

## **Opinion in relation to a consultation of a county council on the disclosure of the content of real estate seizure proceedings**

A letter from a county council is presented to the Catalan Data Protection Authority in which it raises the question of whether in real estate seizure proceedings the name and rights of all persons related to the property can be recorded embargoed, as well as the matrimonial regime of the debtor's spouse, taking into account its notification to several people.

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The Regional Council asks, in its letter of inquiry, whether in the proceedings for the seizure of immovable property the name and right of all persons related to the seized property can be recorded, as well as the marital status of the spouse of the debtor, in accordance with the data recorded in the Property Registry, or if only the data of the debtor can be recorded.

He points out that the notification regime in tax matters is the one provided for in the administrative procedure legislation with the specialties established in Law 58/2003, of December 17, General Taxation (hereinafter, LGT), so it is also necessary to have present the provisions of article 40.5 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPACAP), according to which:

"5. The Public Administrations may adopt the measures they consider necessary for the protection of the personal data contained in the resolutions and administrative acts, when these are addressed to more than one interested party.

In light of these forecasts, the County Council questions whether the people who must be notified of the embargo process can have access to the personal data contained therein or whether any measures should be taken in this regard.

We refer to this issue in the following sections of this opinion.

III

Given the terms in which the query is formulated, it must be agreed, at the outset, that any treatment (article 3.c) of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD)) that the County Council carries out on the data of natural persons (article 3.a) LOPD) in relation to the files of administrative constraint of tax debts must respect the principles and guarantees of the data protection regulations personal

Article 4.1 of the LOPD establishes that "personal data can only be collected to be processed, as well as subjected to this processing, when appropriate,

relevant and not excessive in relation to the scope and the specific, explicit and legitimate purposes for which they have been obtained."

In the same vein, article 5.1.c) of Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, General Data Protection (hereafter, RGPD), applicable to from next May 25, 2018, establishes that "personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".

In accordance with this principle of minimization, the personal data recorded in the embargo process must be the minimum necessary to fulfill the purpose to which it corresponds.

In this sense, reference must be made to the LGT, cited above. In accordance with its article 160.2, the payment or collection of the tax debt can be carried out in a voluntary period - by paying or complying with the tax liability within the terms provided for in article 62 of the same LGT-, or in the executive period - through the spontaneous payment or compliance of the taxpayer or, if there is none, through the administrative enforcement procedure-.

Article 167 of the LGT, relating to the enforcement procedure, establishes, in its section 4, that "if the taxpayer does not make the payment within the period referred to in section 5 of article 62 of this law, will proceed to the embargo of his goods, thus warning in the provision of urgency."

Regarding the practice of this seizure of goods, the LGT determines the order to be followed (article 169), and provides, in its article 170.1, that "each action of embargo will be documented in diligence (...)" .

The attachment process, therefore, is configured as the document that is issued, within the framework of the coercion procedure, to document the attachment of the assets and rights held by the taxpayer, given that he is the one who maintains a debt with, in this case, the local treasury.

The General Collection Regulation, approved by Royal Decree 939/2005, of July 29 (hereafter, RGR), in development of the aforementioned LGT forecasts, specifies, among other aspects, the information that must be included in the seizure proceedings.

Specifically, for the purposes of interest in the present case, reference must be made to its article 83, which establishes:

"1. The embargo of real estate and rights over it will be carried out by means of diligence, which will specify the following circumstances:

a) Name and surname or company name or full name of the holder and, where appropriate, of the owner of the seized property, tax identification number of both and any data that may contribute to its identification. b) If it is a rustic estate: nature and number of said estate, municipal term where it is located and location according to its number in the locality, boundaries, surface area and capacity, and registration and cadastral identification, if available. c) If it is urban property: locality, street and number, premises and flats of which they are composed, area, and registration and cadastral identification, if available. d) Rights of the obligee to pay on the seized properties. e) Total amount of the debt, concept or concepts to which it corresponds and amount of the liability to which the principal property is affected, surcharges, interests and costs, with the warning that it may extend to the interests that may accrue until the conclusion of the execution and costs thereof.

f) Warning that a preventive note of the embargo will be taken in the Property Registry in favor of the State or, as the case may be, of the entity or body holding the credit that motivates the execution. g) To state in good faith, marital status and economic regime of the marriage.

(...)"

From this precept it is inferred that in the proceedings for the attachment of immovable property, it will be necessary to include information relating to the taxable person (the debtor) who owns the immovable property seized. Just for the case that, despite being the owner, he does not possess it, the regulations provide that information about this person is also recorded, albeit limited to his identification data.

The inclusion in the embargo process of the set of personal information referred to in this article of the RGR would be in line with data protection legislation, to the extent that it would be adequate and relevant information for the correct development of the embargo action by the local treasury.

Obviously, it is necessary to collect the identity of the taxpayer, since it is with respect to his assets that the seizure is carried out. Precisely because the action is carried out against their assets, it would also be relevant, if this were the case, to record the identity of the person who owns them.

Point out, with respect to this identifying information, that, despite the provision of the RGR to record "how much data can contribute to your identification", in accordance with the aforementioned principle of data minimization (articles 4 LOPD and 5.1. c) RGPD), it is understood that, in general, it would be sufficient to indicate the data relating to the name, surname and ID number or equivalent of these people.

On the other hand, it is also necessary to specify in the garnishment process the rights that the taxpayer (the debtor) has over the seized immovable property, in order to record that the garnishment is carried out in the part corresponding to their ownership

With regard to the information on "civil status and marital economic regime", it is understood that the regulations refer to information on the marital economic regime of the taxpayer, bearing in mind that, in the regime of a profit society, the assets acquired are responsible for the debts contracted by one of the spouses.

In view of these forecasts, therefore, it does not seem that it could be justified, from the point of view of data protection, that other personal data relating to the obligee be included in the real estate attachment process taxpayer (the debtor), nor personal information of those people who hold real rights over these goods, as indicated in the inquiry letter, except, where applicable, the identification of the owner.

This would not prevent, however, that the mere existence of these real rights over the seized immovable property (such as the existence of a usufruct, right of way, mortgage, etc.) could be indicated in the diligence, is that is to say, without identifying the people who are the beneficiaries.

#### IV

The County Council also considers whether the people who must be notified of the real estate attachment process can have knowledge of the personal information contained in it  
it is known

From the perspective of the right to the protection of personal data, "any disclosure of data made to a person other than the interested party" constitutes a transfer or communication of data (article 3.i) LOPD) and, as such, must be carried out in accordance with

regime provided, in general, for communications or transfers of personal data in article 11 of the LOPD.

This article provides, as a general rule, that the data subject to treatment "can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party" (section 1). This general rule, however, finds certain exceptions, among which, the possibility that the communication is authorized in a law or standard with the rank of law (section 2.a)).

In this sense, reference must be made, again, to the LGT and, specifically, to its article 170, which provides the following:

"1. Each action of embargo will be documented in diligence, which will be notified to the person with whom said action is understood.

Once the goods or rights have been seized, the duty will be notified to the taxpayer and, as the case may be, to the third party owner, holder or depositary of the goods if the proceedings had not been carried out with them, as well as to the spouse of the obliged tributary when the seized goods are profitable and the owners or co-owners thereof.

2. If the embargoed goods were registrable in a public register, the Tax Administration will have the right to have a preventive entry of embargo in the corresponding register. To that effect, the competent body will issue a writ, with the same value as if it were a judicial writ of embargo, also requesting that a certification of the charges listed in the register be issued. The registrar will record the issuance of this certification in a note on the margin of the embargo, stating its date and the procedure to which it refers.

In that case, the embargo will be notified to the holders of loads subsequent to the annotation of the embargo and prior to the marginal note of issuance of the certification.

The preventive annotation thus practiced will not alter the priority for the collection of tax credits established by article 77 of this law, provided that the third party of the best law is exercised. Otherwise, the registration order of embargo entries will prevail. (...)"

In similar terms, article 76.3 of the RGR provides that:

"3. Once the embargo of the goods and rights has been carried out, the duty will be notified to the party liable to pay and, as the case may be, to the third party holder, holder or depositary of the goods if the proceedings had not been carried out with them, as well as to the spouse of the obliged to pay when the seized goods are commercial or habitual residence, and to the owners or co-owners.

In the case of goods and rights registered in a public register, the embargo must also be notified to the owners of cargoes subsequent to the annotation of the embargo and prior to the marginal note of issuance of the certification of cargoes referred to in article 74.

The embargo, in the case of property participation quotas that are placed pro indiviso, will be limited to the participation quota of the person obligated to pay and will be notified to the co-owners."

Therefore, for the purposes of the data transfer regime (article 11.2.a) LOPD), it must be borne in mind that it is the same tax legislation that enables the communication of personal information contained in the diligence of the seizure of immovable property to persons different from the affected party, to the extent that the attachment is carried out on an immovable property in respect of which they have real rights.

The reason is none other than to ensure that these interested third parties, such as the spouse, the possessor, the depositary or the co-owners who may be holders of certain rights over the property in question, are aware of the existence of the attachment, for the purposes of an eventual interposition of a third-party domain or other civil action before the local treasury or the taxpayer.

Therefore, the disclosure of the personal information contained in the embargo process to these third parties, as long as the content complies with the provisions of Article 83 of the RGR, previously examined, would be in accordance with the legislation of data protection.

Agreeing that, once the RGPD is fully applicable, on May 25, this communication would also find qualification in the provisions of article 6.1.c) and i), which provides the following:

"1. The treatment will only be lawful if at least one of the following conditions is met: (...) c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; (...)

e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment; (...)"

Having reached this point, it is appropriate to make a consideration regarding article 40.5 of the LPACAP to which the County Council expressly refers in its consultation.

This article provides that "the Public Administrations may adopt the measures they consider necessary for the protection of personal data contained in the resolutions and administrative acts, when these are addressed to more than one interested party."

It is about adopting the appropriate measures to ensure that the notification of these resolutions and administrative acts is made to each of the interested persons in the part that affects them, so that no personal information of other interested parties is disclosed, in the with the understanding that this is information regarding which they cannot be granted a right of access.

In the present case, taking into account the nature of the act to be notified and its content – essentially information about the taxable person -, as well as the intended purpose of its notification, it would not be necessary to adopt any measure that would limit access to the text of the real estate attachment process by third parties to whom You must notify them in accordance with tax legislation.

In accordance with the considerations made so far in relation to the query raised, the following are made,

## **Conclusions**

In view of the provisions established in article 83.1 of the RGR, in the proceedings for the seizure of immovable property it is not necessary to include information about the persons, other than the taxpayer, who hold any real right over the property seized property, except in the case of non-coincidence between ownership and possession of the asset, in which case the identity of the possessor may be recorded.

The communication, where appropriate, of the personal data included in these proceedings to interested third parties (owners, custodians, spouse, co-owners) is expressly authorized by article 170 of the LGT (article 11.2.a) LOPD) and, in from next May 25, due to the provisions of article 6.1.c) i) of the RGPD.

Barcelona, April 6, 2018.

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