VAT newsletter
June 2025

I. LEGISLATION

Possible VAT reform on short-term tourist housing rentals

The rental of tourist apartments, an increasingly common practice in many Spanish cities, could face a significant change in the field of indirect taxation.

The Bill submitted by the Socialist Parliamentary Group on 22 May proposes, among other housing rental-related measures, a significant amendment to Law 37/1992 on Value Added Tax, affecting the tax treatment of certain leases. Specifically, it contemplates amendments to Article 20.One.23º e´) and Article 91.One.2.2º of said Law.

Currently, the rental of furnished apartments or dwellings, even short-term ones (i.e. for tourist use), is exempt from VAT unless complementary services typical of the hotel industry are provided (such as periodic cleaning, linen change, reception, etc.). In such cases, the reduced VAT rate of 10% applies.

The Bill introduces a modification of Article 20.One.23º e´) of the VAT Law to limit this exemption. From the entry into force of the new regulation, short-term leases (less than 30 nights) in municipalities with more than 10,000 inhabitants, according to the latest Annual Population Census, would be subject to VAT at the general rate of 21%, even if complementary hotel-type services are not provided.

Additionally, the simultaneous amendment of Article 91.One.2.2º of the same Law excludes the application of the reduced VAT rate (10%) for furnished apartment or dwelling leases where complementary services typical of the hotel industry are provided.

Thus, the proposed reform ultimately implies that tourist rentals would be subject to the 21% VAT rate, whether or not hotel-type services are provided, as long as it is a short-term lease (under 30 days) in a municipality with more than 10,000 inhabitants.

If the proposal moves forward, it would mark a turning point in the taxation of tourist rentals in Spain, with direct implications for both property owners and intermediary platforms.

New development from the AEAT: VERI*FACTU now available

Since 23 April 2025, the Spanish Tax Agency has enabled the services associated with the VERI*FACTU system, provided for in Royal Decree 1007/2023 of 5 December, on its Electronic Headquarters. This rollout has been carried out three months ahead of the initially scheduled date.

The VERI*FACTU system enables the electronic submission of billing records at the time of issuance, in accordance with the technical requirements established by the regulation.

Services for issuers are now available, such as the general web service for sending billing records (Article 15), the specific service for sending records from VERI*FACTU systems (Article 16.1), and the consultation and download of submitted records.

For recipients, a QR code verification service (Article 17.1) is enabled to verify the authenticity of invoices, as well as access to consult and download received billing records.

With this, the Tax Agency offers early access to the technical tools that will allow businesses and professionals to progressively adapt to the new framework for invoice process control

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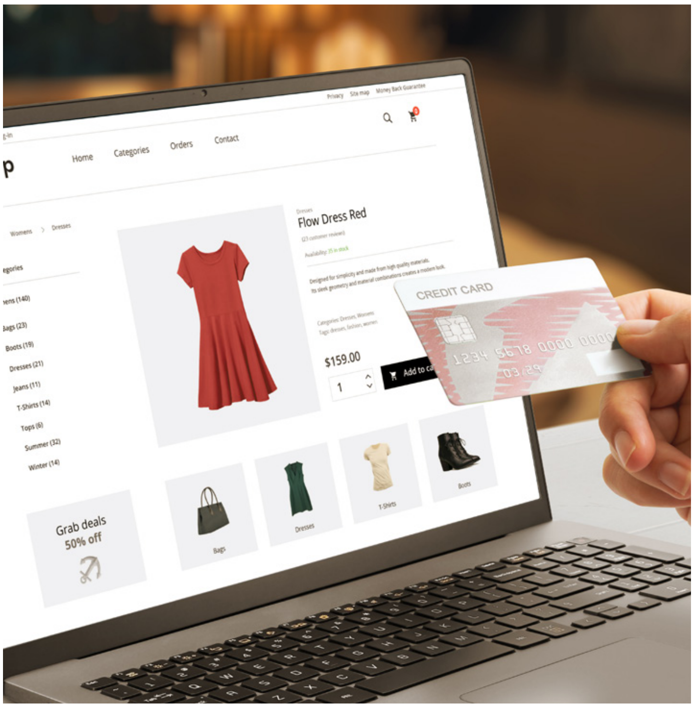
II. EUROPEAN UNION CASE LAW

Judgment of 3 April 2025 of the Court of Justice of the European Union. Case C-213/24 (Grzera)

Preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 9(1) — Concepts of "taxable person" and "economic activity" — Sale of agricultural land for the construction of housing — Preparation for sale by a professional agent — Marital community of property between the co-owning spouses.

This judgment of the CJEU arises from a preliminary ruling requested by a Polish court on whether an individual selling land from their personal assets, through a professional agent, may be regarded as a taxable person for VAT purposes. Additionally, it asks whether, in the case of co-ownership between spouses, the legal community can be considered a taxable person.



In this case, E.T. and her spouse W.T. were owners of agricultural land received as inheritance. They hired a company to urbanize, divide, advertise and sell the land between 2017 and 2021. The Polish tax administration considered that this constituted an economic activity subject to VAT.

E.T. argued that the sale was part of the ordinary management of her private assets and that, since it was handled by a professional agent, she did not bear the economic risk herself, which would exclude her qualification as a taxable person for VAT purposes.

However, the European Court concluded that, if active steps are taken comparable to those of an economic operator—such as urbanization, advertising, or administrative procedures—it can be considered a taxable person. The Court analysed whether there was independence, economic risk, and continuity in generating income. That is, even if these steps are taken by an agent, if the owner ultimately bears the risk, they may be considered to carry out an economic activity.

On the other hand, the CJEU also assessed whether, in the case of co-owning spouses under a marital community of property, both can be treated as a single taxable person or as two separate ones. The Court held that the marital community can be treated as a taxable person if it acts as a single unit towards third parties, although domestic law may be used to determine whether the community assumes the economic risk and acts jointly.

In conclusion, the CJEU ruled that a person who sells land with the involvement of a professional may be a taxable person for VAT purposes if it is proven that an independent economic activity exists. Likewise, a marital community of property may be considered a taxable person if it acts jointly towards third parties and bears the economic risk of the activity, as the key factor is who assumes the economic responsibility and acts in the market.

Judgment of 30 April 2025 of the Court of Justice of the European Union. Case C-278/24 (P.K.)

Preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 273 — Measures to ensure the correct collection of VAT — VAT debt of a taxable person — National legislation establishing joint and several liability of the former chairman of the taxable person's management board — Exemption from joint and several liability — Absence of fault — Filing for insolvency — Existence of a single creditor — Proportionality — Equal treatment — Right to property — Legal certainty.

The CJEU examines various issues concerning the compatibility of Polish national law with EU law, specifically a rule that imposes joint and several liability on members of a company's management board for unpaid VAT debts.

In this case, P.K., former chairman of the management board of a Polish company, was declared jointly and severally liable for the company's VAT debt following unsuccessful enforcement proceedings. P.K. challenged that decision, arguing that there were no grounds to file for insolvency at the time and that the existence of a single creditor (the State) rendered such a filing ineffective. The Polish tax law provides for joint and several liability of board members if three conditions are met: the tax debt arose during the term of office, enforcement was partially or fully unsuccessful, and no insolvency filing was made. Such liability may be avoided if the person proves diligence or external causes for not having filed for insolvency.

In this regard, the referring court questioned whether this law violates the principles of proportionality, equal treatment, effective judicial protection, legal certainty and the right to property, especially when an unviable insolvency filing (due to a single creditor) is required in order to be exempt from liability.

The CJEU focused on Article 273 of the VAT Directive, which allows Member States to establish measures necessary to ensure the correct collection of VAT. Accordingly, the Court considered that a system of joint and several liability can be compatible with Article 273 and Article 325 of the Treaty on the Functioning of the European Union (TFEU), provided that it complies with fundamental principles such as proportionality. Liability must not be automatic or objective; a real possibility of exemption must exist.

In this sense, the Court accepts that the Polish system establishes a rebuttable presumption (iuris tantum) of liability, which may be overturned if the person proves due diligence and shows that filing for insolvency would not have been reasonable, in which case they may be exempted from such liability.

As regards the different treatment of directors of companies with one or several creditors, the CJEU concludes that there is no discrimination, as the law does not require the insolvency filing to be successful—only that it be filed in due time. Moreover, granting an automatic exemption for having a single creditor could encourage abuse.

In conclusion, the CJEU finds that the Polish rules do not infringe EU law, provided that they allow the individual to demonstrate due diligence and lack of fault for failing to file for insolvency in relation to a VAT debt that was not recovered, in full or in part, through enforcement proceedings. Therefore, the Polish system of joint and several liability is valid as long as it complies with these essential conditions.

III. DOMESTIC COURT RULINGS

Judgment 371/2025 of 31 March 2025 of the Spanish Supreme Court. Appeal 932/2023

The case examined by the Spanish Supreme Court concerns whether the company Pefipresa S.A.U. complied with the legal requirements to adjust the taxable base for VAT in relation to unpaid transactions from the year 2013. The issue revolves around the sending of corrective invoices to insolvent debtors and the issuance of such invoices within the legal deadline regarding irrecoverable debts.

Initially, the Spanish Tax Agency (AEAT) issued a provisional assessment rejecting the taxable base adjustments made by the company. In response, Pefipresa filed claims before the Madrid TEAR and subsequently the Madrid High Court, both of which were dismissed. The court held that the company had not adequately proven the dispatch of the invoices nor compliance with the legal deadline. Pefipresa then appealed to the Supreme Court, arguing that requiring dispatch via burofax (registered fax service) was excessive and that the deadline for issuing corrective invoices was disproportionate and contrary to EU law.

Regarding cassational interest, the Supreme Court identified two key issues: whether a specific means of delivery such as burofax is necessary to prove the dispatch of corrective invoices, and whether the period of one year and three months to adjust the taxable base for irrecoverable debts respects the principles of effectiveness and proportionality under EU law.

Pefipresa argued that Article 24 of the VAT Regulation does not require a specific means of dispatch, and that registered mail with acknowledgment of receipt should suffice. It also contended that the imposed deadline is disproportionate and restricts the right to adjust VAT.

On the other hand, the tax administration argued that any proof must reliably demonstrate both the sending and the content of the invoice. Regarding the deadline, it maintained that the Spanish regulation is valid, pursues legitimate aims, and is not contrary to EU law.

Having heard both sides, the Supreme Court ultimately concluded that no specific means such as burofax is required, but that the dispatch and the content of what was sent must be duly proven. The evidence must be sufficient to guarantee that the recipient effectively received the corrective invoice. On the second point, the Court upheld the deadline of one year and three months from the chargeable event to adjust the taxable base for irrecoverable debts, considering that this period is not contrary to the principles of neutrality, effectiveness, and proportionality, provided it is not excessively burdensome.

IV. BINDING RULINGS

V0240-25: Clarification of the concept of "price-linked subsidy"

On 5 March, the Spanish Directorate General for Taxation (DGT) issued a ruling regarding the VAT treatment of subsidies received by driving schools aimed at improving the employability of unemployed and employed individuals in the freight and passenger transport sector.

Article 78 of the VAT Law provides that subsidies directly linked to the price of taxable transactions must be included in the taxable base, clarifying that subsidies will be considered directly linked to the price when they are established based on the number of units delivered or the volume of services rendered, provided they are determined prior to the execution of the transaction.

The concept of price-linked subsidy has generated significant controversy in terms of its scope, and the Court of Justice of the European Union (CJEU) has provided clarifications. The DGT cites the OPW judgment (Case C-184/00), which held that price-linked subsidies involve three participating parties: the trader or professional who performs the subsidised transactions, the customers or recipients of such transactions, and the granting body. In that ruling, the CJEU stated that the price paid by the buyer must be determined in such a way that it decreases in proportion to the subsidy granted to the seller, thereby impacting the price. It clarified that it is not necessary for the amount of the subsidy to correspond exactly to the price reduction of the good, but that the relationship must be significant.

In its Le Rayon d'Or SARL ruling (Case C-151/13), the CJEU nuanced that it is not always necessary for the amounts received to be linked to a specifically individualised service. What matters is the existence of a direct link between the remuneration received and the services rendered. Following that judgment, the DGT changed its traditional approach and stated that the existence of such a direct link between the service provided and the remuneration received is sufficient to qualify a subsidy as price-linked. Therefore, the fact that the subsidy was paid to the subsidised operator for the specific and determined supply of goods or services became secondary and less decisive.

However, following the TEAC resolution of 22 November 2023 and the CJEU's Balgarska ruling (Case C-21/20), the DGT has decided to revise this criterion, which had previously allowed for a broad interpretation of the concept of price-linked subsidy. Thus, to qualify a subsidy as directly linked to the price, the following conditions must be met:

- The subsidy must have been paid to the subsidised operator with the aim of carrying out a specific supply of goods or services. The beneficiary must acquire the right to receive the subsidy upon performing a taxable transaction.
- The purchasers of the goods or recipients of the services must benefit from the subsidy granted to the beneficiary. It is therefore necessary that the price paid by the purchaser or recipient be determined in such a way that it decreases in proportion to the subsidy granted to the seller or service provider. It must be assessed whether the subsidy allows the seller to reduce the sale price or the service fee.

- The consideration represented by the subsidy must be, at a minimum, determinable. It is not necessary for its amount to match exactly the price reduction of the supplied good or service, but the relationship must be significant.

This conclusion regarding the criteria for determining whether a subsidy should be considered price-linked represents a change in approach compared to that previously followed by the DGT in earlier rulings.

V0303-25: VAT rate applicable to the installation of solar panels in buildings

An individual intending to install solar panels in their home to obtain renewable energy has consulted the DGT regarding the applicable VAT rate after receiving estimates from companies applying either the 10% or 21% rate.

The DGT begins by outlining the interpretative criteria of Article 91, section 3, ordinal 1º for the application of the reduced 10% VAT rate on construction works in the building or refurbishment of buildings:

- The operations carried out must have the legal nature of construction works.
- These operations must be the result of contracts entered into directly between the developer and the contractor. For VAT purposes, the developer is understood to be the owner of the buildings who constructed (developer-builder) or commissioned the construction (developer) of said buildings for sale, lease, or own use.
- The construction works must be aimed at the construction or refurbishment of buildings primarily intended as dwellings, including any annexes, installations, and complementary services located therein. Buildings are considered primarily intended as dwellings when at least 50% of the built surface is intended to be used as housing, even if part of the buildings is intended for other purposes.

For a construction project to be classified as refurbishment, it must meet the requirements established in Article 20.One.22º of the VAT Law. Firstly, a qualitative requirement, meaning the works must be considered refurbishment works. This requirement is met when more than 50% of the total project cost corresponds to works involving consolidation or treatment of structural elements, façades, or roofs, or to analogous or related works.

It should be noted that energy refurbishment works (defined as those aimed at improving the energy performance of buildings by reducing energy demand, increasing the efficiency of thermal systems, or incorporating equipment using renewable energy sources) will be considered related works when their cost is lower than that of the works involving consolidation or treatment of structural elements, façades, or roofs and, where applicable, analogous works, provided they are inseparably linked.

Secondly, Article 20.One.22º establishes a quantitative requirement, indicating that the cost of the works must exceed 25% of the acquisition price of the building if acquired within the two years preceding the commencement of the works or, otherwise, the market value.

If the above requirements are not met, the construction works will be taxed at the general VAT rate (21%), unless they can be classified as renovation and repair works under the requirements of Article 91.One.2.10º of the VAT Law:

- The recipient must be a natural person who does not act as a businessperson or professional for VAT purposes and uses the home for private use.
- The construction or refurbishment of the dwelling must have been completed at least two years before the start of the renovation or repair works.
- The person carrying out the works must not provide materials, or if they do, the cost of such materials must not exceed 40% of the overall value of the project.

The DGT concludes that the construction works intended by the applicant shall be considered as falling under the concept of renovation and repair and will be subject to the 10% VAT rate provided that the person carrying out the work does not provide materials or, if they do, the cost of such materials does not exceed 40%.

All tangible goods that become materially incorporated into the building must be considered as supplied materials, and all goods necessary to carry out the works must be included in the calculation, including those used in subcontracted activities.

V0234-25: Concept of mixed holding company and application of the VAT Group Regime (REGE)

In ruling V0234-25, the DGT analyses the VAT treatment of the remuneration received by a holding company acting as director of several entities, as well as the treatment of services provided between group entities in the event of opting for the Special VAT Group Regime (REGE).

Given the status of the entity as a holding company, the DGT begins by pointing out that, based on CJEU case law, the mere holding of shares constitutes an economic activity subject to VAT when it entails direct or indirect involvement in the management of the subsidiary, according to the following criteria:

- Direct or indirect involvement in the management of the subsidiary is to be understood as the provision of services to that company. It is not sufficient that the shareholder appoints directors, board members or even senior managers.
- The operations that must be examined to determine the existence of services that justify treating the holding company as a taxable person are the operations carried out by the holding company itself.
- Where such services exist, dividends may not be regarded as consideration for them.
- The true nature of the transactions must be considered, avoiding the distortion that could arise from a sufficiently large shareholding affecting the legal character of the relationship through its influence over decision-making.
- The services provided by a shareholder to the company in which it holds shares must involve the use of business or professional assets.

If the above criteria are met, the holding company will qualify as a "mixed holding company" and, therefore, as a taxable person for VAT purposes. As a result, supplies of goods and services carried out by the company in the Spanish VAT territory will be subject to VAT, including the services it provides as sole director of the subsidiaries.

On the other hand, regarding the VAT treatment of intra-group services in the event that the entity opts for the REGE, specifically the advanced level, Article 163 octies of the VAT Law states that the taxable base for intra-group supplies of goods and services will be constituted by the cost of the goods and services used, whether directly or indirectly, totally or partially, in the execution of such supplies and for which VAT has been borne or paid.

Therefore, it can be concluded that intra-group transactions would be subject to VAT, although the taxable base would be constituted by the cost of the goods and services used in carrying out the operations and for which the subsidiary has borne or paid VAT in acquiring goods or services from other entrepreneurs or professionals for the purpose of providing those services to another group entity.

V0406-25: Compatibility of the Equivalence Surcharge Regime and the OSS

The DGT analyses the VAT implications for a retail entrepreneur subject to the Special Equivalence Surcharge Regime (Recargo de Equivalencia) who has also registered for the One-Stop Shop (OSS) system for his intra-Community sales.

The OSS allows entrepreneurs making intra-Community distance sales of goods to declare and pay VAT in each Member State of destination through a single electronic portal in the Member State where they are registered.

After reviewing the regulations applicable to OSS and the Special Equivalence Surcharge Regime, the DGT considers that the two regimes are not incompatible, but clarifies that the new regulation on intra-Community distance sales of goods contains no exception for traders covered by the equivalence surcharge regime. Consequently, those under this special regime cannot deduct any VAT, except for the legal exception concerning refunds to exporters under the travellers' regime.

Therefore, the individual in question, as a retail trader under the equivalence surcharge regime, must apply this special regime for domestic supplies within Spain and is not required to file VAT form 303 nor entitled to deduct input VAT.

However, once the threshold of EUR 10,000 is exceeded or the taxpayer opts to apply the destination-based taxation, intra-Community distance sales of goods must be reported via the OSS, where the VAT due in the Member States of destination will be paid.

V0262-25: Tax treatment of a notoriety deed for the registration of inherited property.

The taxpayer and his sister have inherited a property from their mother, who had in turn inherited it from her own mother. However, this intermediate transfer was not formalised through a public deed. Nonetheless, in both stages of inheritance, the Inheritance and Gift Tax (ISD) was properly settled. In order to register the property in the Land Registry, the taxpayer intends to execute a notoriety deed to replace the missing document. The Spanish Directorate General for Taxation (DGT) analyses whether said deed is subject to the Property Transfer and Stamp Duty Tax (ITPAJD), and under which category.

Until recently, the DGT considered that these deeds could be subject to the category of “onerous property transfers” (TPO), unless proper evidence was provided that the event being regularised had already been taxed.

However, following Spanish Supreme Court Judgment 463/2023 of 11 April, the DGT has changed its approach. According to this ruling, the domain record procedure or notoriety deed does not replace the entire chain of prior transfers to the current holder, but only establishes and completes the title of the taxpayer himself to enable registration. In other words, the notarial deed does not substitute the acquisition title (e.g., an inheritance already taxed) but complements it for registration purposes. Therefore, if the taxpayer has already settled the ISD for the acquisition of the property, the deed is not subject to the TPO category of the ITPAJD.

Nevertheless, the execution of the notoriety deed is subject to the “notarial acts” category (AJD), provided that the requirements of Article 31.2 of the Consolidated Text of the ITPAJD Act (TRLITPAJD) are met:

- It involves a first copy of a notarial deed or instrument,
- It refers to a valuable amount or object,
- It contains an act that may be registered in the Land Registry,
- And it is not subject to ISD or other categories of ITPAJD.

In this case, as there is a valid acquisition title (the inheritance) and the corresponding ISD has been paid, the notoriety deed is not subject to TPO but is subject to AJD. Therefore, the tax rate set by the relevant autonomous community for this category will apply.

V0319-25: Tax treatment of a debt acknowledgment secured by mortgage over land intended for subsidised housing (VPPL).

The taxpayer acts as creditor in a notarial deed of debt acknowledgment secured by a mortgage over a plot of land intended for the construction of publicly protected housing at limited price (VPPL). The loan secured by the mortgage had previously been granted by several investors and was used to acquire the plot. The question raised is whether this transaction is exempt from stamp duty (AJD) under Article 45.I.B.12 of the Consolidated Text of the Property Transfer and Stamp Duty Tax Act (TRLITPAJD).

The Spanish Directorate General for Taxation (DGT), based on Articles 7, 15, 31.2 and 45 of the TRLITPAJD, clarifies that a debt acknowledgment secured by a mortgage is treated similarly to a loan, and that when a real security (such as a mortgage) exists, it is not taxed separately but rather falls under the so-called “unitary taxation” principle for the loan.

Since the creditor acts as a businessperson for VAT purposes, the debt acknowledgment is not subject to the category of onerous property transfers (TPO) under Article 7.5 of the TRLITPAJD, as it concerns a transaction carried out in the course of an economic activity subject to VAT.

However, it is subject to stamp duty (AJD), since all requirements of Article 31.2 are met: a first copy of a public deed, a valuable content, registrable in the Land Registry, and not subject to ISD or any other category of the ITPAJD.

As for the possible exemption under AJD, the DGT notes that Article 45.I.B.12 of the TRLITPAJD provides for an exemption applicable to mortgage loans intended for the acquisition of land for the construction of officially protected housing, including housing under regional protection schemes (such as VPPL), provided they meet the national criteria on surface area, price, and income limits for buyers. Therefore, the exemption is not automatic; it is conditional on the VPPL meeting the requirements set at the national level.

In summary, the debt acknowledgment secured by mortgage is subject to AJD as it meets the legal conditions, and is potentially exempt if it is proven that the land is intended for the construction of protected housing within the national parameters applicable to officially protected housing.

V0488-25: Stamp Duty on a purchase option over a primary residence under construction.

The taxpayer intends to reinvest the proceeds obtained from the sale of her primary residence into a future new primary residence currently under construction. While the sale agreement is formalised, a public deed will be executed granting a purchase option, along with the payment of the reinvestment amount. The query concerns whether said purchase option is subject to the stamp duty (AJD) category of the Property Transfer and Stamp Duty Tax (ITPAJD).

The Spanish Directorate General for Taxation (DGT), in light of Article 31.2 of the Consolidated Text of the ITPAJD Act (TRLITPAJD), recalls that for a notarial document to be subject to AJD, the following requirements must be met: it must involve a first copy of a public deed, have valuable economic content, be registrable in an official register (such as the Land Registry or the Register of Movable Property), and not be subject to Inheritance and Gift Tax (ISD) or to any other category of ITPAJD (TPO or OS).

In this case, if the purchase option is not documented in a public deed, it fails to meet an essential requirement and therefore is not subject to AJD. On the other hand, if it is formalised by public deed, it meets all the requirements except, potentially, that of being registrable. The DGT notes that, as it concerns a purchase option over a dwelling not yet built, it is unlikely that such an option would be registrable in the Land Registry, which would prevent its subjection to AJD. However, if exceptionally the deed were registrable, then it would indeed be subject to AJD.

In summary, the purchase option will be subject to AJD only if it is formalised in a public deed and is registrable in an official register. The lack of registrability—likely in this case as the dwelling does not yet exist in the registry—would prevent subjection to the tax.

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