

No1. Restoring the rule of law and due process in Spain's tax system:

The People vs. Hacienda

On 6 May 2025, Amsterdam & Partners published a White Paper entitled '*Hacienda vs. The People*' which highlighted many of the abuses of *Agencia Estatal de Administración Tributaria*, referred to here as Hacienda.

The research carried out for the White Paper revealed systemic and systematic abuse of the extensive powers and rights that have been conferred on the tax administration by successive governments - abuse to which politicians, across the spectrum, have hitherto largely turned a blind eye.

Concerns about Hacienda are not new, and they are deep. Among citizens, they have become more acute, intensified by the development, within Hacienda, of cultural norms that have little to do with the traditional values of public service, and by its increasingly intrusive use of sophisticated information-gathering technology.

Among OECD countries, Hacienda is, regrettably, a persistent outlier across a range of critical measures that are typically used to assess the strength of taxpayer rights in law and practice: accountability, transparency, effective checks and balances, taxpayer relations, burden of proof, code of ethics, absence of political interference, availability of remedies. The law is hollow when practice allows abuse. Hacienda is an organisation on the wrong side of the line.

The legacy of the Granada Declaration

In recent years, many voices have called for greater accountability, to balance Hacienda's growing powers. Many have criticised the or-

ganisation for using tactics of fear to obtain results. Many have called for the constitutional right to legal certainty to be enshrined specifically in tax law and for other constitutional

rights to be respected.

In 2018, 35 Spanish academics, including a former President of the Constitutional Court, signed the *Granada Declaration* which highlighted serious concerns about the state of the law and the conduct of Hacienda's officials, reflecting the fact that "*the Spanish Tax Authority doesn't view taxpayers as citizens but as subjects*" and recognising that there had been "*a worrying deterioration in the principle of legal certainty*".

The Granada Declaration gave voice to the widespread belief among taxpayers that



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The democratic foundations for the tax system

1. **The tax system** does not exist in a vacuum. It cannot be designed, managed and administered as if it was a black box, free-standing and independent, responding only to its own internal rules. It has to be understood as part of the social and economic framework in which we live. It has real effects on people and on the businesses that people run. For this reason, it should be owned as much by the people as by the government. Those who are entrusted with its management should be fully accountable to those from whom, and for whose benefit, they collect the taxes. Without your support and cooperation, the tax system, which pays for the salaries of ministers, civil servants and tax inspectors alike, is unsustainable.
2. **Tax policy** is an instrument of economic and social policy. It should reflect the priorities of the democratically elected government of the day, the priorities to which citizens have given their support through the electoral process. Policy will not be static because people's priorities, and the needs of the economy, inevitably change over time. The responsibility of policy-makers is to shape or reshape the tax system to help ensure the delivery of those priorities, not to obstruct it. This necessarily includes designing measures that raise revenue, because all governments need revenue to fulfil their general expenditure commitments, but it requires much more as well. It requires the careful design of targeted tax measures that will facilitate the achievement of particular objectives and policy outcomes that benefit from democratic support. In the personal tax sphere, this might include, for example, specific measures designed to support low-income households through difficult economic times. In the business sphere, it might involve measures to strengthen entrepreneurial activity and innovation - the kind of progress that Spain so clearly needs. This is not a call for tax favouritism but recognition of the need for intelligent tax design. Tax policy can play a significant role in delivering outcomes that reflect democratic consensus.
3. **Tax administration** requires consent and trust. Trust and taxation are bed-fellows of necessity. In the absence of trust, the administration of the tax system will be contested and adversarial, consuming unnecessary resources and energy. Good tax systems are built on mutual trust and mutual respect. Taxpayers are more inclined to comply voluntarily when they have trust and confidence in government, but unless government, including the tax administration, trusts taxpayers as well, the system will anyway revert to conflict. An approach to compliance built on enforcement alone is not sustainable in the long term.

Hacienda regards them all as guilty unless proved innocent. Spain is different from other countries.

These are well-founded concerns, evidenced by international surveys, echoed very recently by the Council of State, and increasingly voiced by citizens in private conversations and across social media. They are given added weight by the current impunity of Hacienda.

The Madrid Memorandum

We will shortly publish the Madrid Memorandum, news of which has already attracted a significant amount of attention. The Madrid Memorandum is a statement of needs. It sets out a summary of the problems that afflict Hacienda and of the actions that are required from government to restore fairness and the rule of law to the tax system in Spain. Our outreach work suggests that it will attract widespread public support. The measures proposed in it are a necessary precursor to the restoration of public confidence in Hacienda.

For anyone who believes that, in a democracy, government is the servant of the people and not their master, the Madrid Memorandum will simply look like common sense. For anyone who wishes to use the tax system to punish,

control, terrorise and rob fellow citizens, it will be anathema.

In this first Briefing, written particularly for the benefit of El Pais readers who may not have seen much of our work, we explain the nature of the concerns that are emerging from our research. They affect the entire administration of the tax system in Spain. They are at the heart of the Madrid Memorandum.

Democracy and the philosophy of taxation

Most people neither are, nor want to be, experts in taxation. It is usually enough to know that the tax system works as it should do and that it is as fair and progressive as the 1978 Constitution requires. There is, nevertheless, a need for citizens to engage, at least from time to time, to ensure that their own rights are protected and preserved as technology enables the state to become more dominant and powerful. The application of some principles should be understood and monitored by citizens, respected and operationalised by government. The democratic foundations should be firmly in place.

The structure of government, in which the tax administration is placed remotely from

the democratic process, means that public engagement is much less effective at ensuring that the *administration* of the tax system lives up to expectations, than at ensuring that the government charts a consensus-based course for *tax policy*.

Lacking direct accountability, the actions of those who administer and collect taxes can quickly bring the tax system into disrepute, damaging tax morale and voluntary compliance. They can render specific tax policy measures ineffective, whether intentionally or unintentionally. The world is littered with examples of potentially effective policy wrecked by misguided tax administration.

The Spanish citizens' right to choose

Such is the case in Spain. A toxic combination of poor legislative drafting, an excessively burdensome self-assessment scheme, legal uncertainty amplified through a weak system of lower courts and tribunals, difficulties of access to higher courts, aggressive enforcement by Hacienda, information powers that are astonishing in their breadth, an opaque system of perversely-framed bonuses for revenue officials, and many more problems with balance and fairness have not just undermined the rule of law in the Spanish tax system but have deprived citizens of their natural and democratic right to have the tax system of their choice. Hacienda has become unaccountable, a fiefdom, a kingdom on its own, protected by impunity, by an unfounded and unconstitutional presumption of its veracity.

It takes no time at all to realise that the democratic accountability of Hacienda, its leadership, its senior officials, needs to be strengthened. It has lost public trust. It has, therefore, forfeited its rights, its position. Only a rigorous and transparent process of reform can save it, as an institution. An independent investigation is urgently needed to kick-start that process of reform, free from political and administrative control, empowered and required to listen to the concerns of citizens and well-motivated staff, as well as to look deeply into Hacienda's methods of administration and enforcement.

The goal must be a tax system that reflects and responds to the wishes of the Spanish people, democratically expressed, a tax system that is administered in full accordance with the rule of law and in full accordance with the Constitution from which it derives its only legitimacy. The relationship between the Constitution, the tax system, its administrators and Spanish citizens, does not end with the universal requirement to

contribute contained in the opening words of Article 31(1). Unless the administrators of the tax system embrace fully *all* the relevant provisions of the Constitution, their actions simply become organised theft.

Hacienda: the erosion of trust

In Spain, Hacienda has been trusted. In the past, it has been trusted by citizens. It has been trusted by government. Furthermore, it has been entrusted by government with significant and substantial responsibilities. It has been given significant autonomy, in the belief that those who lead it can be trusted. It has been pushed to deliver more and more revenue. This burden of responsibility has now overwhelmed the organisation, its morale, its culture. The temptation that autonomy provides has led it to believe it can exercise unlimited power to achieve its objectives. It has led the officials who work for it, and the leadership who direct them, to turn their backs on their constitutional responsibilities. Under intense pressure from politicians to raise more revenue, and enticed by huge, collection-based bonuses, Hacienda has developed cultural norms that are at odds with the familiar principles of public service and a group mentality that has made it difficult for staff to question whether a particular action is fair or justified or even constitutional.

The need for reform: answering the call

The facts speak for themselves.

- Since publishing the White Paper, we have been overwhelmed by responses from Spanish citizens who have suffered at the hands of Hacienda, who want to see change but fear their voice will not be heard. We have been overwhelmed by the validation that the White Paper has received.
- Since publishing the White Paper, we have had no response from the Minister responsible for Hacienda, no response from Hacienda's leadership to our White Paper or our letters, no attempt to deny the concerns that have been raised about the organisation. Silence speaks volumes. You cannot argue against the facts and Hacienda's Director General has not even attempted to do so. Presumably she knows that it is futile. There is no defence for what they are doing.

Sweeping reform of Hacienda has to be a top priority for government.



The drafting of the Madrid Memorandum

The drafting of the Madrid Memorandum has involved months of detailed work on the laws that create the tax system in Spain, months spent listening to Spanish taxpayers who have felt its impact on their lives, months consulting with those professionals who know the tax system well and those who, from their own experience, understand the inner workings of Hacienda.

In this Briefing, we focus on twelve areas of serious concern about the administration of the tax system that form the core of the forthcoming Madrid Memorandum and suggest a way forward to address them.

1. Abandonment of principles enshrined in the Spanish Constitution of 1978.

The 1978 Constitution was not drafted mechanically by Artificial Intelligence. It was drafted by people who understood in their hearts as well as in their minds that citizens needed to be protected, that their rights needed to be enshrined in the most fundamental of all laws, that without a constitutional framework of enforceable rights, democracy would not take root and flourish in Spain.

The Constitution was not designed solely to protect the rights of taxpayers, but it provides, nevertheless, a framework of enforceable entitlements on which Spanish citizens and others can rely, in circumstances when actions are taken by Hacienda that are simply not appropriate. On a strict and literal reading, tax law may permit them, but that does not make them right.

In our work, we have seen real tension between the constitutional rights of citizens and the wording and application of tax law. The fundamental right to the presumption of innocence and the right to effective legal remedies (Art 24) seem to be violated by Article 108 of the General Tax Law (Law 58/2003) and its use and abuse in the administration and enforcement of taxation. The Constitution establishes freedom and equality (Art 1, 9), the accountability of public institutions (Art 9) which Hacienda breaches again and again with apparent impunity, respect for the law (Art 10), the objectivity of public

institutions (Art 103), and the right to a fair tax system set out in Article 31 which Hacienda leadership appears to believe ends after the first three words, "everyone shall contribute".

These are fundamental elements in Spain's constitutional framework. These and other rights appear to be abused, systematically, in the administration of the tax system and specifically in the audit process, as we have shown in the White Paper. Spanish taxpayers should not have to rely on the protections provided in EU Law and the European Convention on Human Rights when they have constitutional rights that should be protected automatically in the administration of the tax system and, if breached by Hacienda, through the domestic court system.

2. The excessive rights and powers of Hacienda.

A complete overhaul and modernisation of the powers granted to Hacienda through law and practice is required, recognising the need, in the democratic society to which Spanish citizens aspire, for their own rights to be protected more effectively against the overweening power of the state.

The General Tax Law

The current framework of law and regulation, including the General Tax Law and the related Royal Decrees and Ministerial Orders, do much more than facilitate the orderly management and collection of taxes. They provide the basis on which Hacienda has become a fiefdom, subjugating the rights of individuals that should be inviolable under the Constitution. Information powers and a sanctions regime of this nature, coupled with the evident attitudinal problems within Hacienda, give every citizen good reason to be afraid.

Breakdown of trust

They reveal a complete breakdown of trust. Hacienda simply does not trust and does not intend to trust citizens. Instead, it has aggregated to itself the right to coerce them, in the name of ensuring full compliance. Even in

low-income, developing countries, where the record on human rights is otherwise patchy, the need to operate on a more consensual basis is understood, with checks and balances in place to protect citizens. In Spain, the legal rights and entitlements of Hacienda have gone

too far, increased relentlessly, piece by piece, over the years. There is an urgent need to protect Spain's democratic freedoms and to rein in the automatic, unbridled rights of access to information that Hacienda currently enjoys under threat of sanction, in favour of the more consensual, trust-based approach that governments around the world employ.

Presumption of Hacienda's veracity

Today's information powers sit particularly uncomfortably with the legal entitlement of Hacienda to be believed in court, even when - despite its information powers - it provides no factual evidence, but only presumptions. The application of Articles 105-108 of the General Tax Law currently denies taxpayers the benefit of both the constitutional right to be held innocent unless proved guilty and the principle of equality before the law. As a result, taxpayers come to court with a mountain to climb. Like the information powers themselves, these rules are in urgent need of democratic reform to protect citizens.

3. The need for effective limitations, controls and safeguards on the use of intrusive technology.

The availability and accessibility of data have significantly increased the enforcement capability of Hacienda and other government organisations.

The use of Artificial Intelligence

The use of AI, analytical tools, algorithms and big data is an established fact in many, if not most, tax administrations. The issue is not whether they should be used but rather when and how they may be used, how algorithms might be developed and with what intentional or unintentional biases, and what limitations and constraints should be imposed. In principle, Hacienda is subject to the EU General Data Protection Regulation - a fact that it concedes on its website - which rightly imposes significant constraints on the collection, retention and use of, data relating to citizens. It acknowledges the risk of detriment to individual privacy and security as a reason for the restrictions it imposes.

Absence of effective controls

However, the use by Hacienda of its information powers, enabled by sophisticated data-mining technology, does not seem to recognise the expected constraints. The cross-matching of VAT records with individual expenditure us-



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ing Form 347 (see separate box), is a cause of particular concern. It empowers Hacienda to obtain vast amounts of information about a citizen, including highly sensitive information about medical needs and care that is normally fully protected. Locational technology is widely employed within Hacienda to determine an individual's movements within Spain and there is evidence of the use of airline information in a similar way. It puts not only individuals' privacy but also their security at risk.

Hacienda simply does not trust citizens

All of this is the result of Hacienda not trusting citizens. It is one of the principal drivers of concern about the organisation. It does not mean that the analytical tools that are available should not be used. It means that they must be used only in very specific circumstances, by properly trained and properly motivated staff, and with clear and transparent safeguards that currently seem not to exist or not to be enforced within Hacienda. Technology can benefit citizens enormously if used appropriately by government. It can be a serious danger to citizens when it is abused.

4. The re-establishment of legal certainty.

Internationally, Spain has an extraordinarily and unnecessarily weak standing on legal certainty in tax matters, affecting both law and process. This needs to be addressed.

Clarity of legislation

A major concern is the lack of clarity in much of the legislation, which creates difficulties that can be particularly severe in a self-assessment environment. We have seen its impact in a number of specific areas that are important to fairness for individuals and to investment by companies. It could be addressed through more effective guidance for taxpayers but that is an unsatisfactory substitute for clarity of the legislation.

Information deficit and asymmetries

The tax system is plagued by an information deficit, on which we comment below, that negatively affects taxpayers and asymmetries created by under-reporting of cases heard in the lower courts and tribunals.

Geographical inconsistencies in applying the law.

There are significant variations between tax offices in how tax laws are applied and enforced. In the interests of certainty, Hacienda should

ensure consistency in the application of the law, wherever relevant, in all Spanish regions where it is the taxation authority.

Audit process

The audit and assessment process involves an unacceptable level of uncertainty for both individual and corporate taxpayers, from start to finish. The scope of the audit is often explained only in vaguest of terms, implying a fishing expedition rather than a targeted process: a hunt for mistakes made by the taxpayer in the self-assessment system, that can be punished. Procedural rules are pushed to the limits to keep the taxpayer in a state of anxiety. If the Inspector is struggling to find the facts he wants to make his case, the audit can be closed on a provisional basis and seemingly re-opened at

will, negating the intended time limitations. Audit selection, which ought to be guided exclusively by sophisticated, fact-based risk-assessment techniques, using Hacienda's data capability, is often motivated by other factors, including the use of well-established political selection criteria, creating an unacceptable mix of fear and uncertainty. Even the certainty of statutory time limits is abused by Hacienda. They are applied rigorously where taxpayer actions are concerned but disregarded with apparent impunity where the time limits apply to Hacienda. We have many examples.

Significant changes are needed to reestablish legal certainty in Spain's tax system, to bring it into line with both the constitutional and EU Law requirements. The Madrid Memorandum will highlight what is necessary.



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5. Cultural change, education and a reduction of political influence.

Ethical standards

Hacienda's culture is driven from the top. Norms and acceptable standards are set by its leadership. The Code of Ethics is weak and not enforced. Internationally, it scores poorly. Annual ethical training should be mandatory, including data-handling ethics, at every level to break down the self-reinforcing attitudes that perpetuate among staff a sense of the organisation's untouchability. Ethical standards should be taught externally until behavioural norms have been regularised and change fully validated through monitoring.

Professional education and training

The education and training of Hacienda's staff requires radical reform, with a particular focus on improving the quality of their engagement with taxpayers and their written outputs. Communication with taxpayers lacks the humanity that is essential in a well-administered system. Tax Inspectors and taxpayers do not meet across the table as equals but rather as the accuser and the accused. Written communications from Hacienda's staff rely on length rather than the sharpness of their argument to achieve their objective. It is immediately evident that a lot of time is wasted in the collection, documentation and repetition of largely irrelevant details. Often the information is simply wrong. Training improvements should be geared to eliminating these concerns, reducing the current, apparently deliberate, obfuscatory length of communication with taxpayers, and sharpening their focus on relevant legal matters and fact-based evidence rather than supposition.

Political appointments

Political appointments in Hacienda should be discontinued. A formal panel with a majority of independent members should be constituted to make senior appointments. This will help to restore public confidence.

6. Reform of staff remuneration.

Bonuses

It is no secret, now, that Hacienda incentivises its staff to collect additional taxes through a series of bonus structures. For many years, Hacienda's leadership refused to provide any details at all about their schemes, until finally a Madrid's court gave them no option but to publish at least some information.

In most countries, it is recognised and understood that it is as dangerous to give tax inspectors' bonuses for additional collections as it would be to give policemen bonuses for making arrests - unless, of course, there is a risk of clawback, which Hacienda's Inspectors do not face.

Scale

The scale of the bonuses goes well beyond anything known in other countries, and the information put out by Hacienda's leadership on this issue is misleading. For example, they quote the same percentage of remuneration attributable to bonuses both before and after the recent €125 million bonus deal. This is unlikely to be correct. It implies that average pay is around €350,000 per year. (See separate box)

Corrosive effect on honesty

The bonus system has a corrosive effect on the honesty and integrity of Hacienda's Tax Inspectors. It removes objectivity and independence entirely at both the organisational and individual level. The payment of bonuses based on the achievement of collection targets should be eliminated and replaced by an increase in base pay. An independent investigation should be commissioned into the historical system of bonus payments to allow taxpayers to understand exactly how their money has been used in recent years to incentivise collections.

7. The elimination of procedural irregularities.

The Spanish tax system is being brought into disrepute not only in Spain but in the international community as a result of specific actions by Hacienda leadership and staff. Examples include the following:

Intimidation of professional firms

Intimidation of professional firms by Hacienda appears to be endemic. It is simply wrong. It is a clear breach of the Constitution, and it restricts access to representation and justice for taxpayers with a claim against Hacienda. In the course of our work in Spain, we have encountered many law firms who have validated the findings of our White Paper but have been afraid to say so in public. They have told us directly that if they do, either they or their clients, or both, will be subjected to 'unexpected' audits. Tax Inspectors from other countries have been shocked by this revelation.

Abuse of treaty rights and privileges

We have seen evidence of what appear to be deliberate misstatements by Hacienda about taxpayers, that have been made to foreign tax authorities in Exchange of Information requests. We have seen how a weak case for access to information from a foreign tax authority has been bolstered by such misstatements. This is a shocking abuse of treaty privileges. We have also seen Hacienda turn to foreign tax authorities for information long before they have exhausted their domestic sources, as the rules for exchange of information require, and wrongfully claim that it has exhausted them. We have seen misstatements that have been made and not withdrawn, even when Hacienda knows that what it has said to foreign authorities can be proved not to be true.

This type of conduct is inexcusable and should be regularised by a proper system of management controls. In the light of the evidence that has been made available to us, we will be asking the OECD to investigate Hacienda's misuse of treaty mechanisms which risks undermining international agreement and support for its flagship Exchange of Information initiative, designed to fight real financial crime rather than the imaginings of Hacienda. Until these problems have been cured, there is a serious question as to whether the Spanish government should continue to have access to automatic and on-request information.

We have also been provided with evidence of other forms of treaty abuse, including the effective denial of relief for foreign taxes that is legally creditable under a tax treaty. We are in the process of ascertaining how widespread this issue has become.

Punishment audits

The use of tax audits as a punishment for those who challenge either Hacienda or the government line, and as a deterrent to others who might do so, is well-established. We have received evidence of examples of punishment audits of this nature. Such actions are simply unconstitutional and illegal. They should be stopped. Once again, tax inspectors from other jurisdictions, with whom this evidence has been discussed, have been shocked that this could occur in an EU country.

The recent surge in simulación claims and proceedings

Just as worrying is the significant increase that has been noted in the use by Hacienda of a *simulación* argument in tax investigations,

in place of a fact-based approach. This sharp increase appears to be driven, not by an actual growth of fraud, through sham businesses, but rather by factors influencing Hacienda itself. A combination of the current bonus system for Hacienda staff and the opportunity provided by Art. 108 (Law 58/2003) which requires Tax Inspectors' presumptions to be believed, rather than the facts and documents of the taxpayer, provide the motivation for the increase in simulación cases. We have encountered many examples of contrived simulación arguments by Hacienda's inspectors, especially against entrepreneurs and young businesses. The argument is often used in spite of the company concerned having good accounting and legal records and established tax-paying staff and clients. The Inspector usurps the authority of Cortes Generales and decides that the law *should not allow* the owner to set up the business as a company, even though it does, simply because the tax bill is lower in the short term. This is obviously inappropriate.

The threat of criminal prosecution

Another issue of serious concern is the apparently unregulated use of the threat of criminal prosecution. Hacienda makes considerable play of its internationally unusual ability to have a case moved from the civil and administrative domain into the criminal justice system when large amounts of tax are claimed to be at stake. A technical disagreement about a complex and uncertain tax law issue in a self-assessment return can suddenly become a criminal matter, even though no criminal intent on the part of the taxpayer has, or can, be demonstrated. This technique of intimidation and coercion by Hacienda affects most severely those taxpayers who are typically very law-abiding and have reputations and careers that could be seriously damaged by such a prosecution. They are pressed to settle the case by making a payment rather than resist and risk prosecution.

There are extraordinary examples of criminal tax cases that have been won in the Supreme Court by a taxpayer, only to find that he is dragged back into the civil court on exactly the same matter. Alejo Moreno Garcia captured such a case in an emotionally-charged film, '*Hechos Probados*' (*Proven Facts*), which is available on our website.

The switching between civil and criminal processes can also result in a breach of both constitutional (Art 24(2)) and EU Law prohibitions on self-incrimination. Information provided

in good faith by taxpayers for use in civil proceedings, in accordance with the requirements of tax law, can apparently be used against them in criminal proceedings, making a nonsense of those constitutional and EU protections.

At the very least, the use of the switch and the threat of it, should be regularised through a mandatory process of formal authorisations and the use of an auditable database that identifies individual responsibility for the notification of a potentially criminal process. Transfers of tax cases to the Public Prosecutor without notifying the taxpayer should stop.

The Director General of Hacienda oversees an organisation that has extraordinarily wide-ranging powers, some of which appear to be misused on a systematic basis. As a safeguard for Spanish taxpayers, she should be required to take personal responsibility for the organisation's full compliance with the law through a formal, signed statement of compliance each year when presenting Hacienda's annual report.

8. Public communication regarding taxpayers.

The "blacklist"

Hacienda has made unlawful use of its published "blacklist" of so-called tax debtors. A high-profile case settled in the Supreme Court in April this year, provides a recent example. In this case, the Supreme Court ruled that Hacienda had wrongly listed Marillion, an Andalusian company, as a tax debtor, causing it reputational damage. Many others have suffered in a similar way.

International reputational damage

International requests for information are also used by Hacienda as a mechanism for putting pressure on taxpayers to settle, equating them, in the eyes of banks, businesses, and other tax authorities, to money launderers and tax evaders.

An independent expert review of the constitutionality and effectiveness of Hacienda's current approach to communication about named taxpayers should be undertaken as a matter of urgency, taking due note of international experience. The report should be published and the recommendations adopted.

9. Transparency and governance of Hacienda.

Hacienda appears to be unresponsive to requests for information including formal Freedom of Information requests. It is also unresponsive to serious public concerns that have

been expressed about its transparency, governance framework and operations. Its failure to respond to any of the concerns raised in the White Paper is a clear reflection of the cultural, attitudinal and leadership problems with which the organisation is plagued.

Annual Hacienda Transparency Report

As part of the reform strategy, Hacienda should be required to publish a formal annual transparency report, which should be independently audited.

Governance reforms

The organisation's governance framework should be restructured to make it truly independent of the governing party and immune from political pressure on operational matters, while providing full accountability of Hacienda leadership to Cortes Generales and a new Public Accountability Committee. Measures should be taken to prevent weaponisation of audit selection and audit processes by politicians and politically-appointed persons, including independent, expert scrutiny of audit selection and large-assessment decisions.

Strengthening of internal accountability to match outward-facing changes

Internal procedures should be reformed to ensure individual accountability of senior Hacienda staff. For example, the current practice of issuing documents, including sensitive reports, international Exchange of Information requests and press briefings without appropriate Hacienda letterhead and clear identification of individual responsibility, should be stopped immediately. All documents should be fully attributable at both the individual and organisational level. This will promote accountability to citizens and strengthen trust.

Ombudsman (Consejo para la Defensa del Contribuyente)

Taxpayer rights have been violated by Hacienda in multiple ways, as this Briefing and the White Paper demonstrate. The formulaic approach of the Ombudsman has proved ineffective in protecting those rights. It should, therefore, be disbanded in its current form. Its status as a protector of taxpayer rights is severely constrained by its structural relationship within the Ministry of Finance and by the process of appointment for members of the Council. Its weaknesses and ineffectiveness have been noted by observers, including governments and tax administrations outside Spain. It should

be replaced by an effective and independent body. There are good international examples that can inform the establishment of a new Ombudsman.

10. The need for reform of the tax courts and tribunals.

Taxpayers' right of access to justice, and redress against Hacienda, under the 1978 Constitution and EU law, are currently restricted.

Resource issues

The appeal system for tax matters is widely recognised as very slow. The court system is under-resourced, leading to an inevitably large backlog of cases. It should be appropriately funded to allow citizens the right of access to justice within a reasonable timeframe.

Lack of legitimacy of the lower courts and tribunals

The European Court of Justice ruled in 2020, in the Banco Santander case, that the lower courts and tribunals (Tribunal Económico-Administrativo Central, or TEAC) lack the structural and functional independence necessary to have legitimacy as courts. Despite the ruling, and the passage of time, the government has not implemented structural reforms to remedy this problem. The time and energy of taxpayers, in presenting their case to a body that is not independent, is thus almost entirely wasted. The system simply delays, and gives the pretence of, justice for the taxpayer. It is clear that Spanish citizens are entitled to a system of justice in which there are lower courts which have the required autonomy and legitimacy. They are currently being deprived of that entitlement, to their detriment. The system should be reformed in compliance with EU law.

11. Pay-to-appeal system.

Almost all taxpayers in Spain who need to appeal inaccurate assessments raised by Hacienda, are required to pay all of the tax assessed immediately, to put in place a guarantee for the whole amount from an EU financial institution, or to pledge securities that Hacienda will accept. This type of requirement is acknowledged internationally as a barrier to justice. Even governments in low-income countries, such as Uganda, have moved away from it.

The problems with guarantees

Obtaining a guarantee is, in financial terms, very similar to taking out a loan. It is expensive and typically creates a wedge between taxpayers who have substantial Spanish assets that

can be mortgaged and those who do not - for example some non-residents. It also discriminates against those who only have assets that cannot easily be pledged as security.

Non-payment of the tax assessed will typically result in asset seizures by Hacienda.

Negative impacts on taxpayers

Like the lack of independence in the lower courts and tribunals, the Pay-to-Appeal system

currently blights access to justice for many taxpayers and should be reformed. Together with the notorious bonus system, it encourages Hacienda's Inspectors to inflate the assessments it proposes to taxpayers, knowing that it will increase pressure on them to make a deal with Hacienda, for which the Inspectors as a group, are likely to be rewarded.

Required reform

The current system of Pay-to-Appeal should be reviewed independently with the objective

Hacienda vs The People: Five steps from citizen to subject

How has this happened? It would be easy to say that government's perpetual hunger for revenue is the fundamental cause - and there would be some truth in that. Not just one government. Not just one party. Not just at one point in time. Across the political spectrum and, increasingly in more recent years, economic and social policy interventions and some inefficiency and waste, have driven higher and higher tax collection targets and a greater tax burden on citizens and businesses. In most countries, there are enough checks and balances to ensure that this process is ultimately self-limiting but what has happened at Hacienda is different and certainly not better. A particular alignment of factors and circumstances has created an institution of which citizens and business-owners are rightly afraid.

Hacienda has unusual, perhaps exceptional powers, set out in unambiguous detail in Law 58/2003 and the related Royal Decrees. They are the starting point in the chain of factors and circumstances that has made Hacienda what it is today and led its people to pursue the remorseless application of its powers.

So, first, Hacienda has been given the power, the *right*, to know everything about you, your family and your activities.

Secondly, it has been given, through technology, the *means* to find out everything about you, your family and your activities, with or without your consent or the authority of a court.

Thirdly, its people have been given the motivation, through Hacienda's unparalleled bonus schemes, to raise assessments, to demand payment from you, to make accusations against you that may or may not be true, and to be rewarded for it.

Fourthly, Hacienda is protected with impunity from the normal consequences that others face if they make false accusations, and has a legal entitlement to be believed that is contrary to natural justice and the presumption of innocence established in the Constitution; and

Fifthly, Hacienda has been given the right to punish and penalise you, and anyone connected with you, if its people say you are not cooperating, or you have made an innocent mistake in filing a complicated self-assessment return.

In a democracy, this cannot be right. These five steps have turned citizens into subjects, subjects who live in fear of Hacienda's knock on their door.

of replacing it with a fairer and less damaging system. Options for reform might include it being replaced by a requirement to pay (a) any amount not disputed by the taxpayer or (b), if the whole amount is disputed, a fixed payment of €1,000 or a payment of 30% of the tax said to be due, at the taxpayer's choice. A higher rate of interest should be applied to tax held over that subsequently becomes due at the end of the appeal process. These changes will promote greater accuracy in the making of assessments and will encourage government to ensure that court processes are properly funded so that taxpayers can have justice without the current delay of several years and without fear of unjustly being put on Hacienda's blacklist.

12. Asymmetry of access to information

The problems with the court system are not limited to funding and independence. In addition, there are significant issues that relate to and arise from the reporting system for

tax cases. The current, very limited, reporting of tax cases, especially those heard in lower courts and tribunals, creates serious information asymmetry between taxpayers, advisers and Hacienda. Taxpayers and advisers will often be unaware of the judgements that have been given on similar cases because they are unreported. Hacienda will, by contrast, have much better access. This can disadvantage taxpayers. Given the capability of AI today, there is no good reason why this should continue to be the case. To regularise this situation, the courts should be required, and funded, to use now-easily-accessible AI to record and summarise hearings in all courts and tribunals and make the summaries publicly available on a dedicated website. This should not be an unreasonably expensive reform and will enhance fairness and justice significantly for the benefit of taxpayers.

Robert **AMSTERDAM** & Christopher John **WALES**

Charting the route back to democracy, fairness and the rule of law in the tax system

We call on the government to take the action necessary to restore democracy, fairness and the rule of law in the administration of Spain's tax system.

We reiterate the action points embodied for government in the open letter of Amsterdam & Partners to Hacienda's Director General dated 4 June 2025, namely:

1. We call on the Prime Minister, Pedro Sánchez, to initiate an immediate, root and branch, independent investigation into the organisational failures that currently permit Hacienda to commit gross violations of individuals' rights.
2. We call for that investigation to be constituted in such a way as to allow Spanish taxpayers to be able to come forward freely, without fear of retribution, to give evidence of the individual violations of their rights. We recognise that this will make it a long inquiry.
3. We call on the Director General of Hacienda to step back and allow the independent investigation to take its course, so that
 - A line can be drawn under past wrong-doing;
 - Hacienda's own staff can come forward and admit the organisation's failures without fear of reprisals; and
 - Spanish citizens can begin to regain confidence in the fairness of the processes and procedures of this important institution of government, and in the accountability of all those who commit wrong in its name.



Download our white paper and share your experiences with Hacienda on our website.

www.spanishtaxpickpockets.com



Citizen or subject?

The tax environment

Criteria	Citizen	Subject
Legitimacy and consent	Taxation is part of the democratic framework, consensus-based. Institutions accountable	Taxation imposed by the state, remote and shielded from democratic accountability
Participation in formulation of tax policy	Open, transparent consultation, influential on outcomes	Little or no consultation. Policy formulation unresponsive to citizens
Clarity of legislation and guidance	Complex legislation clarified by regulation and guidance, responsive to taxpayer needs	Drafting designed to support contentious tax authority. Areas of known uncertainty left without effective guidance
Use of self-assessment	Widespread use for more complex taxpayers, but supported by clear guidance and helplines	Universal use except in simplest cases. Limited guidance/support, creating scope for taxpayer error
Reciprocity	Balanced	Absent
Transparency and trust	Open. Mutual. Assumption of voluntary compliance	Tax authority secretive. Expects to be trusted. Distrusts taxpayers. Non-compliance assumed
Acknowledgement of taxpayer rights	Taxpayer rights established by Charter. Strong, enforced, Code of Ethics for administration	Weak, constrained or absent Charter of rights. Weak Code of Ethics, not enforced
Audit philosophy	Transparent criteria, risk-based, consistently applied	Opaque criteria, risk-basis supplemented by political factors, opportunism
Basis of relationship	Taxpayers and inspectors meet as equals	Taxpayers intimidated, unequal, treated as evaders
Presumption in filing	Honesty and integrity, backed by sanctions	Dishonesty/error requiring enforcement
Use of data and analytics	Available but use highly regulated	Available, excessive use, intrusive, limited controls
Veracity and the burden of proof	Balanced and shared, fact-based. Presumptions limited, fully contestable	Unbalanced. Authority's presumptions believed. Heavy burden to contest
Remedies: courts	Appeal processes strong, justice accessible, courts independent	Pressure not to appeal. Courts lack independence. Access to justice constrained
Remedies: other	Strong, accessible support. Independent ombudsman	Weak, absent or captive ombudsman. Complaints process difficult

Can you believe Hacienda about staff bonuses?

The basic facts about Hacienda's staff bonuses are simple. Hacienda staff are paid bonuses to incentivise them to collect more money than ever from Spanish citizens. Those bonuses are not clawed back when taxpayers appeal and win their cases.

Hacienda claims, without providing evidence, that bonuses dependent on the quantitative results of inspection activity, amount to as little as **1.4%** of an inspector's pay - a statement which does not seem to be true. This unevicenced assertion has likely been quoted with the intention of misleading Spanish citizens, and others.

Consider three facts:

- On 20 December 2024, Hacienda's Director General wrote to Amsterdam & Partners, quoting the so-called statistic: **1.4%**
- On 9 April 2025, Hacienda's leadership signed an agreement with most of the trade unions, to pay an additional €125 million in bonuses to staff, provided specified targets for personal income tax and VAT collections are met.

- One month later, on 5 May 2025, Hacienda repeated, for journalists, that only **1.4%** of staff pay depends on quantitative results.

It is obvious that this doesn't add up. Hacienda's leadership wants Spanish citizens to believe that the €125 million bonus deal **did not change** the proportion of staff pay dependent on tax collections. This does not seem to be possible. It is unlikely to be true. Is this *simulación* by Hacienda or just an honest mistake?

Consider some more facts:

- Hacienda employs around 25,000 staff. So, the bonus pool of €125 million is worth approximately €5,000 per employee, if it is distributed equally to all staff. Of course it will not be distributed equally.

Some will get much more than others.

- If Hacienda's leadership told the truth on 5 May 2025, their staff are extraordinarily well paid. The calculation is simple: if €5,000 equals just **1.4%** of average staff pay, average pay must be €357,000. This does not seem to be likely. Is this *simulación* as well, or just another honest mistake? Perhaps a presentational error? A misunderstanding?
- Hacienda leadership has refused, repeatedly, to reveal to taxpayers the full details of the bonus arrangements for staff. It is said to have ignored the Resolution of the Council of Transparency and Good Governance to publish. It was finally ordered by a Madrid court in 2022 to explain the bonus system, but it has kept most of the details secret. The leadership continue to withhold information that has been requested.
- Hacienda salaries and bonuses are paid out of taxpayers' money. Taxpayers have a right to know how their money is spent.

The bonus deal signed on 9 April 2025 is

only part of the picture. There are other financial arrangements that are not affected by the new scheme. Hacienda does not disclose the details, but the arrangements are in place, nonetheless.

Hacienda's credibility and its veracity are on the line. There is only one honest course of action for its leadership to take: to **publish the full facts**.

Until the full facts are known, everyone will believe what they want to believe. Some will cling to the idea that Hacienda must be telling the truth, even though it is difficult to imagine how it all adds up. Some will be convinced that Hacienda's leadership is in denial. Others will believe that they are simply lying.

No one will know until the data are published. The full data.

Hacienda has the data. If it won't publish them, its books should be opened up to truly **independent scrutiny** by a firm that is outside the reach of Hacienda's weapon of fear: the punishment audit.

Form 347 - When tax compliance becomes a tool of surveillance

Spain prides itself on having one of the most digitally advanced tax systems in Europe. But beneath the surface of administrative efficiency, a dangerous shift is taking place – one that risks turning citizens into permanent subjects of algorithmic suspicion. At the centre of this shift is what seems like an innocuous bureaucratic form: Form 347.

What was once a targeted tool to detect VAT carousel fraud has evolved into something far more intrusive – a cross-referenced data engine that silently records, aggregates, and interprets the private lives of millions of people. Every business and every professional is required to report every client and supplier with whom they

transact more than €3,005.06 annually. That will be a long list, but of particular concern is the fact that it facilitates scrutiny of an individual's choice of lawyers, therapists, fertility clinics, religious organisations, political consultants – even sexual health providers.

While the form cannot collect content or diagnoses, the identities of service providers

alone often reveal everything. With the right algorithm – and the Agencia Tributaria is spoilt for choice – it becomes possible to process this so-called meta data to infer a person's mental health status, reproductive choices, religious affiliation, political activity, or personal relationships. These are not just fiscal breadcrumbs. They are deeply sensitive, constitutionally protected aspects of identity.

Even more troubling, these inferences occur without notification, consent, or real avenues for challenge – most reading this will have no idea that this process has already been happening since the 1990s; a more innocent time before big data and AI. This data is no longer siloed for VAT fraud detection; it is merged with other declarations (income, assets abroad – e.g., infamous Form 720) and used to score, profile, and target taxpayers. The result is a system in which

the Agencia Tributaria operates as a predictive intelligence agency, not merely a revenue collector.

And it does not stop there. Spain's tax databases are a tempting resource for other state bodies – what Americans euphemistically call the TLAs (Three Letter Agencies – NSA, FBI, CIA). We cannot assume such access is not occurring in Europe, nor can we dismiss the possibility that this infrastructure could one day be used against political opponents, journalists, or wider civil society. It may already be happening in Spain.

Under EU law, including the General Data Protection Regulation (GDPR), data revealing a person's health, beliefs, or private life enjoy the strongest legal safeguards. The Agencia Tributaria's practices – while technically lawful – skirt the spirit of those protections (like so many of their practices). Every taxpayer is a potential

audit target in waiting.

The Agencia Tributaria's system appears to operate under a compliance paradigm: what is permitted by law is presumed acceptable, even if it raises ethical red flags. There is no evidence from publicly available information of any proactive ethical reflection of the dangers of indirect inferences from sensitive data, psychological or behavioural profiling, or transparency of AI decisions, no sign that the Agencia Tributaria currently has, or proposes, any institutional framework explicitly focused on data or AI ethics within its organisational structure, internal policies, or public-facing communications.

Maybe there are algorithm auditors, an AI governance framework, an oversight board. If so the Agencia Tributaria should be showing them off. These features are increasing found in other comparable countries.

If Form 347 isn't bad enough, Spain is now at the vanguard of real-time invoice reporting in Europe, through its Suministro Inmediato de Información ("SII") system – a mandatory, instant, electronic VAT reporting regime that will further transform how the Agencia Tributaria accesses and processes transaction-level data, and then aggregates, cross-references, and analyses this data.

This is a wake-up call. Spanish citizens must consider how far they are willing to let technology and bureaucracy intrude into the private sphere: the tax system must not become a backdoor to permanent fiscal surveillance. No one should have to choose between fulfilling their legal obligations and surrendering the most intimate contours of their life to the invisible eye of the state. If Spain is to move back towards a more democratic model of fiscal citizenship, these issues need to be addressed and resolved by consensus.