apdcat
Autoritat Catalana de Protecció de Dades

Opinion in relation to the query made by a tax administration regarding the suitability of a data request to the Housing Agency of Catalonia in accordance with data protection regulations

A query formulated by a tax administration is presented to the Catalan Data Protection Authority in relation to the compliance with the data protection regulations of a request for certain data from a public administration in the field of housing.

Specifically, the consulting administration states that it has identified that the Housing Agency of Catalonia (henceforth, the Housing Agency) has certain information of tax interest, in particular, data relating to Inspections Building Techniques (ITE) that he carries out and the habitability certificates that he manages. In short, the Tax Administration asks this Authority whether the requirement for the Housing Agency to communicate this information would be appropriate to the data protection regulations.

Having analyzed the request, which is not accompanied by further information, in view of the current applicable regulations and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...)

II

The Tax Administration raises with its consultation whether the request for certain information from the Housing Agency that it has on the basis of its powers is in line with the data protection regulations. In particular, it proposes the periodic communication of certain data contained in the Technical Building Inspection (ITE) reports it carries out, as well as certain information contained in the habitability certificates it manages.

In the annex accompanying the consultation, the Tax Administration states the information it intends to request from the Housing Agency. In particular, among others, it sets out the following:

- In relation to the ITE reports, it is intended to communicate information relating to the location data of the building (type of street, number, scale, municipality, province, postal code), the cadastral reference and property data of the building (legal regime (horizontal property or vertical property) and CIF); general data of the building (such as, year of construction, surface area of the plot and construction, if it corresponds to a single-family or multi-family building, existing entities per floor (housing, premises, parking), description of the building); detailed information in relation to the structure, the envelope, the facilities of the building and the deficiencies detected; as well as certain

data from the last certificate issued (application date, procedure and file code, date of issue and type of certificate and date of validity) .

- As for occupancy certificates, it is intended that the communication of information include the identification number of the occupancy certificate (valid and expired certificates only); state of the card (in process, granted, revoked, denied...); date of resolution of the certificate, date of end of validity, date of registration of the application; cadastral reference of the home; address (among others, type and name of the road, initial and final number of the road; block, scale, floor, door, kilometer, polygon, island, sector, parcel, Utmx and Utmy coordinates , municipality and the INE code , province) and other data relating to the home (such as useful surface area, type of home (single-family or multi-family), total number of rooms) and the maximum occupancy threshold of the home.

This information would be provided annually, every January, through a flat file that would be loaded into the tax administration's information systems.

At the same time, the Tax Administration also proposes the possibility of enabling the internal people in charge of carrying out the valuations to be able to carry out individual consultations of the ITE reports and the complete habitability certificates (in PDF format) through the direct access to these documents through the Housing Agency's application , or from the preparation of a protocol to request and obtain the PDF report related to each case that the Tax administration needs to consult, for example, through a specific mailbox where to address the requests.

As set out in the consultation, the full documents of the ITE reports and habitability certificates contain information that could not be included in the flat file that would be supplied annually by the Housing Agency, but in from the information you transmit with the query, it is not known exactly what is the reason that makes it impossible or what is the information referred to that cannot be included.

Regarding the purpose of the treatment, although the terms in which the query is formulated may be confusing, it is clear that the objective is tax management. In this regard, the Tax Administration states that this information is relevant and necessary *"[...] in order to check the values self -declared by taxpayers in the sales or acquisitions of properties subject to property transfer tax, or "inheritance and donation tax or any other tax or procedure involving the determination of the real value of a property".*

In particular, with respect to the requirement in a flat file of the information contained in the ITE reports and the habitability certificates (which will be transmitted periodically), the Tax Administration explains that this information will be used for prospective purposes, aimed at obtaining data tax authorities to check possible tax non-compliance.

And, in relation to access to the complete reports (in PDF format), it seems that the purpose is to check the values of real estate, but only in specific cases where it is not clear during the processing of a specific procedure or file the state of an immovable asset from the cadastral databases, or if there are discrepancies between various sources. The consultation makes specific reference to which reports will be the subject of specific consultations, especially in the hearing procedures, resolution of appeals or written statements of the taxpayers.

In addition, it is clear from the consultation that all the information is intended to be used to improve the annual market forecasts and studies prepared by the Tax Administration, and to complement the information already available in the information system on the real estate market in Catalonia (OMIC).

Regarding the legal basis of the treatment, the query only refers to the fact that the request for data from the Housing Agency is protected by article 94 of Law 58/2003, of December 17, general tax, and does not require the consent of the interested parties. Also, on the other hand, he argues that the communication of data would be supported by jurisprudential criteria, among others, the STS of November 28, 2013 (appeal number 5692/2011).

The Tax Administration explains that the affected data is data with tax significance, which should not be considered personal data given that it is information directly related to the value of the home, such as the state of the building. And it bases the tax significance of this information on the basis of the following regulations:

> *"- Verification of values: Article 57 of the General Tax Law, article 46 of the revised text of the Asset Transfer Tax Law and documented legal acts and article 10 of Law 19/1991, of June 6, of wealth tax.*
> *- Verification of the concept of non-productive assets and determination of their value: articles 4.1 c) and 7.2 e) of Law 6/2017, of 9 May, on the tax on non-productive assets of legal entities.*
> *- Verification of the correct application of tax benefits: article 4 of Law 19/1991, of June 6, on wealth tax."*

Finally, in the event that the communication referred to in the query complies with the personal data protection regulations, it is considered whether the Housing Agency should inform the affected persons about this communication.

III

Given the consultation in these terms, it is necessary to start from the basis that Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of data personal data and the free circulation of this data and which repeals Directive 95/46/CE (General Data Protection Regulation), hereinafter RGPD, provides that its provisions are applicable to the treatments carried out carried out on any information " *on 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* " (arts. 2.1 and 4.1).

Article 8 of Decree 67/2015, of May 5, for the promotion of the duty of conservation, maintenance and rehabilitation of residential buildings, through technical inspections and the building book, regulates the inspection reports technique and its content, which must consist of the identification of the building, the identification of the technical staff, the general characteristics of the building , the state of conservation (third section) and the rest of the information to which refers to the fourth section of this article.

And, as for the certificates of habitability, article 12 of Decree 141/2012, of 30 October, which regulates the minimum habitability conditions of homes and the certificate of habitability establishes that it must contain, at least, the identification data of the address and location of the home, the useful surface of the home and of the rooms, the rooms and spaces that make up the home, the maximum occupancy threshold and the identification and qualification of the technical person who certifies habitability.

In addition to the information we have just referred to, according to what appears in the query sent, among the data that is intended to be requested from the Housing Agency there is also other information relating to the property of the 'building, such as the legal regime (horizontal ownership or vertical ownership) and the CIF, among others.

At the outset, it should be noted that the vast majority of information refers to strictly technical data of the building (in the case of ITE reports) or of the home itself (occupancy certificate). However, according to what will be analyzed below, it seems clear that the information can affect both legal entities and natural persons.

Regarding legal entities, it should be borne in mind that on the basis of what is provided for in articles 2.1 and 4.1 of the RGPD, in relation to what is established in recital 14, the data protection regulations do not apply. For this reason, this opinion will only focus on cases where natural persons are affected.

Regarding natural persons, it should be borne in mind that Recital 26 of the RGPD states that to determine whether a natural person is identifiable it is necessary to take into account all the means that can reasonably be used by the data controller or any other person to directly identify or indirectly the natural person, such as singularization. In determining whether there is a reasonable likelihood that means will be used to identify a natural person, all objective factors, such as the costs and time required for identification, must be considered, taking into account both the technology available at the time of the treatment as technological advances.

In the case of the consultation, given the means available to the Tax Administration, it seems clear that there is a more than reasonable probability that, based on the information that is intended to be required from the Housing Agency, it will be able to identify to a natural person. Apart from the information relating to the CIF of the person who owns the building, which can allow them to be identified directly, there is also other information which, without directly affecting a natural person, would allow the tax authorities to identify them , such as the data relating to the location of the single-family building when it comes to the habitability certificate, or it can offer information on the condition and value of the homes of natural persons who own a home located in a building in horizontal ownership.

In fact, the fact that this information can affect natural persons is evident from the same purpose set out in the consultation, that is, to have this information to verify possible tax non-compliance.

Consequently, if the information that is sought to be accessed can be related to an identified or identifiable natural person, the communication of this personal data must be subject to the principles and guarantees of the data protection regulations (RGPD, Law Organic 3/2018, of

December 5, Protection of Personal Data and guarantee of digital rights (LOPDGDD) and other applicable regulations).

IV

Article 4.2) of the RGPD considers as processing of personal data " *any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring , conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction* .

Consequently, the communication of data by the Housing Agency that raises the query, when it affects the data of natural persons, is a processing of personal data.

To this end, the RGPD provides that all processing of personal data must be lawful, loyal and transparent in relation to the interested party (Article 5.1.a)) and, in this sense, establishes a system for legitimizing the processing of data which is based on the need for one of the legal bases established in its article 6.1 to apply.

According to article 6.1 of the RGPD:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;

d) the treatment is necessary to protect the vital interests of the interested party or another natural person;

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;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child

The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."

According to what is set out in the consultation, the purpose of the processing of the information that is intended to be required from the Housing Agency is that of tax management and the improvement of the predictions and annual market studies that it prepares the Tax Administration supplementing the information already available in the information system on the real estate market in Catalonia (OMIC).

Regarding the purpose of tax management, please note that the consultation does not expressly refer to what is the legal basis of those listed in article 6.1 of the RGPD that would protect the information requirement from the Agency of the Housing, beyond making reference to article 94 of Law 58/2003, of 17 December, general tax, and to set out the arguments for which it considers that the information has tax significance.

However, reference is made in the consultation to the fact that the data provided by the Housing Agency *"[...] will be included in the processing activity for tax purposes [...]."*

From the analysis of what is contained in the register of processing activities of the Tax Administration, the processing for tax purposes is carried out in compliance with a legal obligation applicable to the person responsible for the processing (art. 6.1.c) of the RGPD) on the basis of Law 58/2003, of December 17, general tax, Law 17/2017, of August 1, of the Tax Code of Catalonia and approval of books one, two and third, relating to the tax administration of the Generalitat and the laws for the creation of the ceded and own taxes of the Generalitat of Catalonia.

However, it should be borne in mind that since this is not the exercise of an obligation by the person in charge but the exercise of a power (tax power) the treatment for tax purposes should rather be based on the basis for the exercise of public powers conferred on the data controller (art. 6.1.e) of the RGPD).

In any case, with respect to these bases, it is necessary to take into account the provisions of article 6.3 of the RGPD:

" 3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) the Law of the Union, or
b) the law of the Member States that applies to the person responsible for the treatment.

[…]"

And, on the other hand, the provision of article 8 of the LOPDGDD:

"1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when this is provided for by a law of the European Union or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. Said rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679.

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679 , when it derives from a competence attributed by a law-ranking norm".

In accordance with these provisions, the legality of the treatment based on article 6.1.c) and e) of the RGPD requires that it be based on a rule with the rank of law.

As this Authority has decided on previous occasions (opinions CNS 41/2019, CNS 55/2018, CNS 2/2018, CNS 50/2017, among others, available on the website www.apdcat.gencat.cat), the tax legislation imposes a general duty of collaboration with the Tax Administration, for the purposes, with the scope, and for the objectives provided for in this legislation (art. 93 of Law 58/2003, of December 17, general tax).

In the case at hand, the analysis must be carried out from the perspective of article 94 of Law 58/2003, of December 17, general taxation (from now on, LGT), the which provides for the regime of the authorities subject to the duty of information.

Article 94 of the LGT provides for the following:

" *1. The authorities, whatever their nature, the holders of the organs of the State, of the autonomous communities and of the local entities; autonomous bodies and public business entities; chambers and corporations, schools and professional associations; social security mutuals; the other public entities, including Social Security managers and those who, in general, exercise public functions, will be obliged to provide the Tax Administration with any data, reports and antecedents with tax significance that it receives* ***by means of general dispositions or through requirements concrete*** *, and to lend it, to it and its agents, support, assistance, assistance and protection for the exercise of its functions.*

[…]

The bodies of the Tax Administration may use the information provided for the regularization of the tax situation of those liable in the course of the verification or inspection procedure, without it being necessary to carry out the requirement referred to in section 3 of the previous article.

5. The transfer of personal data to the Tax Administration in accordance with the provisions of the previous article, in the previous sections of this article or in another legal standard, will not require the consent of the affected party. In this area, the provisions of section 1 of article 21 of Organic Law 15/1999, of December 13, on the Protection of Personal Data shall not apply."

The duty of information and collaboration of the authorities referred to in this article is circumscribed, in any case, in the first place, to those data and information that may have *"tax significance"* .

Regarding *"tax transcendence"* , an indeterminate legal concept, the Supreme Court Judgment of March 16, 2022 (RJ 2022\1523), which establishes:

" Certainly, tax transcendence constitutes an indeterminate legal concept that needs to be clarified in each case. As a first presupposition it must be required that the information serves or has effectiveness in the application of the taxes, considering it sufficient by the jurisprudence that said utility is potential, indirect or hypothetical. The jurisprudence since ancient times has defined the concept, sentences of June 21, 2012 (RJ 2012, 7488) (rec. cas. 236/2010) and of November 3, 2011 (RJ 2012, 1842) (rec. cas. 2117 /2009) that refer to the previous one of November 12, 2003 (RJ 2003, 8895) (rec. cas. 1320/2002[sic]) as "the quality of those facts or acts that may be useful to the Administration for find out whether or not certain people comply with the obligation established in article 31 of the Constitution to contribute to the support of public expenses according to their economic capacity, and be able, if not, to act accordingly. And this utility can be direct (when the information requested refers to taxable facts, that is, to activities, holdings, acts or facts to which the law attaches the levy) or indirect (when the information requested refers only to collateral data, which can serve as an indication to the Administration to search for taxable facts allegedly not declared or, simply, to later guide the inspection work which, let's not forget, cannot reach absolutely all the passive subjects, because it is materially impossible- to certain and determined persons (in the same sense, sentence of 14 March 2007 (RJ 2007, 3090) rec. home 1320/2002)".

... In short, what is of interest, what must be demanded from the Administration, is that it is data that in itself contains a potential tax significance (thus, judgments of the Supreme Court of February 6, 2007 (RJ 2007 , 860) and February 19, 2007 (RJ 2007, 920)), which can happen whenever and when it comes to economic, patrimonial, non-personal data (as far as these are concerned, the question is excluded); and, on the other hand, that your request is not prohibited by a legal rule that prevents the delivery of the data or data requested. Whether or not each piece of data is going to produce a specific tax enforcement action does not properly relate to the sphere of information, but to tax management in its broadest sense. […] (STS 3ª - 22/04/2015- (RJ 2015, 1545) 4495/2012 - EDJ 2015/69622) ".

In other words, the information required by the tax administration, the knowledge of which is necessary to find out whether or not the taxpayers are aware of their tax obligations, has tax significance (STS of November 12, 2003, between d 'others'), and also that information that the treasury considers to be 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.

According to what is set out in the consultation, the potential tax significance of this information is determined by the following tax regulations:

- C omprovation of values (art. 57 of the LGT, art. 46 of the Royal Legislative Decree 1/1993, of September 24, approving the revised text of the Law on property transfer tax and legal acts documented and article 10 of Law 19/1991, of June 6, on Wealth Tax),

- Verification of the concept of non-productive assets and determination of their value (art. 4.1.c) and 7.2.e) of Law 6/2017, of May 9, on the tax on non-productive assets of legal entities).

- Verification of the correct application of tax benefits (art. 4 of Law 19/1991, of June 6 on wealth tax).

Article 57 of the LGT provides for the general regime for the verification of values, which establishes that the value of income, products, assets and other determining elements of the tax obligation can be verified by the Tax Administration through the following means:

"[...]
a) Capitalization or imputation of income at the percentage that the law of each tax indicates.

b) Estimation by reference to the values that appear in the official fiscal records.

Said estimation by reference may consist of the application of the multiplier coefficients that are determined and published by the competent tax administration, in the terms that are established by regulation, to the values that appear in the official fiscal register that is taken as a reference to effects of the valuation of each type of property. In the case of immovable property, the official tax register that will be used as a reference to determine the multiplier coefficients for the valuation of said property will be the Real Estate Registry.

c) Average prices in the market.

d) Quotations in national and foreign markets.

e) Opinion of experts from the Administration.

f) Value assigned to the goods in the insurance contract policies.

g) Value assigned for the appraisal of the mortgaged properties in compliance with the provisions of the mortgage legislation.

h) Price or declared value corresponding to other transmissions of the same asset, taking into account the circumstances of these, made within the period that is established by regulation.

i) Any other means that is determined in the law specific to each tax.

2. The contradictory expert appraisal can be used to confirm or correct in each case the valuations resulting from the application of the means of section 1 of this article.

3. The rules of each tax will regulate the application of the means of verification indicated in section 1 of this article.

4. The verification of values must be carried out by the tax administration through the procedure provided for in articles 134 and 135 of this law, when said verification is the only object of the procedure, or when it is substantiated in the course of another procedure of the regulated in title III, as a specific action thereof, and in any case the provisions of said articles will be applicable except section 1 of article 134 of this law ."

The Tax Administration explains in the consultation that the information that is intended to be required from the Housing Agency can be used to check the values self -declared by taxpayers in the sales or acquisitions of properties subject to property transfer tax, in inheritance and donation tax, as well as any other tax or procedure involving the

determination of the real value of a property. It is clear that the information that is intended to be collected may be relevant to determine the real value of the assets affected by the imposition of any tax, such as the amount of patrimony, the tax on patrimonial transmissions or the tax on assets non-productive of legal entities.

As an example, article 46 of Royal Legislative Decree 1/1993, of September 24, which approves the revised Text of the Tax Law on Asset Transfers and Documented Legal Acts, recognizes the power of the tax administration to check the values of the goods.

So, from the analysis of the regulations that we have just presented, in relation to the information that is transmitted with the query, it can be considered that the information that the tax administration intends to access in relation to the data relating to the buildings and for homes it is information that may have tax implications in those cases where the state of the real estate is relevant to determine whether or not certain taxable persons properly comply with the obligation to contribute to the support of public expenses.

V

Apart from the necessary tax implications, it is necessary to comply with the rest of the requirements provided for in article 94 of the LGT.

Article 94 of the LGT also establishes that the collection of information, in addition to the fact that it must have tax implications, is carried out on the basis of a general provision or through specific requirements.

In relation to this matter, it is necessary to take into account the jurisprudence of the Supreme Court, in particular the Judgment of November 13, 2014 (RJ 2014\5920), which establishes the following:

" the information requirements to third parties of a tax nature can be effected [...] through the provision of information, or individualized requirements, which means the collection of information. The Law does not establish any preference or quantitative limits between one and the other system. But it seems clear that the provision of tax information must be expressly established by a regulatory rule that establishes the form and deadlines for presentation (arts. 29.3 and 93.2 of the current General Tax Law). In this regard, the Regulation of Actuaciones y Procedimientos de Gestión e Inspección Tributaria, approved by Royal Decree 1065/2007, of July 27 (RCL 2007, 1658), has developed these regulatory provisions regarding the obligations that it has considered convenient.

But the tax regulations have established the supply only in certain cases, while in all others it has allowed the Tax Administration to use the individualized request system when the established requirements are met, such as that of tax significance.

Regarding the obtaining of information by capture, two groups can be distinguished:

a) Those requests for information from third parties in which specific information is requested regarding an operation or regarding a specific taxpayer. It is the most common request and is usually made by actuaries in the course of an inspection procedure regarding a taxpayer.

b) Those requests for information from third parties in which information is requested with a view to the detection of fraudulent activities or operations or for inspection or collection activities. By its nature, it deals with requirements made prior to a procedure, given that they precisely seek to detect cases of fraud and tax evasion operations. Therefore and given their nature, they do not refer to specific operations, but to groups of people or operations. [...]

It must be emphasized that requirements can be made outside of an inspection or collection procedure. Currently, this is even expressly recognized in article 30.3 of Royal Decree 1065/2007, of July 27, which approved the General Regulation of Actuaciones y Procedimientos de Gestión e Inspección Tributaria, precept that establishes that "The individualized requirements for obtaining information with respect to third parties, they may be carried out in the course of a tax enforcement procedure or be independent of it ."

And also the Supreme Court Judgment of October 23, 2014 (RJ 2014/5389), which establishes that:

" the information requirements must be motivated; they must comply with the provision of individualization that the type of information claimed requires, having to provide a specific and sufficient justification that grounds them [sentences of November 12, 2003 (RJ 2003, 8895) (casación 4783/98, FJ 4º), March 12, 2009 (RJ 2009, 1692) (casación 4549/04, FJ 3º), November 14, 2011 (RJ 2012, 2187) (casación 5782/09, FJ 4º), February 7, 2014 (RJ 2014 , 747) (case 5688/11, FJ 3º) and March 17, 2014 (RJ 2004, 2119) (case 5149/10 , FJ 3º)] .

C bearing in mind that the Tax Administration states that it intends to require the Housing Agency, on the one hand, on a periodic basis, information relating to ITE reports and habitability certificates and, on the other hand, it also provides for the possibility that its assessment staff can consult the ITE reports and complete habitability certificates on a timely basis.

In relation to the requirement or periodic communication of certain information contained in the ITE reports and habitability certificates, we would be dealing with the case of providing information that must be provided for in a general provision in accordance with which establishes the jurisprudence that we have just analyzed. However, in the case at hand, this provision is not included in a general provision.

In this sense, it is of interest to collect the doctrine established in the STS of November 13, 2018 (rec. 620/2017):

> *" Su due study advises to begin performing some general considerations about what the traits are basics of investigative administrative action in tax matters .*
>
> *The first is to emphasize that the end last and main of that investigative activity is to verify effectively the fulfillment of the obligation to contribute to the support of expenses public than to all imposes article 31 of the Constitution (CE (RCL 1978, 2836)); and what is importance is capital so that the social state model proclaimed in article 1 is a reality , because only with that fulfillment the objectives of social and economic policy can be achieved in which articles 39 and following of our Fundamental Norm comes to specify the content of its initial social status clause .*

The second it is necessary to differentiate between the two types of research that result necessary for the aforementioned activity inquiry reach the goal of effectiveness that Article 103 EC proclaims as one of the principles that must preside over the action of the Public Administration .

In this regard, it must be noted that a first activity of establishing possibilities is necessary breaches individuals , which must be developed when there are indications about them that derive from the information provided by the Tax Administration .

And a prospecting task aimed at obtaining is also essential data that, despite not having surfaced in the tracks ordinary information held by the Tax Administration , are relevant to check breaches taxes that effectively they can to have produced _

The third claims to highlight that both research classes _ some will follow guidelines objective about it _ _ realization , to do effective in this matter of investigation would tributary the postulate of interdiction of the arbitrariness of the powers public that contains article 9.3 CE .

the fourth point out that those _ guidelines Objectives are different according to the class of whose information obtaining is treated , which translates into the distinction , jurisprudentially established with support in what is established in articles 94 and 95 LGT (RCL 2003, 2945) 2003, of these two modalities : an information by supply , which ***operates according to the provisions by regulation established*** *in this regard _ forms and deadlines ; and a catchment information , in which it governs su motivation singled out in order to express the circumstances and facts that justify it , as well as its individualization subjective and su concreteness objective _*

due add that these two forms of information , con sus different guidelines for the objectification of its beginning and practice , they will embody , in principle, the two different ones research instruments _ aimed at those two tasks of prospecting and ascertainment that have been mentioned before ; in other words , ***information by supply is*** *the* ***natural medium for prospecting tasks*** *, while* ***information*** *by capture is the channel ordinary to verify the signs of possible non- compliances that exist reached the Tax Administration ."*

For this reason, it must be concluded that the information requirement for the Housing Agency to periodically communicate certain information from the ITE reports and the habitability certificates of all the buildings for which the Housing Agency Habitatge disposes of information, even if it may have tax significance, it would not have a legal basis from the point of view of data protection regulations, since it is not known that this is provided for in a provision of a general nature as required by article 94 LGT .

Regarding the other possibility raised by the Tax Administration in relation to the fact that the people in charge of carrying out the valuations can carry out specific consultations of the ITE reports and the complete habitability certificates, in this case, in accordance with what has been analyzed, and taking into account the information presented in the consultation, it would be an individualized information request.

In this case, from the point of view of data protection regulations, it seems that these individual information requirements can find protection or a legal basis, in relation to article 6.1.c) and e) of the RGPD, in article 94 of the LTC.

VI

In accordance with what has been stated, the individualized requirement proposed by the consultation in relation to the one-off consultations by the persons in charge of carrying out the checks of the assessments in the Tax Administration can carry out on the reports of ITE and complete occupancy certificates can be protected, on the basis of article 6.1.e) of the RGPD, in relation to the provisions of article 94 of the LGT.

However, it is worth mentioning the two access or communication mechanisms referred to in the query.

The Tax Administration raises the possibility that the one-off consultation can be carried out through direct access to these documents through the Housing Agency 's application , or from the preparation of a protocol for requesting and obtaining the documentation in each specific case, such as, for example, through a specific mailbox where requests should be addressed.

, from the point of view of the principle of data minimization (art. 5.1.c) of the RGPD), by which the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated, it does not seem that the option proposed by the consultation to enable access to their assessment staff to the Housing Agency application is the most appropriate mechanism.

It is worth saying that even if from the point of view of the security of personal data (art. 32 of the RGPD) technical and organizational measures are applied to guarantee a level of security adequate to the risk of the treatment, as can be seen from consultation, through access control and access registration, the principle of data minimization must be taken into account.

For this purpose, it is necessary to take into account the *Guidelines 4/2019 relating to article 25 Data protection by design and by default* of the European Data Protection Committee (ECPD) (https://edpb.europa.eu/system/files/2021-04/edpb_guidelines_201904_dataprotection_by_design_and_by_default_v2.0_es.pdf).

In particular, the Guidelines develop, in section 76, the essential elements from the design and by default in relation to data minimization:

"-Data avoidance: All personal data processing will be avoided when possible to fulfill the relevant purpose. • Limitation: The amount of personal data collected will be limited to what is strictly necessary for the intended purpose.
• Limitation of access: Data processing will be configured in such a way as to minimize the number of people who need access to personal data to perform their functions, and access will be limited accordingly.
• Relevance: The personal data must be relevant to the treatment in question, and the person responsible for the treatment must be able to prove said relevance.

• Necessity: Each category of personal data will be necessary for the specified purposes and should only be processed if the purpose cannot be fulfilled by other means.
• Aggregation: Aggregated data must be used when possible.
• Pseudonymization : Personal data must be pseudonymized when it is no longer necessary to have directly identifiable personal data, and the identification keys will be kept separately.
• Anonymization and suppression: When personal data is not or has ceased to be necessary for the intended purpose, it will be anonymized or deleted.
• Data flow: The data flow must be efficient enough not to create more copies than necessary.
• "State of the art": The data controller must apply up-to-date and adequate technologies to avoid and minimize the use of data."

Based on the analysis of these elements, the intention to enable direct access to the assessment staff in the Housing Agency application does not seem to be the most suitable mechanism from the point of view of the principle of minimization of data

At the outset, because even if it emerges from the consultation that it is intended to limit access to information only to the assessor staff of the Tax Administration and that access will occur in specific cases, especially in hearing procedures, resolution of the taxpayer's appeals or allegations (element of access limitation), it does not seem justified that all the information available to the Tax Agency be made available to them in advance, in a generalized way Housing with the sole purpose of accessing only in specific cases.

Making available to the Tax Administration all the ITE reports and habitability certificates available from the Housing Agency would also involve communicating information related to other cases that might not be related to tax non-compliance.

In fact, the GDPR itself excludes this possibility, precisely in relation to access to information by the tax authorities. In this regard, recital 31 of the RGPD establishes the following:

> *"(31) **The authorities public to which they communicate data personal** by virtue of a legal obligation for its exercise official mission , **like the authorities fiscal** and customs , the investigation units financial , the authorities administrative independent or the market supervisory bodies _ financial in charge of the regulation and supervision of the stock markets , they must not to consider data recipients if they receive data personal data that are necessary to carry out a specific investigation of general interest , in accordance with the Law of the Union or of the States members _ Requests for communication from the authorities public always they must present themselves in writing , in a motivated and occasional manner , and **they must not refer to the entirety of a file or give rise to the interconnection of several files** _ Data processing _ _ personal by dichas authorities public must be in accordance with the regulations on data protection that are applicable depending on the purpose of the treatment . ”*

For these reasons, it does not seem that direct access by the assessment staff to the Housing Agency application is the most suitable mechanism from the perspective of the principle of data minimization and should be considered more adapting the alternative access mechanism proposed by the consultation, consisting of creating a procedure to request the Housing Agency, in each specific case, the complete reports in PDF format, such as the creation of a mailbox of specific mail where to address the requests.

VII

It follows from the consultation that the data will also be treated with the aim of improving the predictions and annual market studies prepared by the Tax Administration and to complement the information already available in the information system on the real estate market in Catalonia (OMIC) .

In accordance with what has been analyzed above, the RGPD provides that all processing of personal data must be based on one of the legal bases established in article 6.1 of the RGPD, among which the section e), to which we have already referred, refers to the cases in which 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".*

In relation to this matter , it is necessary to take into account the additional provision of Law 17/2017, of August 1, of the Tax Code of Catalonia and of the approval of the first, second and third books, relating to the Administration tributary of the Generalitat, which provides for the following:

"Supply of information and data between the bodies and entities that make up the Tax Administration of Catalonia

1. The Tax Agency of Catalonia and the bodies of the departments of the Government of the Generalitat and the entities of its public sector that, in accordance with the applicable legislation, exercise functions of management, settlement and collection of taxes must supply data or relevant information to the bodies and entities that make up the following Tax Administration for the purposes specified:

a) To the body competent in matters of taxes with the purpose of analyzing and designing the tax policy, drawing up the general tax regulations and of the own tax figures and of the ceded taxes, within the framework of the competences of the Generalitat.

b) To the Institute of Fiscal Research and Tax Studies of Catalonia for the purpose of preparing research studies in the field of public finance, tax law and management of tax systems in fiscal and tax matters.

2. The bodies and entities referred to in section 1 must also supply data or information to the entity of the Administration of the Generalitat that has attributed the evaluation of public policies when, with the purpose of preparing studies of assessment of the impact of own and transferred taxes, act on behalf of the competent body in matters of finance.

3. The information and data that must be provided must be proportionate, necessary and essential for the fulfillment of the aforementioned purposes.

4. The communication of the information must be done anonymously , whenever possible or, if the purpose pursued requires it, pseudonymized , so that it does not allow the identification of the affected persons by third parties other than the entity transferor

5. Information encryption mechanisms must be applied during communication and, whenever possible, in the rest of the processing operations. Once the study, the elaboration of the regulations or the analysis and design of the tax policy is finished, the personal information must be destroyed, unless it is anonymized ."

It seems clear that the information available to the Housing Agency, based on its analysis, can be used to analyze and design the tax policy and, where appropriate, draw up the general tax regulations and the own tax figures and the ceded taxes, in the terms referred to in the additional provision of the Catalan Tax Code.

However, from the perspective of data protection regulations, it is relevant that we focus on the provisions of sections 3 to 5 of the additional provision of the Catalan Tax Code.

Although the Housing Agency may be obliged to provide the tax administration with the relevant information for the purpose of analyzing and designing the tax policy, drawing up the general tax regulations and the own tax figures and the ceded taxes, within the framework of the competences of the Generalitat, in accordance with the aforementioned additional provision, this regulation requires, first of all, that the information and data must be proportionate, necessary and essential for the fulfillment of the aforementioned purposes (section 3). In other words, the principle of minimization must be respected.

But, in addition, the additional provision establishes that the information to be communicated must be anonymous whenever possible, or pseudonymized if the purpose pursued requires it, so that it does not allow the identification of the persons affected by third parties persons other than the transferring entity (section 4).

It should be borne in mind, on the basis of articles 2.1 and 4.1 of the RGPD to which we referred at the beginning of this opinion, and in relation to what is established in recital 26 of the RGPD, that *"the principles de protección de datos do not apply to anonymous information, that is to say information that is not related to an identified or identifiable natural person, nor to data converted into anonymous so that the interested party is not identifiable, or ceases to be so. Consequently, this Regulation does not affect the treatment of said anonymous information, including for statistical or research purposes ."*

Consequently, in cases where the information communicated is anonymous, the provisions of the data protection regulations do not apply.

It will be different if the communicated data is pseudonymized . Article 4.5 of the RGPD defines pseudonymization as the processing of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that this information is recorded separately and is subject to technical and organizational measures aimed at ensure that personal data is not attributed to an identified or identifiable natural person.

pseudonymised personal data , which could be attributed to a natural person using additional information, must be considered information about an identifiable natural person.

Consequently, the principles and obligations derived from data protection regulations apply to pseudonymised data .

VIII

Finally, the Tax Administration asks whether, in the event that the communication of data complies with the regulations on data protection, the Housing Agency should inform the affected persons about this communication.

Before analyzing this issue, it is necessary to emphasize the fact that the conclusion reached in this opinion, in relation to the query raised, is that the data protection regulations would only enable individual requests through the mechanism or protocol by which the validating staff of the Tax Administration requests the ITE reports and the certificates of habitability when this information has tax relevance in the context of a specific procedure that is processed.

It should be borne in mind that both article 13 of the RGPD, relating to the information that must be provided when personal data is obtained from the interested party, and article 14 of the RGPD, when personal data are not have obtained from the interested party, establish that the information to be provided includes, where appropriate, the data of the recipients or the categories of recipients of the personal data (section 1.e of the RGPD in both cases)

From the point of view of the query raised, that is, if the Housing Agency must inform the affected people about the communication to the Tax Administration, it must be said that there is no obligation to include in this section of the informative clause those eventual transfers of data that do not depend on the will of the data controller (Housing Agency) but that derive from obligations imposed by current regulations and that will only come into play in in the event that the information is required by the Tax Administration. This without prejudice to the fact that, for the purposes of improving transparency, it may be positive to include a mention of this possibility.

On the other hand, as far as the Tax Administration is concerned, it must be taken into account that article 14 RGPD also provides for the obligation to inform the affected persons, when data is collected that they have not provided themselves, but that they are obtained from third parties (in this case the Housing Agency). However, it should be borne in mind that article 14.5 of the RGPD establishes, among other things, that it is not necessary to inform the affected persons when the obtaining or communication is expressly established by the law of the Union or of the member states in to which the data controller is subject and which establishes appropriate measures to protect the legitimate interests of the interested party (section c).

In accordance with the considerations made in these legal foundations in relation to the query raised, the following are made,

conclusion

In view of the information available when issuing this opinion, the regulations for the protection of personal data in relation to tax legislation would enable, for the purpose of tax management, the communication of data with tax implications by the Agency of the Housing to the Tax Administration based on requirements in relation to a specific person or set of

people. On the other hand, in the absence of a general provision that establishes this, the periodic supply of this information would not comply with data protection regulations.

It is considered appropriate to the principle of minimization, to create a procedure to request the Housing Agency, in each specific case, the information, such as the creation of a specific mailbox to address the requests. On the other hand, the direct connection with the Housing Agency's information system would not conform to this principle.

Regarding the communication of data in order to improve the predictions and annual market studies that the tax administration prepares, and to complement the information system on the real estate market in Catalonia (OMIC), it will be necessary to be in line with the provisions of the provision additional of the Tax Code of Catalonia, in accordance with the criteria that have been set out.

Finally, in cases where the protection regulations enable the communication of data in accordance with the terms that have been set out, the Housing Agency must not inform the people affected by the communication to the 'Tax administration..

Barcelona, January 9, 2023