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Regulations governing the publication of details of tax debtors and fraudsters^{*}

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Abstract

One of the legal changes to have generated the greatest media and social interest in Spain with the amendment to the General Tax Law (Law 58/2003, of 17 December) by means of Law 34/2015, of 21 September, is associated with data protection and privacy.

For public interest reasons, it is now permitted to publish lists of taxpayers with outstanding debts or penalties of more than €1 million that have not been settled within the voluntary payment period, unless they have been deferred or suspended.

Additionally, Organic Law 10/2015, of 10 September, provides for the publication of a summary of final, non-appealable convictions for offences against the Public Treasury, asset stripping, punishable insolvency and smuggling offences when prejudicial to the Public Treasury.

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This is an issue that is clearly connected with personal data protection regulations and with the use of information and communication technology within the sphere of tax administration, and one that merits in-depth analysis.

Keywords

taxation, tax debtors, fraudsters, convictions, publication

Topic

Taxation

La regulación de la publicidad de deudores y defraudadores tributarios

Resumen

Una de las novedades que más interés mediático y social ha provocado la modificación de la Ley 58/2003, de 17 de diciembre, General Tributaria, mediante la Ley 34/2015, de 21 de septiembre, está relacionada con la privacidad y protección de datos.

Por razones de interés general, se permite dar publicidad de listados de obligados tributarios con deudas o sanciones pendientes superiores a un millón de euros, que no hubieran sido pagadas en el plazo de ingreso voluntario, salvo que se encuentren aplazadas o suspendidas.

Asimismo, se prevé en la Ley orgánica 10/2015, de 10 de septiembre, la publicación de la reseña de las sentencias condenatorias firmes y no recurribles por delitos contra la Hacienda Pública, de alzamiento de bienes e insolvencia punible y delitos de contrabando cuando haya un perjuicio para la Hacienda Pública.

Se trata de un tema que tiene claras conexiones con la normativa de protección de datos de carácter personal y con el uso de las tecnologías de la información y la comunicación en el ámbito de la administración tributaria y que merece ser objeto de un análisis en profundidad.

Palabras clave

fiscalidad, deudores, defraudadores, sentencias condenatorias, publicación

Tema

Fiscalidad

1. Publication of the listing of Public Treasury debtors

1.1. The object of publication and those subject to it

Law 34/2015, of 21 September, which partially amends the General Tax Law (Law 58/2003, of 17 December, the 'GTL'), introduces a new Article 95 a) into the latter entitled 'Publication of situations of significant non-compliance with tax obligations', which establishes that the tax administration may decide to periodically publish listings containing Public Treasury debtors for certain tax debts or penalties. Specifically, this means unpaid tax debts or penalties whose total amount exceeds the sum of €1 million and that have not been settled by the voluntary payment deadline. For these purposes, tax debts and penalties that have been postponed or suspended are not included.

According to the provisions of this new Article 95 a) GTL on the information to be published, these listings shall include, on the one hand, identification of the debtors and, on the other, the total amount of unpaid debts and penalties taken into account for publication purposes.

With regard to the identification of the debtors, the law stipulates that, in the case of natural persons, the given name, surname(s) and tax identification number ('NIF') must be included. As far as legal persons and the entities set forth in Article 35.4 GTL (unsettled estates, commonly-held assets and other undertakings lacking legal personality) are concerned, the company or trading name and the NIF must be identified.

With regard to the object of the publication of the listing, Article 95 a) GTL states that, within the scope of the

Spanish state, disclosure shall refer exclusively to Spanish state taxes where application of the taxes and exercise of penalty-related and review powers are attributed exclusively to the tax authorities of the Spanish state, there being no delegation whatsoever of powers in these fields to autonomous communities or local authorities. Additionally, the disclosure regulated in this precept shall be applicable to the taxes comprising customs-related debts.¹

With regard to timing aspects, the new Article establishes that the reference date for establishing the occurrence of requirements for inclusion in the listing shall be 31 December of the year preceding the publication resolution, whatever the unpaid amount on the date of this resolution.

The personal scope of the publication of Public Treasury debtors has been criticised by some legal scholarship (M. T. Mata Sierra, 2016) in that it affects defaulting debtors even if they have complied with their remaining obligations to the tax authority (as is the case with a taxpayer that has acknowledged the debt but is unable to settle it during the voluntary payment period) but not, for example, those fraudsters who, once discovered, pay the penalty immediately, thereby avoiding being published in a listing whose only value, obviously, would be that of being a weapon in the battle against tax fraud, an addition to the arsenal of preventative and educational measures that contribute to voluntary compliance with tax obligations.²

Another author (B. D. Olivares Olivares, 2015) has also criticised the substantive scope of the publication of Public Treasury debtors in that, in this author's opinion, the tax assessment from which the debt or penalty arises must at least become final through the administrative channel to be in a position to consider disclosing debtors' details.³

1. Certain legal scholarship has criticised this difference of treatment between state and EU taxes and autonomous community and local ones when Article 1 of the GTL says it is, in general, applicable to all tax administrations. According to this opinion, there would appear to be no clear differences between all these debtors beyond the actual tax giving rise to the debt or penalty, something that should not be important when bearing the burden of disclosure and which creates a clear inequality of treatment between potential tax debtors, giving rise to a much more disadvantageous treatment for those in respect of exclusively Spanish state or EU tax debts or penalties (M. T. Mata Sierra, 2016, p. 146).
2. According to this legal scholarship opinion, far from doing so, the possibility of settling the debt to avoid being included in the list has nothing to do with the concept of setting an example to promote prevention and taxpayer education, but rather is punitive in nature, causing one to wonder if it would not be better to reform the penalty-related law covering such cases. According to this viewpoint, it does not appear to be a particularly consistent approach and, clearly, the reputational impact involved in publicising such situations would be much more justified in the latter than in the former case (M. T. Mata Sierra, 2016, p. 147).
3. According to this legal scholarship opinion, the tax authority must exhaust all the instruments provided to it by the GTL to collect amounts due since, as this maxim implies, when there are other means of achieving the same end, the one which is least detrimental to personal data protection law must be chosen (M. T. Olivares Olivares, 2015, p. 19).

Our viewpoint is that, so as to provide more detailed information offering greater transparency, the debtors' listing should provide a breakdown between penalties and other tax debts. Additionally, it would be advisable to differentiate between those cases in which the debt is due to an insolvency procedure and those cases in which the debt arises from referral of tax liability procedures. It would also be worth identifying those cases in which the tax debt is not final through the administrative channel.

We believe that all these tax debts should be included in the publication of the listing, as currently occurs, but they should be broken down properly which is not currently the case. All this would provide the public with much higher-quality information which would have a positive impact upon what are, in our opinion, this measure's goals: transparency, civic awareness and the fight against fraud.

1.2. The publication procedure

As noted above, the new Article 95 a) GTL provides that the reference date for establishment of the occurrence of the requirements set for inclusion in the listing is 31 December of the year preceding the publication resolution, whatever the unpaid amount at the date of this resolution.

In this regard, the Article establishes that the affected debtors shall be given notice of their proposed inclusion in this listing and that they may present submissions within ten days of the day following receipt of the notice. For these purposes, it shall be enough for this notification to be deemed made when the tax administration can demonstrate

that it has made an attempt to provide notification of the proposed inclusion containing the full text of its content to the tax address of the affected party.⁴

With regard to the content of the above submissions, the Article states that they must relate exclusively to material or arithmetical errors or errors of fact with regard to the requirements stipulated in Section 1 of the Article. In other words, they may only refer to whether the unpaid tax debts or penalties exceed the sum of €1 million, whether or not they were paid before the voluntary payment deadline or if they have been postponed or suspended.⁵

It also establishes that, as a consequence of the submissions procedure, the administration may resolve to rectify the listing when it is reliably demonstrated that the legal requirements stipulated in Section 1 of Article 95 a) GTL do not obtain. This rectification may also be decided on an ex-officio basis. Having carried out any relevant rectifications, the publication resolution shall be issued. Notification of this resolution shall be deemed to have occurred with its publication and that of the listing.

Additionally, the new Article 95 a) GTL indicates that a ministerial order shall establish the date for publication, which must occur in all cases in the first six months of each year, and the associated files and records. As far as the form of publication is concerned, it states that this shall always be electronic and that the necessary measures must be adopted to prevent indexing of its content by Internet search engines. In this regard, it provides that the listing shall cease to be accessible three months after the publication date.⁶

4. According to the opinion of certain legal scholarship, an opinion we share, it is noteworthy that Article 112 GTL contradicts the provisions of this precept, insofar as it states that two notification attempts must be made, indicating that one shall be sufficient solely in the case that the addressee is confirmed as unknown at the address. Neither does it provide for any announcements of summons for appearance, also provided for in this precept. Nevertheless, this is not the GTL's only exception in this regard, as Article 104 GTL also provides for one single attempt for notifications of express judgements on issues raised in tax application proceedings. According to this point of view, in favour of complying with the general notification system is the importance the issue may have for the tax debtor: against it is the fact that it would delay publication of the listing (M. T. Mata Sierra, 2016, p. 153).
5. This limitation of solely dealing with material or arithmetical errors or errors of fact is, according to one legal scholarship opinion, unacceptable from the viewpoint of respect for the rights and guarantees afforded taxpayers, who should be able to argue anything available to them in the law applicable to them, without prejudice to the outcome of the relevant appeals (M. T. Mata Sierra, 2016, p. 153). Nevertheless, in our opinion it is right to restrict the content of submissions exclusively to material or arithmetical errors or errors of fact, as to begin evaluating any other submission available in taxpayer law would prolong and complicate the listing publication procedure, without prejudice, obviously, to the taxpayer being entitled to lodge the relevant claim (something that should, as we have noted above, be clearly indicated in the listing).
6. Additionally, the Article states that the data processing required for the publication shall be subject to the provisions of the Organic Law 15/1999, of 13 December, on Personal Data Protection ('LOPD'), and its Regulations, enacted by Royal Decree 1720/2007, of 21 December. Obviously, data protection regulations govern this and the other issues affecting the tax administration and the personal information in its hands (R. Oliver Cuello, 2012, pp. 41-63).

With regard to the publication of the debtors' listing, Article 95 a) GTL establishes, within the scope of the powers of the Spanish state, that it is the Director General of the State Tax Administration Agency (*Agencia Estatal de Administración Tributaria*, 'AEAT') who shall be responsible for issuing this resolution. The publication of the listing shall specify that the situation reflected in it is the one at 31 December of the year preceding the publication resolution, without the publication of the listing being affected by any debtor actions subsequent to this reference date in terms of payment of the debts and the penalties included in it.

Furthermore, the Article indicates that the publication of the debtors' listing shall not in any way affect the rebuttal system established in the Law for actions and procedures arising from tax debts and penalties or tax application actions and procedures that have been or may be initiated subsequently in relation to it. Lastly, Article 95 a) GTL establishes that actions carried out as part of the publication procedure do not affect the time limits for the purposes provided for in Article 68 GTL and that the listing publication resolution shall put an end to the administrative channel.

As noted above, Article 95 a) GTL states that the date of publication and the associated files and records shall be established by ministerial order. This legal provision has been met by means of Order HAP/2216/2015, of 23 October, which establishes the publication date and the associated files and records of the listing of Public Treasury debtors for tax debts or penalties meeting the conditions established in Article 95 a) GTL.

In terms of the listing's date of publication, this ministerial order specified that the first listing of Public Treasury debtors for tax debts or penalties meeting the conditions established in Section 1 of Article 95 a) GTL, with a reference date of 31 July 2015, was to be published on or after 1 December 2015 on the AEAT website (<<http://www.agenciatributaria.gob.es>>). This debtors' listing was first published on 23 December 2015.⁷

The first listing of Public Treasury debtors was published electronically in PDF format, adopting the measures necessary in light of the state-of-the-art to prevent indexation of its content by Internet search engines and ensuring that the listing will cease to be accessible three months after the publication date in accordance with Article 95 a) GTL.⁸

The total amount of the debt to the Public Treasury published in this first debtors' listing exceeded €15.6 billion. A total of 345 of the defaulting debtors were natural persons, with a debt exceeding €700 million, and 4,510 were legal persons, with outstanding payments of €14.9 billion.⁹

Lastly, consideration should also be given to the approval of Order HAP/364/2016, of 11 March, which establishes, for 2016 and the following years, the publication date and the associated files and records of the listing of Public Treasury debtors for tax debts or penalties meeting the conditions established in Article 95 a) GTL.¹⁰

The listing of Public Treasury debtors for tax debts or penalties that at 31 December each year meet the conditions

7. The listing of Public Treasury debtors for tax debts or penalties was, pursuant to the provisions of this ministerial order, drawn up on the basis of the data on unpaid debts and penalties that were neither postponed nor suspended, held in the AEAT information system on the reference date of 31 July 2015 and irrespective of the amount actually owed by the taxpayers identified in this listing on the publication date. The listing included the fields permitting identification of the debtors whose information is published, identifiable by their given name, surname(s) and NIF, if a natural person, and by their full business or trading name and NIF, if a legal person or an undertaking included in Article 35.4 GTL, an identification associated with the total amount of the debts and penalties owing on the reference date, calculated on a global basis without any breakdown.
8. Order HAP/2216/2015 states that it is the responsibility of the AEAT Director General to approve, by means of a resolution, the modification of the computer file of debtors supporting the data which is published and their main characteristics, in the terms provided for in personal data protection legislation.
9. Of the overall total of €15.6 billion of outstanding debt on this listing, more than €6.5 billion, or 42% of the total, is owed by insolvent defaulting debtors, i.e. those affected by a procedure in which the possibilities of actual collection of the debt diminish the longer the insolvency proceedings take. Overall, the listing contains almost 1,700 insolvent debtors, 35% of the total. Additionally, 825 defaulters on this list are the subject of a referral of secondary or joint liability and not the principal debtor, representing a total amount of €1.5 billion, close to 10% of the total amount of debt on the list (*El Periódico*, 23 December 2015, "The Public Treasury listing of defaulters, published today, includes 4,855 debtors").
10. As already noted, for 2015, Order HAP/2216/2015, of 23 October, which establishes the publication date and the associated files and records of the listing of Public Treasury debtors for tax debts or penalties meeting the conditions established in Article 95 a) GTL, had already been published, with a reference date of 31 July 2015. This latter order also includes a provision on the modification of the computer file

stipulated in Section 1 of Article 95 a) GTL shall, pursuant to this ministerial order, be published from 1 May of the following year on the AEAT website.

According to the provisions of this ministerial order, the listing of Public Treasury debtors shall be drawn up on the basis of the data on unpaid debts and penalties that are neither postponed nor suspended, held in the AEAT information system on the reference date of 31 December each year and irrespective of the amount actually owed by the taxpayers identified in this listing on the publication date.

The listing shall include the fields permitting identification of the debtors whose information is published, identifiable by their given name, surname(s) and NIF, if a natural person, and by their full business or trading name and NIF, if a legal person or an undertaking included in Article 35.4 GTL. This identification shall be associated with the total amount of the debts and penalties owing on the reference date, calculated on a global basis without any breakdown.¹¹

Pursuant to these criteria, the second listing of tax debtors and fraudsters was published on 30 June 2016, referring to tax debts or penalties of more than €1 million unpaid at 31 December 2015 and neither postponed nor suspended.¹²

1.3. The legal nature and purpose of the regulation

The preamble to Law 34/2015, of 21 September, on the partial amendment of the GTL, provides the arguments justifying the enactment of this regulation, which amongst

other matters governs publication of the listing of Public Treasury debtors.

In this regard, it indicates that there is a need to bolster the Public Treasury's mechanisms for promoting the general duty of contribution contained in Article 31 of the Spanish Constitution and the fight against tax fraud, not solely by means of measures aimed directly and exclusively at its mere suppression. The principle of transparency and disclosure forms part of the principles that should govern the actions of all public authorities to ensure the establishment of an advanced democratic society.

In this way, the preamble to Law 34/2015 argues that the measure consisting of the debtors' listing included in the GTL should be seen as part of the fight against tax fraud by means of promoting all manner of preventative and educational measures contributing to voluntary compliance with tax obligations, fostering the development of real civic tax awareness and active disclosure arising from transparency in public activities associated with information which it is important the public knows about.

According to the preamble, the measure has complete respect for the confidentiality of tax data and, therefore, the principles upon which it is based, and one should not forget the influence on this issue of protection of the right to privacy and the need to boost the efficacy of the tax system. In view of all this, the only object of disclosure will be that tax-related behaviour which is socially reprehensible from a quantitatively significant standpoint. It will thus permit the legislator to disseminate only that conduct which gives rise to great economic harm to the Public Treasury stemming from the failure to make payment in the established

of debtors supporting the data which is published and their main characteristics, in the terms provided for in personal data protection legislation, by means of a Resolution of the AEAT Director General. Accordingly, 2 December 2015 saw publication in Spain's Official Gazette, the BOE, of the Resolution of 18 November 2015, which modified and adapted both the computer file on debtors and the one on debts, such that there was no longer any need to issue a new Resolution for the subsequent publications of the listing.

11. This ministerial order establishes that publication shall be carried out electronically in PDF format, adopting the measures necessary, in light of the state-of-the-art, to prevent indexation of its content by Internet search engines and ensuring that the listing will cease to be accessible three months after the publication date, in accordance with Article 95 a) GTL. Lastly, Order HAP/364/2016 states that, for the purposes of drawing up the listing, use shall be made of the files and records of debtors and debts, modified and adapted in accordance with the aforementioned Resolution of the AEAT Director General of 18 November 2015, under the terms provided for in personal data protection legislation.
12. The global amount of the debts included in this listing exceeds €15.7 billion and the total number of debtors is 4,768. Compared with the first list, the debt figure has increased by 0.7%, whilst the number of debtors has fallen by 1.8%. Of the 4,768 debtors, 336 are natural persons, with a total debt of less than €700 million, and 4,432 are legal persons, with outstanding payments of more than €15 billion. Compared to the previous list, the debt owed by natural persons has fallen, but that of legal ones has risen. Additionally, 333 debtors appearing in the first listing are no longer included in the second one, after fully or partially settling their debt or having secured a postponement or suspension prior to 31 December 2015.

voluntary payment periods established in the Law for each type of debt.

The preamble to Law 34/2015 continues by justifying the amendment introduced into the GTL, stating that although the principles of transparency and disclosure may on occasion clash with other constitutionally-protected rights, such as those to privacy and of data protection, the different interests whose protection is sought need to be weighed up, taking into account the principles of proportionality, accuracy and data retention contained in Article 4.1 LOPD.¹³

It also explains that in the search for balance between the rights included in the regulation (those of society as a whole to seek compliance with tax obligations, and those of taxpayers with regard to the preservation of privacy), value-based rules have been introduced for the drawing up of the lists to be made public.

According to this line of argument, this has been done in other sectors, introducing this principle of disclosure in different fields in which special protection is advocated.¹⁴ Bearing in mind the innovation the text involves in this point and the importance of the consequences arising from it, the regulation chooses to provide direct access to the administrative courts for those affected parties who regard the publication as not consistent with the law.

Lastly, the preamble states that Law 34/2015 is completed by Organic Law 10/2015, of 10 September, which governs access to, and disclosure of, certain information contained in judgements issued in respect of tax fraud, as it would be inconsistent to publish the identity of those who have ceased to pay their tax liabilities but nevertheless conceal

that of large-scale fraudsters, convicted in a final judgement of offences of this nature.

A number of authors have expressed criticisms of the legal nature and purposes of the amendment introduced by Law 34/2015. One (J. Martín Queralt, 2013) questions the very need to publish a list of Public Treasury debtors, highlighting that tax regulations are based on the confidential nature of data of tax importance (Article 95 GTL). It is therefore not enough to merely introduce a new precept but, instead, there is also a need to carry out a proper assessment of the 'pressing social need' alluded to in case law. A need that, in the case of defaulting debtors, is, according to this legal scholarship opinion, very difficult to perceive.¹⁵

Other legal scholarship positions (B. D. Olivares Olivares, 2015) have criticised the fact that this measure aims to impose an ancillary penalty upon anyone committing a violation against, or owing amounts to, the tax administration. Specifically, according to this opinion it aims to damage the person's reputation for the purposes of making an example of them due to the magnitude of the harm caused to the Public Treasury. The reason for this disclosure is, according to this viewpoint, one of punishment, adding to the tax penalty one of social reproach through the publication of personal information. Therefore, the measure aims to leverage this public reproach to prevent the repetition of such behaviour.¹⁶

The penalty-related nature of the measures adopted by means of Law 34/2015 is also highlighted by another author (A. Cayón Galiardo, 2015). He states that we are dealing with measures that represent a direct or indirect penalty, and that the purpose that inspires them—according to the

13. This is also the case, according to the preamble, in other nearby countries such as Germany and Finland, which have a number of exceptions to the general principle of the confidentiality of tax data.

14. This is the case in the financial sector, in the field of occupational health and safety and, recently, with regard to penalties for senior management, all areas in which the efficacy of this type of measure in achieving the goals sought has been noted.

15. This author believes that this need is not imposed by the exercise of administrative powers and, furthermore, is by no means the only measure that can be adopted to enforce the duty to contribute (J. Martín Queralt, 2013, p. 2).

16. According to this author, this regulation's restriction on the right to control over data affects core aspects of the fundamental right to the protection of personal data. The owner of the information will have no right to consent to its processing in light of the change in the initial purpose of the public assignment nor, possibly, will they be informed of this processing prior to publication. With regard to rights, according to this opinion the right of rectification is restricted and the rights to access and cancellation may also be limited, given the use of the broad concept established in Article 23.2 LOPD. For these reasons it is this author's belief that, following the precedent set by the Constitutional Court, there is, with these restrictions, a clear risk of breaching the essential content of the right to protection of personal data, in that it may make it impracticable, more difficult than is reasonable or strip it of the required protection (B. D. Olivares Olivares, 2015, pp. 17 and 19).

regulations bringing them into force—provides only very dubious justification since closer examination reveals that the disclosed purpose is neither the only nor (possibly) even the main one. According to this viewpoint, the disclosed or declared purposes sought by the publication of these listings are coincidental to those of a substantially penal sanction: on the one hand, to intimidate defaulting debtors into no longer delaying payment of their taxes and, on the other, to have a dissuasive effect to reduce fraud. This is the case irrespective of any positive impact on tax collections that may also be achieved.¹⁷

Similar pronouncements have been made by another author (J. Calvo Vérguez, 2015), who believes that this law gives rise to the imposition of a sort of ancillary penalty upon those committing a violation against or owing money to the tax administration, reflected in the social reproach represented by the publication of personal information. This is despite the fact that they are taxpayers who, although they have recognised their debt with the tax authority, cannot settle it within the voluntary period. According to this viewpoint, it is not acceptable that protection of the constitutional duty to contribute entails the disclosure of information that, given its nature and purposes, is confidential, thereby stigmatising the defaulter.¹⁸

Another author (S. L. Doncel Núñez, 2016) argues that the listings of Public Treasury data have a clearly penalty-related nature, on the basis that their repressive purpose is made clear in the fact that what is sought by this publication is not so much transparency or that the

public is made aware of who the greatest defaulters or fraudsters are, but rather that the latter suffer public scorn. In short, according to this legal scholarship position, this is a penalty whose purpose is to make a public example of these taxpayers.¹⁹

On the other hand, another author (D. Carbajo Vasco, 2015) is in favour of the measures adopted with regard to the disclosure of listings of Public Treasury debtors and the one for convictions for tax offences. We share this author's opinion, which is that disclosing recalcitrant defaulters and those with large amounts of debt with the Public Treasury (more than €1 million) and convictions for tax offences has a clearly preventative and educational mission against antisocial behaviour.²⁰

In our opinion, publishing listings of Public Treasury debtors is not a punitive measure, but rather a regulation aimed at transparency and at informing the public about matters of importance. This disclosure may develop civic awareness of the importance of paying taxes, something that is—in our view—important to foster with the aim of boosting voluntary compliance with tax-related obligations.

We are therefore in agreement with Spain's State Council (*Consejo de Estado*) which, when analysing the draft of this new Article 95 a) GTL, stated that 'it seems clear it is not structured as a kind of penalty for taxpayers unable to make payment of their debt within the voluntary period but, rather, the aim of it is to achieve certain goals of administrative efficacy and transparency', and it highlights

17. According to this legal scholarship opinion, this is not a measure that is going to reduce defaults (something that has, during the economic crisis, been noted as a serious problem that has affected the economy as a whole) as it does not even mention those cases in which it is the tax authority that is late in paying the taxpayer. Instead, it highlights the penalty-related intent, including the intention for disclosure of the information to have a prejudicial effect upon the defaulting taxpayer, as everyone can be aware of the tax situation of those with whom they do business, such that they can avoid entering into loans and transactions with persons who may put them at risk (A. Cayón Galiardo, 2015, pp. 15 and 31).
18. Disclosure of protected data (tax information) does not, according to this author, afford any 'educational' effect that may justify violation of the right to privacy (J. Calvo Vérguez, 2015, p. 13).
19. Accordingly, this author suggests incorporating inclusion in a listing of fraudsters as an ancillary penalty in Article 186 GTL and that no provision should be made with respect to defaulters since, although they may be a nuisance to the tax administration, they have committed no violation, and they are already under enough pressure from enforcement period surcharges and late payment interest (S. L. Doncel Núñez, 2016, pp. 108 and 109).
20. However, as this author rightly points out, these measures will not lead to radical change in the tax avoidance schemes of multinationals in the digital economy (true taxation 'black holes'). These disclosure measures, which have been the object of disproportionate and self-serving criticism, are barely two drops in the ocean, two footnotes in the fight against fraud. As this author rightly points out, in the recent reform of the GTL it was doubtless more appealing, impactful and media-savvy to divert attention towards petty aspects of the reform of the GTL, publicity-related aspects typical of the 'showbiz society', but ones that are also very worthwhile due to their preventative and educational impact. Accordingly, this author concludes that, even though we may classify them as small arms, we support both the publication of the listing of defaulters and the one for tax offenders (D. Carbajo Vasco, 2015, p. 20).

'the preventative, informative, and educational purpose of the planned provision'.²¹

To sum up, the aim of these measures for disclosing Public Treasury debtors and those for disclosing convictions for tax offences is to make society aware of a problem of great current importance: defaulting in payments to the Public Treasury and tax fraud. These transparency and disclosure measures are not punitive in nature, and nor do they solely aim to encourage the debtor to pay, but rather they attempt to raise public awareness of tax issues, providing important information for taxpayers who fulfil their tax duties and who are entitled to know about the tax-related non-compliances with the greatest impact upon the Public Treasury.

2. Publication of convictions for tax offences

2.1. Publication content and procedure

Organic Law 10/2015, of 10 September, governing access to and publication of certain information contained in convictions issued on tax fraud, introduces Article 235 b) into Organic Law 6/1985, of 1 July, on Judiciary Powers ('LOPJ').

This new Article states that public access must be provided to personal data contained in the wording of judgements resulting in final convictions when they have been issued in respect of the offences included in Articles 305, 305 a) and 306 (on offences against the Public Treasury), of Organic Law 10/1995, of 23 November, on the Criminal Code ('CC'); Articles 257 and 258 of the CC (on offences of asset stripping and punishable insolvency), when the defrauded creditor is the Public Treasury; and Article 2 of Organic Law 12/1995, of 12 December, on the repression of smuggling (smuggling offences), provided that harm has been caused to the Spanish State or the European Union Treasury.

Under the provisions of Article 235 b) of the LOPJ, the Clerk of the Court shall issue a certificate placing on record the following information: a) that which permits identification of the judicial proceedings; b) the given name and surname(s)

or business name of the convicted party and, as the case may be, the one with civil liability; c) the offence of which they have been convicted; d) the penalties imposed; and e) the amount associated with the harm caused to the Public Treasury, of all types, according to the provisions of the judgement. As an organisational measure, the Clerk of the Court shall order its publication in the BOE.

Lastly, this legal precept establishes that this disclosure of convictions shall not be applicable should the convicted party or, as the case may be, the one with civil liability have settled or deposited in the court's escrow account the entirety of the amount of the harm caused to the Public Treasury, of all types, prior to the judgement becoming final.

2.2. The regulation's justification

The preamble to Organic Law 10/2015, of 10 September, which governs access to, and disclosure of, certain information contained in judgements issued in respect of tax fraud, justifies the law by stating that the principle of disclosure of judicial actions and judgements issued by the courts is enshrined in Article 120 of the Spanish Constitution, and is a principle linked with that of judicial transparency and public oversight of proceedings, conceived of as fundamental guarantees of this principle.

It argues that the rights to reputation or privacy, although constitutionally enshrined, are not absolute but rather legally configured and, as such, the legislator may introduce exceptions and limits for public interest reasons and, particularly, when they clash with other values also included in the Constitution.

In this regard, the preamble indicates that, in the specific case of tax fraud offences, the public interest supersedes the interests of the convicted party. It should be borne in mind that the legal good protected in these cases has been raised to a constitutional level in Article 31 of the Spanish Constitution. This is of importance in weighing priorities here, since it should not be forgotten that the constitutional duty to contribute to the sustenance of public expenditure has, as its flipside, the right of society as a whole to demand compliance with tax obligations, as well as oversight over the activities of all the public authorities

21. State Council Opinion 130/2015, of 19 April.

in the fight against tax fraud, and the implementation in this specific field of the general principle of transparency in providing information on public activities and, most especially, judicial actions.²²

The end purpose is, therefore, to bolster, in this specific field, the principles of judicial disclosure, transparency and effectiveness in public activities, which, in that they are constitutionally enshrined and guarantees of securing the public interest, must prevail in this case over individual rights to privacy or data protection.

One author (J. Martín Queralt, 2013) has criticised this measure on the publication of convictions for tax offences, stating that as far as large-scale fraudsters are concerned, it is difficult to argue that they deserve special reproach, different to that applicable to other far more serious offences involving stiffer sentences.²³

In our opinion, these disclosure measures are not penalties in nature. We agree with Spain's General Council of the Judiciary ('GCJ')²⁴ when, in its report on this legislative measure and whilst admitting that disclosing a conviction may constitute a burden to the person affected, it holds that higher reasons of information and the fight against tax fraud prevail. In this regard, it states that 'it cannot be said that the measure is mainly and purely a penalty or additional punishment in nature, since, in such a case, it ought to be included in the Criminal Code and be ruled upon by the judge.'

3. Conclusions

The regulation on publication of listings of Public Treasury debtors seeks to promote transparency and to inform the public on matters in its interest. We are not, therefore, dealing with a measure that is a penalty in nature, but rather the goal of this disclosure is to help develop civic awareness of tax issues, something that is important to foster with the aim of increasing voluntary compliance with tax obligations.

Nevertheless, in our opinion and to provide more detailed information for the purposes of greater transparency, the debtors' listing should provide a breakdown between penalties and other tax debts. It would also be advisable to distinguish between those cases in which the debt is due to insolvency proceedings and those cases in which the debt arises from tax liability referral proceedings. It would also, in our opinion, be worthwhile to identify cases in which the tax debt has not yet become final through the administrative channel.

The aim of these measures publicising the details of Public Treasury debtors and those disclosing convictions for tax offences is to convey to society a serious problem in today's world, that of defaulting on payments to the Public Treasury and tax fraud. The intention of these transparency and publicity measures is not solely to incentivise payment by debtors, but also to increase public awareness of tax issues, providing important information for taxpayers who comply with their tax duties and who have a right to be given information on the tax non-compliances with the greatest impact upon the Public Treasury.

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22. The Law also notes, in this preamble, that convictions for tax fraud-related offences are of great importance outside of court proceedings, since a number of different regulations establish consequences stemming from such convictions in the fields of public procurement, public grants and in the intervention in, and discipline of, financial institutions, whose application is only effective if they are disclosed, even if only partially.
23. This author believes that, from this viewpoint and leaving other specific considerations belonging to the field of criminal law aside, when comparing offences constituting a serious felony, it is tricky to argue that only those involving offences against the Public Treasury are deserving of dissemination or disclosure (J. Martín Queralt, 2013, p. 2).
24. GCJ report on the Draft Organic Law governing access to information contained in tax fraud convictions, 11 May 2015.

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