VAT newsletter
April 2025

I. LEGISLATION

New Draft Royal Decree on B2B Electronic Invoicing

The Ministry of Finance has launched a public consultation process, open until April 7, 2025, for interested parties to submit their observations on the new draft Royal Decree regulating electronic invoicing between businesses and professionals (B2B).

This new draft, which develops Article 12 of Law 18/2022 on the Creation and Growth of Companies, responds to the need to adapt the invoicing system to European standards and the guidelines of the "VAT in the Digital Age" (ViDA) package.

Among the main novelties, the text now requires the issuance of electronic invoices even in cases where invoicing is voluntary and not mandatory under the Invoicing Regulation.

From a technical point of view, one of the most relevant measures is the mandatory adoption of the UBL (Universal Business Language) standard in the public e-invoicing solution managed by the Spanish Tax Agency (STA). This format, aligned with European standard EN16931, ensures interoperability between platforms and facilitates integration with billing systems.

The draft also introduces a clear definition of a "true copy" of the invoice, requiring private platforms to send an exact replica in UBL format to the public system, thereby ensuring the authenticity and integrity of the documents.

It also establishes obligations regarding invoice status communication. Recipients will have a maximum of 4 calendar days to report acceptance, rejection, or full payment. Rules are clarified on charges and credits in payments, and the calculation of payment terms is defined as the time between the transaction date and the moment of full payment.

Additionally, a free form for issuing electronic invoices will be created, especially for SMEs and professionals, whose invoices may be verified under the SIF-Veri*Factu regulations.

For taxpayers under regional tax rules, such as in the Basque Country and Navarre, specific agreements will be established between the regional tax administrations and the STA to ensure proper cooperation.

After the public consultation, the draft will be submitted to the European Commission for technical review, which could take up to three months. Subsequently, with the opinion of the Council of State, the final text will be submitted for approval by the Council of Ministers. The decree will enter into force one year after the approval of the Ministerial Order developing the public e-invoicing solution, which has been under prior public consultation since March 25.

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For companies with a turnover exceeding 8 million euros, the Royal Decree will take effect one year after the approval of the Ministerial Order. For all other companies, the adaptation period will be two years from the approval of that Order.

ViDA: The EU Modernises VAT to Adapt to the Digital Age

On March 11, 2025, the Council of the European Union approved the adoption of the "ViDA (VAT in the Digital Age)" package, a set of reforms aimed at modernising and adapting the Value Added Tax (VAT) system in the European Union to the current digital economy. Following the Council's approval, on March 25, 2025, Directive (EU) 2025/516, Regulation (EU) 2025/517, and Implementing Regulation (EU) 2025/518 were published in the Official Journal of the European Union (OJ), paving the way for the continued implementation of the ViDA plan.

This package will introduce significant changes in how businesses declare and pay VAT, with progressive implementation until 2035.

The new regulations will enter into force gradually over the next 10 years after their publication in the OJ. Although some rules will be directly applicable, Member States must transpose the provisions of the VAT Directive into their national legislation.

The key objectives of the ViDA project include modernising VAT management through the digitalisation of processes, reducing tax fraud in cross-border transactions, simplifying tax obligations for businesses, and ensuring fair competition.

As of 2025, Member States may introduce mandatory e-invoicing for recipients under specific conditions and without prior authorisation, enhancing tax control and reducing VAT fraud.

Furthermore, improvements will be made to the Import One-Stop-Shop (IOSS) scheme to ensure more efficient and effective control of import operations.

Starting January 1, 2027, legislative changes will affect users of the One-Stop-Shop (OSS) and IOSS regimes to optimise their functionality and facilitate compliance for businesses operating across multiple EU countries.

From July 1, 2028, short-term accommodation rental platforms and passenger transport platforms will be required to comply with the new "deemed supplier" rules. These platforms must collect and remit VAT on behalf of the actual suppliers when they do not do so themselves.

Additionally, reforms will be implemented for the EU VAT Registration System, extending the OSS regime to include domestic B2C supplies, installations or assembly of goods, and intra-company transfers of own goods—abolishing the "call-off stock" regime.

Another important change will be the adoption by Member States of the reverse charge mechanism for suppliers not identified in the Member State where the VAT is due.

Digital Reporting Requirements (DRR) will impact intra-EU transactions from July 1, 2030, with the introduction of a harmonised system based on mandatory e-invoicing for such transactions. This will eliminate the recapitulative statements (Modelo 349 in Spain) and establish a centralised electronic VAT information exchange system with stricter reporting deadlines.

Finally, from January 1, 2035, Member States with real-time reporting systems introduced before 2024 (such as Spain's SII) will have to align their systems with the EU standards, marking the final phase of the ViDA package.

With ViDA, the EU is taking a crucial step towards modernising its tax system in the digital economy, focusing on transparency, efficiency, and fairness in VAT administration.

II. EUROPEAN UNION CASE LAW

Judgment of the Court of Justice of the European Union (CJEU), 27 February 2025, Case C-277/24 (M.B.)

Preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 273 — Measures to ensure the correct collection of VAT — VAT liability of a taxable person — National legislation establishing joint and several liability of the former chairman of the board of directors of the taxable person — Participation of the former chairman in the tax assessment proceedings — Procedure for establishing joint and several liability — Appeal against the VAT liability — Right of defence — Proportionality.

In this judgment, the CJEU analyses joint and several liability in the context of VAT and the procedural safeguards available to third parties potentially liable.

The dispute arose in Poland, where M.B., a former chairman of the board of directors of a company, was held jointly and severally liable for the VAT debts of that company. M.B. requested to be allowed to participate as a party in the tax assessment proceedings against the company, but this request was denied by the Polish tax authority.

The Polish Administrative Court referred to the CJEU the question of whether national legislation that prevents a third party, who may be held jointly liable, from participating in the tax assessment proceedings against a company is compatible with Article 273 of Directive 2006/112/EC and the principles of the right of defence and proportionality.

The Court held that, although national legislation may provide for measures to ensure correct VAT collection and prevent fraud, and may exclude third parties from the assessment procedure, it is essential that such third parties be given the opportunity to challenge the conclusions reached in those proceedings.

The CJEU ruled that denying a third party's participation in the tax assessment procedure may be acceptable if adequate means are available for that party to defend their interests in the joint liability procedure. That is, the measures must not go beyond what is necessary to ensure the proper collection of VAT.

In conclusion, the Court held that Article 273 of Directive 2006/112/EC does not preclude national legislation from preventing a third party from participating in the tax assessment procedure of a company, provided that, in the joint liability procedure, the third party has the opportunity to challenge the tax authority's conclusions and access the relevant documentation.

III. DOMESTIC COURT RULINGS

Order 1682/2025 of 26 February 2025 of the Supreme Court. Appeal 1788/2024

The Order of the Supreme Court admits for consideration a cassation appeal relating to the refund of VAT amounts in the event of contract termination and the seller's inability to pay due to insolvency proceedings.

In this specific case, the entity Ramos y Ruipérez Hoteles, S.L. filed a cassation appeal against the judgment of the National Court that dismissed its contentious-administrative appeal. The dispute arose from the denial of a request to rectify a VAT self-assessment.

The controversy arose from the termination of purchase and sale contracts between Ramos y Ruipérez Hoteles, S.L. and Construcciones Medina Durán, S.A., for which the taxes were duly paid at the time. However, upon termination of the contracts, the claimant company requested a refund of the VAT it had paid, arguing that it could not recover it from the seller, who was in insolvency proceedings.

The Spanish Tax Agency (AEAT) rejected the request to rectify the VAT self-assessment, arguing that the dispute regarding the refund should be resolved under civil jurisdiction and not in the tax arena. As a result, Ramos y Ruipérez Hoteles, S.L. appealed the decision before the Regional Economic-Administrative Tribunal of Castilla y León, which dismissed the claim. Subsequently, both the Central Economic-Administrative Tribunal (TEAC) and the National Court upheld the denial.

The claimant argued that Articles 80 and 89 of the VAT Law and Article 90.1 of Directive 2006/112/EC, interpreted in light of the case law of the Court of Justice of the European Union (CJEU),

had been violated. It claimed that the principle of VAT neutrality entitled it to claim the refund of the tax directly from the administration.

The Supreme Court (SC) evaluated whether the matter had cassational interest and determined that the appeal raised a relevant legal issue: whether the purchaser may claim VAT from the administration when the seller is insolvent and cannot refund the amounts paid. Therefore, it decided to admit the appeal to unify criteria and ensure legal certainty, considering that there was no clear jurisprudence from the SC on this issue and that the interpretation of EU law made by the National Court might contradict the doctrine of the CJEU.

Judgment 234/2025 of 22 January 2025 of the National Court. Appeal 1837/2021

In this recent judgment, the National Court addresses the imposition of the threshold established in Article 80.4 of Law 37/1992 on Value Added Tax, for the modification of the taxable base of the tax due to uncollectible debts in transactions with private individuals. It should be noted that said threshold was amended by Law 31/2022, which reduced the minimum threshold from 300 to 50 euros.

In this regard, it is important to point out that the National Court has addressed the same issue and ruled similarly in judgments 235/2025 and 238/2025 of the same date (22 January 2025).

In this judgment, the company Securitas Direct España S.A. filed an appeal against the resolution of the Central Economic-Administrative Tribunal (TEAC) dated 21 June 2021, which dismissed five claims filed against provisional VAT assessment agreements.

The company challenged the Tax Agency's refusal to modify the taxable base of the tax due to unpaid invoices, arguing that Spanish legislation, specifically Article 80.4 of the VAT Law, violated EU Directive 2006/112/EC by setting a 300-euro limit for considering a debt uncollectible when the recipient is a final consumer. According to the company, this threshold hinders the recovery of VAT in transactions with private clients.

The Tax Agency and the TEAC argued that national regulations are protected by Article 90.2 of the VAT Directive, which allows Member States to establish conditions for reducing the taxable base. Thus, the TEAC justified the 300-euro limit for operational and tax control reasons.

However, the National Court proceeded to examine EU legislation and the case law of the Court of Justice of the European Union (CJEU), noting that the principle of tax neutrality requires that VAT charged on unpaid transactions be recoverable by entrepreneurs. The court emphasized that the VAT Directive has direct effect and that Member States cannot impose excessive restrictions on the recovery of the tax.

Therefore, the National Court concluded that the minimum threshold limit is not justified under EU law. While acknowledging

that Member States may establish conditions to prevent fraud, it also stated that this threshold is unrelated to the uncertainty about the definitive nature of the non-payment, which is the only legitimate reason to restrict the reduction of the taxable base.

In conclusion, the National Court upheld Securitas's appeal, annulled the TEAC's resolution and the contested assessments, ruling that the refusal to allow modification of the taxable base violated EU law.

IV. ADMINISTRATIVE RESOLUTIONS

Resolution of 24 February 2025, of the Directorate General for Taxation, on the VAT rate applicable to bread and rulings V0280-25, V0281-25, V0282-25, V0283-25

The recent judgment of the Supreme Court No. 1.610/2024, of 15 October 2024, has established that the current wording of Article 91.two.1.1.º, letter a), of the VAT Law regarding the non-application of the reduced VAT rate of 4 percent to bread considered "special" according to Spanish technical-health and food regulations, is contrary to the principle of VAT neutrality, particularly in its aspect as a guarantee of free competition, and to the doctrine of the Court of Justice of the European Union.

As a consequence of this, the Directorate General for Taxation issued a Resolution on 24 February stating that the super-reduced VAT rate of 4% should be applied both to common bread and to the so-called special breads:

"The reduced rate of 4 percent referred to in Article 91.Two.1.1.º of Law 37/1992 shall apply to the deliveries, intra-Community acquisitions, or imports of all the products referred to in Royal Decree 308/2019, of 26 April, which approves the quality standard for bread, as well as to products which, conforming to the definition of common bread, special bread, or semi-finished products referred to therein, have been made with gluten-free flour, either naturally or through special treatment to reduce its gluten content, or in which flour has been replaced by other ingredients naturally free of gluten, even if these are predominant in their composition."

It should be noted that this resolution has ex tunc effects, that is, it applies from the entry into force of the interpreted rule.

Resolution of the Central Economic-Administrative Tribunal (TEAC). Resolution No. 01155/2023, of 20 February 2025, on the right to deduct input VAT.

In this resolution, the Central Economic-Administrative Tribunal (TEAC) establishes doctrine regarding the right to deduct input Value Added Tax (VAT), determining that, for an entity to be entitled to deduct VAT on its transactions, the VAT must have been effectively borne. This implies that there must be a prior and effective act of repercussion (charge) by the taxable person performing the transaction. In the absence of such repercussion, the VAT is not considered borne and, therefore, cannot be deducted.

This ruling stems from an appeal filed against a resolution of the Regional Economic-Administrative Tribunal of Catalonia (TEARC). That tribunal had allowed partial deduction of the input VAT borne by the entity TW SL in relation to the acquisition of two urban properties during the 2018 financial year based on their intended use.

In the first and third quarters of 2018, TW SL acquired two urban plots and applied reverse charge VAT in the first quarter, but did not report any data related to the purchase in its self-assessment for the third quarter.

After a tax inspection, the AEAT determined that the waiver of VAT exemption by the seller was improper, since Article 20.One.22º.A) of the VAT Law excludes such a waiver in letter b) for the transfer of buildings for future rehabilitation by the buyer. Moreover, the intended use of the properties was residential leasing, an activity that, according to Article 20.One.23º of Law 37/1992, is subject to and exempt from VAT, thereby preventing deduction of the VAT borne.

Nevertheless, it was concluded that it was appropriate to declare reverse charge VAT in both periods, as the ultimate purpose of the tax is that someone charges and someone bears VAT. Therefore, the taxable bases and VAT due related to the third-quarter acquisition were increased, while those declared in the first quarter were maintained.

The company filed a claim before the TEARC, which held that if the law identifies the entrepreneur who delivered the property as the taxable person, the Administration cannot assign the obligations inherent to that status to another person or entity. Furthermore, it ruled that the VAT accrued from the sale was not payable and denied the deduction of the input VAT, arguing that the intended use of the properties was insufficiently proven. Nevertheless, with respect to one of the properties, it allowed partial deduction of the input VAT, since a divisible part of it was intended for leasing commercial premises, an activity subject to and not exempt from VAT.

Disagreeing with this interpretation, the Directorate of the Financial and Tax Inspection Department of the AEAT filed an appeal for reversal before the TEAC, requesting the annulment of the TEARC's resolution. In its appeal, it argued that the resolution was contradictory: on the one hand, it determined the inapplicability of accrued VAT, while at the same time allowing deduction of the input VAT, which breaches the principle of tax neutrality and results in a loss of tax revenue for the Administration.

The TEAC concluded that the VAT had not been effectively borne, as the taxable person in the transaction was the seller of the property, not the buyer. Consequently, the reverse charge of the VAT made by TW SL was improper, which means that, since VAT was not duly charged by the taxable person, its deduction by the purchaser is not allowed.

To support its decision, the TEAC referred to the case law of the Court of Justice of the European Union (CJEU), citing the judgment of 26 April 2017 (C-564/15, Tibor Farkas). In that ruling, the CJEU held that if a buyer wrongly pays VAT to the seller instead of applying the reverse charge mechanism, such VAT is not correctly due and, therefore, cannot be deducted.

Based on this criterion, the TEAC annulled the TEARC resolution, reaffirming that the deduction of VAT was not appropriate in any case. It also rejected the argument that the deduction could be allowed based on the intended use of the properties acquired.

On the other hand, TW SL argued that in a limited verification procedure for fiscal year 2020, the AEAT had recognised the right to deduct the VAT on commercial premises, which, according to the company, amounted to an express statement that the properties were allocated to an activity subject to and not exempt from VAT. However, the TEAC dismissed this argument, noting that a limited verification procedure has a restricted scope, without analysing the material reality of the transactions or the right to deduction, and thus such recognition cannot be extrapolated to the present resolution.

For all the above reasons, the TEAC decided to uphold the AEAT's appeal, confirming the impropriety of the deduction of input VAT by TW SL and establishing that, in the absence of an effective charge of the tax, the VAT cannot be considered as borne or deductible.

This ruling establishes doctrine on the application of the principle of effective VAT charge as an essential requirement for its deduction, consolidating a particularly relevant criterion in real estate transactions subject to tax inspection.

Resolution of the Central Economic-Administrative Tribunal. Resolution No. 01115/2023, of 20 February 2025, on the application of the reduced VAT rate to the supply of buildings suitable for housing.

The Central Economic-Administrative Tribunal (TEAC), in its resolution 00/01115/2023, of 20 February 2025, has established doctrine concerning the application of the reduced VAT rate to the supply of buildings or parts thereof intended for housing. It clarifies the interpretative criteria regarding the requirements that must be met for a transaction to benefit from the reduced 10% rate instead of the general 21% rate.

In this regard, Article 91.One.7º of Law 37/1992 on VAT establishes that the reduced VAT rate applies to the supply of buildings or parts thereof that are suitable for use as housing, provided they are not second or subsequent transfers and the building in question has the characteristics of a property intended for the habitual or permanent residence of individuals.

This resolution is framed in the context of the recent Supreme Court judgment of 28 January 2025, cassation appeal number 3389/2023, which sets precedent on this matter. In that case, a property developer had applied the reduced VAT rate of 7% (10% currently in force) to the sale of several properties that, although structurally designed to be used as housing, did not yet have a certificate of occupancy or first occupancy licence. The claimant argued that the property should be considered suitable for housing use even without those documents.

The dispute focused on whether, to consider a property suitable for legal use as housing—and thus apply the reduced VAT rate of 7%—it is necessary for the property to have a certificate of occupancy or a first occupancy licence at the time of transfer. The Supreme Court held that a property's suitability for use as housing derives from its design and construction, as well as its potential legal destination to meet a housing need. It clarified that it is not necessary for the property to have a certificate of occupancy, occupancy licence or similar authorisation for the reduced VAT rate to be applicable at the time of transfer.

Additionally, the TEAC referenced its own resolution of 21 May 2021 (RG 00-00972-2018), where it had already acknowledged the application of the reduced rate in a case in which the certificate of occupancy was obtained after the property had been transferred. This confirms that the existence or non-existence of these administrative documents is not the determining criterion for applying the reduced rate.

Following the criteria established by the Supreme Court, the TEAC in its resolution No. 01115/2023, of 20 February 2025, and after confirming that in the specific case there was evidence of self-consumption of goods under Article 9.1.a), determined that it is not necessary for the property to have a certificate of occupancy, expressing itself in the same terms as the Supreme Court in the previously mentioned ruling. It finally concludes that, given that the availability of a certificate of occupancy is not a determining factor to consider that a building is suitable for use as housing, the claimant's argument that the property could

not be used as housing before obtaining such certificate must be rejected. Therefore, it must be understood that the accrual of the deemed supply operation does not occur solely at the moment of obtaining said certificate.

In conclusion, the TEAC upheld the adjustment made to the claimant, consisting of the increase of the taxable base and the VAT due for the self-consumption of goods under Article 9.1.a) of Law 37/1992.

This ruling reinforces the doctrine on the application of the reduced VAT rate to housing supplies, decoupling the application of the reduced rate from specific administrative formalities and providing legal certainty to developers and buyers. The objective interpretation of the concept of housing facilitates the application of the reduced VAT rate, preventing administrative factors unrelated to the nature of the property from blocking its application. The resolution sets a relevant precedent in tax matters and brings clarity to the scope of VAT rules in the real estate sector.

V. BINDING RULINGS

V0038-25: Reduced VAT rates on the purchase of a new home by a person with a disability

In binding ruling V0038-25 issued by the Directorate General for Taxation (DGT) on 15 January 2025, the question is raised regarding the VAT rate applicable to the purchase of a new home by an individual with a recognised disability of 75%.

The Directorate General for Taxation clarifies that, according to Article 90 of Law 37/1992 on VAT, the general VAT rate is 21%, except as provided in Article 91, which establishes the application of reduced rates for certain transactions. Specifically, Article 91.One.1.7º sets a reduced rate of 10% for the supply of buildings or parts thereof that are suitable for use as dwellings, including garage spaces (maximum of two units) and annexes located in the same building that are transferred together. On the other hand, Article 91.Two.1.6º establishes that the super-reduced rate of 4% shall apply to the supply of dwellings administratively classified as social housing under special regime or public development, when the supply is made by developers, including garages and annexes located in the same building that are transferred together. For this purpose, the number of garage spaces must not exceed two units.

The DGT concludes that the disability of the purchaser is not relevant for determining the VAT rate applicable to the supply of a dwelling. The only relevant factor is the administrative classification of the dwelling as social housing under special regime or public development. Therefore, the determining factor for the application of this super-reduced VAT rate is the condition of the dwelling, not the condition of the buyer.

V0073-25: Application of the Verifactu Regulation using a word processor, spreadsheet or database that generates a PDF

In binding ruling V0073-25, the Directorate General for Taxation (DGT) analyses whether an entity that issues its invoices using a word processor, spreadsheet, or database that generates the invoice in PDF format is required to comply with the provisions of Royal Decree 1070/2023 (Verifactu Regulation).

Following the criteria established in previous rulings (such as V2653-24), the DGT states that if no invoicing software system is used for issuing invoices and such issuance is done manually, the entity would not be subject to the obligations set forth in the Regulation approved by Royal Decree 1007/2023, as is the case with handwritten invoices.

However, it clarifies that if spreadsheets, databases or processors are used, it cannot be concluded that the entity is not subject to the Regulation approved by Royal Decree 1007/2023, since such spreadsheets may have data processing and storage functionalities that may lead them to be considered Invoicing Software Systems under the terms of Article 1.2 of said Regulation.

V0175-25: Application of the Verifactu Regulation to taxable persons not required to issue invoices

Binding ruling V0175-25, issued by the Directorate General for Taxation (DGT), analyses the obligation to issue invoices and the application of Royal Decree 1007/2023 (Verifactu Regulation) by VAT taxable persons who are subject to the Special Surcharge Regime (Recargo de Equivalencia).

It should be noted that Article 3 of the Invoicing Regulation (Royal Decree 1619/2012) provides that there is no obligation to issue an invoice for transactions carried out by entrepreneurs or professionals in the course of activities subject to the special surcharge regime. Nevertheless, an invoice must always be issued for the supply of immovable property that is subject to and not exempt from VAT.

Therefore, entrepreneurs or professionals under the special surcharge regime are generally not required to issue invoices for the transactions covered by that regime, without prejudice to the obligation to issue invoices for transactions in which VAT is charged to the recipient of the transaction—such as when the recipient is another entrepreneur or professional, or when required for exercising any tax-related rights. However, even in such cases, the taxable person is not required to pay the charged VAT to the Tax Authorities.

In relation to the application of the Verifactu Regulation, the DGT states that the aforementioned Regulation and the obligations concerning invoicing software systems will not apply to transactions carried out by taxable persons under the special surcharge regime for which there is no obligation to issue an invoice. In any case, for those transactions under the special surcharge regime for which there is an obligation to issue an invoice, the Regulation shall apply to the invoicing software systems used for their issuance.

V0197-25: Acquisition of a hotel property encumbered with several mortgages

The Directorate General for Taxation (DGT) analyses in binding ruling V0197-25 the VAT treatment of a housing cooperative that entered into a purchase option agreement with a commercial entity that owns a hotel establishment under construction. The property is encumbered with several mortgages, and if the option to purchase is exercised, part of the price will be withheld to cancel said mortgages.

First, the transfer of the hotel complex under construction is analysed with regard to VAT liability. Since this is not an autonomous economic unit—as no licences, permits, or other material or human resources are transferred along with the property—the exemption provided in Article 7.1 of the VAT Law does not apply. Therefore, the transfer is subject to VAT.

Article 20.One.22 of the VAT Law provides for the exemption of second and subsequent transfers of buildings that take place after their construction or renovation has been completed. However, insofar as the transfer subject to consultation concerns a hotel complex under construction, the exemption provided for in Article 20.One.22º does not apply, and the operation is subject to VAT and not exempt.

The DGT then analyses the application of the reverse charge mechanism in this transfer. It begins by referring to Article 84.One.2º.e) of the VAT Law, which provides that the taxable person is the entrepreneur or professional for whom the taxable operation is carried out when it involves the transfer of immovable property in execution of the guarantee constituted over such property. Execution is also understood to occur when the property is transferred in exchange for total or partial discharge of the secured debt or when the buyer undertakes to extinguish the said debt.

In this context, the DGT notes its prior criteria for situations involving the transfer of a property given as collateral without extinction of the guaranteed obligation for the seller or debtor. The DGT has held that in all such cases, the buyer must be understood to undertake to extinguish the guaranteed debt, either because they expressly assume that obligation, because—under the second paragraph of Article 118 of the Mortgage Law—they deduct the amount of the guaranteed debt from the purchase price or withhold it, or because if they pay the full price, such payment is tacitly agreed to be used by the seller to settle the guaranteed debt.

However, in a resolution from September 2022, the TEAC limited the application of the reverse charge mechanism, stating that it should only apply in cases where the transfer of the property constitutes the execution of the guarantee. That is, there must be a legal procedure by which the creditor enforces the guarantee over the asset, whether through payment in kind, deed in lieu of foreclosure, or any other mechanism that implies the execution of the mortgage. The TEAC held that the concept of “execution of

the guarantee" must be the key criterion for applying the reverse charge mechanism, as Directive 2006/112/EC—on which the Spanish VAT Law is based—intended this mechanism to prevent fraud in situations where the debtor cannot pay their debt and the creditor takes ownership of the property.

In this regard, the TEAC concluded that if the purchaser does not assume the mortgage debt nor expressly undertakes to cancel it with respect to the creditor, the transaction cannot be considered a guarantee execution and, therefore, the reverse charge mechanism does not apply.

Nonetheless, in a new resolution from October 2022, the TEAC introduced an important nuance to the previous position. In that case, it analysed the transfer of land encumbered with urban charges and concluded that the reverse charge mechanism does apply when the transferred land is subject to a registered encumbrance in effect at the time of transfer. The key aspect of that resolution is that the TEAC recognised that urban charges have the nature of a real guarantee, even higher than that of a mortgage, and thus their cancellation by the purchaser may be equated with a guarantee execution. This nuance suggests that although the September resolution appeared to restrict the scope of Article 84.One.2º.e), the October decision relaxes that criterion and allows its application when the transfer of real estate entails the cancellation of a real right over the property.

Therefore, the DGT highlights that, given the legal nature of urban charges as being analogous to a mortgage, it appears that the same treatment outlined in the October TEAC resolution should be applied to cases involving transfers of real estate affected by other real guarantees in general, and mortgages in particular.

Accordingly, in the specific case of the hotel under construction, where there is no judicial enforcement of the mortgage, but part of the price is withheld to cancel the debt, the DGT concludes that the reverse charge mechanism must apply.

However, the DGT notes that if the buyer withholds part of the sale price for the purpose of cancelling said mortgages before or at the same time as the execution of the public deed of transfer—so that the property is transferred free of mortgage charges—the reverse charge mechanism provided in Article 84.One.2º.e) of the VAT Law would not apply. This conclusion represents a change of position compared to earlier binding rulings (such as V0692-20).

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