Vat Newsletter
November 2025

I. LEGISLATION AND NEWS

Approval of Royal Decree-Law 15/2025: VERI*FACTU provisionally postponed to 2027

On 3 December 2025, the Spanish Government approved Royal Decree-Law 15/2025, which amends the fourth final provision of Royal Decree 1007/2023 (commonly referred to as the "VERI*FACTU Regulation"), extending the deadlines for adapting invoicing IT systems to 1 January 2027 for Corporate Income Tax taxpayers and 1 July 2027 for all other obligated parties.

However, as this regulation has been enacted through a Royal Decree-Law, its application is immediate but provisional until it is ratified by the Spanish Congress of Deputies within a period of 30 days. If it is not ratified, the Royal Decree-Law would be expressly repealed and, consequently, the VERI*FACTU implementation dates would revert to those originally established: 1 January 2026 and 1 July 2026

Customs: Start of the definitive period of the AES (Automated Export System).

On 15 December, the definitive period of the AES system will begin. This is the IT system developed for the electronic management of export declarations and the exit of goods from the customs territory of the European Union.

AES replaces the previous system known as ECS (Export Control System) and aims to modernise, harmonise, and automate customs procedures at EU level in line with the UCC.

We remind that the AES system will generate the following documents:

- Release Note (for the carrier)
- Exit Authorisation (for the exporter)
- Export Accompanying Document (EAD) on a temporary basis
- Certificate of Effective Exit of an Export (CCCSEC), available when the goods leave the EU Customs Territory (UCT)

The CCCSEC is an official document allowing the exporter to prove, for VAT and other purposes, that the export has taken place and that the goods have left the EU customs territory. It may be obtained through the Spanish Tax Agency's electronic headquarters.

Although not mandatory, several Member States will temporarily maintain the physical EAD in order to facilitate carriers proving indirect exports without delays.

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II. EU CASE LAW

Judgment of 2 October 2025 of the Court of Justice of the European Union. Case C-535/24 (Svilosa AD).

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(c) — Supply of services for consideration — Article 24(1) — Supply of services — Article 26(1)(b) — Supply of services free of charge treated as a supply of services for consideration — Debt collection — Collection of a debt on behalf of a third party.

This judgment of the CJEU analyses whether certain actions carried out by the Bulgarian company Svilosa AD constitute taxable supplies of services or free supplies treated as supplies for consideration under Articles 2(1)(c) and 26(1)(b) of Directive 2006/112/EC.

In the case examined, Svilosa granted a loan to the "Mir za teb, mir za men" Foundation to organise a charity concert. The money was not transferred to the foundation but was distributed to third parties responsible for organising the event. As the concert never took place and the loan was not repaid, Svilosa hired US law firms to recover the amounts.

The dispute arose when, following a tax inspection, the Bulgarian tax authorities concluded that Svilosa had provided legal services to the foundation without receiving consideration, and that such services were therefore subject to VAT. The law firms invoiced Svilosa directly for those legal services, and Svilosa bore the full cost. A portion of the recovered money was paid directly into Svilosa's account and recorded as repayment of the loan. The administration considered that Svilosa had acted on behalf of the foundation, benefiting it without charging anything, thus qualifying the operation as a free supply.

The Bulgarian national court expressed doubts about that interpretation and referred the question to the CJEU, asking whether the acts of collection carried out by a creditor on behalf of a debtor (without any prior mandate from the foundation to Svilosa) can be regarded as a supply for consideration or as a free supply treated as a supply for consideration for VAT purposes.

The Court held that a supply of services is only for consideration if there is a legal relationship between the parties with reciprocal performance, and a direct link between the service and the consideration — once again referring to the "direct link" doctrine. In this case, there was no agreement between Svilosa and the foundation regarding the judicial recovery of the debt, nor any payment for those acts. Therefore, no service was supplied for consideration.

Furthermore, the CJEU added that the fact that Svilosa recovered part of its credit in the United States does not constitute consideration for services provided to the foundation, but merely the recovery of its own right as a creditor. Civil law classifications under Bulgarian law (management of another's affairs, indirect action, etc.) are irrelevant for the autonomous interpretation of the concept of supply of services for VAT purposes.

Nor can the case be treated as a free supply treated as a supply for consideration under Article 26(1)(b) of the VAT Directive, as this applies only where services are used for private purposes or for purposes other than those of the business. Here, Svilosa clearly acted in its own business interest in seeking to recover its own credit, and any advantage for the foundation was only an indirect effect.

Therefore, the Court ruled that debt collection carried out by a creditor without a mandate from the debtor is not subject to VAT, as it does not constitute a supply of services for consideration nor can it be treated as such.

Judgment of 9 October 2025 of the Court of Justice of the European Union. Case C-101/24 (XYRALITY GmbH).

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(c) — Supplies of services for consideration — Article 24(1) — Supply of services — Article 26(1)(b) — Supply of services free of charge treated as a supply of services for consideration — Debt collection — Collection of a debt on behalf of a third party.

This judgment concerns a dispute regarding the application of VAT to in-app purchases made within games developed by XYRALITY and marketed through an Irish app store ("X"). The central issue is determining who supplies the service to the consumer: the app store X or the developer directly.

In this context, the entire purchasing process took place under X's interface and logo, shaping the perception of the average consumer as to who their contractual counterpart was. The Court

recalls the legal fiction in Article 28 of the VAT Directive, under which, if an intermediary acts in its own name but on behalf of another person, it is deemed to receive and supply the service itself.

The fact that order confirmations sent to consumers after payment referred to XYRALITY and indicated German VAT paid by it is not sufficient to rule out the application of Article 28. According to the CJEU, these subsequent communications do not alter the essential nature of the transaction nor the function performed by X at the time of purchase, which is essentially that of a commissionaire acting in its own name but on behalf of XYRALITY.

Therefore, since X is deemed to receive the services from XYRALITY, the place of supply is determined in accordance with Article 44 of the VAT Directive (B2B rule), meaning that the operation is located in Ireland, where X is established.

Lastly, in relation to Article 203 of the VAT Directive, the CJEU states that VAT becomes payable only where there is a risk of loss of tax revenue, particularly due to undue deductions by the recipient. As the final customers are not taxable persons, no such risk exists. Consequently, XYRALITY is not liable for German VAT merely because the tax was mentioned in the confirmations sent by X.

Judgment of 23 October 2025 of the Court of Justice of the European Union. Case C-232/24 (A Oy).

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Taxable transactions — Exemption relating to the granting of credit — Article 135(1)(b) — Exemption relating to financial transactions — Debt collection — Article 135(1)(d) — Factoring through assignment of receivables — Pledge-based factoring.

This judgment addresses the VAT treatment applicable to the commissions charged by "A Oy", a Finnish company providing factoring services through the assignment of receivables and pledge-based factoring. The dispute concerns whether these commissions are subject to VAT or whether they should be treated as exempt financial services under Article 135 of the VAT Directive.

In this context, whereas the Finnish tax authorities considered that part of the commissions corresponded to an exempt granting of credit, A Oy argued that all commissions should be subject to VAT. The Finnish court referred several questions to the CJEU regarding the nature of these commissions.

The CJEU recalls that factoring constitutes a supply of services for consideration subject to VAT under Articles 2 and 9 of the Directive, a view supported by previous case law. In this regard, the financing commission depends on the risk assumed and the payment term, while the opening commission covers costs such as those derived from anti-money laundering regulations. Both remunerate services provided to the client and are not an adjustment of the purchase price of the receivable.

The Court explains that a granting of credit exempt under Article 135(1)(b) requires that the client receive funds to be repaid later, which does not occur in factoring transactions involving an assignment of receivables. In pledge-based factoring, although financing is provided, it is not autonomous but incidental to the main service of debt collection.

Consequently, the CJEU finds that these commissions form part of a single and indivisible supply whose economic objective is to relieve the client from the task of collecting its receivables. Separating the financing element from the management element would be artificial, as they are closely linked.

Therefore, the Court concludes that factoring (in all its forms) falls within the concept of "debt collection", which is excluded from the exemption under Article 135(1)(d) of the VAT Directive. As a result, the commissions in question are subject to VAT and cannot benefit from the financial services exemption.

Finally, the CJEU states that the exclusion relating to debt collection is unconditional, precise, and has direct effect, meaning it may be relied upon by individuals before national courts even where domestic law contains broader exemptions.

Judgment of 23 October 2025 of the Court of Justice of the European Union. Case C-234/24 (Brose Prievidza spol s r.o.).

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 138(1) — Directive 2008/9/EC — Article 4(b) — Refund of VAT to taxable persons not established in the Member State of refund — Principal and ancillary supplies — Artificial splitting of a single supply — Absence of physical movement of the object supplied.

This judgment concerns a dispute on whether Brose Prievidza, a Slovak company, is entitled to a refund of VAT incurred in Bulgaria on the purchase of a piece of equipment ("tooling") used to manufacture components that the Bulgarian company IME sent to Slovakia as exempt intra-Community supplies. The Bulgarian tax authorities denied the refund on the basis that the supply of the equipment should be regarded as exempt, just like the supply of the components.

The equipment was manufactured by IME Bulgaria, sold first to Brose Coburg (Germany) and then to Brose Prievidza. Despite the changes in ownership, the equipment always remained physically in Bulgaria. This led the Bulgarian administration to consider that the supply had been artificially separated from the exempt intra-Community supplies of components.

The Bulgarian first-instance court accepted this reasoning, holding that the supply of the equipment was "ancillary" to the exempt supply of the components and should therefore also be exempt under Article 138 of the VAT Directive. Accordingly, the VAT incurred would be considered unduly charged and not refundable under Article 4(b) of Directive 2008/9.

The CJEU reiterates that the exemption for intra-Community supplies always requires an effective physical movement of the goods out of the Member State. Since the equipment never physically left Bulgaria, it cannot qualify as an intra-Community supply (whether principal or ancillary), unless it forms part of a single, indivisible supply.

The next issue to be addressed was therefore whether the supply of the equipment constituted an independent supply, an ancillary supply, or part of a single composite supply.

The Court stresses that the existence of several suppliers, separate contracts, distinct invoicing, and different economic purposes all indicate that the transactions are independent. Moreover, the fact that the equipment is used to produce multiple series of components and provides the purchaser with its own advantages — such as the ability to reorganise production — shows that it has an autonomous economic purpose for Brose Prievidza.

The CJEU concludes that, unless the national court identifies facts showing the existence of a single supply or an ancillary supply to the main supply, the supply of the equipment is an independent, non-exempt, non-intra-Community transaction. Consequently, the VAT incurred cannot be excluded from refund under Article 4(b) of Directive 2008/9.

Judgment of 23 October 2025 of the Court of Justice of the European Union. Case C-744/23 (TPT).

Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Taxable transactions — Article 2(1)(c) — Supplies of services for consideration — Article 9(1) — Taxable person — Free legal assistance provided by a lawyer to a party in judicial proceedings — Payment of fees to that lawyer by the opposing party whose claims have been dismissed.

In this judgment, the CJEU examines a preliminary question raised by the Sofia District Court regarding whether free legal assistance provided by a lawyer constitutes a supply of services for consideration subject to VAT when, although the service is free for the client, the lawyer ultimately receives his fees because the opposing party is ordered to pay costs.

Bulgarian law provides for free legal assistance for persons with financial difficulties. However, if the beneficiary succeeds in the proceedings, the opposing party must pay the lawyer the minimum statutory fees established under Bulgarian law.

In the present case, the lawyer requested that the amount paid by the losing party include VAT, which the latter rejected on the grounds that the service was free and therefore not subject to VAT. Faced with this dispute, the national court referred several questions to the CJEU, which reformulated them to address the central issue: whether there is a supply of services for consideration where the lawyer acts free of charge for the client, but receives fees from the losing party by operation of law.

The CJEU holds that the lawyer is a taxable person and that legal representation constitutes a supply of services, and the fact that the client does not pay is irrelevant for this qualification, as the lawyer still acts in the course of an economic activity. The core question is therefore whether there is a direct link between the service and the remuneration received, drawing on prior case law such as Tolsma (C-16/93) and Baštová (C-432/15).

The Court finds that there is a supply for consideration because there is a direct link between the service provided and the remuneration received: the amount is set by law, it is mandatory, and it constitutes the actual consideration for the legal representation. This direct link arises both from the legal relationship and from the statutory framework.

Furthermore, the judgment clarifies that factors such as uncertainty regarding the outcome of the litigation, or the fact that the payment is made by a third party (the losing party), do not undermine the existence of that direct link. If the case is won, the remuneration is objective, sufficiently determinate, and not voluntary.

Therefore, the CJEU concludes that this service is subject to VAT, and VAT must be included in the amount paid by the party ordered to pay costs.

III. DOMESTIC COURT RULINGS

Judgment 1397/2025 of 31 October of the Spanish Supreme Court. Appeal 6833/2023.

This judgment of the Supreme Court concerns the dispute between the Spanish Tax Administration and the company Hotel Vending SL. The company sold jewellery and watches to travellers resident outside the EU, applying the exemption under Article 21(2) of the Spanish VAT Act.

The Supreme Court addresses whether the company may benefit from the VAT exemption despite not complying with the effective refund procedure provided for in Article 9 of the VAT Regulation. The company's operating model consisted of charging VAT on the invoice but not collecting it from the traveller. After receiving the invoice stamped by Customs, the company merely made a negative entry in its VAT ledger, without making an actual refund as required by Article 9 of the Regulation.

The Tax Audit (and subsequently the TEAR, the TEAC, and the National Court) denied the exemption on the grounds that the actual refund is a material requirement, not a formal one. The company appealed in cassation, arguing that it charged VAT on the invoice, complied with the substantive requirements (residence of the traveller, effective exit, non-commercial dispatch), and that the Tax Administration suffered no loss. In its view, the substantive requirements of the Directive were met and the Spanish procedural requirements were disproportionate.

The State Attorney countered that the refund is an essential part of the anti-fraud system, as it prevents sellers from obtaining undue refunds and ensures that VAT has been effectively borne beforehand.

The Supreme Court emphasises that the Directive allows Member States to impose additional conditions to ensure the correct application of exemptions (Article 131), and that the actual refund forms part of that legitimate control framework.

The Court finds that not collecting VAT initially breaks the system: without prior payment, there can be no refund, and a mere negative accounting entry does not ensure either the proper functioning of the exemption or the anti-fraud control required by law. It considers that the Spanish refund procedure is neither disproportionate nor incompatible with the Directive, as it does not impede the exercise of the exemption and is suitable for ensuring traceability. Therefore, the CJEU doctrine on excessive formalities and rejection of undue formalism does not apply here, since a material condition is missing.

Consequently, the Supreme Court establishes case law declaring that the actual refund is an essential requirement for the traveller exemption and upholds the denial of the exemption and the adjustment made by the Tax Administration. It further states that the refund mechanism ensures the principle of neutrality.

IV. BINDING RULINGS

V1577-25: Non-taxable event due to the transfer of a going concern.

The Spanish Directorate General for Taxation (DGT) issued Ruling V1577-25, analysing whether Article 7(1) of the Spanish VAT Act applies to the transfer, by an entity to its newly incorporated Spanish subsidiary, of the machinery and personnel necessary for the production process, without including the factory building, which will remain owned by the parent company but will be leased to the new entity.

Under Article 7(1) of the VAT Act, for a global or partial transfer of a business to be treated as non-taxable, the transferred elements must constitute an autonomous economic unit capable of independently carrying out an economic activity within the transferor, and such economic unit must be dedicated to an economic activity.

Therefore, the application of this non-taxable treatment requires that the set of elements transferred must be sufficient to allow an autonomous economic activity to be carried out by the transferor — in this case, that the transferred elements are sufficient to carry out the production activity.

The DGT recalls the CJEU judgment in Christel Schriever (C-444/10), which examined the application of the non-taxable rule where the commercial premises were not transferred but were simultaneously leased to the purchaser. First, the Court held that, in each specific case, it must be assessed whether the immovable property is necessary for the economic activity, together with the rest of the transferred elements, depending on the nature of the activity and the characteristics of the premises. Second, if the premises are necessary, the Court clarified that their transfer may be replaced by their mere availability under a lease agreement enabling continuity of the economic activity.

Based on this CJEU case law, the DGT concludes that the fact that the activity is carried out in premises that will be subleased to the purchaser together with all other elements transferred does not preclude the application of Article 7(1). Therefore, the transfer described in the ruling will not be subject to VAT pursuant to Article 7(1).

V1621-25: Application of the reduced VAT rate to the sale of buildings.

Ruling V1621-25 analyses the VAT treatment of the transfer of two commercial premises acquired by a company in order to convert them into dwellings through refurbishment works and change of use, as well as the applicable VAT rate on the sale.

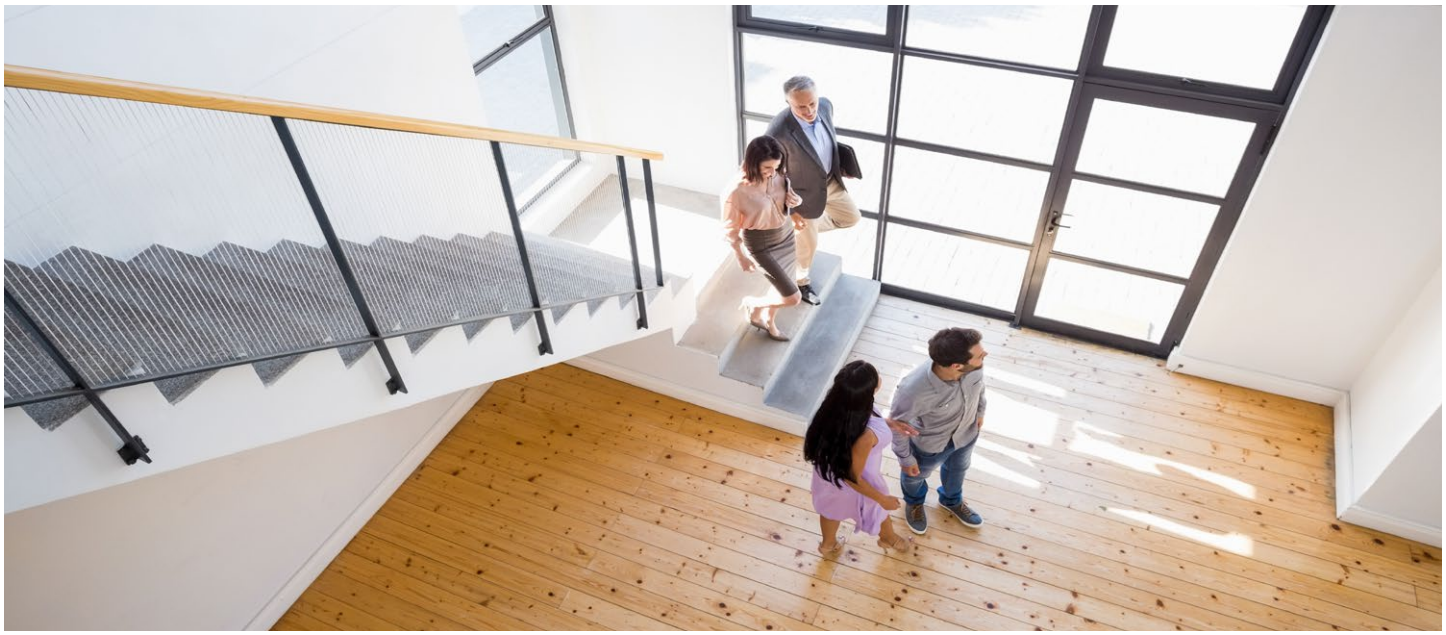
First, Article 20(1)(22) of the VAT Act provides that second and subsequent supplies of buildings are exempt from VAT, except where the transfer constitutes a first supply following construction or renovation works. If the transaction is taxable and not exempt, the applicable VAT rate is 10% (Art. 91(1)(1)(7)) provided that the property is suitable for use as a dwelling. Otherwise, the general 21% rate applies.

Regarding the subsequent sale, if the works carried out qualify as renovation works, the subsequent transfer will be taxable and not exempt, with the 10% rate applicable if the property is suitable for residential use. If the works do not qualify as renovation, the subsequent sale will be taxable but exempt under Article 20(1)(22).

Concerning the suitability of a building for residential use, the DGT had previously considered a property to be suitable only if, at the time of supply, it had the relevant occupancy permit or first occupancy licence. However, following a recent Supreme Court judgment (STS 82/2025), that criterion has been refined: suitability for use as a dwelling is an objective circumstance that must be assessed on a case-by-case basis, using any means of proof. Therefore, the application of the reduced rate no longer depends on the existence of the occupancy permit, first occupancy licence, or similar authorisation, but must instead be inferred from the objective design and construction characteristics of the property, together with its legally permitted purpose of serving as a dwelling.

V1748-25: Place of supply of services provided to a Spanish branch.

In this ruling, the DGT analyses, for VAT purposes, the services provided by a company established in the Netherlands that enters into agreements with athletes and sports clubs for the promotion of its brand. To this end, these athletes provide advertising and marketing services, including the transfer of image rights, to the consulting entity, with such services being exploited worldwide.



As a general rule, Article 69(1)(1º) of the Spanish VAT Act provides that services are deemed to be supplied in Spanish territory when the recipient is a business or professional that has in Spain either the seat of its economic activity or a permanent establishment.

According to the information submitted, the consulting entity operates in Spain through a branch, so the question is whether the actual recipient of the advertising and marketing services provided by the athletes, clubs, or federations is the Dutch head office or the Spanish branch.

In this regard, the CJEU has consistently indicated that the connection to the permanent establishment is a secondary criterion that constitutes an exception to the general rule (place of the seat of economic activity). This connection must be applied only where certain conditions are met. The permanent establishment's involvement must be considered only when connecting the service to the head office would not lead to a rational fiscal solution or would create a conflict with another Member State. This occurs in particular where the permanent establishment is the actual recipient of the services and uses them for its activity in that territory.

Based on the information provided by the consulting entity, the services rendered by the athletes are not provided exclusively in Spain, but are exploited worldwide. Such services are contracted and paid for by the Dutch head office, which directs the strategy, manages the decision-making process for the athletes, and controls the budgets for these services. The local team in Spain, operating through the branch, has only limited negotiation capabilities, such as determining the number of appearances or publications required from the contracted athlete.

The DGT concludes that, without prejudice to what might result from a detailed examination of the contractual clauses, the information provided suggests that the actual recipient of the services supplied by the athletes, clubs, or federations is the Dutch entity. Consequently, these services are not subject to VAT in Spain.

V1761-25: Intra-Community services supplied by an entity under the small business exemption scheme.

Ruling V1761-25 analyses the VAT treatment of general consultancy services received by a Spanish company engaged in exempt mediation in the purchase of unpaid debts, where the services are supplied by an Estonian company benefiting from the small business exemption scheme in its Member State.

Article 84(1)(2)(a) of the VAT Act provides that, in operations carried out by suppliers not established in the Spanish VAT territory, the recipient becomes the taxable person. Accordingly, the Spanish company must apply the reverse charge mechanism, declaring and paying the VAT due, without the supplier charging VAT on the invoice.

The ruling clarifies that Article 13(1)(a), which excludes from the concept of intra-Community acquisitions those transactions in which the supplier is under the small business exemption scheme in the Member State of dispatch, does not apply to supplies of services. This provision concerns the acquisition of goods only. There is no equivalent provision for supplies of services, because in such cases the place-of-supply rules result in VAT being applied directly in the Member State of the recipient, when the recipient acts as a business.

Therefore, the reverse charge applies, and the Estonian supplier's exemption status does not prevent the Spanish recipient from being liable for the VAT under Article 84.

V1606-25: Stretch film for waste management; liability under the Special Tax on Non-Recyclable Plastic Packaging and requirements of the destination-based exemption.

The Directorate General for Taxation (DGT) issued Binding Ruling V1606-25, analysing whether the stretch film manufactured by a company for use in waste-management operations at an eco-park falls within the objective scope of the Special Tax on Non-Recyclable Plastic Packaging, regulated in Law 7/2022.

The DGT recalls that Article 68(1)(b) of Law 7/2022 expressly includes within the scope of the tax semi-finished plastic products intended to be used in the manufacture of packaging, such as preforms or thermoplastic sheets. Under Article 71(1)(e), semi-finished products are those requiring further processing stages in order to fulfil their function as packaging. Based on this definition, the DGT concludes that the stretch film at issue must

be classified as a semi-finished product, as it requires additional transformation for its final use. It is therefore included within the objective scope of the tax.

Consequently, the manufacture of the film triggers the taxable event provided for in Article 72 of the Law. Its taxation may only be avoided if the exemption under Article 75(1)(g) applies, which concerns semi-finished products that will not be used to produce packaging. To benefit from this exemption, the taxpayer must obtain a prior declaration from the purchaser confirming the actual intended use of the product. The absence of such proof not only prevents the exemption from being applied but may also make the taxpayer liable for payment of the tax and any applicable penalties, pursuant to Articles 76 and 83.

In the scenario examined, the DGT understands that the stretch film will be used to contain, protect, or handle waste in an eco-park — functions that fully fall within the legal definition of packaging under the waste-management regulations. It therefore concludes that the intended use of the product is, in fact, the production of non-reusable packaging. As a result, the exemption does not apply, unless the contrary were evidenced through the mandatory prior declaration, which is not the case here.

The ruling concludes that the stretch film manufactured by the taxpayer is subject to the tax, and that the exemption could only apply if the purchaser formally declares and proves that the product will not be used to manufacture packaging within the scope of the tax. The DGT further notes that the improper application of the exemption constitutes a taxable infringement subject to penalties.

V1699-25: erger of asset-holding companies, application of the special tax regime and exemption from Transfer Tax and Stamp Duty (ITPAJD).

Binding Ruling V1699-25 concerns a merger by absorption involving three asset-holding companies belonging to the same family group. Entities A, E and P, all exclusively engaged in the leasing of real estate and with no employees, plan their integration through the absorption of E and P by A, with the full transfer of their assets and the allocation of shares to the shareholders of the absorbed companies.

The merger is justified by the centralisation of management, the streamlining of the corporate structure, the elimination of duplications, the rationalisation of the real-estate portfolio, and the strengthening of the group's solvency. After the merger, the resulting entity intends to hire one full-time employee, thereby ceasing to qualify as an asset-holding company.

The DGT recalls that the special tax regime set out in the Spanish Corporate Income Tax Act ensures tax neutrality in mergers provided that the operation does not have as its principal objective the obtaining of an improper tax advantage. The ruling reflects recent doctrine from both the Supreme Court and the CJEU, which rejects general presumptions of fraud and requires an assessment of each case based on its specific facts. In this case, the economic reasons presented are considered valid and aligned with the purpose of the regime, and therefore the transaction may benefit from it.

With regard to Transfer Tax and Stamp Duty (ITPAJD), the DGT confirms that the merger qualifies as a restructuring operation, and is therefore not subject to the corporate transactions component of the tax and benefits from the exemption applicable to transfers for consideration and to stamp duty.

In conclusion, the ruling validates the application of the special Corporate Income Tax regime and the ITPAJD exemption to the proposed merger, provided that the stated economic motives are actually implemented and the transaction complies with the applicable legal framework.

V1721-25: Distribution of dividends through real estate; liability to Transfer Tax (TPO) and exclusion from Stamp Duty (AJD).

Binding Ruling V1721-25 analyses the tax implications arising from the notarisation of a corporate resolution approving the distribution of dividends paid by means of the transfer of real estate located in the Community of Madrid.

The transaction consists of assigning immovable property to shareholders in payment of dividends. Although the transfer of immovable property is exempt from VAT as it qualifies as a second or subsequent supply (Article 20(1)(20) of the VAT Act), the general non-taxability rule in Article 7(5) of the Spanish Transfer Tax and Stamp Duty Act (TRLITPAJD) does not apply. The law expressly excludes from that non-taxability rule transfers of real estate that are exempt from VAT, which must instead be taxed under the "transfers for consideration" (TPO) modality. Consequently, the assignment of the real estate is treated as a transfer for consideration, and the taxpayers are the receiving shareholders.

With regard to the taxable base, Article 10 of the TRLITPAJD provides that, in the case of real estate, the valor de referencia (official cadastral reference value) prevails, unless the declared or agreed value is higher. This reference value operates as the minimum taxable base, without prejudice to possible administrative verification.

The DGT also indicates that liability to TPO excludes the application of the variable-rate Stamp Duty (AJD), as the compatibility requirement in Article 31(2) of the TRLITPAJD is not met. Although the notarised deed is registrable, it cannot simultaneously be taxed under both modalities.

In conclusion, the distribution of dividends through immovable property, although exempt from VAT, is subject to TPO and not to AJD, with the receiving shareholders being the taxpayers.

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