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# The Autonomous Region of Catalonia approves Form 673 on annual reporting of information related to benefits paid from life insurance contracts to be taxed under Inheritance and Gift Tax

Legal Flash. Tax

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## Approval of File 673



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- > The *Generalitat* of Catalonia has approved File 673 on the annual reporting of information related to benefits paid from life insurance contracts to be taxed under Inheritance and Gift Tax.
- > The deadline for the first filing of Form 673 expires next March 31, 2019.
- > The first filing of Form 673 must include information on benefits paid in years 2017 and 2018.
- > The regulations approved raises doubts about its legal validity and the scope of the information to be submitted.



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## 1. Obligation to report specific information by the insurance companies

Effective from April 1, 2017, the *Generalitat* of Catalonia established a new obligation for the insurance companies consisting of the reporting of specific information related to the benefits paid from life insurance contracts subscribed by residents in Catalonia.

Such new obligation was approved by Article 153 of Act 5/2017, of March 28, on tax, administrative, financial and public sector measures, and on the regulations of taxes on large shopping centers, on stays in tourist establishments, on radiotoxic elements, on bottled sugary drinks and on carbon dioxide emissions. Said Article 153 provides as follows:

*"The insurance companies must report to the Agencia Tributaria de Cataluña, as a general rule and in the form and terms determined by the order of the person in charge of the competent department of finance, information on the benefits paid from life insurance contracts subscribed by persons resident in Catalonia".*

Likewise, the third additional provision of Book II of the Tax Code of Catalonia, relating to the submission of information to the Tax Agency of Catalonia, regulates in section 4 this obligation to report information by stipulating that *"insurance entities must report to the Tax Agency of Catalonia information on the benefits paid from life insurance policies contracted with assured persons resident in Catalonia"*.

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## 2. Approval of new Form 673

After 22 months from the approval of the aforementioned obligation, Order VEH / 28/2019 of February 15 was published last February 22 in the Official Gazette of the *Generalitat* of Catalonia, approving Form 673 on the annual report of information related to benefits paid from life insurance contracts to be taxed under Inheritance and Gift Tax and the conditions and procedure for its filing.

Thus, such Order provides the regulations on the obligation established by said Article 153 of Act 5/2017.

Firstly, it should be noted that the new obligation to report information refers to the benefits paid that are subject to taxation under **Inheritance and Gift Tax** (hereinafter, "IGT"). Consequently, the information to be submitted will consist of the benefits paid from life insurance contracts where the policyholder is a person other than the beneficiary.



Regarding the **persons obliged to inform**, Article 2 of the Order states that the obligation falls into the insurance companies that are authorized to carry on their activities within Spain, including those who carry on their activities under the freedom to provide services regime from another EU member estate or another member estate of the European Economic Area (EEA), or under the establishment regime through a branch in Spain.

Regarding the **content of the information to be reported**, Article 3 of the Order states that the insurance companies will provide specific information related to the benefits paid from life insurance contracts subscribed by persons that are residents in Catalonia. Such information is specified in the Annex of the Order regarding “(...) *each of the life insurance contracts subscribed by persons that are residents in Catalonia*” as follows:

- Information related to the beneficiary: name and surname; Tax Identification Number (“NIF”); amount of the benefit received and date of payment.
- Information related to the assured person: name and surname; Tax Identification Number (“NIF”) and date of decease.

Form 673 must be filed in ellectronically through the internet site of the Catalonian Tax Agency. At the time of the drafting of this Legal Flash access to the ellectronic presentation of Form 673 is still pending. Acces is expected to be shortly available.

The **term provided for the filing of Form 673** is the period between March 1 and March 31 of each year. The Form must include the information related to the preceeding year. Taking into account that the Order has been approved after the expiration date to submit the information related to year 2017, the first filing of Form 673 in March 2019 should include the information related to both year 2017 and year 2018, as expressly stated in the additional provision of the Order.

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## 3. Commentary

### On the validity of the Order approved

Order VEH/ 28/2019 of February 15 raises several questions on its validity, related not only to the procedure followed for its approval, but also in regard to its content. As far as the aforementioned Order regulates an obligation to report information regarding the Inheritance and Gift Tax, we believe that there could be arguments to defend that the Autonomous Region may have exceeded its legal competences. On the other hand, the scope of the obligation to



report information, as regulated in Order VEH / 28/2019 of February 15, could be in breach of several general tax principles.

The possible invalidity of the Order may lead to challenging it before the courts of justice and request a precautionary measure of suspension of its application.

### **On the scope of the obligation to submit information**

The wording of the approved Order raises numerous questions on its interpretation, being the most relevant the following:

- Which benefits from insurance contracts are affected by the reporting obligations?

In the absence of more detail, it could be understood that the obligation to inform affects the benefits paid from the "Life insurance and supplementary risks insurance" referred to in letter B) of the Annex to the Spanish Act 20/2015, of July 14, on the ordination, supervision and solvency of the insurance and reinsurance entities, which may lead to report information not only related to life insurance covering death, survival, or both risks, but also other insurance contracts.

- What is to be understood as "insurance contracts subscribed by persons that are resident in Catalonia"?

As far as it is not specified in the Order, the term "persons" may include both individuals and legal entities. This may, in principle, trigger the reporting of information related to benefits derived from both individual life insurance contracts and collective life insurance contracts.

In addition, it is doubtful what is to be understood as "residents in Catalonia". At this point, it is not clear if the concept of "residence" should be the concept of residence for civil purposes, for the purposes of Personal Income Tax, the concept of residence for the purposes of IGT or the policyholder's domicile information requested at the signing of the contract, being this latest –the policyholder's domicile- the only information available for the insurance company. And in the case of policyholders that are legal entities, the question is to clarify whether the concept of residence would be the place of the social domicile of the entity or the concept of residence for the purposes of Corporate Income Tax or the domicile informed by the policyholder at the signing of the insurance contract.

The interpretation of the concept of "residence" is a very controversial question that may lead to the practical impossibility to fulfill the reporting of information. Depending on the understanding of the concept of "residence", it may be impossible



for the insurance companies to obtain information of the residence of the policyholders.

- > What is to be understood as insurance contracts “that are to be taxed under the Inheritance and Gift Tax”?

By only requesting the information on the benefits paid from insurance contracts that are subject to taxation under IGT, insurance companies may not submit information related to the benefits from insurance contracts where the policyholder and the beneficiary are the same person (which are taxed under the Personal Income Tax) or from certain types of insurance contracts covering the risk of death or invalidity of the assured person who is the borrower of a loan and where the beneficiary is a credit entity.

- > Part 2 - "Declaration" of the Annex to the Order specifies the information to be submitted: in relation to the beneficiary, insurance company must report the name and surnames of the beneficiary, his/her Tax Identification Number, the benefit paid and the date of payment; in relation to the assured person, the name and surnames, the Tax Identification Number and the date of decease must be reported.

It must be noted that in relation to the assured person the date of decease must be reported, something which may lead to understand that the report obligations only affect the benefits paid that derive from the risk of death, i.e.: (i) benefits paid from insurance contracts deriving from the risk of death of the policyholder and (ii) benefits from insurance contracts deriving from the risk of death of the assured person who is other than the policyholder.

According to the aforementioned, ¿would be out of the scope of the reporting obligations the benefits paid from insurance contracts where the risk covered is the survival of the policyholder who is also the assured person, or from insurance contracts where the risk covered is the survival of the assured person who is other than the policyholder? The wording of the Order leads to such an interpretation.

- > Part 2 - "Declaration" of the Annex to the Order provides that information to be reported must be referred “to each of the insurance contracts subscribed by persons that are resident in Catalonia”, which raises the question of whether this expression is referring exclusively to life insurance “in which there are assured residents in Catalonia.” Given that this expression cannot be interpreted in the sense that the insurance has been contracted with an assured resident in Catalonia (which is impossible because the insurance contract can only be signed with the policyholder), it could be interpreted that the aforementioned term refers to life insurance contracts



where a person that is resident in Catalonia intervenes as assured. If this interpretation is correct, regardless of the questions that it may raise on a territorial basis, it could be understood that no reporting obligations may affect the benefits from life insurance contracts where the policyholder is a person other than the assured person and where the assured person whose death triggers the payment of benefits is not resident in Catalonia. I.e.: the case of an insurance signed by a policyholder that is resident in the Autonomous Region of Madrid where the assured person in the event of death is a resident in the Autonomous Region of Aragon and the beneficiary in the event of death is a resident in Catalonia. Taking into account that the benefits from such an insurance contract would be taxed under IGT as an *inter vivos* transfer and the applicable legislation would be that of the Autonomous Region of Catalonia and the assured person is not a resident in Catalonia, then it could be understood that no reporting obligation should arise in this case.

- Finally, in regard to the personal scope of the reporting obligations, the Order places the reporting obligations in the "insurance companies that are authorized to operate in Spain", which could be interpreted in the sense that the reporting obligations would not only affect the insurance companies operating in Spain under the establishment regime (Spanish companies, EU companies and non-EU companies) but also -as specified in the Order- the insurance companies established in countries of the European Union or the European Economic Area operating in Spain under the free provision of services.

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