

CNS 21/2018

Opinion in relation to the query raised about the suitability of making a request for data of tax significance for the correct identification of where the taxable event of the water fee occurs.

A query is submitted to the Catalan Data Protection Authority in relation to the information required by the ACA (Catalan Water Agency) from water supply entities, based on their tax functions.

According to the query, the ACA wants to request from the supply entities information associated with their subscribers (subjects liable for the water tariff), on the UTM coordinates of the supply point or the meter. This would allow the correct identification of where the taxable event of the water fee occurs, the use of the water and, even, the verification of the taxable base of the tax - cubic meters used for different purposes - and, therefore, according to the query, it would constitute information with tax implications.

Having analyzed the request, the current applicable regulations, and the report of the Legal Counsel, the following is ruled:

I

(...)

II

Mention should be made of Opinion CNS 2/2018, of this Authority, referring to the request for data from the subscribers of a supply company, by the ACA, through the "Requirement for tax information in relation to the water fee", in which the ACA requested certain information in relation to the procedure for declaring and entering the water fee passed on by the supplying entities, specifically :

"1. NIF of the subscriber; 2. Name of the subscriber; 3. Supply address; 4. Policy number; 5. Counter number; 6. UTM coordinates ETRS89 reference system".

The requirement that the ACA formulated in that case to a supplying company stated that:

"With reference to the detailed billing report, and in accordance with the current technical prescriptions, the identification of subscribers is carried out by means of the postal address, the policy number and the meter number. However, the geolocation of the supply point or the meter gives good complementary information in order to identify the subscriber subject to the water fee.

As long as this information is not used by the majority and is not incorporated into the technical prescriptions of the detailed invoicing relationship, it is necessary to open a

**procedure for requesting tax information in order to obtain this information from the supplying entities that already have it."**

**The consultation states that knowing the UTM coordinates would allow the correct identification of where the taxable event of the water canon occurs, the use of water and, even, the verification of the taxable base of the tax - meters cubic used for different purposes-. According to the query, the data requested would have tax implications.**

**The consultation explains that it is common for users of a certain entity to use two types of supply, that coming from the supply network managed by the supplying entity, and that coming from their own sources (wells, mines...), with which satisfy a large part of their water consumption needs. According to the consultation, through different actions, the ACA would have found that in many cases water from undeclared catchments would be being used, so there could be fraud by users who do not declare all the water consumed According to the consultation, knowledge of geographical (cadastre), hydrological and climatology data are of great use in determining the real water needs of taxpayers.**

**According to the consultation, knowing the supply points would make it possible to bring to light fiscal deviations of users who do not declare all the water they consume, "in order to be able to make a comparison of what is consumed with the estimate that has been made in relation with the consumption needs of each taxpayer".**

**The consultation concludes that having this information "allows the ACA to detect non-compliance with the obligations to declare all the volumes of water used by taxpayers, which make up the taxable base of the tax, and regularize, if necessary , your tax situation, through the initiation and processing, with the guarantees provided for by law, of the verification or limited verification procedures contained in articles 136 et seq. of the General Tax Law, with the already stated objective of fighting fraud fiscal".**

**For all the above, an opinion is requested on the suitability of making this type of request with tax implications to the administrative entities.**

### **III**

**Given the consultation in these terms, it is necessary to start from the basis that, according to article 4.1) of Regulation (EU) 2016/679, of 27 April, general data protection (RGPD), in force since 25 May 2016, and fully applicable from May 25, 2018 (Article 99 RGPD), are personal data "all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person;**

**The query refers, specifically, to the treatment (art. 4.2 RGPD) of the data referring to the UTM coordinates of the supply point or the meter. This information would refer to a positioning system on the earth's surface, that is to say, a geolocation system that makes it possible to identify a certain point, in this case, by the information available, "the point of supply or of the meter".**

The information referring to the geolocation of a water supply meter, when linked directly or indirectly with other data of natural persons (for example, the first and last name, or the NIF), would be personal information.

The communication by water supply entities (art. 2.8 of the revised text of the legislation on water in Catalonia, approved by Legislative Decree 3/2003, of November 4 (DL 3/2003)) to this public authority (ACA), of the coordinates of the supply points of the subscribers of supply companies, together with other invoice data that identify the users, is subject to the principles and guarantees of the data protection regulations (RGPD), among others, at the beginning of legality (art. 5.1.a) RGPD).

Likewise, it should be borne in mind that the RGPD has given a letter of nature to the principle of minimization, understood as the requirement that data be processed only to the extent that these are completely essential for the fulfillment of the intended purpose (Article 5.1 .c)).

Article 6.1 of the RGPD establishes that there must be a basis that legitimizes the treatment, either the consent of the affected person (art. 6.1.a)), or any of the other circumstances provided for, such as, among others, that "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (art. 6.1.c)), or that "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 controller" (art. 6.1.e)).

To this it should be added that, according to article 6.3 RGPD, the basis of the treatment indicated in article 6.1, letters c) and e), must be established by European Union Law (art. 6.3.a) , or by the law of the Member States that applies to the data controller (art. 6.3.b)).

With all this, in the absence of the consent of natural persons, subscribers to the water supply service, it will be necessary to examine the provisions of the applicable regulations, in order to analyze whether the communication to the ACA of the requested information is conforms to the principles of data protection regulations.

#### IV

The consultation states that the ACA, in the exercise of its tax functions, can make requests under article 93 of Law 58/2003, of December 17, general tax (hereafter, LGT), according to which:

"1. The natural or legal persons, public or private, as well as the entities mentioned in section 4 of article 35 of this law, will be obliged to provide the Tax Administration with all kinds of data, reports, antecedents and supporting documents with tax significance related to the compliance with your own tax obligations or deductions from your economic, professional or financial relationships with other people. (...).

2. The obligations referred to in the previous section must be fulfilled with a general character in the form and terms that are determined by regulation, or by means of an individualized request from the Administration

tax that can be made at any time after the completion of the operations related to the required data or background.”

As this Authority agreed in Opinion 2/2018, cited, to which we refer given that the considerations contained therein are not distorted by the information provided with the consultation, so that the LGT can be enabling rule for the transfer of data to the ACA, it is necessary that the personal information subject to transfer has "tax significance" and that it is required by the Tax Administration (in this case, by the ACA, in relation to the powers attributed to him by the regulations in relation to the water canon), in the form determined by regulations, or through individualized requirements.

As this Authority has also agreed on previous occasions (Opinions CNS 50/2017, CNS 22/2016, CNS 6/2015, CNS 48/2015, or CNS 21/2014), available on the website [www.apdcat.gencat.cat](http://www.apdcat.gencat.cat)), has "tax significance", in accordance with the jurisprudential analysis of this indeterminate legal concept, that information required by the tax authorities whose knowledge is necessary to find out whether or not the taxable subjects are aware of their tax obligations (STS of November 12, 2003, among others), as well as any information that the tax authorities consider useful or effective in the application of taxes (STS of June 7, 2003, among others), that is to say, not only that necessary to establish the tax relationship, but any information that leads to the effective application of taxes. In short, the requests for information, to have tax significance, must refer to the fulfillment of their own tax obligations or of third parties (taxpayers) such as, in this case, the subscribers to whom the company supplier invoices the water supply service.

Given the regulations studied, the information requested (information relating to the subscribers, to whom the company provides the water supply service), can be linked to the management of a specific tax, such as the canon of water

At the outset, taking into account the regulation of the water canon (arts. 62 et seq. DL 3/20103), it cannot be ruled out that, for certain purposes of control, inspection, or management of the canon of water, knowing the information about the UTM coordinates of the meters may be relevant.

Specifically, the consultation states that the required information would allow the ACA to detect non-compliance with the obligations to declare the total volumes of water used by taxpayers and regularize, if necessary, their fiscal situation, by initiating and processing, of the verification or limited verification procedures (arts. 136 et seq. LGT), with the already stated objective of fighting tax fraud.

Article 131 LGT provides that the tax administration can initiate a "data verification procedure" in certain cases, among others:

"(...) b) When the declared data do not coincide with the contents of other declarations presented by the same obligee or with those open in the power of the tax administration. c) When there is an improper application of the regulations that is evident from the declaration or self-assessment presented or from the supporting documents provided with it.

**d) When the clarification or justification of some data relative to the declaration or self-assessment submitted is required, (...)."**

**According to article 132.1 LGT: "The data verification procedure can be initiated by means of a request from the Administration for the taxpayer to clarify or justify the discrepancy observed or the data relating to his declaration or self-assessment, or by means of the notification of the settlement proposal when the tax administration has sufficient data to formulate it."**

**Regarding the limited verification procedure, article 136 LTG provides that:**

**"1. In the limited verification procedure, the Tax Administration will be able to verify the facts, acts, elements, activities, operations and other circumstances determining the tax liability.**

**2. In this procedure, the Tax Administration will only be able to perform the following actions:**

**a) Examination of the data entered by the taxpayers in their declarations and of the supporting documents presented or required for this purpose.**

**b) Examination of the data and antecedents in the power of the Tax Administration that show the realization of the taxable event or the budget of a tax obligation, or the existence of elements determining the same not declared or different from those declared by the obligee tributary**

**(...)."**

**The query is formulated in broad terms, in relation to users "of a certain entity" who could use two types of supply (the one from the supply network managed by the supplying company, and the one from its own sources).**

**Without prejudice to the fact that, in specific cases, the ACA may initiate one of the procedures referred to in the consultation and that, as part of the corresponding actions, information on UTM coordinates may be requested, the regulatory forecasts studied do not allow it to be considered that there is an authorization, from the perspective of the principles of data protection, to request said information, in advance (with the generic purpose of contrasting other information that the ACA may have), in relation to all users served by the supply companies.**

**In other words, although it cannot be ruled out that in certain cases, and for certain purposes of control, inspection, or management of the water canon (such as the initiation of the aforementioned verification procedures), knowing the information about the UTM coordinates in specific cases may be relevant, it does not follow from the regulations studied that the supply companies must communicate to the ACA, in a generalized way, the data related to the UTM coordinates along with data that identifies the all natural persons who are subject to the water tax (ex. art. 66.2 DL 3/2003), to whom these companies provide service.**

**Thus, the purpose of bringing to light fiscal deviations of users who do not declare all the water consumed, would not justify a prior, "preventive" and generalized communication, on the part of the supply companies, in relation to their users, in the terms of the query, and therefore it cannot be considered that, in all cases, the**

relevance or "tax significance" with respect to all taxable persons who could be affected by this requirement, provided for in the regulations (art. 93 LGT), which can justify a communication of the "UTM coordinates" information, together with the rest of the data personal data of all those affected, in the terms proposed by the consultation.

From the perspective of the principle of proportionality or minimization, it should be borne in mind that, although the request for information would be "individualized" with regard to the direct recipient (a certain company providing the service), it is not because to its final recipients, who are the users and taxpayers of supplying companies and, therefore, the owners of the personal data processed.

Thus, a request for information can refer not only to a specific person, but also to a set of people, in this case, liable to pay the water tax.

However, in the case at hand, and beyond pointing out that the required data (UTM coordinates) could allow cases of tax fraud to surface, the reason why it would be necessary to know this information regarding all subjects is not justified liabilities to which the supply companies provide service, which may or may not be related to breaches of their fiscal obligations regarding the water fee.

For this reason, it is not possible to consider sufficiently justified, from the perspective of the principle of minimization (art. 5.1.c) RGPD), the need to communicate the information subject to consultation, referring to the totality of the passive subject subscribers to whom they would provide service the supply companies required by the ACA, in the terms of the consultation, that is, through an "individualized"

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Despite what has just been stated, in the sense that, according to the provisions of article 93 LTC, it cannot be considered that in the case at hand the requested information has a tax significance with respect to all the affected subjects that enable a generalized requirement in the terms raised in the consultation, the following must be done.

Article 93 LTG provides that the obligation to communicate data, reports, antecedents and supporting documents to the Tax Administration can be foreseen in regulations.

As the jurisprudence does: "the Administration can obtain information, (...) imposing on certain persons through general rules the obligation to periodically supply the aforementioned data with fiscal significance, not through a request; (...)" (STS of February 7, 2014, among others).

Taking this into account, it must be agreed that in the event of a provision in regulatory regulations, in the terms provided for in article 93.2 LTG, which determines the obligation of taxpayers to communicate information in relation to the water fee, this would allow the ACA, as the Tax Administration, to request from the supplying companies the communication of the data relating to the UTM coordinates, in relation to all the subjects affected, that is to say, in relation to all the obliged taxpayers to whom said companies provide the water service.

**For all of the above, in line with the conclusions of Opinion 2/2018, it must be reiterated that, from the perspective of data protection, the communication of the information subject to consultation (UTM coordinates), based on what is established by the LGT (art. 93), it would be possible, if the ACA accredits the tax significance of this information in relation to certain affected persons, or if it is determined by regulation.**

**In accordance with these considerations, the following are made,**

**Conclusions,**

**In view of the information available when issuing this opinion, it does not follow from the regulations studied and from the information provided, that the supply companies must communicate to the ACA the data relating to the UTM coordinates together with the rest of data that identify the physical persons affected, in the terms set out in the query.**

**Without prejudice to what has just been said, the communication of the required information, based on what is established by the LGT (art. 93), would be possible if the ACA accredits the tax significance of this information in relation to certain affected persons or if determined by regulation.**

**Barcelona, June 5, 2018**