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Failure to send information message by SMS or email regarding e-notification will not affect term or validity

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› Background

› Decision

› Comment

Background

The amendments made in Notification Law 7201 in 2019 expanded the scope of persons notified by e-notifications to include:

- public institutions and organisations;
- lawyers;
- notaries;
- experts; and
- mediators.

Following this development, the Regulation on Notification via Electronic Means came into force in 2019.

Both the Notification Law and the Regulation on Notification via Electronic Means provide that "the electronic notifications are deemed to have been served by the end of the fifth day upon their delivery to the addressee's electronic address".

This rule has been interpreted differently and, therefore, some contradictory decisions have been rendered. For example, one of the decisions of the Ninth Chamber of the Supreme Court gave rise to uncertainty as it accepted the date on which the notification was viewed as the notification date. However, the same chamber revoked its decision following opposition by the defendants, and it provided clear legal guidance that e-notifications will be deemed to have been served by the end of the fifth day following their delivery, regardless of whether the addressee has viewed the e-notification. Thus, there is a settled practice regarding the considered date of notification.

In practice, as an e-notification is sent, an additional information message is also sent to the addressee's mobile or email.

Decision

An application was made to the Council of State to eliminate the contradiction between the regional administrative courts regarding whether not sending the additional information message regarding the e-notification can affect the duration or validity of the e-notification.

Examining the application, the Council of State highlighted that the beginning of the five-day period is not the date of notification by SMS or email, but rather the date when the document that is the subject of the e-notification reaches the addressee's electronic inbox.

The Council of State also referred to the Constitutional Court's decision where it was ruled that the addressee can be aware of the notification by checking their inbox through the internet tax office. Therefore, there will be no loss of rights in terms of the period given before resorting to legal remedies if the addressee checks their inbox at five-day intervals.

Accordingly, the Council of State ruled that an informative message regarding the e-notification can be sent to the addressee's mobile phone number or email address registered in the e-notification system. However, under article 107/A of the Tax Procedure Law, not sending such an information message will not affect the duration or validity of the e-notification.

Comment

Although the decision is fitting, considering the regulations regarding e-notifications, it will require taxpayers and the other real and legal persons subject to said legislation to check their inboxes through the internet tax office at least every five days.

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