Agencia Tributaria

FAQs REGARDING THE TAX ON CERTAIN DIGITAL SERVICES (TCDS)

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1. CONCEPTS

1.1. What is a "digital interface"?

Article 4.4 of the tax law defines a digital interface as "any program, including websites or part thereof; application, including mobile applications; or any other means, accessible to users, that enables digital communication".

From this definition the following characteristics are inferred:

- The interface must allow digital communication.
- It is an open definition that includes examples for illustrative purposes.

Digital interfaces can be accessible through various types of devices, such as, a mobile phone, a computer, a television, a tablet, a household appliance or a vehicle.

For example, a television used to access digital content, whether pre-installed on the television itself, downloaded, or run on some other device connected to the television (e.g., a game console or a decoder) is a digital interface for tax law purposes.

1.2. What is "digital content"?

Article 4.1 of the tax law defines digital content as "data supplied in a digital format, such as computer software, applications, music, videos, texts, games and any other computer program, other than the data of the digital interface itself".

From this definition the following characteristics are inferred:

- It refers to data supplied in a digital format other than the interface itself.
- It is an open definition that includes examples for illustrative purposes.

Data that constitutes the digital content can be supplied by downloading it, using it simultaneously with downloading (streaming) or accessing the digital interface. Such supply can take place only once, during a specified period of time or in perpetuity.

Digital content must be supplied through a digital interface. Therefore, data supplied on a physical medium such as CDs, DVDs, or external memory (pen drives) is not considered digital content. The fact of these physical media being transmitted through a digital interface does not convert the data in question into digital content, notwithstanding the possible provision of an online intermediary service.

2. TAXABLE EVENT

2.1 Are all data transmissions carried out by the entity that collected the data taxable or only the first data transmission? Are data transmissions made by entities that have not captured the data subject to the tax?

Article 4.8 of the tax law defines data transmission services as "those of transmission with consideration, including the sale or assignment, of those collected about users, which have been generated by activities carried out by the latter on digital interfaces".

The Law's Regulatory Impact Analysis Report states that the data of the digital economy is not exhausted in a single transaction, but rather allows the multiplication of the value generated by the company that initially captured it as said data is transmitted.

Therefore, all data transmissions by the entity that captured the data will be subject to the tax, not just the first.

Similarly, all data transmissions by entities that, without having captured the data, have acquired it from the entity that had captured it or from any other entity will be subject to the tax.

3. PLACE OF SERVICE PROVISION

3.1. Means of evidence admissible for locating users.

In Article 7.4, the tax law establishes that the presumed location of the user's device is the IP address. However, it may be concluded that the location differs, for which geolocation may be used, or any other means of proof admissible in law, other than those excepted in Article 7.3 of the tax law, namely, the place where the delivery of goods or the supply of underlying services is carried out, in the case of online intermediary services with an underlying transaction, or the location from which any payment related to a digital service is made.

The geolocation instruments understood to be valid means of proof appear in Article 1 of Royal Decree 400/2021 of 8 June, which implements the rules for the location of users' devices and the formal obligations of the TCDS (Tax on Certain Digital Services).

Other means of proof that can be assessed are, for example:

- In the case of online advertising services, online intermediary services without an underlying transaction and data transmission services: the data of the user who views the advert according to their user profile, such as their registration address, the national prefix of the user's mobile or the address information obtained from recurring data related to the geolocation of their device.

- In the case of intermediary services with an underlying transaction, the above means of proof could be assessed to both locate the device of the purchaser and that of the seller; the address where the latter is established may also be considered in the case of a legal person.

3.2. Location of users in online intermediary services with an underlying transaction when they are not using the device at the time the underlying transaction is concluded

In the cases of an online intermediary with an underlying transaction in which one of the users is not using the device at the time the transaction is concluded, the location of that user's device at the time of including their purchase or sales order in the digital interface of the intermediary will be used.

4. TAXPAYER

4.1. Who has the status of taxpayer for the Tax on Certain Digital Services? And in the event of groups?

Pursuant to Article 8 of the Law, legal persons and entities without legal personality referred to in Article 35.4 of Law 58/2003, of 17 December, General Taxation, are taxpayers, whenever they exceed the following two thresholds on the first day of the settlement period:

a) net turnover in the previous calendar year exceeds €750 million; and

b) total revenues derived from the supply of taxable digital services for the previous calendar year, after applying the rules provided in Article 10 of Law 4/2020, of 15 October, on the Tax on Certain Digital Services, exceed €3 million.

When the activity had started in the immediately preceding year, the previous amounts will be annualised.

In the **specific case of groups**, however, in quantifying the thresholds that determine the status of taxpayer, the net turnover and revenue amounts from tax liable operations at group level will be taken into account.

This does not mean that the taxpayer is the group, but rather each entity will continue to be considered individually.

If an entity that did not meet the thresholds in the previous year becomes part of a group in the current year that met the thresholds in the previous calendar year, it will not be considered a taxpayer in the remaining settlement periods of the calendar year in which it became part of the group.

For example, an entity that was not part of any group and had not exceeded the thresholds in year X1, will not be considered a taxpayer in the tax periods of X2 even if it becomes part of a group on 5 January X2 that would have exceeded the thresholds in X1.

Alternatively, if an entity was part of a group that met the thresholds in the previous calendar year and ceases to be part of the group in the current year, it will remain a taxpayer in the remaining settlement periods of the current calendar year even if individually it did not meet the thresholds in the previous calendar year.

Thus, for example, an entity that individually did not exceed the thresholds in year X1 but is part of a group that did exceed the thresholds will be considered a taxpayer for the settlement periods of X2 even if it ceases to be part of the group on 5 January X2.

4.2. How is the threshold relating to the amount of digital services supplied in 2021 determined if the tax did not exist in 2020? And in the event of groups?

Exclusively for the purpose of determining the total amount of digital services subject to the tax provided for in Law 4/2020 (Article 8.1.b), the total amount of these digital services subject to the tax that have been carried out since 16 January 2021 (entry into force of the Law) is considered, until the end of the quarterly settlement period in question, although these amounts are annualised.

This results in:

Period	Total amount of taxable digital services	Total amount of taxable digital annualised	Situation (*)	Profit/(loss)
16 January to 31 March 2021	A	E	E > €3 million	TCDS liability (Q1 2021)
			E ≤ €3 million	No TCDS liability (Q1 2021)
16 January to 30 June 2021	B	F	F > €3 million	TCDS liability (Q2 2021)
			F ≤ €3 million	No TCDS liability (Q2 2021)
16 January to 30 September 2021	C	G	G > €3 million	TCDS liability (Q3 2021)
			G ≤ €3 million	No TCDS liability (Q3 2021)
16 January to 31 December 2021	D	H	H > €3 million	TCDS liability (Q4 2021) TCDS liability 2022: Q1, Q2, Q3 and Q4
			H ≤ €3 million	No TCDS liability (Q4 2021) No TCDS liability 2022 (Q1, Q2, Q3, Q4)
(*) Assuming turnover in 2020 exceeds €750 million				

In the **specific case of groups**, in quantifying the thresholds that determine the status of taxpayer, the net turnover and revenue amounts from tax liable operations at group level will be taken into account.

For the purpose of calculating the threshold referred to in Article 8.1.b of the Law, the situation of the entity on the last day of the relevant settlement period (31 March, 30 June, 31 October and 31 December 2021) will be taken into account. If on any of these dates the entity is part of a group, to calculate the threshold referred to in Article 8.1.b of the Law, all taxable services rendered by the entities forming part of the group must be taken into account, without excluding inter-group services.

Thus, if, for example, a company is part of a group on 31 March 2021, all the services provided by the entities forming part of the group since the entry into force of the Law will be taken into account for the purpose of calculating the amount of taxable services for the year. Alternatively, if the same entity is no longer part of the group on 30 June 2021, only the services it has provided since the entry into force of the Law will be taken into account for the purpose of calculating the amount of taxable services for the year.

Furthermore, as regards the threshold referred to in Article 8.1.a of the Law for the 2021 settlement periods, whether the entity was part of a group on 31 December 2020 should be examined. If so, the net turnover of the group as a whole will be considered. If an entity was part of a group that met the thresholds in 2020 and in 2021 it ceases to be part of the group, the threshold in Article 8.a of the Law will still be deemed to be met for all settlement periods remaining in 2021.

4.3. What reference to the thresholds must be taken into account in considering the obligation to file form 490 in 2022 and subsequent years?

In this case, the references are those corresponding to the previous calendar year.

For example, with respect to 2022, the reference to the thresholds refers to 2021, both the reference to the annual turnover and the digital services subject to the tax, albeit computed from 16 January 2021 in the latter case – the date Law 4/2020 entered into force.

4.4. What does the incorporation of the TCDS into the Economic Agreement with the Basque Country mean for certain taxpayers?

Act 1/2022, of 8 February, amending Act 12/2002, of 23 May, approving the Economic Agreement with the Autonomous Community of the Basque Country, has incorporated the agreement of the "Tax on Certain Digital Services" approved under Act 4/2020, of 15 October, on the Tax on Certain Digital Services.

The Tax on Certain Digital Services has been incorporated into the Economic Agreement with the Autonomous Community of the Basque Country through the new Article 34(b) of the Agreement, which establishes the applicable regulations, the levying and the inspection of tax, and specifically stipulates in Section One that it is an agreed tax that will be governed by the same substantive and formal rules that are established at any time by the Spanish State.

In accordance with the levy criteria established in the aforementioned Article 34 ter of the Economic Agreement with the Autonomous Community of the Basque Country, taxpayers shall

pay the tax, regardless of where their tax address is located, to the Provincial Councils, to the State Administration, or to both administrations, in proportion to the volume of digital services rendered in each territory.

Taxpayers who must pay tax to more than one administration shall complete the new boxes on Form 490 relating to taxation by territory (total tax payable to the State and, where applicable, its adjustment, as well as the percentages of taxation to each territory), created for the purpose of providing information on taxation in each of the provincial territories and in the common territory.

4.5. What does the incorporation of the TCDS into the Economic Agreement with the Autonomous Region of Navarre mean for certain taxpayers?

Law 22/2022, of 19 October, amending Law 28/1990, of 26 December, approving the Economic Agreement with the Autonomous Community of Navarre, has also incorporated the agreement of the "Tax on Certain Digital Services" approved under Act 4/2020, of 15 October, on the Tax on Certain Digital Services.

The Tax on Certain Digital Services has been incorporated into the Economic Agreement with the Autonomous Community of Navarre through the new Article 40(b) of the Agreement, which establishes the applicable regulations, the levying and the inspection of the tax, and specifically stipulates in Section One that this tax included in the Agreement will be governed by the same substantive and formal rules that are established at any time by the Spanish State.

In accordance with the levy criteria established in the aforementioned Article 40 ter of the Economic Agreement with the Autonomous Community of Navarre, taxpayers shall pay the tax, regardless of where their tax address is located, to the Autonomous Community of Navarre, to the State Administration, or to both administrations, in proportion to the volume transactions undertaken in each territory during the settlement period.

Taxpayers who must pay tax to more than one administration shall complete the new boxes on Form 490 relating to taxation by territory (total tax payable to the State and, where applicable, its adjustment, as well as the percentages of taxation to each territory), created for the purpose of providing information on taxation in each of the provincial

4.6. From when will taxpayers who pay tax to more than one administration have to fill in the new boxes relating to territory-specific taxation?

The new boxes in relation to taxation depending on the region are enabled for taxpayers who pay tax to the different Administrations to fill them out as follows:

- ✓ The boxes in relation to territory-specific taxation concerning Álava, Guipúzcoa, Vizcaya and the State Administration are enabled effective the second quarter of 2022.
- ✓ The boxes relation to territory-specific taxation concerning Navarre are enabled to be filled in from the first quarter of 2023 (to be filed on 1 April 2023).

5. TAXABLE BASE

5.1. Taxable base calculation examples.

a) Online advertising services

1. During the settlement period, company A pays the owner of an interface – a taxpayer – €1,000 for an advertising campaign that is shown to 20,000 users, of whom 5,000 are in the territory where the tax applies, and €2,000 for an advertising campaign that is shown to 40,000 users, of whom 20,000 are in the territory where the tax applies.

$$\text{BI} = 1.000 \times \frac{5.000}{20.000} = 250$$

$$\text{BI} = 2.000 \times \frac{20.000}{40.000} = 1.000$$

2. During the settlement period, company B carries out an advertising campaign aimed entirely at users located outside the territory where the tax applies. It pays the owner of an interface (a taxpayer) €500 and the campaign is shown to 1,000 users. Of these, 100 viewed the advert on their device while transferring through a Spanish airport.

$$\text{BI} = 500 \times \frac{100}{1000} = 50$$

3. During the settlement period, company C, the owner of an interface – a taxpayer – has received €2,000 for all the advertising it has included on its digital interface from company D, dedicated to holding programmatic advertising auctions. This advertising was shown to 30,000 users, of whom 15,000 are located in the territory where the tax applies. Company D received €2,200 from the entities on whose platforms the advertisers manage the programmatic purchase of advertising inventory, taking €200 as its commission.

$$\text{BI} = 2.000 \times \frac{15.000}{30.000} = 1.000$$

The amount of the commission charged by company D (€200) is not included in taxable base calculation because it was collected by an entity other than the taxpayer.

4. During the settlement period, company E, advertising service provider that contracts with many interface owners to include advertising on them, received €40,000 for the inclusion of advertising on its digital interface from company F, dedicated to holding programmatic advertising auctions. Company E transfers a total of €36,000 to the interface owners, with the remaining €4,000 being its commission. The adverts were shown 1,000,000 times on devices, of which 400,000 were in the territory where the tax applies. Company F received €42,000 from the entities on whose platforms advertisers manage the programmatic purchase of advertising inventory, with its commission being €2,000.

$$\text{BI} = 40.000 \times \frac{400.000}{1.000.000} = 16.000$$

The taxable base of the advertising service providers includes the total amount of the consideration received from those who acquire the advertising space.

b) Online intermediary services with underlying transactions

1. Company A has a "marketplace" type platform that invoices the sellers of goods 15% of the price agreed with customers. A seller user located in the territory where the tax applies has sold an asset to another user also located in the territory where the tax applies for €5,000.

$$\text{BI} = (5.000 \times \ 0{,}15) \times \frac{2}{2} = 750$$

Note that, in calculating the numerator and denominator, both buyers and sellers will be considered users.

Where the buyer is not located in the territory where the tax applies.

$$\text{BI} = (5.000 \times \ 0{,}15) \times \frac{1}{2} = 375$$

c) Online intermediary services without underlying transactions

1. Company A owns a social network that, in addition to financing itself by showing adverts to its users and transmitting their data, offers a premium version for €30 per month. During the settlement period, a total of 10,000 accounts were opened, 1,000 of which were opened by users who were in the tax territory at the time of opening. Each of these 1,000 users paid the 3 monthly instalments during the settlement period.

$$\text{BI} = 1.000 \times 30 \times 3 = 90.000$$

d) Data transmission services

1. Company A has granted company B the right to use data generated by users of digital interfaces during the settlement period and also during the year prior to the entry into force of the LTCDS. The consideration for the assignment amounted to €50,000. The data referred to 120,000 users, of whom 30,000 were in the territory where the tax applies at the time the data was generated.

$$\text{BI} = 50.000 \times \frac{30.000}{120.000} = 12.500$$

Note that the time when the data was collected is irrelevant.

2. Company B above analyses the data provided by company A and transmits it to company C, attaching the same data that it had acquired from company A to its report. The price received

for preparing the report and transferring the data is €200,000. The value of the data transferred to company C remains the same as when it was transferred to company B.

$$\text{BI} = 50.000 \times \frac{30.000}{120.000} = 12.500$$

Please note that it does not matter whether the same data has previously been subject to a transmission liable for tax.

5.2. What exchange rate should be used to determine the taxable base?

If the amount of the taxable base is available in a currency other than the euro, it will be converted to euros by applying the exchange rate published in the last Official Journal of the European Union available in the settlement period in question.

5.3. When must the taxpayer regularise the taxable base according to the procedure referred to in Article 10.3 of Law 4/2020, of 15 October, on the Tax on Certain Digital Services?

When the taxpayer knows the amount of the provisionally self-assessed taxable base in a previous settlement period (due to not knowing the amount of the taxable base at that time), they must regularise this in the period they file the next quarterly self-assessment of the tax.

In other words, they should not file two self-assessments, one corresponding to the current period and the other amending the one relating to the initial self-assessment period, but only the one corresponding to the current self-assessment period. However, this self-assessment, which includes the adjustment referred to in Article 10.3 of the Law, must be completed with the breakdown contained in the approved tax form (Form 490), differentiating the quarter(s) and financial year(s) to which the adjusted amounts correspond.

There is an exception to the aforementioned means of regularisation, where – at the time of filing the self-assessment – they no longer have the status of taxpayer for the tax.

In this case, they must regularise the self-assessments filed with provisional amounts of the taxable base by filing the corresponding additional self-assessments and/or requests for rectification, with the breakdown and content provided for in the annex of the order on form 490.

5.4. Can the new territory-specific boxes in the "Adjustment (Art. 10.3 Law 4/2020)" section be completed?

According to the procedure set out in Article 10.3 of Law 4/2020, taxpayers can adjust any of the previous periods within the statute of limitations.

However, consideration must be given to the fact that only the new boxes in relation to territory-specific taxation as part of this procedure can be filled in under the following circumstances:

- ✓ The boxes for Álava, Guipúzcoa and Vizcaya can only be filled in when adjusting the second quarter of 2022 onwards.
- ✓ The boxes for Navarre can only be filled in when adjusting the first quarter of 2023 onwards.

Therefore, the boxes in relation to territory-specific taxation cannot be filled in for adjustments corresponding to any settlement period previous to the periods in which the Agreement for this Tax has been agreed or adapted.

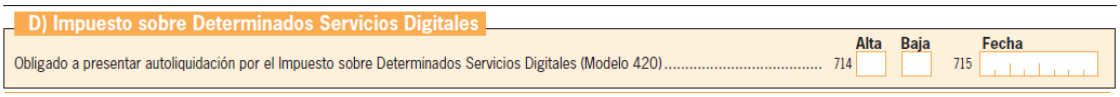
6. TAX RETURN AND DEPOSIT

6.1. Should I submit a tax register declaration if I am obliged to pay TCDS?

Yes. TCDS taxpayers must submit a tax register declaration (form 036):

- Registration of tax register declaration (form 036): if you were not previously included in the Tax Register of Businesspersons, Professionals and Withholders, marking Box 111 Registration in the tax register of businesspersons, professionals and withholders and then, on page 7 of the same form, fill in Boxes 714 (registration) and 715 (date).

- Amendment of tax register declaration (form 036), if already registered in the Tax Register of Businesspersons, Professionals and Withholders, communicating this new status (TCDS taxpayer), marking box 137 (Amendment of data related to other Taxes and registers) and then, on page 7 of the same form, fill in boxes 714 (registration) and 715 (date).



Tax register declarations must be filed from 1 July 2021, the date on which the appropriate tax register amendments come into force.

6.2. In 2021, if the net turnover in 2020 was greater than €750 million, and in a particular quarter it exceeded the threshold of tax liable digital services in the specific manner foreseen for that year (question 4.2), but it did not exceed it in the following quarter, what tax returns related to TCDS should be filed in both quarters?

In that case, you must file:

- the quarterly self-assessment of the TCDS (form 490) corresponding to the quarterly settlement period in which the threshold was exceeded in the specific manner foreseen for that year (question 4.2);

- tax register declaration form 036 (amendment or registration, depending on whether or not you previously appeared in the Tax Register of Businesspersons, Professionals and Withholders).

In the following quarter, if you do not exceed the aforementioned threshold (in the specific manner foreseen for that year), you must file tax register declaration form 036 (amendment or deregistration), but you do not file form 490 corresponding to that settlement quarter.

6.3. In what period should I file the self-assessment and payment of the tax in 2021 and 2022?

In general, the filing period is the month following the end of the calendar quarter. If the last filing day is a non-working day, the filing period will end on the first working day immediately following that period.

However, for 2021, the first year it applies, the self-assessment for Q1 2021 will be filed and deposited within the self-assessment filing and deposit period corresponding to Q2 2021. Therefore, the first self-assessments of the tax will not be filed until 1 July 2021.

Consequently, for 2021, the filing and deposit periods for the quarterly self-assessments of the tax (form 490) are as follows:

2021	
Filling and deposit periods (except payment by direct debit)	***Filling periods with payment by direct debit (*)***
• First quarter: 1 July to 2 August 2021 (1) • Second quarter: 1 July to 2 August 2021 (2)	• First quarter: 1 to 28 de July 2021 (1) • Second quarter: 1 to 28 de July 2021

• Third quarter: 1 October to 2 November 2021 (3). • Fourth quarter: 1 to 31 January 2022 (4)	• Third quarter: 1 to 28 October 2021 • Fourth quarter: 1 to 26 January 2022

(1) The first quarter of 2021 is filed in the second quarter filing period (sole transitional provision of the Order on form 490).
(2) As 31 July and 1 August are non-working days.
(3) As 31 October and 1 November are non-working days.
(4) Or immediate subsequent working day, if 31 January 2022 is a non-working day.

(*) Important: if you wish to pay the tax by direct debit in 2021 via an entity collaborating in collections for the Tax Agency, you must file the self-assessment with a request for direct debit, in general, five days before the end of the period.

The **periods for 2022** are as follows:

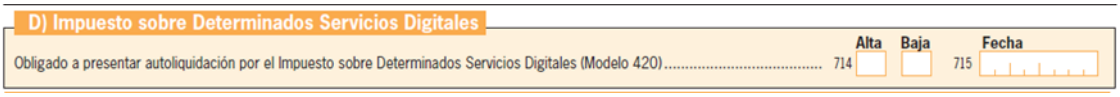
2022	
Filling and deposit periods (except payment by direct debit)	***Filling periods with payment by direct debit.***
• First quarter: 1 to 30 April 2022. • Second quarter: 1 to 31 July 2022. • Third quarter: 1 to 31 October 2022. • Fourth quarter: 1 to 31 January 2023.	• First quarter: 1 to 25 April 2022. • Second quarter: 1 to 26 July 2022. • Third quarter: 1 to 26 October 2022. • Fourth quarter: 1 to 26 January 2023.

6.4. If I am obliged to file form 490 from 2022, which self-assessments should I file? And which tax register declarations?

You must file quarterly self-assessments for the tax (form 490) and deposit the resulting amounts in the periods provided for 2022.

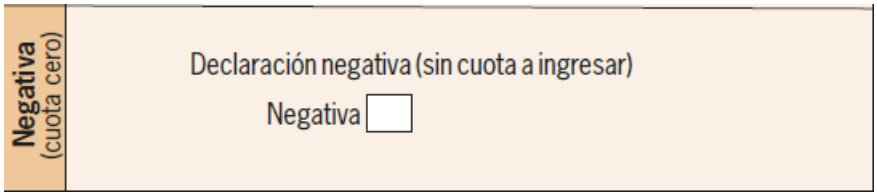
Regarding the tax register declarations to be filed, if you acquire the status of taxpayer for the tax for the first time for 2022 (by exceeding the thresholds in 2021), you must file form 036 for amendment or registration, depending on:

- if already in the Tax Register of Businesspersons, Professionals and Withholders: form 036 (amendment), marking box 137 (Amendment of data related to other Taxes and registers) and then, on page 7 of the same form, fill in boxes 714 (registration) and 715 (date).
- if not in the Tax Register of Businesspersons, Professionals and Withholders: form 036 (registration), marking Box 111 (Registration in the tax register of businesspersons, professionals and withholders) and then, on page 7 of the same form, fill in Boxes 714 (registration) and 715 (date).



6.5. What tax returns should I file if there is no amount to be paid in a quarterly settlement period (amount equal to zero euros)?

If you are a taxpayer and have no amount to pay (amount of zero euros) in a quarterly tax return period, you must still file the corresponding quarterly self-assessment form 490, filling in the "Negative tax return" box on the form.



6.6. Who can file form 490 corresponding to the taxpayer?

Like all other tax self-assessments, form 490 can be filed by:

a) Taxpayers.

b) Voluntary representatives of the taxpayers with authorisation (proxies) to electronically file tax returns and self-assessments with the Tax Agency on their behalf or representation.

c) Shared tax reporters.

6.7. How can I have a power of attorney to file form 490?

You can have power of attorney through the following means:

1. With the legal representative of the entity or of whoever holds sufficient powers to grant powers of attorney.

2. With a public or private document bearing a signature authenticated by a notary, submitted to the Tax Agency.

3. Through the Internet using any of the identification and signature systems provided for in Articles 9 and 10 of Law 39/2015, of 1 October, on the Common Administrative Procedures of Public Administrations.

The power of attorney may be granted to one or to several parties, including both individuals and legal persons.

For more information, please consult the following link:

Registration of representative powers

6.8. What does social collaboration consist of in order to be able to file form 490?

Social collaboration in tax management allows the completion of multiple procedures and actions electronically on behalf of third parties; these include electronic filing of tax self-assessments.

The social collaborator must hold the relevant voluntary representation for the electronic filing of tax returns, without conferring on them the status of representative to intervene in other acts or to receive all kinds of communications from the Tax Agency on behalf of the taxpayer or interested party, even if they result from the document filed.

A specific collaboration agreement will be established for the Tax on Certain Digital Services that enables any entity of the group to file returns related to the tax.

At any time, the Tax Agency may require the social collaborator to accredit the representation they hold to act on behalf of third parties. In other words, accreditation of representation a priori is not necessary.

For more information, please consult the following link:

https://sede.agenciatributaria.gob.es/Sede/en_gb/colaborar-agencia-tributaria/colaboracion-social-presentacion-declaraciones.html

6.9. In the case of groups, who can file the tax returns of the different taxpayers?

There are various possibilities to file it, regardless of individual filing by each of the group's entities:

1ª) Filing via a proxy (voluntary representative). See question 6.7.

2ª) Filing through a social collaborator (SC):

- SC is not part of the group. In other words, it is the generic social collaboration that currently exists and that allows certain professionals in the tax field to file tax returns.

- SC is part of the group. It is a new specific Social Collaboration Agreement so that the entity that signs on (any entity of the group for the purposes of the TCDS) can file the corresponding tax returns for each of the entities that have granted the power of attorney.
- In addition to the signing of the corresponding SC Agreement by the entity filing for the group, each entity of the group must grant their power of representation to the "filing" entity which, although it should not be provided initially, it may be subsequently required at any time by the Tax Agency.
- Interested parties should complete the form for granting representation.

6.10. What documentation must be submitted by an entity wishing to sign a shared tax reporting agreement with the Tax Agency for the electronic filling of tax returns, communications and other tax documents on behalf of the group´s entities?

For the processing of the social collaboration agreement in the application of taxes for the electronic filling of tax returns, communications and other tax documents on behalf of the entities that make up the group from those defined in Article 4.3 of Law 4/ 2020, of October 15, on the Tax on Certain Digital Services, the entity that is going to sign the agreement must send the following information and the corresponding documentation to comunicacion.sepri@correo.aeat.es:

- Written document formally requesting, by whoever is authorised to do so, the signing of a social collaboration agreement under the provisions of Article 92 of Law 58/2003, of 17 December, on General Taxation, for the electronic filing of tax returns, communications and other tax documents on behalf of third parties.
- Full name and NIF of the company (pdf format)
- Name and NIF of the person who will sign the agreement on behalf of the entity (PDF format)
- Deed of sufficient power of attorney to represent the entity before the public administration of the person signing the agreement (PDF format)
- Name and NIF of the person of contact
- Contact phone number
- Company address
- E-mail address

Given that the agreement is processed electronically, it is essential that the person signing the agreement on behalf of the entity has the following for this purpose:

- a personal electronic certificate that generates their digital signature, or
- the representative certificate of the legal entity that will be used to sign the agreement.

6.11. In the case of groups, is there any simplification for the filing of returns for the different taxpayers in the group?

In this case, and after signing the corresponding specific social collaboration agreement enabled for this purpose, the entity filing for the group may file the tax returns of the various group entities using its own recognised electronic certificate, by means of:

- Filing in batches. The batch filing system allows the files of the tax returns of each entity to be selected, as well as the file with the NRCs (Complete Reference Number) of the payments. The tax returns of the different entities of the group are selected and filed in a single filing.

  You can obtain more information in the following link of the Spanish Tax Agency website:

How to file batch tax returns

- Direct "machine to machine" filing, in the technical terms authorised for this purpose by the Tax Agency.

6.12. Payment of the debt by direct debit.

Updated

You can make the payment by direct debit at a deposit-taking institution that collaborates in collections management for the Tax Agency or at a non-collaborating entity within the SEPA area. In the latter case, payment shall be made through the intermediary service of an entity collaborating in collections management.

In the case of payment by direct debit at a collaborating deposit-taking institution, you must fill in the self-assessment by entering the direct debit order and you must enter the International Bank Account Number (IBAN) of the account from where payment is to be made.

Note: the direct debit account must meet the requirements established in Article 2 of Order EHA / 1658/2009, of 12 June, which establishes the procedure and conditions for direct debit payments of certain debts whose management is attributed to the Tax Agency.

In the case of payment by direct debit at a non-collaborating entity within the SEPA area, you must include in the tax return the complete data of the account open in said non-collaborating entity.

The procedure for proceeding with the payment of the amount resulting from the self-assessment will be as established in Order HAP/2194/2013, of 22 November (Articles 4 and 6 to 9), regulating the procedures and general conditions for the filing of certain self-assessments and informative tax returns (Official State Gazette of 26 December). If the direct debit is set up using an account at a non-collaborating entity within the SEPA Area, the provisions of Article 5 bis of Order EHA/1658/2009, of 12 June shall apply.

In any case, the direct debit order must refer to the total amount that is to be paid resulting from the self-assessment filed electronically.

6.13. Payment of the debt without direct debit.

In this case, the party liable for the tax payment or, where appropriate, the filer, must contact the collaborating entity (electronically or by going to its branches) to pay the resulting amount.

Having done the above, you must complete the self-assessment by entering the Complete Reference Number (NRC - Número de Referencia Completo) obtained when making the payment.

The NRC is a 22-character code obtained as proof of payment for online tax return filings.

You can obtain further information about this form of payment at the following link:

Payment of taxes, debts and fees - Technical assistance

6.14. If I do not have an account with an entity collaborating in tax collections for the Tax Agency, nor in a non-collaborating entity within the SEPA area, how can I pay the self-assessed debt referred to in form 490?

Updated

In this case, payment can be made by bank transfer, under the assumptions, terms and conditions implemented by the Resolution of 18 January 2021 of the Directorate General of the Tax Agency, which defines the procedure and conditions for the payment of debts by means of transfers through collaborating entities in the collection management entrusted to the Tax Agency (https://www.boe.es/buscar/act.php?id=BOE-A-2021-1617).

6.15. Self-assessment with an amount to be paid and with a request for deferral or payment in instalments, offsetting or with recognition of debt.

The distinction between the following must be made:

A) If it is a partial payment of the debt:

The procedure is similar to full payment of the self-assessment without direct debit (you must obtain the NRC), although you must later enter the tax settlement code assigned by the system when filing the form (seventeen characters).

Then, with the settlement code, you can electronically request offsetting, deferral or payment in instalments of the amount not paid at the same time it is obtained or at a later time through the procedure enabled for that purpose in the electronic office of the Tax Agency.

B) If the debt is not paid, but the intention is to request offsetting, deferral or payment in instalments or simply recognising the full amount of the resulting debt:

You must electronically file the self-assessment without deposit, selecting the option you want in relation to the debt (offsetting, deferral or payment in instalments or simple recognition of the debt without deposit).

Subsequently, with the settlement code assigned by the system, you can request deferral of the debt or payment in instalments.

7. ISSUES RELATING TO THE IDENTIFICATION OF THOSE OBLIGED TO DECLARE THE TAX

7.1. To file form 490 for the self-assessment of the Tax on Digital Services, how is a company or entity not resident in Spain identified with the Tax Agency?

Legal persons and entities must request a NIF (Tax Identification Number) from the Spanish tax agency to identify themselves and properly comply with their tax obligations.

Under the Spanish regulations, taxpayers must include their NIF in all self-assessments, tax returns, communications or documents submitted to the tax administration and in any documents with tax impact which they may issue as a result of their activity in operations with credit institutions. In addition, they must communicate this to other taxpayers in accordance with the provisions of the tax regulations.

7.2. What statement form has to be used to request a Spanish Tax Identification Number (NIF - Número de Identificación Fiscal)?

Legal persons and entities must apply for the NIF using form 036 of "Tax register declaration for registration, amendment or deregistration in the tax register of businesspersons, professionals and withholders", which must be accompanied by certain documentation related to the entity (refer to FAQ 7.3. What documentation must be provided by foreign corporate entities or foreign private entities?)

In the tax register declaration (form 036), there must be a record of the complete identifying details of their legal representatives and also, if applicable, of any voluntary representatives.

7.3. What documentation must be provided by foreign corporate entities or foreign private entities?

The documentation to be submitted by foreign entities, together with Form 036, to obtain a NIF (which will begin with the letter N) is as follows:

- Document certifying the existence of the company. This document can be the deed of incorporation in its own country and the articles of incorporation registered in an official register of its own country or a certification by a notary or a registration by a tax authority certifying the company's existence.
- Photocopy of the card or document certifying the NIF issued by the Spanish Administration of the person signing Form 036 as a representative of the entity.
- Photocopy of the document which certifies that the person signing the form has sufficient powers to do so. This will not be necessary if this person is identified as such in the document certifying the company's existence.

In the event that the documents submitted are not issued in Spain, the Spanish Tax Administration could require that a legalised copy be submitted containing the Hague Apostille, translated, as the case may be, by an official translator or via the Spanish Embassy or Consulate.

7.4. Is it possible to carry out the procedures for assigning a NIF in Spanish Consulates and Embassies abroad?

Yes. Foreign entities can obtain the NIF "N" in most of the Spanish diplomatic representations or consular offices abroad.

However, these consular branches may reject the requests of the concerned parties who are not residents of their constituency.

Access the following link to consult Spanish Consular Offices abroad:

Spain's career consular offices abroad

7.5. What details and documentation must be provided to apply for a NIF "N" by a corporate person or entity in a Spanish Consular Office abroad?

A corporate person or entity without foreign nationality personality which requests the NIF "N" via a Spanish Consular Office abroad must submit the following necessary details for its assignation:

- Whether or not it has legal personality.
- Company name or trading name.
- Tax Identification number or code attributed in the country of residence.
- Fiscal address, which in general will be the Registered Office.
- Date of incorporation and date of recording in the corresponding public register, if applicable.
- Initial corporate capital, if applicable.
- Representatives: full name, corporate name or trade name and tax identification number (NIF) of the legal representatives, if applicable; full name, corporate name or trade name, NIF, tax address and nationality of their representative in Spain.
- In the case of entities under the income allocation regime established abroad: first name(s) and surname(s) or corporate name or trade name, NIF, tax domicile and nationality of its shareholders, partners or heirs.

In order for a corporate person or entity without legal personality to be assigned a NIF 'N', it must be taken into account that the legal representatives named must have a Spanish NIF.

The original and, if requested, a scanned copy of the following documents must be submitted:

- ✓ Certification of the registry or tax authority of the country of origin which attests to the company's actual existence and the data to be recorded.
- ✓ In relation to the individual who signs the application for the company's NIF as its legal or voluntary representative:
  - Card or document certifying the NIF issued by the Spanish Administration.
  - Document certifying that the person signing the entity's NIF application has sufficient power to do so. For this purpose, the certification of the registry or tax authority of the country of origin which attests to the company's existence will be sufficient when the person signing the application is the company´s legal representative and also appears as its legal representative in the said certification.

7.6. Once the NIF is obtained, can I file the tax self-assessment (form 490)?

No. You also need to have a recognised electronic certificate to file the tax self-assessment; it is already mandatory to file it electronically via the internet.

To obtain this electronic certificate, once the NIF has been obtained, getting the certificate from the Spanish Royal Mint can be processed for both individuals and corporate entities and companies without legal personality in the Spanish Consular Office abroad.

7.7. Where can I find more information on the identification of non-resident entities?

More information related to obtaining a non-resident NIF can be found at the following link:

Census Informer

Legal NIF