

Circular 3/ 2015

Value Added Tax

Barcelona, 19 January 2015

Dear Client,

28 November 2014 finally saw the publishing of the issue of the Spanish Official Gazette (*Boletín Oficial del Estado*, 'BOE') containing the reforms to the main state-wide taxes, which came into force on 1 January 2015.

In this Circular, we shall take a look at the main changes made with regard to Value Added Tax (VAT).

1) Waiver of property exemptions

The scope of application of the waiver of property exemptions is expanded, with there no longer being a requirement for the acquirer to be entitled to complete deduction of input tax, on the basis of the foreseeable use on acquisition of the property.

This puts an end to the commonly encountered obstacle found in day-to-day practice, in which taxpayers with an acknowledged entitlement to a partial deduction, as a result of the application of the prorate rule, saw their entitlement to opt for waiver of exemption vetoed.

2) Modification of tax rates

The VAT rate on healthcare products is modified, due to the need to bring Spanish regulations into line with the EU VAT Directive. The bulk of the products affected (medical equipment, devices, healthcare products and other instruments for medical or hospital

use) **move from being subject to the reduced rate of 10% to a rate of 21%**, with the reduced rate being maintained for those products that, due to their objective characteristics, are designed to alleviate or treat deficiencies, for the personal and exclusive use of persons with physical, intellectual or sensory disabilities, a listing of which is included in a new Section 8 to the Annex of Spain's VAT Act.

3) Modification of the tax base

To date, **in the case of insolvencies**, it was possible to reduce the tax base when the recipient had not paid the VAT charged, provided that, after the transaction's chargeable event, a court ruling declaring it insolvent had been issued. This **rectification to the taxable base needed to be made by the deadline established** by the regulation, which was within one month **of the publication in the BOE of the judicial ruling declaring insolvency**. This reform now means that **said deadline has been extended to three months**.

Additionally, **greater flexibility is given to the procedure for reducing the taxable base in the case of bad debts when the taxpayer carrying out the transaction is regarded as an SME** (i.e. whose turnover in the immediately preceding calendar year, as calculated in accordance with the provisions of Article 121 of Spain's VAT Act, has not exceeded 6,010,121.04 euros), **with it being possible to carry out this modification within six months of the chargeable event**, as had previously been the requirement, **or by the general one-year deadline contemplated for other businesses or professionals**. **Said modification must be made within three months of the expiration of the 6-month or one-year period**.

4) Modification and abolition of exemptions

Education exemption:

Application of the so-called 'education exemption' is extended to embrace childcare services in education centres provided in non-class hours, both during meal breaks and in the out-of-school-hours crèche, giving these services the same VAT treatment, irrespective of whether they are provided with own or external resources.

Exception to the exemption in the disposal of developed land or land undergoing development:

To date, the supply of developed land or land undergoing development, made by its developer, constituted one of the exceptions to the application of the exemption for the supply of land.

Now, however, the reforms have **eliminated the requirement for the supply to be made by the developer**, to guarantee the neutrality of the tax in disposals of developed land or land undergoing development, all of which are now non-exempt for VAT, irrespective of the capacity of the disposing businessperson, unless said land is intended for use solely as public parks, gardens or roads.

Exemption for Compensation Boards (*Juntas de Compensación*):

The exemption applicable to the supply and award of land made between Compensation Boards and owners is abolished, to eliminate the distortion caused by the different VAT treatment of said Boards' actions in development processes, depending upon whether their involvement was as trustees or otherwise. In this latter case, as the supply was VAT-exempt, a Board could not deduct input tax, thus making the development process more expensive.

Financial exemptions:

The exemption for services provided by notaries public (*fedatarios públicos*), including Property and Company Registrars, in connection with VAT-exempt transactions, is abolished. This is due to the need to bring Spanish law into line with EU law. The EU VAT Directive contemplates an exemption for financial services. For example, the granting of a loan and the sale of shares are VAT-exempt transactions. On the other hand, a notary public's involvement chiefly consists in the preparation of public documents to guarantee their authenticity and accuracy. Although these services are provided with regard to financial transactions, they are clearly different in nature and may not therefore take advantage of the exemption for financial transactions.

5) The supply without consideration of promotional printed matter or objects.

The supply of promotional objects, when the total cost of the supplies made to a single recipient over the course of a calendar year does not exceed a specific amount, is regarded as a **transaction that is not subject to VAT**. In other cases, i.e. those exceeding the established limit, said supply shall be subject to VAT, unless supplied to other taxpayers for redistribution free of charge. As a result of this change, **the aforementioned limit**, which previously stood at 90.15 euros, **has been increase to 200 euros**.

6) The place of supply of goods subject to installation or assembly

The supply of goods that shall be subject to installation or assembly before being made available **shall be taxed for VAT**, when the installation is completed in the territory in which the tax is applicable, provided that the installation or assembly entails the immobilisation of the goods supplied.

This is **irrespective of whether the installation cost exceeds 15% of the total associated consideration**. This means that the requirement for the quantification of the installation cost for subjecting it to VAT in Spain has been abolished. It is enough for the supply of the goods to be installed or assembled and for said assets to be immobilised in the territory in which VAT is applicable for the transaction to be located in it and thus subject to the tax.

7) Expansion of the cases of reverse charge

The cases of the reverse charge are expanded for the supply of products such as **mobile phones, videogame consoles, portable computers and digital tablets, as well as silver, platinum and palladium**.

In the case of mobile phones, videogame consoles, portable computers and digital tablets, entitlement to the reverse charge is subject to the recipient being a businessperson or professional acting as reseller of these goods (irrespective of the amount of the supply), or being a businessperson or professional (when the total amount of the supply made thereto, documented in a single invoice, exceeds 10,000 euros, excluding VAT).

The measure also entails an added burden for the vendor business or professional: the duty to ascertain, prior to or simultaneously with the supply, the business or professional status of the purchaser and that it is acting within the scope of its economic activities.

This change **comes into force on 1 April 2015**.

8) Change in place of supply rules

New place of supply rules are established for telecommunications, radio broadcast and television services and for the provision of services supplied by electronic means, when they are provided to a person that is not regarded as a businessperson or professional acting as such. Such services are now taxed in the place where the recipient is established or has its domicile or habitual residence, irrespective of where the provider of the service is established, according to the provision to this end in the VAT Directive.

As a result, **all telecommunications, radio broadcast or television and electronic services shall be taxed in the Member State in which the recipient is established**, whether the latter is a businessperson or professional or a person who does not possess this status, and whether or not the provider of the service is a businessperson established inside or outside the EU.

9) Modification of VAT on imports

Regulations mean that some operators may now **defer payment of the tax until the filing of the associated assessment return (Modelo 303)** by including said input tax in the return, without having to make payment at the time of importing. However, the scope of application of this option has been restricted in regulations to businesspersons and professionals whose assessment period coincides with the calendar month.

Those who wish to opt for the scheme should do so, generally speaking, in the month of November prior to the commencement of the calendar year in which it is to be in effect. For the **first year, 2015**, they may do so until **31 January 2015**, by marking Box 530 in the Modelo 036 form.

10) Special scheme for travel agents

Changes in the scheme in comparison with that in force until 31 December 2014:

- **Its application with regard to the transactions carried out by any businessperson or professional is established**, provided that the following requirements are met: acting on one's own behalf with regard to travellers and use in the product of goods or services supplied by other businesspersons or professionals.

- **The second cause for exclusion from the scheme, that of the sale to the public by retail travel agents of products organised by wholesale agents is eliminated**. Now, only the first cause remains: transactions carried out using exclusively for the provision for the product one's own means of transport and/or catering/accommodation.

- **The global method for establishing the tax base globally has been abolished**, with only the transaction-by-transaction method remaining in force.

- **Disappearance of the current scheme for charging the tax, whereby it was possible to charge on the invoice 6% of the VAT falling due** when the recipient was a businessperson or professional and the supply of goods or provision services was limited to the spatial scope of the application of the tax. So, henceforth, taxpayers shall not have an obligation to detail separately on the invoice the tax charge, which must, where applicable, be deemed included in the transaction price, although mention must be made on the invoice of the 'special travel agents scheme'.

- **Establishment of the possibility, to be exercised on a transaction-by-transaction basis, of applying the general scheme for VAT**, provided that the recipient of the transaction is a businessperson or professional that is, to some degree, entitled to the deduction or reimbursement of input tax.

11) Modification of the scheme for groups of undertakings

Explicitly established is the possibility of regarding a whole group of undertakings as a single taxpayer when it features, simultaneously, **financial, economic and organisational links**. The financial link requires **effective control** of the undertakings by means of a stake, direct or indirect, of **more than 50%** in the capital or voting rights thereof.

Lastly, it should be noted that the reform establishes a **transitional regime** by means of which those undertakings currently taking advantage of the scheme that **do not meet the new link requirements, may continue to take advantage of the scheme until 31 December 2015** subject to the link requirements set by the previous regulations.

12) Exclusion from certain special schemes

Simplified scheme:

With effect **from 1 January 2016, the limit allowing taxpayers to opt for this scheme is reduced:**

The amount of income in the immediately preceding year (2015) for overall business and professional activities, excluding agricultural, forestry and livestock activities, falls from 450,000 to **150,000 euros**.

The amount of income in the immediately preceding year (2015) for overall agricultural, forestry and livestock activities falls from 300,000 to **250,000 euros**.

Remember that the calculation of overall income includes the entirety of the income obtained from the aforementioned activities as a whole. Nevertheless, **this calculation does not include working capital or capital grants, compensation or VAT**.

Another cause for exclusion relates to the amount of acquisitions and imports of goods and services for the overall business or professional activities taking advantage of the scheme, excluding those associated with fixed assets. Also reduced is the quantitative limit, when these exceed in the immediately preceding year the sum of **150,000 euros per annum excluding VAT** (previously, the figure was 300,000 euros).

Special scheme for agriculture and fisheries:

With effect **from 1 January 2016, the limit allowing taxpayers to opt for this scheme is reduced:**

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Those business persons and professionals whose acquisitions and imports of goods and services for their overall business or professional activities, excluding those associated with fixed assets, have in the immediately preceding year exceeded the sum of **150,000 euros per annum** (previously 300,000 euros), **excluding VAT**.

As always, we will be pleased provide any clarification you may require with regard to this circular. If necessary, in addition to the professionals who normally work with your company, you are welcome to contact Lorena Marquina, Judit Rosell and Sergi Fandos.

Best regards,
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