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Compulsory online tax returns

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Abstract

In general, submitting tax returns online is optional for taxpayers. Nonetheless, legislation provides for online submission to be made compulsory in certain cases, for taxpayers for whom, due to their economic or technical capacity, professional activity or other accepted factors, access to and the availability of the necessary technological resources are guaranteed. In that regard, it must be borne in mind that some taxpayers, particularly individuals, do not have the technical and economic resources to submit returns online. One of a number of measures geared towards making submission easier for such taxpayers consists of allowing returns to be submitted on behalf of third parties in the context of social collaboration in the collection of taxes. Such collaboration takes on greater importance in cases in which online interaction with the tax authorities is compulsory.

Keywords

tax returns, taxpayers, online submission, electronic administration

Topic

taxation

Las declaraciones tributarias telemáticas obligatorias

Resumen

En general, para los contribuyentes es opcional presentar declaraciones de impuestos por internet. Sin embargo, la legislación prevé que la entrega por Internet sea obligatoria en ciertos casos, para los contribuyentes a los que, debido a sus capacidades económicas o técnicas, actividades profesionales u otros factores aceptados, se les garantiza el acceso y la disponibilidad de los recursos tecnológicos necesarios. A este respecto hay que tener presente que algunos contribuyentes, sobre todo particulares, no tienen los recursos tecnológicos o económicos para presentar declaraciones por Internet. Una de las muchas

medidas que se han orientado para facilitarles la entrega consiste en permitir que las declaraciones se presenten en nombre de terceros, en el contexto de la colaboración social en la recaudación de impuestos. Esta colaboración cobra mayor importancia en los casos en los que es obligatoria la interacción por internet con las autoridades tributarias.

Palabras clave

declaración de impuestos, contribuyentes, presentación por Internet, administración electrónica

Tema

fiscalidad

Introduction

What is referred to as e-government constitutes the modernisation of administrative processes on the basis of the possibilities that information and communication technologies (ICTs) offer in the more general context of the information society, as it is known. The purpose of e-government encompasses providing better public services, reducing waiting times, allowing for funds to be used more effectively, increasing productivity and enhancing transparency and accountability.

The provision of online services in conditions of availability, accessibility, trust, security, privacy and interoperability is a particularly significant aspect of e-government.

The meaning of e-government is no different in relation to tax than to any other sector.¹ Its intended purpose is the same, as are the methods used. The Spanish tax authorities, however, have been particularly active in the long, complicated process of applying ICTs to its work.

Final provision five of Law 66/1997, of 30th December, on fiscal, administrative and social order measures, entailed an important advance in tax-related e-government. It authorised the Minister of the Economy and Finance to establish, via a ministerial order, the cases and conditions in which large companies would be required to fulfil their formal tax obligations online, a matter further developed in the Order of 29th June 1998.²

Online submission had initially been envisaged as an option. The possibility of making the online submission of applications and correspondence to the Spanish government and its public bodies generally compulsory for certain individuals and organisations therefore constitutes a turning point in the development of e-government.³

In that context, it is very important to regulate the cases in which third parties can help citizens conduct their online dealings with the administration. With regard to tax, the system of representation and social collaboration in the collection of taxes is particularly noteworthy when it comes

1. As pointed out by M. Vizcaíno Calderón (2004, pp. 575 *et seq.*).
2. Later, the Order of 13th April 1999 on the online submission of personal income tax returns, under which digital signatures were first used in tax procedures, was issued on the basis of the authorisation contained in Article 79.5 of Law 40/1998, of 9th December, on personal income tax, and in accordance with the provisions of Article 59.3 of Royal Decree 214/1999, of 5th February, which approves the regulations applicable to the tax in question. Since then, numerous provisions have authorised the use of online procedures for submitting returns for many taxes, as well as electronic payments corresponding thereto.
3. Law 24/2001, of 27th December, on fiscal, administrative and social order measures, added a new provision, number 18, to Law 30/1992, of 26th November, on the legal system applicable to the public authorities and common administrative procedure. This new provision made the online submission of applications, correspondence and the required complementary documentation compulsory for companies with over a hundred employees or deemed large companies for VAT purposes, and for all institutions or bodies governed by public law, in the cases and conditions to be stipulated via an order issued by the corresponding minister. It also established a second, similar rule in relation to individuals, organisations and associations not covered by the first and belonging to groups or sectors in which such methods and resources are routinely used. In addition to stipulating the aforementioned cases and conditions, any such ministerial order would have to accredit that the requirement to interact online in no way restricted or discriminated against the members of the relevant group or sector. On this topic, see A. M. Delgado García and R. Oliver Cuello (2005, pp. 47 *et seq.*). Also see A. M. Delgado García (2009, pp. 119 *et seq.*).

to the online submission of returns, correspondence and other tax-related documents to be processed by the Spanish Tax. The system in question is governed by Royal Decree 1377/2002, of 20th December, and is also referred to by Article 92.4 of Law 58/2003, of 17th December, which approves the Spanish taxation code (*Ley General Tributaria* or LGT).

It should be noted that the Spanish Tax Agency (*Agencia Estatal de Administración Tributaria* or AEAT) is one of Europe's more pioneering public authorities in terms of the use of ICTs in its dealings with citizens. Promoting and facilitating access to ICTs for all citizens is one of the main issues deemed crucial for the effective development of e-government plans, generally speaking.

The number of computer users in Spain is rising gradually, but not sufficiently for a significant figure to have been attained. It is vital that the country adopt public policies that prevent the creation of imbalances, not only in technological expertise (the so-called digital divide), but also in terms of social and economic inequalities, which might exacerbate its existing social and economic divide.

The application of new technologies to dealings between the administration and taxpayers is of great importance in relation to the former's duty to provide the latter with information and assistance, as well as with regard to tax procedures, and certain of them in particular, such as tax collection. The main purposes for which new technologies are used in tax procedures are submitting tax returns and making the corresponding payments, issuing tax-related notifications and appealing against tax-related actions.⁴

1. The submission and payment of tax returns online

The online submission of returns undoubtedly stands out among all the tax-related services for which the internet

is used. The advantages of online communication with the tax authority include reductions in compliance costs, as the system is a more convenient way for taxpayers to submit their returns; in the tax authority's administrative workload, due to certain recording and processing tasks and paperwork in general being unnecessary; in the time taken to process returns; and in the time taken to process and detect the evolution of economic variables, allowing for more accurate monitoring of overall and sector-by-sector tax collection.

In Spain, tax returns can be submitted online and the corresponding payments made in the same way. Furthermore, it is not only possible for taxable persons to settle their tax debts via the internet, but also for the administration itself to settle such debts. Article 60.1 of the LGT states that "the requisites and conditions for payment to be made using electronic, computerised or telematic methods and resources shall be governed by tax regulations".

For most types of state taxes, it is currently possible to submit returns and self-assessments online, as well as to make the corresponding payments via the internet, if applicable, not only in relation to actual taxable events but also to withholdings, payments on account and instalments, and even to reporting obligations.

According to the Order HAP/800/2014, of 9th May, which establishes specific rules on identification and authentication systems electronically with the Spanish Tax Agency, the forms of identification and authentication accepted by the Tax Agency will be the electronic National Identity Document and the system's advanced electronic signature based on electronic certificates accepted by the general administration of the State, in accordance with the provisions of Law 11/2007, of 22nd June, on citizens' electronic access to public services.⁵

Order HAP/2194/2013, of 22nd November, which regulates the procedures and general conditions for the submission of certain self-assessments and tax information returns,

4. In relation to all these topics, see A. Angulo Cascán (2000, pp. 601 *et seq.*); J. Hortalà Vallvé and J. Ibáñez Peña (2001); S. Segarra Tormo (2000, pp. 583 *et seq.*); S. Ruiz Gallud (2001, pp. 379 *et seq.*); and I. Rovira Ferrer (2009, pp. 203 *et seq.*).
5. Article 3.1 of Law 59/2003, of 19th December, on electronic signatures, defines an electronic signature as a set of data, in electronic form, sent together or associated with other data, and which can be used as a means of identifying the signatory. Along with the general concept of electronic signatures, the aforementioned law, in Article 3.2, defines a specific class that it calls the "advanced electronic signature", which is characterised by meeting particular security requirements. Such an electronic signature makes it possible to identify the signatory and detect any alteration to the signed data, is linked to the signatory and the data to which it refers in a unique manner, and is created using means that the signatory can keep under their exclusive control.

establishes a common regulatory system of online submission of self-assessments and information returns. It is a norm that consolidates existing regulation and avoids regulatory dispersion. In our view, this Order helps to clarify and simplify the application of the tax rules, which results in greater legal certainty.⁶

For taxpayers to use the internet to submit self-assessments that require them to make a payment, they must pay the relevant amount beforehand and obtain a complete reference number (*número de referencia completo* or NRC) that serves as proof of having done so. The procedure to follow to that end is described in the following paragraphs.⁷

Firstly, the taxpayer must contact a financial institution collaborating in the tax collection process, either in person on its premises or online (via an e-banking service or the Spanish Tax Agency's electronic office; in the latter case, they may do so themselves or a social collaborator may do so on their behalf), to obtain a set of data related to the self-assessment on the basis of which they are to make the payment.

Upon accessing the Tax Agency's electronic office, the taxpayers must select the self-assessment and tax payment option, the relevant return form and whether they wish to pay by debiting their bank account or by credit or debit card (in which case they will need to specify the card's issuer). They must also provide the details of their self-assessment and of their bank account or card. They have to use their electronic certificate to sign all the data entered, bearing in mind that the holder of the certificate and the holder of the aforementioned bank account or card must be one and the same.

The procedure is the same for the online submission of self-assessments with applications for offsetting, to defer or spread payment, for simple acknowledgement of debt or for entries in tax current accounts.

Secondly, once the taxpayers' payment has been registered, the financial institution collaborating in the tax collection process will assign the taxpayers an NRC, which they must subsequently specify when submitting their self-assessment

online. The financial institution will also issue the taxpayers with a receipt for their payment, to show that they have cleared their debt to the Tax Agency and enable the tax authority to verify that the said payment has been made. Each NRC is generated by a computerised cryptographic system that univocally links it to the amount payable.

However, it is not necessary to obtain an NRC in the case of payment of the amount due being deferred through a direct debit arrangement. Logically, it is also unnecessary to obtain an NRC when a self-assessment gives rise to a reimbursement, with a refund application or waiver. In such cases, the taxpayers should move directly on to the next stage of the online submission procedure.

Having carried out the necessary transaction and, if applicable, obtained the corresponding NRC, the third step is for the taxpayers to access the Spanish Tax Agency's electronic office to submit their return, on the same date as making their payment or, if applicable, their refund application.⁸ In the virtual office's section for submitting returns, the taxpayers must select the return form and type (payable, refundable, offsettable, no activity or balanced outcome, payable by direct debit, payment to be recorded in tax current account, application to defer or spread payment, acknowledgement of debt, etc.), as well as the electronic certificate.

Next, the taxpayers must enter the data requested on the form displayed on the return screen. They have the option of importing that data from a file if they have prepared their return using a support programme, as well as the option of reading the NRC assigned by the collaborating financial institution from a file. Self-assessments can be submitted in batches if there are various of the same type to be sent.

The online submission of a self-assessment should take place on the same date as the payment corresponding thereto is made. It is thus possible to deem the payment and the submission of the self-assessment as simultaneous, in the sense that they occur on the same day, although in reality the payment is made first and the self-assessment submitted later.

6. On this matter, see R. Oliver Cuello (2014, pp. 5 *et seq.*).

7. For a more detailed analysis of this subject, see A. Delgado García; R. Oliver Cuello (2001, pp. 112 *et seq.*).

8. In this regard, it must be borne in mind that, as applies to other submission methods, taxpayers may use the internet to spontaneously submit self-assessments outside the voluntary payment period in two cases, namely to make up for failing to submit a previous self-assessment or to modify one already submitted.

If, however, for technical reasons it is not possible to submit a self-assessment on the day on which the corresponding payment is made, it may be submitted online up to four calendar days after the date of the payment.

In relation to such a situation, it should be noted that, if the taxpayers make the necessary payment on the final day of the voluntary payment period, it is possible that they might be unable to submit their self-assessment within the same period, due to network overload, server problems or any other technical difficulty. Under such circumstances, we believe it would be possible for the taxpayers to submit their self-assessment within the four calendar days subsequent to the end of the voluntary payment period without suffering legal repercussions.

However, it is necessary to consider the repercussions the taxpayers would face if they were unable to submit their self-assessment within the four days in question. In such cases, with payment having already been made, we feel that they could not be deemed to have failed to pay the tax, so it would not be fitting to penalise them for the infringement defined in Article 191 of the LGT, nor to claim interest for late payment from them by way of compensation. Nonetheless, failure to submit a self-assessment within the periods established by tax regulations constitutes a minor infringement, as established in Article 198 of the LGT. Clearing the debt does not result in exemption from the duty to submit the return.

In that regard, it must be borne in mind that Article 179.2 of the LGT identifies various circumstances that result in exoneration from liability for tax infringements. Thus, if any of those circumstances were applicable to taxpayers, the tax authorities could not penalise them for a minor infringement. If, for example, the computer on which the taxpayers had installed their electronic certificate were to be destroyed, they could be exempt from liability on the grounds of *force majeure*, as envisaged by Point b) of the aforementioned precept. Alternatively, Point d) thereof could apply if the taxpayers have acted with due diligence.

The fourth step to be taken by taxpayers submitting a return online consists of generating their electronic signature so

as to be able to send the return. They must subsequently transmit the entire return with the corresponding digital signature (or signatures, if applicable).⁹

Fifthly, once a submission has been accepted, the Tax Agency will display the return or, if applicable, the payment or refund document, which will be validated with an electronic code, plus the date and time of submission, on the taxpayers' screen. The final step the taxpayers must take is to save the accepted return or documents bearing the corresponding validation code.

The submission and payment of tax returns online is therefore provided with two receipts, one for their payment and one for their submitted return. It is important to save both, as they prove that the taxpayers have fulfilled their obligations to the tax authorities.

2. Optional or compulsory use of the internet for tax purposes

One of the most relevant issues in relation to using the internet for tax purposes is the optional or compulsory nature of doing so to submit tax returns.

In this regard, there are no appreciable differences between the rules set out in Law 11/2007, of 22nd June, on citizens' electronic access to public services (*Ley de acceso electrónico de los ciudadanos a los servicios públicos* or LAECSP) and in the LGT.¹⁰ Both laws provide for internet use being optional, except in some cases in which it may be made compulsory for certain persons.

The optional nature of using the internet is established in Article 27.1 of the LAECSP, which states that "citizens may choose, at all times, how they communicate with the public authorities, be it by electronic means or otherwise, except in cases in which a legal instrument with the status of a law stipulates or implies the use of a non-electronic medium. The option of communicating via one medium or another shall not bind the citizen thereto. They may, at any time, opt to use a medium other than that initially chosen".

9. It is necessary, for example, to include more than one digital signature when using the internet to submit a joint personal income tax return, which must be signed by both spouses. Where social collaboration in the submission of returns is concerned, however, only the signature of the submitting party is required (that of the taxpayer whom they represent is unnecessary).

10. With regard to the application of Law 11/2007, of 22nd June, on citizens' electronic access to public services, in the tax area, see R. Oliver Cuello (2009, pp. 19 *et seq.*).

Article 27.6 of the LAECSP establishes exceptions to the aforementioned optional nature of online communication with the public administration. It indicates that “under regulations, the public authorities may make it compulsory to communicate with them via electronic means only, in the case of legal persons or groups of individuals for whom, due to their economic or technical capacity, professional activity or other accepted factors, access to and the availability of the necessary technological resources are guaranteed”.

Meanwhile, in relation to the optional or compulsory nature of the use of the internet, Article 96.2 of the LGT states that “when compatible with the technical resources available to the tax authority, citizens may use electronic, computerised or telematic methods and resources to communicate with it to exercise their rights and fulfil their obligations, with the guarantees and requisites envisaged in each procedure”.

The literal wording of Article 96.2 of the LGT implies that the use of ICTs is an option open to taxpayers in their dealings with the tax authorities. In other words, their use is optional, and the specific choice to use them is to be made by the taxpayer rather than the tax authority. However, the precept in question does not rule out making it compulsory for some taxpayers to use the internet in certain cases.

The use of ICTs is indeed compulsory in some cases. Article 98.4 of the LGT grants the Ministry of the Economy and Finance legal authorisation to determine, in relation to areas over which the state has jurisdiction, “the cases and conditions in which taxpayers must use electronic means to submit their tax returns, self-assessments, correspondence, applications and any other pertinent tax-related document”.

3. Cases of compulsory online tax return submission

Until recently, the use of the internet was only compulsory in a few cases affecting a limited number of taxpayers and certain taxes, basically linked to large companies. Examples include such companies' income tax withholdings and payments on account, as well as monthly value added tax (VAT) self-assessments, in accordance with the Orders of the Ministry of the Economy and Finance of 20th January 1999, 22nd February 1999 and 30th July 1999.¹¹

Legal authorisation for the cases in question was granted by final provision five of Law 66/1997, of 30th December, on fiscal, administrative and social order measures. Given the characteristics of the taxpayers involved in the aforementioned cases and the extent of their dealings with the tax authorities, it was decided to impose the use of ICTs upon them with a view to speeding up procedures and boosting administrative efficiency.

In recent years, however, provisions have been made for new cases of compulsory online tax return submission, considerably increasing the number of taxpayers affected. The measure is thus taking on a significant scale.

It can nonetheless be maintained that, as stated previously, the general rule is that taxpayers are free to choose which medium to use. The compulsory use of ICTs seems unlikely to be extended to all taxpayers until such time as these technologies are much more widespread in Spanish society than at present.¹²

In application of the authorisation contained in Article 98.4 of the LGT, the first instance of online tax return submission

11. Additionally, Order HAC/540/2003, of 10th March, extends compulsory use of the internet to forms 218 and 222, corresponding to the instalments paid by large companies and tax groups. Order EHA/1308/2005, of 11th May 2005, also provides for the compulsory online submission of large companies' VAT returns.

12. In the opinion of Orón, any ruling required on ministerial orders implementing the legal authorisation granted in Article 98.4 of the LGT will need to take into account the social reality of the time in which they are to be applied, as a criterion for interpreting the legislation (Article 3 of the Spanish Civil Code). As the use of new technologies becomes more generalised among citizens, there will be scope for gradually moving from the possibility of using the internet for fulfilling tax obligations to making its use to that end compulsory, according to the same author. Bearing in mind the percentage of the Spanish population who currently use new technologies, he believes it would be absolutely disproportionate at present to indiscriminately impose such an obligation on those persons to pay taxes collected by the state (and unthinkable for most local institutions, as far as the taxes they collect are concerned), unless channelled through social collaboration, in accordance with Article 92 of the LGT, in which respect certain access requisites would also undoubtedly have to be met (G. Orón Moratal, 2007, p. 192).

being made compulsory for taxable persons other than large companies was that established by Order 1981/2005 of the Ministry of the Economy and Finance, of 21st June, which approved self-assessment form 576 for the special tax on certain means of transport. All those persons to pay the tax, whether natural or legal persons, were required to submit the form in question online.¹³

Also of note with regard to the same tax is Order EHA/3851/2007, of 26th December, which established an alternative to submitting the corresponding form online, consisting of the tax authority making various personalised help points available at its offices so that taxpayers with an appointment can provide the data necessary for the submission of their self-assessments.

However, that service is not open to all taxpayers. There are three requisites for its use, in accordance with the provisions of Article 3 of the aforementioned order. Firstly, users must be individuals not included on the register of entrepreneurs, professionals and withholders. Secondly, the means of transport on which the tax is levied must be owned by the taxpayers submitting the self-assessment. Thirdly, the taxpayers must pay the tax via a financial institution beforehand and obtain the corresponding NRC, with which they are to provide the tax authority.

It is also compulsory to use the internet to submit some returns related to special manufacturing taxes, tax on the retail sale of certain hydrocarbons and transactions treated as imports for VAT purposes (Order EHA/3548/2006, of 4th October, on special taxes).

Additionally, Order EHA/3398/2006, of 26th October, which sets out measures geared towards the promotion and standardisation of certain aspects of the online submission of tax returns, has increased the range of annual summaries and information returns to be submitted via the internet, by substantially reducing (to 15, specifically) the number of entries to be transmitted as of which it is compulsory to submit forms 180, 190, 193, 198, 345, 347 and 349 online.¹⁴

The online submission of returns corresponding to corporate tax and non-resident income tax, for permanent establishments and companies established abroad, present in Spain and subject to the income allocation system (form 200), is compulsory for taxpayers registered with the Central Office of High-income Taxpayers or the Large Companies Management Units, as well as for all taxpayers operating as public limited companies or limited companies. In addition, corporate tax returns applicable to the tax consolidation system for tax groups, corresponding to the state administration (form 220), must be submitted online in all cases.¹⁵

13. In the view of Orón, in relation to the compulsory online submission of the tax return in question, "it is disproportionate to require the purchaser of a new vehicle (or one not yet registered in Spain) to obtain an electronic certificate or to seek the assistance of a third party, who will charge for representing them, in order to fulfil their duty to pay tax. Furthermore, it is unclear why this was optional until December 2005 and has been compulsory since January 2006, as the control requirements involved should be the same". He thus feels that "in this case, it would be reasonable to make the use of new technologies compulsory for taxpayers who are entrepreneurs or professionals who already have the resources and the duty to submit some tax returns online. However, for citizens who only feature on the register of taxpayers, and not in that of taxable persons (Articles 2 and 3 of Royal Decree 104/2003), the use of new technologies should remain optional" (G. Orón Moratal. *cit.*, pp. 194-195).
14. Other cases of compulsory online tax return submission include Order EHA/3435/2007, of 23rd November, which approves self-assessment forms 117, 123, 124, 126, 128 and 300, establishes measures for the promotion and extension of the online submission of certain self-assessments, annual summaries and tax information returns, and makes it compulsory for taxpayers operating as public limited companies or limited companies to submit forms 110, 115, 117, 123, 124, 126, 128, 202 and 300 online; Order EHA/3290/2008, of 6th November, which approves forms 216 and 296 corresponding to the non-resident income tax; Order EHA/3481/2008, of 1st December, which approves form 189 for annual information returns on securities, insurance and income; and Order EHA/3788/2008, of 29th December, which approves form 039 for reporting data, concerning the special group-of-entities system corresponding to VAT.
15. The online submission of form 201 (simplified return) was first made compulsory for public limited companies or limited companies under Order EHA/1433/2007, of 17th May, which approved the tax return forms for corporate tax and non-resident income tax corresponding to permanent establishments and companies established abroad, present in Spain and subject to the income allocation system for tax periods beginning between 1st January and 31st December 2006. The following year, Order EHA/1420/2008, of 22nd May, which approved the same forms for tax periods beginning between 1st January and 31st December 2007, made it compulsory to use the internet to submit form 220, corresponding to the tax consolidation system (as well forms 430 and 480, for insurance fees tax self-assessments and annual summaries respectively). Finally, Order EHA/1375/2009, of 26th May, which approved the forms for tax periods beginning between 1st January and 31st December 2008, unified tax return forms 200 and 201 to give a single general form (form 200), in which the taxable person uses a code to specify whether they complete standard, abbreviated or small to medium-sized enterprises (SME) forms for the purpose of filing accounts with the Registry of Companies, and is only asked for the information corresponding to whichever of those cases applies to them.

Despite the scope of compulsory online submission having been extended considerably, the system of requiring all public limited companies or limited companies to use the internet to submit their periodic self-assessments and make the corresponding payments has been a notable success. Virtually no incidents of any kind were recorded in the submission of corporate tax returns for 2007 (submitted in July 2008) or of self-assessments for the third quarter of 2008 (submitted in October 2008, the quarter in question being the first in which their online submission was compulsory).¹⁶

Mention must also be made of the cases in which it is compulsory to submit VAT returns online. Order EHA/3786/2008, of 29th December, approves form 303, a single VAT self-assessment replacing forms 300, 330, 332 and 320.¹⁷ The online submission of form 303 is compulsory for taxpayers who submit their VAT return every month. It is optional for taxpayers who submit their VAT return every quarter, except for public limited companies or limited companies, for which it is compulsory.

Moreover, it should be remembered that Article 36 of Royal Decree 1065/2007, of 27th July, which approves the general regulations on tax inspection and tax management activities and procedures (*Reglamento general de gestión e inspección tributaria* or RGGIT), stipulates that taxable persons who have to submit self-assessments for VAT or the general indirect Canary Islands tax online will be required to submit an information return showing the content of their record books for each tax period, including all data up to the last day of the relevant settlement period. In general, such taxpayers will be exempt from the duty to submit returns corresponding to transactions with third parties (Article 32.1.e of the RGGIT).

Finally, the Order HAP/2194/2013, of 22nd November, which regulates the procedures and general conditions for the submission of certain self-assessments and tax information returns, is important in this matter. This Order establishes a common regulatory system of online submission of self-assessments and information returns.

According to Article 3 of this Order, the online submission of all self-assessments with advanced electronic signature will be compulsory for taxpayers that have the character of public administration or are enrolled in the Registry of Large Companies or are assigned to the Central Office of High-income Taxpayers, or the entities that have the legal form of public limited companies or limited companies.

Likewise, the online submission with advanced electronic signature will be compulsory, in any case, for taxpayers who submit their VAT return every month. It is also compulsory in the tax on insurance fees (form 430), whichever person is required to submit.

In addition, the online submission of self-assessments is mandatory for taxpayers of personal income tax who have to submit the wealth tax.

Moreover, in connection with tax information returns, Article 13 of the Order HAP/2194/2013, of 22nd November, states that the online submission with advanced electronic signature will be compulsory for taxpayers that have the character of public administration or are enrolled in the Registry of Large Companies or are assigned to the Central Office of High-income Taxpayers, or entities that have the legal form of public limited companies or limited companies.

The online submission of the annual summary return of VAT (form 390), according to this Order, will be compulsory for taxpayers who submit their VAT return every month. Online submission is also mandatory in the case of the annual summary return of personal income tax withholdings and payments on account of income from liquid capital (dividends, interest, royalties); the income derived from the transfer, redemption, reimbursement, exchange or conversion of any kind of assets representative of uptake and utilization of third-party capital (form 194), and the annual summary return of insurance fees tax (form 480).

In the case of individuals in relation to the tax information return on assets and rights located abroad (form 720), online

16. In this regard, see the comments and statistics in J. I. López Lubián (2009, pp. 7 *et seq.*). The author in question also points out the success, in the same area, of the tax debt direct debit procedure, the use of which has increased spectacularly.

17. Form 303 is to be used by taxpayers of VAT who are required to carry out periodic self-assessments every month or quarter. Exceptions are made for natural or legal persons who apply the special simplified system governed by Chapter 2 of Title 9 of Law 37/1992, of 28th December, on VAT, and for legal persons who have opted to apply the special group-of-entities system governed by Chapter 9 of Title 9 of the same law. Taxpayers to whom those exceptions apply must submit the specific self-assessment forms approved to that end for the special systems in question.

submission will be compulsory, according to this Order, using for that purpose the advanced electronic signature or the signature system with password in a previous user registration. The individuals who submit their VAT return every month are excluded and these taxpayers have to use, in any case, the advanced electronic signature.

Finally, it should be noted that the submission of a self-assessment or a tax information return by non-electronic means, in the cases in which online submission is compulsory, constitutes a serious offence. The sanction, in general, is a fine of 1,500 euros, according to Article 119 of the LGT, paragraphs 1, 2, 4 and 5.

4. Social collaboration in tax electronic administration

With regard to this topic, it must be borne in mind that some taxpayers, especially individuals, do not have the technical and economic resources to submit tax returns online. Nonetheless, to make submission easier for such taxpayers, the possibility of tax returns being submitted on behalf of third parties in the context of social collaboration in the collection of taxes has been established. Alternatively, in particular cases, such as the tax on certain means of transport, as mentioned previously, citizen help points in the Spanish Tax Agency offices are envisaged for the submission of the corresponding returns.

It can thus be said that social collaboration in the collection of taxes takes on greater significance in cases in which online interaction with the tax authority is compulsory. The great extent to which use is made of such social collaboration, governed by Article 92 of the LGT, constitutes a unique feature of the tax area.

The aforementioned article, which is the first in Section 3 of Chapter 1 of Title 3 of the LGT, sets out a series of measures geared towards cooperation between public treasury bodies and certain public or private bodies in the collection of taxes. The precept in question is developed by Articles 79 to 81 of the RGGIT.

Order EHA/1433/2007, of 17th May, extended social collaboration where the submission of tax return forms that have to be sent to the tax authority online are concerned, as well as in terms of passing on direct debit instructions, issued beforehand by the taxable persons represented, for the purpose of paying the corresponding tax debts.

Similarly, the Decision of the Directorate General of the AEAT of 17th July 2007 extended social collaboration to the electronic submission of applications to offset, defer or spread payment of tax debts corresponding to returns whose online submission is compulsory, plus the documents that have to accompany such applications.

This is what is known as “social collaboration in the collection of taxes”, a concept referred to in the regulations on some taxes, such as personal income tax, corporate tax, VAT and the tax on certain means of transport. Such collaboration is now becoming a necessity in Spain's complex, highly changeable tax system, in which the onus to fulfil obligations and duties is mainly on taxpayers.

It is thus vital that the tax authority (in the context of its duty to provide information and assistance) and third parties (in the context of social collaboration) put mechanisms in place to help taxpayers fulfil their duties (and exercise their rights). This is particularly so in cases in which taxpayers are required to interact with the tax authority online.

The measures intended to implement social collaboration are organised through agreements that the tax authority establishes with bodies and institutions that represent social, labour, business or professional interests or sectors. Such bodies and institutions always enter into social collaboration agreements voluntarily.

In accordance with Article 92 of the LGT, some of the forms that social collaboration may take can be organised into three groups. The first group comprises activities involving producing studies or reports related to the development and application of general provisions. The second group consists of activities aimed at increasing the information and assistance available to citizens as a collective, such as information campaigns and simplifying the fulfilment of tax obligations.

The third group comprises activities designed to provide information and assistance for citizens as individuals in relation to the fulfilment of their tax obligations, subject to authorisation. Those activities include providing help with carrying out self-assessments and tax returns, with preparing correspondence and with completing the appropriate forms correctly; submitting and sending self-assessments, tax returns, correspondence and any other pertinent tax-related documents to the tax authorities; correcting errors; providing information on the status of the processing of refunds; and requesting and obtaining tax certificates.

Social collaboration not only covers the stage of applying regulations, but also that of developing them beforehand.

Some of the envisaged forms of social collaboration, including submitting and sending tax returns, self-assessments, correspondence and any other pertinent tax-related documents, are generally carried out online. Such third-party collaboration is therefore now acquiring greater relevance due to the rapid emergence of new ICTs (particularly the internet and email) in the field of the collection of taxes, and will be a necessity until these technologies are in generalised use in Spanish society.

In general, however, the necessary reinforcement of social collaboration may not be effective unless other measures are adopted, as the corresponding provisions are merely programmatic.¹⁸ Monitoring mechanisms to verify whether the tax authority is genuinely promoting social collaboration would thus be desirable.

Specifically, with regard to the use of the internet in social collaboration in the collection of taxes, it is necessary to take Article 92 of the LGT into account. Section 4 of the said article stipulates that “the tax authority may indicate the requisites and conditions for social collaboration to take place through the use of electronic, computerised and telematic methods and resources”.

It is worth noting that Article 81.2 of the RGGIT does not add a great deal to the legislation, in stating that “in accordance with the provisions of Article 92.4 of Law 58/2003, of 17th December, the General Taxation Law, the tax authority may establish the requisites and conditions for social collaboration to take place through the use of electronic, computerised and telematic methods and resources”.

The same precept goes on to say that, at state level, the Minister of the Economy and Finance shall establish, through a ministerial order, the requisites and conditions for using electronic, computerised and telematic methods and resources to submit and send tax returns, correspondence and any other pertinent tax-related documents in the context of social collaboration agreements.

The most notable forms of social collaboration envisaged in Article 92.3 of the LGT and in which such methods and resources may be used include help with carrying out, submitting and sending self-assessments, tax returns and correspondence (paragraphs d) and e), respectively); and providing information on the status of the processing of refunds, and requesting and obtaining tax certificates (paragraphs g) and h), respectively).¹⁹ Such collaboration thus entails the possibility of certain bodies or third parties submitting the aforementioned documents online on behalf of taxpayers, in accordance with the established procedure.

It should not be forgotten that, as stated, it is compulsory in some cases to submit certain tax returns online, and there are taxpayers, especially individuals, who do not have the technical and economic resources to do so. Nonetheless, to make submission easier for such taxpayers, the possibility of tax returns being submitted on behalf of third parties in the context of social collaboration in the collection of taxes has been established. Alternatively, in particular cases, such as that of the tax on certain means of transport, as mentioned previously, citizen help points in Tax Agency offices are envisaged for the submission of the corresponding returns. It can thus be said that social collaboration in the collection of taxes plays a very important role in cases in which online interaction with the tax authority is compulsory.

The parties involved in social collaboration are the tax authority, bodies or individuals authorised to carry out submission online, and taxpayers. The relationships established between them are described in the following paragraphs.

Firstly, the aforementioned bodies or individuals must sign a social collaboration agreement with the tax authority to be able to engage in such collaboration. Specifically, the bodies or individuals who may be social collaborators are listed in Article 79.1 of the RGGIT, according to which they may be other public authorities; bodies that are collaborators in tax collection administration; institutions and organisations that represent social, labour, business or professional interests or sectors (including professional associations); bodies that or individuals who carry out economic activities, in

18. That is the opinion of Pérez Royo and Aguillo, among others, according to whom “they are mostly guidelines without immediate legislative force, which merely indicate possible areas of collaboration between the tax authority and “civil society” bodies or social actors. The precept’s only specific instruction is found in Section 4 thereof, on the periodic publication of the administrative doctrine contained in answers to queries” (F. Pérez Royo; Á. Aguillo Avilés, 1996, p. 356). Along similar lines, see T. García Luis (1996, pp. 437-438).

19. On this subject, see A. M. Delgado García and R. Oliver Cuello (2003, pp. 11 et seq).

relation to the online submission of tax returns, data and other documents connected to the personal income tax of their employees and, if applicable, of the corresponding family unit, and in relation to the provision of services and assistance for those employees; bodies or individuals that carry out economic activities, if their geographical location or trade network may be conducive to the fulfilment of the tax authority's goals; or, lastly, other bodies or individuals specified by the Minister of the Economy and Finance.

Secondly, in the case of a collaborator being an individual who is a member of a professional association that has signed a collaboration agreement with the tax authority, they must, in principle, sign a personal document of adherence to that agreement, in which they expressly accept the entire content thereof (Article 79.2 of the RGGIT). However, the signature of a collaboration agreement by a professional association of notaries or registrars is binding for all its members, and personal adherence thereto is unnecessary.

Thirdly, the taxpayers must authorise the collaborating body or professional association member to submit documents on their behalf through a power of attorney, as discussed below. Lastly, the duly authorised third party will interact with the tax authority in the online submission process.

Where the submission of tax documents is concerned, the social collaborators must have a power of attorney in their capacity as the taxpayers' voluntary representatives, in accordance with the provisions of Article 46.4 of the LGT. The tax authority may request proof of that power of attorney at any time. The social collaborators may provide such proof by any legally valid means that establishes a reliable record, in person before the competent administrative body or in the ways identified in Article 111.2 of the RGGIT.

The social collaborators must also provide proof of the said power of attorney by the same means but without being prompted by the tax authority in the cases envisaged in Article 46.2 of the LGT (lodging or withdrawing appeals or claims, waiving rights, assuming or acknowledging obligations on behalf of the taxpayer, requesting that undue payments be refunded, and any other case in which the signature of the taxpayer may be necessary in the procedures governed by titles 3, 4 and 5 of the LGT).

In accordance with Article 46.7 of the LGT, the absence or insufficiency of such a power of attorney shall not prevent an act from being considered to have been carried out, as

long as the power is supplied or the deficiency is rectified within the 10-day period that the competent administrative body must allow to that end.

As Article 79.3 of the RGGIT states, the failure of a body, institution or organisation that has signed a collaboration agreement to fulfil its duties thereunder shall entail the termination of the agreement, subject to the case being examined and a hearing with the collaborator held.

The collaborators' failure to fulfil their duties under the personal document of adherence they have signed shall result in their exclusion from the agreement, with the procedure and guarantees provided for, and their personal authorisation shall cease to be valid. In any case, the object of social collaboration in each instance depends on the content of the specific agreement established, so checking its provisions will make it possible to ascertain whether or not there has been any form of abuse thereof or non-compliance therewith, for the purpose of seeking accountability through private law proceedings.

In relation to the social collaborator's liability for the non-fulfilment or erroneous fulfilment of the taxpayer's obligations (a bone of contention in the legal doctrine), it should be noted that, under the LGT, in principle, the social collaborator is neither classed as a specific taxpayer (Article 35) or as an offender (Article 181). Furthermore, Article 17.4 of the LGT stipulates that the acts or agreements between individuals "shall not produce legal effects in relation to the tax authority, notwithstanding their consequences in the private law field".

Some light is shed on the matter in question by the administrative doctrine contained in the Directorate General for Tax's Binding Consultation V0044/2005 of 18th January, in relation to a social collaborator submitting the tax returns of third parties online. It is unequivocally established therein that the tax advisor merely submits the returns, in the role of social collaborator, with their authorisation to represent third parties in the context of social collaboration being deemed to refer exclusively to submitting documents online. Thus, the collaborator is not held to represent the taxpayer in any additional way merely due to submitting tax returns online.

The same consultation also establishes that "if tax returns submitted by the advisor contain incorrect data or are not submitted within the established period, the tax authority

shall hold the taxpayer liable, notwithstanding the possibility of the submitting party also being deemed liable in the case of the applicability of any of the circumstances that Articles 42 and 43 of Law 58/2003 identify as giving rise to such liability”.

In short, in the event of such non-fulfilment or erroneous fulfilment, only the taxpayer is answerable to the tax authority. However, the social collaborator could be deemed jointly or subsidiarily liable if any of the circumstances envisaged in Articles 42 or 43 respectively of the LGT apply, such as being the cause of or an active participant in a tax infringement (Article 42.1.a of the LGT). Evidently, that does not affect the taxpayer's right to bring private law proceedings to seek compensation for any losses caused by the social collaborator.

In this context, it is worth pointing out that, based on the experience of the Spanish Tax Agency, in Article 23 on forms of representation, the LAECSP permits public authorities to empower, generally or specifically, authorised natural or legal persons to carry out certain electronic transactions on behalf of third parties. It stipulates that such empowerment must specify “the conditions and duties agreed to by those who thus acquire representative status, and the presumption of validity of their authorisation to act as representative, unless otherwise envisaged in the applicable legislation. Public authorities may request proof of such authorisation at any time”.

It is also necessary to highlight the provisions of the Decision of the Directorate General of the AEAT of 3rd June 2009 on assistance for taxpayers and citizens in identifying themselves to collaborating bodies via the internet for tax procedure purposes and, in particular, for the payment of debts via the debit system or by means of credit or debit cards.

According to the said decision, the satisfactory and secure functioning of the online payment procedure and the aim of continuing to do as much as possible to help taxpayers pay their tax debts make it advisable to establish a new decision, under which, in the case of online payments made by direct debit to a taxable person's bank account, the corresponding debit instruction may be issued by someone other than the taxpayer on the Tax Agency's website.

The decision in question thus introduces a new incentive and support measure where online social collaboration is concerned, in the form of the possibility of a third party issuing debit instructions in the case of online payments made by direct debit to a taxpayer's bank account.

Logically, for security reasons, a requisite that the decision establishes for this new kind of online payment is that a collaborator issuing such an instruction must be expressly authorised to do so by the relevant taxpayer, and the corresponding authorisation must be included in the Tax Agency's registry of powers of attorney.

It is interesting to note that, in relation to liability, Article 7 of the aforementioned Decision of the General Directorate General of the AEAT of 3rd June 2009 stipulates that “in cases in which, under the terms and conditions envisaged herein, online payment is made by means of debiting a bank account and the instruction to do so is issued by a party other than the taxable person, responsibility for verifying that the said party has the express authorisation of the taxable person to perform the transaction, and that such authorisation is valid at the time in question and included in the Registry of powers of attorney, shall lie exclusively with the Tax Agency”.

Lastly, with regard to online social collaboration, it is important to emphasise the extension of the scope of the practice, as provided for by Order EHA/1658/2009, of 12th June, which establishes the procedure and conditions for the payment by direct debit of certain debts administered by the AEAT.

The said order points out that Article 80 of the RGGIT authorises the Minister of the Economy and Finance to extend social collaboration with the Tax Agency to aspects other than those expressly referred to in Article 92.3 of the LGT. On that basis, the order extends social collaboration with the Tax Agency to the use of the internet for applications to defer or spread payment and for offsetting, regardless of whether or not they are made when submitting tax returns. As the order itself points out, the measure in question represents a further attempt to help taxpayers fulfil their obligations to the tax authorities.²⁰

20. The first additional provision to Order EHA/1658/2009, of 12th June, extends social collaboration with the Tax Agency to the online submission of applications for offsetting and to defer or spread the payment of debts corresponding to tax returns and all other debts administered by the tax authority. It also extends such collaboration to the online submission of the documents that must accompany the said applications, in accordance with the legislation applicable in each case.

Order EHA/1658/2009, of 12th June, also makes payment by direct debit compulsory in cases in which the bodies of the Spanish Tax Agency grant permission to defer or spread payment. It justifies that measure on the grounds of the direct debit procedure having so far proven to function satisfactorily, and invokes the authorisation set out in Article 46.2.f of the Royal Decree 939/2005, of 29th July, which approves the general regulations on tax collection (*Reglamento general de recaudación* or RGR).²¹

Additionally, the same order establishes uniform general rules related to the procedure for the payment of debts to the Tax Agency by direct debit, which applies to the vast majority of self-assessments. In this context, the individuals and bodies authorised to submit returns online on behalf of third parties may also use the internet to pass on to the tax authorities direct debit instructions which the taxpayers whom they represent have previously issued them.

Conclusions

The online submission of tax returns in Spain stands out among all the tax-related services for which the internet is used. The advantages of online communication with the Spanish tax authorities include reductions in compliance

costs, in the tax authority's administrative workload, in the time taken to process returns and in the time taken to process and detect the evolution of economic variables.

Until recently, in Spain, the use of the internet was only compulsory in a few cases affecting a limited number of taxpayers and certain taxes, basically linked to large companies.

However, in recent years, provisions have been made for new cases of compulsory online tax return submission, considerably increasing the number of taxpayers affected. The measure is thus taking on a significant scale.

Nonetheless, it can be maintained that the general rule is that taxpayers are free to choose which medium to use. The compulsory use of ICTs seems unlikely to be extended to all taxpayers until such time as these technologies are much more widespread in Spanish society than at present.

In that regard, it must be borne in mind that some taxpayers, particularly individuals, do not have the technical and economic resources to submit returns online. One of a number of measures geared towards making submission easier for such taxpayers consists of allowing returns to be submitted on behalf of third parties in the context of social collaboration in the collection of taxes.

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21. Article 4 of Order EHA/1658/2009, of 12th June, stipulates that "the means of payment in cases in which debt is deferred or spread shall be direct debit, unless the taxpayer is one of those referred to in Article 35.4 of Law 58/2003, of 17th December, the General Taxation Law. Such direct debits shall always be collected from accounts on the 5th or the 20th day of the month in which the payment or instalment agreed upon is due, or the first working day thereafter". Under the terms set out in Article 79 of the RGGIT, bodies or individuals that have signed a social collaboration agreement to that end with the Tax Agency may use the internet to pass on to the latter direct debit instructions with which the taxpayers whom they represent have issued them in relation to deferred or spread debt payments.

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