VAT newsletter
March 2025

I. LEGISLATION

Regulation (EU) 2025/40

Regulation (EU) 2025/40, published on January 22, 2025, in the Official Journal of the European Union, introduces significant changes in packaging and waste management within the EU. Its main objectives are to reduce environmental impact, promote a circular economy, and harmonize regulations across Member States. The most relevant measures include:

Reduction of Unnecessary Packaging

- Establishing restrictions on certain formats, such as single-use plastic packaging.
- Introducing a methodology to minimize the volume and weight of packaging.
- Setting a maximum allowable percentage of empty space in packaging to reduce material waste.

Promotion of Reuse and Refilling

- Setting reuse targets for specific packaging formats, including a minimum number of cycles for reusable formats.
- Mandating deposit, return, and refund systems (SDDR) for plastic bottles and metal containers.
- Recommending the extension of SDDR to other reusable packaging, such as single-use glass bottles, while exempting wine, spirits, and dairy products.

Sustainability and Recyclability

- Only packaging that meets sustainability, labeling, marking, and information criteria outlined in Articles 5 to 12 of the Regulation will be allowed on the market. Compliance must be demonstrated through a declaration of conformity.
- By 2030, all packaging must be recyclable according to criteria to be defined by the European Commission in future delegated acts.
- Minimum recycled content percentages are set, with targets for 2030 and 2040.
- The use of PFAs (per- and polyfluoroalkyl substances) in food-contact packaging is banned.

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Environmental Labeling

- Implementation of harmonized labeling. From August 2028, packaging must include detailed information on material composition and recycling systems.
- Introduction of QR codes on packaging to enhance waste traceability and management.
- Prohibition of misleading sustainability-related claims or markings.

Extended Producer Responsibility (EPR)

- Expanding the definition of "producer" to include not only packers and importers but also packaging manufacturers and entities that unpack packaged products without being the final consumer.
- Mandatory registration of producers in each Member State where their packaging is marketed.
- Producers must provide logistics service providers with their registration number and a self-certification proving compliance.
- EPR systems must cover, in addition to waste management, the costs of container labeling and municipal waste composition studies.

The Regulation was definitively approved on December 16, 2024, and entered into force on February 11, 2025. However, its mandatory application will begin on August 12, 2026. In Spain, the Ministry for Ecological Transition will adapt Royal Decree 1055/2022 to align with the Regulation.

Royal Decree 1305/2024, of December 23, Approving the Regulation on the Sanctioning Procedure for Violations of Obligations Related to International Trade Statistics within the European Union and Amending the Regulation on the Administrative Sanctioning Procedure for Violations of Obligations Established in the Public Statistical Function Law, Approved by Royal Decree 1572/1993, of September 10

On January 29, the Official State Gazette published Royal Decree 1305/2024, of December 23, which approves the Regulation on the sanctioning procedure for violations of obligations related to international trade statistics of goods within the European Union (INTRASTAT).

Additionally, this regulation introduces amendments to the Regulation on the administrative sanctioning procedure for violations of obligations established in the Public Statistical Function Law.

This Regulation responds to the need to align the national regulatory framework with Regulation (EU) 2019/2152, which governs business statistics in the European Union and establishes the obligation for Member States to collect and report data on international trade in goods. It is also consistent with Law 12/1989, of May 9, on Public Statistical Function, and complements the principles established in Law 40/2015 on the Legal Regime of the Public Sector.

With this decree, data quality standards are reinforced, and the sanctioning procedure is adapted to Law 39/2015 on Common Administrative Procedure, setting more precise criteria for identifying violations and applying sanctions. Additionally, it regulates infractions and penalties related to non-compliance with international trade statistics regulations.

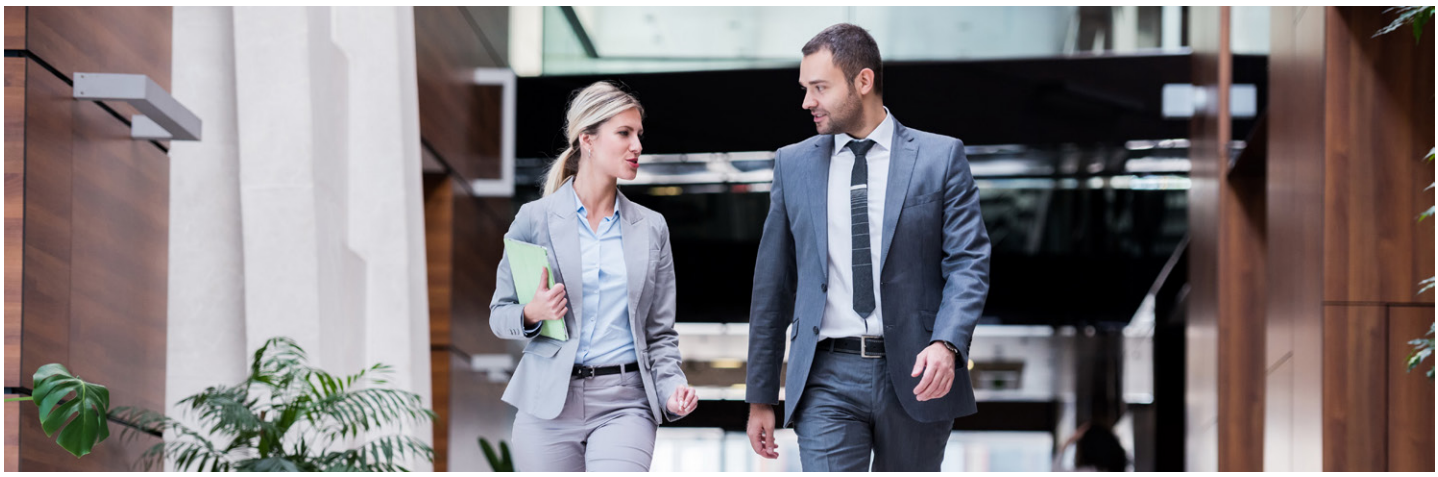
The regulation applies to reporting units, specifically VAT taxpayers and entities that, while not subject to VAT, have been assigned an individual identification number for this purpose.

Its purpose is to regulate specific aspects of the sanctioning procedure, such as competent authorities, resolution deadlines, and applicable reductions, as well as to establish criteria for determining sanctions imposed as a result of the infractions defined in Article 50 of Law 12/1989. The decree does not apply to sanctioning procedures initiated before its entry into force, except for provisions that benefit the responsible parties, which may apply retroactively.

Chapter III outlines the criteria for classifying infractions and determining sanctions, establishing three categories:

Very Serious Infractions and Penalties

These occur when there is notorious resistance to providing the required data or recurrence of serious infractions within one year. For the purposes of Article 50.2(d) of Law 12/1989, notorious resistance in submitting the required data will be considered to



exist when two requests concerning the same periods and trade flows are not met within the deadline.

The penalty can reach up to €6,000 if the sum of the taxable bases of the operations exceeds €100 million in the previous year; in other cases, €4,000.

Serious Infractions and Penalties: The following will be considered serious infractions

- When the infraction causes serious harm to the service, such as failure to submit the declaration (without qualifying as a minor infraction) or submission after the calendar month following the deadline.
- When incomplete or inaccurate data result in a discrepancy of more than 30% between the taxable base reported in VAT returns and Intrastat declarations, exceeding €500,000.00. Additionally, it will be considered a serious infraction if a declaration is submitted with no reported transactions when such transactions have actually taken place.
- When the offender has been definitively sanctioned for two minor infractions within the twelve months preceding the date of the new infraction.

These infractions may be subject to fines of up to €1,200 when, in the previous calendar year, the sum of the taxable bases reported in the recapitulative statements of intra-Community transactions or the statistical value of the INTRASTAT declarations for a specific flow exceeded €100 million. In all other cases, the fine will amount to €600.

Minor Infractions and Penalties: These include the following cases:

- Failure to submit or submission with errors regarding the reporting unit, provided that the incorrect declaration has been annulled and a new declaration has been submitted.
- Minor delays in submission, meaning when the declaration is submitted within the calendar month in which the submission deadline expires.
- Non-significant errors in statistical information, that is, when the conditions established for serious infractions are not met.

The penalty will be €300 when, in the previous calendar year, the sum of the taxable bases reported in the recapitulative statements of intra-Community transactions or the statistical value of the INTRASTAT declarations for a specific flow exceeded €100 million. In all other cases, the fine will amount to €150.

Additionally, reductions in penalties are introduced to encourage voluntary compliance:

- 20% reduction if the offender acknowledges responsibility before the resolution of the case.
- 30% reduction if the alleged offender makes a voluntary payment before the resolution.
- Both reductions are cumulative, allowing for a total reduction of 50% on the initial penalty, encouraging cooperation with the Administration.

Finally, the sanctioning procedure complies with current regulations and establishes that the instruction and resolution of cases will be handled by the Regional Customs Offices and the Department of Customs and Excise Duties of the AEAT. Cases must be resolved within a maximum of six months; if no resolution is issued within this period, the case will expire. All communications between operators and the Administration must be conducted exclusively through electronic means, and the imposition of a sanction does not exempt the offender from the obligation to submit or correct erroneous declarations.

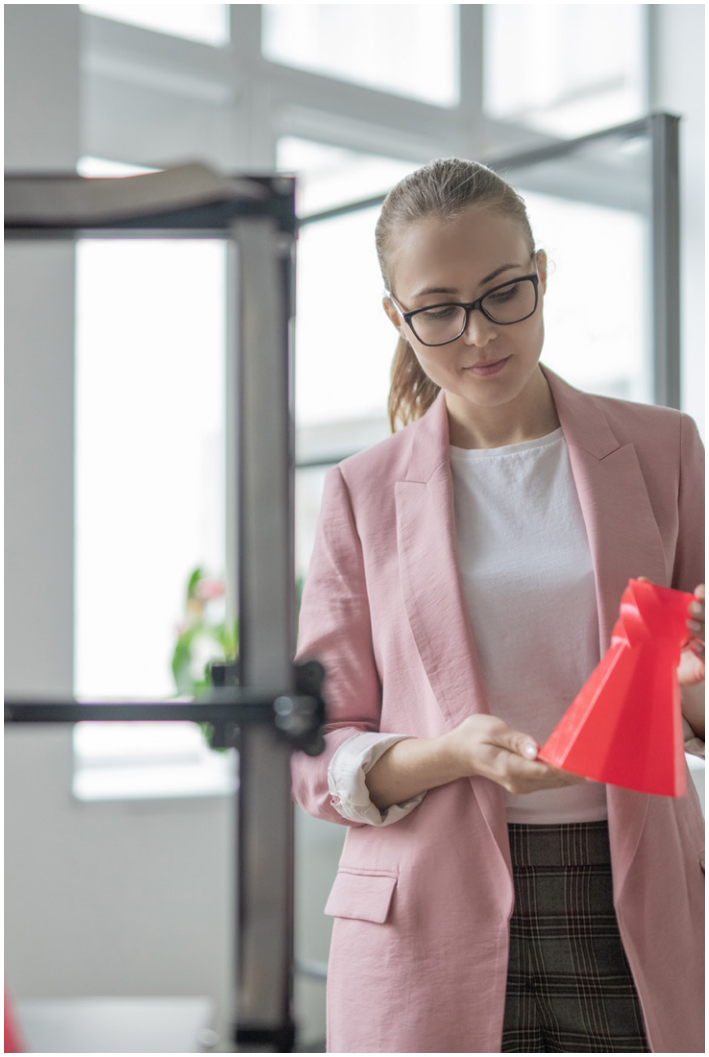
Royal Decree 1305/2024 will enter into force on February 1, 2025, repealing any prior regulations that contradict its provisions. Its purpose is to ensure greater legal certainty and efficiency in the application of sanctions, while promoting a fairer system aligned with European standards.

II. EU CASE LAW

Judgment of January 16, 2025, of the Court of Justice of the European Union. Case C-376/23 (Baltic Container Terminal Sia)

Preliminary ruling — Customs Union — Regulation (EU) No 952/2013 — Union Customs Code — Delegated Regulation (EU) 2015/2446 — Implementing Regulation (EU) 2015/2447 — Free zones — Change of customs status from non-Union goods to Union goods — Records of the holder of an authorization to carry out activities in a free zone — Legitimate expectation — Res judicata

In this case, the Latvian tax authorities conducted a control over the records of a company authorized to perform loading, unloading, and storage activities in the free zone of the Port of Riga. During the inspection, it was detected that certain shipments, initially classified as non-Union goods, had left the free zone without being placed under a subsequent customs procedure. As a result, the authorities considered that these goods had been removed from customs supervision, imposing on the company the payment of import duties, VAT, and penalties.



The Court noted that the shipments in question entered the free zone as non-Union goods and soon after left as Union goods. This change in customs status should have been carried out through the release for free circulation procedure, which grants non-Union goods the status of Union goods.

To complete this process, a customs declaration is required, along with the assignment of a Master Reference Number (MRN) to identify the declaration. However, in this case, the company failed to record the corresponding MRN in its records, leading the tax authorities to conclude that the customs procedure had not been properly fulfilled.

The CJEU examined whether the absence of the MRN in the records constituted a violation justifying the imposed penalties. The Court concluded that, while including the MRN is a standard practice, it is not strictly mandatory if customs authorities have authorized an alternative form of documentation that ensures the traceability and control of the goods, in accordance with Article 178 of Delegated Regulation 2015/2446.

In this regard, the Court determined that the operator could fulfill its record-keeping obligations using the CMR consignment note, provided that it was duly stamped and signed by customs authorities, certifying the customs status of the goods. Furthermore, the CJEU emphasized that if customs authorities allowed the use of alternative documentation and waived the requirement for more detailed information, the operator could invoke legitimate expectation in the validity of its records.

Additionally, the CJEU addressed the issue of res judicata, ruling that EU law does not preclude the application of a national rule that binds administrative courts to the final decision of a criminal court. This reinforces the principle of legal certainty and protects economic operators from contradictory decisions by the administration and the judiciary.

III. DOMESTIC COURT RULINGS

Judgment 82/2025 of January 28, 2025, of the Supreme Court. Appeal 3389/2023

The Supreme Court addresses the application of the reduced VAT rate to housing deliveries. In this case, the appellant company acquired residential properties in 2007 that, although completed, lacked the certificate of habitability or first occupancy license at the time of delivery. The Tax Agency considered that, in the absence of these documents, the properties were not suitable for use as housing, applying the general VAT rate of 16% instead of the reduced rate of 7% (applicable at the time).

The dispute centers on the interpretation of the concept of "housing suitable for use." The Supreme Court, in its analysis, relied on CJEU case law, which considers that a building is deemed suitable for use as a dwelling when it is completed and constructed with the purpose of serving as a habitual residence.

Applying this criterion to the specific case, the Supreme Court concluded that, for a building to be considered suitable for use as housing for the purpose of applying the reduced VAT rate, it must be completed and its purpose must be habitation—serving as a home or domestic residence for an individual or family. Additionally, the reduced VAT rate only applies to transactions qualifying as housing deliveries, and not to transactions related to housing that are classified as services.

With this interpretation, the Supreme Court clarified that even though the properties in question did not have the certificate of habitability at the time of delivery, this did not prevent them from being considered suitable for use as housing.

Finally, the ruling emphasizes that the sale of tourist apartments is subject to the general VAT rate, rather than the reduced rate, when they cannot be classified as housing because their intended use cannot, under any circumstances, be the habitual residence of an individual or family.

IV. ADMISNITRATIVE RESOLUTION

Resolution of the Central Economic-Administrative Tribunal. Resolution No. 03977/2023, of January 28, 2025, on the VAT refund procedure for entrepreneurs or professionals not established in the territory of application of the tax

In this resolution, the Central Economic-Administrative Tribunal (TEAC) establishes doctrine regarding the VAT refund procedure for entrepreneurs or professionals not established in the territory of application of the tax. The resolution addresses the right of defense in these procedures and the need to guarantee the right to a hearing, even when it is not explicitly regulated in the specific legislation.

The case arose from claims filed by a company that requested a refund of VAT paid in Spain during the 2021 and 2022 fiscal years, amounting to €315,000 per year, under Article 119 bis of Law 37/1992 on VAT, which governs the special VAT refund scheme for non-established entrepreneurs or professionals. The National Tax Management Office (ONGT) denied these requests, arguing that the company had failed to provide a certificate issued by the tax authority of its country confirming its status as a taxable person for VAT or an equivalent tax.

In response to this denial, the company filed administrative appeals, arguing, first, that it had submitted sufficient documentation to prove its status as a VAT taxpayer in its home country, but that the tax authorities in that country only issued a specific certificate, not the one required by Spain. Second, it claimed that it had not been granted a prior hearing before the denial, which it considered a violation of its right to defense.

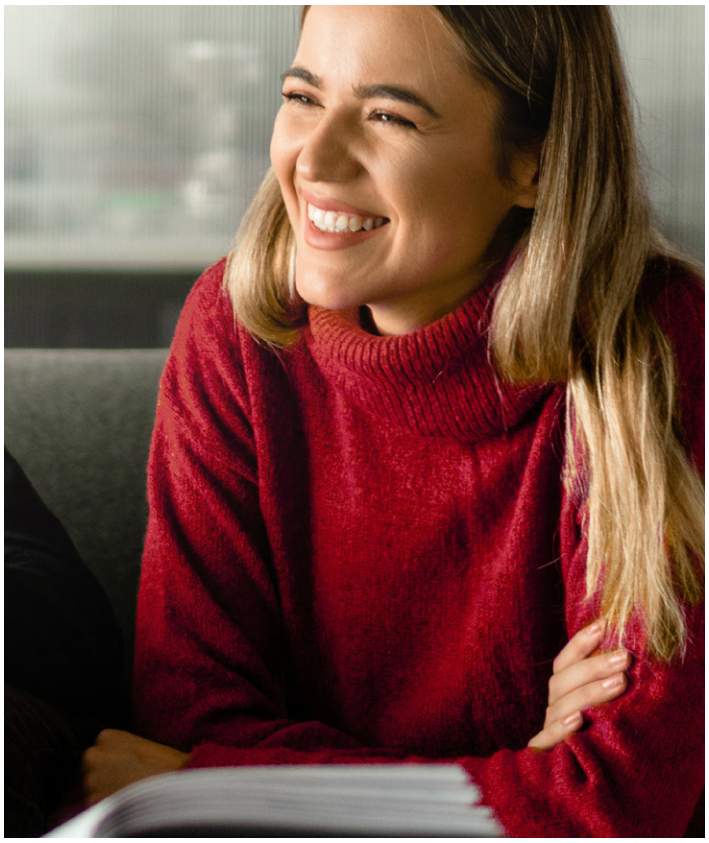
The ONGT dismissed the appeals, maintaining that the applicable regulations do not expressly require granting a hearing in these procedures and that the submitted documentation was insufficient to justify the right to a refund. Given this situation, the company appealed to the TEAC, which examined whether the denial of the refund without granting a hearing violated the applicant's right to defense.

Ultimately, the TEAC ruled partially in favor of the claimant, concluding that the lack of a prior hearing before the denial of the refund request resulted in a situation of legal defenselessness, affecting the fundamental rights of the claimant. The tribunal determined that the hearing procedure, as a fundamental principle of EU law, must be ensured even when it is not explicitly provided for in the regulations governing the procedure.

The Tribunal also referred to Supreme Court case law, specifically the judgment of July 17, 2007 (cassation appeal No. 296/2002), which states that defenselessness is not merely caused by the omission of a hearing procedure, but requires that such omission result in harm to the rights of the affected party. A loss of rights is sufficient if it is potential, not necessarily actual.

For this reason, considering the circumstances described, the TEAC annulled the ONGT's decisions and ordered that the procedure be reinstated to the point where the hearing should have been granted, allowing the company to submit new documents and defend its claim before a final decision was made.

This TEAC ruling sets a precedent on the tax authorities' obligation to guarantee the right to a hearing in VAT refund procedures for non-established businesses, even when not explicitly required by law. As a result of this resolution, the Tax Agency must now allow applicants to defend their position before issuing a denial, reinforcing legal certainty and fairness in the procedure.



V. BINDING RULINGS

CV2653-24: Application of the Verifactu Regulation

The binding consultation CV2653-24 analyzes the application of the obligations introduced by Royal Decree 1007/2023 ("Verifactu Regulation") to an entity that issues a limited number of invoices per month, which are prepared using a spreadsheet and sent to its clients.

After analyzing the scope of application of the Verifactu Regulation, the consultation highlights Article 7, which states that taxpayers using billing software may choose between the following two options:

- A billing system that complies with the requirements set forth in Law 58/2003, of December 17, General Tax Law, and this Regulation.
- The software application that may be developed by the Tax Administration for this purpose.

The DGT concludes that if the taxpayer does not use any billing software to issue invoices and does so manually, the provisions of the Regulation approved by Royal Decree 1007/2023 would not apply.

However, it clarifies that if the taxpayer uses spreadsheets or word processors, it cannot be concluded that they are exempt from the obligations of the Regulation, since these tools could be considered data processing and storage utilities and may qualify as Billing Software Systems under the Verifactu Regulation.

CV2454-24: Proof of the Traveler's Habitual Residence

The General Directorate of Taxes (DGT) issued Binding Consultation V2454-24 on December 5, 2024, analyzing the possibility of VAT refund for a Spanish passport holder residing in the United Kingdom.

According to VAT Law, sales of goods to travelers are exempt from VAT if the following conditions are met:

- The traveler's habitual residence is outside the territory of the Community.
- The purchased goods are effectively taken out of the Community territory.
- The total purchased goods do not constitute a commercial shipment.

Additionally, Article 9 of the VAT Regulation conditions the application of the exemption on compliance with certain requirements, including proof of habitual residence by the traveler through a passport, identity document, or any other legally admissible proof.

In this regard, the DGT references the Supreme Court ruling of December 19, 2022, which held that a passport alone is not sufficient proof of the buyer's habitual residence when it does not specify the traveler's habitual residence or address. In such cases, additional proof is required to confirm habitual residence.

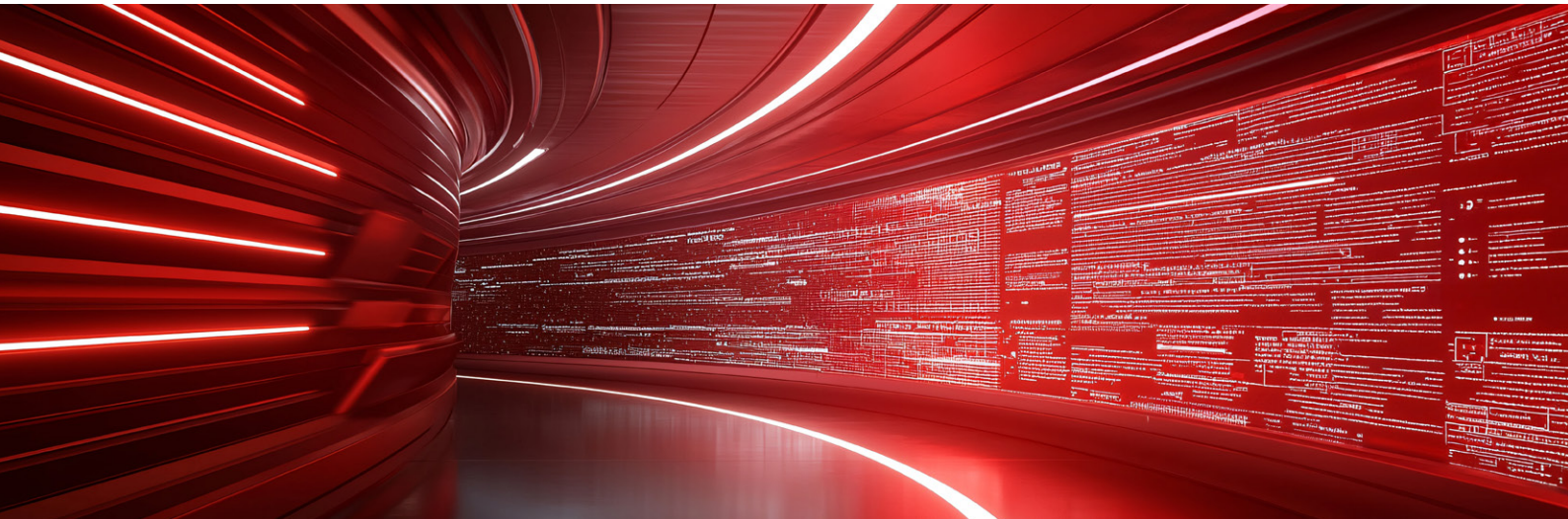
In all cases, it is the responsibility of the seller to verify whether the document presented by the traveler includes their habitual residence or address, and any legally admissible proof may be used for this purpose.

CV2455-24: Role of the Consignee in the Importation of Goods

Regarding Binding Consultation V2455-24, the consulting entity is a Spanish intermediary company acting as consignee for goods arriving from a third country and destined for another Spanish company. The consultation examines whether the intermediary company can be considered the recipient of the goods and whether the consignment stock regime can be applied.

The intermediary company may submit customs clearance declarations and be considered the recipient of the goods, acting in its own name and on its own account.

The DGT begins by stating that, under the Union Customs Code (UCC), the customs declaration may be submitted by any person who can provide all the necessary information required for applying the provisions regulating the customs procedure under which the goods are declared. In any case, the declarant must be established in the customs territory of the Union.



Additionally, the DGT explains that any person may appoint a customs representative, which may take the form of:

- Direct representation, where the representative acts in the name and on behalf of another person.
- Indirect representation, where the representative acts in their own name but on behalf of another person.

According to the UCC, the declarant is the debtor, and in the case of indirect representation, both the representative and the person on whose behalf the customs declaration is made are considered debtors.

Based on this, the DGT states that if the intermediary company appears in the Single Administrative Document (SAD) as the consignee or recipient of the goods, it is acting in its own name and on its own account. As a result, it assumes the role of the importer and is liable for VAT in accordance with Article 86 of the VAT Law.

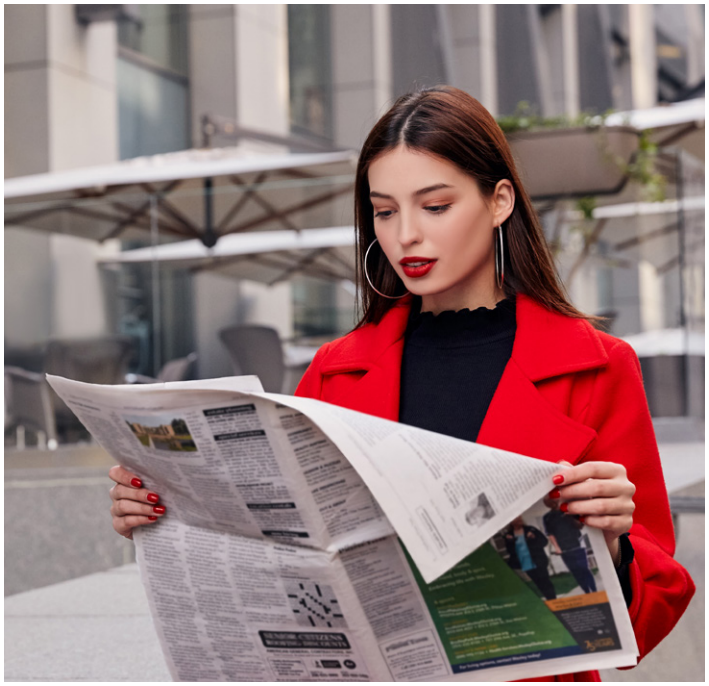
The DGT clarifies that the consignee is the person designated in the transport document covering the entry of goods into Spanish territory, who receives the goods on consignment. This consignee is considered the taxable person for the importation, even if they are not the purchaser, assignee, or owner of the goods, provided that they act in their own name in relation to the imported goods.

Finally, concerning the consignment stock regime for imported goods, the DGT clarifies that under this regime, goods are sent to the country of importation not as a result of a sale, but rather with the intention of selling them in that country on behalf of the supplier. However, this regime cannot be applied when the transaction involves a firm sale between a supplier from a third country and a recipient within the EU customs territory.

CV2540-24: Different Scenarios in the Sale of a Rural Property

The binding consultation V2540-24 issued by the DGT analyzes the VAT treatment applicable to the sale of a rural property, considering different scenarios:

- If the seller is not considered an entrepreneur or professional, the transfer of the property will not be subject to VAT, without prejudice to the applicable taxation under the Transfer Tax and Stamp Duty (ITP and AJD).
- If the seller has previously leased the property, they will be considered an entrepreneur or professional for such leasing activity, and therefore, the transfer of the property will be subject to VAT, applying the exemption provided for in Article 20.Uno.23º of the VAT Law.
- If the owner of the property has previously transferred it free of charge, it is necessary to determine whether the owner qualifies as an entrepreneur or professional. For example, if the owner leases other properties or had previously leased the property being transferred, the free transfer of this property would be subject to VAT as self-supply of services, in accordance with Article 12 of Law 37/1992, and its subsequent sale would also be subject to VAT as it constitutes the transfer of an asset forming part of a business or professional estate.



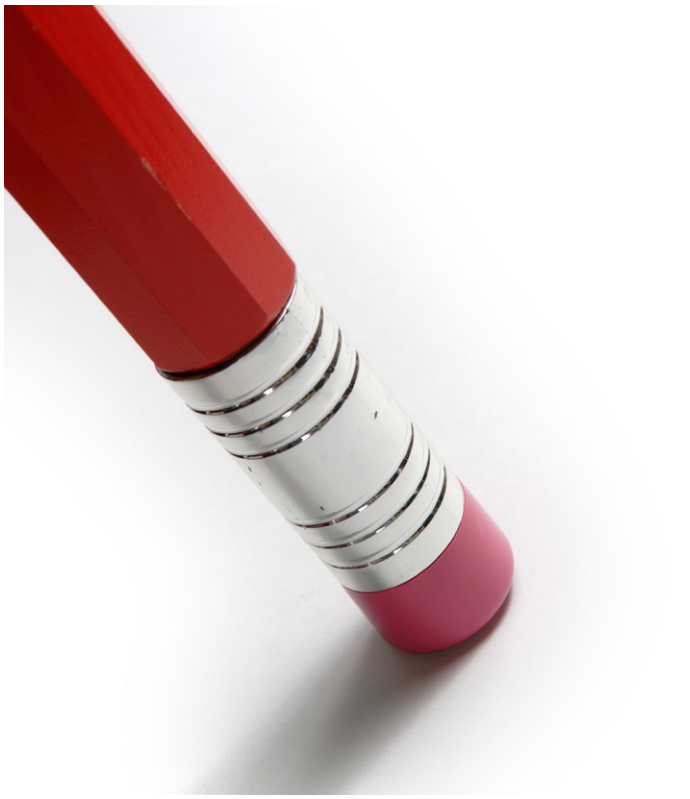
However, if the free transfer of the property is the only transaction carried out by the seller, and since all their transactions would be gratuitous, they would not be considered an entrepreneur or professional for VAT purposes, meaning that neither the free transfer nor the subsequent sale of the property would be subject to VAT.

CV2565-24: Intermediation Services on Behalf of Third Parties in Property Rentals

The binding consultation V2565-24, issued by the General Directorate of Taxes (DGT), analyzes the VAT treatment of a foundation managing an international university center for a public university. The foundation connects students with host families, who provide accommodation, meals, and laundry services. The foundation acts as an intermediary on behalf of third parties and receives the full amount for accommodation services, which it then pays to the families.

Since the foundation acts as an intermediary on behalf of third parties, the rental service is provided directly by the property owner to the final client, while the foundation provides an intermediation service, which is subject to VAT.

Pursuant to Article 70.Uno.1º of the VAT Law, and in line with previous DGT consultations, the DGT states that intermediation in property rentals, whether the intermediary acts in their own name (thus providing a rental service) or on behalf and for the account of the recipient of the service, is considered a real estate-related service for VAT purposes. The only exception applies to intermediation services in hotel accommodation or equivalent lodging, where the intermediary acts on behalf and for the account of the client, as per Article 31 bis(3)(b) of EU Regulation 282/2011.



Since hospitality services (e.g., meals) are provided, the intermediation services would not be considered a real estate-related service. Therefore, the location of these services for VAT purposes must be determined under Articles 69.Uno.1º and 70.Uno.6º, depending on whether the recipient of the intermediation services is the property owner or the final clients.

If the property owner is the recipient of the intermediation services, the services will be deemed to take place in Spain if the property owner is established in Spain.

Conversely, if the final clients are the recipients and they are not considered entrepreneurs or professionals, the intermediation service will be deemed to take place in Spain when the rental transaction being mediated is deemed to take place in Spain, due to the property being located in Spanish territory.

CV2568-24: Merger Transactions

The binding consultation V2568-24, issued on December 11, 2024, by the DGT, analyzes the VAT treatment of merger transactions in a case where a Spain-based company engaged in real estate commercialization absorbs other entities from the same group, also established in Spain, which are primarily involved in real estate development, construction, and commercialization.

The DGT first clarifies the concept of an entrepreneur or professional for VAT purposes, specifically in relation to holding companies. It relies on CJEU case law, which states that the mere acquisition of financial holdings in other companies does not constitute the exploitation of an asset to obtain continuous revenue over time. This is because dividends from such holdings are a result of ownership rather than economic activity. Similarly, mere ownership and holding of securities, without contributing to another business activity, should not be considered an economic activity conferring VAT taxpayer status.

Consequently, the DGT concludes that both the consulting entity and the entities involved in the merger qualify as entrepreneurs or professionals, and their supplies of goods and services will be subject to VAT when carried out in the course of their business activity, provided they do not merely hold real estate assets without engaging in any business activity.

Regarding the transfer of shares in the Spanish companies, the DGT refers to the non-taxability provision under Article 7.1º of the VAT Law. Under this article, for a transfer to be considered non-taxable, the transferred assets must constitute an autonomous economic unit capable of carrying out a business or professional activity on its own at the transferor's premises and must be used for an ongoing economic activity. Each case must therefore be analyzed to determine whether the transfer of a portfolio of real estate properties, along with their management structure (e.g., through the subrogation of a management contract), constitutes an independent organizational structure capable of functioning autonomously. When these requirements are met, the transfer will not be subject to VAT.

Therefore, if real estate properties are transferred along with the acquirer's subrogation into corresponding real estate management contracts, and if these are sufficient to enable an autonomous economic activity at the transferor's premises at the time of the transfer, the assets transferred can be deemed to include the necessary organizational structure of production factors, in accordance with Article 7.1º. As a result, the transfers in the context of the merger transaction would not be subject to VAT.

Conversely, the mere transfer of a leased property, without the transfer of a management contract related to the rental activity, does not constitute an autonomous economic unit under Article 7.1º, and therefore, this transaction would be subject to VAT. In this regard, since the assets being transferred consist of real estate properties, the exemption provided in Article 20.Uno.22º—which applies to second and subsequent transfers of buildings—may be applicable.

CV0026-25: Refund of the Plastic Packaging Tax for Waste Generated in the Production Process

The DGT has issued binding consultation V0026-25, addressing a case involving a company engaged in the manufacturing of horticultural packaging, which purchases polyethylene reels and mesh from domestic suppliers. During the production process, part of this material is discarded and recycled by a

waste management company. The company inquires whether it is possible to request a refund of the Special Tax on Non-Reusable Plastic Packaging paid for the unused material and what requirements must be met.

According to the DGT, these semi-finished products are subject to the tax under Law 7/2022. However, Article 81 of the same law allows for a tax refund when the acquired products are not used for the manufacture of packaging. To obtain the refund, the company must prove to the Tax Agency that the material was not used in the production of packaging and that the tax was effectively paid.

The procedure is managed through Form A22, as established in Order HFP/1314/2022. The application must include supporting documentation proving the facts on which the claim is based, as well as evidence of tax payment.

For evidence assessment, the general principle of free and comprehensive evaluation applies, excluding a predetermined legal or fixed system of proof.The filing deadline is within the first 20 calendar days of the quarter following the waste generation.

CVV0046-25: Exemption or Refund of the Plastic Packaging Tax After the Importation of Polypropylene Fabric Rolls Based on Final Use

The binding consultation V0046-25 analyzes the tax implications under the Special Tax on Non-Reusable Plastic Packaging for the importation of non-woven polypropylene fabric rolls intended for commercialization. These products can be used both in the manufacture of taxable packaging and in the production of other non-taxed goods.

According to Law 7/2022, polypropylene rolls are classified as "semi-finished plastic products," meaning that their importation triggers the taxable event, and the importing company assumes the status of taxpayer.

However, Article 75 of the law provides for an exemption when these products are not used for packaging manufacturing, provided that their final use is certified through a prior declaration by the purchaser. If the final use cannot be justified, the importing company remains liable for the tax payment.

If the exemption is not applied at the time of importation, the consulting company's clients (purchasers of the rolls) may request a refund of the tax using Form A22, provided they can demonstrate that the purchased products were not used to manufacture taxable packaging.

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