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The Spanish Tax Administration and the Internet

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Abstract

The application of new technologies in relations between the Spanish Tax Administration and the taxpayer is of particular importance in terms of the administrative duty of information and assistance, and also in tax procedures, especially in those such as administrative procedures. In this context, the principle manifestations of new technologies applied to tax procedures occur in the presentation and payment of tax declarations, tax notification and the lodging of appeals against tax decisions.

This communication channel with the Tax Administration offers the following benefits: reduced indirect tax pressure, as it is a more comfortable system for the taxpayer for processing their declarations; reduced workload for the Administration which avoids recording and processing tasks, and, generally, paperwork; shorter declaration processing times; and less time needed for processing and detecting the evolution of economic variables, which allows for improved monitoring of the global collection and by sector.

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1. Introduction

The incorporation of new technologies into the Spanish Tax Administration is helping to meet the basic aim of bringing the Administration closer to the public, giving them access to information and its services. It also provides the public with a greater knowledge of the Administration, its functions and its powers, greater flexibility in processing cases and in their notification, as well as shorter response time, which means improvements to the quality of service offered. In short, a better-performing Administration that works more efficiently and costs less.

Of all Administrations, the Spanish Tax Administration has stood out due to its early widespread expansion in numerous fields related especially to tax procedures that have gradually increased. As a result of this process, even the role that it carried out up to now has changed, going from being an overwhelmingly controlling Administration to one essentially of assistance.

In Spanish law, the basis for applying information and communication technologies in the Administration in its relations with taxpayers lies in the principle of efficiency in the service of general interests, enshrined in Article 103 of the Spanish Constitution, according to which the basic principles that must govern the activity of the Administration are those of service, objectivity, generality, efficiency, hierarchy, decentralisation, deconcentration and coordination. And it should be remembered that the technological media undoubtedly help speed up procedures, while in turn making them more transparent by simplifying access and knowledge of their procedural status for the taxpayer.

To this end, the Services Charter of the State Tax Administration Agency (hereafter, AEAT), approved by the 26 July 2001 Ruling, stresses the following most relevant principles which should be taken into consideration during the activity of the above Agency with regard to its basic aim of promoting the voluntary fulfilment of tax obligations: the firm commitment of assistance to the public in the fulfilment of their tax obligations; ease, flexibility and simplicity in procedures derived from tax obligations, saving the public unnecessary administrative processes and journeys, offering new channels for relations with taxpayers and facilitating payment of tax debts; flexible and fluid communication with the public, making full use of the latest technologies; efficacy and efficiency in all tax procedures; and, finally, continuous adaptation to the economic-social environment and the new needs of the public.

In addition to this, the General Tax Law 58/2003, of 17 December 2003, (hereafter, LGT), introduces the regulation of the use of information and communication technologies in Article 96. In particular, the application of new technologies in relations between the Administration and the taxpayer is of particular importance in terms of the administrative duty of information and assistance, and also in tax procedures, especially in those such as administrative procedures. In this context, the principle manifestations of new technologies applied to tax procedures occur in the presentation and payment of tax declarations, tax notification and the lodging of appeals against tax decisions.

2. Information and assistance to taxpayers by telematic¹ media and social collaboration in the application of taxes

In light of the extreme difficulty in fulfilling the material and formal obligations imposed on taxpayers by law, which, in turn, is excessively changeable and difficult to interpret, it is essential that the Administration inform them of their rights and duties and help them exercise and fulfil them. This situation may prove to be difficult for most taxpayers, for whom the indirect tax cost of advice on the matter may also be too expensive, but which, on the other hand, may become very straightforward in the majority of cases. Consequently, Article 85 of the LGT establishes the duty of the Administration to inform and assist taxpayers in fulfilling their duties and exercising their rights. And, in particular, Article 87.3 of the LGT stresses that the information actions to which this provision refers (communications, provision of the complete text of consultations or rulings, information through offices open to the public, access to computerised bases, etc.) “may be carried out through the use and application of electronic, computer and telematic techniques and media.”

Consequently, it is the duty of the Tax Administration to help the taxpayer on this point, a process in which technological resources are seen as a highly efficient aid. However, technological support and the use of electronic documents in assisting the taxpayer should not be seen as something that only applies to taxpayers with little tax experience, but also to taxpayers of greater importance and potential, subject to numerous obligations of many different types. In this context, the Tax Agency, in a desire to modernise, enabling it to provide the taxpayer with improved information and assistance, in fulfilment of its duty contained in Article 85 of the LGT, has started a website where it offers numerous services relating both to information and to assistance.² On this point, the Services Charter of the AEAT mentioned above contains the commitments to quality in its provision of services.

At present, these services include the following: the presentation of telematic tax declarations; lodging of appeals; access to the latest legislative amendments in terms of tax; access to replies to written tax consultations issued basically by the Inland Revenue; knowledge of the Tax Agency’s interpretative criteria contained in the INFORMA Programme; consultation of the rulings by the Central Economic-Administrative Court; consultation of the procedural status of Personal Income Tax repayments (hereafter, IRPF); requesting or printing of tax labels; obtaining electronic tax certificates and verification of their issue; requesting, obtaining or rectifying IRPF tax details; requesting advance collection of maternity leave deductions from the IRPF; obtaining models of declarations, other tax documents and forms; downloading programmes to help with drafting declarations; and confirming or rectifying the IRPF draft declaration.

Two observations can be made in relation to these information and assistance actions: first, is the notable rapid rise in the number of services provided via the Internet.

¹ A note on the use of the term: Telematics is a term that can be used instead of the phrase *Information and Communication Technologies* (ICTs). See: <http://en.wikipedia.org/wiki/Telematics>

² See A M Delgado García and R Oliver Cuello, “El deber de información y asistencia a los obligados tributarios” [The duty of information and assistance to taxpayers, Tirant Lo Blanch (2004). And also “Algunas cuestiones relativas a la información y asistencia a los obligados tributarios”, [Some questions relating to information and assistance to taxpayers] (2004) 65 *Revista de Información Fiscal* [Tax Information Journal].

Second, that to receive the majority of them, a user certificate is required such as the one supplied by the Spanish National Mint. And, third, that, sometimes, these actions can be carried out by a person who is not the taxpayer, within the framework of social collaboration in tax administration.

In addition, this technological support in assistance to the taxpayer, in the majority of cases, offers significant benefits for the Tax Administration, on the one hand, in terms of the punctual and precise fulfilment of the obligations, since correct knowledge of the tax law helps to eliminate the errors which taxpayers, who do not have this knowledge, may commit; on the other, that the tax information contained in the declaration is received in a much more streamlined and flexible way; and, finally, in terms of reducing subsequent verification actions.³ The aim of technological support in assistance and information to taxpayers can be summed up in the following points: first, it must allow clear information on the matter and how they should fulfil their tax obligations to reach the taxpayer; second, it must also allow the necessary procedures to be carried out with the minimum inconvenience; and, third, it must facilitate the presentation of declarations.

Finally, other actions that can be carried out via the Internet include the payment of self-assessment tax by the taxpayer or settled by the Administration; application for the deferral of debts; participation, as bidders, in asset alienation procedures carried out in the field of tax collection; the presentation of a public complaint; registration of power of attorney for tax procedures via the Internet; and the practice of notifications telematically.

The social application of taxes, the subject related to that of information and assistance to taxpayers, is regulated in Article 92 of the LGT, acquiring greater relevance today due to the mushrooming of information and communication technologies within the field of tax applications, especially the Internet and e-mail, and becomes a necessity that until use of information technologies is socially widespread. Of the instances of social collaboration covered by Article 92.3 of the LGT which may include the use of these techniques and media, the following should be highlighted: assistance in drafting, presenting and sending self-assessments, declarations and communications (letters d) and e), respectively), information about the procedural status of repayments and refunds, as well as requesting and obtaining tax certificates (letters g) and h), respectively).⁴ In the instances that involve the presentation of tax documentation, the social collaborator must hold a power of attorney, in their role as voluntary representative of the taxpayer, under the provisions of Article 46.4 of the LGT. With regard to this power of attorney, the Ruling of 16 February 2004 from the Directorate General of the State Tax Administration Agency must be taken into consideration, which governs the registration and administration of powers of attorney for carrying out tax procedures and actions on the Internet.

³ F Valencia Alonso, "Apoyo tecnológico a la función de asistencia e información al contribuyente" [Technological support in assistance and information to the taxpayer] in *Factores de éxito para la Administración del sistema tributario* [Successful factors for the Administration of the Tax System], XXVIII General Assembly of the CIAT, Instituto de Estudios Fiscales (1994), 121-122.

⁴ See A M Delgado García and R Oliver Cuello, "La colaboración social en la gestión tributaria telemática" [Social collaboration in telematic tax administration] (2003) 59 *Revista de Información Fiscal* [Tax Information Journal].

3. The presentation and payment of tax declarations via the Internet

Of all the telematic assistance actions, the presentation of telematic declarations, referred to in Article 98.4 of the LGT, is, undoubtedly, the most significant. This communication channel with the Tax Administration offers the following benefits: reduced indirect tax pressure, as it is a more comfortable system for the taxpayer for processing their declarations; reduced workload for the Administration which avoids recording and processing tasks, and, generally, paperwork; shorter declaration processing times; and less time needed for processing and detecting the evolution of economic variables, which allows for improved monitoring of the global collection and by sector.

In terms of tax declarations, these can both be presented and, where appropriate, paid via the Internet; although for some taxpayers, as is the case with large companies, the law obliges them to use the telematic channel for certain taxes. Similarly, all taxpayers must present the Special Tax on Certain Forms of Transport telematically.

In addition, not only can self-assessment debts be paid telematically by the taxpayer, but debts can also be settled by the Administration through this channel. Besides this, applications for compensation, deferral or fractioning of payment can also be presented telematically, deferral rulings can be consulted and information obtained regarding the expiry of pending deadlines.

At present, on a state-wide level, there are a number of tax items that can be presented telematically and, where appropriate, declarations paid or self-assessments made via the Internet, not only in relation to the taxable event, but also to withholdings, deposits and instalment payments, and even to information obligations. This is for Value Added Tax, IRPF, Capital Gains Tax, Corporate Tax, Non-Residents' Income Tax and Special Taxes.

A user certificate or advanced electronic signature is essential for this. Within the tax field, the Spanish National Mint operates, along with other institutions, as a certification authority, in accordance with the qualification awarded by Article 81, Section 1, letter *b*), of Law 65/1997, of 30 December 1997.

The procedure for presenting and, where appropriate, paying telematic declarations, tends to be similar for all cases.⁵ It is basically the following. First, the filer must contact the collaborator institution, be it telematically or by going to its offices; or by going in person to the deposit institution that offers the cashier service at the regional office or administration of the AEAT, whose tax residency lies within its jurisdiction, with the aim of providing information about self-assessment.

Second, the collaborator institution or deposit institution will allocate the taxpayer a complete reference number (NRC) once the amount has been entered into the books. Similarly, this institution will deliver or send the filer a receipt, which can be used for exemption purposes before the Tax Administration. The NRC is created on a computer using a cryptographic system that relates the NRC with the amount to be paid in or repaid on a one-to-one basis. However, when the self-assessment result is negative, with an application for repayment or waiver of the repayment, no NRC is

⁵ For more in-depth analysis of this subject, see A M Delgado García and R Oliver Cuello "Las declaraciones tributarias telemáticas" [Telematic tax declarations], (2001) 259 *Revista de Derecho Financiero y Hacienda Pública* [Financial and Treasury Law].

required; but the filer must contact the AEAT directly via the Internet to progress to the next stage of the telematic presentation procedure. At this juncture, it should be taken into account that telematic tax self-assessments can be presented on behalf of taxpayers, as in the case of self-assessments presented by other means spontaneously outside the voluntary period in two instances: to make up for the previous presentation not being made or to modify the self-assessment presented.

Third, after this transaction has been completed and the corresponding NRC obtained, the filer will contact the AEAT through its Internet website to present the declaration on the same date as payment, or, as the case may be, application for repayment is made. The filer enters the NRC allocated to them by the collaborator institution and completes the information included in the form that appears on screen after they have selected the declaration presentation option. The telematic transfer of the declaration-settlement must be made on the same date as the payment resulting from it. Consequently, there is a simultaneousness with the payment and the self-assessment presentation, as they both take place on the same day. Although in fact payment occurs first and presentation follows. However, if presentation cannot be made on the same day as payment due to technical reasons, the self-assessment may be transferred telematically up to the second working day after payment.

With regard to this point, it is important to emphasise that the situation may arise where payment having been made on the final day of the voluntary period, the self-assessment cannot be presented within this period, due to the Internet being saturated, problems with the server or other problems of a technical nature. In this respect, we feel that the declaration may also be presented within the two working days after the voluntary period has ended, without any legal consequences for the taxpayer, despite the law not saying anything on this point.

However, if presentation cannot be made within these two days either, the impact that this could have for the taxpayer will have to be considered. In these cases, as payment has been made, we understand that there would be no payment omission, with there being no reason to impose a penalty for infringement classified in Article 191 of the LGT, and neither would late payment interest be called for as compensation. However, failure to present self-assessments within the periods stipulated by tax law constitutes a minor infringement as classified in Article 198 of the LGT; as payment of the debt does not exempt taxpayers from the obligation of presenting the declaration.

In this respect, the existence should be taken into account of different circumstances exonerated from liability in terms of tax infringements regulated by Article 179.2 of the LGT. Should the filer commit any of them, the Administration may not impose any penalty on them for minor infringement. Therefore, if the filer's computer on which they have installed their user certificate is destroyed, the reason for exoneration from liability consisting of force majeure, set out in letter b) of this point, may be applied. Or the circumstance contained in letter d) could be applied if the filer acts with due diligence.

The fourth step that the taxpayer who presents their declaration telematically must carry out consists of selecting the user certificate to create the electronic signature. The filer will then transfer the complete declaration with the digital signature, or, where appropriate, digital signatures. More than one digital signature is required, e.g. when a joint IRPF declaration is presented telematically which must be signed by both spouses. However, in the sphere of social collaboration in the presentation of

declarations, only the digital signature of the presenter will appear, as the signature of the taxpayer whom they represent is not required.

The fifth step is that once the presentation has been accepted, the AEAT will return to the filer the declaration, or, as the case may be, the payment or repayment document on screen, validated with an sixteen-character electronic code, and the date and time of presentation. Finally, the filer must print and retain the declaration or documents which have been accepted and validated with the corresponding electronic code. Consequently, the taxpayer who presents a declaration telematically receives two receipts or receipt slips: one, for payment, and the other relating to the presentation of the declaration. Both receipts can be used by the taxpayer for exemption purposes before the Tax Administration. Hence the need to retain it.

4. Telematic tax notifications

The incorporation of telematic techniques into the relationship between the Administration and the taxpayer enables them to be used as the ideal media for issuing notifications, given the speed of communication between both parties. Compared to other means of notification, telematic media undoubtedly make issuing notifications easy and flexible in that not only do they make the functioning of the Administration and communication with the taxpayer more efficient, but they also provide greater administrative control in the issuing of notifications. Therefore, it should not be forgotten that there are many acts to be notified to numerous taxpayers in a mass administration system, and within a short space of time.

In these cases, the medium (e-mail) is confused with the place for issuing notifications (single e-address); and, on the other hand, generally the receiver of the notification will be its addressee, with the repercussions that this may entail in terms of the reception and practice of the notification. And, also, it should be emphasised that the body that resolves and, therefore, notifies is confused with the agent who actually carries out the notification; leading to flexible issuing of notifications and the prevention of extensive disputes regarding the matter.

The LGT does not regulate on this matter in the sphere of tax applications, except for economic-administrative claims. In this case, the applicable law is the Public Administrations Legal System and Common Administrative Procedures Act 30/1992, of 26 November 1992, (hereafter, LRJPAC), Article 59.1 of which allows notification through any medium that permits the accreditation of its reception, and the date, identity and content of the notified act. Specifically, this provision dedicates Section 3 to notification by telematic media, given the specialities of this medium; regulation developed by Article 12 of Royal Decree 263/1996, of 16 February 1996, that regulates the use of electronic, IT and telematic techniques by the General Administration of the State.

For the notification to be issued using telematic media, the interested party must have stipulated this expressly, either indicating the telematic medium as their preferred way of receiving notifications (on their application, in their letter or communication), or consenting to this medium at the suggestion of the corresponding administrative body (Article 59.3 LRJPAC and Article 12 of Royal Decree 263/1996). Consequently, use of this channel to issue notifications is optional and choosing it specifically always depends exclusively on the taxpayer, be they an individual or company, and, in the latter case, irrespective of whether they are a small, medium or large company.

A series of general conditions set out in Article 7.1 of Royal Decree 263/1996 must also be fulfilled: their guaranteed availability and access under the conditions that are established in each case; the existence of compatibility between those used by the issuer and the recipient which technically allows communications between both, including the use of codes and formats or register designs established by the General Administration of the State; and the existence of security measures designed to avoid the interception and alteration of the communications, and also unauthorised access.

For its part, Article 7.2 of the above law establishes that telematic notifications will be valid when they fulfil the following requirements: a record of the transfer and reception of their dates and the full contents of the communications; reliable identification of the sender and addressee of the communication; and that the individuals have stipulated their preferred support, medium or application for their communications with the General Administration of the State at any moment of the initiation or processing of the procedure or development of the administrative action.

The interested party must have an enabled e-mail address for this, which will be single for all possible notifications issued by the Administrations (Article 12.3 of Royal Decree 263/1996). The single e-mail address must fulfil the following requirements: have user identifiers and access codes to ensure the exclusivity of its use; authentication mechanisms which guarantee user identity; encryption mechanisms to protect the confidentiality of the data; and any other established legally or in due form. The single e-mail address is valid indefinitely, unless its revocation is requested due to death or the disincorporation of the company, when ordered by an administrative ruling, or when three years have elapsed without any notifications being issued (the instance when the single e-mail address will be disabled, with the interested party informed of this).

In our opinion, the single e-mail address therefore becomes the e-residence of the interested party for notification purposes. However, regulation of the single e-mail address is excessively strict as it obliges the interested party to have an e-mail account exclusively for notifications, which will be different from the accounts that they use normally. This way, this regulation offers numerous benefits for the Administration (ease and flexibility in issuing notifications), but few for the public, since, as we will see, ten days after the notification has been received without its contents having been accessed, it is deemed issued. This leads taxpayers on very few occasions to being motivated to give this means of notification as their preferred method.

According to Article 12.4 of Royal Decree 263/1996, notifications will not be issued telematically in all procedures, but only in those where expressly stipulated by the interested party. During the course of the procedure, and only if justified technical reasons exist, the interested party may request the body that successive notifications are not issued telematically. The notification system must accredit the dates and times when the notification is received and the content of its message is accessed, and any other technical reason that prevents either circumstance (Article 12.5 of Royal Decree 263/1996).

In accordance with Article 59.3 of the LRJPAC, will be deemed to have been issued to all legal effects “at the moment when its content is accessed at the e-mail address”, i.e., from when the e-mail is opened. Royal Decree 263/1999, however, does not contain any similar provisions, although it does state that there should be a record of the date and time when the contents of the notification are accessed. From the start, this criterion of Article 59.3 of the LRJPAC seems to go against the principle of

reception that dominates the regulation of notifications. In terms of telematic notifications, however, it appears that the principle of cognition applies. Although, as we will see, it is highly qualified by the provision that if ten days have passed since reception without its contents being accessed, it will be deemed rejected. In effect, in accordance with Article 59.3 of the LRJPAC, “when, there being a record of the notification having been received at the e-mail address, if after ten calendar days the contents have not been accessed, the notification will be deemed rejected”, in which case the notification will be considered to have been issued, under the provisions of Article 111.2 of the LGT.

Consequently, in our opinion, Parliament could have saved itself the references to “access” of the notification’s contents and its rejection, and have simply established that, ten days after the corresponding server receives the notification, the notification would be deemed issued to all legal effects. This is all the more so when the express consequence considered is rejection, while in tax notifications issued by other means, according to the provisions of Article 112.1 of the LGT, the notification is used for appearances in announcements.

However, logically, Article 59.3 of the LRJPAC exempts the technical or material impossibility of access from this effect, both if it is proven by operation of law or at the request of the addressee. The problem that may arise, in this case, is determining when a circumstance occurs that may technically or materially impede access, as in the case of a power cut, a fault with the computer or if the e-mail server is down. For this, in order for one of these reasons to function as the determinant of the technical or material impossibility and, therefore, as an exception to the consideration of rejection of the notification, these circumstances must be proven, a task which on occasions can be rather complex.

5. Telematic presentation of appeals

The question of using the telematic channel in the presentation of the appeal for reversal and other applications of a tax nature (such as the repayment of undue payments, the rectification of self-assessment and the initiation of the rectification procedure for material, factual or mathematical errors) is regulated by part of the Ruling of 11 December 2001, of the Directorate General of the State Tax Administration Agency. In addition, Additional Provision Sixteen of the LGT refers to the use of electronic, computing and telematic media in economic-administrative claims.

To carry out the telematic presentation procedure of the appeal for reversal and the above applications, the applicant, or, as the case may be, their representative, must first contact the Tax Agency through its website. They should then select the type of application they want to submit, although classification is not mandatory. Depending on the type of option chosen, they should complete the information included in the on-screen form.

Pleadings can be incorporated through the retrieval of an HTML format file or created at the same time as the lodging. If documentation is to be provided as an appendix to the application, the interested party or their representative should do so in any of the registries established in administrative law. This documentation will include the electronic validation code returned by the Tax Agency. Once all the information has been entered, if it is validated according to the computer application, the application

presentation document will be displayed. If not, the errors that the interested party, or, as the case may be, their representative, need to correct will be indicated. The next step is to select a user certificate, previously installed in the browser to create the digital signature. The application presentation document with the digital signature will then be sent to the Tax Agency. If the application is accepted, the Tax Agency will return the validated application presentation document on screen with a sixteen-character electronic code, as well as the date and time of the presentation.

Similarly, if the application is presented by voluntary representative, both for individuals and companies, the application, in a message on the matter, will indicate the need for the representation to be accredited in the favour of the representative within ten days following the presentation of the application. The awarding, accepting and revoking the representation in appeal procedures can be accredited via the Internet. The applicant, or, as the case may be, their representative, must print and retain the application presentation document once it has been accepted and validated with the corresponding electronic code.