VAT NEWSLETTER
MARCH 2026

I. REGULATIONS AND NEW DEVELOPMENTS

Customs: The EU will introduce a temporary tariff of €3 per shipment in e-commerce from July 2026 (continued).

As we mentioned in previous newsletters, following the agreement reached on December 12 by the European Union's finance ministers, on February 11, 2026, the Council of the European Union formally approved Regulation (EU) 2026/382, which definitively ends the exemption from customs duties for low-value imports. This regulation, published on February 18, will enter into force on July 1, 2026, with the aim of combating fraud and ensuring fair competition between third-country e-commerce platforms and EU companies.

The main change is the definitive elimination of the customs exemption that until now exempted shipments with a value of less than €150 from customs duties. The increase in the volume of low-value imports following the explosive growth of e-commerce and the resulting facilitations made it difficult for customs authorities to monitor compliance with tax and non-tax obligations, making intervention necessary to protect the Union's financial interests more efficiently.

As a transitional measure, in force from July 2026 to July 2028, a simplified customs duty of €3 per item will be applied to shipments not exceeding €150. This fixed tariff has specific conditions of application: it will be used for operators registered with the Import Single Window (IOSS) and for goods contained in postal consignments. On the other hand, operators who are not registered with the IOSS regime will have to pay the ordinary common customs tariff corresponding to the product nomenclature.

This system will serve as a bridge until the Union's new centralized IT infrastructure, scheduled for 2028, is operational, which will allow for more effective calculation and notification of customs debt. However, the regulation includes a safeguard clause: from October 2026, the Commission will assess on a monthly basis whether there are any deviations in trade flows to avoid payment of this fixed duty. If irregularities are detected or if the new technology platform suffers delays, the transitional measure of €3 could be extended or prolonged beyond 2028.

New possibility of extraordinary withdrawal from the SII and extraordinary deregistration from REDEME: extension of the deadline to February 16, 2026, and pending validation of Royal Decree-Law 2/2026

In line with our previous article on the non-validation of Royal Decree-Law 16/2025 and its automatic repeal in accordance with Article 86 of the Constitution (formalized by the Resolution of January 27, 2026, published in the BOE on January 28), Royal Decree-Law 2/2026 re-enables an exceptional VAT regime and extends the initially planned deadline.

Specifically, through the new fourth transitional provision introduced in the VAT Regulations, the extraordinary deadline for (i) waiving the option for electronic bookkeeping through the SII and (ii) requesting voluntary deregistration from the REDEME is extended until February 16, 2026, despite the fact that these procedures are generally carried out in November of the previous year. In addition, waivers/withdrawals submitted in January 2026 during the brief period of validity of Royal Decree-Law 16/2025 will remain valid.

However, Royal Decree-Law 2/2026 was not ratified by the Congress of Deputies at the session held on 26 February 2026 and, consequently, it has been repealed, resulting in the loss of validity of the measures it contained, in a manner analogous to what occurred with Royal Decree-Law 16/2025. Accordingly, only the general VAT deadlines and conditions apply once again, and uncertainty has reopened regarding the treatment by the Spanish Tax Authorities (AEAT) of renunciations or deregistrations submitted under the exceptional regime.

Impact of Royal Decree-Law 2/2026 on the classification of operators in the hydrocarbons sector.

Royal Decree-Law 2/2026, of February 3, incorporates through its Article 8 a modification in the regime applicable to holders of tax warehouses and hydrocarbon extractors in the field of Excise Taxes, specifically affecting the requirements for obtaining the classification of reliable operator. Under this amendment, the annual volume of extractions required to qualify is reduced, with a new threshold of 500 million being established to replace the previous limit.

The reduction in the extraction threshold responds to the need to adapt the control regime for these operations to the reality of the sector, taking into account the actual volume of activity of operators and the evolution of the hydrocarbon market. The classification as a reliable operator is an important element in the excise tax control system, insofar as it allows for specific treatment of certain formal and operational obligations related to the management and circulation of products subject to these taxes, particularly in the area of tax warehouses.

This regulatory amendment seeks to adapt the requirements for obtaining the classification of reliable operator, so that the exercise of control functions by the tax authorities is compatible with the reduction of administrative burdens for operators carrying out their activities in this area. The reduction in the minimum volume of withdrawals broadens the subjective scope of application of the qualification, allowing a greater number of operators to access this regime based on their level of activity, without this implying any alteration to the general framework for the supervision and control of operations subject to excise duties.

The amendment introduced by Article 8 of Royal Decree-Law 2/2026 applies from the date of entry into force of the regulation and affects both holders of tax deposits and hydrocarbon extractors who meet the new quantitative requirement established, with these provisions being understood to be integrated into the current legal regime for excise duties applicable to this type of operator.

However, Royal Decree-Law 2/2026 was not ratified by the Congress of Deputies (session of 26 February 2026) and, consequently, has been repealed, resulting in the loss of validity of the measures it contained, including the reduction of the threshold for reliable operator status. Thus, the previous general regime once again applies, reopening practical uncertainty regarding the administrative treatment of any actions that may have been initiated or processed during its brief period of effectiveness.

II. EUROPEAN UNION CASE LAW

Opinion of Advocate General Kokott of January 15, 2026. Case C-603/24 (Stellantis Portugal)

Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC or Directive 77/388/EEC — Supplies between connected companies — Adjustment of the intra-group sale price on the basis of the warranty and operating costs borne by the purchaser — Adjustment of the price of a supply as an independent service provided for consideration — Relevance for VAT purposes of transfer price adjustments.

Kokott's conclusions on this matter are probably the most relevant since the recent CJEU judgment we discussed (Case C-726/23: Arcomet), because they directly address how transfer pricing adjustments should be treated in the context of intra-group transactions when they affect the price of a delivery already made, i.e., determining whether we are dealing with an independent provision of services, a modification of the tax base, or a mere adjustment of profits that is irrelevant for VAT purposes.

In this case, Stellantis purchased vehicles from European manufacturers belonging to the General Motors group and subsequently resold them to independent dealers who repaired defects covered by warranty and invoiced Stellantis with VAT.

Stellantis assumed certain after-sales costs, such as those arising from warranties or distribution. Based on these costs, the purchase price of the vehicles was adjusted retrospectively by means of credit notes or credit memos issued by the manufacturers, in order to ensure that the distribution company obtained the operating margin envisaged within the group.

In this context, the Portuguese tax authorities considered that this adjustment constituted consideration for a service provided by Stellantis to the manufacturers, consisting of the management of distribution and warranties, which would imply the existence of a supply of services subject to VAT.

The Advocate General rejects this interpretation, pointing out that the mere fact that the buyer pays more or less for a delivery depending on certain variables does not allow the conclusion that it is providing a service to the seller, since VAT is levied on consumption and not on the payments themselves. In other words, it taxes payments made for a service. In fact, accepting the logic of the Portuguese administration would imply admitting a service with negative remuneration.

Kokott also points out that the assumption of warranty costs by the distributor does not constitute a provision of services to the manufacturer, but rather the fulfillment of its own obligations to its end customers. In reality, the adjustment of the intra-group price is intended to redistribute profits between related companies for income tax purposes, which is in principle irrelevant from a VAT perspective.

In summary, Kokott proposes a fundamental classification in this context:

- In the case of actual contractually agreed services involving the provision of independent services in return for remuneration, the transaction may be subject to VAT. This is the case in the Arcomet judgment.

- In the case of unilateral and retroactive adjustments by the Administration made for income tax purposes and without modification of the agreed price, such adjustments are not relevant for VAT purposes.
- In the case of a contractual adjustment of an indeterminate but determinable variable price (a price that depends on future variables such as after-sales costs), the adjustment modifies the taxable base of the supply. This is the case in Stellantis. In such circumstances, this adjustment must be considered a modification of the taxable amount of the initial supply, in accordance with Articles 73 and 90 of the VAT Directive, without it being classified as a supply of services for consideration.

Judgment of January 29, 2026, of the Court of Justice of the European Union. Joined cases C-72/24 (Keladis I) and C-73/24 (Keladis II)

Preliminary ruling — Customs union — Regulation (EEC) No. 2913/92 — Community Customs Code — Regulation (EU) No. 952/2013 — Union Customs Code — Importation of goods — Customs value — Undervaluation — Secondary methods of determining customs value — Method based on the "minimum acceptable price" calculated on the basis of aggregate statistical values established at European Union level — Appropriateness.

The judgment analyzes the extent to which the Administration can reconstruct the customs value using statistical prices when there is fraudulent undervaluation. The Keladis judgment originates from a fraudulent scheme involving the importation of textile products from Turkey, in which artificially low customs values were declared in order to reduce import VAT. After detecting the usual signs of undervaluation of the goods, the Greek customs authorities confirmed the existence of numerous false import declarations.

However, there were several problems for the authorities, as the goods could not be physically examined and the descriptions on the invoices were so generic that it was impossible to apply the main transaction value method or the secondary methods (identical goods) provided for in the customs code to calculate the customs value. The authorities therefore resorted to an anti-fraud system developed by OLAF (the European Anti-Fraud Office), which allows a minimum acceptable price (MAP) to be calculated on the basis of statistical data extracted from the Eurostat database.

This threshold price is used as a reference to detect abnormally low values. However, the customs valuation system expressly prohibits determining such a value on the basis of minimum values, since the residual method provided for in Article 31 of the Customs Code allows the use of data available in the Union when the other valuation methods cannot be applied.

Thus, the Court considers that the statistical values used to calculate the minimum acceptable price may be used in the context of that residual method, provided that their use does not lead to the automatic setting of a minimum value.

In conclusion, the CJEU determines that the use of this type of reference price will only be compatible with EU law if the economic operator has the possibility of justifying the lower values declared in its import declarations and providing additional information that allows the actual value of the goods to be determined. Furthermore, the Court points out that the data used to calculate these statistical values must refer to imports made at a time close to those being checked.

Judgment of February 11, 2026, of the General Court of the European Union. Case T-689/24 (I. S.A.)

Preliminary ruling — Taxation — Common system of VAT — Right to deduct input VAT — Articles 167, 168(a), and 178(a) of Directive 2006/112/EC — Issuance of the invoice indicating VAT during the tax period following that for which the right to deduct is exercised — Fiscal neutrality and proportionality.

The General Court of the EU analyzes the timing of the exercise of the right to deduct and, in particular, the eternal conflict between material and formal requirements.

The I. S.A. ruling originates from the treatment of the right to deduct VAT incurred on gas and electricity purchases in Poland. The problem arises because invoices relating to energy purchases were received in the following tax period but before the VAT return for the accrual period was filed. National legislation prevented the right to deduct these invoices from being exercised until the following period, thereby automatically shifting the right to deduct to that later period, even though the transaction had been carried out, the VAT had been paid by the supplier, and the taxpayer had the invoice before filing their return.

In this context, the Court examines whether this legislation is compatible with Articles 167 and 168 of the VAT Directive, which establish that the right to deduct arises at the time when the tax becomes chargeable, i.e., when the goods are supplied or the services are provided, regardless of whether the invoice is in possession, as this is not a material requirement but a formal requirement.

The Polish legislation in question meant that the taxable person could not deduct the VAT incurred in the period in which the right to deduct arose, despite having the invoice before submitting the corresponding return, which meant temporarily bearing the tax burden.

The Court considers that this situation violates the principles of neutrality and proportionality, as it artificially delays the exercise of the right to deduct without sufficient justification in terms of fraud prevention or guaranteeing collection, thus establishing the opposition of the Directive to national legislation that prevents the exercise of the right to deduct in the corresponding period when the invoice is received before the return is filed, even if it was not received during that tax period.

III. DOMESTIC COURT RULINGS

Judgment 349/2026 of February 2, 2026, of the Supreme Court. Appeal 8496/2023.

In this ruling, the Supreme Court analyzes the neutrality between VAT and IGIC (Canary Islands General Indirect Tax) and the legitimacy of procedures for the refund of undue payments by introducing a qualified exception to the doctrine of Article 14.2 of the Administrative Review Regulations (RRVA) when there is double taxation between incompatible taxes, as is the case with VAT and IGIC.

By way of introduction, the Court analyzes the situation of a travel agency (Iberotours) which, in application of the Special Regime for Travel Agencies, had initially charged IGIC at a rate of 7% to its end customers. Subsequently, following an inspection by the Spanish Tax Agency (AEAT), it was concluded that such services should be located in the VAT territory, which obliged the entity to pay the tax at a rate of 21%, without being able to pass it on to end consumers a posteriori.

This circumstance gave rise to a situation of material double taxation, insofar as the entity had simultaneously paid IGIC to the Canary Islands Tax Administration and VAT to the State Tax Administration Agency for the same transactions, which were also incompatible taxes.

Faced with this situation, the entity requested a refund of the IGIC payments that had been unduly paid. However, the Canary Islands

Administration rejected the request on the grounds that, as it was a mandatory tax, the only party entitled to a refund would be the end consumer who had borne the tax burden.

The dispute reached the Supreme Court, which analyzed whether this interpretation of Article 14 of the RRVA was compatible with the principle of VAT neutrality, taking into account that the end consumer had not actually borne a tax burden greater than that legally applicable to them, while the company had assumed an additional tax burden by paying VAT without passing it on.

The Court highlights the case law doctrine which limits the right to request a refund to the person on whom the tax was passed on in cases where the entrepreneur acted as a mere intermediary in the transfer of the tax burden. In other words, according to this interpretation, the only person entitled to obtain a refund is the person who bore the tax burden through the passing on of the tax. However, this is not the case here, as Iberotours does not act as a mere intermediary for the tax.

In fact, since the corresponding VAT was paid without being passed on to the final consumer, the business owner effectively bore the economic impact of the VAT, which prevents it from being considered a simple transfer of the tax. Furthermore, given that the transactions in question were to be understood as having been carried out in the territory where VAT applies, the payment of IGIC had no legal basis, as the corresponding taxable event did not occur in that territory.

Consequently, the Supreme Court concludes that refusing to refund the unduly paid IGIC amounts would violate the principle of neutrality of the common VAT system and generate unjust enrichment in favor of the Administration, and therefore recognizes the entity's right to a refund.

IV. ADMINISTRATIVE DECISIONS

Resolution Nº. 09752/2022, of December 16, 2025, on the application of the anti-abuse principle and the denial of the right to deduct VAT on services rendered.

The resolution concerns the denial of the right to a refund of VAT paid by XZ SA (a company not established in Spain, parent company of XZ-FP SA) for purchases of silver made from its subsidiary during 2012-2014. These transactions were part of a fraudulent VAT chain, with intermediary suppliers (shell companies) that did not pay the VAT charged. Following a criminal complaint in 2016 and a provisional dismissal in 2020, the Spanish Tax Agency (AEAT) initiated an inspection in 2020, resulting in a provisional settlement of €7.39 million and a penalty for serious infringements.

In this context, the Central Economic Administrative Court (TEAC) ruled on the direct application of the principle of prohibition of abusive practices under European Union law on VAT and, specifically, on the appropriateness of denying the right to deduct VAT paid on services when it is proven, through objective data, that the taxpayer knew or should have known that they were participating in tax fraud. All this, even though there is no express provision in domestic legislation providing for such a denial, especially with regard to services, given that Article 87.5 of the VAT Law is limited to supplies of goods.

The issue under consideration focuses on determining whether it is lawful to deny the right to deduct VAT paid on services in cases of fraud, despite the fact that Article 87.5 of Law 37/1992 on VAT expressly regulates a case of subsidiary liability referring only to supplies of goods and does not expressly extend this regime to services.

In this regard, the TEAC reaffirms that, in accordance with the established case law of the Court of Justice of the EU, the anti-abuse principle is a general principle of EU law and is therefore directly applicable by national authorities, regardless of its express transposition into domestic law. Consequently, no taxable person may fraudulently or abusively invoke the rules of the common VAT system in order to obtain an undue tax advantage.

In particular, the Court refers to the doctrine of the CJEU established, inter alia, in the Italmoda judgment of December 18, 2014 (C131/13 and joined cases) and subsequently in Cussens of November 22, 2017 (C-251/16), according to which the right to deduct, exempt, or refund VAT must be denied when it is proven, by objective evidence, that the taxable person knew or should have known that the transaction invoked to justify the right was part of VAT fraud committed in the chain of transactions. This case law builds on that previously established in Kittel, Mahagében, Bonik, Aquila, among others.

On this basis, the TEAC concludes that the absence of an internal rule extending Article 87.5 LIVA to the provision of services does not prevent the direct application of the EU anti-abuse principle or limit the Administration's power to deny the right to deduction when the requirements established by the CJEU are met: the existence of fraud in the chain of transactions, and

knowledge or duty of knowledge on the part of the taxable person.

Consequently, the Court establishes as a criterion that the right to deduct VAT paid on services may be denied when it is proven that the taxpayer participated (actively or through lack of due diligence) in fraud or acted abusively, even in the absence of a specific internal rule expressly providing for such legal consequence, in direct application of the anti-abuse principle of EU law.

The TEAC thus reiterates the criteria already established in previous rulings and reinforces the primacy of European Union law in the interpretation of VAT regulations, consolidating a doctrine that limits the exercise of the right to deduction when it is invoked in a context of fraud, regardless of the nature of the transactions carried out.

Resolution Nº. 02605/2025, of January 20, 2026, on the calculation of agricultural compensation within the exclusion limit of the special VAT regime for agriculture, livestock, and fisheries (REAGP).

The Central Economic-Administrative Court (TEAC) rules on the calculation of the volume of transactions determining exclusion from the special regime for agriculture, livestock, and fishing (REAGP) for Value Added Tax (VAT), establishing criteria in relation to the inclusion of the flat-rate compensation provided for in Article 130 of the VAT Law.

The controversial issue is whether the agricultural compensation received by taxpayers covered by the REAGP should be included in the calculation of the quantitative limit that defines the application of this special regime, in accordance with the provisions of Article 124.Two.3 of Law 37/1992 on VAT and its implementing regulations.

In this regard, the TEAC carries out a systematic and coordinated interpretation of the VAT and personal income tax regulations, concluding that exclusion from the REAGP due to exceeding the volume of transactions cannot be determined solely on the basis of the general concept of "volume of transactions" defined in the VAT Law, but must take into account the express reference made in Article 43.2.a of the VAT Regulations to the regulations governing the objective assessment method for personal income tax.

The Court points out that this reference is not limited to setting the threshold amount of €250,000, as interpreted by the TEAR of Catalonia, but also includes the basis for calculating this amount, so that the limit for exclusion from the REAGP must be determined in accordance with the concept of gross income provided for in the personal income tax regulations. In this context, agricultural compensation, which is not a tax, subsidy, or indemnity, constitutes income inherent to the activity and must therefore be included in the calculation of the limit when there is no express exclusion in the applicable regulations.

On this basis, the TEAC establishes as a criterion that the lump-sum compensation under the special regime for agriculture, livestock, and fishing must be taken into account for the purposes of determining the exclusion from the REAGP by volume of operations, insofar as the regulations governing the objective assessment method for personal income tax do not expressly provide for its exclusion, a criterion consistent with the repeated doctrine of the Directorate General of Taxes and with previous rulings of the Central Court itself.

However, the Court introduces an important temporal clarification, indicating that for the 2025 and 2026 tax periods, agricultural compensation should not be included in the calculation of income volume, as this has been expressly established in Ministerial Orders HAC/1347/2024 and HAC/1425/2025 approved for those years, a provision that confirms its inclusion in previous periods due to the absence of express exclusion.

Consequently, the TEAC establishes doctrine to the effect that agricultural compensation forms part of the calculation of the volume of operations determining exclusion from the REAGP, except in those years in which the personal income tax regulations expressly provide otherwise.

Resolution Nº. 03713/2024, of January 20, 2026, on the refund of VAT to non-established entrepreneurs or professionals covered by the Union's external regime and the non-requirement of reciprocity.

The Central Economic-Administrative Court (TEAC) rules on the procedure for recovering Value Added Tax (VAT) paid in the territory where the tax applies by entrepreneurs or professionals not established in the European Union, when they are covered by the Union's external regime (single window - OSS), and on the non-requirement of reciprocity of treatment in such cases.

The issue analyzed focuses on determining whether it is lawful to require reciprocity of treatment in order to recognize the right to a VAT refund for a business owner or professional not established in the European Union who has opted for the Union External Scheme, taking into account that Article 119 bis of Law 37/1992 on VAT generally establishes this requirement for taxable persons established in third countries.

In this regard, the TEAC makes a joint interpretation of domestic legislation and European Union law, highlighting that Article 163 vicies.2 of the VAT Law, which regulates the Union's external regime, expressly recognizes the right to a refund of VAT paid by entrepreneurs or professionals covered by that regime without requiring reciprocity of treatment, referring the exercise of that right to the special procedure provided for in Article 119 bis of the same Law.

In this regard, the Court emphasizes that this provision transposes into domestic law the provisions of Article 368 of Directive 2006/112/EC, which excludes the application of the limitations provided for in Directive 86/560/EEC, including reciprocity, to VAT refunds linked to services covered by the Union's external regime.

On this basis, the TEAC concludes that the requirement of reciprocal treatment generally provided for entrepreneurs or professionals established in third countries is not applicable when the applicant for the refund is covered by the Union's external regime and the tax paid is linked to the provision of services covered by that regime.

The Court also analyzes the formal requirements of the invoices provided and recalls that formal defects in the identification of the recipient cannot, on their own, determine the denial of the right to a refund when the reality of the transactions and the status of

the applicant as the recipient have been proven, especially when such defects have been duly corrected by providing corrective invoices and additional documentation during the review process.

Consequently, the TEAC establishes as a criterion that the recovery of VAT paid by entrepreneurs or professionals not established in the European Union who are covered by the Union's external regime must be carried out through the special refund procedure provided for in Article 119 bis of the VAT Law, without the requirement of reciprocal treatment generally provided for persons established in third countries being enforceable.

The Court upheld the claim, annulled the denial agreements issued by the Administration, and recognized the claimant's right to a refund of the VAT paid, specifying that the criterion established does not, for the time being, constitute binding doctrine as it has not been reiterated.

V. BINDING CONSULTATIONS

V1780-25: Chain sales with a British intermediary and a single intra-Community transport. Taxation of the transaction and formal obligations.

In binding consultation V1780-25, the Directorate-General for Taxation analyzes the Value Added Tax treatment of a chain of successive sales involving a supplier established in Portugal, an intermediary entity established in the United Kingdom, and a Spanish company as the final recipient. The goods are subject to two successive deliveries, but with a single intra-Community transport from Portugal, where the goods are manufactured, to the territory where the tax applies (TAI). The central issue is to determine to which delivery the transport should be attributed and, consequently, the classification of each transaction, as well as the formal obligations arising for the Spanish company making the consultation.

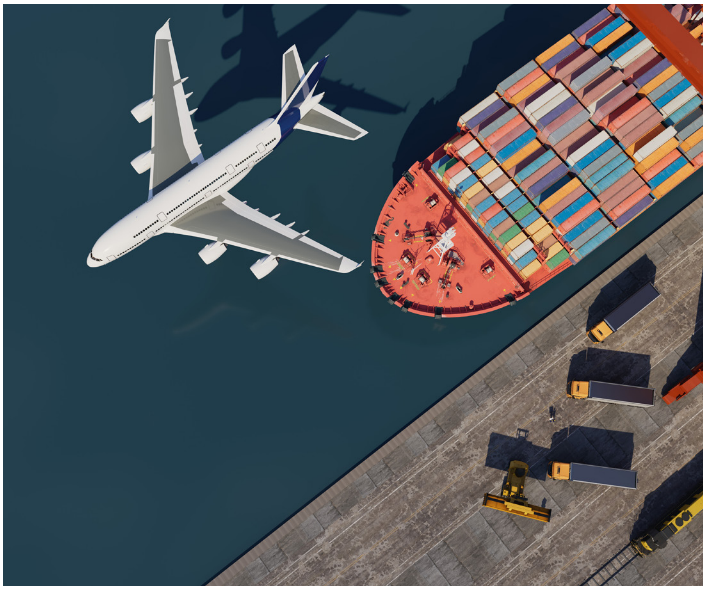
The determining factor in the analysis lies in the application of Article 68. Two.1º.B) of Law 37/1992, transposing Article 36 bis of Directive 2006/112/C, establishing that, when goods are subject to successive deliveries and are transported directly from the first supplier to the final customer in another Member State, the shipment or transport shall generally be attributed to the delivery made to the intermediary. However, if the intermediary provides its supplier with a VAT identification number assigned by the Member State where the transport began, the dispatch shall be deemed to be linked to the supply made by that intermediary.

In the case under consideration, the British entity acts as an intermediary, although it is not clear from the consultation letter whether it has communicated to its Portuguese supplier a VAT identification number assigned by the Portuguese tax authorities. The classification of the transactions depends on this circumstance.

If the British intermediary entity provides a Portuguese VAT identification number to its supplier, the transport will be attributed to the supply made by the intermediary to the Spanish company. In this case, the delivery from the Portuguese supplier to the British entity would not be located in the TAI (being classified as a domestic transaction in Portugal), while the transaction between the intermediary and the consulting entity would constitute an intra-Community supply of goods in Portugal and the corresponding intra-Community acquisition in Spain by the consulting company, subject to and not exempt from VAT.

Conversely, if the intermediary does not provide a Portuguese VAT number, the transport will be attributed to the Portuguese supplier's delivery to the British company. In this case, this transaction will give rise to an intra-Community acquisition in the TAI by the intermediary, which could be exempt under the conditions set out in Article 26.Four of the VAT Law (if there is a right to request a VAT refund through the special procedure for non-established persons), while the subsequent delivery by the British entity to the consultant will be considered a domestic delivery in the territory where the tax applies, subject to tax and not exempt.

In this second scenario, Article 84.1.2.a) of the VAT Law, which regulates the reverse charge mechanism for supplies of goods made by entrepreneurs or professionals not established in the TAI, is particularly relevant. Given that the British entity is not



established in Spain, the taxable person for the tax will be the Spanish recipient company, which must charge and pay the corresponding VAT in its self-assessments.

The DGT expressly emphasizes that this reverse charge does not imply the existence of an intra-Community acquisition by the consultant, but rather that it is a domestic supply in respect of which the recipient assumes the status of taxable person by application of the aforementioned Article 84.1.2.a). Consequently, this transaction does not give rise to the formal obligations inherent in intra-Community transactions, such as inclusion in form 349 or the need for the Spanish purchaser to have a VAT identification number for this purpose.

V2212-25: Services between a Spanish branch and an Italian head office that is part of a VAT group.

In this consultation, the Directorate-General for Taxation analyzes the VAT treatment of advisory services provided by a branch established in Spain to its head office in Italy, which is part of a VAT group in that Member State. The question raised focuses on determining whether transactions between the head office and the branch are subject to tax, whether the reverse charge rule applies, and what impact this has on the calculation of the Spanish branch's pro rata deduction.

On this point, the DGT bases its opinion on the doctrine established by the Court of Justice of the European Union in its judgment of March 23, 2006, Case C-210/04, FCE Bank, in which it was concluded that a branch that does not constitute a legal entity separate from its head office and does not assume the economic risk of its activity does not act independently, forming a single taxable person together with the main entity. In that case, it was understood that the branch could not be considered autonomous, as it did not personally assume the economic risks arising from the exercise of the activity. In such circumstances, the provision of services between the head office and the branch is not subject to VAT.

However, the DGT points out that this criterion was qualified by the CJEU itself when one of the entities is part of a group of entities for the purposes of Article 11 of Directive 2006/112/EC. Thus, in the Skandia case (judgment of September 17, 2014, case C-7/13), the CJEU ruled that services provided between a main establishment and its branch established in another Member State constitute taxable transactions when the branch is a member of a VAT group. Subsequently, in the Danske Bank case (judgment of March 11, 2021, case C-812/19), the Court extended this criterion to the reverse situation, considering that they must also be treated as separate taxable persons when it is the main establishment that is part of the VAT group.

Applying this doctrine to the case in question, the DGT concludes that, given that the Italian head office is part of a VAT group in its Member State, the services provided between the Spanish branch and the head office must be considered as being provided between separate taxable persons and therefore constitute transactions subject to VAT.

V2162-25: Rectification of the tax base due to the retroactive 80% reduction in tolls for electricity-intensive consumers. Royal Decree Law 7/2025 approving urgent measures to strengthen the electricity system.

The Directorate-General for Taxation is analyzing the Value Added Tax treatment of the 80% reduction in tolls for access to the transmission and distribution networks provided for energy-intensive consumers in Article 22 of Royal Decree-Law 7/2025 of June 24, approving urgent measures to strengthen the electricity system, which was ultimately not validated by the Congress of Deputies.

The measure, approved in June 2025, was to take effect from January 23, 2025, until December 31, 2025, and provided that the first bill issued after the entry into force of this royal decree-law should separately include the discount on electricity transmission and distribution tolls corresponding to the period from January 23, 2025, to the date of entry into force of this provision under the heading “regularization of discounts on electricity transmission and distribution tolls for energy-intensive industries.”

The amount to be discounted would be such that in no case would the economic value of the tolls in each of the invoices be negative, in which case the remaining amounts to be discounted would be applied in the following billing cycles.

In this regard, it would not be necessary to issue a corrective invoice, as provided for in Article 89.4 of the VAT Law and Article 15 of the Invoicing Regulations.

Following the non-validation of the Royal Decree-Law, the DGT points out that, taking into account the legal status of royal decree-laws and in accordance with the principle of hierarchy, during the period of validity of Royal Decree-Law 7/2025, its content should have been applied in preference to the provisions of the Invoicing Regulations. Consequently, during the period of validity of Royal Decree-Law 7/2025, the rectification of all previous invoices had to be made in the first invoice issued after June 25, 2025, under the heading “regularization of discounts on

electricity transmission and distribution tolls for energy-intensive industries."

However, given that this Royal Decree-Law is no longer in force following its non-validation, the rectification of invoices must be carried out in accordance with the Invoicing Regulations, i.e., by issuing at least one corrective invoice for each customer benefiting from the discount, identifying the rectified invoices.

V2362-25: VAT refunds to non-established persons (Art. 119 bis LIVA). Responsibility of the representative.

Consultation V2362-25 analyzes the situation of a representative of an entity established in the United Kingdom who requested, on behalf of the latter, refunds of VAT paid in the territory where the tax applies during the 2021 to 2023 fiscal years. Following the termination of the contract and the appointment of a new representative for the 2024 financial year, the question arises as to whether the previous representative continues to be liable for the refunds already requested and whether he must maintain ownership of the guarantee provided for this purpose.

Article 119 bis of Law 37/1992 allows entrepreneurs or professionals not established in the TAI or in the Community, the Canary Islands, Ceuta, or Melilla to request a refund of the amounts paid in that territory, provided that certain requirements are met. Among these, Article 119 bis. One.1º imposes the obligation to appoint, in advance, a representative resident in Spain who fulfills the corresponding formal and procedural obligations and who "shall be jointly and severally liable with them in cases of improper refunds." Likewise, this article states that the Public Treasury may require said representative to provide sufficient security.

The purpose of this security is to ensure that the Tax Authorities, in the event that the refund is improper, recover the amounts unduly refunded and, where applicable, any interest on arrears and penalties that may be payable. The DGT states that the joint and several liability of the representative refers exclusively to the amount of improper refunds and cannot be extended to other cases.

As for the temporal dimension of representation and liability, the DGT refers to Article 111.5 of the General Regulations on Tax Management and Inspection Procedures (Royal Decree 1065/2007), which establishes that revocation does not affect the validity of actions taken with the representative before such circumstance is accredited before the Administration, producing effects only for the future.

It follows from this provision that refund requests submitted during the 2021 to 2023 fiscal years constitute administrative acts carried out by said representative, without such liability being transferred to the new representative, who did not participate in said past actions. For said refund requests, the representative who submitted them must maintain ownership of the guarantee or bond that was initially provided.

V2518-25: Cryptocurrency exchange and VAT. Tax liability, exemption, and treatment of outsourced payment services.

The Directorate-General for Taxation analyzes the treatment under Value Added Tax of an entity engaged in the exchange of fiat currencies (euros, dollars) for cryptocurrencies (Bitcoin, Ethereum) and vice versa. In order to carry out its activity, the consultant has contracted with an entity established in Lithuania that provides it with access to national and international payment systems. Two issues are analyzed separately: whether the exchange services provided by the consultant are subject to and exempt from VAT, and what regime applies to the outsourced services provided to it by the Lithuanian entity.

With regard to the first issue, the starting point is Article 135.1.d) and e) of the VAT Directive, which establishes the exemption of transactions relating, among other things, to payments and transfers, as well as currency and legal means of payment. This provision has been transposed into our Article 20.1.18 of the VAT Law, which exempts, among other things, transactions relating to transfers and other payment orders, as well as transactions involving the purchase, sale, or exchange of currency.

With regard to cryptocurrencies, the interpretative criterion was definitively established by the Court of Justice of the European Union in its judgment of October 22, 2015, in the David Hedqvist case (C-264/14). In that ruling, the CJEU concluded that cryptocurrencies constitute a direct means of payment between operators who accept them. Thus, the mere exchange of one cryptocurrency for another cryptocurrency, or for a currency that constitutes a legal means of payment, are transactions excluded from the scope of Value Added Tax and not subject to the tax. Furthermore, financial services related to cryptocurrencies (exchange fees paid by the consultant in the course of its business) are exempt from VAT under Article 135.1.e).

Consequently, the DGT concludes that the financial services of exchanging fiat currency for cryptocurrency and vice versa, or exchanging one cryptocurrency for another, provided by the consultant are subject to but exempt from VAT.

The second question concerns the treatment of the services provided by the Lithuanian entity, analyzing mainly whether the outsourcing of certain functions to a third party constitutes a financial transaction subject to and exempt from tax. To this end, the DGT points out that the general principle that exemptions must be interpreted restrictively in the financial field must be taken into account.

The applicable doctrine has been consistently developed by the Court of Justice, whose starting point is the judgment of June 5, 1997, in the Sparekassernes Datacenter case (C-2/95). In that ruling, the CJEU established that in the case of "a transaction relating to transfers," the services provided must have the effect of transferring funds and involve legal and financial changes. Therefore, it is necessary to distinguish the exempt service for the purposes of the Directive from a mere material or technical service, such as making a computer system available to the bank.

This interpretation has subsequently been reinforced in rulings such as Bookit (C-607/14) and DPAS (C-5/17), in which the Court states that it is not sufficient for the service to be necessary or essential for the payment to be made, but that it must, in itself, produce the legal and financial change characteristic of the exempt transaction. The mere provision of technical or administrative services, such as data transmission, transfer arrangements, or payment verification, would not be sufficient to qualify for the exemption.

Applying these principles to the specific case, the Directorate-General for Taxation concludes that the treatment of the services provided by the Lithuanian entity will depend on the actual scope of its functions and the responsibility assumed contractually. If the Lithuanian entity acts on its own behalf, executes the transactions, and assumes responsibility in the sense that such responsibility extends to the specific and essential functions of the payment (alteration of the balances resulting from the exchange transactions), the services may be considered subject to and exempt from VAT. Conversely, if its involvement is limited to technical, administrative, or purely managerial aspects, such as arranging payments, verifying transactions, or generating files, such services will be subject to and not exempt from tax.

V2326-25: certificates with recycled content in percentage terms and determination of the tax base in kilograms for the purposes of the IEPNR

Consultation V2326-25 is based on a case raised by a certification body accredited in accordance with UNE-EN 15343:2008. The consultant indicates that, for certain products, there is no analytical technology that allows the kilograms of recycled plastic incorporated into the final product to be quantified directly and reliably. For this reason, certification of recycled content is usually issued as a percentage by mass. Based on this operational reality, the question is asked whether these certificates expressed as a percentage can be used to determine the tax base for the special tax on non-reusable plastic packaging, bearing in mind that the tax is calculated on the kilograms of non-recycled plastic contained in the products.

The Directorate General of Taxes recalls that Law 7/2022 defines the tax base as the amount of non-recycled plastic, expressed in kilograms, and that the amount of recycled plastic that allows for a reduction in the calculation must be accredited by a certificate issued by an entity accredited in accordance with the UNE-EN 15343 standard (or others that replace it). It also stresses the importance of ensuring that the data used is consistent with the legal format, as the regulations classify the incorrect certification of the amount of recycled plastic when it must be expressed in kilograms as an infringement.

On this basis, the DGT accepts that recycled content can be certified by means of certificates issued as a percentage, provided that this percentage allows the quantity of recycled plastic to be

determined in kilograms and, consequently, the kilograms of non-recycled plastic that make up the tax base to be calculated by difference.

In practice, the criterion does not validate the percentage as an autonomous substitute for the data in kilograms, but as a format of accreditation that can be used when there is sufficient traceability of the weight of the plastic component or the product concerned to allow the percentage to be converted into a quantitative result in kilograms, verifiable and consistent with the tax base defined in the law.

V2570-25: devolución del IEPNR soportado por adquirentes no contribuyentes en envíos fuera del TAI

Consultation V2570-25 analyzes a case in which a company purchases products subject to tax in Spain from a domestic manufacturer, who charges the special tax on non-reusable plastic packaging on the invoice. Subsequently, part of these products are used in transactions involving shipment outside the territory where the tax applies. The consulting entity does not carry out activities that make it liable for the tax (such as manufacturing, importing, or intra-Community acquisition), so it asks whether, despite this, it can request a refund of the tax paid on the units that ultimately leave the TAI.

The Directorate-General for Taxation confirms the right to a refund provided for in Law 7/2022 for purchasers who, without being taxpayers, can prove that the goods have been shipped outside the TAI and that the tax has been paid. The consultation emphasizes that the request must be supported by proof of departure from the TAI and evidence of the tax actually paid, with the relevant supporting documents being provided to the AEAT by means accepted by law.

A relevant element of the criterion is the reference to the TEAC ruling of June 19, 2025, which rejects the addition of conditions not provided for in the regulation. In particular, it rules out the requirement that the shipment outside the TAI be made by the applicant themselves or by a third party acting on their behalf or on their account when this is not established by law. Consequently, the core of the analysis focuses on proving the material fact of the departure from the TAI and the economic burden of the tax paid.

The consultation also incorporates the caveat regarding unjust enrichment, in the sense that the refund may be denied if it is proven that the tax was transferred in a manner incompatible with the intended refund. This nuance places the focus on the consistency between the transport or shipping documentation, the invoicing incurred, and the economic reality of the transaction, especially when the cost of the tax may have been incorporated into the price charged to third parties.

V2049-25: bags in industrial circulation and proof of reusability for IEPNR purposes

Consultation V2049-25 refers to a company that manufactures plastic bags for an industrial customer. According to the facts, the bags are used to separate components during the production process and the customer has a recovery circuit: each bag is reused at least 15 times, with defined recovery services, and at the end of its useful life, they are removed by a waste manager in specific containers. The question is whether these bags can be considered reusable for the purposes of the Special Tax on Non-Reusable Plastic Packaging (IEEPNR) and how to prove this status.

The DGT first states that, due to their function of containing and handling goods, the bags are considered packaging. The decisive question then becomes whether they are reusable or non-reusable under Law 7/2022. The DGT points out that non-reusable packaging is packaging that has not been conceived, designed, and marketed for multiple rotations or for reuse for the same purpose. It emphasizes that the classification does not depend solely on whether the user actually reuses it, but on whether the packaging is objectively conceived and designed to operate in a reuse cycle.

Regarding accreditation, the DGT does not establish a single document or mandatory certificate: reusability can be proven by any means admissible in law, and it will be up to the management and inspection bodies to assess the sufficiency of the evidence provided (e.g., technical design documentation, traceability of the circuit, contracts, and operational evidence), without the DGT being able to validate a specific means of proof in the abstract.

V2180-25: Affidavit for registration: criteria following Supreme Court Ruling 463/2023 and consequences when the previous acquisition was not settled.

Consultation V2180-25 is based on a case in which the consultant acquired a home in 2001 by public deed, did not settle the ITPAJD at that time, and, years later, a settlement was processed declaring the debt time-barred. In order to register the property at present, an affidavit has been granted and a question has been raised about its taxation.

The DGT frames the analysis in Article 7.2.C of the TRLITPAJD, which subjects title deeds and affidavits to tax, unless proof of payment of the tax, or exemption or non-liability, for the transfer for which the title is being replaced is provided. The relevant new development is that the consultation expressly incorporates STS 463/2023, of April 11, and adjusts the administrative criteria in line with that ruling: the "title" being replaced is that of the acquisition of the property by the developer of the file, not that of previous transfers in the chain. Consequently, when the developer proves that their acquisition has already been taxed (or was exempt/not subject), the deed is not subject to TPO and, if the requirements are met, it may be subject to AJD under Article 31.2.

Applied to the specific case, the DGT concludes that, as it is clear that the 2001 acquisition was not settled and no proof of tax paid or exemption/non-liability for the transfer whose title is being replaced has been provided, the exclusion in Article 7.2.C does not apply. Therefore, the affidavit is subject to TPO.

V2480-25: Simultaneous dissolution of inherited condominiums: mixed compensation and delimitation versus exchange

Consultation V2480-25 describes a scenario in which the consultant and his nine siblings are co-owners of two properties acquired through inheritance. Following the death of their mother, who shared ownership of one of the properties with them, they are considering distributing the inheritance and dissolving one of the communities, with the consultant receiving 100% of one property. The excess allocation would be compensated partly in cash and partly through the transfer of ownership of his share in the second condominium. The taxation of these transactions under ITPAJD is being consulted.

The DGT (Directorate General of Taxes) starts from the rule of classification according to the true legal nature and that, if a document contains several separable agreements, they should be settled separately. Regarding the dissolution of the community, it recalls the typical problem of simultaneous dissolutions: if, upon the extinction of several communities, the co-owners "exchange" assets from one and another as if it were a single community, the transaction may be reclassified as a swap and taxed under TPO.

The consultation is particularly relevant because it systematizes and applies the doctrine of the Supreme Court, in particular STS 1502/2019, of October 30, in relation to two key issues: i) that the existence of several condominiums terminated simultaneously does not in itself prevent the application of Article 7.2.B of the TRLITPAJD, and ii) that compensation for the excess is not strictly limited to cash if the elements of equivalence and proportionality of benefits are preserved, with alternative compensation such as the assumption of debts or payment in kind being accepted. If the requirements of indivisibility/inevitability and equivalence are met, the case of non-liability for TPO under Article 7.2.B would apply and taxation by AJD would proceed.

The DGT adds two clarifications: the existence of one or more communities when several assets are involved is a matter of fact that can be verified, and the tax base on dissolution is linked to the part of the value corresponding to the co-owners whose share disappears and is acquired by the person who is awarded the property, who is the taxpayer.

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