulated, in general terms, in LGT art. 29.2.e. In particular, the Value-Added Tax Act (LIVA) stipulates[50] that taxpayers subject to the tax have an obligation, in line with the requirements, limits and conditions that are legislatively established, to issue and present invoices for all of their transactions.

(50)Art. 164.1.3 LIVA.

In addition, when regulating the charging of the tax, the LIVA stipulates that this must be performed through an invoice in accordance with the conditions and requirements that are legislatively established[51]. These precepts are enacted by the provisions of arts. 62 to 70 of the Value-Added Tax Code, and RD 1619/2012, of 30 November, which approves the code that regulates invoicing obligations. Meanwhile, electronic invoicing in the public sector is regulated in Law 25/2013, of 27 December, for the promotion of electronic invoicing and the creation of an accounting registry for invoices in the public sector.

(51)Art. 88.2 LIVA.

5.1. The regulation of electronic invoicing in the European Union

In relation to this matter, **Directive 2001/115/EC** of the European Council, of 20 December 2001, amends Directive 77/388/EEC (currently, Directive 2006/112/EC of the Council, of 28 November 2006) with the aim of simplifying, modernizing and standardizing the conditions imposed on invoicing in relation to VAT.

Justification of Directive 2001/115/EC

The preface of the aforementioned Directive 2001/115/EC justifies its publication by stating that, currently, invoicing is subject to extremely diverse regulations in the different Member States of the European Union. The compulsory content in invoices was as varied as it was numerous. Meanwhile, there was no EU legal framework in place with respect to electronic invoicing and self-invoicing, so that there were large differences between the legislations adopted by the various Member States, ranging from complete prohibition to maximum flexibility.

The provisions prior to the amendment of Directive 77/388/EC in relation to the invoicing obligation, set out in Section 3 of art. 22, were not developed to any great extent and gave the Member States great freedom of interpretation. However, this section was designed at a time when it was not possible to imagine any form of invoice that was not paper-based.The idea of electronic invoicing was, therefore, not catered for in any way by these provisions.

Moreover, the obligations imposed on invoicing were solely based on this concept of paper invoices and they were not easily transferable to electronic invoices. This was the case, for instance, for the obligation to keep a copy of the documents, which is difficult to interpret when dealing with invoices sent electronically.

Currently, the legislative provisions regulating invoicing are contained in arts. **217 to 240 of Directive 2006/112/EC**, which basically set out the amendments introduced by Directive 2001/115/EC. The amendments introduced by Council Directive 2010/45/EU, of 13 July, should also be taken into account, which have been enacted in our legislation by the aforementioned RD 1619/2012, of 30 November.

Amendments introduced by Directive 2001/115/EC

The first amendment introduced by Directive 2001/115/EC deals with the obligation to issue invoices. There are no changes made with respect to the determination of the cases in which, at a European Union level, there is an invoicing obligation.

It expressly stipulates that the invoicing obligation can be delegated to a third party (subcontracting) or to the customer (self-invoicing). Therefore, from this point onwards, the taxpayer who conducts the transaction is responsible for an invoice being issued, but is not, strictly speaking, under obligation to issue the invoice themselves. With respect to self-invoicing, Member States can impose other conditions on issuing invoices. In particular, they can demand that these invoices are issued in the name of and at the cost of the taxpayer.

The second amendment introduced by Directive 2001/115/EC focuses on the content of the invoices. In terms of the information that must be included on the invoices, the growing internationalization of economies and the development of electronic commerce has obviously made it crucial that this information is standardized. The list consists of fifteen general pieces of information.

In addition, it also provides the option for Member States to stipulate that not all of the information is compulsory in the case of invoices issued when the invoice amount is small, or when the commercial or administrative practices in the sector of activity concerned or the technical conditions of issuing these invoices make it difficult to include all of this information.

Meanwhile, it excludes the possibility of Member States imposing conditions in relation to the signature of invoices, with the exception of the conditions established with respect to electronic invoicing.

The third amendment introduced by Directive 2001/115/EC refers to electronic invoicing. It establishes a general principle by which an invoice can be sent in any format, whether it be physical or electronic, and, in the latter case, on the condition that the recipient has given their consent to this effect. The acceptance of this principle, which saves the need for presenting a long list of accepted technologies or methods, is the only way in which a legal framework can be constructed that is neutral from a technological point of view and which is, therefore, sustainable through time.

It imposes certain conditions underpinning electronic invoicing, which aim to guarantee the technical certainty of the method. These conditions are as follows: the guarantee of authenticity of the origin of the invoice, so that the recipient of the invoice is certain that it really comes from the issuer; and the guarantee of the integrity of the content of the invoice (the set of information, including the invoice number).

In order to fulfil these two conditions, the following methods can be used. The first option is the advanced electronic signature, in accordance with the provisions of art. 2.2 of Directive 1999/93/EC of the European Parliament and of the Council, of 13 1999, which establishes an EU framework for electronic signatures. According to the aforementioned art. 2.2 of this Directive, an advanced electronic signature is one that meets the following requirements: it is binding for the signatory on a unique basis; it enables the signatory to be identified, having been created through means that the signatory can keep under their exclusive control; it is binding in terms of the data contained therein so that any subsequent modification can be detected.

The second option is the electronic data interchange (EDI), as defined in art. 2 of Commission Recommendation 1994/820/EC of 19 October 1994, when the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data;

Lastly, there are other electronic transmission means, subject to their approval by the Member State or States in question.

Finally, it is stipulated that, in the case of batches containing several electronic invoices that are sent simultaneously to the same recipient, the details that are common to the individual invoices may be mentioned only once if, for each invoice, all the information is accessible.

The fourth amendment introduced by Directive 2001/115/EC deals with storage of the invoices. The concept of the obligation to store a duplicate is replaced by a more general obligation to store the invoices issued and received, with the aim of adapting this obligation to the development of electronic invoicing. Therefore, it states that all taxpayers must ensure that they store copies of the invoices that they issue on their own behalf, for customers or, in their own name for a third party, as well as the invoices that they receive.

However, the time period for which storage is obligatory can only be stipulated by the Member States themselves. Therefore, the issue depends on purely national procedures in terms of the supervision regulations. When the invoice is sent electronically, the States can demand that the data that guarantees the authenticity of the origin and the integrity of the content of each invoice is also stored.

The last of the amendments introduced by Directive 2001/115/EC establishes a definition of electronic transmission and storage of the invoices. In this respect, the electronic transmission and storage of an invoice is understood as transmission and storage performed using electronic processing (including digital compression) and data storage equipment, and using the telephone, radio, optical media and other electromagnetic means.

Lastly, as mentioned earlier, **Directive 2010/45/EU** introduces certain amendments to the regulations on invoicing, which have been incorporated in the Spanish legislation as of 1 January 2013, by RD 1619/2012, of 30 November, which approves the Code that regulates invoicing obligations.

Amendments introduced by Directive 2010/45/EU

The main amendments introduced by Directive 2010/45/EU are as follows:

Firstly, there must be a clear indication of the Member State's applicable invoicing regulations.

Secondly, a standardized time limit is imposed for issuing invoices corresponding to certain cross-border goods deliveries or service provisions.

Thirdly, certain requirements are amended in relation to the information that must appear on invoices, with the aim of enabling better control of the tax and more uniform treatment of cross-border and national deliveries and service provisions, as well as helping to promote electronic invoicing.

The fourth amendment is the revision of the requirements for electronic invoicing with the aim of reducing the workloads and obstacles involved, applying the same treatment for paper-based and electronic invoicing, without increasing the administrative workload in relation to paper-based invoicing.

In this respect, it should be noted that there is still a significant difference between the two modalities of invoicing, in view of the fact that, in order to be able to issue invoices electronically, Directive 2010/45/EU still stipulates the requirement for consent from the recipient. However. the recipient's consent for issuing electronic invoices hardly adds value in terms of administrative control. For this reason, in our opinion, this condition should be eliminated in the near future, when the level of incorporation of ICT between companies and individuals is greater than is currently the case.

As a result of the fifth amendment, with respect to the powers of the tax authorities, supervision powers and taxpayers' rights and obligations, these must be applied on an identical basis with respect to the taxpayer, regardless of whether they issue their invoices on paper or electronically.

The sixth amendment establishes that invoices must reflect the real situation in terms of the goods delivered or services provided, and must guarantee its authenticity, integrity and legibility. Moreover, to this end, administrative supervision can be used to establish reliable audit trails between the invoices and the goods delivered or services provided, thereby ensuring that each invoice meets these requirements (regardless of whether they are in paper or electronic format).

The seventh amendment states that the authenticity and integrity of electronic invoices can be guaranteed through the use of the electronic data interchange (EDI) or advanced electronic signature systems. However, as there are other technologies, taxpayers cannot be required to use a specific electronic invoicing technology. Directive 2010/45/EU tries to align the treatment of paper and electronic invoices, by not requiring the use of a signature in either of the formats, as this requirement has been eliminated in the case of electronic invoice, thereby reducing the administration costs for companies.

Lastly, clarifications are made with respect to when taxpayers store invoices online that they have issued or received, and regarding the fact that the Member State where the taxpayer is established, in which the tax must be paid, must have the right to access these invoices for supervision purposes.

5.2. Electronic invoices in the Spanish legal system

Invoices issued by a businessperson or professional, or by a customer or third party acting in the name and on behalf of the aforementioned businessperson or professional, can be transmitted by **electronic means**, on the condition that, in the latter case, the recipient of the invoices has given their consent and the electronic means used for transmission guarantee the authenticity of its origin and the integrity of its content[52].

(52) Art. 164.2 LIVA.

Meanwhile, the LIVA states that the invoices received, accounting records, invoices issued and copies of all other invoices issued must be kept, albeit by electronic means, throughout the period of limitation of the tax.

In addition, when the taxpayer stores the issued or received invoices by electronic means, it must be guaranteed that the Tax Administration has online access to these invoices and can download and use them remotely. The aforementioned obligation applies regardless of the storage location[53].

(53) Art. 165.4 LIVA.

In accordance with the provisions of art. 1 of Law 56/2007, of 28 December, on Measures for Promoting the Information Society, the term ***electronic invoice*** must be taken to mean an electronic document that meets the requirements that are legally and statutorily enforceable in relation to invoices and which, in addition, guarantee the authenticity of its origin and the integrity of its content, which prevents the repudiation of the invoice by its issuer. Meanwhile, in accordance with the provisions of art. 3.5 of Law 59/2003, in the version approved by Law 56/2007, of 28 December, an electronic document is considered to be information of any nature in electronic form, stored in an electronic format of a determinate type that can be identified and processed individually.

Recommended reading

A. M. Delgado García (2012). "Los medios electrónicos y las obligaciones formales en el ámbito tributario". *Revista Aranzadi de Derecho y Nuevas Tecnologías* (no. 28).

Characteristics of electronic invoices

An electronic invoice is an original invoice and, therefore, does not constitute a replacement document for the invoice, as it is not a document that cannot be used to exercise the right to deductions in terms of the recipients contributions or taxable base (as in the case of the numbered vouchers and receipts issued by cash registers). Neither is it a document equivalent to the invoice (which, in contrast to the replacement document and despite not meeting the requirements of an invoice, has the same effects). It is not a duplicate of the original of the invoice either (as in the case of the transaction in which there are several recipients, or when the original is lost for any reason), nor is it a copy of the original of the invoice.

RD 1619/2012, of 30 November, which approves the **Invoicing Obligation Regulations** (ROF), sets out the amendments introduced on this matter by Directive 2010/45/EU. It came into effect on 1 January 2013 and superseded the invoicing obligation regulations approved by RD 1496/2003, of 28 November.

Invoicing obligation regulation

In terms of the new developments introduced by RD 1619/2012, of 30 November, according to the preface, in order to achieve greater legal certainty for businesspeople and professionals, cases are clarified in which the invoicing rules stipulated in the ROF should be applied.

As a new development related to the obligation to issue invoices, it stipulates that this obligation shall not apply in the case of the provision of certain financial and insurance services, except when these transactions are deemed to have been conducted in a territory in which the tax is applied or in another EU Member State and they are liable and not exempt.

In order to establish a harmonized billing system in the field of EU and to promote and facilitate the operation of small and medium-sized entrepreneurs, as well as professionals, it establishes an affiliation system based on two types of invoices: the complete or ordinary invoice and the simplified invoice, which comes to replace to the so-called tickets.

The content of **simplified invoices** is less than the content of full or ordinary invoices and, with a few exceptions, they can be issued by the taxpayer:

- when the invoice amount does not exceed 400 euros, VAT included;
- in the case of rectified invoices;

- when the invoice amount does not exceed 3,000 euros, VAT included, and it meets one of the conditions for which authorization has traditionally been given to issue receipts instead of invoices.

Moreover, according to the preface of RD 1619/2012, the new EU regulation on invoicing represents a clear boost to electronic invoicing, under the principle of equal treatment for paper and electronic invoices, as an instrument for reducing costs and making companies more competitive.

In this respect, a new definition of **electronic invoice** is established as any invoice which, in compliance with the requirements stipulated in the regulations, has been issued and received in electronic format.

In any case, invoices in paper or electronic formats must reflect the reality of the transactions that they document and the taxpayers are responsible for ensuring this certainty throughout the term of the invoice, without this requirement involving any extra administrative workload for businesspeople and professionals.

As such, the taxpayer may guarantee the authenticity, integrity and legibility of the invoices that they issue or store through the **usual management and auditing controls** that they implement in the course of their business or professional activity.

This equal treatment for paper and electronic invoices therefore expands the range of possibilities to enable taxpayers to issue invoices by electronic means, without requiring the use of a specific type of technology.

However, in order to guarantee legal certainty of taxpayers that were already using the electronic data interchange (EDI) and the advanced electronic signature, this Regulation expressly acknowledges that these technologies, which are **no longer compulsory**, guarantee the authenticity of the origin and the integrity of the content of electronic invoices.

Moreover, taxpayers can continue to inform the AEAT of any means that they consider appropriate that guarantee the aforementioned conditions, so that, if applicable, they can be validated by the Agency, prior to it employing them.

Lastly, in order to improve the operation of the internal market, a standardized time limit is imposed for issuing invoices for certain goods and service provisions between members of the European Union.

Moreover, for the purposes of facilitating the administrative management of taxpayers, it has been deemed appropriate to apply this same standardized time limit to all transactions for all other businesspeople and professionals, whether at a internal or international level. This time limit also applies in the case of summary invoices.

In relation to the **means of issuing invoices**, specifically, ROF art. 8.1 stipulates that "invoices may be issued by any means, whether in paper or electronic format, by which the authenticity of the origin and integrity of the content of the invoices, as well as their readability, can be guaranteed from the date of issue and throughout the storage period". The authenticity of the origin of the invoice, in paper or electronic format, shall guarantee the identity of the taxpayer to whom the invoice is issued and the issuer of the invoice. The integrity of the content of the invoice, in paper or electronic format, shall guarantee that the invoice has not been modified[54].

(54)ROF art. 8.2

The authenticity of the origin and the integrity of the content of the invoice, in paper or electronic format, may be guaranteed by any verification means allowed by law, in accordance with ROF art. 8.3. In particular, the authenticity of the origin and the integrity of the content of the invoice may be guaranteed through the usual administrative controls in place in the taxpayer's business or professional activities. The aforementioned administrative controls must enable a **reliable audit trail** to be created that establishes the necessary link between the invoice and the delivery of goods or service provision that the invoice indicates.

In terms of the concept of electronic invoice, ROF art. 9.1 stipulates that "electronic invoice shall be taken to mean any invoice which complies with the requirements stipulated in these Regulations and which has been issued and received in electronic format". Issuing an electronic invoice, is conditional on the recipient having given their **consent**[55].

(55)ROF art. 9.2

With respect to the authenticity of the origin and the integrity of the content of the electronic invoice, according to ROF art. 10.1, they can be guaranteed by any of the means indicated in art. 8 of the aforementioned regulations.

In particular, the authenticity of the origin and integrity of the contents of the electronic invoice are guaranteed in one of the following ways[56]:

(56)ROF art. 10.1

a) by means of an advanced electronic signature within the meaning of art. 2.2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999, on an EU framework for electronic signatures, based either on a qualified certificate created by a secure signature-creation device,

in accordance with the provisions of Sections 6 and 10 of art. 2 of the aforementioned Directive, or on a qualified certificate, in accordance with the provisions of Section 10 of art. 2 of the aforementioned Directive;

b) by means of the electronic data interchange (EDI) as defined in art. 2 of Commission Recommendation 1994/820/EC of 19 October 1994, relating to the legal aspects of electronic data interchange, when the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data;

c) by other means that the parties involved have communicated to the AEAT prior to their use and which have been authorized by the Agency.

In the case of **batches** containing several electronic invoices that are sent simultaneously to the same recipient, in accordance with ROF art. 10, the details that are common to the individual invoices may be mentioned only once if, for each invoice, all the information is accessible.

In this context, it is necessary to refer to **electronic invoicing in the public sector**. Law 25/2013, of 27 December on promotion of electronic invoicing and creation of an accounting registry for invoices in the public sector, in accordance with its article 1, is aimed at promoting the use of electronic invoicing, creating an accounting registry for invoices and regulating the proceedings in public administrations and follow-up actions by the competent bodies.

Recommended reading

Delgado García, A. M. (2014). "La regulación de la factura electrónica en el sector público". *Revista de Internet, Derecho y Política* (issue 18).

According to this legal provision, the following entities will be **obliged to use electronic invoicing**: corporations, limited liability companies, legal persons and entities without legal personality that are not of Spanish nationality, permanent establishments and branches of entities not resident in Spanish territory, consortia, economic interest groupings, European economic interest groupings, pension funds, venture capital funds, investment funds, asset utilization funds, mortgage market stabilization funds, mortgage securitization funds and investment guarantee funds[57].

(57) LFESP art. 4

However, it is important to keep in mind that public administrations may statutorily exclude from this electronic invoicing obligation invoices of up to EUR 5,000 and those issued by suppliers to services of public administrations abroad. It should also be noted that all suppliers have the right to be informed about the use of electronic invoicing through the public body or entity determined by each public administration.

Electronic invoices sent to public administrations must have a structured **format** and be signed with **advanced electronic signature** based on a qualified certificate, in accordance with the provisions of ROF 10.1.a[58].

(58)LFESP art. 5

The **advanced electronic seal** based on a qualified certificate will also be admitted. The Law itself defines it as the set of data in electronic form which are found in or associated with electronic invoices that can be used by legal persons and entities without legal personality to guarantee the origin and integrity of its content.

On the other hand, the Law establishes that the Spanish State, autonomous regions and local entities will all have a **general entry point for electronic invoices**. Invoices by entities, agencies, associated or subordinated bodies will all be received through this point. However, local entities may join the general entry point for electronic invoices provided by their local government offices, autonomous regions or the State. Likewise, autonomous regions may join the general entry point for electronic invoices provided by State[59].

(59)LFESP art. 6

All electronic invoices submitted through the general entry point for electronic invoices will be recorded automatically in an electronic registry of the Public administration in charge of this general entry point, providing an electronic acknowledgment of receipt with proof of date and time of submission.

General entry point for electronic invoices

In this regard, the general entry point for electronic invoices will be an automated service for the electronic provision or referral of said invoices to the competent accounting offices for registration.

When a public administration does not have a general entry point for electronic invoices and has not joined that of another administration, the supplier shall have the right to submit their invoice at the general entry point for electronic invoices of the General State Administration. The invoice will be deposited automatically in a repository. The relevant administration will be responsible for accessing and processing the invoice.

In addition, the Law provides that the local government offices, councils and island councils will offer to the municipalities with a population of less than 20,000 inhabitants the assistance and technical means necessary to ensure the application of the provisions of this rule, in accordance with article 36.1 of Law 7/1985, of 2 April on the basis of the local government.

It should also be kept in mind that, as established by the Law, the administrative body to which the invoices are addressed is responsible for **archiving and custody of electronic invoices**. This does not exclude the fact that this administrative body may choose to use the corresponding general entry point for electronic invoices as a means of archiving and custody of said invoices if said body has joined the general entry point[60].

(60)LFESP art. 7

It should also be stressed that when the general entry point for electronic invoices is used for archiving and custody of electronic invoices, the information contained in it cannot be used or transferred except for the administrative body itself to which the invoice corresponds. This shall be without prejudice to the obligations that may arise from tax regulations.

6. Immediate Supply of Information

6.1. Applicable regulations and system objectives

The SII (Immediate Supply of Information) mandates that the keeping of register books (of invoices issued, invoices received, capital goods and certain intra-community transactions) is done **on the AEAT's electronic headquarters** (i.e. the Spanish tax authorities' online portal or platform) by submitting invoice records almost immediately. Taxpayers must continuously send the Tax Administration details about their invoicing via the electronic channel. With this updated information, VAT register books are reported almost in real time.

Recommended reading

Delgado García, A. M. (2017). "La regulación del Suministro Inmediato de Información". *Quincena Fiscal* (issue 20).

This is one of the most significant changes that have been introduced in VAT management since the creation of this tax.

It should be clarified that with the new VAT management system taxpayers are not supposed to send the invoices themselves. Instead, taxpayers should send invoice records (ledgers containing VAT-related data). This provision is found in Order HFP/417/2017, of 12 May 12 on the regulatory and technical specifications regarding the new system to keep VAT register books on the AEAT online platform.

It should also be noted that, with the SII, a new obligation has not been introduced in our tax system in a strict sense. Rather, it is about complying with the existing obligation of maintaining the register books (although it has implications for the taxpayers as it involves more procedures). In this respect, it is not only a system of keeping the books registered in electronic headquarters. This is the obligation for certain taxpayers to electronically report the invoice records issued and received with the Tax Administration.

In relation to the **regulations applicable** to this new VAT management system, it must be taken into account that Law 34/2015, of 21 September amending the LGT, made changes to article 29, which is dedicated to formal tax obligations. In this article, the third section (on bookkeeping) stated the possibility of using a rule to regulate the obligation of reporting invoice records via electronic channels. And, in connection with this new provision, the same Law modified article 200 in order to classify as a tax violation the reporting deadlines in the obligation to maintain the VAT register books on the AEAT online platform.

The regulatory development of the SII is essentially specified in RD 596/2016, of 2 December for the modernization, improvement and promotion of electronic means in the management of VAT.

Regarding the **objectives of the SII**, the introduction of this new VAT tax management seeks to enhance taxpayer assistance and to provide the Tax Administration with greater and better tax control.

Main objectives of the SII

1) A first objective of the SII is to enhance taxpayer assistance. Thus, taxpayers are first provided a series of fiscal data, and then the draft tax return in a second stage. In this respect, the taxpayer will have two register books in the AEAT portal: an "accounted for" book and a "compared" book with contrast information from third parties belonging to the VAT group of this system or the AEAT database. Taxpayers will be able to check this information before the end of the deadline for submitting their monthly VAT declaration and, if it proceeds, correct the errors made without being required by the AEAT to do so.

2) A second objective established in RD 596/2016 is the adaptation to the development of new technologies. Thus, the preamble of said provision specifies that the keeping of different register books has undergone a profound transformation since the first time the obligation was established, in line with the development of new technologies, the use of electronic media by Spanish businesses and the gradual implementation of the use of electronic invoicing. So much so that, as of today, the number of businessmen and professionals not using electronic or computer means to keep VAT register books is residual.

3) A third objective is to achieve greater and more efficient tax control to detect VAT fraud, by providing the Tax Administration with quality information almost in real time. In our opinion, the main objective of the SII is clearly tax control, as it is obvious that the obligation to provide immediate information to the AEAT is intended to allow the Tax Administration to carry out a more thorough control of the self-assessments filed, so that tax fraud can be avoided and ensuring that the accrued VAT is actually accounted for within the period in which the operations subject to VAT occurred. Let's not forget that the Administration has a large amount of information on the economic activity of the taxpayers to whom the SII applies, more information than the one found in the register books kept by the rest of the businessmen and professionals.

6.2. Subjective scope of application

The **subjective scope of application of the SII is two-fold**, since in some cases its application is compulsory whereas in others the taxpayer can choose to follow it.

The SII is **compulsory** for businessmen and professionals and other taxpayers whose tax settlement period coincides with the calendar month: large companies (turnover over EUR 6,010,121.04 turnover per annum), VAT groups and those applying the VAT group regime in the REDEME[61] (monthly VAT refund scheme).

(61) RIVA arts. 62.6 and 71.3.5

On the other hand, those the SII will be **optional** for other taxpayers by filing a Census form under the terms of RIVA art. 68 bis, which regulates the form and exercising of said option. In that case, the reporting period will be monthly, and the option will be extended for the following years provided that there is no waiver. Through this provision the legislator can generalize the system.

The **option** for taxpayers to maintain their VAT books electronically on the AEAT online portal must be exercised during the month of November preceding the calendar year in which the option shall be effected by submitting the corresponding Census tax return form (modelo 036), or at the time of filing the report of commencement of activity, in this case having effect in the current financial year[62].

(62) RIVA art. 68 bis

Wavering must be exercised by submitting a Census tax return form (form 036) during the month of November preceding the calendar year in which the option shall be effected. Exclusion from REDEME will mean exclusion from the SII from the first day of the settlement period in which the exclusion agreement has been notified, unless the settlement period is still on a monthly basis.

Resignation from the special scheme of the VAT group of entities will determine the resignation from the SII with effect from the time when the former occurs unless the settlement period is still on a monthly basis.

6.3. Information to be provided and sanctions

1) Information to be provided

In accordance with RIVA provisions, the entities included in the SII must include some additional **information**[63] apart from the information provided via traditional register books.

(63) RIVA arts. 62.6, 63.3 and 64.4

In relation to the **ledger of issued invoices**, the following information fields must be provided:

- invoice type (complete or simplified, invoices issued by third parties and receipts of the special agriculture, farming and fishing scheme, among others);
- identification of action for correcting records;
- description of the transaction;
- corrected invoices (identification as such, corrected invoice reference or specifications that are being modified);
- substitutive invoices (reference of the substituted invoice reference or specifications that are being replaced);
- self-billing tax invoicing;

- conversion to taxable person;
- special schemes (travel agencies, used assets, cash approach, group of entities, investment gold);
- settlement period for the transactions;
- indication of transaction subject to and exempt from VAT;
- AEAT invoicing agreement, where applicable;
- and any other information with tax significance determined by ministerial decree.

In relation to the **ledger of received invoices**, the following information fields must be provided:

- the receipt number is replaced by the invoice number and series;
- identification of action for correcting records;
- description of the transaction;
- self-billing tax invoicing;
- conversion to taxable person;
- intra-community acquisition of goods;
- special schemes (travel agencies, used assets, cash approach, group of entities);
- deductible tax from the settlement period;
- settlement period corresponding to the registered transactions;
- accounting date and Single Customs Declaration number (DUA) in case of imports;
- and any other information with tax significance determined by ministerial decree.

The electronic reporting of invoice records will be made on the **AEAT portal** through a web service or an electronic form, in accordance with the registration fields approved in the relevant ministerial decree.

2) Deadlines for electronic submission

In relation to the **invoices issued**, the deadline is four calendar days after the issuance of the invoice, unless for invoices issued by the recipient or by a third party, which must be completed within eight calendar days. In both cases, submissions must be completed before the 16th day of the month following that in which the tax accrual occurred.

In relation to the **invoices received**, the deadline is four calendar days after the date of taking the accounting record or that of the document in which the quota settled by customs is recorded in case of imports and, in any case, before the 16th day of the month following the reporting period in which the transactions have been included. Consequently, any entry in the ledger of received invoices must necessarily be made before the end of the deadline for submission of the self-assessment corresponding to the period in which

the deduction is due (for VAT purposes, understood as the four-year period in which the taxable person can exercise their right to deduction, even if they choose not to do so).

As regards certain **intra-community transactions** (sending or receiving tangible assets for temporary use or for preparation of expert reports, repairs and work on them), the deadline is four calendar days counting from the date of dispatch in case of supply of goods, or where applicable, counting from the date of receipt of goods.

3) Modification of formal obligations

Taxable persons who choose to apply the SII voluntarily go from generally paying taxes quarterly to having a settlement period that coincides with the **calendar month** (in this line, RIVA art 71.3, in its new number 5, extends the circumstances of monthly declaration to persons who choose to apply the SII). As for taxpayers obliged by the SII, there is no variation with respect to the settlement period, which remains monthly.

In relation to the **deadline for submitting tax returns-settlements**, and in accordance with the new wording of RIVA art. 71.4, it is extended for entrepreneurs who use the SII until the first thirty calendar days of the month following the corresponding monthly settlement period, or until the last day of the month of February for the tax return-settlement corresponding to the month of January (compared to the first twenty calendar days of the month following the corresponding monthly or quarterly settlement period that applies in general).

As already mentioned, certain formal obligations are also abolished. As provided in RGGIT arts. 32.f) and 36.1 RD 596/2016 2 DT, taxable persons who apply the SII are exempted from submitting certain **informative returns**. These include, on the one hand, the reporting of transactions with third parties (modelo 347) from the period corresponding to 2017 and, on the other, the informative return with the content of the register books (modelo 340) for taxable persons registered in REDEME.

4) Applicable penalty scheme

As previously mentioned, Law 34/2015, of 21 September on amendments to the LGT, has modified article 200 to classify delay in the obligation to maintain the VAT register books on the AEAT online platform as a tax infraction. Entry into force of this amendment goes back to 1 January 2017.

Specifically, letter g has been introduced in LGT art. 200.1, which provides that the following is considered a tax infraction:

"delay in the obligation to maintain the register books on the AEAT's electronic headquarters by providing invoice records in the terms established by regulation".

A new paragraph is also introduced in LGT art. 200.3. It states that:

"delay in the obligation to maintain the record books on the AEAT online portal by providing invoice records in the terms established by regulation will be sanctioned with a proportional penalty of 0.5 % of the amount of the invoice subject to registration, with a quarterly minimum penalty of EUR 300 and a maximum penalty of EUR 6,000".

7. Online presentation of appeals

7.1. Online channels for submitting appeals for reversal

Online channels can be used to submit **appeals for reversal** and other tax-related applications such as refunds for undue taxes, rectification of self-assessments and initiating the rectification procedure in the case of material, factual or mathematical errors.

Recommended reading

J. Calvo Vérgez (2011). "La interposición de reclamaciones económico-administrativas a través de Internet". *Revista Internet, Derecho y Política* (no. 12).

This matter is regulated by the Resolution of 11 December 2001, of the General Directorate of the State Tax Administration Agency (AEAT).

With respect to the procedure for **online presentation** of an appeal for reversal or the aforementioned applications, firstly, the applicant or, if applicable, their representative, must contact the Tax Agency via its website. They should select the "Appeals and Claims" option. They should then select the "Appeals for reversal and other applications / presentation of applications" option, which gives a set of general instructions for completing the application.

Next, they should select the type of application that they wish to submit, although this parameter is not compulsory. Depending on the option selected, they then complete the information required by the form that appears on the screen.

Their **pleadings** can be added by uploading a file in HTML format of by creating it at the time that of lodging the application. If they wish to attach documentation to the application, the interested party or their representative must do so on one of the registries established by the administrative regulations. In this documentation, they must mention the electronic validation code given to them by the Tax Agency.

Once all of the details have been entered and the program has validated them, the document for presenting the application will be shown. If this is not the case, any errors are indicated so that the interested party or, if applicable, their representative can rectify them.

They then have to select a **user certificate**, installed previously on the browser in order to generate the electronic signature. Next, the document for presenting the application with the digital signature is sent to the Tax Agency.

If the request is accepted, the Tax Agency returns the written request presentation to the taxpayer on the screen validated with a sixteen-character electronic code, along with the date and time of presentation.

In addition, if the application is submitted by a voluntary **representative**, both in the case of natural persons and organizations, the program will display a message indicating the requirement that accreditation of the representative's status as such must be provided within the ten-day period following the presentation of the application. The granting, acceptance and revocation of representative powers in relation to processing appeals can be accredited online. In this respect, it should be noted that, in accordance with the Resolution of 19 October 2005, of the General Directorate of the AEAT, acting through joint tax reporting is also permitted in the case of online presentation of the appeal for reversal.

The appellant or, if applicable, their representative must print and keep the document with which the request is submitted, once approved and validated with the corresponding electronic code.

Lastly, the lodged application can be consulted by selecting the corresponding user certificate, and going to the "Application presentation enquiry" option, where the presentation document can be obtained again as it was shown when the application was submitted.

7.2. Lodging financial administrative claims online

The General Tax Act refers[64] to the use of electronic, computerized or online means for financial administrative claims. In effect, as a general rule, it states that electronic, computerized or online means can be used for lodging, processing and ruling on financial administrative claims. In the same way, as mentioned above, it permits the use online notifications in this area.

[(64)]DA 16ª LGT.

Moreover, the General Tax Act states that the documents that are included in a file corresponding to a financial and administrative claim can be obtained by electronic means. Lastly, the Treasury Department is given the power to regulate the aspects required for the implementation of these measures and the creation of the resulting electronic records.

Electronic notifications and electronic case files

LGT art. 234.4 provides for the possibility of notifying interested parties of acts and resolutions through their publication on the website of the financial and administrative tribunals. Furthermore, electronic notification will be obligatory when the appellants are obliged to receive communications and notifications via electronic channels, and when claims must also be submitted this way.

In LGT arts. 235.5 and 236.1 reference is made to the electronic case file, and the obligation for electronic submission of claims is established when appellants are obliged to receive notifications via electronic channels. In such cases (obligatory submission of claims via electronic channels), the pleadings, evidence and any other written content must also by submitted in this way.

Meanwhile, the General Revision Code for Administrative Channels (RGRVA) stipulates[65] that the Ministry of the Treasury shall establish the regulations for development in relation to the use of electronic, computerized or online means for lodging, processing and ruling on financial administrative claims. It goes on to add that the transfer of files between the administrative bodies indicated in this regulation can be replaced by the file in electronic format, on the conditions that it meets the requirements for admissibility imposed by the legislation.

(65)DA 3ª RGRVA.

The regulatory implementation of these matters is encompassed in **Order EHA/2784/2009**, of 8 October, which regulates the online lodging of financial administrative claims and which is partially developed in the Sixteenth Additional Provision of the LGT, on the use of electronic computerized and online means in financial administrative claims.

The aforementioned Order is applied in relation to online lodging of **financial administrative claims**, both in the case of general procedure in the court of first and last resort or the court of first instance, and in the case of summary procedure hearings before single-member bodies, as well as in the case of applications for enforcement, the referral of the administrative case with respect to the act against which the claim has been lodged electronically and for online enquiries regarding the processing status of financial administrative claims.

In terms of the **scope of application**, online presentation may be used in the case of petitions for financial administrative claims, both in the case of general procedure in the court of first and last resort or the court of first instance, and in the case of summary procedure hearings before single-member bodies, as well as in the case of applications for enforcement. Therefore, electronic or online presentations shall not be valid or effective in the case of any appeals indicated in the annulment regulated by LGT art. 241 bis, of the petitions or any other documents or procedural acts other than those cited[66].

(66)Art. 2 Order EHA/2784/2009.

With respect the **location and form for presenting claims**, the presentation must be performed by completing the form provided for this purpose on the electronic registry of the institution that made the ruling on the contested measure and which enables the inclusion of attached documents or files in the format stipulated in this respect by the institution in question within the list of accepted formats[67] by the Treasury Department. In particular, the application for the suspension of the contested measure can be included, in accordance with RGRVA art. 40.

(67)Art. 3.1 Order EHA/2784/2009.

The presentation form

The presentation form shall include the points indicated in RGRVA art. 2.1, as well as a space for making any pleadings, if necessary. This precept stipulates that the application or written claim must contain the following points: a) name and surnames or company

name or full denomination, fiscal identification number and address of the interested party; in the event that they are acting through a representative, their full identification details are required; b) the institution before which the claim or appeal is being lodged, or to which the application to start proceedings is being made; c) administrative deed or action that is being challenged or which is the object of the proceedings, date on which it was ruled, case number, or the alphabetical and numerical code that identifies the administrative act that is being challenged and any other related information that may be considered necessary, as well as the claim of the interested party; d) address indicated by the interested party for the purpose of notifications; e) location, date and signature of the claim or application; f) any other information stipulated in the applicable legislation.

The **identification and authentication** of the signatory may be performed using any of approved electronic signature systems, in accordance with the provisions of the LPACAP, on the recipient electronic registry[68].

(68)Art. 4.2 Order EHA/2784/2009.

Moreover, the form templates are approved that will be used to lodge financial administrative claims against a decision ruled by an administrative body, as well as the form for lodging financial and administrative claims against actions or omissions of private individuals related to tax matters and for presenting a petition for enforcement with respect to an financial administrative ruling.

It is also stipulated that the presentation form must be equipped with a validation system through which the appellant can obtain online an **authenticated digital copy**, which can be printed on paper and which verifies the act of presentation, the institution to which it has been submitted, the content of the completed form including the text of the pleadings, if applicable, the date of presentation and the registry entry number[69].

(69)Art. 5.1 Order EHA/2784/2009.

Meanwhile, the proof of **receipt of the presentation** must include the list of documents and files attached to the presentation form, as well as a digital fingerprint of each of them. In the event that files containing malicious code are submitted, the document must at least contain the name but not the digital fingerprint of the files in question.

In the same way, it states that the institution that made the ruling on the contested measure must send or give the competent tribunal access to the administrative case file corresponding to the measure in question in electronic format, if this is possible with the technical resources available[70]. In order to generate the **electronic case file**, the provisions of the LPACAP on this matter shall apply, and the provisions of art. 70.3 of this law must be complied with, such that the appellant must be able to verify the integrity of the file sent and the impossibility of its modification.

(70)Art. 6.1 Order EHA/2784/2009.

Whenever possible, the Order stipulates that the file shall be sent or made available to the competent tribunal by web-based automated online channels. Email can also be used as another form of electronic transmission, on the condition that an agreement to this effect is made between the issuing institution and the financial and administrative tribunals. In this case, it is necessary to

establish a proof of receipt system that guarantees that both parties have proof that the full file was delivered and received by the financial and administrative tribunals.

It is also stipulated that the tribunal must be equipped with viewing systems that enable the file to be examined and which guarantee that the content shown and the file received online or stored in digital or optical format are identical, but paper copies of the original file will not be issued. The appellant and the interested parties who have duly appeared in the claim can obtain an electronic copy of the file, at their own cost, during the processing of the plea declarations[71].

(71)Art. 6.6 Order EHA/2784/2009.

The body to which the claim has been sent online shall **forward it to the corresponding financial and administrative tribunal**. The appeal should preferably be sent in electronic format, together with the original file and other documentation required by law in the same format, if applicable. When the original file and associated documentation cannot be sent in electronic format, a dispatch system must be used that facilitates the binding effect of the online claim with its original file in paper format[72].

(72)Art. 7.1 Order EHA/2784/2009.

In the claim file, a paper copy may be included of the document for presenting the claim that was submitted online. For this purpose, the tribunal must have systems in place that enable this copy to be obtained in such a way that it guarantees that the content of the electronic form and the printed copy is identical.

The remaining actions involved in the financial and administrative procedure initiated online, as well as the actions that do not fall within the scope of application of the order that regulates it, shall continue to be presented and documented in paper format in the claim file.

Lastly, it states that the appellant and the interested parties who have duly appeared in the claim can ascertain the **processing status** of the claim via the websites of the financial and administrative tribunals or by other online means. This right, however, does not extend to the content of the processes. The identification and authentication of the appellant and the parties involved in the appeal or claim that are the subject of the enquiry (or their representatives) may be performed using any of the accepted electronic signature systems, in accordance with the provisions of the LAECSP[73], in the corresponding electronic headquarters.

(73)Art. 8 Order EHA/2784/2009.

Activities

Case studies

1. The company X, S. A. cannot submit the online tax return the same day that they make payment of the tax, for technical reasons.

a) What provisions are there regarding such cases?

b) If the payment has been made on the last day of the voluntary payment period, what are the consequences of presenting the tax return the following day?

c) And if the tax return is submitted a week later?

d) Are there any circumstances that would exempt the company from liability?

2. With respect to the company X, S. A.:

a) Will the company compulsorily receive online notifications?

b) Which means may be used to make electronic notifications?

c) At what point is the electronic notification deemed to have been effectuated for legal purposes?

Self-evaluation

1. The binding effect of written tax enquiries means that...

a) the taxpayer is under obligation to modify their actions in accordance with the terms contained in the response to the enquiry.
b) the Administration is under obligation to modify its actions in accordance with the terms contained in the response to the enquiry.
c) the Administration is under obligation to penalize taxpayers that breach the terms contained in the response to the enquiry.

2. The Informa program gives taxpayers access to...

a) a database of the General Tax Directorate that contains a collection of the main responses to written tax enquiries.
b) a database of the Central Financial Administrative Tribunal that contains a selection of the main rulings.
c) basic written information related to the application of the tax system both in terms of the different tax concepts and the procedures involved in tax administration.

3. The data, amounts and ratings contained in the draft tax return that have been communicated to the taxpayer...

a) are not binding for the Administration in terms of any verification and investigation activities that may be conducted subsequently.
b) are binding for the Administration in terms of any verification and investigation activities that may be conducted subsequently.
c) are binding for the Administration in terms of any verification activities, but not in relation to any investigation activities that may be conducted subsequently.

4. In the event of technical shortcomings in terms of the assistance software provided by the Tax Administration to facilitate fulfilment of tax obligations, the LGT...

a) excludes liability for the tax offence, but it does not stipulate anything in relation to the requirement to pay interest for late payment or applicable surcharges.
b) excludes liability for the tax offence, interest for late payment and applicable surcharges.
c) excludes liability for the tax offence and applicable surcharges, but it does not stipulate anything in relation to the requirement to pay interest for late payment.

5. Submitting tax returns online...

a) is compulsory as a general rule, but in certain circumstances and for particular taxpayers the use of online means is voluntary.
b) is voluntary as a general rule, but in certain circumstances and for particular taxpayers the use of online means is compulsory.
c) is always voluntary.

6. Currently, most of the state tax institutions permit the online presentation and, if applicable, payment of tax returns or self assessments online...

a) in relation to the performance of the taxable event, but not in the case of withholdings, account deposits and payments in instalments.
b) not only in relation to the performance of the taxable event, but also in the case of withholdings, account deposits and payments in instalments, but not reporting obligations.
c) not only in relation to the performance of the taxable event, but also in the case of withholdings, account deposits and payments in instalments, and even reporting obligations.

7. For notification to be made by electronic means...

a) when this means of notification is not compulsory under the legislation, the consent of the interested party is required.
b) when this means of notification is compulsory under the legislation, the consent of the interested party is required.
c) when this means of notification is not compulsory under the legislation, the consent of the interested party is not required.

8. If there is evidence of when the electronic notification had been made available, and ten calendar days elapse without the content being accessed, the LPACAP stipulates that the notification is deemed to have been rejected...

a) only in the case of taxpayers who have indicated their preference for electronic means for the purpose of notifications, but not in the case of compulsory electronic notifications.
b) only in the case of compulsory electronic notifications but not in the case of taxpayers who have indicated their preference for electronic means for the purpose of notifications.
c) both in the case of taxpayers who have indicated their preference for electronic means for the purpose of notifications and in the case of compulsory electronic notifications.

9. In accordance with current legislation, for the purposes of verifying the authenticity of the origin and the integrity of the content of the electronic invoice...

a) the use of the electronic signature is not required.
b) the use of the electronic signature is required.
c) a hand-written signature is required.

10. Petitions for financial administrative claims can be submitted online...

a) in the case of general procedure in the court of first and last resort or the court of first instance, but not in the case of summary procedure hearings before single-member bodies, nor in the case of applications for enforcement.
b) in the case of general procedure in the court of first and last resort or the court of first instance, as well as in the case of summary procedure hearings before single-member bodies, but not in the case of applications for enforcement.
c) in the case of general procedure in the court of first and last resort or the court of first instance, and in the case of summary procedure hearings before single-member bodies, as well as in the case of applications for enforcement.

Answer key

Case studies

1. a) If they cannot submit the self-assessment the same day that the payment is made for technical reasons, they can send it online within the four working days following the payment.

1. b) If payment has been made on the last day of the voluntary payment period and the self-assessment cannot be submitted within the aforementioned time limit, because the network is overloaded, due to problems with the server or any other technical problem, we consider that the self-assessment can also be submitted within the four working days following the end of the voluntary payment period, without any legal consequence for the taxpayer, despite the fact that the regulation makes no explicit reference to this eventuality.

1. c) However, if the self-assessment is not submitted within this four-day period, the effects that this will have for the taxpayer must be considered. In such cases, as the payment has already been made, we understand that there has been no omission as far as payment is concerned, so no penalty can be applied for the offence indicated in LGT art. 191, nor can interest for late payment be charged by way of compensation. Nevertheless, failure to submit the self-assessments within the time limits established in the tax legislation without causing financial losses to the public Treasury does constitute an offence as stipulated in LGT art. 198, as payment of the debt does not exempt the taxpayer from presenting the self-assessment.

1. d) The are various circumstances that exempt the company from liability in terms of tax offences, as stipulated in LGT art. 179.2. As such, if the tax declarant was subject to one of these circumstances, the Administration could not impose any penalty for a minor offence. Therefore, if the computer on which the tax declarant's user certificate is installed is destroyed, the cause for liability exemption on the basis of force majeure could apply, as indicated in point b of the aforementioned precept. Alternatively, the circumstances indicated in point d may be applied if the tax declarant operates with due diligence.

2. a) Company X Ltd. will necessarily receive notifications electronically. The general provision regarding online notifications is voluntary nature in the use of this means of communication both in procedures initiated ex officio and at the request of a party because, as indicated in LPACAP art. 41.1, in principle:

> "the concerned parties which are under no obligation to receive electronic notifications may decide that successive notifications be issued or ceased to be issued by electronic means. Said parties can inform the Public administration of such decision through the standardized models established to this end at any time".

However, there are exceptions to this voluntary nature. Thus, in accordance with LPACAP art.41.1, administrations may establish, by regulation, the obligation to electronically issue notifications for certain procedures and for certain groups of natural persons that due to their economic, technical, and professional dedication or due to other reasons, it is established that they have access to and availability of the necessary electronic means.

This precept, in the field of taxation, has been developed by RD 1363/2010, of 29 October, which regulates the conditions for compulsory electronic notifications and administrative communications with respect to the AEAT. In accordance with art. 4 of the same regulation, this fundamentally refers to anonymous companies and limited liability companies (besides the other organizations mentioned earlier in the precept). It should be remembered that anonymous companies and limited liability companies must compulsorily submit their Corporate Tax declaration and other regular tax returns using online channels.

2. b) Electronic notifications can be made via the following means: the assigned email address; an email system with a proof of receipt that records the date and time of receipt; visits to the website; and any other means that may be established, on the condition that it records receipt by the interested party within the time limit and in accordance with the conditions stipulated in the specific regulation.

Notification by making the electronic document available via the assigned email address is regulated in art. 38 of RD 1671/2009, which, in turn, is developed by the provisions of Order PRE/878/2010, of 5 April, which establishes the framework for the assigned email address.

As a general rule, the application to open the assigned email address, with its inclusion in the corresponding directory, is made at the request of the taxpayer (arts. 38.2, *in fine*, of RD 1671/2009 and 3.1 of Order PRE 878/2010), except in the case of the conditions under which, in accordance with the regulations, the use of electronic notifications is compulsory,

in which case the address is automatically assigned by the Administration (Article 38.3 of RD 1671/2009).

Lastly, art. 40 of RD 1671/2009 stipulates that a notification by online visit consists of "access by the duly identified interested party to the content of corresponding administrative action via the website of the public body or institution in question". However, in order for the online visit to be valid for the purposes of effective notification, in accordance with LPACAP art. 43, it must meet two requirements: firstly, the interested party, prior to accessing its content, must have been informed of the effect that accessing the notification of the administrative action shall have: and secondly, the information system must leave a record of the access, with reference to the date and time.

2. c) Lastly, in relation to the moment at which the electronic notification is deemed to have been executed for legal purpose, in accordance with the terms of LPACAP art. 43.2 a distinction must be made between the notification being made available and its content being accessed. For all legal effects and purposes, electronic notification shall be deemed to have been effectuated at the moment when the content is accessed, in accordance with LPACAP art. 43.2. In other words, notification is not deemed to have been made when the electronic notification is delivered to the inbox of the assigned email address, but rather at the time that the interested party opens the email and accesses the content of the notification (regardless of whether or not the interested party proceeds to read the specific content of the notification, either at that point or later).

However, if there is evidence of when the electronic notification had been made available, and ten calendar days elapse without the content being accessed, LPACAP art. 43.2 stipulates that the notification has been rejected, even if the taxpayer has indicated their preference for electronic communication for the purposes of notifications, and in the case of compulsory electronic notifications. For these purposes, art. 10.2.d of Order PRE/878/2010 stipulates that the service provider of the email address submitted must send the administrative body electronic certification that ten days have elapsed since the email was made available without the interested party accessing the content of the notification contained therein.

In terms of the consequence of rejection of the notification by the interested party or their representative, LGT art. 111.2 states that the notification is deemed to have been executed and, unless expressly stated otherwise, if applicable, the procedure shall continue.

However, to protect the rights of the taxpayer, the effects of rejecting the notification shall be rescinded when, automatically or at the request of the recipient, the technical or physical impossibility of accessing the content is demonstrated.

Self-evaluation

1. b

2. c

3. a

4. a

5. b

6. c

7. a

8. c

9. a

10. c