

# TAX PAYERS' RIGHTS DURING THE FISCAL INSPECTION PROCESS IN SPAIN

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**Abstract:** *Fiscal inspection corresponds to the Public Estate, which, in accordance with the regulatory procedure, has the obligation to verify the judicial situation of the tax payers, as well as to check the exact fulfilment of their obligations and duties. We can mention the following characteristics: (1) liquidation of the tax, (2) obtaining information in order to correctly liquidate taxes, (3) checking and investigating the declared taxable events and not declared ones in order for liquidations to adjust to reality; other activities, for example, statistics, issuing reports.*

**Key words:** tax, the fiscal inspection process, rights of the taxpayers.

## 1. The procedure of the fiscal inspection

The procedures of the fiscal inspection [1] are regulated by *art.141 to 159 General Tax Law (Ley 58/2003, General Tributaria)*. The notion of fiscal inspection has three meanings:

- 1) *Organic*, as an assembly of organisms of the Public Finance Administration;
- 2) *Functional*, as a specific activity that GTL includes within “the domain of taxes”; according to *art.83*, nevertheless, as it has been stated in doctrine, in reality, fiscal inspection does not take part in the application, but in the control of application of fiscal obligations; [2]
- 3) *Procedural*, as an assembly of procedures through which inspection organisms fulfil their duties; the administrative function of verifying the application of taxes is the essential and defining function of the Fiscal

Inspection, but it is not an exclusive one.

*Article 141* of the *GTL* regulates tax inspection that consists of the exercise of the administrative functions directed to:

- investigating the suppositions of facts connected to tax debts for the discovery of those who ignore the Tax Administration;
- checking the truthfulness and accuracy of the statements presented by the tax payer;
- accomplishing actions in order to obtain information related to the application of the taxes and also to the agreement established by *art.93* and *art.94 GTL*;
- checking the value of rights, revenues, products, goods, heritages, companies and other elements, when it is necessary for the determination of the tax debts, in the application arranged by *art.134* and *135 GTL*;

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- checking the fulfilment of the requirements demanded for obtaining benefits or fiscal incentives and tax returns, as well for the application of special tax rates;
- informing tax payers about their rights, tax debts and the form in which they must fulfil the above mentioned on the occasion of the inspection activity ;
- performing control actions, in compliance with the rules established in *art.136* and *art.140 GTL*;
- advising and reporting to authorities of the Public Administration;
- others, which are established in other dispositions.

## 2. Rights and guarantees of the tax payer

According to *article 34* of the *GTL*, the rights of the tax payers, are, among others, as follows [3]:

- a) Right to be informed by the Tax Administration and represented in front of it on the exercise of their rights and the fulfilment of their tax debts;
  - b) Right to obtain, in the terms mentioned in this law, the returns derived from the regulation of every tax and the returns of undue income, with credit of the interest of the delay mentioned in the *art.26 GTL*,
  - c) Right to use the official languages on the territory autonomous communities. The tax payer fiscally dwelling in an autonomous community, e.g. Catalonia, has the right to use the Catalan language during the process of fiscal inspection. The Spanish or Castellan language is the official language on the entire territory of Spain; nevertheless, according to the legislation, other languages are also admitted as official, but only on the territory of certain autonomous communities. Thus, on the territory of an autonomous community, the tax payer may use Spanish or
- d) another language officially admitted (Catalan, Basque, Galician) in front of fiscal authorities.
  - d) Right to know the identity of the authorities and personnel in the service of the Tax Administration under whose responsibility the actions and tax procedures are done, especially the ones in which they are interested;
  - e) Right to request certification and copy of statements to be presented, as well as right to obtain sealed copy of the documents presented before the Tax Administration. ,
  - f) Right not to contribute those documents already presented by them themselves and that they find in power of the Tax Administration performer.
  - g) Right in the terms legally mentioned, to the reserved character of the information, reports or precedents obtained by the Tax Administration, which will are only to be used for the application of the taxes or resources which management has entrusted and for the imposition of sanctions, without them being yielded or communicated to third parties, except in the suppositions foreseen in the *GTL*;
  - h) Right to be treated with due respect and consideration by the personnel in the service of Tax Administration;
  - i) Right to formulate allegations and to submit documents to the competent organs;
  - j) Right to be heard in the process of hearing, in the terms mentioned in the *GTL*;
  - k) Right to be informed about the values of the real estate that is going to be the object of an acquisition or transfer;
  - l) Right to be informed, at the beginning of the actions of checking or inspection on their nature and scope, as well as to be informed regarding their own rights and obligations in the course of such actions

- or those conducted in the period foreseen in the GTL;
- m) Right to the recognition of the benefits or fiscal rate that turn out to be applicable;
  - n) Right to formulate complaints and suggestions in relation to the functioning of the Tax Administration;
  - o) Right to choose which manifestations with tax relevancy that are enforced and gathered in the exformalities extended in the tax procedures;
  - p) Right to the obliged ones to present before the Tax Administration the documentation that they consider suitable and that could be relevant for the resolution of the tax procedure that is developing;
  - q) Right to obtain copies of the documents at their own expense; this right can be exercised at any time in the compulsory procedure.

Integrated the *Treasury Department*, the *Taxpayer Protection Council (Consejo para la Defensa del Contribuyente [4])* will guard over the efficiency of the rights of the fiscal obliged. (art. 34.2. GTL).

The fiscal inspection aimsto verify the basis of taxation, the legality and conformity of fiscal statements, the compliance with the fiscal and accounting laws, the determination of taxes, and all their corresponding accessories.

The recognition of the rights of the taxpayers and the fulfilment of the obligations that they have during the fiscal inspection is a guarantee of the correct achievement of this activity, in the spirit of the principles that govern the entire fiscal procedure.

The right of the tax payer during the fiscal inspection is regulated in the legislation of other states, such as Romania. Different from the Spanish Law, title VII of the Romanian Fiscal Procedures Code, entitled "Fiscal Inspection" does not mention in a special

chapter the rights and obligations of the taxpayer, [5] as they are implicitly deduced from the whole regulation of the procedure of inspection. [6]

Another difference would be that in Romania there is no special institution created for the defence of the taxpayers' rights such as in Spain. Of course, in Romania taxpayers can and will formulate applications to defend themselves in front of the fiscal organisms or directly to a court of law, but there is an advantage of the Spanish law that it created the Taxpayer Protection Council within the Treasury Department, advantage that is correlated with the high concentration of regulation of taxpayers' rights in one article of the GTL, which presents stronger guarantees for the respect of their rights and the correct performance of the fiscal inspection.

## Notes

- [1] For details regarding the procedure of Fiscal Inspection in Spain, please consult Juan Martin Queralt, Carmelo Lozano Serrano, José M. Tejerizo López, Gabriel Casado Ollero, *Curso de derecho financiero y tributario*, Editorial Tecnos, Madrid, 2004, pp. 366-399 (Leccion 13. Funciones y procedimientos de la inspección de los tributos).
- [2] The aforementioned sources, p.366.
- [3] The norms of *article 34* of the *GTL* are corroborated with those of *article 99* regarding the *fiscal acts and procedures*.
- [4] Taxpayer Protection Council (*Consejo para la Defensa del Contribuyente*) is regulated by article 2 of the Royal Decree 1676 of 2009.
- [5] The Romanian Fiscal Procedure Code expressly regulates only the obligation for the taxpayer to collaborate and his right to be

informed.

[6] For details please consult Ramona Ciobanu, *Drepturile si obligațiile contribuabilului în cadrul procedurii inspecției fiscale (The rights and obligations of the taxpayer during the procedure of fiscal inspection)*, in Colocviul Internațional de Științe Sociale ACUM, The University of Transilvania from Brasov Publishing House, 2009, p.327-333.

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3. General Tax Law 58/from 2003 (*Ley 58/2003, General Tributaria*).
4. [www.agentiatributaria.es](http://www.agentiatributaria.es).
5. [www.minhap.gob.es](http://www.minhap.gob.es).