



VAT NEWSLETTER

FEBRUARY 2026

I. REGULATIONS AND NEW DEVELOPMENTS

Repeal of Royal Decree-Law 16/2025: extraordinary deadline for opting out of the SII and REDEME system no longer applies

As reported in a previous bulletin, Royal Decree-Law 16/2025 introduced various tax measures, including the establishment of an extraordinary deadline, until January 31, 2026, to opt out of keeping VAT records through the SII and to request voluntary withdrawal from the REDEME with effect in 2026, outside the ordinary deadlines.

This measure was part of the context generated by the implementation of Veri*factu in 2026, which led certain taxpayers to opt for the SII or the REDEME as an alternative to Veri*factu, an obligation that was ultimately postponed to 2027.

However, this Royal Decree-Law has not been validated by the Congress of Deputies, which means that it has been repealed and all the measures it contained have ceased to be valid, as they have not subsequently been incorporated into a law.

As a result, the extraordinary deadline for opting out of the SII and requesting withdrawal from the REDEME has disappeared, and the general deadlines and conditions set out in the VAT regulations are once again applicable.

This situation leaves open the question of how the Spanish Tax Agency (AEAT) will treat requests for opting out or deregistration that were submitted during January under the now repealed exceptional regime, particularly in relation to the obligation to keep VAT records through the SII from January 1, 2026.

We will keep you informed of any administrative criteria or pronouncements that may clarify this situation.

II. EUROPEAN UNION CASE LAW

Judgment of January 22, 2026, of the Court of Justice of the European Union. Cases C-379/24 (Agrupació de Neteja Sanitària, A. I. E.) and C-380/24 (Educat Serveis Auxiliars, S. C. C. L.)

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Supply of services by autonomous groups of persons carrying out an exempt activity — Services directly necessary for the exercise of the exempt activity — Risk of distortion of competition — Cleaning services in the health and education sectors —

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The judgment resolves two questions referred for a preliminary ruling by the High Court of Justice of Catalonia in the context of disputes concerning the VAT liability of cleaning services provided by an economic interest group and a cooperative to their respective members, who carry out exempt activities in the health and education sectors.

The Spanish tax authorities had refused to apply the exemption provided for in Article 20.1.6 of the VAT Law, transposing Article 132.1.f) of Directive 2006/112/EC, on the grounds that, on the one hand, that the services were not provided directly by the groups, as an essential part of them had been subcontracted, and, on the other hand, that those services were not directly and exclusively necessary for the exempt activity of the members, as they were general services that could be used in any type of activity, which, in its opinion, created a risk of distortion of competition.

With regard to the requirement that the services be “directly necessary” for the exercise of the exempt activity, the Court of Justice recalls that the exemptions in Article 132 of the VAT Directive must be interpreted strictly, but in a manner consistent with their purpose and without depriving them of their effectiveness. In that regard, it states that Article 132(1)(f) does not require that the services provided by the group be exclusive or specific to the exempt sector, or that they constitute an indispensable contribution to a specific transaction, but only that they contribute directly to the exercise of the exempt activity of the members.

The Court emphasizes that the wording itself and the systematic context of the Directive—in particular, the fact that the requirement of indispensability is expressly mentioned in Article 134 for other exemptions, but not in Article 132(1)(f)—confirm

that a link of exclusivity cannot be required. In this regard, it considers that general services, such as cleaning, may be directly necessary for activities of general interest such as healthcare and education, particularly in view of the specific hygiene and operational requirements inherent in those sectors and the technical and complex nature of the services at issue.

With regard to the requirement of no distortion of competition, the Court states that Article 132.1.f) precludes a national interpretation which presumes, in a general and automatic manner, the existence of a distortion or risk of distortion of competition merely because the services provided by the group are of a general nature and may also be used in taxable activities. The assessment of a possible distortion must be made on a case-by-case basis and cannot be based on a general and irrefutable presumption linked to the non-exclusivity of the service.

Consequently, the Court of Justice concludes that Article 132(1)(f) of Directive 2006/112/EC precludes both national legislation that systematically excludes from the exemption services that are directly necessary because they are not exclusive to the exempt activity, and an interpretation that automatically equates the non-exclusivity of the service with the existence of a distortion of competition.

Judgment of December 11, 2025, of the Court of Justice of the European Union. Case C-796/23 (Česká síť)

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 9(1) — Concept of “taxable person” — Members of a civil law partnership without legal personality — Article 193 — Determination of the taxable person liable for payment of the tax.

The judgment resolves a preliminary ruling requested by the Nejvyšší správní soud (Supreme Administrative Court of the Czech Republic) concerning the determination of the taxable person liable for VAT in the context of cooperation between several entities which, under Czech civil law, constituted a civil law partnership without legal personality.

The main proceedings were between Česká síť s. r. o. and the Czech tax authorities, which had issued additional VAT assessments and penalties to that company in its capacity as the "designated partner" of a civil partnership formed together with Czech branches of several US companies. The administration considered that Česká síť was liable for VAT not only for its own transactions but also for the services provided by the branches, under national legislation which attributed all the VAT obligations of the partnership to the designated partner.

In the facts of the case, the branches provided Internet access services to end customers in the Czech Republic, acting in their own name, concluding contracts with those customers, and recording the corresponding income. Česká síť, for its part, provided infrastructure and other organizational resources, but did not appear as a contracting party vis-à-vis the end customers, nor was it apparent that it acted as an agent of the branches in those relationships.

The referring court asked the Court of Justice whether Articles 9(1) and 193 of Directive 2006/112/EC preclude national legislation which allows VAT to be charged to the designated partner for transactions carried out by other partners who have dealt directly with the end customers, and whether it was relevant that those partners had acted in their own name, outside the rules on representation of civil partnerships laid down in national law.

The Court of Justice points out that the concept of a "taxable person" for VAT purposes is based on the independent exercise of an economic activity, which requires identifying who acts in their own name and on their own behalf, under their own responsibility and assuming the economic risk of the activity. Furthermore, in accordance with Article 193 of the VAT Directive, the person liable for the tax is, in principle, the taxable person who supplies the goods or services subject to tax.

The Court emphasizes that the mere existence of cooperation, even close cooperation, between several entities within the framework of a civil partnership without legal personality does not automatically mean that all of them must be considered taxable persons for the transactions carried out by only one of the partners. It is decisive to identify who acted as the service provider vis-à-vis the final customer and who carried out the economic activity independently.

In light of the facts presented by the referring court, the Court observes that the branches acted on their own behalf vis-à-vis the customers, concluded the contracts, performed the taxable services, and assumed the corresponding economic risk, without there being any evidence that Česká síť presented itself to the customers as a supplier or acted as a representative of the civil partnership in those transactions. The fact that the branches did not comply with the civil rules on representation of the company in their dealings with third parties is irrelevant for the purposes of determining the person liable for VAT.

The Court adds that only if the conditions of Article 11 of the VAT Directive (VAT group) are met or if there is a purely artificial arrangement constituting abuse could different treatment be justified, which is a matter for the national court to assess.

Consequently, the Court concludes that Articles 9(1) and 193 of Directive 2006/112/EC preclude national legislation which, as a matter of principle, attributes to the "designated partner" of a civil law partnership without legal personality the status of VAT debtor for taxable supplies made by other partners who have acted in their own name vis-à-vis the final customers, regardless of whether or not they have infringed national rules on civil representation.



Judgment of December 3, 2025, of the General Court. Case T-646/24 (MS Ključarovci)

Preliminary ruling — Harmonization of tax laws — Common system of VAT — Articles 41 and 42 of Directive 2006/112/EC — Place of an intra-Community acquisition of goods — Article 141(c) of Directive 2006/112 — Triangular transaction — Simplification measure — Chain of supplies involving four operators identified in three different Member States — Taxable person who is or should be aware of transactions constituting abuse of the VAT system.

The judgment answers three questions referred for a preliminary ruling by the Upravno sodišče (Administrative Court of Slovenia), whose request was forwarded to the General Court in accordance with Article 50b of the Statute of the Court of Justice of the European Union. The main proceedings are between the Slovenian company MS Ključarovci d.o.o., in bankruptcy, and the Slovenian tax authorities, concerning the adjustment of VAT arising from intra-Community transactions carried out in 2015 and 2016.

MS Ključarovci purchased goods from suppliers established in Germany and resold them to companies identified for VAT purposes in Denmark. The goods were transported directly from Germany to Denmark and were organized and financed by MS. This company communicated its VAT identification number in Slovenia to the German suppliers and applied the simplification measure provided for triangular transactions, without identifying itself for VAT purposes in Denmark and issuing reverse charge invoices.

Through administrative cooperation, the Danish authorities reported that the Danish companies had not declared the intra-Community acquisitions or paid the corresponding VAT and that they had no real activity, being classified as missing traders. The investigation also revealed that the goods were ultimately made available to another Danish company, so that the actual transaction was structured as a chain of supplies involving four operators, under a single intra-Community transport. As a result, VAT was not paid in any Member State.

The referring court asked, in essence, whether Article 141(c) of Directive 2006/112/EC requires the goods to be physically transported to the third operator in a triangular transaction, whether the second operator's knowledge of the final destination of the goods affects the application of the simplification, and whether a taxable person who knew or should have known that he was participating in fraud can benefit from that measure and from the reduction of the taxable amount provided for in Article 41 of the Directive.

The General Court recalls that the simplification applicable to triangular transactions is an exception that must be interpreted strictly, but that the concept of "supply of goods" in Article 14(1) of the VAT Directive does not require the physical receipt of the goods by the purchaser. Consequently, Article 141(c) does not require the goods to be physically transported to the third operator, and that requirement may be considered to be fulfilled even if, in the context of a single transport operation, the goods are sent directly to the customer of the third operator identified in the same Member State.





The Court adds that the fact that the operator invoking the simplification is aware that the goods are being transported to the third party's customer, and not to the third party itself, does not affect compliance with the requirement of Article 141(c), since the classification of the transaction must be based on its objective characteristics.

However, the General Court emphasizes that the principle of prohibition of abuse of rights prevents a taxable person from benefiting from the provisions of the common VAT system where it is established that he knew or should have known that he was participating in VAT fraud. In such a case, it is for the Member State which issued the VAT identification number used for the intra-Community acquisition to refuse the taxable person the benefit of the scheme provided for in Articles 42 and 141 of the Directive, as well as the reduction in the taxable amount provided for in the second paragraph of Article 41.

In the main proceedings, the General Court considers that the Slovenian tax authorities could, if such knowledge or obligation to know was established, refuse MS Ključarovci the benefit of the simplification and require the corresponding VAT to be paid in Slovenia.

Judgment of December 11, 2025, of the Court of Justice of the European Union. Case C-121/24 (Vaniz)

Preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 205 — Joint and several liability — Insolvency of the principal debtor — Maintenance of the obligation to pay VAT — Joint and several liability of a third party following the cancellation of the principal debtor's registration in the Commercial Register — Principle of legal certainty — Principle of proportionality.

The judgment answers several questions referred for a preliminary ruling by the Administrativen sad Veliko Tarnovo (Administrative Court of Veliko Tarnovo, Bulgaria) on the interpretation of Article 205 of Directive 2006/112/EC and its compatibility, in a specific situation, with the principles of proportionality and legal certainty.

The main proceedings are between Vaniz EOOD, a Bulgarian company engaged in road haulage, and the Bulgarian tax authorities. In 2017, Vaniz purchased trucks and rented vehicles from its supplier Stars International EOOD, which issued 35 invoices with VAT. Stars included the transactions in its returns, and Vaniz deducted the input VAT. However, the VAT declared by Stars was not paid to the tax authorities.

Subsequently, insolvency proceedings were opened against Stars (2019), which concluded with a ruling on August 4, 2020, ordering the cancellation of its registration in the Commercial Register. On January 17, 2022, the Administration initiated an inspection of Vaniz to declare its joint and several liability for the VAT not paid by Stars, under the national regime (Article 177 of the ZDDS), on the grounds that Vaniz knew or should have known, at the time of exercising the deduction, that the VAT would not be paid. A supplementary assessment was issued to Vaniz for BGN 217,277.82 (approx. €111,092), plus default interest of BGN 114,365.21 (approx. €58,474).

The referring court asked, in essence, whether Article 205 allows proceedings to be brought or continued to declare joint and several liability after the principal debtor has ceased to exist legally (due to deregistration following bankruptcy proceedings), and whether this is compatible with the principles of proportionality and legal certainty, particularly in view of the risk that the third party's situation may be reviewed in an unpredictable or indefinite manner.

The Court of Justice recalls that Article 205 empowers Member States to provide, in order to ensure the effective collection of VAT, that a person other than the principal debtor is jointly and severally liable for payment of the tax, with it being for the Member States to specify the conditions and procedures, while respecting the general principles of EU law, in particular proportionality and legal certainty. In line with its case law (ALTI), the Court emphasizes that this joint and several liability may be triggered where it is established that the person required to pay knew or should have known, at the time when he exercised his own right to deduct, that the principal debtor would not pay the VAT.

As regards the question of time, the Court states that the disappearance of the VAT debtor as a legal entity does not in itself affect the possibility of demanding payment from the jointly and severally liable co-debtor: by the very nature of joint and several liability, the disappearance of one of the debtors does not extinguish the obligation of the others. Furthermore, allowing joint and several liability to be enforced only while the principal debtor exists would jeopardize the effectiveness of Article 205, as it could facilitate liquidation strategies to avoid third-party liability.

From the perspective of proportionality, the Court considers that the possibility of demanding joint and several liability after the disappearance of the principal debtor does not go beyond what is necessary to ensure effective collection, especially in situations of insolvency or disappearance of the debtor.

With regard to the principle of legal certainty, the Court requires, on the one hand, that national legislation be clear and predictable as to the possibility of claiming against a third party even after the cancellation of the principal debtor; and, on the other hand, that the situation of the third party not be reviewable indefinitely, which is normally articulated through reasonable limitation periods. In this case, the Court notes that, according to the order for reference, Bulgarian law expressly provided for both (i) the liability of the recipient who deducted VAT if they knew or should have known about the non-payment (Art. 177 ZDDS) and (ii) that the deregistration of the debtor does not extinguish the public debt when there is a liable third party (Article 168 DOPK), and that the administrative action had taken place within the national limitation period, a point to be verified by the referring court.

Consequently, the Court concludes that Article 205 of the VAT Directive, in the light of the principles of proportionality and legal

certainty, does not preclude national legislation which allows joint and several liability to be imposed after the principal debtor has ceased to exist as a legal entity, if it is established that the third party, at the time when it exercised its right to deduct, knew or should have known that the debtor would not pay the VAT.

III. DOMESTIC COURT RULINGS

Order of the Supreme Court (Contentious-Administrative Chamber, First Section) of January 14, 2026

Appeal No. 9505/2024 (Porcelanosa Grupo AIE)

The Supreme Court ruling of January 14, 2026 (ATS 341/2026, rec. 9505/2024) admits for consideration an appeal filed by Porcelanosa Grupo AIE against the ruling of September 18, 2024, of the High Court of Justice of the Valencian Community (appeal 917/2023), which confirmed the inadmissibility of the deduction of VAT paid by an economic interest group (AIE) on the acquisition of certain goods and services related to customer service for its member companies.

The dispute arises from a VAT adjustment for the period 08/2019, processed through a limited verification procedure initiated on December 7, 2020, by the Large Companies Management Unit of the Spanish Tax Agency (AEAT) in Valencia. The Administration denied the deduction of the VAT paid on the grounds that these expenses—food, beverages, and other services associated with customer service—were included in the restrictions on the right to deduct under Article 96.1 (in particular, 96.1.5) of the VAT Law.

The AIE argued, however, that the exception in Article 96.2 (sections 2 and 3) of the VAT Law was applicable, insofar as these goods and services were purchased as part of its cost





centralization function and subsequently re-invoiced to its partners, with the corresponding tax impact. The appealed judgment expressly defined the context: the EIG provides intra-group services (sales, intermediation, marketing, promotion, coordination of fairs and events, etc.), passes on the costs incurred to its partners, and operates on a “zero balance” basis, without profit.

The lower court ruling rejected the application of the exception on the grounds that, even though there was re-invoicing, the requirement that the subsequent transaction be carried out “for consideration” was not met. In particular, it linked consideration to the existence of profit or margin, reasoning that if the EIG acts merely as a cost centralizer and re-invoices for the exact cost of the goods and services, “it does not appear” that there is consideration in the sense required by Article 96.Two LIVA, so there would be no exception to the general rule of non-deductibility in Article 96.1.

In response to this interpretation, the appellant prepared an appeal alleging infringement of Articles 4 and 96.2 LIVA, as well as Articles 2 and 168.a) of Directive 2006/112/EC. It argues that the contested judgment interprets the concept of a transaction carried out “for consideration” in a manner incompatible with

EU law, by making it subject to the obtaining of profit, when, according to the case law of the CJEU cited in the order itself, that concept requires the existence of a direct relationship between the service and a consideration actually received, it being irrelevant whether the price is higher or lower than the cost.

The Supreme Court considers that there is an objective interest in cassation for the formation of case law, as it considers that the issue in dispute affects a large number of situations, given the widespread business practice of centralizing and re-invoicing costs in group structures, and because the interpretation adopted in the lower court has a direct impact on EU law, insofar as onerousness is an autonomous concept of the common VAT system and its definition affects the principle of neutrality and the scope of the right to deduct.

The Court also emphasizes that, although there is previous case law on Article 96 of the VAT Law, this has been developed predominantly in cases where the subsequent transaction was free of charge (without consideration), whereas the question now raised focuses on determining whether re-invoicing with tax impact, even if carried out at cost and without margin, can be classified as a transaction carried out “for consideration” for the purposes of the exception in Article 96.2 of the VAT Law.

Consequently, the Supreme Court admits the appeal and sets as the question to be resolved whether, for the purposes of Article 96.Two LIVA, the requirement of consideration necessarily requires the obtaining of a profit or margin by the person re-invoicing the goods or services, or whether the existence of consideration with VAT is sufficient, even when the amount re-invoiced coincides with the cost. The future cassation ruling must specify the scope of this requirement in accordance with EU law and the case law of the CJEU, in the interests of legal certainty and equality in the application of the law.

IV. ADMINISTRATIVE DECISIONS

Resolution of the Central Economic-Administrative Court. Resolution No. 003742/2024, of October 27, 2025, on the deductibility of input VAT not recorded in the Immediate Supply of Information (SII) system at the start of the inspection proceedings.

The Central Economic-Administrative Court (TEAC), in its resolution No. 00/03742/2024/00/0, rules on the scope of the right to deduct Value Added Tax (VAT) in cases of non-compliance with the formal obligations of the Immediate Supply of Information (SII), reiterating its restrictive criteria on deductibility.

The ruling arises from a general inspection procedure relating to several tax periods between 2017 and 2020, in which the Administration analyzes, on the one hand, the appropriateness of the equivalence surcharge on certain transactions carried out with retail customers and, on the other hand—and more importantly—the deductibility of input VAT declared on the taxpayer's Form 322 but not recorded in the books of invoices received via SII at the beginning of the inspection.

The controversy lies in determining whether the right to deduct VAT can be exercised when, even though the corresponding invoices exist and the tax has been effectively paid, those invoices had not been recorded in the input VAT register prior to the start of the administrative verification proceedings, even if they are recorded subsequently during the course of the proceedings.

In this regard, the TEAC makes a strict interpretation of Article 99.3 of Law 37/1992 on VAT, concluding that, when there is an audit or inspection, only those input VAT amounts that are duly recorded in the registers prior to the start of such proceedings are deductible in the assessments made.

In this context, the Court emphasizes that the SII is the system for keeping VAT records by providing them directly to the Tax Agency, and is not merely a formal obligation. Consequently, failure to provide the information through the SII is equivalent, for legal

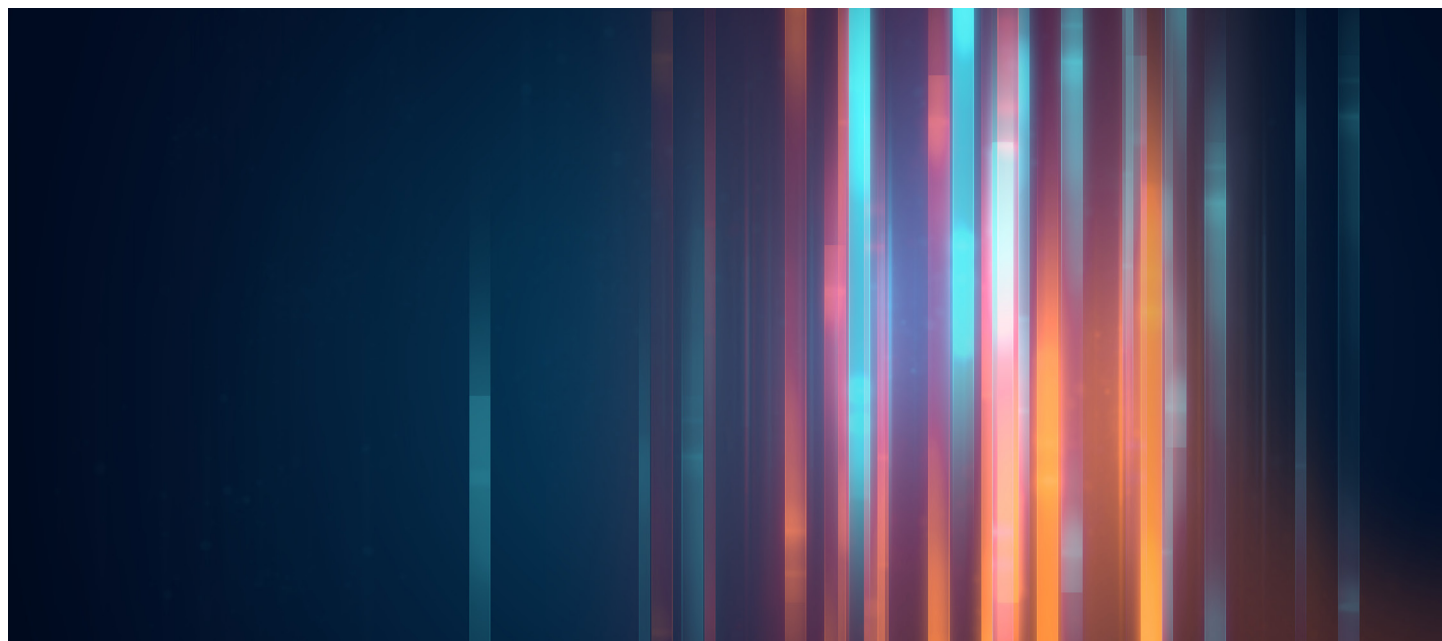
purposes, to the absence of accounting for the input tax, insofar as it prevents the Administration from verifying compliance with the material requirements for exercising the right to deduction.

On this basis, the TEAC concludes that input VAT that has not been recorded in the SII prior to the start of the inspection procedure cannot be deducted in the adjustment made by the Administration. However, this criterion is understood to be without prejudice to the taxpayer's right to subsequently exercise their right to deduction in the tax period in which they proceed to correctly register it in the SII, provided that the four-year limitation period to which the right to deduction is subject has not expired.

On the other hand, the Court expressly excludes intra-Community acquisitions of goods and other cases of reverse charge from this criterion, considering that such transactions do not generate a collection risk for the Treasury. In these cases, VAT is self-assessed by the taxpayer and its deductibility does not depend on the registration of an invoice in the SII.

Likewise, in relation to deferred import VAT, the Court introduces a key differentiation from the restrictive position held by the Inspectorate, which denied deductibility due to the failure to include the amounts paid in the SII at the time of the start of the verification procedure. Following the criteria of the TEAC itself, the Court applies the principles of full regularization and VAT neutrality and concludes that, when the Administration regularizes the VAT accrued on imports of goods, the right to deduct the VAT paid in the period in which the taxpayer was entitled to do so must be recognized accordingly, even when the amounts were pending payment or certain formal requirements of the SII had not been met, provided that the taxpayer's conduct was not abusive or fraudulent.

Applying this criterion, the Court partially upheld the claim and recognized the deductibility of import VAT (as there was no evidence of fraud, deceit, or abuse) and corrected an error in 2020 income in Álava, but upheld the rest of the adjustment made by



the Administration (non-deductibility of amounts not recorded in the SII and equivalence surcharge).

In addition, it annuls the entire penalty imposed (provided for in Articles 191 and 195 of the LGT) due to lack of subjective culpability. This is a mere formal breach without proven intent or negligence, given the complexity of the SII and the entity's cooperation.

However, the TEAC generally confirms the validity of the administrative adjustment made by the Inspectorate and reiterates that the prior registration of input VAT in the SII is an essential requirement for exercising the right to deduction when verification or inspection proceedings have already been initiated. In this regard, the ruling reinforces the role of the SII as an essential instrument of control, transparency, and legal certainty in the Spanish VAT system, specifying that failure to comply with formal registration obligations may not only give rise to penalties but also directly affect the exercise of the right to deduction.

V. BINDING CONSULTATIONS

V1983-25: Total spin-off in a real estate leasing company. Application of Article 7.1 of the VAT Law and, where applicable, real estate exemptions.

The Directorate-General for Taxation, in binding consultation V1983-25, of October 20, 2025, analyzes the VAT treatment of a total spin-off operation whereby a company engaged in real estate leasing (with a significant real estate portfolio and operating structure) is dissolved without liquidation, transferring its assets to two companies linked to the two family branches of the partners, with the aim of separating the activity into two asset blocks.

First, the DGT recalls that Article 7.1 of Law 37/1992 states that the transfer of a set of tangible and, where applicable, intangible elements that constitute an autonomous economic unit capable of carrying out a business or professional activity by its own means is not subject to VAT, requiring that the transfer be accompanied by the necessary organizational structure of production factors (material and/or human) that allows the activity to continue. On this basis, and in view of the information provided, the DGT indicates that it is not possible to conclude whether the elements transferred in each of the two blocks do, in fact, constitute an autonomous economic unit for the transferor.

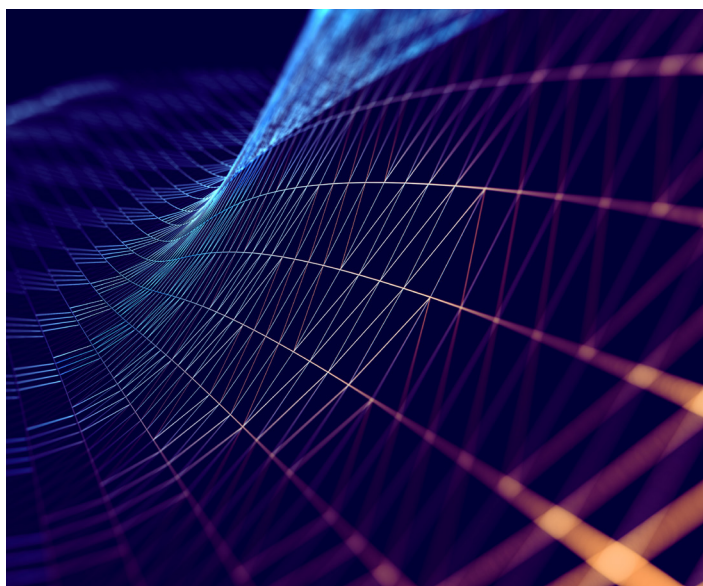
Consequently, the DGT points out that the transaction will only be exempt from VAT if the transfer of each block is accompanied by the aforementioned organizational structure in accordance with the terms of Article 7.1 of the VAT Law. Otherwise, the transfer would be subject to tax, and the taxation of each element would have to be analyzed in accordance with its specific regime. In particular, if land and buildings are transferred, the exemptions in Article 20.One.20 (certain types of land) and 20.One.22 (second and subsequent deliveries of buildings) may be applicable, without prejudice to the possible waiver of such exemptions in accordance with Article 20.Two. Likewise, the DGT points out that, if the exemption is waived, the reverse charge mechanism provided for in Article 84.1.2.e) of the VAT Law would apply.

With regard to the Tax on Property Transfers and Documented Legal Acts, the DGT indicates that Articles 19, 21, and 45.I.B) 10 and 11 of the Consolidated Text of the ITP and AJD (Royal Legislative Decree 1/1993) must be taken into account. In particular, it notes that Article 19 subjects, in the form of corporate transactions, the incorporation, increase and decrease of capital and dissolution of companies, while establishing that restructuring transactions are not subject to tax. For these purposes, Article 21 considers restructuring operations to include, among others, spin-offs, under the terms provided for in the Corporate Income Tax regulations. However, the DGT specifies that, in the case analyzed, the proposed transaction is not considered a restructuring transaction, and therefore the exemption provided for such transactions in Article 19.2 of the TRLITPAJD does not apply.

On that basis, the DGT concludes that the proposed total spin-off constitutes a transaction subject to the corporate transactions modality (Article 19.1 TRLITPAJD), although it adds that it will not give rise to effective taxation under that modality as there is no tax base in this specific case. In this regard, it recalls that Article 25.4 of the TRLITPAJD establishes that, in the event of dissolution, the tax base coincides with the actual value of the assets and rights delivered to the shareholders, without deduction of expenses and debts; and points out that, in the total spin-off examined, even if the consulting company is dissolved, no assets or rights are transferred to the partners, since the spun-off assets are contributed en bloc to two existing companies.

In short, VAT taxation will depend on whether what is transferred constitutes (in each block) an autonomous economic unit for the purposes of Article 7.1 of the VAT Law, otherwise the transaction will be subject to possible application of real estate exemptions, waiver, and reverse charge. For ITP and AJD purposes, the transaction is not considered a restructuring for these purposes and is therefore subject to corporate transactions, although no tax is payable due to the absence of a tax base, as no assets or rights are allocated to the partners in the case described.





V2005-25: VAT on contributions to a SCRAP and treatment of deposits in SDDR (closed and open) for reusable packaging.

The Directorate General for Taxation, in binding consultation V2005-25 of October 27, 2025, analyzes the VAT treatment of (i) the financial contribution paid by producers to a collective extended producer responsibility system (SCRAP) for packaging; (ii) its possible transfer to the customer in the sale of the packaged product; and (iii) the treatment of the deposit associated with reusable packaging in deposit, return, and refund systems (SDDR), both closed and open, including the implications in terms of modification of the tax base, rectification of quotas, and the right to deduct from the SCRAP.

Firstly, the DGT assumes that the SCRAP has the status of entrepreneur or professional for VAT purposes and points out that the financial contribution paid by producers constitutes consideration for a service provided by the SCRAP in the context of compliance with the obligations arising from the RAP, and is therefore subject to tax in accordance with Article 4.One of Law 37/1992. The tax base will be determined by the total amount of this contribution, in accordance with Article 78.1. As for the tax rate, the DGT concludes that, since the main obligation of the SCRAP is the management of packaging waste, the reduced rate of 10% provided for in Article 91.1.2.5 of the VAT Law for services of collection, transport, recovery, or disposal of waste is applicable.

With regard to the transfer of the contribution to the customer, the DGT clarifies that, in accordance with Article 78.One, if the parties agree that the purchaser shall pay the amount of the financial contribution, said amount shall be included in the consideration for the supply of the product and, therefore, in the VAT taxable base for said supply, regardless of whether it is identified separately on the invoice.

Next, the consultation addresses the treatment of deposits for reusable containers. In closed SDDRs, the DGT recalls that

Article 78.Two.6^o includes in the concept of consideration the amount of containers and packaging, even those that are returnable, so that the deposit charged to the customer forms part of the taxable base of the supply. When the container is returned, the tax base will be reduced by the corresponding amount, pursuant to Article 80.One.1, and the taxpayer must rectify the amounts charged in accordance with Article 89 of the VAT Law and the regulatory invoicing rules. In open SDDRs, the DGT distinguishes between the deposit received from the customer (which is also included in the taxable base of the supply pursuant to Article 78.Two.6) and the financial deposit mechanism managed through SCRAP; in the latter case, it points out that the exercise by the customer of the right to receive the transfer of the financial deposit does not, in itself, determine a transaction subject to VAT. However, if the product supplier accepts the return of the packaging under the open SDDR and this alters the consideration, the DGT considers that the modification of the tax base in accordance with Article 80.Two is applicable, with the corresponding rectification under the terms of Article 89.

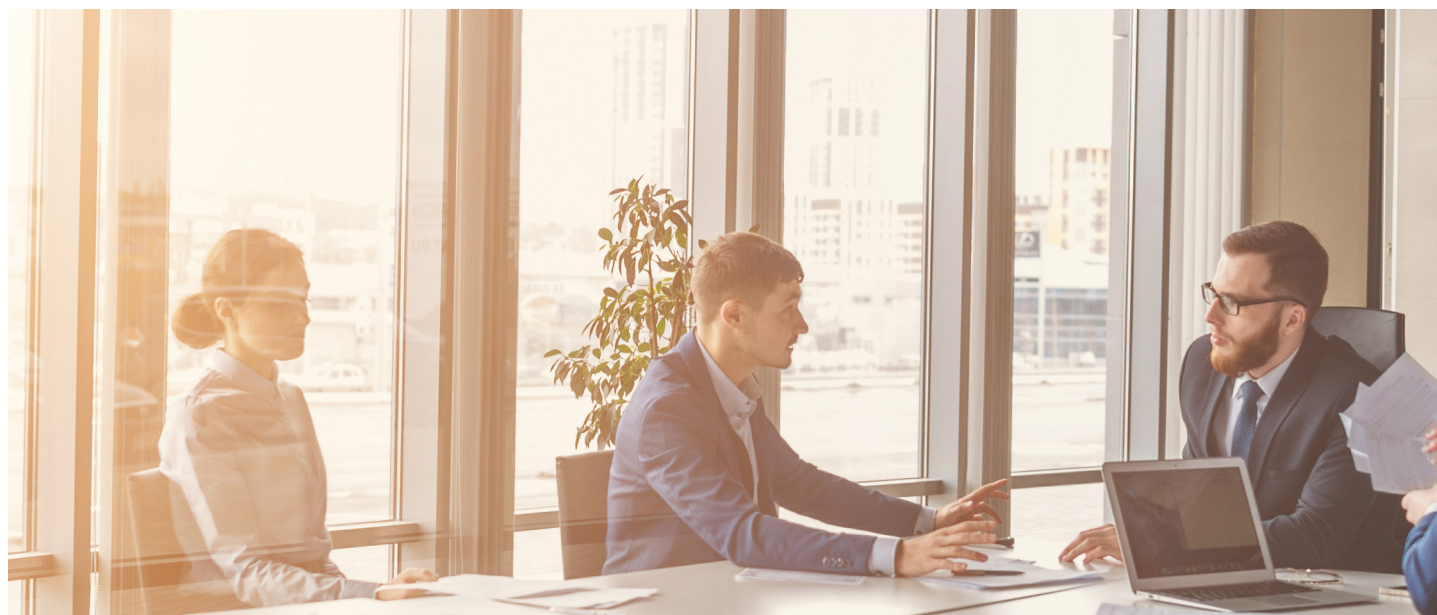
Finally, the DGT concludes that the fact that certain financial transfers associated with the deposit in the open SDDR are not subject to VAT does not, in itself, prevent the exercise of the right to deduct by SCRAP, insofar as its main activity consists of providing services that are subject to tax and not exempt in favor of producers (financed by contributions subject to tax), with Article 94.1 of the VAT Law being applicable with the general requirements.

In short, the financial contribution to SCRAP remunerates a taxable service and is taxed at 10%; its requirement to the customer is included in the taxable base for the delivery of the product. The amounts charged as a deposit for reusable containers are included in the tax base and, when the container is returned or the consideration is altered, the corresponding modification of the base and rectification of quotas is articulated in accordance with Articles 80 and 89 of the VAT Law.

V2031-25: Special tax on non-reusable plastic packaging (IEEPNR). Not subject to tax for shipments outside the territory and returns to non-taxpayers.

The Directorate General for Taxation, in binding consultation V2031-25 of October 29, 2025, analyzes the application of the special tax on non-reusable plastic packaging (IEEPNR) in a structure in which a company (A) markets seafood products packaged by its subsidiary (B), the latter purchasing the packaging from a domestic supplier and bearing the tax, while company A subsequently sells the products both in Spain and in other Member States and third countries.

Firstly, the DGT points out that the tax is configured as an indirect tax on the use, in the territory of application, of non-reusable packaging containing plastic. In this context, the consultation examines the exemption provided for in Article 73(b) of Law 7/2022, applicable to the manufacture of products included in



the scope of the tax intended to be shipped outside the territory of application, provided that the actual departure is proven. For these purposes, and based on the definition of “manufacture” contained in Law 7/2022, the DGT concludes that company A, which merely markets pre-packaged goods, cannot benefit from this exemption as it does not qualify as a manufacturer under the required terms.

The DGT then analyzes the tax refund regime for those who do not have taxpayer status. In particular, it points out that non-taxpayers may request a refund in accordance with Article 81.1.d) of Law 7/2022 when they can prove shipment outside the territory of application and payment of the tax, with the clarification that the refund will proceed unless the Administration can prove that the applicant has transferred the tax burden to its customers via the price and, therefore, the refund could give rise to unjust enrichment. Likewise, the DGT recalls that taxpayer status is linked to the manufacture, import, or intra-Community acquisition of the products subject to tax, concluding that, in the case described, company A does not have such status and, therefore, would be entitled to request a refund if the above requirements are met.

In short, the marketing company cannot apply the exemption under Article 73.b) as it is not a manufacturer, but it may request a tax refund in accordance with Article 81.1.d) if it can prove that the goods were shipped outside the territory and the tax was paid, and there is no case of unjust enrichment.

V1792-25: Total spin-off with separation of real estate activity and share portfolio. Non-liability under Article 7.1 of the VAT Law and exemption of financial transactions.

The Directorate-General for Taxation, in binding consultation V1792-25 of October 9, 2025, analyzes the VAT treatment of a total spin-off with dissolution without liquidation of a company whose main purpose is the leasing of real estate and which, in

addition, holds majority and minority shareholdings in various entities. The restructuring envisages the transfer of the assets in two blocks to two newly created companies: a first entity that would receive the real estate block and continue the leasing activity, and a second entity that would receive the block consisting of shares and other financial assets.

Firstly, the DGT points out that Article 7.1 of Law 37/1992 establishes that transfers of a set of elements that constitute an autonomous economic unit capable of carrying out a business or professional activity by its own means are not subject to VAT, excluding from this assumption, among others, transfers that constitute a mere transfer of goods or rights when they are not accompanied by the necessary organizational structure of production factors. On this basis, the DGT indicates that, with regard to the real estate block transferred to the first entity, it will be decisive to verify whether the assets and liabilities are transferred with the material and/or human resources necessary for the continuity of the activity, a point that cannot be deduced with certainty from the information provided.

Consequently, the DGT concludes that the transfer of the real estate block will not be subject to VAT only to the extent that it is transferred as an autonomous economic unit under the terms of Article 7.1 of the VAT Law; otherwise, the transaction will be subject to tax, with each element being taxed according to its regime. In this context, if the transfer includes real estate consisting of land and buildings, the exemptions in Articles 20.One.20 and 20.One.22 may be applicable, without prejudice to the waiver of the exemption in accordance with Article 20.Two, and the application of the reverse charge mechanism under Article 84.One.2^o.e) when the requirements are met.

With regard to the block of shares and financial assets transferred to the second entity, the DGT considers that, under the terms described, such transfer does not constitute an autonomous economic unit and is considered a mere assignment, and is therefore subject to VAT in general.

However, the DGT points out that transactions involving shares and holdings are generally exempt under Article 20.1.18 of the VAT Law, within the scope and limits set out in that provision.

In short, VAT treatment requires a distinction to be made between blocks: the real estate block may be exempt if it is transferred as an autonomous economic unit (Article 7.1 of the VAT Law) and, if not, its liability will be analyzed with the possible application of real estate exemptions, waiver, and reverse charge; the block of shares does not constitute an autonomous economic unit in the case described, although the transfer of shares is generally covered by the exemption in Article 20.1.18 of the VAT Law.



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